

**STATE OF UTAH DEPARTMENT OF HEALTH AND HUMAN SERVICES
CLIENT SERVICE TERMS**

1. **Definitions.** In this contract, the following definitions apply:

"Authorized Persons" means the Contractor's employees, officers, partners, Subcontractors, or other agents of the Contractor who need to access State Data to enable the Contractor to perform its responsibilities under this contract.

"State" means the state of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.

"State Data" means all confidential information, non-public data, personal data, and protected health information that is created or in any way originating with the State whether such data or output is stored on the State's hardware, the Contractor's hardware, or exists in any system owned, maintained or otherwise controlled by the State or by the Contractor. State Data includes any federal data that DHHS controls or maintains, that is protected under federal laws, statutes, and regulations. DHHS may identify, during and after this contract, additional reasonable types of categories of information that must be kept confidential under federal and State laws.

"Subcontractor" includes each individual or entity that has an agreement with the Contractor to perform contractual services for which the Contractor is responsible. Subcontractor also refers to each individual or entity that has an agreement with a Subcontractor if that individual or entity performs any of the Subcontractor's duties.

"Work Product" means every invention, modification, discovery, design, development, customization, configuration, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know how, secret, deliverable, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection), that is specifically made, conceived, discovered, or reduced to practice by the Contractor or the Contractor's Subcontractors (either alone or with others) pursuant to this contract. Work Product will be considered a work made for hire under federal, State, and local laws; and all interest and title will be transferred to and owned by DHHS. Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product does not include any DHHS intellectual property, the Contractor's intellectual property (that it owned or licensed prior to this contract) or third party intellectual property.

2. **Order of Precedence.** The terms of this contract will be reasonably interpreted and construed to avoid any conflict among the provisions. If there is any conflict between this contract's terms, the order of precedence (listed in order of descending precedence) among the terms is: (1) Contract Signature Page(s); (2) DHHS Client Service Terms; (3) DHHS scope of work; (4) Any other attachments.
3. **Contractor Contact Information.** The Contractor shall ensure that its DHHS contract representative has current contact information for the Contractor throughout the duration of this contract and throughout the duration of the Contractor's record retention responsibilities. The Contractor shall promptly notify DHHS of changes to contact information. Contact information includes the name and title of the individual authorized to receive legal and other notices regarding the contract; telephone number; email address; and street address.
4. **Independent Contractor.** The parties intend that the Contractor will be an independent contractor. The Contractor has no authorization to bind DHHS to any agreement, settlement, or liability. The Contractor shall not act as an officer, employee, or agent of DHHS.

5. **Contract Jurisdiction, Choice of Law, and Venue.** Utah law governs this contract. The parties shall submit to the jurisdiction of the courts of the state of Utah for any dispute arising out of this contract or the breach thereof. Venue will be in Salt Lake City, in the Third District Court for Salt Lake County.
6. **Registration with Utah Department of Commerce.** The Contractor shall maintain current registration with the Utah Department of Commerce, Division of Corporations and Commercial Code.
7. **Debarment.** DHHS may immediately terminate this contract if DHHS determines that the Contractor has been debarred, suspended, or otherwise lawfully excluded from participating in any agreement issued by a governmental entity, including but not limited to, being determined ineligible as a subcontractor of any governmental entity. The Contractor certifies that it is not currently suspended, debarred, or otherwise prohibited to enter this contract. The Contractor shall immediately notify DHHS if the Contractor becomes suspended, debarred, or otherwise ineligible for this or any other agreement issued by a governmental entity.
8. **Conflicts of Interest.** The Contractor shall not enter into any transaction that is improper or gives the appearance of being improper because of a conflict of interest. The Contractor shall complete and submit to DHHS the DHHS Conflict of Interest Disclosure Statement form ("**Disclosure Statement**"). The Contractor shall declare a conflict on the Disclosure Statement if it subcontracts with or employs a State employee. In addition to the remedies stated in this contract, DHHS may do any of the following: investigate potential conflicts of interest, require information from the Contractor, require remedial action, disapprove transactions, or require repayment of transactions.
9. **Contractor Conflict of Interest Policy and Internal Review.** The Contractor shall implement a written policy that requires its representatives, including employees, volunteers, and Subcontractors, to: 1) submit a conflict of interest Disclosure Statement upon hire and annually thereafter; 2) promptly disclose in writing to the Contractor all existing, potential, or contemplated conflicts of interest as they arise; 3) review annually all Disclosure Statements and its own operations to reasonably assure DHHS that the Contractor avoids prohibited conflicts of interest; 4) maintain Disclosure Statements in its personnel files; and 5) be trained on certification and disclosure requirements and laws governing conflicts of interest.
10. **Continuing Duty to Disclose Conflicts of Interest.** The Contractor shall continually and promptly review updated Disclosure Statements and submit a copy to DHHS whenever an existing or potential conflict of interest is disclosed. The Contractor shall require its Subcontractors to provide an updated Disclosure Statement to the Contractor upon any change regarding a conflict of interest.
11. **Subcontracts.** The Contractor shall not subcontract, assign, or delegate any right or obligation under this contract, in whole or in part, without the prior written consent of DHHS.
12. **Contract Assignment.** The Contractor shall not assign this contract or any portion thereof without the prior written consent of DHHS, which consent may be withheld for any reason. Notwithstanding any agreement between the assignor and assignee, DHHS may hold the assignor and assignee jointly and severally responsible for all obligations, losses, damages, injuries, liabilities, suits, claims, and proceedings arising out of the performance of this contract.
13. **Contract Amendments.** Amendments to this contract must be in writing, signed by the parties, and approved by the DHHS Office of Procurement & Contract Management except for the following for which written notification from DHHS will constitute an amendment to the contract without the Contractor's signature: 1) budgetary action that necessitates a change in rates or payments; 2) changes to Medicaid rates; 3) changes to financial reporting requirements; or 4) any documents identified in an attachment as being subject to amendment without the Contractor's signature.

14. **Remedies.** If DHHS determines that the Contractor has not complied with this contract, DHHS may do any of the following: terminate this contract; pursue any remedy allowed by law; require corrective action; disallow expenditures and adjust payments to the Contractor by deducting the disallowed expenditures; withhold funds due the Contractor to cover the costs of any audits, legal fees, and other expenses; withhold the Contractor's payments until DHHS fully recoups any incorrectly paid funds; require repayment; remove clients from the Contractor; and suspend client placements or referrals.
15. **Administrative Dispute Review.** Before pursuing any legal remedy for a contract dispute, the Contractor shall file a written appeal, including the contract number and disputed issue, with the DHHS Deputy Director over Operations no later than 30 days after the disputed DHHS action. The Contractor shall also provide a copy of its appeal to the DHHS Executive Director. DHHS shall issue a written response to the Contractor's appeal no later than 60 days after receiving the appeal.
16. **Contract Termination.** Either party may terminate this contract by written agreement or by giving the other party 30 days' written notice via email. Notice sent to DHHS must be sent to dhhscontracts@utah.gov. DHHS may immediately terminate this contract if: 1) DHHS identifies risk of harm to the clients served; 2) the Contractor does not maintain required licensing or certification standards; 3) the Contractor does not comply with federal, state, or local laws, regulations, or ordinances; or 4) this contract becomes unnecessary, or the ability to fulfill the contract is made impossible, due to: a legislative change, revoked statutory authority, lack of appropriated funds, or unavailability of funds.
17. **Mitigation of Service Interruption.** If either party terminates this contract, both parties shall use reasonable efforts to provide for uninterrupted client services. Upon giving or receiving notice of intent to terminate this contract, DHHS may remove clients from the Contractor's services and take any other steps deemed necessary to ensure client services will be uninterrupted.
18. **Payments after Termination.** After termination of this contract, DHHS shall pay for any undisputed services that the Contractor provided. The Contractor shall make no claim for services not rendered. DHHS will not pay the Contractor for any of the Contractor's obligations or expenses that extend beyond the contract termination date.
19. **Financial Viability.** The Contractor shall remain financially viable. If DHHS receives notice of any lien or IRS withholding against the Contractor's payments, or bankruptcy, DHHS may immediately terminate the contract. The Contractor shall provide DHHS with proof of financial viability upon request.
20. **Legal Fees and Costs.** If either party seeks to enforce this contract upon a breach by the other party, or if one party seeks to defend itself against liability arising from the negligence of the other party, the unsuccessful party shall pay the prevailing party's court costs and its reasonable legal fees.
21. **Cover.** If DHHS terminates this contract for cause, DHHS may procure replacement Goods or Services upon terms and conditions necessary to replace the Contractor's obligations. If the termination is due to the Contractor's failure to perform, and DHHS procures replacement Goods or Services, the Contractor agrees to pay any excess costs associated with obtaining the replacement Goods or Services.
22. **Severability.** A determination that any provision of this contract is illegal or void will not affect the legality or enforceability of any other provision of this contract.
23. **Copyright.** If the Contractor creates Work Product for DHHS under this contract that is eligible for copyright protection, such Work Product will be deemed work for hire, and the Contractor shall assign all ownership rights to DHHS.

24. **Standard of Care.** The Contractor shall perform in accordance with the standard of care exercised by members of its profession having substantial experience providing services of a similar type, magnitude, and complexity to the services required in this contract. The Contractor shall be liable to DHHS for claims, liabilities, additional burdens, penalties, damages, or third-party claims caused by acts, errors, or omissions that do not meet this standard of care.
25. **Force Majeure.** The Contractor's performance will not be excused by force majeure.
26. **No Waiver.** If either party does not enforce a provision of this contract, or waives its right to suit or damages in the case of breach of contract, it retains its right to enforce provisions for later breaches.
27. **Entire Agreement.** This contract constitutes the entire agreement between the parties and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.
28. **Job Opening Information Sharing.** The Contractor shall notify the Utah Department of Workforce Services of open job positions and provide a contact name and contact information for each position. The Department of Workforce Services may post this information on its website. This requirement does not preclude the Contractor from advertising job openings in other forums.
29. **General Insurance Provisions.** Non-compliance with the insurance requirements of this contract will constitute a material breach of this contract. The Contractor shall obtain insurance that is acceptable to DHHS. DHHS may reject policies that contain exclusions or limitations, or both, that are unacceptable to DHHS. The Contractor shall obtain any commercial insurance from insurance companies authorized to do business in the state of Utah with an AM Best Company rating of "A-" or better and a financial size category of Class VII or larger.
30. **Insurance Deductibles and Similar Costs.** The Contractor shall pay any deductibles, self-insured retentions, self-insurance costs, and similar items and ensure that any such costs are stated in the certificate of insurance. Such costs must not exceed \$10,000 unless the DHHS Deputy Director for Support Services grants an exception.
31. **General Liability Insurance.** The Contractor shall maintain commercial general liability insurance written on an occurrence form that, at a minimum, covers the following types of liability: bodily injury, death, personal injury, property damage, and liability for the property of others in the care, custody, or control of the Contractor. The policy must have a combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence and \$3,000,000 aggregate. The insurance must cover each site where the Contractor performs services.
32. **Additional Insured Endorsement.** The Contractor's general liability insurance policy must include an endorsement that names the state of Utah, DHHS, and their officers and employees as additional insureds, and that provides the state of Utah, DHHS, and their officers and employees with primary and non-contributory coverage for any liability arising as a result of the Contractor's acts or omissions in connection with this contract.
33. **Automobile Insurance.** If the Contractor transports clients or goods, the Contractor shall maintain commercial automobile liability insurance that covers property damage, personal injury protection, and liability for the vehicles used by the Contractor. The policy must provide for a combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence. If the Contractor subcontracts for all transportation, the Contractor may satisfy this requirement by submitting proof that its Subcontractor meets this requirement.
34. **Professional Liability Insurance.** The Contractor shall maintain professional liability insurance with a limit of not less than \$1,000,000 per occurrence, and \$3,000,000 aggregate, if any services are performed by professionals licensed by a professional licensing organization or the Utah Division of Occupational and Professional Licensing including, but not limited to, doctors, dentists, nurses, massage therapists, social workers,

and mental health therapists. This insurance must cover damages caused by errors, omissions, and negligence. If the policy is written on a claims-made basis, the Contractor shall ensure that any retroactive date under the policy precedes the effective date of this contract, and that either continuous coverage is maintained, or extended reporting coverage is obtained, for a period of five years after this contract terminates. The Contractor shall email documentation of coverage to DHHS at dhhscontracts@utah.gov.

35. **Self-Insured.** The Contractor may request approval to be self-insured. To request such approval, the Contractor shall: 1) provide DHHS with evidence that it is financially solvent and has established financial arrangements (such as a written comprehensive self-insurance program, performance bonds, or fidelity bonds) that will provide DHHS with adequate liability protection; 2) show that its ability to process and pay claims adequately, fairly, and in a timely manner is comparable to a commercial insurer; and 3) before signing this contract, obtain from the DHHS Deputy Director over Operations a written statement that DHHS has approved the Contractor's self-insurance and that the Contractor is not required to obtain additional insurance. DHHS may include in this statement additional conditions to ensure that the Contractor's self-insurance is satisfactory to DHHS. DHHS may deny self-insurance for any reason or withdraw its approval of self-insurance at any time. If the Contractor is approved to be self-insured, the Contractor shall immediately notify DHHS at dhhscontracts@utah.gov if its financial position or established financial arrangements change in a manner that may negatively impact its ability to process and pay claims comparable to a commercial insurer. DHHS may terminate this contract immediately if the Contractor does not provide such notification.
36. **Proof of Coverage.** The Contractor shall obtain certificates of insurance and additional insured endorsements that show the required coverage is in effect and that the insurer will notify DHHS within 30 days of any modification, cancellation, or non-renewal of the policy. The certificates of insurance must list Utah Department of Health and Human Services, dhhscontracts@utah.gov in the certificate holder box. The Contractor shall ensure these documents and any notices of cancellation are promptly sent to DHHS at: dhhscontracts@utah.gov. The Contractor shall provide a copy of the Contractor's full insurance policy upon request. DHHS's receipt of any certificates of insurance, policy endorsements, or policies that do not comply with this contract will not waive or otherwise affect the requirements of this contract. The Contractor shall provide DHHS with proof that the Contractor has the insurance coverage required by this contract annually and upon request.
37. **Insurance Required of Subcontractors.** The Contractor shall ensure that any Subcontractors maintain reasonable levels of insurance.
38. **Indemnification.** The Contractor shall be fully liable for the actions of its agents, employees, officers, partners, and Subcontractors, and shall fully indemnify, defend, and save harmless DHHS and the state of Utah from all claims, losses, suits, actions, damages, and costs of every name and description arising out of the Contractor's performance of this contract caused by any intentional act or negligence of the Contractor, its agents, employees, officers, partners, or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the sole fault of DHHS. The parties agree that if there are any limitations of the Contractor's liability, including a limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability will not apply to injuries to persons, including death, or to damages to property.
39. **Intellectual Property Indemnification.** The Contractor shall indemnify and hold DHHS and the state of Utah harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities, and costs in any action or claim brought against DHHS or the state of Utah for infringement of a third party's copyright, trademark, trade secret, or other proprietary right. The parties agree that if there are any limitations of Contractor's liability, such limitations of liability will not apply to this section.

40. **No Subrogation or Contribution:** The Contractor has no right of subrogation or contribution from the state of Utah or DHHS for any judgment rendered against the Contractor.
41. **Defense of Suits Brought Upon Claims:** The Contractor shall defend all suits brought upon claims and shall pay all expenses. DHHS may participate in the defense of any suit in which DHHS deems that its interests are not adequately protected by the Contractor or where the Contractor believes, asserts, or claims that the claim arises out of the sole negligence of DHHS. If the Contractor believes, asserts, or claims that a claim arises out of the sole negligence of DHHS, the Contractor shall notify DHHS no later than 90 days after receiving notice of the claim. If the Contractor does not notify DHHS within this timeframe, the Contractor shall defend and indemnify DHHS, even if the claim arises out of the sole negligence of DHHS. The participation by DHHS in the defense of a claim does not relieve the Contractor of any obligation under this contract. However, if DHHS elects to retain independent counsel, DHHS shall pay the legal fees and costs of that counsel except where DHHS retains independent counsel due to a claim by the Contractor that the claim arises out of the sole negligence of DHHS. If a finding is later made that the claim did not arise out of the sole negligence of DHHS, the Contractor shall reimburse DHHS for all costs, including legal fees, incurred by DHHS.
42. **Client Placements.** DHHS makes no guarantee that it will place or maintain any clients with the Contractor, that it will refer any clients to the Contractor, or that any clients will select the Contractor to provide services. DHHS may place or refer clients based on DHHS's determination of client need.
43. **Human Subjects Research.** The Contractor shall not conduct research involving human subjects or their private data unless the Contractor obtains prior written approval from the DHHS Institutional Review Board ("**IRB**") and from any other federal or state agencies whose approval is required for research on human subjects. The Contractor shall fully comply with any requirements imposed by the IRB.
44. **Grievance Procedures.** The Contractor shall establish a grievance system for clients and applicants for services. The Contractor shall notify each client and applicant in writing of their right to file grievances with the Contractor including: 1) denial of services; 2) exclusion from a program; or 3) inadequacies or inequities in the programs and services provided. The Contractor shall establish and maintain a tracking system identifying the nature and outcome of each grievance. If the Contractor denies a grievance or does not respond to a grievance in a timely fashion, the Contractor shall notify the client or applicant that they may contact DHHS in writing. DHHS will attempt to resolve the grievance.
45. **Client Centered Objectives.** The Contractor shall include in any client treatment plans individualized treatment objectives that address the assessed needs of the client. Treatment plans must prescribe an integrated program of therapies, activities, and experiences to meet the client's treatment objectives, and include reasonable measures to evaluate how the Contractor meets the treatment objectives.
46. **Customer Satisfaction Surveys.** DHHS may conduct customer satisfaction surveys to ensure that services are appropriate for the clients served. The Contractor shall cooperate with all DHHS initiated feedback activities and shall require its Subcontractors to do the same.
47. **Emergency Management and Business Continuity Plan.** The Contractor shall identify the critical functions of its business operations and develop an emergency management and business continuity plan that will allow the Contractor to continue to operate during short-term or long-term emergencies, periods of declared pandemic, or other disruptions of normal business. The plan must address at least the following areas: evacuation procedures; temporary or alternate living plans; plans for isolation or quarantine; maintenance, inspection, and replenishment of vital supplies (including food, water, clothing, first aid supplies, medical necessities, client medications, infection control supplies, and hazardous material protections); communications with Contractor staff, governmental agencies, and clients' families; transportation; recovery and maintenance of client records; and policies and procedures that: 1) ensure maintenance of required staffing ratios; 2) address both leave for,

and the recall of, Contractor's employees unable to work for extended periods due to illness during periods of declared pandemic; and 3) ensure the timely discharge of the Contractor's financial obligations, including payroll. The Contractor shall provide at least annual training for its staff on its plan. The Contractor shall provide DHHS with a copy of its plan upon request from DHHS. The Contractor shall evaluate its plan at least annually. The Contractor shall provide DHHS with any modifications to the plan no later than 15 days after the time the modifications are made.

- 48. Client Fatality Notification and Review.** Upon discovery of the death of a client, the Contractor shall immediately notify DHHS, comply with the DHHS fatality review process, and furnish any information or documents requested by DHHS.
- 49. Monitoring and Visits.** DHHS may monitor the Contractor's performance including through scheduled and unannounced visits.
- 50. Performance Based Outcome Measures.** The Contractor shall collaborate with DHHS and, if referred, the University of Utah to assess how closely its programs meet principles of effective interventions based on empirically-derived principles.
- 51. Internal Quality Management.** The Contractor shall develop, implement, and maintain an internal quality management system that evaluates the Contractor's programs and establishes a system of self-correcting feedback that may be externally validated by DHHS.
- 52. Payment.** Payments made to the Contractor will be the Contractor's total compensation for contract services provided. With the exception of guaranteed payment amounts and budget-based contracts, DHHS shall pay the Contractor only if clients are placed with, are referred to, or select the Contractor for services, and only if the Contractor provides contract services to clients.
- 53. Payment for Residential Care Services.**
- a. **Client Absences.** If the Scope of Work states that the Contractor may receive payment for client absences from a residential placement, the Contractor shall include in the client records the reason for the client's absence, the client's whereabouts during the absence, and any other appropriate information. In addition, if the Scope of Work requires the Contractor to obtain written approval from DHHS to obtain payment for a client's absence, the Contractor shall include a copy of the approval in the client's file. Payment for client absences from a residential placement is prohibited in the following situations: 1) the client has left the Contractor's residential program and there is no plan to return the client to the Contractor's residential program and, therefore, no need to hold the slot; or 2) the standard rate already includes a factor for absences.
 - b. **Ongoing Billings.** The Contractor shall submit all billings and claims for services rendered during a given billing period no later than 20 days after the last day of that billing period, except that the Contractor shall submit all billings for services performed on or before June 30th of a given fiscal year pursuant to paragraph c. below.
 - c. **State Fiscal Year-End Billings.** The State Fiscal Year is from July 1st through June 30th. The Contractor shall submit all billings for services performed on or before June 30th of a given fiscal year no later than July 14th of the following fiscal year, regardless of the Contractor's billing period or the contract termination date.

- d. **Final Contract Billings.** The Contractor shall submit all final billings no later than 14 days after this contract terminates, regardless of the Contractor's billing period.
 - e. **Late Invoices.** DHHS may reject any invoice or claim for payment or reimbursement if received by DHHS after the requirements stated in this contract, but in no case will DHHS pay for items billed later than twelve months after the fiscal year ending June 30th that the Contractor's services or goods were provided or expected under the contract, or for contracts with Medicaid, later than Medicaid deadlines.
54. **Most Favored Nation.** The Contractor guarantees that the amounts it charges for services will not be higher than the amounts the Contractor charges others for comparable services.
55. **No Imposition of Fees.** The Contractor shall not charge clients for any services except as expressly authorized in the Scope of Work.
56. **Supporting Documentation.** The Contractor shall maintain documentation necessary to support the costs billed by the Contractor and shall submit the documentation with the billings, if requested. The Contractor shall store and file required documentation in a systematic and consistent manner.
57. **Questioned Costs.** DHHS may question any billing by the Contractor if the billing is not supported by proper documentation.
58. **Availability of Non-Party Resources.** In addition to funds received from DHHS, other sources of funding may be available to the Contractor including Medicaid, private insurance, or other state, federal, and county programs. All funding sources other than DHHS are "**Non-Party Resources**".
59. **Non-Party Resources Requirements.** Where Non-Party Resources are available: 1) the Contractor shall not obtain duplicate recovery from DHHS and Non-Party Resources for services delivered; 2) except as stated below, the Contractor shall seek payment from Non-Party Resources for services delivered; 3) upon successful recovery of funds from Non-Party Resources, the Contractor shall reimburse DHHS for the full amount of the recovery; and 4) If the amount of the recovery is greater than the amount that the Contractor received from DHHS, the Contractor shall reimburse DHHS for the amount received from DHHS.
60. **Medicaid Enhancement and Home and Community-Based Services.** If DHHS bills Medicaid for the Contractor, the Contractor shall not seek reimbursement from Medicaid if the client is eligible for Medicaid Enhancement or for Home and Community-Based Services. Instead, DHHS shall pay the Contractor for services delivered, DHHS shall bill the Non-Party Resources, and the DHHS Office of Recovery Services or Medicaid will pursue reimbursement for amounts that DHHS paid to Contractor.
61. **Non-Appropriation or Reduction of Funds.** If funding for this contract is eliminated or reduced, or if federal funding requires any return of funds required for the State to continue payments, DHHS may terminate this contract or proportionately reduce the services and payments.
62. **Cost Information:** DHHS may require the Contractor to submit cost information to DHHS for use in setting rates, establishing budgets, or designing or evaluating services.
63. **DHHS Cost Principles for Budget Based Contracts:** If this contract is budget-based, the Contractor shall differentiate administrative costs from program costs. Personnel who have both administrative and program duties, or who have duties related to multiple programs, must allocate their time to each function and program as appropriate, and shall maintain time sheets or other comparable supporting documentation detailing the time spent in each function and program. Costs that support more than one function or program must be

appropriately allocated to the applicable function and program. The Contractor shall not have administrative costs that exceed 25% of the program costs of this contract in any given Contractor fiscal year.

64. **Budget Adjustments:** If this contract is budget-based, the budget attached to this contract will be the basis for DHHS's payments to the Contractor. The Contractor shall not transfer budgeted funds from program costs to either administrative costs or capital expenditures without DHHS's prior written approval. The Contractor shall not transfer budgeted funds between administrative costs and capital expenditures without DHHS's prior written approval. The Contractor may transfer funds from administrative costs or capital expenditures to program costs without prior approval. The Contractor may transfer funds between subcategories within each major category without prior approval if there are no restrictions on expenditures within those subcategories.
65. **Expenditures in Excess of those Budgeted:** If this contract requires a budget, DHHS may question any amounts in excess of the total amount budgeted in either administrative costs or capital expenditures and may require the Contractor to refund the excesses to DHHS. Amounts in excess of the total amount budgeted in program costs will not normally result in questioned costs unless DHHS has placed restrictions on subcategories within this major category. When this contract restricts expenditures within defined subcategories, DHHS will consider any unapproved excesses to be a questioned cost.
66. **No Incentive and Collecting Costs in Budget-Based Contracts.** This contract includes no incentive amount for budget-based contracts. With budget-based contracts, the Contractor may bill DHHS for the cost of collecting from Non-Party Resources only if the Contractor provides DHHS with adequate documentation to show that the costs were necessary, reasonable, and incurred by the Contractor. The Contractor shall maintain financial records to support the costs for auditing purposes.
67. **Underutilization of Funds.** If DHHS determines that the Contractor is underutilizing funds, DHHS may reduce the funding. DHHS shall notify the Contractor of any reduction and reimburse the Contractor for services performed before the reduction.
68. **Contractor's Cost Accounting System.** The Contractor shall maintain an accounting system that provides a general ledger and cost accounting records adequate to assure that costs incurred are reasonable, allowable, allocable to contract objectives, and separate from costs associated with other business activities of the Contractor. The Contractor shall ensure that its accounting system meets required reporting requirements and timely development of cost data in the required form.
69. **Personal Expenses:** DHHS shall not reimburse the Contractor for personal expenses, including travel, that are not business related.
70. **Cost Principles.** Regardless of the Contractor's entity type or the source of its funding, the Contractor shall comply with and determine allowable costs under the federal cost accounting principles described in 2 CFR Part 200, as well as any other applicable parts.
71. **Related Party Payments.** In addition to the federal cost principles, the Contractor shall not make payments to related parties in any category of expenditure (Administrative Costs, Capital Expenditures, or Program Costs) without the prior written consent of DHHS. Payments to related parties may include: salaries, wages, compensation under employment or service agreements, or payments under purchase, lease, or rental agreements. Payments made by the Contractor to related parties without prior written consent may be disallowed and require repayment to DHHS.
72. **Compliance with Law and Other Standards.** The Contractor shall comply with all laws, regulations, ordinances, certification requirements, and licensing standards.

73. **Background Screening Requirements.** The Contractor and any individuals associated with the Contractor shall comply with the background screening requirements in Utah Code §26B-2-120 and Utah Administrative Code R501-14.
74. **Utah 211 Information Requests.** The Contractor shall provide Utah 211 with information about the Contractor's services in a form determined by Utah 211.
75. **Registration and Use of Employment Status Verification System.** The Status Verification System, also referred to as "E-verify," only applies to contracts issued through a request for proposals process, and to sole sources included within a request for proposals. The Contractor certifies under penalty of perjury to its own entity that it has registered and is participating in the Status Verification System to verify the work eligibility status of the Contractor's new employees that are employed in the state of Utah in accordance with immigration laws, including Utah Code § 63G-12-302.
76. **Subcontractor E-verify Requirements.** The Contractor shall require that each of its Subcontractors certify by affidavit under penalty of perjury that each Subcontractor has registered and is participating in the Status Verification System to verify the work eligibility status of Subcontractor's new employees that are employed in the state of Utah in accordance with applicable immigration laws.
77. **Provider Code of Conduct.** The Contractor shall follow and enforce the DHHS Provider Code of Conduct. Before allowing any employee or volunteer to work with clients, the Contractor shall: 1) provide a current copy of the DHHS Provider Code of Conduct to each employee or volunteer currently working for the Contractor and to new employees or volunteers; and 2) retain in each employee's or volunteer's file a signed and dated statement in which that person certifies that he or she has read, understands, and will comply with the DHHS Provider Code of Conduct. Annually, the Contractor shall obtain the current DHHS Provider Code of Conduct poster and display the poster where its employees and volunteers can see it.
78. **Boycott Restrictions:** If this contract has a total value of \$100,000 or more, and if the Contractor has ten or more employees, the Contractor certifies that it is not currently engaged in a boycott of the State of Israel or an economic boycott as defined by Utah Code § 63G-27-201 and that it will not engage in a boycott of the State of Israel for the duration of the contract, and that it will notify DHHS if the Contractor engages in an economic boycott. For purposes of this term, "**Contractor**" includes any wholly-owned subsidiary, majority-owned subsidiary, parent company, or affiliate of the Contractor. This section does not apply to the extent that an exception in Utah Code § 63G-27-201 applies.
79. **Other Laws and Requirements.** The Contractor shall comply with all drug-free workplace laws and all laws governing research involving human subjects.
80. **Employment Practices:** The Contractor shall abide by the following employment laws, as applicable: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of Services, on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 C.F.R. § 90 which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disabilities; (v) Utah Executive Order No. 2006-0012, dated December 13, 2006, which prohibits unlawful harassment in the workplace; (vi) Utah Code Ann. § 26B-7-503, Utah Indoor Clean Air Act which prohibits smoking in enclosed public places; (vii) Utah Executive Order No. 2006-0012 which prohibits all unlawful harassment in any workplace in which State employees and employees of public and higher education must conduct business; (viii) 41 CFR part 60, Equal Employment Opportunity, and the Executive Order 11246, as amended by Executive Order 11375, which implements those regulations; (ix) 45 C.F.R. part 83, which prohibits the extension of federal support to any entity that discriminates on the basis of sex in the admission of individuals to its health manpower and nurse

training programs; and (x) 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. part 5), Contract Work Hours and Safety Standards Act, for contracts that involve the employment of mechanics or laborers. The Contractor further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind of any of the Contractor's employees or Persons served.

81. **Federal Requirements.** The Contractor shall abide by the following federal statutes, regulations, and requirements: 2 C.F.R. § 200.326, Agreement Provisions as applicable; 45 C.F.R. § 46, 42 U.S.C. § 2899, 21 C.F.R. 50, & 21 C.F.R. 56 Protection of Human Subject in research activities; 45 C.F.R. part 84, prohibits discrimination of drug or alcohol abusers or alcoholics who are suffering from mental conditions from admission or treatment by any private or public hospital or outpatient facility that receives support or benefit from a federally funded program; 42 C.F.R. parts 2 and 2a which implements the Public Health Service Act, sections 301(d) and 543, which requires certain medical records that relate to drug abuse prevention be kept confidential when the treatment or program is directly or indirectly assisted by the federal government; 42 U.S.C. §§ 7401-7971q., the Clean Air Act and 33 U.S.C. §§ 1251-1387, the Federal Water Pollution Control Act, and all applicable standards, orders or related regulations; 31 U.S.C. § 1352, Byrd Anti-Lobbying Amendment; 42 U.S.C § 4331, the National Environmental Policy Act of 1969; 2 C.F.R. § 200.322, Procurement of recovered materials which outlines section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act; 37 C.F.R. § 401, Rights to Inventions Made; 42 C.F.R. part 50, Subpart B, Sterilizations; 42 C.F.R. part 50, Subpart C, Abortions and Related Medical Services; 59 FR 46266, Recombinant DNA and Institutional Biosafety; 7 U.S.C. § 2131, Animal Welfare; 42 C.F.R. part 92, Misconduct in Science; 42 U.S.C. §§ 4728-4763, Merit System Standards for governmental entities only; 42 U.S.C. §§ 6101-6107 & 45 C.F.R. Part 91 Age Discrimination Act of 1975; 42 U.S.C. § 12101 et seq. & 28 C.F.R. Part 35, Part 39 Americans with Disabilities Act; 45 C.F.R. Part 80, 42 U.S.C. § 2000d et. seq. Civil Rights Act of 1964 as amended Title VI; 40 U.S.C. §§ 3701-3704 & 29 C.F.R. Part 5 Contract Work Hours and Safety Standards Act; 45C.F.R. 2543.82, 18 U.S.C. § 874 & 29 C.F.R. Part 3 Copeland Anti-Kickback Act; 40 U.S.C. § 3142 & 29 C.F.R. Part 5 Davis-Bacon Act; 41 U.S.C. § 701 through 707, Drug Free Workplace Act of 1988; 20 U.S.C. § 1681et. seq. & 45 C.F.R. Part 86, Education Amendments of 1972, Title IX; 8 U.S.C. § 1324a, Employment Eligibility Verification; 29 U.S.C. § 206(d) Equal Pay Act; 29 U.S.C. § 201 et seq. Fair Labor Standards Act; 8 U.S.C. § 1324 Immigration Control and Reform Act; 42 U.S.C. § 10801 et seq. Protection and Advocacy for Individuals with Mental Illness Act; 45 C.F.R. Part 84.53 Public Health Service Act, Section 522 and Section 526; 29 U.S.C. § 794 & 45 C.F.R. Part 84 Rehabilitation Act of 1973, as amended, Section 504; 42 U.S.C. § 6322 Energy Policy and Conservation Act; 42 U.S.C. § 4106 Flood Disaster Act of 1973 and other flood hazard provisions; 42 U.S.C. § 4321 et seq. & 40 C.F.R. Part 1500 et seq. National Environmental Policy Act of 1969; 42 U.S.C. §§ 7181-7184, Pro-Children Act of 2001; 31 U.S.C. § 3729-3733 and Chapter 38 Civil False Claims Act; Public L. 109-171 (2006) Deficit Reduction Act of 2005; P.L. 109-282, as amended by Section 6202 of P.L. 110-252 FFATA; 5 U.S.C. § 1501, et. seq. Hatch Act; 42. U.S.C. § 290dd-2; 42 C.F.R. § 2 and 2a Substance Abuse and Mental Health confidentiality; 45 C.F.R. Part 75 HHS Award requirements; and the Contractor shall include in any contracts termination clauses for cause and convenience, along with administrative, contractual, or legal remedies in instances where subcontractors violate or breach agreement terms and provide for such sanctions and penalties as may be appropriate.
82. **Abuse Reporting.** The Contractor shall comply with abuse reporting requirements in Utah Code §§ 80-2-602 and 26B-6-205.
83. **Records Access:** The Contractor shall provide DHHS with access to all records relating to this contract and shall not limit or interfere with DHHS' access rights. The Contractor shall allow independent auditors, state and federal auditors, and contract reviewers to have access to any records related to this contract including all personnel, training, client, treatment, accounting, and financial records.
84. **Record-Keeping and Reporting Requirements:** The Contractor shall maintain or supervise the maintenance of all records necessary for the proper and efficient operation of its programs including, as applicable, records relating to screenings, assessments, applications, determination of clients' eligibility, the provision of services,

treatment, administrative costs, statistics, fiscal operations, and any other records necessary for complying with the reporting and accountability requirements of this contract.

85. **Client Records Retention:** The Contractor shall retain all adult client records (including records that support Title XIX reimbursements) for at least six years from the day of last service to the adult client. The Contractor shall retain all records relating to clients under 18 years old (including records that support Title XIX reimbursements) for at least six years from the day of last service to the child client, or until the child client reaches the age of 22, whichever period is longest.
86. **Administrative Records Retention.** The Contractor shall retain all administrative records relating to this contract (including records that support Title XIX reimbursements) for at least six years after DHHS makes the last payment on this contract.
87. **Discontinued Operations:** If the Contractor discontinues its programs or ceases to provide services, the Contractor shall protect DHHS access rights by implementing one of the following options: 1) transfer the client records to a successor agency or entity that has entered into a contract with DHHS to provide the services formerly provided by the Contractor; 2) deliver the client records to an office within the Contractor's organization and provide DHHS with continuing immediate access to the records; 3) with the prior written consent of DHHS which may be withheld for any reason, deliver the client records to DHHS; or 4) if the Contractor is bound by the requirements of 42 C.F.R. Part 2 and ceases to provide its services, the Contractor shall comply with the following requirements before destroying records: (a) the Contractor shall notify DHHS in writing at least 30 days before it ceases to provide its services; (b) upon request from DHHS, the Contractor shall give each of its patients a consent form that meets the requirements of 42 C.F.R. § 2.31 and that authorizes the Contractor to transfer its patient records to DHHS; and (c) upon obtaining signed consent forms from patients, the Contractor shall deliver the consenting patients' records to DHHS.
88. **Audits and Litigation:** The Contractor shall maintain all records related to any audits initiated by federal or state auditors or to any pending litigation until six years after all audits are completed or litigation is resolved, including any related appeals or the time for appeal has expired, or for six years from the day this contract terminates, whichever is longer.
89. **Method for Destruction of Client Records:** If destroying a client record, the Contractor shall cross-shred or burn the record to protect client confidentiality. For electronic records, the Contractor shall destroy the records in a manner that prevents unauthorized persons from reading or accessing the records.
90. **Client Record Confidentiality:** The Contractor shall keep client records confidential and shall restrict access to client records in accordance with state and federal laws. Client records include, but are not limited to, hard copy records, electronic data, audio and video tapes, digital files, photographs, scans, and other images. The Contractor shall maintain all client records in locked rooms or cases or in password-protected electronic files. The Contractor shall password-protect any records that are transported or contained in any electronic medium. The Contractor shall not use or disclose any client information except as provided by this contract or required by law. The Contractor shall restrict access to records for its representatives to those portions of the records directly related to their work.
91. **Loss or Disclosure of Client Records:** The Contractor shall have and comply with policies and procedures to protect confidential client records and information from loss, unauthorized disclosure, and data breaches (collectively "**Loss**"), and shall make those policies available to DHHS. The Contractor shall address in its policies and procedures how client records and information will be maintained, transmitted, stored, and secured to protect against any Loss. The Contractor shall address in its policies and procedures the steps that will be taken in the event of any Loss to notify, protect, and reimburse those impacted by the Loss against potential damages, as well as to prevent future losses. The Contractor shall be responsible for any Loss of client records

or client information by it or its representatives and for any and all costs, remediation (including, credit monitoring), and damages associated with the Loss. In the event of a Loss, the Contractor shall notify the following of the Loss no later than 24 hours after it is discovered: 1) the DHHS Deputy Director over Operations; 2) the DHHS Privacy and Security Director; and 3) the client or the client's parents or legal guardian.

92. **Information Ownership:** Except for confidential medical records held by direct care providers, DHHS shall own exclusive title to all information gathered, reports developed, and conclusions reached in performance of this contract. The Contractor shall not use or disclose, except in meeting its obligations under this contract, information gathered, reports developed, or conclusions reached in performance of this contract without prior written consent from DHHS. DHHS will own and retain unlimited rights to use, disclose, or duplicate all information and data (copyrighted or otherwise) developed, derived, documented, stored, or furnished by the Contractor under this contract. The Contractor shall not use confidential federal, state, or local government information without prior written consent from DHHS, and shall bind any Subcontractor to the same requirement.
93. **Information Practices:** The Contractor shall establish, maintain, and practice information procedures and controls that comply with federal and state law including, as applicable, Utah Code § 26-1-1 et seq. and the privacy and security standards promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") & the Health Information Technology for Economic and Clinical Health Act of 2009 (the "HITECH Act"). The Contractor shall receive or request from DHHS only information about an individual that is necessary to the Contractor's performance of its duties and functions. The Contractor shall use the information only for purposes of this contract.

94. **Secure Protection and Handling of State Data:**

- a. If the Contractor is given access to or stores State Data as part of this contract, the protection of State Data must be an integral part of the business activities of the Contractor to ensure that there is no inappropriate or unauthorized use of State Data. The Contractor shall safeguard the confidentiality, integrity, and availability of the State Data. The Contractor agrees to not copy, reproduce, sell, assign, license, market, transfer, or otherwise dispose of, give, or disclose such information to third parties or use such information for any purpose whatsoever other than the performance of this contract. The improper use or disclosure of confidential information is strictly prohibited.
- b. Any and all transmission or exchange of State Data must take place via secure means. The Contractor shall create, store, and maintain any State Data on secure or encrypted computing devices or portable storage mediums. The Contractor agrees to protect and maintain the security of State Data with security measures including, but not limited to, maintaining secure environments that are patched and up to date with all appropriate security updates, network firewall provisioning, and intrusion detection. The Contractor agrees that any computing device or portable medium that has access to DHHS's network or stores any non-public State Data is equipped with strong and secure password protection.
- c. The Contractor shall: (i) limit disclosure of any State Data to Authorized Persons who have a need to know such information in connection with the current or contemplated business relationship between the parties to which this contract relates, and only for that purpose; (ii) advise its Authorized Persons of the proprietary nature of the State Data and of the obligations set forth in this contract and require Authorized Persons to keep the State Data confidential; (iii) keep all State Data strictly confidential by using a reasonable degree of care, but not less than the degree of care used by it in safeguarding its own confidential information; and (iv) not disclose any State Data received by it to any third parties, except as permitted by this contract or otherwise agreed to in writing by DHHS.
- d. The Contractor shall promptly notify DHHS of any misuse or misappropriation of State Data that comes to the Contractor's attention. The Contractor shall be responsible for any breach of this duty of confidentiality by any of its officers, agents, Subcontractors at any tier, and any of its respective representatives, including any required remedies or notifications under applicable law (Utah Code Ann.

§§ 13- 44-101 through 301). This duty of confidentiality is ongoing and survives the term of this contract. Notwithstanding the foregoing, if there is a discrepancy between a signed business associate agreement and this provision, the business associate agreement language will take precedence.

95. Ownership, Protection, and Return of Documents and Data upon Contract Termination or Completion:

Except for records that must be retained for a longer period under sections 85 and 86, and for confidential medical records held by direct care providers, all documents and data pertaining to work required by this contract will be the property of DHHS and must be returned to DHHS or disposed of within 30 days after termination or expiration of this contract, regardless of the reason for contract termination, and without restriction or limitation to future use. If such return or destruction is not feasible, the Contractor shall notify DHHS. The Contractor shall extend any protections, limitation, and restrictions of this contract to any information retained after the termination of this contract and shall limit further uses and disclosures to those purposes that make the return or destruction of the data infeasible. Any disposal of State Data must be disposed of in such a manner that it cannot be recovered or recreated. Notwithstanding the foregoing, if there is a discrepancy between a signed business associate agreement and this provision, the business associate agreement language will take precedence.

96. Intellectual Property Ownership: DHHS and the Contractor recognize that each has no right, title, or interest, proprietary or otherwise in the intellectual property owned or licensed by the other, unless agreed upon by the parties in writing. All deliverables, documents, records, programs, data, articles, memoranda, and other materials not developed or licensed by the Contractor prior to the execution of this contract, but specifically created or manufactured under this contract, is considered work made for hire, and the Contractor shall transfer any ownership claim to DHHS.

97. Work Product Ownership: In the event that the Contractor provides Work Product to DHHS pursuant to this contract, the Contractor grants the ownership in Work Product, which has been developed and delivered by the Contractor exclusively for DHHS and is specifically within the framework of fulfilling the Contractor's obligations under this contract. Work Product will be deemed work made for hire, such that all intellectual property rights, title, and interest in the Work Product will pass to DHHS, to the extent that the Work Product is not recognized as work made for hire, the Contractor hereby assigns to DHHS any and all copyrights in and to the Work Product, subject to the following:

- a. The Contractor has received payment for the Work Product,
- b. Each party will retain all rights to patents, utility models, mask works, copyrights, trademarks, trade secrets, and any other form of protection afforded by law to inventions, models, designs, technical information, and applications ("**Intellectual Property Rights**") that it owned or controlled prior to the effective date of this contract or that it develops or acquires from activities independent of the Services performed under this contract ("**Background IP**"), and
- c. The Contractor will retain all right, title, and interest in and to all Intellectual Property Rights in or related to the Services, or tangible components thereof, including but not limited to (a) all know-how, intellectual property, methodologies, processes, technologies, algorithms, software, or development tools used in performing the Services (collectively, the "**Utilities**"), and (b) such ideas, concepts, know-how, processes, and reusable reports, designs, charts, plans, specifications, documentation, forms, templates, or output which are supplied or otherwise used by or on behalf of the Contractor in the course of performing the Services or creating the Work Product, other than portions that specifically incorporate proprietary or confidential information or Work Product of DHHS (collectively, the "**Residual IP**"), even if embedded in the Work Product.
- d. The Contractor shall not distribute or market Work Product, not including the Contractor's Intellectual Property Rights, Background IP, and Residual IP, without written approval by DHHS.

- e. The Contractor agrees to grant to DHHS a perpetual, irrevocable, royalty-free license to use the Contractor's Background IP, Utilities, and Residual IP, as defined above, solely for DHHS and the State to use the Work Product. DHHS reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for DHHS's and the State's internal purposes, such Work Product. For the Goods or Services delivered that consist of the Contractor's scripts and code and are not considered Work Product, for any reason whatsoever, the Contractor grants DHHS a non-exclusive, non-transferable, irrevocable, perpetual right to use, copy, and create derivative works from such, without the right to sublicense, for DHHS's and the State's internal business operation under this contract. DHHS and the State may not participate in the transfer or sale of, create derivative works from, or in any way exploit the Contractor's Intellectual Property Rights, in whole or in part.

98. **Software Ownership:** If the Contractor develops or pays to have developed computer software exclusively with funds or proceeds from this contract to perform its obligations under this contract, or to perform computerized tasks that it was not previously performing to meet its obligations under this contract, the computer software will be exclusively owned by or licensed to DHHS. If the Contractor develops or pays to have developed computer software which is an addition to existing software owned by or licensed exclusively with funds or proceeds from this contract, or to modify software to perform computerized tasks in a manner different than previously performed, to meet its obligations under this contract, the addition will be exclusively owned by or licensed to DHHS. In the case of software owned by DHHS, DHHS grants to the Contractor a nontransferable, nonexclusive license to use the software in the performance of this contract. In the case of software licensed to DHHS, DHHS grants to the Contractor permission to use the software in the performance of this contract. This license or permission, as the case may be, terminates when the Contractor has completed its work under this contract. If the Contractor uses computer software licensed to it which it does not modify or program to handle the specific tasks required by this contract, then to the extent allowed by the license agreement between the Contractor and the owner of the software, the Contractor grants to DHHS a continuing, nonexclusive license for either DHHS or a different contractor to use the software in order to perform work substantially identical to the work performed by the Contractor under this contract. If the Contractor cannot grant the license as required by this section, then the Contractor shall reveal the input screens, report formats, data structures, linkages, and relations used in performing its obligations under this contract in such a manner to allow DHHS or another contractor to continue the work performed by the Contractor under this contract.

(Revised 4/16/2024)