

## **Exhibit B: DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES LEAD ENTITY UNIFORM TERMS AND CONDITIONS, FY26**

1. **Joint Protocols.** Throughout this exhibit, DFPS references requirements where the Lead Entity must interact with the “primary caseworker” during the Rural Community-Based Care (CBC) Pilot Program prior to the implementation phase and as part of the Rural CBC Pilot Program Implementation Manual. The Lead Entity and DFPS will go through Exhibit B and develop a joint protocol describing how DFPS and the Lead Entity will interact in the implementation phase when the Lead Entity has responsibility for case management. Once the Lead Entity has entered the implementation phase, in the event of any conflict between this Exhibit and the Rural CBC Pilot Program Implementation Manual concerning the specific activities of a caseworker, the Rural CBC Pilot Program Manual will control.

2. **Office of Community Based Care Transition.** SB1896 of the 87<sup>th</sup> Regular Texas Legislative Session established the Office of Community Based Care Transition (OCBCT), which is administratively attached to DFPS, but whose Director independently reports to the Governor. OCBCT contracts on behalf of DFPS and works collaboratively with DFPS on certain aspects of this contract. Its duties and responsibilities are set forth in Texas Family Code Section 264.172.

### **3. Children and Youth.**

3.1 **Access to Children and Youth.** The Lead Entity must permit access to DFPS, its employees, its designees, Foster Care Ombudsmen, and properly identified individuals appointed by a court of competent jurisdiction (Volunteer or Court Appointed Special Advocates (“CASA”), guardian ad litem, and attorney ad litem) to all Children and Youth referred by the Department to the Lead Entity.

- 3.1.1 All parties will exercise their right of access in a reasonable manner and attempt to plan and coordinate all necessary visits with Children in cooperation with the Lead Entity and in a manner that minimizes disruption of the care of the Children placed with the Lead Entity.
- 3.1.2 No party will construe this section as prohibiting the Department or its designees from making unannounced visits to the Lead Entity’s facilities or to a foster home verified by a Child Placing Agency (CPA).
- 3.1.3 In order to determine whether an individual is appropriately appointed by a court of competent jurisdiction, a Lead Entity or Caregiver should do the following:
  - (A) If such individual is an employee of CASA, review for a valid court order; and
  - (B) If such individual is a CASA volunteer, review for a valid court order and a notification letter of volunteer assignment and acceptance that clarifies the individual's appointment to the Child; or
  - (C) Review to ensure that the individual is named on the Child's Contact List as part of the child’s placement paperwork.
- 3.1.4 If the Lead Entity or Caregiver cannot readily determine the identity or authority of an individual appointed by a court of competent jurisdiction, then the Lead Entity or Caregiver should obtain approval from the Child's case worker or chain of command prior to granting the individual access to the Child.

3.2 **Children’s Rights.** The Lead Entity must:

- 3.2.1 Cooperate with DFPS Child Protective Services (CPS) to ensure all Children have been given a written copy of the CPS Rights of Children and Youth in Foster Care (“Rights”) at the time of placement, review and explain the Rights, and obtain the Child's signature (5 and older), if appropriate;
- 3.2.2 No later than 72 hours after the initial placement, the Lead Entity, in the Implementation Phase must ensure that children and youth in foster care are provided

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with a copy of the CPS Rights of Children and Youth in Foster Care (Form 2530). At placement, the placement staff must review these Rights with the child or youth. Upon completion of the review, the placement staff must have the child or youth and caregiver sign on the appropriate signature lines, provide a copy to the child or youth, and upload a signed copy into OneCase in IMPACT;

- 3.2.3 Support the rights listed in the CPS Rights of Children and Youth in Foster Care;
- 3.2.4 Not deny or restrict, through action or policy, any of the rights listed in the CPS Rights of Children and Youth in Foster Care or the Extended Foster Care Rights and Responsibilities.
- 3.2.5 Develop and implement a process by which children, youth, and families may elevate concerns about the provision and/or quality of services provided.
- 3.2.6 Provide services to Children who are deaf or hard of hearing that ensure effective communication. When providing services to a Child who is deaf or hard of hearing, contact a Deafness Resource Specialist from the Health and Human Services Commission for assistance in determining how best to ensure effective communication:  
<https://hhs.texas.gov/services/disability/deaf-hard-hearing>; and  
<https://dhhs.hhsc.state.tx.us/providers/cssacontractors.asp>
- 3.2.7 Ensure the DFPS hotline's phone number is readily available and displayed prominently in all foster care residential facilities. Foster children must be allowed telephone access to reach out to this 24-hour system, free from observation. The following link will take you to the Ombudsman poster which must be printed and displayed per instructions above.  
<https://www.hhs.texas.gov/sites/default/files/documents/about-hhs/your-rights/office-ombudsman/ombudsman-fostercarefacilityflyer.pdf>
- 3.2.8 Ensure the compliance of the individual subcontractors if the Lead Entity provides services through a network of providers.
- 3.2.9 Consistent with Family Code Section 264.131, the Lead Entity or its subcontractors may not collect or use a DNA sample from a child in DFPS's managing conservatorship for any purpose without:  
 (1) the written consent of an adult having actual care, control, and possession of the child as the child's primary caregiver or (2) a court order.

### **3.3 Health Care Services for Children in Substitute Care.**

- 3.3.1 The Lead Entity must access all medical, dental, vision, and behavioral health care for Children in substitute care referred by DFPS through STAR Health and managed care system for children in substitute care, unless otherwise directed by DFPS.
  - (A) For all Children, an initial Texas Health Steps Medical Checkup within 30 days of entry into DFPS conservatorship;
  - (B) For all Children, unless required more frequently by the Child's medical provider, a subsequent Texas Health Steps Medical Checkup must be scheduled one year after the previous checkup and no later than the child's next birthday;
  - (C) For Children under 36 months of age, Texas Health Steps Medical Checkups in accordance with the Texas Health Steps Periodicity Schedule:  
<https://www.hhs.texas.gov/providers/health-services-providers/texas-health-steps/medical-providers>
- 3.3.2 The Lead Entity must access Medicaid healthcare related services which are excluded from or carved out of the STAR Health Plan but for which Children are eligible.

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- 3.3.3 The Lead Entity is financially responsible for providing behavioral health services for children served by the Lead Entity when other community resources are not available and/or Medicaid does not cover the cost of the service. The cost of all medically necessary behavioral health services for children served by the Lead Entity should be covered through Medicaid.
- 3.3.4 No later than the third business day after a Child's Caregiver receives a letter denying prior authorization for a Medicaid service, the Lead Entity must e-mail a scanned copy of the denial letter and the date of such receipt to the assigned primary caseworker or caseworker's chain of command and the DFPS regional Well-being Specialist.
- 3.4 Research/Studies.** Children and families referred to the Lead Entity for services must not participate in research and/or studies without the prior written approval of DFPS.
- 3.5 Case-Specific Dispute Resolution.** Case-specific disputes between the Lead Entity and DFPS will be resolved using the following protocol:
  - 3.5.1 Step 1: Objective, solution-driven, discussion or meeting between the individual(s) closest to the issue in dispute. If a mutually agreeable solution is not achieved, the individual will notify the other individual that they plan to involve their chain of command.
  - 3.5.2 Step 2: If Step 1 is unsuccessful, either party may proceed to Step 2. Disputes proceeding to Step 2 will be elevated to a knowledgeable, neutral DFPS staff member who understands the philosophy and goals of community-based care and is not a direct supervisor of the individual involved in the dispute. A written decision from DFPS is required within five business days of the neutral DFPS staff member reviewing the dispute and hearing from the disputing parties (as applicable) or as otherwise mutually agreed upon by the parties.
  - 3.5.3 The Lead Entity must ensure continuity of services and continue performing under this Contract, as defined by DFPS, to the child or family affected while seeking to resolve case-specific disputes.
  - 3.5.4 The Parties must use the dispute resolution process outlined in Texas Government Code Chapter 2260 if the case specific dispute resolution procedures fail to resolve a dispute arising under this Contract.
- 3.6 Notification of Family/Tribal Affiliation.** During the Implementation Phase, the Lead Entity must notify DFPS in writing within one business day if the Lead Entity finds a child's family member(s) during its work with the child and/or any other individual or entity. The Lead Entity must immediately notify DFPS in writing upon learning that a child or a family member may possibly have a tribal family connection.
- 3.7 Evaluation.** The Lead Entity must participate in and provide information for any DFPS evaluation(s) of the Foster Care Redesign or Community Based Care, including third party evaluations.
- 3.8 Education.** The Lead Entity must ensure:
  - 3.8.1 Each School-Aged Child is enrolled in a Public School within two school days of placement unless an exception has been granted in writing by the Child's primary Caseworker or Caseworker's Chain of Command;

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- 3.8.2 If the caregiver plans to educate the child in a home setting, the Lead Entity must contact the CPS caseworker within one business day of receiving notification from the caregiver;
  - 3.8.3 If a Child has to withdraw from a Public School due to a change in placement that results in the Child being discharged, the Discharging Lead Entity must notify the Public School within three school days of this discharge, unless an exception has been granted in writing by the Child's primary Caseworker or Caseworker's Chain of Command;
  - 3.8.4 Each School-Aged Child attends a Public School unless the Lead Entity has received a written exception to this requirement by the Child's primary Caseworker or Caseworker's Chain of Command;
  - 3.8.5 Each Child that is three, four, and five years of age:
    - (A) Attends a pre-kindergarten program offered through the Public School or an early childhood education program offered through Head Start, if available, in the local community of the Child's Caregiver, unless an exception has been granted by the Child's primary Caseworker or Caseworker's Chain of Command; or
    - (B) May attend a private, early childhood education program or pre-kindergarten program paid for by the Lead Entity or Caregiver, if an exception has been granted by the primary Caseworker or Caseworker's Chain of Command;
  - 3.8.6 Written verification of the Child's enrollment is provided to the primary Caseworker within five calendar days of the Child's enrollment;
  - 3.8.7 Minimal disruptions to a child's education by scheduling therapy and other appointments outside of school hours, whenever possible;
  - 3.8.8 Necessary support is provided to Children to achieve educational goals, including but not limited to, tutoring, help with homework and obtaining necessary school supplies; and
  - 3.8.9 Caregiver participates in all child/youth Admission, Review & Dismissal ("ARD") meeting(s) and parent/teacher conferences either in person or by telephone.
  - 3.8.10 Pursuant to Texas Education Code §29.012, the Lead Entity must ensure that a school district receives written notice for each instance where a child age 3 or older is placed in a residential facility within the school district rather than a home. The notice must be sent not later than the third calendar day after the date the child is placed in the facility.
- 3.9 Education Portfolio.**
- 3.9.1 The Lead Entity must develop, maintain, and update an Education Portfolio for each school-age child in the Lead Entity's care. The Lead Entity must keep the Education Portfolio where the child resides while in paid foster care (Implementation Phase) and substitute care (Implementation Phase). The Education Portfolio must contain the current following educational documents and records:
    - (A) School enrollment documentation: Birth certificate, Social Security number, Immunizations, and withdrawal paperwork from the last school;
    - (B) Special education documentation: ARD team meeting notes, Individual Education Plan (IEP), documents related to Section 504 of the Rehabilitation Act of 1973 regarding reasonable accommodations, Full Individual Evaluations and/or other diagnostic assessments;
    - (C) Report cards, progress reports, and/or IEP progress reports;
    - (D) Transcripts;
    - (E) Standardized test results;

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- (F) Referrals, notices, or correspondences; and
    - (G) School pictures.
  - 3.9.2 The Lead Entity must make the Education Portfolio readily available to DFPS for each school-age child on any visit with the child or otherwise, if requested.
  - 3.9.3 The Lead Entity must ensure and document that the report card and progress reports are discussed with each School-Age child.
  - 3.9.4 The Lead Entity must provide the Child's Education Portfolio to DFPS at the time a School-Age child is discharged from the Lead Entity's care (Implementation Phase).
- 3.10 Post-Secondary Educational and Vocational Activities.** The Lead Entity must:
  - 3.10.1 Provide or facilitate access to post-secondary education, vocational or technical training, support services and activities, including job readiness, skills training, and internship program opportunities that are required by the Child's Plan of Service and CPS Transition Plan at 14 years of age and include youth with disabilities, ensuring information is developmentally appropriate, so each Child:
    - (A) Has access to appropriate community vocational and technical training programs and volunteer opportunities, including services provided by the local Texas Workforce Solutions offices (if available in the area), Transition Centers (where available), if applicable, vocational rehabilitation services for individuals with disabilities provided by the local Health and Human Services Agency (if available in the area), and post-secondary education programs; and
    - (B) Receives the assistance needed to maximize the benefit of these activities.
  - 3.10.2 Guide and assist the Child as needed in accessing and completing documents when required for the State-Paid Tuition Fee Waiver and Education and Training Voucher (ETV) Program.
- 3.11 Driver's License.** The Lead Entity must:
  - 3.11.1 Ensure that the following are made available to Children to facilitate driver license fee waiver-residency affidavit requirements:
    - (A) A DFPS Foster Youth Driver License Fee Waiver Letter;
    - (B) A Texas Department of Public Safety (DPS) Texas Residency Affidavit (Form DL-5), which is completed and signed by the Child and a Representative;
    - (C) For Children under age 18, a Representative to accompany the Child to the DPS driver license office to provide acceptable proof of residency; and
    - (D) Inform Children who have applied for a driver license of the need to notify DPS of a new address change within 30 days of a change in placement.
- 3.12 Early Childhood Intervention (ECI) Program.** The Lead Entity must, for each Child who is younger than three years of age:
  - 3.12.1 Provide, in compliance with the Texas Education Code §29.012, written notice to the local ECI program not later than the third calendar day after the date a Child is placed in a residential Facility. For this written notice, the Lead Entity should reference the Texas Education Code §29.012 and include the following minimum information:
    - (A) Name and date of birth of Child;
    - (B) Name of caregiver (kinship or foster), CPA or GRO (if applicable);
    - (C) Address of location where child resides; and
    - (D) Contact information for the caregiver or representative of the CPA or GRO (if applicable) who is submitting such notice.

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- 3.12.2 Notify the primary Caseworker and Primary Care Physician (PCP) if the Lead Entity has a concern regarding the physical or mental development of a Child under the age of three;
- 3.12.3 Ensure that a referral to ECI is made if the primary Caseworker or PCP has determined a referral is necessary;
- 3.12.4 Facilitate the continuation of ECI services to each Child who was receiving ECI services prior to placement;
- 3.12.5 Ensure the Caregiver fully participates in the Child's ECI evaluation and process for developing an Individualized Family Service Plan (IFSP) for ECI services;
- 3.12.6 Ensure the Caregiver performs the following duties related to the Child's participation in the ECI Program:
  - (A) To the extent the Caregiver consents to the Child's recommended and additional ECI Program services, the Caregiver fully participates in and supports such services;
  - (B) To the extent the Caregiver declines to consent to any of the Child's recommended and additional ECI Program services, the Lead Entity must immediately submit a detailed written report to the Caseworker explaining why such declined services are not in the best interest of the Child (Implementation Phase).
  - (C) To the extent the Caregiver disagrees or has a concern with any matter related to the identification, evaluation, placement, or provision of ECI services, the Caregiver may exercise the Caregiver's rights under the ECI program of the Texas Health and Human Services Commission, which can be found at: <https://hhs.texas.gov/services/disability/early-childhood-intervention-services/eci-how-file-a-complaint>; and
  - (D) Ensure the Caregiver provides written consent for:
    - 1) The Child's ECI information to be entered into the Child's Health Passport; and
    - 2) The Child's primary Caseworker and Caseworker's Chain of Command to directly access ECI records from the ECI program if necessary.

### **3.13 Approval for Travel and Visits.**

- 3.13.1 The Lead Entity must develop and maintain a written policy regarding overnight travel and overnight visits. When the Lead Entity desires to take a child outside of the state or country, the Lead Entity must follow DFPS policies and procedures including the completion of the Caregiver Declaration Regarding Out-of-Country Travel (Form 2069). See DFPS Policy [6474](#) When a Child Travels Outside of the U.S.
- 3.13.2 Written approval for travel and visits is not required when:
  - (A) The primary Caseworker arranges for the child to visit with members of the child's family; or
  - (B) The primary Caseworker authorizes the child to travel in specified circumstances (usually routine trips or visits).
- 3.13.3 The Lead Entity shall provide or arrange all travel to ensure the Child's access to:
  - (A) Behavioral Health, Medical, Dental, Vision, and Pharmacy services;
  - (B) Recreational, educational and after-school activities, sibling visits, family visits, court hearings, Preparation for Adult Living (PAL) activities, Aging-Out Seminars, Youth Leadership Council activities, Permanency Planning Meetings, local Texas Workforce Solutions offices, Transition Centers (if available in the area); and

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- (C) Any other services necessary to fulfill the orders of a court or the tasks on a Child's Plan of Service.

### **3.14 Discipline and Crisis Management.**

- 3.14.1 **Discipline.** The Lead Entity must develop and implement discipline policies consistent with the Texas Administrative Code (TAC) (*see* [26 TAC, Chapters 743-750](#)) and HHSC Minimum Standards.
- 3.14.2 **De-Escalation and Crisis Management.** The Lead Entity must develop and implement Emergency Behavior Intervention policies consistent with the TAC (*see* [26 TAC, Chapters 743-750](#)) and HHSC Minimum Standards.

### **3.15 Voluntary Extended Foster Care or Return to Foster Care.** The Lead Entity must offer assistance to the youth in maintaining documentation such as school transcripts or pay stubs to demonstrate that any such young adult 18 to 22 years of age is qualified to remain in Extended Foster Care or Return to Care. The Lead Entity must notify DFPS if a young adult no longer meets eligibility criteria for Extended Foster Care or Return to Care (Implementation Phase). The Lead Entity must assist the young adult in completion of the Voluntary Extended Foster Care Agreement, Form 2540, during the following time periods:

- 3.15.1 Within the thirty (30) days preceding the young adult's 18th birthday, when possible;  
or
- 3.15.2 When this is not possible, no later than the 30th day after the youth's 18th birthday.

### **3.16 Basic Living and Social Skills.** The Lead Entity must ensure for all Children that Caregivers:

- 3.16.1 Teach Basic Life Skills and Social Skills;
- 3.16.2 Maximize opportunities for learning through the use of Basic Life Skills Activities;
- 3.16.3 Provide access to Experiential Life Skills Activities provided by community resources;
- 3.16.4 Promote the ability to appropriately care for themselves and function in the community;
- 3.16.5 Assist Children ages 14 or older who have a source of income to establish a savings plan and, if available, a savings account to manage independently;
- 3.16.6 Provide or assist Children ages 18 up to 22 years of age who have a source of income to obtain a savings or checking account with a Financial Institution in accordance with Texas Finance Code §201.101; and
- 3.16.7 Provide access to age-appropriate Normalcy activities which are suitable for the Child's level of maturity and age including activities not listed in the Child's Service Plan. The Lead Entity must train Caregivers and use a "Reasonable and Prudent Parent Standard" to decide whether a Child may participate in an unsupervised activity. Activities can include, but are not limited to:
- (A) Participating in academic and non-academic extracurricular activities within the Child's school;
  - (B) Allowing the Child to visit with friends or attend regular social and recreational events;
  - (C) Support a Child's employment efforts; and
  - (D) Participating in other activities agreed upon by the Caregiver and the Child, without the need to seek initial approval from the Department.

### **3.17 National Youth in Transition Database (NYTD).** The Lead Entity must ensure that it or its direct service providers support the necessary activities, including on-going computer access for

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Children or Young Adults selected during a certain reporting periods (October 1 to March 31 or April 1 to September 30) to take the NYTD survey at age 17, 19 or 21. The Lead Entity must ensure that it or its provider network:

- 3.17.1 Maintains contact with regional PAL Staff to determine if a Child has been selected to take the survey. PAL Staff contact information can be found on the Texas Youth Connection website at: [www.texasyouthconnection.org](http://www.texasyouthconnection.org);
- 3.17.2 Ensure the youth register with NYTD on the Texas Youth Connection website at: [www.texasyouthconnection.org](http://www.texasyouthconnection.org);
- 3.17.3 Ensure that the youth maintain an email address to receive NYTD updates;
- 3.17.4 Ensure that the youth enter NYTD contact updates to the Texas Youth Connection website at: [www.texasyouthconnection.org](http://www.texasyouthconnection.org); and
- 3.17.5 Ensure that the youth complete the NYTD survey within the required timeframe as specified on the Texas Youth Connection website at: [www.texasyouthconnection.org](http://www.texasyouthconnection.org).

#### **4. Fiscal Provisions.**

- 4.1 Funds Availability.** This Contract depends upon the availability and receipt of state or federal funds. DFPS is prohibited from incurring obligations in excess of amount lawfully appropriated by the Texas Legislature over the course of a biennium. If funds for this Contract become unavailable during any budget period, DFPS may immediately terminate or reduce the amount of this Contract at the discretion of the Department. In the event of cancellation or termination under this Section, DFPS have no liability for any damages or losses caused or associated with such termination or cancellation.
- 4.2 Payments.** The Lead Entity must seek payment or adjustment to payments in accordance with the time limit specified in 45 CFR 95.1 (Code of Federal Regulations). This subpart establishes a two-year (eight quarter) time limit for a State to claim Federal financial participation in expenditures under State plans approved under Title IV-B, Title IV-E, and Temporary Assistance for Needy Families (TANF). Any invoice or amended invoice, which is submitted to DFPS later than seven quarters after the end of the quarter in which the expense is incurred, will not be processed unless DFPS determines that submission for payment of the invoice to the federal government can be completed in a proper and timely fashion.
- 4.3 Debt to State and Corporate Status.** Pursuant to Tex. Gov. Code § 403.055, the Department will not approve, and the Texas Comptroller will not issue payment for non-Title IV-E funds if the Lead Entity is indebted to the State for any reason, including a tax delinquency. If a corporation, the Lead Entity certifies by execution of this Contract that it is current and will remain current in its payment of franchise taxes to the State of Texas or that it is exempt from payment of franchise taxes under Texas law (Tex. Tax Code §§ 171.001 et seq.). If the Lead Entity's tax payments become delinquent during the Contract term, all or part of the non-Title IV-E payments under this Contract may be withheld until all delinquent State taxes are paid in full. If a payment law prohibits the Texas Comptroller from making a payment, the Lead Entity acknowledges that DFPS payments under the Contract will be applied toward eliminating the debt or delinquency. This requirement applies to any debt or delinquency, regardless of when it arises.



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- 4.4 Use of Funds.** The Lead Entity must expend funds provided under this Contract only for the provision of approved services and for reasonable and allowable expenses directly related to those services.
- 4.5 Use for Match Prohibited.** The Lead Entity cannot use funds provided under this Contract for matching purposes in securing other funding without the written approval of DFPS.
- 4.6 Program Income.** Income directly generated from funds provided under this Contract or earned only as a result of such funds constitutes Program Income. Unless otherwise required under the Program, the Lead Entity must use the addition alternative, as provided in 45 CFR 75.307 for the use of Project income to further the Program, and the Lead Entity must spend the Program Income on the Project. The Lead Entity must identify and report this income in accordance with the Contract and applicable law. The Lead Entity must refund program income not expended in the term in which it is earned to DFPS. The Department may base future funding levels, in part, upon the Lead Entity's proficiency in identifying, billing, collecting, and reporting Program Income, and in using it for the purposes and under the conditions specified in this Contract.
- 4.7 Nonsupplanting.** The Lead Entity cannot use funds from this Contract to supplant, replace, or substitute for existing funding from other sources, but must use funds from this Contract to supplement existing state or local funds currently available. The Lead Entity must make a good faith effort to maintain its current level of support. The Lead Entity may be required to submit documentation substantiating that a reduction in state or local funding, if any, resulted for reasons other than receipt or expected receipt of funding under this Contract.
- 4.8 No debt Against the State.** The Contract will not be construed as creating any debt by or on behalf of the State of Texas.
- 4.9 Recapture of Funds.** DFPS may withhold all or part of any payments to the Lead Entity to offset previous overpayments to the Lead Entity. Overpayments, as used in this Section, include payments (i) made by DFPS that exceed the maximum allowable rates; (ii) that are not allowed under applicable laws, rules, or regulations; or (iii) that are otherwise inconsistent with this Contract, including any unapproved expenditures. The Lead Entity agrees that it must be liable to DFPS for repayment of any costs disallowed pursuant to financial and compliance audit(s) of funds received under this Contract. The Lead Entity further understands and agrees that reimbursement of such disallowed costs will be paid by the Lead Entity from funds which were not provided or otherwise made available under this Contract.
- 4.10 Allowable Costs.** DFPS will reimburse allowable costs incurred in performing services under this Contract that are sufficiently documented and in accordance with the Federal Regulations set forth in 45 CFR 75 and the State of Texas Uniform Grant Management Standards (UGMS). DFPS will determine whether costs submitted by Lead Entity are allowable and eligible for reimbursement. If DFPS has paid funds for unallowable or ineligible costs, DFPS will notify the Lead Entity in writing, and the Lead Entity must return the funds to the Department within thirty (30) calendar days of receipt of the written notice. At its sole discretion, DFPS may withhold or take repayment (recoup) from funds available under this Contract in amounts necessary to fulfill the Lead Entity's repayment obligations.
- 4.11 Independent Single or Program-Specific Audit.** If the Lead Entity, within the Lead Entity's fiscal year, expends a total amount of at least seven hundred fifty thousand dollars (\$750,000.00)

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in federal funds, the Lead Entity must have a single audit or program-specific audit in accordance with 45 CFR 75, Subpart F. If the Lead Entity, within the Lead Entity's fiscal year, expends a total amount of at least \$750,000.00 in state funds awarded, the Lead Entity must have a single audit or program-specific audit in accordance with UGMS, State of Texas Single Audit Circular. For-profit the Lead Entitys whose expenditures meet or exceed the federal or state expenditure thresholds, must follow the guidelines in 45 CFR 75 or UGMS, as applicable, for their program-specific audits. The HHSC Compliance and Quality Control Division (CQC) will notify the Lead Entity to complete the Single Audit Status Registration Form. The audit must be conducted by an independent certified public accountant and in accordance with applicable Federal regulations (formerly OMB Circulars), Government Auditing Standards, and UGMS. The Lead Entity must procure audit services in compliance with this section, state procurement procedures, as well as with the provisions of UGMS.

- 4.12 Submission of Audit.** Within thirty (30) calendar days of receipt of the audit reports required by the Independent Single or Program-Specific Audit section, the Lead Entity must submit one copy to DFPS and one copy to the HHSC CQC through the HHSC SAU portal at <https://hhsportal.hhs.state.tx.us/heartwebextr/hhscSau>. If the Lead Entity fails to submit the audit report as required by the Independent Single or Program-Specific Audit section within thirty (30) calendar days of receipt by the Lead Entity, the Lead Entity must be subject to the DFPS sanctions and remedies for non-compliance with this Contract.
- 4.13 Compliance with Audit or Inspection Findings.** The Lead Entity must implement all corrections necessary to address any finding of noncompliance with any law, regulation, audit requirement, accounting principle, or deficiency identified in any audit of this Contract. Any such correction will be at the Lead Entity's or Subcontractor's sole expense. Whether the Lead Entity's action corrects any noncompliance will be solely the decision of DFPS. The Lead Entity must provide, at DFPS' request, a copy of those portions of the Lead Entity's and its Subcontractor's internal audit reports relating to this Contract.

### **5. Lead Entity Responsibilities.**

#### **5.1 Legal and Regulatory Requirements.**

- 5.1.1** DFPS is accountable for meeting federal funding requirements outlined in the Temporary Assistance for Needy Families (TANF) program and in Titles IV-B and IV-E of the Social Security Act. The Lead Entity must follow all applicable state and federal child welfare laws and regulations when providing the services outlined in this Contract. Information about applicable state and federal child welfare laws and regulations may be found at:
- (A) Title IV-B - Child Welfare Policy Manual:  
[http://www.acf.hhs.gov/cwpm/programs/cb/laws\\_policies/laws/cwpm/index.jsp](http://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/index.jsp)
  - (B) CAPTA: <https://www.acf.hhs.gov/cb/resource/capta-state-grants>
  - (C) Compilation of Titles IV- B, IV- E and Related Sections of the Social Security Act: <https://www.acf.hhs.gov/cb/resource/compilation-of-social-security-act>
  - (D) Temporary Assistance for Needy Families:  
<https://www.acf.hhs.gov/ofa/programs/tanf>
  - (E) DFPS State Plan for IV-B and IV-E:  
[http://www.dfps.state.tx.us/About\\_DFPS/reports.asp](http://www.dfps.state.tx.us/About_DFPS/reports.asp)
  - (F) **Prompt Payment.** The Lead Entity must comply with the Texas Comptroller of Public Accounts prompt payment requirements. Information about these

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requirements may be accessed by visiting:

<https://fm.x.cpa.state.tx.us/fm/payment/vendorinfo.php>

- 5.1.2 **Funding Restrictions.** The Lead Entity may not use funds received from DFPS to replace any other federal, state, or local source of funds awarded under any other contract.
- 5.1.3 **Non-Denial of Services.** A client referred to the Lead Entity by DFPS cannot be denied or experience a delay in services based on a failure to pay fees or contribute to the cost of any service.
- 5.1.4 **Medicaid for Purchase of Service Clients.**
- (A) Individuals referred by DFPS and served through the Lead Entity may be Medicaid (Traditional or Managed Care) eligible. The Lead Entity must have a process to verify the Medicaid eligibility of the individual served, initially and on an on-going basis. This process should include requesting a copy of the Medicaid card at the first encounter and periodic verifications of eligibility, as well as being informed and following the process for service providers based on the individual's Medicaid plan.
  - (B) DFPS funding allocated for the Lead Entity cannot be used for Medicaid eligible services for Medicaid eligible clients except as stated in this Section. The Lead Entity must use Medicaid (Traditional or Managed Care) as the source of payment for eligible individuals when Medicaid reimburses for the identified service. If the Lead Entity chooses not to utilize Medicaid for any Medicaid eligible individual, then the Lead Entity cannot bill DFPS for the service.
  - (C) The Lead Entity must keep documentation of proof of Medicaid and results of Medicaid and Managed Care verification and claims in the client file.
  - (D) The Lead Entity's failure to appropriately bill Medicaid for an eligible service will result in the Lead Entity needing to reimburse DFPS for any payments made by DFPS for those services.
  - (E) The Lead Entity must accept Medicaid or Medicaid Managed Care compensation as payment in full for covered services. The Lead Entity must not bill DFPS until the Medicaid claim is finalized. If the Lead Entity bills DFPS for services which are Medicaid eligible and for which the Lead Entity actually receives payment from Medicaid, the Lead Entity must reimburse DFPS for the payment, plus interest. Interest on such overpayment amount will be calculated from the date of receipt of DFPS funds by the Lead Entity of the overcharged amount until the date of payment to HHSC and will be calculated at the Department of Treasury's Median Rate (resulting from the Treasury's auction of 13-week bills) for the week in which liability is assessed, but in no event will exceed the highest lawful rate of interest.
  - (F) If Medicaid refuses to pay for a service, except when due to an Lead Entity error or failure to take appropriate and timely action to include appeals, payment will be made through the Contract with proof of denial from Medicaid.
- 5.1.5 **Private Insurance (Implementation Phase).**
- (A) The Lead Entity may ask those individuals referred to the Lead Entity if they are covered by private insurance and request that they utilize their private insurance. If in agreement, the Lead Entity must request the client file claims through their insurance for services (excluding paid foster care and Preparation for Adult Living Services). Note: Medicaid requires that existing insurance be used first for all eligible clients (excluding children receiving Foster Care Medicaid). Medicaid will pay what the private insurance does not cover up to the Medicaid

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fee. If the client refuses to file a claim, then Medicaid will deny the claim and it will be a billable claim against the Contract with the proper documentation.

- (B) The Lead Entity may claim reimbursement through the contract allocation for deductibles and/or insurance co-payments for allowable private insurance claims not otherwise paid by the client, so long as such a payment is permitted by federal TANF and Titles IV-B and IV-E regulations and documentation is maintained to support this claim.
- (C) If the client has insurance and chooses to file a claim, the Lead Entity may choose to accept and require its service providers to accept the final insurance compensation as payment in full for covered services.
- (D) If the client has insurance but the insurance carrier refuses to pay or fully pay for an otherwise allowable service, the client should be assisted and encouraged to appeal. Claims should be made through the contract allotment after the denial has been appealed and with proof of denial from the insurance company, when the client follows through with the appeal. When the client does not appeal, documentation of the Lead Entity's efforts to assist and the client's failure to act should be documented.
- (E) The Lead Entity must keep documentation of the explanation of benefits for each insurance claim charged to the contract in the client file. The Lead Entity must not bill DFPS until the insurance claim is finalized. If the Lead Entity bills DFPS for services which are covered by private insurance and for which the Lead Entity actually receives payment from the insurance carrier, the Lead Entity must reimburse DFPS for the payment, plus interest. Interest on such overpayment amount will be calculated from the date of receipt of DFPS funds by the Lead Entity of the overcharged amount until the date of payment to DFPS and will be calculated at the Department of Treasury's Median Rate (resulting from the Treasury's auction of 13-week bills) for the week in which liability is assessed, but in no event will exceed the highest lawful rate of interest.

### **5.1.6 Sliding Fee Scale / Service Co-Payments (Implementation Phase).**

- (A) The Lead Entity may use a sliding fee scale or otherwise allow individuals DFPS has referred to the Lead Entity for purchased services (services to families) to be responsible in part for paying fees for purchased service (with the exception of services offered as a part of Preparation for Adult Living).
- (B) DFPS must approve the Lead Entity's plan for using a sliding fee scale or co-payments prior to implementation.
- (C) The Lead Entity must make efforts to collect fees and/or co-payments at the point of service; however, the client's failure to pay must not result in denial of services.

### **5.1.7 Reimbursement for Vandalism or Damage.** DFPS will not reimburse the Lead Entity for vandalism or damage caused by deliberate acts of destruction by any individual referred to the Lead Entity by DFPS.

### **5.1.8 General Requirements for All Payments to Lead Entity.**

- (A) The Lead Entity must submit bills for purchased services (excluding foster care) in an accurate and timely manner within 15 days of the month following the month of service.
- (B) All payments will be made to the Lead Entity after deducting any known previous overpayment made by DFPS, plus interest. Interest on such overpayment amount will be calculated from the date of receipt of DFPS funds by the Lead Entity of the overcharged amount until the date of payment to DFPS

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and will be calculated at the Department of Treasury's Median Rate (resulting from the Treasury's auction of 13-week bills) for the week in which liability is assessed, but in no event to exceed the highest lawful rate of interest.

- (C) The Lead Entity must reconcile all claims prior to the most current eight quarters. The Lead Entity must seek payment or adjustment to payments in accordance with the time limit specified in 45 CFR 95.1. This subsection establishes a two-year (eight quarter) time limit for a State to claim Federal financial participation in expenditures under State plans approved under titles IV-B, IV-E and TANF. Any claim or amended claim, which is submitted to DFPS later than seven quarters after the end of the quarter of the expense, will not be processed unless DFPS determines that submission of payment of the claim to the federal government can be processed in a proper and timely fashion.

### **5.1.9 General Fiscal Requirements.**

- (A) The Lead Entity must file appropriate and applicable forms to the Internal Revenue Service and must provide a copy to DFPS upon request.
- (B) The Lead Entity must submit quarterly financial statements prepared following an accrual basis.
- (C) The Lead Entity must maintain all financial and statistical information using the accrual method of accounting in accordance with 40 TAC 700.1753.
- (D) The Lead Entity must treat its operation under this contract separately in financial statements to facilitate monitoring and to track the financial performance of the Lead Entity.

**5.2 Required Programmatic Record Keeping.** The Lead Entity must ensure compliance with all record keeping requirements stated in this Contract as well as HHSC Residential Child Care Minimum Standards and the Texas State Records Retention Schedule. The Lead Entity must ensure that any records maintained in proprietary systems are able to be provided to DFPS, upon Contract expiration or termination and at no additional cost, in a format that is usable to DFPS or a subsequent Lead Entity. At a minimum, proprietary system files must be able to be provided to DFPS in a .csv format. The Lead Entity agrees to work with DFPS on the transfer of all DFPS program files when needed. For information about the Texas State Records Retention Schedule, please visit: <http://www.tsl.state.tx.us/slr/recordspubs/rrs4.html>. The Lead Entity must maintain documentation to support performance measures to allow for testing the validity of the results reported. The Lead Entity must have policies and procedures for ensuring the development and sharing of accurate and useful client reports. At a minimum, the following will be required:

- 5.2.1 Maintenance of Individual Child (Implementation Phase) and Family/Client (Implementation Phase) Case Files.** Files must include all assessments, evaluations, service plans, and monthly and closing summaries for services provided in the Implementation Phase.
- 5.2.2 Referral Tracking System (Implementation Phase).** The Lead Entity must develop and maintain a tracking system to record and document DFPS' referral of children and families for services to the Lead Entity, including date of referral and when services were initiated.
- 5.2.3 Provider Personnel Files.** The Lead Entity must maintain and ensure subcontractors maintain personnel files that include, but are not limited to, the following information:
  - (A) Copy of current professional license(s), as applicable
  - (B) Verification of Medicaid provider number, as applicable

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- (C) Copy of completed Forms 2970c and 2971c or other applicable form as identified by DFPS
- (D) Copy of Background Check Results

### **5.3 Foster Care Reimbursement Requirements.**

- 5.3.1 DFPS will reimburse the Lead Entity for the calendar day of placement, but not for the calendar day of discharge.
- 5.3.2 DFPS will provide the Lead Entity notice in writing of any change that affects payments to the Lead Entity, unless court ordered or there is immediate risk to safety. DFPS must provide notice to the Lead Entity within two (2) business days of any change in a child's eligibility. DFPS will pay the Lead Entity for days of care provided up until the time DFPS notifies the Lead Entity of a change, even if a child's eligibility ended prior to notification.
- 5.3.3 DFPS will reimburse the Lead Entity for up to 14 days of foster care in the following circumstances:
  - (A) Psychiatric hospitalization;
  - (B) Medical facility hospitalization;
  - (C) Runaway;
  - (D) Unauthorized placement;
  - (E) Temporary placement/visit in own home;
  - (F) Locked facility, jail, juvenile detention center; or
  - (G) Short-term substance abuse placement.
  - (H) Under the above-referenced circumstances, DFPS will reimburse the Lead Entity for days of foster care on behalf of a child who is no longer in that provider's care, in order to reserve space for the child's anticipated return to the same placement at a date in the near future. The maximum duration of continued payments to the provider during a child's absence is subject to the limitations set forth in this section and [TAC Title 40, Part 19, Chapter 700, Subchapter C, Rule §700.323](#). Payments to the Lead Entity for foster care during a child's absence will only be made if each of the following conditions are met:
    - 1) The Lead Entity plans to return the child to the same placement at the end of the absence;
    - 2) The provider agrees to reserve space for the child's return for as long as payments are made in the child's absence; and
    - 3) The Lead Entity is not making foster care payments on behalf of this same child to any other provider (with the exception of what is required as a part of the minimum pass-through to the child's foster parent) during the child's absence.
  - (I) In order for the provider to be eligible to receive foster care payments for children absent from the foster care facility, excluding children who have run away from placement, the provider must be actively engaged in:
    - 1) Giving emotional support to the child (via active participation in the child's treatment while hospitalized);
    - 2) Meeting the child's concrete needs (providing clothing, etc.);
    - 3) Having frequent face-to-face contact with the child on a regular basis (being physically present with the child at the hospital as required by some medical facilities, etc.);
    - 4) Facilitating family visits, as appropriate; and

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- 5) Communicating with the medical facility care team regarding the child's progress and discharge plan.
  - (J) In order for the provider to be eligible to receive foster care payments for children who have run away from the foster care facility, the provider must be actively engaged in working with the primary caseworker to locate the child.
- 5.3.4 DFPS will not reimburse the Lead Entity for days of foster care when children and/or youth reside in a non-IV-E eligible paid placement, including but not limited to:
- (A) Psychiatric hospitals once acute care ends;
  - (B) Nursing home placement;
  - (C) DFPS Intermediate care facilities for persons with mental retardation (ICFMR);
  - (D) State Supported Living Centers (SSLC);
  - (E) Placed with a non-licensed relative caregiver;
  - (F) Pre-consummated adoptive placement;
  - (G) Texas Youth Commission facility; or
  - (H) Texas State Hospitals;
  - (I) Home and Community-based Services.
- Note: The Lead Entity may utilize Medicaid paid placements, such as Psychiatric Hospitals, to the extent allowed by Medicaid (usually no more than 15 days). However, the Lead Entity must seek reimbursement for such instances from Medicaid and not from DFPS).

- 5.4 Records Maintenance and Retention.** The Lead Entity must maintain all records and information concerning a child served under this contract.
- 5.4.1 The Lead Entity must keep and maintain accurate and complete records necessary to determine compliance with this Contract and applicable laws.
  - 5.4.2 The Lead Entity must provide access to its records to DFPS, the Texas State Auditor's Office (SAO), the federal government, and their authorized representatives.
  - 5.4.3 Unless otherwise specified in this Contract, The Lead Entity must maintain legible copies of Subcontracts under this Contract and all related documentation for a minimum of seven years after the termination of this Contract or seven years after the completion of any litigation or dispute involving the Contract, whichever is longer.
  - 5.4.4 **THE Lead Entity MUST NOT DISPOSE OF RECORDS BEFORE PROVIDING THE DFPS CONTRACT MANAGER WRITTEN NOTICE OF ITS INTENT TO DISPOSE OF RECORDS AND RECEIVING WRITTEN APPROVAL FROM THE DFPS CONTRACT MANAGER.**
  - 5.4.5 The Lead Entity must provide access to all records and information concerning a child served under this contract to properly identified individuals appointed by a court of competent jurisdiction, including but not limited to: Volunteer or Court Appointed Special Advocates (CASA), guardian ad litem, Foster Care Ombudsman, attorney ad litem, and anyone else approved by DFPS or another competent person who has a legitimate right to the records.
  - 5.4.6 Such records and information may include, but are not limited to, documentation of face-to-face visits with the Child by the Lead Entity's Case Manager staff, the Child's Service Plan, documentation of services provided to a Child, medical and dental information, educational documentation, and narratives.
  - 5.4.7 In order to assess that an individual who is accessing records and information is appointed by a court of competent jurisdiction, a Lead Entity or Caregiver should:
    - (A) If such individual is an employee of the CASA, have a valid court order; and



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- (B) If such individual is a CASA volunteer, review for a valid court order and a notification letter of volunteer assignment and acceptance that clarifies the individual's appointment to the Child.
  - (C) If the Lead Entity or Caregiver cannot readily determine the identity or authority of an individual appointed by a court of competent jurisdiction, then the Lead Entity or Caregiver should obtain approval from the Child's primary caseworker or chain of command prior to granting access to records or information.
  
- 5.5 Reporting Abuse, Neglect, or Exploitation.** The Lead Entity must promptly report any suspected case of abuse, neglect, or exploitation to the appropriate authority as required by the Texas Family Code, Chapter 261. All reports must be made within twenty-four (24) hours of the discovery of abuse, neglect, or exploitation.
  
- 5.6 Reporting Criminal Conduct.** In addition to any other reporting requirement, if the Lead Entity, DFPS or their employees become aware of either the Lead Entity's, DFPS's or their employees' conduct against a person receiving DFPS services that could constitute a criminal offense, they must report it to a local law enforcement agency no later than 48 hours after becoming aware of such criminal conduct.
  
- 5.7 Cultural Competency.** The Lead Entity must provide services to people of various cultures, races, ethnic backgrounds, and religions in a manner that recognizes, values, affirms, and respects the worth of the individuals, and protects and preserves their dignity. The Lead Entity must:
  - 5.7.1** Exhibit a clear understanding of the cultural beliefs of children and families in the distinct communities and population hubs within the designated catchment area.
  - 5.7.2** Provide ongoing education in the form of orientation, training, workshops, and other educational opportunities to help staff, caregivers, and subcontractors understand the unique socio-economic and cultural backgrounds as well as experiences of families and how they impact services to children and families.
  - 5.7.3** Ensure that caregivers and subcontractors understand the impact of disproportionality and disparities in the child welfare system. Disproportionality is the over representation of a particular race or cultural group in a program or system and is an issue DFPS remains committed to addressing. .
  - 5.7.4** Coordinate and deliver services in a manner that is relevant to the culture of children and families served in the distinct communities and population hubs within the designated catchment area.
  - 5.7.5** Provide services in the client's primary language either directly by the Lead Entity or by a translator.
  
- 5.8 Testimony in Proceedings.** In accordance with Exhibit A Statement of work of the Contract the Lead Entity must require its employees, agents, volunteers, consultants, or subcontractors to testify in judicial and administrative proceedings at the request of the court or DFPS. The Lead Entity must make reasonable efforts to locate former employees, agents, volunteers, consultants, or subcontractors when required to appear and testify.
  
- 5.9 Removal of Access.** The Lead Entity must immediately remove access capabilities to any DFPS automated systems or internet-based application(s) or immediately notify DFPS that access to such systems or applications needs to be terminated for an employee, subcontractor, or volunteer whose employment, subcontract, or volunteer term with the Lead Entity has ended for any reason.



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- 5.10 Personnel.** The Lead Entity must assign only qualified personnel to this Contract. The Lead Entity, in its reasonable discretion, may substitute appropriate key personnel to accomplish its duties so long as the substituted personnel are equally qualified and skilled in the tasks necessary to accomplish the tasks and services required. The Lead Entity must provide to DFPS prior written notice of any proposed change in key personnel who will be involved in providing services under this Contract. The Texas Penal Code (Section 32.52) prohibits the use of fraudulent or substandard degrees. The Lead Entity must include a process to verify the education and degree requirements of all employees in its human resources policy.
- 5.11 Subcontracting.** The Lead Entity must be responsible to DFPS for any subcontractor's performance under this Contract. Subcontractors providing services under the Contract will meet the same requirements and level of experience as required of the Lead Entity. No subcontract under the Contract will relieve the Lead Entity of responsibility for ensuring the requested services are provided. The Lead Entity must monitor any subcontractor providing services described in this Contract in accordance with the Lead Entity's DFPS approved contract monitoring policies and procedures. The Lead Entity must not subcontract out any child welfare legal case management duties described in this contract. All case management requirements must be performed by employees of the Lead Entity. If the Lead Entity uses a subcontractor for any other work required, the following conditions will also apply:
- 5.11.1 The Lead Entity's planning to subcontract all or a portion of the work to be performed will identify the proposed subcontractors and provide this information to DFPS upon request.
  - 5.11.2 Subcontracting will be solely at the Lead Entity's expense.
  - 5.11.3 DFPS retains the right to check subcontractor's background, qualifications, and experience and to approve or reject the initial use or continued use of subcontractors who provide direct client care services, including residential child care.
  - 5.11.4 The Lead Entity must be the sole contact for DFPS and the Lead Entity will list a designated point of contact for all Department inquiries regarding its subcontractors and subcontracted services.
  - 5.11.5 **Subcontracts.** The Lead Entity must include a term in all subcontracts that incorporates this Contract by reference and binds subcontractor to all the requirements, terms, and conditions of this Contract that relate to the service being provided by the subcontractor, as well as explicitly hold that this Contract controls in the event of any conflict with the subcontract between the Lead Entity and the subcontractor. DFPS approval of the Lead Entity's use of any subcontractor is conditioned upon the extent that any subcontract does not conflict with any requirements of the Contract between DFPS and the Lead Entity.
  - 5.11.6 **Payment to Subcontractors.** Pursuant to Chapter 2251 of the Texas Government Code, the Lead Entity must make any payments owed to subcontractors within ten (10) calendar days of the Lead Entity's receipt of funds from DFPS. The Lead Entity must maintain records that account for funds expended separately for each subcontracted agency which provides care or services under the continuum.
  - 5.11.7 **Insurance.** DFPS will not require any uniform insurance requirement for the Lead Entity subcontractors. The Lead Entity contractor providing community-based care services must maintain minimum insurance coverage, as required in the contract with the department, to minimize the risk of insolvency and protect against damages. The Lead Entity must ensure adequate protection for all funds expended and all clients served under this contract. If the Lead Entity subcontracts with a governmental entity,

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the Lead Entity must waive any insurance requirements related to this contract for the governmental entity.

- 5.11.8 **Reporting.** Lead Entity must require subcontractors, as a condition of the subcontract agreement, to report serious incidents (SIR), licensing investigations, Licensure Board reports and investigations, suspected fraud or fraud investigations, and Minimum Standards violations to the Lead Entity. For said circumstances in particular, and at all times in general, the Lead Entity must have operational procedures and mechanisms in place to respond immediately to conditions or situations that may pose a threat to child or youth safety. The Lead Entity must notify DFPS of subcontractors' disclosure. Failure to disclose and report may be regarded as a breach of this Contract. Additionally, the Lead Entity must obtain a waiver from each of its subcontractors which allows DFPS to disclose information to the Lead Entity relating to background checks, prior contract performance history and monitoring, and licensing investigations of a subcontractor, or a subcontractor's employees, agents, and volunteers.

**5.11.8.1** Reporting serious incidents is also a condition and requirement of subcontracted residential providers outside the State of Texas when children and youth are placed by the Lead Entity through the Interstate Compact on the Placement of Children (ICPC). A Serious Incident is any non-routine occurrence that has an impact on the care, supervision, or treatment of a child. This includes, but is not limited to suicide attempts, injuries requiring medical treatment, runaways, commission of a crime, and **allegations of abuse or neglect or abusive treatment**. Each Serious Incident must be reported within 24 hours to all of the following individuals/areas at DFPS and the Lead Entity.

- 5.11.8.1.1** DFPS or Lead Entity Caseworker, once the Lead Entity is in stage II;
- 5.11.8.1.2** DFPS or Lead Entity Caseworker's Chain of Command, once the Lead Entity is in stage II;
- 5.11.8.1.3** DFPS or Lead Entity Contract Manager, once the Lead Entity is in stage II, and the following DFPS areas;
- 5.11.8.1.4** DFPS Statewide Intake at (800) 252-5400 or online at <https://www.txabusehotline.org>; and
- 5.10.8.1.5** DFPS Interstate Compact for Placement of Children by email at [ICPCHS@dfps.texas.gov](mailto:ICPCHS@dfps.texas.gov).

- 5.11.9 The Lead Entity must include, as a part of all subcontract agreements, a provision stating that DFPS or its designee will become the primary contracting entity with the subcontractor in the event that the Lead Entity contract with DFPS is terminated or not renewed.
- 5.11.10 **Subcontract Dispute Resolution.** The Lead Entity must have a clearly defined approach and protocol for addressing both case-specific and contract disputes which may arise between the Lead Entity and a subcontractor.
- 5.11.11 **Residential Child Care Subcontractors.** If a subcontractor will provide residential child care services under this contract, then the Lead Entity must explicitly state in its subcontract that the subcontractor will be responsible for meeting all HHSC residential child care licensing minimum standards and requirements, regardless of any terms or conditions of the subcontract. Additionally, the Lead Entity must submit necessary information of its subcontractors to DFPS prior to placement so that DFPS can enter that information into the DFPS system IMPACT.

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- 5.11.12 Prior to entering into a subcontract for services described in this Contract, the Lead Entity must consider (1) the strength of the subcontractor's operational plan and all required components of the subcontractor's operational plan that must be submitted for licensing purposes, (2) the regulatory history of the subcontractor, and (3) the history of the subcontractor's performance in meeting any performance measures, goals or outcomes defined in previous contracts with DFPS.
- 5.11.13 The Lead Entity must ensure that all subcontractors, including foster parents, participate and provide information to be used in Evaluation of Community Based Care activities as directed by DFPS.
- 5.11.14 In accordance with the Human Resources Code §42.042 the Lead Entity and its child placing agency subcontractor may not require an agency foster home to:
  - (1) disclose the specific types of firearms that are present in the home; or
  - (2) notify the child-placing agency if there is any change in the types of firearms that are present in the home. Any information obtained by the Lead Entity or its child placing agency subcontractor relating to the types of firearms that are present in an agency foster home, can only be used in determining whether there are firearms present in the home.

The Lead Entity and its subcontractors must maintain the information relating to the types of firearms that are present in an agency foster home as confidential and as not subject to disclosure under Chapter 552, Government Code.
- 5.12 Background Checks.** The Department reserves the right to conduct background history checks on the Lead Entity, the Lead Entity's employees, subcontractors, volunteers, agents, and other individuals who interact with DFPS Clients or have access to Clients' records. If the Lead Entity chooses to provide services under this Contract through a residential subcontractor licensed by HHSC, then HHSC will conduct background checks on the residential licensed subcontractor through the residential licensing process. If the Lead Entity provides services for families in the Implementation Phase under this Contract through a subcontractor who is not licensed by HHSC, then the Lead Entity must verify and ensure that such subcontractors and their employees, agents, and volunteers undergo DFPS background checks by using the DFPS Automated Background Check System (ABCS) according to the instructions in the user guide located at: [https://www.dfps.state.tx.us/Background\\_Checks/documents/ABCS\\_User\\_Guide.pdf](https://www.dfps.state.tx.us/Background_Checks/documents/ABCS_User_Guide.pdf)
- 5.13 Disclosure and Release.** The Lead Entity must disclose and release, or cause its employees, subcontractors, and volunteers with direct client contact and/or access to client records to disclose and release, any allegation made against that employee, subcontractor, or volunteer alleging the commission of any act noted in either: (1) the DFPS Purchased Client Services (PCS) Background Check Criminal History Chart or (2) the DFPS Purchased Client Services (PCS) Background Check DFPS Central Registry Chart, both of which may be accessed using the below links: [http://www.dfps.state.tx.us/handbooks/Background\\_Checks/Menu/Menu\\_BC\\_APX.asp](http://www.dfps.state.tx.us/handbooks/Background_Checks/Menu/Menu_BC_APX.asp)
- 5.13.1 **Method of Disclosure and Release.** This disclosure and release is required of all individuals who have, or will have, direct contact with clients and/or access to client records, prior to such contact or access and will be accomplished through the use of:
  - (A) a criminal history background check;
  - (B) a DFPS abuse and neglect history check; and
  - (C) if the ABCS system is used to conduct the background check, a signed disclosure and release by each person attesting to this information, which will be maintained

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by the Lead Entity, available for review by the Department, and renewed at intervals not to exceed 24 months while the Contract is in effect.

- 5.13.2 **Contact with Clients.** The Lead Entity must prevent or promptly remove any employee, agent, volunteer, subcontractor, subcontractor's employee, subcontractor's agent, or subcontractor's volunteer from direct client contact and/or from access to client records who is identified by the HHSC Centralized Background Check Unit or the DFPS Background Check Program. If HHSC or DFPS determines that the person in question has not committed the acts or offenses alleged, that person may again be assigned to direct client contact and/or access to client records. However, the Lead Entity must notify the Department of its intent to do so no later than ten (10) business days and receive Department approval prior to the reassignment. The Lead Entity must provide HHSC or DFPS with further information concerning the reasons for the reassignment upon the request of the Department. If the person in question is found to have committed any of the acts or offenses listed in this Contract, that person will not be reassigned to duties involving any direct contact with clients and/or access to client records.
- 5.13.3 The Lead Entity must ensure initial and subsequent Background History Checks (Checks) are performed in compliance with Child Care Licensing Minimum Standards or DFPS Background Check Policy, including:
- (A) Submitting initial Checks timely;
  - (B) Submitting subsequent Checks before their due date;
  - (C) Ensuring employees, volunteers, Lead Entitys, and caregivers are not present at the facility if the Checks are submitted past the due date; and
  - (D) Timely complying with any HHSC or DFPS Background Check requirements when there is a relevant Check for a particular employee, volunteer, Lead Entity, or Caregiver, which includes but is not limited to restrictions on employee actions like not transporting Children or not being the sole Caregiver for Children, or submitting complete requests for risk evaluations timely.
- 5.13.4 **Background Checks for Principals.** In addition to the requirements in Subsection 3.11.1 through 3.11.4, anyone who is a Principal must follow the Purchased Client Services Background Check Policy. A Principal is defined as any person who has the ability to make unilateral fiscal decisions on behalf of the Lead Entity. The following positions are assumed to have such ability: Executive Director, Chief Executive Officer, Chief Operating Officer, Comptroller, and Chief Financial Officer. This policy also applies to situations where a subcontractor performs any portion of the Lead Entity's financial or accounting operations. In such situations, the Lead Entity must require subcontractor's principals to follow the Purchased Client Services Background Check Policy. Any person or entity this policy applies to must conduct Background History Checks and submit them through the DFPS Automated Background Check System (ABCS) in accordance with the Purchased Client Services Background Check Policy, which can be found at:  
[http://www.dfps.state.tx.us/handbooks/Background\\_Checks/Files/BC\\_pg\\_2000.asp#BCU\\_2340](http://www.dfps.state.tx.us/handbooks/Background_Checks/Files/BC_pg_2000.asp#BCU_2340)
- 5.13.5 **Background Checks for IMPACT, TARE, and CLASS.** No person will have access to IMPACT, TARE, or Child Care Licensing Automated Support System (CLASS) without completing a DFPS Form 4047 and receiving prior approval from the Department. The Lead Entity must provide DFPS with a list of each employee who the Lead Entity proposes to have access to IMPACT or CLASS and require each such employee to complete a DFPS Form 4047. The Lead Entity must ensure that

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DFPS has a current list of all Lead Entity employees with IMPACT, TARE, or CLASS access at all times. If this list changes at any time for any reason, the Lead Entity must notify DFPS immediately and take any necessary precautions to ensure the protection of confidential information and IMPACT, TARE and CLASS system security.

- 5.13.6 If, during a Federal audit, there is a finding that Checks are not being performed by the Lead Entity or its network within the timeframes required by Minimum Standards and Contract, this finding can result in a disallowance of Title IV-E funds claimed on behalf of the Child. In addition to any other remedy under this Contract, DFPS can require the Lead Entity to reimburse DFPS for such disallowances, including disallowed costs related to foster care maintenance payments, administrative costs, and interest.
- 5.14 Limitation on Use of DFPS Seal and Name.** The Lead Entity may not use the DFPS seal in any form or manner without the prior written approval of the Department. The Lead Entity also may not use the name of DFPS to imply any endorsement, approval, or sponsorship of the Lead Entity's goods or services by DFPS.
- 5.15 Taxes.** DFPS is not responsible for any state, local, or federal taxes. The Lead Entity must comply with all federal, state, and local tax laws.
- 5.16 Prohibition on Non-compete Restrictions.** The Lead Entity must not require any employees or subcontractors to agree to any conditions, such as non-compete clauses or other contractual arrangements that would limit or restrict such persons or entities from employment or contracting with other providers (including DFPS). This Section does not limit or preclude the Lead Entity's ability to require employees or subcontractors to enter into binding nondisclosure or confidentiality agreements.
- 5.17 Insurance.** The Lead Entity must maintain the following minimum insurance requirements throughout the contract term.
- 5.17.1 DFPS will require the Lead Entity to provide evidence of insurability within 48 hours prior to contract execution. The Lead Entity must provide DFPS with documentation that it meets or exceeds the applicable insurance coverages and limits in this subsection. Documentation can include, but is not limited to, insurance policies, accords, certificates or binders.
- 5.17.2 DFPS reserves sole discretion to determine whether a document provided to DFPS meets the minimum insurance requirements, coverage, and/or limits.
- 5.17.3 If the coverage will be provided through an insurance policy(ies) or other similar insurance document(s), The Lead Entity represents and warrants that the issuing insurance company is licensed and authorized to do business in the State of Texas and has a "B" or higher rating by Best's Insurance Guide and Key Ratings.
- 5.17.4 Insurance requirements for subcontractors of the Lead Entity are listed in the UTCs Section 3.10.
- 5.17.5 **Commercial General Liability Insurance.**
- (A) In the Implementation Phase, The Lead Entity must maintain coverage including, but not limited to, liability with minimum combined bodily injury (including death) and property damage limits of \$1,000,000 per occurrence, and \$2,000,000 general aggregate.

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- (B) In the Implementation Phase, The Lead Entity must maintain coverage including, but not limited to, liability with minimum combined bodily injury (including death) and property damage limits of \$2,000,000 per occurrence, and \$4,000,000 general aggregate.
  - (C) In the Implementation Phase, the Commercial General Liability Insurance policy must also afford Sexual Molestation and Abuse coverage of \$1,000,000 aggregate.
- 5.17.6 **Professional Liability Insurance.** If the Lead Entity's employees will be providing professional services, The Lead Entity must maintain professional liability for these employees, including coverage for the rendering of, or failure to render, professional services with minimum limits of \$1,000,000 per occurrence, \$2,000,000 annual aggregate.
- 5.17.7 **Business Automobile Liability Insurance.** The Lead Entity must obtain business automobile liability insurance covering owned, hired, and non-owned vehicles, with a minimum combined bodily injury (including death) and property damage limit of \$1,000,000 aggregate.
- 5.17.8 **Commercial Crime Insurance.** The Lead Entity must maintain commercial crime insurance to cover losses from fraudulent and dishonest acts with a minimum limit of \$250,000 per occurrence endorsed to cover third party property/funds and deletion of the conviction clause.
- 5.17.9 **Lead Entity Notice to DFPS of Any Material Changes.** The Lead Entity must provide written notice to DFPS of any material changes to any document submitted under this Section within one business day after it knows, or should have known, of the material change; such notification also includes cancellation of coverage before the expiration date (i.e., end of policy period) of the applicable document.
- 5.17.10 **Renewals or New Coverages during Contract Period.** The Lead Entity must always have available documentation for DFPS that required coverages under this Section are current and in full force and effect. If the document has a period of coverage, then the Lead Entity must ensure that after each renewal, it provides the new coverage document to DFPS within one business day of receiving the new coverage document. In the event that the Lead Entity obtains coverage from a new issuer or insurer, then the Lead Entity must immediately provide the new coverage document to DFPS.
- 5.17.11 **Notice of Cancellation Endorsement Requirement.** For the insurance coverage in Sections 5.17.5(A)-(C) above, The Lead Entity agrees that it will request for any insurance policies, or other similar documents, that an endorsement be included which states that if the Insurer cancels the coverage before the end of the policy's period, then the Insurer will provide notice to DFPS' named individual with a 30-day notice of cancellation.
- 5.17.12 **Insurance Requirements for Governmental Entities.** Entities considered governmental entities as defined in Texas Government Code 2252.001(2) may provide self-insurance to meet the insurance requirements of this Contract.
  - 5.17.12.1 If the coverage will be provided through a self-insurance plan, then the submitted plan must demonstrate that it can provide DFPS with the required coverages and limits.
  - 5.16.12.2 If the coverage will be provided through a bond or other financial instrument, then the issuer must be authorized to do business in the State of Texas.

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- 5.18 INDEMNIFICATION. THE Lead Entity MUST DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS, THE DEPARTMENT, ITS OFFICERS, AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES INCLUDING, WITHOUT LIMITATION, ATTORNEY'S FEES AND COURT COSTS ARISING OUT OF OR RESULTING FROM:**
- a. THE Lead Entity'S OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER'S PERFORMANCE UNDER THIS CONTRACT INCLUDING ANY NEGLIGENT ACTS OR OMISSIONS OF THE Lead Entity, OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF THE Lead Entity, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF THE Lead Entity, IN THE EXECUTION OR PERFORMANCE UNDER THIS CONTRACT;**
  - b. ANY BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD OR RULE OF CONTRACT BY THE Lead Entity OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF THE Lead Entity, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF THE Lead Entity, IN THE EXECUTION OR PERFORMANCE UNDER THIS CONTRACT;**
  - c. EMPLOYMENT OR ALLEGED EMPLOYMENT DISCRIMINATION, INCLUDING CLAIMS OF DISCRIMINATION AGAINST THE Lead Entity, ITS OFFICERS, OR ITS AGENTS; OR**
  - d. WORK UNDER THIS CONTRACT THAT INFRINGES OR MISAPPROPRIATES ANY RIGHT OF ANY THIRD PERSON OR ENTITY BASED ON COPYRIGHT, PATENT, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS.**
- 5.19 NOTHING IN THIS CONTRACT WILL BE CONSTRUED AS A WAIVER OF DFPS' SOVEREIGN IMMUNITY.**
- 5.20 IF DFPS IS A NAMED DEFENDANT IN ANY SUIT INVOLVING THIS CONTRACT, THE Lead Entity MUST COORDINATE ANY DEFENSE WITH THE TEXAS ATTORNEY GENERAL. THE Lead Entity MAY NOT AGREE TO ANY SETTLEMENT REGARDING SUITS INVOLVING THIS CONTRACT IF DFPS IS A NAMED DEFENDANT WITHOUT FIRST OBTAINING THE CONCURRENCE OF THE TEXAS ATTORNEY GENERAL.**
- 5.21 E-Verify.** By entering into this Contract, the Lead Entity certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's
- 5.22 e-Verify system to determine the eligibility of all persons employed during the contract term to perform duties within Texas and all persons (including subcontractors) assigned by the Lead Entity to perform services, deliverables and work pursuant to the Contract.**

### **6. Data Use**

- 6.1 Disclosures under the Public Information Act.** All contracts and other information submitted to DFPS may be subject to the Texas Public Information Act, Chapter 552 of the Texas Government Code ("the Act"). If the Lead Entity submits proprietary or otherwise confidential information to DFPS, then the Lead Entity should clearly identify that particular information and the specific exception to disclosure in the Act. Making a blanket claim that an entire submission is protected from disclosure because it contains some proprietary information is not acceptable and will not render the entire proposal confidential. DFPS assumes no responsibility for asserting legal arguments for the Lead Entity. The Lead Entity should consult with legal counsel concerning disclosure issues and take precautions to safeguard trade secrets and other proprietary

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information.

- 6.2 Confidential Information.** The provisions of this Section remain in full force and effect following termination, non-renewal, or any cessation of the services performed under this Contract. All records received or created by the Lead Entity that include confidential information may be disclosed to third parties only with the prior written consent of the Department or within the scope of consents specifically permitted under this Contract (i.e. - Medical Consenter or Approved Subcontractor). The Lead Entity must not use any confidential information supplied by DFPS or generated as the result of this Contract except for the purposes described in this Contract. If the Lead Entity stores, collects, or maintains any confidential data, the Lead Entity must only use such data in the performance of this Contract.
- 6.2.1 The Lead Entity must establish a method to ensure the protection and security of confidential information in compliance with applicable federal and state laws, rules, and regulations and the IT security requirements of this Contract. This provision does not limit the Department's right of access to client case records or other information relating to clients served under this Contract. The Department will have an absolute right to access such information upon request.
  - 6.2.2 If the Lead Entity receives any request or demand for disclosure of confidential information by oral questions, documents, subpoenas, civil investigative demand, interrogatories, requests for information, or other similar legal process, the Lead Entity must provide DFPS with at least 2 business days' notice of such request so that the Department may seek an appropriate protective order and/or consent to the Lead Entity's disclosure of the requested records.
  - 6.2.3 Research and Publication. The Lead Entity may not use any confidential information supplied by DFPS for any research purposes, training, or publication without the prior written approval of the Department.
  - 6.2.4 The Lead Entity must require all of its subcontractors or agents that receive or have access to DFPS confidential information to agree to the same restrictions and conditions on the use and/or disclosure of the information that apply to The Lead Entity under this Contract; specifically, the "Data Use and IT Security" Section.
  - 6.2.5 The Lead Entity may release or otherwise use a photo or image of a Child under the following circumstances:
    - (A) The Lead Entity has made a good faith determination that releasing an image of the Child poses no threat to the Child's health or safety, supports the best interests of the child, and the use is not for any commercial use, publicity, pecuniary benefit, or similar gain for the Lead Entity or any other party;
    - (B) The Lead Entity must ensure that no reference is made to the fact that the Child is in the conservatorship of DFPS or in foster care, and the use does not stigmatize the Child in any way;
    - (C) When appropriate, the Child approves of the release or use; and
    - (D) Permission is received from DFPS prior to release or other use of a photo or image.
    - (E) The Lead Entity is not required to receive prior written permission from DFPS when the following conditions are in effect:
      - 1) The photo or image is released or otherwise used by the Child or Caregiver to the Child's friends or to the Caregiver's friends or family, including but not limited to school pictures traded with peers or a family photo sent in a holiday card;



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- 2) The photo or image is released by the Child or Caregiver to the Child's biological family; or
- 3) The photo or image is used as a normal part of a school or extracurricular activity, including but not limited to photos published in the school yearbook or a church newsletter, photos of Honor Roll students published in the local newspaper, a group photo of a scout troop distributed to all the troop members and posted on a community youth center bulletin board, photos of the sports team posted in a school showcase, or other similar publication.

- 6.2.6 The Lead Entity shall promptly destroy any genetic material and delete any genetic information obtained from an individual for the purpose of a genetic test after the purpose for which the sample was obtained is accomplished.
- 6.2.7 The Lead Entity shall retain the results of a genetic test to determine paternity as part of DFPS's suit affecting the parent child relationship in IMPACT only. The results of a genetic test are confidential under Human Resources Code Section 40.005.

- 6.3 Access to IMPACT, TARE, and CLASS.** DFPS authorization for the Lead Entity access to IMPACT, TARE, and CLASS is contingent on the Lead Entity's good faith business need for casework information in order to accomplish the tasks, services, and deliverables described in this contract. The Lead Entity understands that DFPS and the State of Texas consider any access of the IMPACT, TARE, or CLASS IT Systems for a reason not related to performing the tasks, services, and deliverables described in this contract to be unauthorized and unlawful. The Lead Entity must report any use or suspected misuse of the IMPACT, TARE, or CLASS system to DFPS and must cooperate in any investigation related to improper access or use of either system.

- 6.3.1 In addition to the IT Security Requirements of this contract, the Lead Entity must establish comprehensive policies, procedures, and processes to ensure the confidentiality of the DFPS IMPACT, TARE, and CLASS IT Systems, including all information contained in those systems or otherwise used by the Lead Entity.
- 6.3.2 The Lead Entity understands and will inform its staff, volunteers, or other authorized agents that unauthorized or unlawful use of IMPACT, TARE, or CLASS can lead to civil or criminal liability.

- 6.4 Information Security Requirements.** The Lead Entity must comply with: [http://www.dfps.state.tx.us/Doing\\_Business/documents/Contractor\\_Data\\_and\\_System\\_Security\\_Requirements.pdf](http://www.dfps.state.tx.us/Doing_Business/documents/Contractor_Data_and_System_Security_Requirements.pdf) and agrees to periodically check for any updates made to this document and comply with any updates made to these requirements.
- 6.4.1 The Lead Entity must sign the DFPS Data Use Agreement form and submit to an initial IT Security Audit performed by DFPS Office of Information Security (OIS) and must resolve any critical and high-risk items identified by OIS prior to being certified for readiness.
- 6.4.2 Security and Management Control Outsourcing Standard for Non-Channelers (issued by the National Crime Prevention and Privacy Compact Council, eff. May 16, 2018)
- 6.4.3 The FBI Criminal Justice Information Services (CJIS) Security Policy, now incorporated into this Contract as Attachment I: Criminal Justice Information Services (CJIS) Security Policy.

- 6.5** DFPS will provide scheduled data exports for the approved Lead Entity information system and retain full ownership of the exported data. Sharing DFPS data requires explicit consent from the DFPS Contract Manager or their designated representative. Approval from the DFPS Contract

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Manager can only be granted after obtaining consensus and approval from the DFPS General Counsel, DFPS Chief Data and Analytics Officer, DFPS Chief Information Officer, and DFPS Chief Information Security Officer.

- a) All documents related to the handling of data provided by DFPS, such as data sharing agreements, memoranda of understanding, contracts with other Lead Entitys, or any third-party contracts involved in the Lead Entitys fulfilling their obligations with DFPS, must be submitted to the DFPS Contract Manager for approval.
- b) In order to ensure alignment with interoperability and cybersecurity protocols, it is mandatory for DFPS to approve all information systems utilized by the Lead Entity before the procurement of a new information system. In the event that prior approval has not been officially granted to an existing information system in use by the Lead Entity, a formal assessment of the information system must be conducted. This approval process must be documented and formalized in order to ensure that all federal and state-mandated procedures and protocols are followed accordingly. For additional information relating to the information system approval process, please refer to the Contractor Data and System Security Requirements.
- c) DFPS reserves the right to request the aforementioned documents at any time during the duration of the contract.

### **7. Contract Administration.**

- 7.1 Notifications.** The Lead Entity must notify the Department immediately of any significant change affecting the Lead Entity or this Contract, including, but not limited to, change of the Lead Entity's name or identity, ownership, control, governing board membership, key personnel, any problem or potential problem associated with performance or services, or payee identification number. The Lead Entity must also provide DFPS with any documentation or information related to a notification provided for under this section. The Lead Entity must also notify DFPS of any lawsuit brought against the Lead Entity related to the services provided under this Contract. Unless otherwise noted in this Contract, the Lead Entity must provide all notices in writing to the Department within ten (10) business days of the event occurring that requires the notice.
- 7.2 DFPS Monitoring.** The Lead Entity must cooperate fully in any review conducted by DFPS or its authorized representatives related to services provided under this Contract. DFPS has the authority to monitor, inspect, assess, and review the fiscal, contractual, or program performance of the Lead Entity, including all information related to any services provided under this Contract or invoiced to DFPS. The Lead Entity must remedy in a timely manner, any weaknesses, deficiencies, program noncompliance, or audit exceptions found as a result of a review by DFPS or its authorized representatives. Such remedy can include a refund of invoiced amounts or any other appropriate actions deemed necessary by DFPS, including the recoupment of funds for failing to comply with court orders. Acceptance of funds under this Contract acts as acceptance of the authority of the State Auditor's Office, HHSC Office of Inspector General, or any successor agency, to audit or investigate the expenditure of funds under this Contract or any subcontract. The Lead Entity must ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the Lead Entity and the requirement to cooperate is included in any subcontract it awards.
- 7.3 Reporting.** The Lead Entity must submit all reports requested by the Department in appropriate format and within the time limits specified by DFPS. If DFPS has not specified a time limit for the reporting request, then the Lead Entity must have ten (10) business days to respond to the request. If the Lead Entity cannot respond to a reporting request within ten (10) business days, it

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- must promptly notify DFPS of the time within which it can respond to the request and the parties will establish a reasonable time limit. The Lead Entity must accurately complete time studies, contract monitoring surveys, and any other reports required by this Contract or requested by the Department. The Lead Entity must also make client records and any other programmatic or financial records, books, reports, and any other supporting documents available for reviewing and copying by the Department, the U.S. Department of Health and Human Services, or their authorized representatives within the time limits specified by DFPS.
- 7.3.1 **Cost Report Training.** The Lead Entity acknowledges and agrees that individual(s) responsible for preparing the Lead Entity's cost reports, when applicable shall attend HHSC cost report training in compliance with 1 TAC § 355.102(d) prior to submitting a quarterly cost report.
  - 7.3.2 **Legislative Requests.** If DFPS requires information from the Lead Entity in order to respond to a request from the Texas Legislature, Federal Agency, or any other applicable governmental entity, then DFPS will contact the Lead Entity and identify the needed information required by DFPS. The Lead Entity must provide a report to DFPS with the requested information within eight (8) hours of the time the Lead Entity receives the request, unless DFPS and the Lead Entity have agreed to a different timeframe. If DFPS and the Lead Entity do agree to a different timeframe, the Lead Entity must obtain written confirmation via e-mail of the agreement.
  - 7.3.3 **Media Requests.** The Lead Entity must inform DFPS of all third-party journalism-based media requests and interactions regarding this contract. The Lead Entity must involve DFPS prior to publication of any media story involving this Contract. If DFPS requires information from Lead Entity in order to respond to a media request, then DFPS will contact the Lead Entity and identify the needed information. The Lead Entity must provide a report to DFPS with the requested information within two (2) calendar days unless DFPS and the Lead Entity have agreed to a different timeframe. If DFPS and the Lead Entity do agree to a different timeframe, the Lead Entity must obtain written confirmation via e-mail of the agreement.
  - 7.3.4 **Open Records Requests.** If DFPS requires information from the Lead Entity in order to respond to an open records request, then DFPS will contact the Lead Entity and identify the needed information. Lead Entity must provide requested information within twenty-four (24) hours of the time the Lead Entity receives the request, unless DFPS and the Lead Entity have agreed to a different timeframe. If DFPS and the Lead Entity do agree to a different timeframe, the Lead Entity must obtain written confirmation via e-mail of the agreement.
- 7.4 **Authority of Department Staff.** DFPS staff are not authorized to sign non-DFPS forms unless those forms have received prior approval by DFPS. DFPS is not bound by unauthorized staff actions in signing such forms.
  - 7.5 **Vendor Performance.** Pursuant to Section 2155.089 and 2262.55 of the Texas Government Code, state agencies are required to report vendor performance for all contracts upon completion or termination. DFPS reports vendor performance by means of the Vendor Performance Tracking System (VPTS), which can be accessed online at: [http://www.window.state.tx.us/procurement/prog/vendor\\_performance/](http://www.window.state.tx.us/procurement/prog/vendor_performance/) DFPS may use the VPTS to determine best value when awarding contracts in instances where past performance is included as a factor in the evaluation of a vendor for award.

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- 7.6 Complaint Reporting.** Unless otherwise noted in this Contract, DFPS will contact the Lead Entity when a complaint about the Lead Entity is received and advise the Lead Entity whether DFPS will conduct an investigation or will coordinate with the Lead Entity for an investigation and a response. When DFPS requires the Lead Entity to conduct any part of the complaint investigation, the Lead Entity must respond in writing to DFPS with all information and according to DFPS requirements and specified time frames. If the Lead Entity is unwilling or unable to provide any information within the time required, the Lead Entity must provide a written explanation for any information that the Lead Entity does not submit, any applicable date by which the Lead Entity must provide the information, and the detailed reasons why the Lead Entity is unwilling or unable to provide such information.
- 7.7 Independent Lead Entity.** The Lead Entity must serve as an independent Lead Entity in providing services under this Contract. The Lead Entity's employees will not be construed as employees of DFPS or the State of Texas. The Lead Entity has sole authority and responsibility to employ, discharge, and otherwise control its employees and Lead Entitys. The Lead Entity is responsible for providing all necessary unemployment and workers' compensation insurance for the Lead Entity's employees.
- 7.8 Force Majeure.** DFPS will excuse the Lead Entity from obligations of this Contract to the extent that performance is delayed or prevented by any circumstances (except financial) reasonably beyond the Lead Entity's control. Such delays or failures to perform shall extend the period of performance at the discretion of DFPS. The Lead Entity must inform DFPS in writing of proof of force majeure within three business days or otherwise waive this right as a defense. The Lead Entity agrees that breach of this provision entitles DFPS to any and all available remedies.
- 7.9 No Waiver of Provisions.** Neither failure to enforce any provision of this Contract nor payment for services provided under it constitute waiver of any provision of the Contract.
- 7.10 No Waiver of Sovereign Immunity.** Nothing in the Contract will be construed as a waiver of sovereign immunity by DFPS.
- 7.11 Assignment.** The Lead Entity may not assign all or any portion of its rights under, interests in, or duties required under this Contract without prior written consent of DFPS, which may be withheld or granted at the sole discretion of DFPS. Except where otherwise agreed in writing by DFPS, assignment will not release the Lead Entity from its obligations under the Contract.
- 7.12 Warranty.** The Lead Entity warrants that all services and work done under this Contract will be completed in a manner consistent with generally accepted standards in the applicable trade, profession, or industry and conform to or exceed the specifications set forth in the Contract.
- 7.13 DFPS Information Transfer.** Upon expiration or termination of this Contract, the Lead Entity agrees to work collaboratively with DFPS to provide all information gathered or developed under this Contract to DFPS in a usable format. This includes providing DFPS any and all electronic records in a "csv" or other agreed to application format that DFPS can use.

### **8. Governing Law and Regulations.**

- 8.1 Governing Law and Venue.** This Contract will be construed in accordance with the laws of the State of Texas (State). Venue will be in a court of competent jurisdiction in Travis County,

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Texas.

**8.2 Federal and State Requirements.** The Lead Entity must comply with all applicable federal and state regulations as well as the Department's policies and procedures regarding services delivered under this Contract.

- 8.2.1 **Civil Rights.** The Lead Entity agrees to comply with state and federal anti-discrimination laws, including without limitation:
- (A) Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d *et seq.*);
  - (B) Sections 504 and 508 of the Rehabilitation Act of 1973 (29 U.S.C. §794) and Texas EIR Accessibility Requirements described in Title 1, Texas Administrative Code (TAC), Chapter 206, Subchapter B and Chapter 213, Subchapters A and B. The Lead Entity must comply with HHS EIR Accessibility requirements located at: [https://accessibility.hhs.texas.gov/policy\\_hm/default.htm](https://accessibility.hhs.texas.gov/policy_hm/default.htm).
  - (C) Americans with Disabilities Act of 1990 (42 U.S.C. §12101 *et seq.*);
  - (D) Age Discrimination Act of 1975 (42 U.S.C. §§6101–6107);
  - (E) Title IX of Education Amendments of 1972 (20 U.S.C. §§1681–1688);
  - (F) Food and Nutrition Act of 2008 (7 U.S.C. §2011 *et seq.*); and
  - (G) The HHS agency's administrative rules, as set forth in the Texas Administrative Code, to the extent applicable to this Agreement.

The Lead Entity agrees to comply with all amendments to the above-referenced laws, and all requirements imposed by the regulations issued pursuant to these laws. These laws provide in part that no persons in the United States may, on the grounds of race, color, national origin, sex, age, disability, political beliefs, or religion, be excluded from participation in or denied any aid, care, service or other benefits provided by federal or state funding, or otherwise be subjected to discrimination.

- 8.2.2 The Lead Entity agrees to comply with Title VI of the Civil Rights Act of 1964, and its regulations at 45 CFR. Part 80 or 7 CFR. Part 15, prohibiting the Lead Entity from adopting and implementing policies and procedures that exclude or have the effect of excluding or limiting the participation of clients in its programs, benefits, or activities on the basis of national origin. Applicable state and federal civil rights laws require The Lead Entity to provide alternative methods for ensuring access to services for applicants and recipients who cannot express themselves fluently in English. The Lead Entity agrees to ensure that its policies do not have the effect of excluding or limiting the participation of persons in its programs, benefits, and activities on the basis of national origin. The Lead Entity also agrees to take reasonable steps to provide services and information, both orally and in writing, in appropriate language other than English, in order to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities.
- 8.2.3 The Lead Entity agrees to comply with Executive Order 13279, and its regulations at 45 CFR. Part 87 or 7 CFR. Part 16. These provide in part that any organization that participates in programs funded by direct financial assistance from the United States Department of Agriculture or the United States Department of Health and Human Services will not, in providing services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.
- 8.2.4 Upon request, the Lead Entity must provide HHSC Civil Rights Office with copies of all of The Lead Entity's civil rights policies and procedures.
- The Lead Entity agrees to post applicable civil rights posters in areas open to the

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public informing clients of their civil rights and including contact information for the HHSC Civil Rights Office. The posters are available on the HHSC website at <https://www.hhs.texas.gov/about/your-rights/civil-rights-office/civil-rights-posters>.

- 8.2.5 The Lead Entity must notify HHSC's Civil Rights Office of any civil rights complaints received relating to its performance under this Agreement. This notice must be delivered no more than ten (10) calendar days after receipt of a complaint. Notice provided pursuant to this section must be directed to the address below.

HHSC Civil Rights Office  
701 W. 51<sup>st</sup> Street, Mail Code W206  
Austin, Texas 78751  
Phone Toll Free: (888) 388-6332  
Phone: (512) 438-4313  
TTY Toll Free: (877) 432-7232  
Fax: (512) 438-5885

- 8.2.6 In addition to all applicable state and federal laws, the Lead Entity must comply with:
- (A) Health and Safety Code Section 85.113 (workplace and confidentiality guidelines regarding AIDS and HIV);
  - (B) The Immigration Reform and Control Act of 1986 and any subsequent immigration laws related to employment verification and retention of verification forms for any individuals performing any labor or services under this Contract; including The Immigration Act of 1990 and The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") enacted on September 30, 1996;
  - (C) All state and federal licensing and certification requirements and regulations prescribed by the United States Department of Health and Human Services;
  - (D) The Clean Air Act (42 U.S.C. §7401 *et seq.*) and the Federal Water Pollution Control Act (33 U.S.C. §1251 *et seq.*);
  - (E) All mandatory standards and policies relating to energy efficiency contained in the state energy conservation plan related to the Energy Policy and Conservation Act (Pub.L.94-163);
  - (F) The Fair Labor Standards Act (FLSA) (29 U.S.C. § 201 *et seq.*) regarding minimum wages, overtime pay, recordkeeping, and child labor; and
  - (G) 42 U.S.C. §675(4) (Foster care maintenance payments must be expended for items that are provided by foster parents and facilities).
  - (H) Contract Cost Principles and Procedures. 45 CFR 31.
  - (I) Uniform Administrative Requirements for HHS Awards. 45 CFR 75.
  - (J) Uniform Grant Management Standards (UGMS) issued by the State of Texas.
  - (K) Tex. Gov't Code, Chapter 411 Department of Public Safety of the State of Texas.
- 8.2.7 The Lead Entity and its child placing agency subcontractors must comply with Texas Family Code Section 264.752 and may not:
- (1) subject a relative or designated caregiver to any requirement other than as provided by law or DFPS or Health and Human Services Commission rule; or
  - (2) adopt any policies or procedures related to a relative or designated caregiver other than as authorized by law or DFPS or Health and Human Services Commission rule.

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### **9. Intellectual Property.**

- 9.1 Intellectual Property.** Except as otherwise provided in this Contract, all products produced by the Lead Entity using State funds received through this Contract become the sole property of DFPS, including, without limitation, all plans, designs, software, and other contract deliverables.
- 9.1.1 If the Lead Entity develops any copyrightable material in the course of performing this Contract, then the Lead Entity must grant the State of Texas, DFPS, and any federal awarding agency a royalty-free, non-exclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for governmental purposes.
- 9.1.2 This section does not apply to any report, document, or other data, or any invention of the Lead Entity which existed prior to, or was developed or discovered independently from, its activities related to or funded by this Contract.

### **10. Intervention, Contingencies, Termination and Transition.**

- 10.1 Progressive Intervention Plan.** DFPS and the Lead Entity must implement a continuous quality improvement process (CQI) that provides continuous data and information collection which DFPS will analyze for the early identification of issues with the Lead Entity system of care as well as areas of potential contract non-compliance. Whenever DFPS identifies performance concerns or compliance issues, the Department will intervene by requiring the Lead Entity to develop and submit a plan that details the steps that the Lead Entity must take to reverse the trend or address the area of non-compliance. In instances where DFPS and the Lead Entity cannot correct an identified issue through the Data Monitoring Process or in instances of more serious contract noncompliance issues, DFPS reserves the right to implement contract remedies. The use of the data monitoring process, informal remedies, and formal remedies is entirely at the discretion of DFPS. Failure to enforce any provision of this Contract does not constitute a waiver of that provision, or any other provision, of the Contract.
- 10.1.1 **Data Monitoring Process.** In instances where DFPS determines that available data indicates a negative trend, the Department will communicate with the Lead Entity to discuss the identified data and offer information and technical assistance in correcting the issue. If the negative data trend continues and becomes a systemic issue, DFPS will request a formal contract action plan from the Lead Entity that must contain specific steps to be taken to correct identified deficiencies. Under the standard data monitoring process, DFPS will use the following mechanisms to bring the Lead Entity back into contract compliance:
- (A) **Technical Assistance.** The Department will provide informal support, guidance, clarification, and other forms of technical assistance via phone, email, and fax in order to resolve minor contract or performance compliance issues. The Lead Entity must document all such instances of technical assistance in writing, including any implementation work.
  - (B) **Technical Resolution.** DFPS and the Lead Entity must enter into a joint technical resolution process. Both parties will hold face to face meetings or scan calls where both parties will identify issues, barriers, potential solutions, and implementation strategies to fix noncompliance and performance issues. DFPS will document these sessions and provide the Lead Entity with a final technical guidance document to aid in implementation.
  - (C) **Contract Action Plan (CAP).** DFPS will provide the Lead Entity with a CAP that identifies areas of noncompliance, poor performance, or other deficiencies.

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The Lead Entity must respond in writing within the timeframes required in the CAP, address each identified defect, and provide an appropriately thorough response to DFPS for review and approval. After a CAP receives Departmental approval, it is incorporated into the Contract by this reference. Upon receipt of DFPS approval, the Lead Entity must implement and maintain compliance with the requirements of the Contract CAP. Failure to appropriately implement or maintain compliance with the CAP will serve as grounds for the exercise of any additional remedies under this Contract.

- 10.2 Remedies.** DFPS will utilize formal remedies as a means to address serious issues of contract noncompliance and poor performance. DFPS retains sole discretion in selection of which remedy to implement. The Department may require the Lead Entity to take specific corrective actions in order to maintain compliance with applicable federal or state regulations and the terms and conditions of this Contract. The Lead Entity's failure to comply with the specific corrective actions may be grounds for DFPS to suspend or terminate the Contract, in whole or in part.
- 10.2.1 **Financial Remedies for Actual Damages.** DFPS reserves the right to implement fiscal remedies based on monitoring or audit findings of violations of Contract requirements; including recovery for any and all actual damages DFPS accrues as a result of the Lead Entity's noncompliance with this Contract.
  - 10.2.2 **Abeyance of Staff.** DFPS reserves the right to require the Lead Entity to remove any employee, volunteer, or agent of the Lead Entity or any subcontractor from the provision of services under this contract or to prohibit any employee, volunteer, or agent of the Lead Entity or any subcontractor from having direct contact with DFPS referred clients or client records.
  - 10.2.3 **Health Screening.** As required by Texas Human Resources Code §42.0432(b), DFPS will assess liquidated damages in instances where the Lead Entity fails to ensure that an early and periodic screening, diagnosis, and treatment (EPSDT) checkup is completed as specified in this contract. The Lead Entity must develop and implement a review process that ensures each individual child who is in the managing conservatorship of DFPS and is placed with the Lead Entity for a minimum of 30 days receives a complete EPSDT checkup. The Lead Entity-developed review process must be submitted to DFPS for review and approval prior to being implemented.
  - 10.2.4 **Liquidated Damages for No Eject/No Reject.** The Lead Entity acknowledges that its failure to comply with timeframes associated with placement of children as described in this Contract will cause DFPS to incur economic damages of types and in amounts which are impossible or difficult to ascertain. If the Lead Entity cannot place a child or youth in accordance with the timeframes described in this contract, then such failure, at the sole discretion of DFPS, may be deemed as a violation of the No Eject/No Reject mandate of Community Based Care. Accordingly, in lieu of actual damages for such noncompliance, the Lead Entity agrees that DFPS may recover liquidated damages if the Lead Entity cannot comply with the no eject/no reject sections of the contract. The Lead Entity must be liable to DFPS for payment of liquidated damages in the amount of Ten Thousand Dollars (\$10,000) for each instance of noncompliance with the Contract's no eject/no reject requirement. The liquidated damages represent the best, reasonable, and most appropriate estimate of the Department's loss for each instance of noncompliance and are not considered by either Party to be a penalty. After DFPS has found placement for children and youth covered by no eject/no reject provisions of the Contract, the Lead Entity must also be



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liable to DFPS for actual damages in the amount of what the substitute provider bills DFPS for the child's or youth's care.

### **10.3 Termination.**

**10.3.1 Termination by DFPS for Convenience.** DFPS may terminate the Contract, in whole or in part, at any time with at least 180 days' notice to the Lead Entity when, in its sole discretion, DFPS determines that termination is in the best interests of the State of Texas. The termination will be effective on the date specified in DFPS' notice of termination.

**10.3.2 Termination by DFPS for Cause.** If the Lead Entity fails to provide the services or goods required by this Contract or fails to comply with any terms or conditions of it, DFPS may terminate the Contract in whole or part with at least 180 days' notice to the Lead Entity.

**10.3.2.1 Lead Entity Responsibility.** In addition to any other remedy allowed by law, the Lead Entity must be responsible to DFPS for all costs incurred by DFPS and the State of Texas to replace the Lead Entity. These costs include, but are not limited to, the costs of procuring a substitute Lead Entity and the cost of any claim or litigation that is reasonably attributable to the Lead Entity's failure to provide services or goods.

**10.3.3 Equitable Settlement.** Any early termination under this Contract will be subject to the equitable settlement of the respective interests of the Parties up to the date of termination.

**10.3.4 Termination by Lead Entity.** The Lead Entity may terminate this contract prior to the Lead Entity's date of termination by providing at least 180 days' notice to DFPS.

**10.4 Contingencies.** Upon notification of contract termination, the Lead Entity and DFPS will meet to develop a plan of action within 10 days of notification of contract termination. This plan must be completed within 30 days and will include a timeline and process for reassignment of responsibilities. , In accordance with Family Code [§ 264.166](#), DFPS reserves the right to enter into contract with a different contractor to assume the Lead Entity contract that is being terminated.

**10.5 Transition after Termination.** At the end of the Contract term or other Contract termination or cancellation, the Lead Entity must aid in the transition to any new arrangement or provider of services. The respective accrued interests or obligations incurred to date of termination must also be equitably settled. Upon termination or expiration of this Contract, DFPS will work with the Lead Entity to transfer all services as efficiently as possible with the goal to have all necessary services transferred by the effective date of the expiration or termination of the Contract. However, in the event that a transfer of all necessary services is not possible, the Lead Entity and DFPS will continue to perform in accordance with all terms and conditions of this Contract until DFPS determines that all necessary client services are completely transferred.

**10.6 Survivability.** Termination for any reason does not release the Lead Entity from performance, liability or obligation in the Contract that is expressly stated to survive such termination or by its nature would be intended to be applicable following any such termination, which includes but is not limited to confidentiality, indemnification, transition, records, audit, dispute resolution, invoice, and continuing to provide care for a Child after termination of this Contract.

### **11. DFPS Required Certifications.**

**11.1** The certifications enumerated below represent material facts upon which DFPS relies when accepting a bid for this solicitation. If DFPS later determines that the Lead Entity knowingly

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rendered an inaccurate certification, DFPS may pursue all available remedies in accordance with Texas and U.S. law. The Lead Entity further agrees and acknowledges its on-going duty to provide immediate written notice to DFPS if, at any time, the Lead Entity learns that any of the certifications provided for below were inaccurate when submitted or have since become inaccurate by reason of changed circumstances. If the Lead Entity cannot certify the accuracy of all the statements contained in this section, the Lead Entity must provide written notice to DFPS detailing which of the below statements it cannot certify and why. The Lead Entity acknowledges its continuing obligation to comply with the requirements of the following certifications contained in its Proposal, and will immediately notify DFPS of any changes in circumstances affecting these certifications:

- 11.1.1 **Federal Certification Regarding Lobbying.** Federal law places restrictions on the use of federal funds in regard to lobbying. The Lead Entity certifies, to the best of its knowledge and belief, that:
  - 11.1.1.1 In accordance with 31 U.S.C. § 1352, no federal appropriated funds have been paid or will be paid, by or on behalf of the Lead Entity, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
  - 11.1.1.2 If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Lead Entity agrees that it will complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying.
  - 11.1.1.3 The Lead Entity must require that the language of this certification be included in the award documents for subcontracts and that all subcontractors will certify and disclose accordingly.
- 11.1.2 **Drug-Free Workplace Certification.** The Lead Entity certifies that it will or will continue to provide a drug-free workplace by:
  - 11.1.2.1 Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Lead Entity's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
  - 11.1.2.2 Establishing an ongoing drug-free awareness program to inform employees about:
    - 11.1.2.2.1 The dangers of drug abuse in the workplace;
    - 11.1.2.2.2 The Lead Entity's policy of maintaining a drug-free workplace;
    - 11.1.2.2.3 Any available drug counseling, rehabilitation, and employee assistance programs; and
    - 11.1.2.2.4 The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
  - 11.1.2.3 Making it a requirement that each employee to be engaged in the performance of the Contract be given a copy of the statement;

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- 11.1.2.4 Notifying the employee in the statement that, as a condition of employment under the Contract, the employee will:
  - 11.1.2.4.1 Abide by the terms of the statement; and
  - 11.1.2.4.2 Notify the Lead Entity in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
- 11.1.2.5 Notifying DFPS in writing, within ten calendar days after receiving notice from an employee or otherwise receiving actual notice of such conviction. The Lead Entitys of convicted employees must provide notice, including position title, to every contract manager or other designee on whose Contract the convicted employee was working. Notice will include the identification number(s) of each affected Contract;
- 11.1.2.6 Taking one of the following actions, within 30 calendar days of receiving notice, with respect to any employee who is so convicted:
  - 11.1.2.6.1 Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
  - 11.1.2.6.2 Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency;
- 11.1.2.7 Making a good faith effort to continue to maintain a drug-free workplace.

**11.2 Additional Federal Assurances.** The Lead Entity certifies, to the best of its knowledge and belief, that:

- 11.2.1 The Lead Entity has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in the Contract.
- 11.2.2 The Lead Entity must give DFPS, the Comptroller General of the United States and the State of Texas, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award, and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
- 11.2.3 The Lead Entity must establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
- 11.2.4 The Lead Entity must initiate and complete the work within the applicable time frame after receipt of approval of the Department.
- 11.2.5 The Lead Entity must comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
- 11.2.6 The Lead Entity must comply with all Federal statutes relating to nondiscrimination. These include but are not limited to:
  - 11.2.6.1 Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin;

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- 11.2.6.2 Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex;
- 11.2.6.3 Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disabilities;
- 11.2.6.4 The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age;
- 11.2.6.5 The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse;
- 11.2.6.6 The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
- 11.2.6.7 §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee- 3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
- 11.2.6.8 Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing;
- 11.2.6.9 Any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and
- 11.2.6.10 The requirements of any other nondiscrimination statute(s).
- 11.2.7 The Lead Entity must comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
- 11.2.8 The Lead Entity must comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
- 11.2.9 The Lead Entity must comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally-assisted construction sub-agreements.
- 11.2.10 The Lead Entity must comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
- 11.2.11 The Lead Entity must comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. 7104) which prohibits grant award recipients or a sub-recipient from: (1) Engaging in severe forms of trafficking in persons during the period of time that the award is in effect; (2) Procuring a commercial sex act during the period of time that the award is in effect; or (3) Using forced labor in the performance of sub-awards under the award.
- 11.3 Conflict of Interest.** In accordance with Texas Human Resources Code § 40.034, the Lead Entity certifies that it did not receive assistance, either directly or indirectly, from a former DFPS employee who (1) was directly concerned with or had administrative responsibility related to the

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subject of this contract, and (2) had been separated from DFPS for less than one year at the time the assistance began.

**11.4 State of Texas General Affirmations.** By entering into this Contract, the Lead Entity affirms, without exception, as follows:

- 11.4.1 The Lead Entity represents and warrants that these General Affirmations apply to the Lead Entity and all of the Lead Entity's principals, officers, directors, shareholders, partners, owners, agents, employees, Subcontractors, independent Lead Entities, and any other representatives who may provide services under, who have a financial interest in, or otherwise are interested in this Contract.
- 11.4.2 The Lead Entity represents and warrants that all statements and information provided to DFPS are current, complete, and accurate. This includes all statements and information relating in any manner to this Contract and any solicitation resulting in this Contract.
- 11.4.3 Under Section 2155.006, Texas Government Code (relating to convictions and penalties regarding Hurricane Rita, Hurricane Katrina, and other disasters), the Lead Entity certifies that it is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
- 11.4.4 Under Section 2261.053, Texas Government Code (relating to convictions and penalties regarding Hurricane Rita, Hurricane Katrina, and other disasters), the Lead Entity certifies that it is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
- 11.4.5 Pursuant to Section 2252.901, Texas Government Code (relating to prohibitions regarding contracts with and involving former and retired state agency employees), The Lead Entity must not allow any former employee of DFPS to perform services under this Contract during the twelve (12) month period immediately following the employee's last date of employment DFPS.
- 11.4.6 The Lead Entity understands that DFPS does not tolerate any type of fraud. The Department's policy is to promote consistent, legal, and ethical organizational behavior by assigning responsibilities and providing guidelines to enforce controls. Violations of law, agency policies, or standards of ethical conduct will be investigated and appropriate actions will be taken. All employees or the Lead Entities who suspect fraud, waste or abuse (including employee misconduct that would constitute fraud, waste, or abuse) are required to immediately report the questionable activity to both the Health and Human Services Commission's Office of the Inspector General at 1-800-436-6184 and the State Auditor's Office. the Lead Entity agrees to comply with all applicable laws, rules, regulations, and DFPS policies regarding fraud.
- 11.4.7 The Lead Entity represents and warrants that it is not aware of and has received no notice of any court or governmental agency proceeding, investigation, or other action pending or threatened against the Lead Entity or any of the individuals or entities included in 9.4.1 of these General Affirmations within the five (5) calendar years immediately preceding the execution of this Contract that would or could impair the Lead Entity's performance under this Contract, relate to the contracted or similar goods or services, or otherwise be relevant to DFPS's consideration of entering into this Contract. If the Lead Entity is unable to make the preceding representation and warranty, then the Lead Entity instead represents and warrants that it has provided to DFPS a complete, detailed disclosure of any such court or governmental agency

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proceeding, investigation, or other action that would or could impair the Lead Entity's performance under this Contract, relate to the contracted or similar goods or services, or otherwise be relevant to DFPS's consideration of entering into this Contract. In addition, the Lead Entity represents and warrants that it shall notify DFPS in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update DFPS shall constitute breach of contract and may result in immediate termination of this Contract.

- 11.4.8 The Lead Entity understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by the Lead Entity is subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of this Contract.
- 11.4.9 The Lead Entity represents and warrants that it will comply with all applicable laws and maintain all permits and licenses required by applicable city, county, state, and federal rules, regulations, statutes, codes, and other laws that pertain to this Contract.
- 11.4.10 The Lead Entity represents and warrants that the individual signing this Contract is authorized to sign on behalf of the Lead Entity and to bind the Lead Entity.

**11.5 Protection of Rights of Conscience.** The Lead Entity certifies that it will comply with Texas Human Resources Code, Chapter 45. The Lead Entity must not take any adverse action or otherwise discriminate against a child welfare provider who:

- 11.5.1** has declined or will decline to provide, facilitate, or refer a person for child welfare services that conflict with, or under circumstances that conflict with, the provider's sincerely held religious beliefs;
- 11.5.2** provides or intends to provide children under the control, care, guardianship, or direction of the provider with a religious education, including through placing the children in a private or parochial school or otherwise providing a religious education in accordance with the laws of this state;
- 11.5.3** has declined or will decline to provide, facilitate, or refer a person for abortions, contraceptives, or drugs, devices, or services that are potentially abortion-inducing;
- 11.5.4** refuses to enter into a contract that is inconsistent with or would in any way interfere with or force a provider to surrender the rights created by Chapter 45 of the Texas Human Resources Code; or
- 11.5.5** declines in any other way to provide any good or service that conflicts with the child welfare service provider's sincerely held religious beliefs.

This certification and Chapter 45 of the Texas Human Resources Code does not in any way limit or rescind the duty of the Lead Entity to locate a secondary provider for any services necessary for a child, youth, or family in its care.