



**DFPS UNIFORM CONTRACT TERMS & CONDITIONS**

# Exhibit B: DFPS SSCC Uniform Contract Terms and Conditions

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## 1. General Provisions

1.1 **Legal Authority.** Pursuant to its authority under Texas Human Resources Code §40.058, the Texas Department of Family and Protective Services (DFPS or the Department) is authorized to enter into this Contract (Contract or Agreement).

1.2 **Incorporation by Reference.** The following documents are incorporated into the Contract for all purposes and are on file with the Department, the SSCC, and subcontractor(s).

- 1.2.1 The solicitation document
- 1.2.2 The application, response, or bid submitted by the SSCC
- 1.2.3 Form 2031, Signature Authority Designation
- 1.2.4 Form 4732, Request for Determination of Ability to Contract
- 1.2.5 Form 2030, Budget for Purchase of Service with Narrative, if applicable
- 1.2.6 Form 1513, Disclosure of Ownership and Control Interest Statement, if applicable
- 1.2.7 HUB Subcontracting Plan, if applicable
- 1.2.8 Form 9007[for applicable payment type], Internal Control Structure Questionnaire (ICSQ), if applicable

1.3 **Order of Precedence.** To the extent of any conflict between the provisions of this Contract and other relevant documents, the conflict will be resolved, to the extent possible, by reference to the documents in the following order of priority:

- 1.3.1 First, this Contract and any amendments hereto;
- 1.3.2 Second, the solicitation document, including all attachments and exhibits, and any modifications, addendum, or amendments issued in conjunction with the solicitation; and
- 1.3.3 Third, the application, response, or bid submitted by the SSCC, including all attachments and exhibits.

1.4 **Sovereign Immunity.** No part of any of this Contract, nor DFPS's conduct related to this Contract, will constitute a waiver of any of the privileges, rights, defenses, remedies, or immunities available to DFPS, the State of Texas, and their officials and staff. DFPS does not waive any such privileges, rights, defenses, or immunities by entering into this Contract or by its conduct prior to or subsequent to entering into this Contract.

1.5 **Severability.** Invalidity or unenforceability of one or more provisions of this Contract will not affect any other provision of this Contract. If a part of the Contract is determined invalid or unenforceable, a clause of as similar terms as may be legally possible may be added in order to make the prior intent of such provision legal, valid, and enforceable.

1.6 **Force Majeure.** Neither party will be liable for any delay in performance under this Contract related to an unavoidable cause not attributable to the fault or negligence of the respective party. Such delays will extend the period of performance at the discretion of DFPS. The SSCC must inform the Department in writing of proof of force majeure within five (5) business days or otherwise waive this right as a defense.

1.7 **Survivability.** All obligations and duties of the SSCC not fully performed as of the expiration or termination of this Contract will survive the expiration or termination of the Contract.

1.8 **Non-waiver.** Failure to enforce any provision of this Contract does not constitute a waiver of that provision, or any other provision, of the Contract.

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## Exhibit B: DFPS SSCC Uniform Contract Terms and Conditions

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### 2. Children and Youth

2.1 **Access to Children and Youth.** The Contractor will permit access to all Children and Youth referred to the SSCC by the Department to DFPS, its employees, its designees, and properly identified individuals appointed by a court of competent jurisdiction (Volunteer or Court Appointed Special Advocates (CASA), guardians ad litem, and attorneys ad litem).

- 2.1.1 All parties will exercise their right of access in a reasonable manner and attempt to plan and coordinate such visits in cooperation with the Contractor and in a manner that minimizes disruption of the care of the Children placed with the Contractor.
- 2.1.2 This section will not be construed to prohibit the Department or its designees from making unannounced visits to the Contractor's facilities or to a foster home verified by a CPA.
- 2.1.3 In order to assess that an individual is appointed by a court of competent jurisdiction, a Contractor or Caregiver should:
  - 2.1.3.1 If such individual is an employee of the CASA, review for a valid court order; and
  - 2.1.3.2 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
  - 2.1.3.3 Review that the individual is named on the Child's Contact List.
- 2.1.4 If Contractor or Caregiver cannot readily determine the identity or authority of an individual appointed by a court of competent jurisdiction, then the Contractor or Caregiver should obtain approval from the Child's case worker or chain of command prior to granting the individual access to the Child.

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

- 2.2.1 The SSCC must access all medical, dental, vision and behavioral health care for children in substitute care referred by DFPS through STAR Health, managed care system for children in substitute care, unless otherwise directed by DFPS.
- 2.2.2 The SSCC must access Medicaid healthcare related services which are excluded from or carved out of the STAR Health Plan but for which children are eligible to receive.
- 2.2.3 The SSCC will be financially responsible for providing behavioral health services for children served by The SSCC when 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 SSCC should be covered through Medicaid.
- 2.2.4 No later than the third (3rd) business day after a child's caregiver receives a letter denying prior authorization for a Medicaid service, The SSCC will e-mail a scanned copy of the denial letter and the date of such receipt to the CPS caseworker or caseworker's chain of command and the DFPS regional Well-being Specialist.

2.3 **Research/Studies.** Children and families referred to the SSCC for services will not participate in research and/or studies without the prior written approval of DFPS.

2.4 **Case-Specific Dispute Resolution.** Case-specific disputes between the SSCC and DFPS will be resolved using the following protocol:

- 2.4.1 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

## Exhibit B: DFPS SSCC Uniform Contract Terms and Conditions

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individual will notify the other individual that they plan to involve their chain of command.

- 2.4.2 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 foster care redesign and is not a direct supervisor of the individual involved in the appeal. A written decision to the appeal is required within five business days.
- 2.4.3 The SSCC must ensure continuity of services, as defined by DFPS, to the child or family affected while seeking to resolve case-specific disputes.

2.5 **Notification of Family/Tribal Affiliation.** The SSCC must notify DFPS in writing within one business day of a child's family member(s) that it becomes aware of during its work with the child and/or any other individual or entity. The SSCC must immediately notify DFPS in writing upon learning that a child or a family member may possibly have a tribal family connection.

2.6 **Evaluation.** The SSCC will be required to participate in and provide information for the DFPS evaluation of the Foster Care Redesign.

2.7 **Education.** The SSCC must ensure:

- 2.7.1 Each School-Aged Child is enrolled in a Public School within three school days of placement unless an exception has been granted in writing by the Child's Caseworker or Caseworker's Chain of Command;
- 2.7.2 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 Contractor must notify the Public School within three school days of this discharge, unless an exception has been granted in writing by the Child's Caseworker or Caseworker's Chain of Command;
- 2.7.3 Each School-Aged Child attends a Public School unless the Contractor has received a written exception to this requirement by the Child's Caseworker or Caseworker's Chain of Command;
- 2.7.4 Each Child three, four, and five years of age:
  - 2.7.4.1 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 Caseworker or Caseworker's Chain of Command;
  - 2.7.4.2 May attend a private, early childhood education program or pre-kindergarten program paid for by the Contractor or Caregiver, if an exception has been granted by the Caseworker or Caseworker's Chain of Command;
- 2.7.5 Written verification of the Child's enrollment is provided to the Caseworker within five calendar days of the Child's enrollment;
- 2.7.6 In compliance with the Texas Education Code §29.012, if the Child is three years of age or older, the Contractor will provide written notice to the school district in which the Facility is located, not later than the third calendar day after the date a Child is placed in a residential Facility. For this written notice, the Contractor should reference the Texas Education Code §29.012 and include the following minimum information:
  - 2.7.6.1 Name and date of birth of Child;
  - 2.7.6.2 Name of CPA and Foster Family or GRO;
  - 2.7.6.3 Address of location where Child resides; and

## Exhibit B: DFPS SSCC Uniform Contract Terms and Conditions

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- 2.7.6.4 Contact information for the representative of the CPA or GRO who is submitting such notice; or
- 2.7.6.5 The Contractor also has the option of using the DFPS template for this purpose, which can be accessed at:

**[http://www.dfps.state.tx.us/documents/PCS/CPA\\_notice\\_to\\_ISD\\_sample\\_letter.doc](http://www.dfps.state.tx.us/documents/PCS/CPA_notice_to_ISD_sample_letter.doc)**;

- 2.7.6.6 The Contractor shall minimize disruptions to a Child's education by scheduling therapy, and other appointments, outside of school hours, whenever possible.
- 2.7.6.7 The Department may at any time require that a Child attend the local Public School.
- 2.7.7 The SSCC will minimize disruptions to a child's education by scheduling therapy and other appointments outside school hours, whenever possible.
- 2.7.8 The SSCC will ensure necessary support to achieve educational goals, including but not limited to, tutoring, help with homework and obtaining necessary school supplies.
- 2.7.9 The SSCC will ensure caregiver participates in all child/youth ARD meeting(s) and parent/teacher conferences either in person or by telephone.

### 2.8 **Education Portfolio.**

- 2.8.1 The SSCC must maintain and update the Education Portfolio for each school-age child in the SSCC's care. The SSCC must keep the Education Portfolio where the child resides while in paid foster care. The contents of the Education Portfolio must include:
  - 2.8.1.1 School enrollment documentation: Birth certificate, Social Security number, Immunizations, and withdrawal notice from the last school;
  - 2.8.1.2 Special education documentation: Admission, Review & Dismissal (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;
  - 2.8.1.3 Report cards, progress reports, and/or IEP progress reports;
  - 2.8.1.4 Transcripts;
  - 2.8.1.5 Standardized test results;
  - 2.8.1.6 Referrals, notices, or correspondences; and
  - 2.8.1.7 School pictures.
- 2.8.2 The SSCC will make the Education Portfolio readily available to DFPS for each school-age child on any visit with the child or otherwise, if requested.
- 2.8.3 The SSCC will ensure and document that the report card and progress reports are discussed with each School-Age child.
- 2.8.4 The SSCC will provide the Child's Education Portfolio to DFPS at the time a School-Age child is discharged from the Contractor's care.
- 2.8.5 For each School-Aged child, the SSCC must ensure:
  - 2.8.5.1 The most current educational documents and records are in the child's Education Portfolio; and
  - 2.8.5.2 The Child's Education Portfolio includes the child's current school withdrawal paperwork, if applicable.

### 2.9 **Post-Secondary Educational and Vocational Activities.** The SSCC must:

## Exhibit B: DFPS SSCC Uniform Contract Terms and Conditions

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- 2.9.1 Provide or facilitate access to post-secondary education, vocational or technical training, support services and activities, including job readiness, skills training, and apprenticeship program opportunities that are required by the Child's Plan of Service and CPS Transition Plan at 16 years of age and/or as developmentally appropriate, so each Child:
    - 2.9.1.1 Has access to appropriate community vocational activities, including services provided by the local Texas Workforce Solutions offices (if available in the area) and post-secondary education programs; and
    - 2.9.1.2 Receives the assistance needed to maximize the benefit of these activities;
  - 2.9.2 Guide and assist the Child in accessing and completing documents when required for the State-Paid Tuition Fee Waiver and Education and Training Voucher (ETV) Program if there is a need by the Child.
- 2.10 **Driver License.** The SSCC must:
- 2.10.1 Ensure that the following are made available to Children to facilitate driver license fee waiver-residency affidavit requirements:
    - 2.10.1.1 A DFPS Foster Youth Driver License Fee Waiver Letter;
    - 2.10.1.2 A Texas Department of Public Safety (DPS) Texas Residency Affidavit (Form DL-5), which is completed and signed by the Child and a Representative; and
    - 2.10.1.3 For Children under age 18, a Representative to accompany the Child to the DPS driver license office to provide acceptable proof of residency; and
  - 2.10.2 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.
- 2.11 **ECI Program.** The SSCC must, for each Child who is younger than three years of age:
- 2.11.1 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 Contractor should reference the Texas Education Code §29.012 and include the following minimum information:
    - 2.11.1.1 Name and date of birth of Child;
    - 2.11.1.2 Name of CPA and Foster Family or GRO;
    - 2.11.1.3 Address of location where child resides; and
    - 2.11.1.4 Contact information for the representative of the CPA or GRO who is submitting such notice: or
    - 2.11.1.5 The Contractor also has the option of using the DFPS template for this purpose which can be accessed at:  
  
[http://www.dfps.state.tx.us/documents/PCS/CPA\\_notice\\_to\\_ECI\\_sample\\_letter.doc](http://www.dfps.state.tx.us/documents/PCS/CPA_notice_to_ECI_sample_letter.doc).
  - 2.11.2 Notify the Caseworker and Primary Care Physician (PCP) if the Contractor has a concern regarding the physical or mental development of a Child under the age of three;
  - 2.11.3 Ensure that a referral to ECI is made if the Caseworker or PCP has determined a referral is necessary;
  - 2.11.4 Facilitate the continuation of ECI services to each Child who was receiving ECI services prior to placement;
  - 2.11.5 Ensure the Caregiver fully participates in the Child's ECI evaluation and process for developing an Individualized Family Service Plan (IFSP) for ECI services;



## Exhibit B: DFPS SSCC Uniform Contract Terms and Conditions

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- 2.11.6 Ensure the Caregiver performs the following duties related to the Child's participation in the ECI Program:
  - 2.11.6.1 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;
  - 2.11.6.2 To the extent the Caregiver declines to consent to any of the Child's recommended and additional ECI Program services, the SSCC must immediately submit a detailed written report to the Caseworker explaining why such declined services are not in the best interest of the Child.
  - 2.11.6.3 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 rules of the Texas Department of Assistive and Rehabilitative Services (DARS) which are referenced in Part 2, Chapter 108 of Title 40 of the TAC, including 40 TAC §§108.111, procedures for filing complaints; 108.113, investigation and resolution of complaints and 108.123, opportunity for a hearing; and
- 2.11.7 Ensure the Caregiver provides written consent for:
  - 2.11.7.1 The Child's ECI information to be entered into the Child's Health Passport; and
  - 2.11.7.2 The Child's Caseworker and Caseworker's Chain of Command to directly access ECI records from the ECI program if necessary.

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

- 2.12.1 SSCC will develop and maintain a written policy regarding overnight travel and overnight visits. When the SSCC desires to take a child outside of the state or country, the SSCC will follow DFPS policies and procedures including the completion of the Caregiver Declaration Regarding Out-of-Country Travel (Form 2069).
- 2.12.2 Written approval for travel and visits is not required when:
  - 2.12.2.1 The CPS Caseworker arranges for the child to visit with members of the child's family; or
  - 2.12.2.2 The CPS Caseworker authorizes the child to travel in specified circumstances (usually routine trips or visits).
- 2.12.3 The Contractor shall provide or arrange all travel to ensure the Child's access to:
  - 2.12.3.1 Behavioral Health, Medical, Dental, Vision, and Pharmacy services;
  - 2.12.3.2 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 Conferences, CPS Transition Plan Meetings, Family Group Conferences, Circles of Support Conferences, local Texas Workforce Solutions offices, Transition Centers (if available in the area); and
  - 2.12.3.3 Any other services necessary to fulfill the tasks on a Child's Plan of Service.

**2.13 Rights of Children and Youth in Foster Care.** The SSCC must give all children served a written copy of the DFPS Rights of children and youth in foster care at the time of placement, and, for CPAs, at the time of any placement changes to a new foster home.

The SSCC must 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, the SSCC must contact a Deafness Resource Specialist from the Department for Assistive and Rehabilitative Services (DARS) for assistance in determining how best to ensure effective communication.

## Exhibit B: DFPS SSCC Uniform Contract Terms and Conditions

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<http://www.dars.state.tx.us/dhhs/providers/specialists.asp>).

### 2.14 **Discipline and Crisis Management.**

- 2.14.1 **Discipline.** The SSCC must develop and implement discipline policies consistent with the Texas Administrative Code (TAC) and Minimum Standards.
- 2.14.2 **De-Escalation and Crisis Management.** The SSCC must develop and implement Emergency Behavior Intervention policies consistent with the TAC and Minimum Standards.

**2.15 Voluntary Extended Foster Care or Return to Foster Care.** The SSCC will offer assistance to the youth in maintaining documentation such as school transcripts or pay stubs to demonstrate that any such child/youth 18 to 22 years of age is qualified to remain in Extended Foster Care or Return to Care. The SSCC will notify DFPS if a child or youth is no longer meets eligibility criteria for Extended Foster Care or Return to Care. The SSCC will assist the child/youth in completion of the Voluntary Extended Foster Care Agreement, Form 2540, during the following time periods:

- 2.15.1 Within the thirty (30) days preceding the child/youth's 18th birthday, when possible; and
- 2.15.2 When this is not possible, no later than the 30th day after the youth's 18th birthday.

## 3. Payment

3.1 **Funds Availability.** This Contract depends upon the availability and receipt of state or federal funds that the Department has allocated to this Contract. 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. The SSCC will have no right of action against DFPS if DFPS cannot perform its obligations under this Contract as a result of lack of funding for any activities or functions contained within the scope of this Agreement.

2.2 **Payments.** The SSCC 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-E and Temporary Assistance for Needy Families (TANF). Any bill or amended bill, 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 for payment of the bill to the federal government can be executed in a proper and timely fashion.

## 4. Contractor Responsibilities

### 4.1 **Legal/ Regulatory.**

- 4.1.1 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 SSCC 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 by accessing the following resources:
  - 4.1.1.1 Title IV-B - Child Welfare Policy Manual:

[http://www.acf.hhs.gov/cwpm/programs/cb/laws\\_policies/laws/cwpm/policy.jsp?idFlag=7](http://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/policy.jsp?idFlag=7)



## Exhibit B: DFPS SSCC Uniform Contract Terms and Conditions

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[http://www.acf.hhs.gov/programs/cb/laws\\_policies/cblaws/safe2010draft.htm](http://www.acf.hhs.gov/programs/cb/laws_policies/cblaws/safe2010draft.htm)

4.1.1.2 CAPTA:

[http://www.acf.hhs.gov/programs/cb/laws\\_policies/cblaws/capta03/](http://www.acf.hhs.gov/programs/cb/laws_policies/cblaws/capta03/)

4.1.1.3 Compilation of Titles IV- B, IV- E and Related Sections of the Social Security Act:

[http://www.acf.hhs.gov/programs/cb/laws\\_policies/cblaws/safe2010draft.htm](http://www.acf.hhs.gov/programs/cb/laws_policies/cblaws/safe2010draft.htm)

4.1.1.4 Temporary Assistance for Needy Families:

<http://www.acf.hhs.gov/programs/ofa/>

4.1.1.5 DFPS State Plan for IV-B and IV-E:

[http://www.dfps.state.tx.us/About/Reports\\_and\\_Data/default.asp](http://www.dfps.state.tx.us/About/Reports_and_Data/default.asp)

4.1.1.6 **Prompt Payment.** The SSCC must remain in compliance with the Texas Comptroller of Public Accounts Prompt Payment Requirements. Information about these requirements may be accessed by visiting:

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

4.1.2 **Funding Restrictions.** The SSCC may not use funds received from DFPS to replace any other federal, state, or local source of funds awarded under any other contract.

4.1.3 **Non-Denial of Services.** A client referred to the SSCC 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.

4.1.4 **Medicaid for Purchase of Service Clients.**

4.1.4.1 Individuals referred by DFPS and served through the SSCC may be Medicaid (Traditional or Managed Care) eligible. The SSCC 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 of based on the individual's Medicaid plan.

4.1.4.2 DFPS allocated funding will not be used for Medicaid eligible services for Medicaid eligible clients except as stated in letter f) below. The SSCC must use Medicaid (Traditional or Managed Care) as the source of payment for eligible individuals when Medicaid reimburses for the identified service. If the SSCC chooses not to utilize Medicaid for any Medicaid eligible individual, then the SSCC cannot bill DFPS for the service.

4.1.4.3 The SSCC must keep documentation of the proof of Medicaid and results of Medicaid and Managed Care verification and claims in the client file.

## Exhibit B: DFPS SSCC Uniform Contract Terms and Conditions

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- 4.1.4.4 Failure to appropriately bill Medicaid for an eligible service will result in reimbursement to DFPS for any payments made by DFPS.
  - 4.1.4.5 The SSCC will accept Medicaid or Medicaid Managed Care compensation as payment in full for covered services. The SSCC must not bill DFPS until the Medicaid claim is finalized. If the SSCC bills DFPS for services which are Medicaid eligible and for which the SSCC actually receives payment from Medicaid, the SSCC will 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 SSCC 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 to exceed the highest lawful rate of interest.
  - 4.1.4.6 If Medicaid refuses to pay for a service [excluding residential child care services and/or services listed in Section 2.12.3.6], except when due to an SSCC 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.
- 4.1.5 Private Insurance (Stages II and III).**
- 4.1.5.1 The SSCC may ask those individuals referred to the SSCC through the process described in Section 2.12.1.2 if they are covered by private insurance and request if they are in agreement to utilize their private insurance. If in agreement, the SSCC will request the client file claims through their insurance for services (excluding paid foster care and Preparation for Adult Living Services) documenting their agreement. 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 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.
  - 4.1.5.2 The SSCC 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.
  - 4.1.5.3** If the client has insurance and chooses to file a claim, the SSCC may choose to accept and require its service providers to accept the final insurance compensation as payment in full for covered services.
  - 4.1.5.4 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 contractor's efforts to assist and the client's failure to act should be documented.
  - 4.1.5.5 The SSCC must keep documentation of the explanation of benefits for each insurance claim charged to the contract in the client file. The SSCC must not bill DFPS until the insurance claim is finalized. If the SSCC bills DFPS for services which are covered by private insurance eligible and for which the SSCC actually receives payment from the insurance carrier, the SSCC will reimburse DFPS for the payment, plus interest. Interest on such

## Exhibit B: DFPS SSCC Uniform Contract Terms and Conditions

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overpayment amount will be calculated from the date of receipt of DFPS funds by the SSCC 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 to exceed the highest lawful rate of interest.

### **4.1.6 Sliding Fee Scale / Service Co-Payments (Stages II and III).**

- 4.1.6.1 The SSCC may use a sliding fee scale or otherwise allow individuals DFPS has referred to the SSCC 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).
- 4.1.6.2 DFPS must approve the SSCC's plan for using a sliding fee scale or co-payments prior to implementation.
- 4.1.6.3 The SSCC 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.

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

### **4.1.8 General Requirements for All Payments to SSCC.**

- 4.1.8.1 The SSCC must submit bills for purchased services (excluding foster care) in an accurate and timely manner, preferably within 15 days of the month following the month of service.
- 4.1.8.2 All payments will be made to the SSCC 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 SSCC 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 to exceed the highest lawful rate of interest.
- 4.1.8.3 The SSCC will reconcile all claims prior to the most current eight quarters. The SSCC will 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.
- 4.1.8.4 The SSCC will submit IRS Form 1120, or evidence of an extension. The required IRS Form 1120 is due annually within 150 days of the end of the Providence Service Corporation of Texas fiscal year or the date indicated by the extension, if applicable.
- 4.1.8.5 The SSCC will submit quarterly financial statement on accrual basis.
- 4.1.8.6 The SSCC will treat its operation under this contract separately in financial statements to facilitate monitoring and to track the financial performance of the SSCC.

## Exhibit B: DFPS SSCC Uniform Contract Terms and Conditions

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**4.2 Required Record Keeping.** The SSCC must ensure compliance with all record keeping requirements stated in this contract as well as DFPS Residential Child Care Minimum Standards and the Texas State Records Retention Schedule. For information about the Texas State Records Retention Schedule, please visit:

<http://www.tsl.state.tx.us/slr/recordspubs/rrs4.html>

The SSCC must maintain documentation to support performance measures to allow for testing the validity of the results reported. The SSCC 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:

- 4.2.1 **Maintenance of Individual Child (Stages I, II, III) and Family/Client (Stages II-III) Case Files.** At a minimum, files must include all assessments, evaluations, service plans, and monthly and closing summaries for services provided in Stages I-III.
- 4.2.2 **Referral Tracking System (Stages I-III).** The SSCC must develop and maintain a tracking system to record and document DFPS' referral of children and families for services to the SSCC, including date and time of referral and when services were initiated.
- 4.2.3 **Provider Personnel Files.** The SSCC must maintain and ensure subcontractors maintain personnel files that include, but are not limited to, the following information:
  - 4.2.3.1 Copy of current professional license(s), as applicable
  - 4.2.3.2 Verification of Medicaid provider number, as applicable
  - 4.2.3.3 Copy of completed Forms 2970c and 2971c or other applicable form as identified by DFPS
  - 4.2.3.4 Copy of Background Check Results

**4.3 Financial Records Maintenance and Retention.** The SSCC must maintain all financial and statistical information using the accrual method of accounting in accordance with 1 TAC §355.7101(6).

- 4.3.1 The Contractor will 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 (Volunteer or Court Appointed Special Advocates (CASA), guardians ad litem, and attorneys ad litem).
- 4.3.2 Such records and information may include, but is not limited to, documentation of face-to-face visits with the Child by the Contractor's Case Manager staff, the Child's Service Plan, documentation of services provided to a Child, medical and dental information, educational documentation, and narratives.
- 4.3.3 In order to assess that an individual who is accessing records and information is appointed by a court of competent jurisdiction, a Contractor or Caregiver should:
  - 4.3.3.1 If such individual is an employee of the CASA, have a valid court order; and
  - 4.3.3.2 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.
  - 4.3.3.3 If Contractor or Caregiver cannot readily determine the identity or authority of an individual appointed by a court of competent jurisdiction, then the Contractor or Caregiver should obtain approval from the Child's caseworker or chain of command prior to granting access to records of information.

**4.4 Reporting Abuse, Neglect, or Exploitation.** The SSCC will 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.

## Exhibit B: DFPS SSCC Uniform Contract Terms and Conditions

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- 4.5 Cultural Competency.** The SSCC 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 SSCC will:
- 4.5.1 Exhibit a clear understanding of the cultural beliefs of children and families in the distinct communities and population hubs within the designated catchment area.
  - 4.5.2 Provide ongoing education in the form of orientation, training, workshops, and other educational opportunities to help staff, caregivers, and subcontractors understand the impact race, culture, and ethnic identity have on them and others and how they impact services to children and families.
  - 4.5.3 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. Catchment area specific statistics/data on race and ethnicity are included as a part of the procurement library, which can be found on the ESBD website.
  - 4.5.4 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.
  - 4.5.5 Develop and implement a plan to ensure the composition of the SSCC workforce reflects the race, ethnicity, and culture of the client population.
- 4.6 Testimony in Proceedings.** In accordance with Section 2.16 of Exhibit A of the Contract, the SSCC will require its employees, agents, volunteers, consultants, or subcontractors to testify in judicial and administrative proceedings at the request of DFPS. To the extent possible, The SSCC will also assist the Department in locating past employees, agents, volunteers, consultants, or subcontractors when DFPS requires past employees, agents, volunteers, consultants, or subcontractors to appear and testify in accordance with this subsection.
- 4.7 Removal of Access.** The SSCC will immediately remove access capabilities to any DFPS automated/internet-based application(s) or immediately notify DFPS that access to such applications needs to be terminated for an employee, subcontractor, or volunteer whose employment, subcontract, or volunteer term with The SSCC has ended for any reason.
- 4.8 Notice of Funding.** The SSCC will place prominent notices acknowledging the funding it receives from the Department in all of its literature that describes services covered by this Contract. This notice will also appear in The SSCC's annual financial report, if any is issued.
- 4.9 Personnel.** Contractor will assign only qualified personnel to this Contract. Contractor, 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. Contractor will 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. Contractor must include a process to verify the education and degree requirements of all employees in its human resources policy.
- 4.10 Subcontracting.** Contractor will 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 Contractor. No subcontract under the Contract will relieve Contractor of responsibility for ensuring the requested services are provided. Contractor will



## Exhibit B: DFPS SSCC Uniform Contract Terms and Conditions

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monitor any subcontractor providing services described in this Contract on an annual basis at a minimum. If Contractor uses a subcontractor for any or all of the work required, the following conditions will also apply:

- 4.10.1 Contractors 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.
- 4.10.2 Subcontracting will be solely at Contractor's expense.
- 4.10.3 DFPS retains the right to check subcontractor's background, qualifications, and experience and to approve or reject the use of submitted subcontractors.
- 4.10.4 Contractor will be the sole contact for DFPS and Contractor will list a designated point of contact for all Department inquiries regarding its subcontractors and subcontracted services.
- 4.10.5 **Subcontracts.** Contractor will 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 SSCC and the subcontractor. DFPS approval of Contractor'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 Contractor.
- 4.10.6 **Payment to Subcontractors.** Pursuant to Chapter 2251 of the Texas Government Code, Contractor will make any payments owed to subcontractors within ten (10) calendar days of Contractor's receipt of funds from DFPS. The SSCC must maintain records that account for funds expended separately for each subcontracted agency which provides care or services under the continuum.
- 4.10.7 **Insurance.** DFPS will not require any uniform insurance requirement for SSCC subcontractors. The SSCC will be solely responsible for their subcontractors maintaining a level of insurance coverage and limits appropriate for the services the subcontractor is providing during the contract term. The SSCC must ensure adequate protection for all funds expended and all clients served under this contract. If the SSCC subcontracts with a governmental entity, the SSCC will waive any insurance requirements related to this contract for the governmental entity.
- 4.10.8 **Reporting.** SSCC must require subcontractors, as a condition of the subcontract agreement, to report critical incidents, licensing investigations, Licensure Board reports and investigations, suspected fraud or fraud investigations, and Minimum Standards violations to the SSCC. For said circumstances in particular, and at all times in general, the SSCC 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 SSCC will notify DFPS of subcontractors' disclosure. Failure to disclose and report may be regarded as a breach of contract. Additionally, Contractor must obtain a waiver from each of its subcontractors which allows DFPS to disclose information to the SSCC relating to background checks, prior contract performance history and monitoring, and licensing investigations of a subcontractor, or a subcontractor's employees, agents, and volunteers.
- 4.10.9 The SSCC 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 SSCC contract with DFPS is terminated or non-renewed.
- 4.10.10 **Subcontract Dispute Resolution.** The SSCC must have a clearly defined approach and protocol for addressing both case-specific and contract disputes which may arise between the SSCC and a subcontractor.



## Exhibit B: DFPS SSCC Uniform Contract Terms and Conditions

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- 4.10.11 **Residential Child Care Subcontractors.** If a subcontractor will provide residential child care services under this contract, then Contractor must explicitly state in its subcontract that the subcontractor will be responsible for meeting all DFPS residential child care licensing minimum standards and requirements, regardless of any terms or conditions of the subcontract. Additionally, Contractor must submit necessary information of its subcontractors to DFPS prior to placement so that DFPS can enter that information into IMPACT.
- 4.10.12 Contractor will ensure that all subcontractors, including foster parents, participate and provide information to be used in Evaluation of Foster Care Redesign activities as directed by DFPS.

4.11 **Assignments.** The SSCC will refrain from transferring or assigning any portion of this Contract without prior written approval from DFPS. The SSCC may collaterally assign its right to receive payments for the services provided by The SSCC. The SSCC must give written notice to DFPS at least ten (10) working days in advance of any assigned payment. The SSCC will not assign or otherwise encumber any interest in or rights to payments of funds that The SSCC must pass through to other individuals or entities per the requirements of this Contract.

4.12 **DFPS Background Check Policy.** Any person who has direct contact with DFPS clients or client information must undergo a DFPS background check in accordance with this section and the DFPS Background Check Policy. The Department reserves the right to conduct background history checks on the SSCC, the SSCC's employees, subcontractors, volunteers, agents, and other individuals who interact with DFPS Clients or have access to Clients' records. DFPS will conduct all necessary background checks on the SSCC through the licensing process. If the SSCC chooses to provide services under this Contract through a subcontractor licensed by DFPS, then DFPS will conduct background checks on the licensed subcontractor through the licensing process. If Contractor provides services for families in Stage II of the implementation model (see Section 2.05) under this Contract through a subcontractor who is not licensed by DFPS, then Contractor 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:

<http://www.dfps.state.tx.us/documents/PCS/ABCSUserGuideFY09.pdf>.

- 4.12.1 **Disclosure and Release.** Contractor will 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:
- 4.12.1.1 an act of abuse, neglect, or exploitation of Children, Youth, the elderly, or persons with disabilities;
  - 4.12.1.2 criminal history or any current criminal indictment (for felonies) or information (for misdemeanors) involving an offense under the Texas Penal Code against:
    - 4.12.1.2.1 the person;
    - 4.12.1.2.2 the Family;
    - 4.12.1.2.3 public order or decency;
    - 4.12.1.2.4 public health, safety, or morals; or
    - 4.12.1.2.5 property;
  - 4.12.1.3 an offense under Chapter 481 of the Texas Health and Safety Code (Texas Controlled Substances Act); or

## Exhibit B: DFPS SSCC Uniform Contract Terms and Conditions

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- 4.12.1.4 any act or offense that can reasonably be associated with potential risk of harm or loss to the Department and/or its clients based on the job duties or contractual role(s) of the person in question at any time during the contract period.
- 4.12.2 **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:
- 4.12.2.1 a criminal history background check;
  - 4.12.2.2 a DFPS abuse and neglect history check; and
  - 4.12.2.3 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 by Contractor, available for review by the Department, and renewed at intervals not to exceed 24 months while the Contract is in effect.
- 4.12.3 **Contact with Clients.** Contractor will 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 DFPS Background Check Unit. If 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 Contractor will notify the Department of its intent to do so no later than ten (10) business days and receive Department approval prior to the reassignment. Contractor must provide the 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.
- 4.12.4 Contractor will ensure initial and subsequent 24-month Background History Checks (Checks) are performed in compliance with Minimum Standards, including:
- 4.12.4.1 Submitting initial Checks timely;
  - 4.12.4.2 Submitting subsequent 24-month Checks before their due date;
  - 4.12.4.3 Ensuring employees, volunteers, Contractors, and caregivers are not present at the facility if the Checks are submitted past the due date; and
  - 4.12.4.4 Timely complying with any DFPS Centralized Background Check Unit requirements when there is a relevant Check for a particular employee, volunteer, Contractor, 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.
- 4.12.5 **Access to IMPACT.** No person will have access to IMPACT without completing a DFPS 4047 and receiving prior approval from the Department. The SSCC will provide DFPS with a list of each employee who the SSCC proposes to have access to IMPACT and require each such employee to complete a DFPS Form 4047. The SSCC must ensure that DFPS has a current list of all SSCC employees with IMPACT access at all times. If this list changes at any time for any reason, the SSCC must notify DFPS immediately and take any necessary precautions to ensure the protection of confidential information and IMPACT system security.
- 4.12.6 If, during a Federal audit, there is a finding that Checks are not being performed by the Contractor 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

## Exhibit B: DFPS SSCC Uniform Contract Terms and Conditions

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Contractor to reimburse DFPS for such disallowances, including disallowed costs related to foster care maintenance payments, administrative costs, and interest.

4.13 **Limitation on Use of DFPS Seal and Name.** The SSCC may not use the DFPS seal in any form or manner without the prior written approval of the Department. The SSCC also may not use the name of DFPS to imply any endorsement, approval, or sponsorship of The SSCC's goods or services by DFPS.

4.14 **Independent Contractor.** The SSCC will serve as an independent The SSCC in providing services under this Contract. The SSCC's employees will not be construed as employees of DFPS or the State of Texas. The SSCC has sole authority and responsibility to employ, discharge, and otherwise control its employees and The SSCCs. The SSCC is responsible for providing all necessary unemployment and workers' compensation insurance for the SSCC's employees.

4.15 **Taxes.** DFPS is not responsible for any state, local, or federal taxes. The SSCC must comply with all federal, state, and local tax laws.

4.16 **Buy Texas.** In accordance with Texas Government Code §2155.4441, the State of Texas requires that during the performance of a contract for services, The SSCC will purchase products and materials produced in the State of Texas when available at a price and time comparable to products and materials produced outside the state.

4.17 **Prohibition on Non-compete Restrictions.** The SSCC will 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 SSCC's ability to require employees or subcontractors to enter into binding nondisclosure or confidentiality agreements.

**4.18 INDEMNIFICATION. THE SSCC WILL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS, DFPS, AND ITS OFFICERS AND EMPLOYEES FROM ANY CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING, WITHOUT LIMITATION, ATTORNEY'S FEES AND COURT COSTS CONNECTED WITH ANY ACTS OR OMISSIONS OF THE SSCC OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT. THE SSCC WILL COORDINATE ITS DEFENSE WITH THE TEXAS ATTORNEY GENERAL AS REQUESTED BY DFPS. THIS PARAGRAPH IS NOT INTENDED TO AND WILL NOT BE CONSTRUED TO REQUIRE THE SSCC TO INDEMNIFY OR HOLD HARMLESS THE STATE OR THE DEPARTMENT FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF DFPS OR ITS EMPLOYEES.**

4.19 **Insurance.** The SSCC must maintain the following minimum insurance requirements throughout the contract term.

- 4.19.1 DFPS will require The SSCC to provide evidence of insurability within 48 hours prior to contract execution. The SSCC will 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, self-insurance plans and/or bonds.
- 4.19.2 DFPS reserves sole discretion to determine whether a document provided to DFPS meets the minimum insurance requirements, coverage, and/or limits.
- 4.19.3 If the coverage will be provided through an insurance policy(ies) or other similar insurance document(s), The SSCC represents and warrants that the issuing insurance company is licensed and authorized to do business in the State of Texas and has "B" or higher rating.

## Exhibit B: DFPS SSCC Uniform Contract Terms and Conditions

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- 4.19.4 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.
- 4.19.5 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.
- 4.19.6 Insurance requirements for subcontractors of The SSCC are listed in the UTCs.
- 4.19.7 **Commercial General Liability Insurance.**
- 4.19.7.1 In Stage I, The SSCC will 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.
- 4.19.7.2 In Stage II, The SSCC will 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.
- 4.19.7.3 In Stage III, The SSCC will maintain coverage including, but not limited to, liability with minimum combined bodily injury (including death) and property damage limits of \$3,000,000 per occurrence, and \$5,000,000 general aggregate.
- 4.19.7.4 In Stages I-III, the Commercial General Liability Insurance policy must afford Sexual Molestation and Abuse coverage of \$1,000,000 aggregate.
- 4.19.8 **Professional Liability Insurance.** If The SSCC's employees will be providing professional services, The SSCC will 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.
- 4.19.9 **Business Automobile Liability Insurance.** The SSCC will 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.
- 4.19.10 A Performance and Payment Bond covering an amount equal to any advance payment made to The SSCC by DFPS. The Performance and Payment Bond must allow DFPS the right to recover funds directly from the bonding company. 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.
- 4.19.11 **SSCC Notice to DFPS of Any Material Changes.** The SSCC will provide written notice to DFPS of any material changes to any document submitted under this subsection 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.
- 4.19.12 **Renewals or New Coverages during Contract Period.** The SSCC 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 SSCC will 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 SSCC obtains coverage from a new issuer or insurer, then The SSCC will immediately provide the new coverage document to DFPS.
- 4.19.13 **Notice of Cancellation Endorsement Requirement.** For the insurance coverage in Sections 2.8.5.G.1-5 above, The SSCC agrees that it will request for any insurance policies, or other similar documents, that an endorsement be included which states

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## Exhibit B: DFPS SSCC Uniform Contract Terms and Conditions

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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. Confidentiality

5.1 **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 SSCC submits proprietary or otherwise confidential information to DFPS, then The SSCC 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 SSCC. The SSCC should consult with legal counsel concerning disclosure issues and take precautions to safeguard trade secrets and other proprietary information.

5.2 **Confidential Information.** Unless specified otherwise in this contract, Contractor will not release confidential information to any party without the prior written approval of DFPS. Contractor will not use any information supplied by DFPS except for the purposes described in this Contract. If Contractor stores, collects, or maintains any data, Contractor will only use such data internally in the performance of this Contract.

- 5.2.1 Contractor will establish a method to ensure the confidentiality of records and other confidential information relating to clients according to applicable federal and state laws, rules, and regulations.
- 5.2.2 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 and copies of such information, upon request.
- 5.2.3 If Contractor 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, Contractor will provide DFPS with immediate notice of such request (no later than two (2) business days) so that the Department may seek an appropriate protective order and/or consent to Contractor's disclosure of the requested records.
- 5.2.4 **Research and Publication.** Contractor may not use any confidential information supplied by DFPS for any research purposes, training, or publication without the prior written approval of the Department.
- 5.2.5 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.
- 5.2.6 The Contractor may release or otherwise use a photo or image of a Child under the following circumstances:
  - 5.2.6.1 Before the Contractor may release or otherwise use a photo or image of a Child, the following conditions must occur:
    - 5.2.6.1.1 It is in the best interest of the Child, poses no threat to the Child's health or safety, and the use is not for any commercial use, publicity, pecuniary benefit, or similar gain for the Contractor or any other party;
    - 5.2.6.1.2 No reference is made to the fact the Child is in the conservatorship of DFPS, and the use does not stigmatize the Child in any way;
    - 5.2.6.1.3 The Child approves of the release or use; and
    - 5.2.6.1.4 Permission is received from DFPS prior to release or otherwise use of a photo or image.



## Exhibit B: DFPS SSCC Uniform Contract Terms and Conditions

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- 5.2.6.2 The Contractor is not required to receive prior written permission from DFPS when the following conditions are in effect:
- 5.2.6.2.1 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;
  - 5.2.6.2.2 The photo or image is released by the Child or Caregiver to the Child's biological family; or
  - 5.2.6.2.3 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.
- 5.2.6.3 Any other release or use of photo or images of a Child must be approved in writing by the Caseworker or Chain of Command.

### 6. Contract Administration

6.1 **Notifications.** The SSCC will notify the Department immediately of any significant change affecting The SSCC or this Contract, including, but not limited to, change of The SSCC'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 SSCC will also provide DFPS with any documentation or information related to a notification provided for under this section. The SSCC will also notify DFPS of any lawsuit brought against The SSCC related to the services provided for in this Contract. Unless otherwise noted in this Contract, The SSCC will provide all notices in writing to the Department within ten (10) working days.

6.2 **Right to Audit.** The SSCC will 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 SSCC, including all information related to any services provided under this Contract or billed to DFPS. The SSCC will 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 billed amounts or any other appropriate actions deemed necessary by DFPS. 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 SSCC will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through The SSCC and the requirement to cooperate is included in any subcontract it awards.

6.3 **Reporting.** Contractor will 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 Contractor will have ten (10) business days to respond to the request. If Contractor cannot respond to a reporting request within ten (10) business days, it will promptly notify DFPS of the time within which it can respond to the request and the parties will establish a reasonable time limit. The Contractor must accurately complete cost reports, time studies, Internal Control Structure Questionnaires (ICSQs), Contract Monitoring surveys, and any other reports required by this Contract or requested by the Department. The Contractor must submit annual cost reports as required by 1 TAC §§355.7101-7103. Contractor will also make client records and any other programmatic or financial



## Exhibit B: DFPS SSCC Uniform Contract Terms and Conditions

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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.

- 6.3.1 **Cost Report Training.** The Contractor acknowledges and agrees that individual(s) responsible for preparing the Contractor's cost reports shall:
  - 6.3.1.1 Attend HHSC cost report training in compliance with 1 TAC §355.7101 prior to submitting an annual cost report; and
  - 6.3.1.2 Attach a copy of the preparer's training certificate to each completed cost report.
- 6.3.2 **Legislative Requests.** If DFPS requires information from Contractor in order to respond to a request from the Texas Legislature, Federal Agency, or any other applicable governmental entity, then the Department will contact Contractor and identify the needed information required by DFPS. Contractor must provide a report to DFPS with the requested information within eight (8) hours unless DFPS and Contractor have agreed to a different timeframe. If DFPS and Contractor do agree to a different timeframe, Contractor must obtain written confirmation via e-mail of the agreement.
- 6.3.3 **Media Requests.** If DFPS requires information from Contractor in order to respond to a media request, then the Department will contact Contractor and identify the needed information required by DFPS. Contractor must provide a report to DFPS with the requested information within two (2) calendar days unless DFPS and Contractor have agreed to a different timeframe. If DFPS and Contractor do agree to a different timeframe, Contractor must obtain written confirmation via e-mail of the agreement.

### 6.4 **Record Keeping.**

- 6.4.1 Unless otherwise noted in this Contract, The SSCC will maintain legible copies of this Contract and all related documents for a minimum of five (5) years after the termination of the contract period or five (5) years after the completion of any litigation or dispute involving the Contract, whichever is later. The SSCC will provide any records and information concerning a child to the Department upon request. The SSCC must forward legible records and information to the Department within fourteen (14) calendar days. The SSCC will provide any necessary records and information to DFPS upon verbal request in emergency situations. In emergency situations, The SSCC must submit legible records and information within the Department's specified timeframe. **THE SSCC MUST NOT DISPOSE OF RECORDS PERTAINING TO CHILDREN IN DFPS CONSERVATORSHIP BEFORE PROVIDING THE DEPARTMENT'S CONTRACT MANAGER WRITTEN NOTICE OF ITS INTENT TO DISPOSE OF RECORDS AND RECEIVING WRITTEN APPROVAL FROM THE DEPARTMENT'S CONTRACT MANAGER.**
- 6.4.2 The SSCC will comply with the Identity Theft Enforcement and Protection Act (Chapter 521 of the Texas Business and Commerce Code). The SSCC has a duty to protect personal information and to notify all affected parties of any breach of personal information.

6.5 **Authority of Department Staff.** DFPS staff are not authorized to sign non-DFPS forms unless those forms have received prior approval by the Department. DFPS is not bound by unauthorized staff actions in signing such forms.

6.6 **Vendor Performance.** Pursuant to Section 2155.144 (K) of the Texas Government Code and 20.108 of the Texas Administrative Code, state agencies are required to report vendor performance on

## Exhibit B: DFPS SSCC Uniform Contract Terms and Conditions

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any purchase of \$25,000 or more from contracts administered by the CPA or any other purchase made through an agency's delegated authority or a purchase made pursuant to the authority in Government Code, Title 10, Subtitle D or a purchase exempt from CPA's procurement rules and procedures. 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.

6.7 **Complaint Reporting.** Unless otherwise noted in this Contract, DFPS will contact The SSCC when a complaint is received, and advise the SSCC whether DFPS will conduct an investigation or will coordinate with the SSCC for an investigation and a response. When DFPS requires the SSCC to conduct any part of the complaint investigation, The SSCC must respond in writing to DFPS with all information and according to DFPS requirements and specified time frames. If The SSCC is unwilling or unable to provide any information within the time required, The SSCC will provide a written explanation for any information that The SSCC does not submit, any applicable date by which The SSCC will provide the information, and the detailed reasons why The SSCC is unwilling or unable to provide such information.

6.8 **Comptroller Status.** The SSCC has an affirmative duty to remain in compliance with applicable franchise tax requirements. If the Texas Comptroller of Public Accounts (CPA) designates the SSCC to be forfeited from doing business in the State of Texas, the contract will terminate effective on that date.

The SSCC agrees that should the Texas Comptroller of Public Accounts (CPA) ever place the SSCC on "vendor hold," then the Department will apply all payments under this Contract directly toward eliminating any of The SSCC's debts or delinquencies to the State of Texas.

6.9 **Single Audit.** All DFPS Contractors identified as subrecipients will submit a Single Audit Determination (SAD) form in accordance with HHSC-OIG requirements. The SSCC will submit an annual financial and compliance audit of The SSCC's fiscal year in accordance with Single Audit Requirements of OMB Circular A-133 (Audits of State, Local Government, and Non-Profit Organizations) and Texas Uniform Grant Management Standards. The SSCC will re-procure with the objective of rotating the independent audit firm every six years. The SSCC will submit verification of the re-procurement of the independent audit firm for Single Audits.

### 7. Governing Law and Regulations

7.1 **Governing Law.** This Contract will be governed by and construed in accordance with the laws of the State of Texas with venue in State District Court, Travis County, Texas.

7.2 **Information Security Requirements.** The SSCC must comply with the following:

7.2.1 The DFPS IT Security Policy located at:

**[http://www.dfps.state.tx.us/documents/PCS/The\\_SSCC\\_Information\\_Security.pdf](http://www.dfps.state.tx.us/documents/PCS/The_SSCC_Information_Security.pdf)**

7.2.2 Health and Human Services Enterprise Information Security Standards and Guidelines

7.2.3 Title 1, Texas Administrative Code, Sections 202.1 and 202.3-.28

## Exhibit B: DFPS SSCC Uniform Contract Terms and Conditions

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- 7.2.4 Texas Human Resources Code, Section 40.005
- 7.2.5 Texas Family Code, Section 161.006(a)-(b)
- 7.2.6 Texas Family Code, Section 162.018
- 7.2.7 Texas Family Code, Subchapter C, Sections 261.201-.203
- 7.2.8 Texas Family Code, Section 264.408
- 7.2.9 Texas Family Code, Section 264.511
- 7.2.10 Texas Health and Safety Code, Section 85.115
- 7.2.11 Title 40, Texas Administrative Code, Subchapter B, Sections 700.201-.209
- 7.2.12 The Federal Information Security Management Act of 2002 (FISMA);
- 7.2.13 Publication 1075 – Tax Information Security Guidelines for Federal, State and Local Agencies;
- 7.2.14 NIST Special Publication 800-53 Revision 3 – Recommended Security Controls for Federal Information Systems and Organizations; and
- 7.2.15 NIST Special Publication 800-47 – Security Guide for Interconnecting Information Technology Systems.
- 7.2.16 In addition to the requirements expressly stated in this Section, The SSCC must comply with any other State or Federal law, regulation, or administrative rule relating to the specific DFPS program area that The SSCC supports.
- 7.2.17 Upon reasonable notice, The SSCC must provide, and cause its subcontractors and agents to provide, DFPS or its designee, prompt, reasonable, and adequate access to any information security records, books, documents, and papers that are directly pertinent to the performance of the Contract including, but not limited to:
  - 7.2.17.1 The SSCC information security policies;
  - 7.2.17.2 The SSCC information security procedures;
  - 7.2.17.3 The SSCC information security standards;
  - 7.2.17.4 The SSCC information security guidelines;
  - 7.2.17.5 The SSCC security plan in compliance with NIST Special Publication 800-53 Revision 3;
  - 7.2.17.6 The SSCC security violation reports;
  - 7.2.17.7 The SSCC employee security acknowledgement agreements; and
  - 7.2.17.8 Lists of The SSCC's employees, subcontractors, and agents with authorized access to DFPS confidential information.
- 7.2.18 Items 1.42.17.1 through 1.42.17.7 above are subject to DFPS' review and approval. Neither DFPS' review or approval, nor its failure to review or approve, will relieve, waive, or satisfy any of The SSCC's obligations under this Agreement.
- 7.2.19 The SSCC will provide, and will cause its subcontractors and agents to provide, to DFPS, upon reasonable notice, written certifications of compliance with controls and provisions relating to information security, including but not limited, those related to confidential data transfers and the handling and disposal of Personally Identifiable Information (PII). Acceptable forms of written compliance may be, but are not limited to:
  - 7.2.19.1 Statement on Auditing Standards No.70, Service Organizations (SAS-70) Report;
  - 7.2.19.2 General Security Controls Audit;
  - 7.2.19.3 Application Controls Audit;
  - 7.2.19.4 Vulnerability Assessment; and
  - 7.2.19.5 Network/Systems Penetration Test.

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

## Exhibit B: DFPS SSCC Uniform Contract Terms and Conditions

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- 7.3.1 **Anti-Discrimination.** The SSCC agrees to comply with state and federal anti-discrimination laws, including without limitation:
- 7.3.1.1 Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d *et seq.*);
  - 7.3.1.2 Sections 504 and 508 of the Rehabilitation Act of 1973 (29 U.S.C. §794): this Contract may be subject to HHS EIR Accessibility Requirements. If The SSCC must comply with HHS EIR Accessibility Requirement, The SSCC must follow terms and conditions at:  
<http://architecture.hhsc.state.tx.us/myweb/Accessibility/docs/HHSUniformEIRAccessibilityClause.doc>;
  - 7.3.1.3 Americans with Disabilities Act of 1990 (42 U.S.C. §12101 *et seq.*);
  - 7.3.1.4 Age Discrimination Act of 1975 (42 U.S.C. §§6101–6107);
  - 7.3.1.5 Title IX of Education Amendments of 1972 (20 U.S.C. §§1681–1688);
  - 7.3.1.6 Food and Nutrition Act of 2008 (7 U.S.C. §2011 *et seq.*); and
  - 7.3.1.7 The HHS agency's administrative rules, as set forth in the Texas Administrative Code, to the extent applicable to this Agreement.
- The SSCC 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.
- 7.3.2 The SSCC agrees to comply with Title VI of the Civil Rights Act of 1964, and its regulations at 45 C.F.R. Part 80 or 7 C.F.R. Part 15, prohibiting a The SSCC 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 SSCCs to provide alternative methods for ensuring access to services for applicants and recipients who cannot express themselves fluently in English. The SSCC 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 SSCC 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.
- 7.3.3 The SSCC agrees to comply with Executive Order 13279, and its regulations at 45 C.F.R. Part 87 or 7 C.F.R. 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.
- 7.3.4 Upon request, The SSCC will provide HHSC Civil Rights Office with copies of all of The SSCC's civil rights policies and procedures.
- 7.3.5 The SSCC 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

## Exhibit B: DFPS SSCC Uniform Contract Terms and Conditions

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TTY Toll Free: (877) 432-7232

Fax: (512) 438-5885

- 7.3.6 If applicable, The SSCC will comply with:
- 7.3.6.1 Health and Safety Code Section 85.113 (workplace and confidentiality guidelines regarding AIDS and HIV);
  - 7.3.6.2 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;
  - 7.3.6.3 All state and federal licensing and certification requirements and regulations prescribed by the United States Department of Health and Human Services and DFPS;
  - 7.3.6.4 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.*);
  - 7.3.6.5 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);
  - 7.3.6.6 The Fair Labor Standards Act (FLSA) (29 U.S.C. § 201 *et seq.*) regarding minimum wages, overtime pay, recordkeeping, and child labor; and
  - 7.3.6.7 42 U.S.C. §675(4) (Foster care maintenance payments must be expended for items that are provided by foster parents and facilities).
  - 7.3.6.8 Uniform Administrative Requirements for Awards and Subawards to institutions of higher education, hospitals, other nonprofit organizations, and commercial organizations. 45 CFR 74.
  - 7.3.6.9 Contract Cost Principles and Procedures. 45 CFR 31.
  - 7.3.6.10 ;Office of Management and Budget (OMB) Circulars A-133, A-110, A-21, A-87, A-102 and A-122
  - 7.3.6.11 Uniform Grant Management Standards (UGMS) issued by the State of Texas.
- 7.3.7 **FFATA Reporting.** The SSCC must report to DFPS the data elements required by the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282) and listed in 1.27.9 if The SSCC is a Subrecipient. No direct payment will be made to The SSCC for providing any reports required under these provisions, as the cost of producing such reports will be deemed included in the Contract price. The reporting requirements in 1.27.9 are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes will be automatically incorporated into this Contract and shall become part of The SSCC's obligations under this Contract. DFPS may provide written notice to The SSCC of any such change in accordance with this Contract, but such notice will not be a condition precedent to The SSCC's duty to comply with revised OMB reporting requirements.
- 7.3.8 **Subrecipient Reporting.** If The SSCC is a Subrecipient, The SSCC will report to DFPS as set forth below unless otherwise exempted. All required information must be made publicly available according to federal law.
- 7.3.8.1 **Sub-award Information.** A Subrecipient will provide the following information to DFPS according to the timeframes communicated by the Department but no later than the end of the month following the month of award of a contract with a value of \$25,000 or more, (and any modifications to these contracts that change previously reported data):



## Exhibit B: DFPS SSCC Uniform Contract Terms and Conditions

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- 7.3.8.1.1 Unique identifier (DUNS Number) for the contractor receiving the award and for the contractor's parent company, if the contractor has a parent company.
- 7.3.8.1.2 Name of the contractor.
- 7.3.8.1.3 The SSCC's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district.
- 7.3.8.1.4 The SSCC's primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district.
- 7.3.8.2 **Subrecipient Officers' Total Compensation (Top 5)**. According to the timeframes communicated by the Department but no later than the end of the month following the month of a contract award, and annually thereafter, the contractor will report the names and total compensation of each of the five most highly compensated executives for the contractor's preceding completed fiscal year if—
  - 7.3.8.2.1 In the contractor's preceding fiscal year, the contractor received—
    - 7.3.8.2.1.1 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and
    - 7.3.8.2.1.2 \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and
    - 7.3.8.2.1.3 The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

### 8. Intellectual Property

- 8.1 **Intellectual Property.** Except as otherwise provided in this Contract, all products produced by The SSCC as a result of this Contract become the sole property of DFPS, including, without limitation, all plans, designs, software, and other contract deliverables.
  - 8.1.1 If The SSCC develops any copyrightable material in the course of performing this Contract, then The SSCC will grant the State of Texas, DFPS, any federal awarding agency, and the Health and Human Services Commission 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.
  - 8.1.2 This section does not apply to any report, document, or other data, or any invention of The SSCC which existed prior to, or was developed or discovered independently from, its activities related to or funded by this Contract.

### 9. Termination, Remedies, and Dispute Resolution



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## Exhibit B: DFPS SSCC Uniform Contract Terms and Conditions

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- 9.1 Termination, Remedies, and Dispute Resolution.** Failure to enforce any provision of this Contract does not constitute a waiver of that provision, or any other provision, of the Contract.
- 9.1.1 **Abandonment or Default.** If Contractor materially defaults on the Contract, DFPS reserves the right to cancel this Contract without notice and either re-solicit or re-award the contract to the next best respondent or bidder. DFPS reserves the right not to consider the defaulting Contractor in the re-solicitation or in future solicitations for the same type of work, unless the specification or scope of work significantly changes. Termination is not an exclusive remedy but will be in addition to any other rights and remedies provided by law or under this Contract.
- 9.1.2 **Immediate Suspension or Termination.** The Department will immediately suspend or revoke this Contract if the Contractor is found liable for, or has a contract, license, certificate, or permit of any kind revoked for, Medicaid fraud. DFPS will also suspend or revoke this Contract if the Contractor's license, certificate, or permit has been revoked by any applicable licensing authority. This language does not limit the ability of the SSCC to pursue any action or other available remedy under Chapter 2260 of the Texas Government Code.
- 9.1.3 **Contract Contingencies.** Upon notification of contract termination, the SSCC 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 the event that another DFPS Contractor fails to perform according to the terms and conditions of its contract, DFPS reserves the right to enter into negotiations with the SSCC in order for the SSCC to provide the services performed by the failed contractor on a temporary basis until such time as DFPS can procure the services for that contracted service area. DFPS will provide resources commensurate with the additional tasks and temporary responsibilities to the SSCC to support the function.
- 9.1.4 **Remedies.** The Department, based on information from monitoring or other verifiable sources which establish a breach of contract by Contractor, may immediately terminate this Contract for cause if the breach is material or take other actions, including, but not limited to:
- 9.1.4.1 requiring the Contractor to take specific corrective actions in order to remain in compliance with any contractual term;
  - 9.1.4.2 withholding or recouping payments made to the Contractor;
  - 9.1.4.3 suspending and/or limiting any services and placing conditions on any such suspensions and/or limitations of services;
  - 9.1.4.4 removing from the provision of services any employee of the Contractor or subcontractor; and
  - 9.1.4.5 suspending, placing into abeyance, or removal of any contractual rights including, but not limited to, withholding of payment, cessation of placement, and removal of all contract rights.
- 9.1.5 **Liquidated Damages for No Eject/No Reject.** The SSCC 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 SSCC cannot place a child or youth in accordance with the timeframes described in this contract, then such failure will be deemed as a violation of the No Eject/No Reject mandate of Foster Care Redesign. Accordingly, in lieu of actual damages for such noncompliance, the Contractor agrees that DFPS may recover liquidated damages if the SSCC cannot comply with the no eject/no reject sections of the contract. The SSCC will 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

## Exhibit B: DFPS SSCC Uniform Contract Terms and Conditions

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requirement. The liquidated damages represent the best, reasonable, and most appropriate estimate of the Department's loss for each instance of noncompliance. After DFPS has found placement for children and youth covered by no eject/no reject provisions of the Contract, the SSCC will be liable to DFPS for actual damages in the amount of what the substitute provider bills DFPS for the child's or youth's care.

### 9.1.6 **Termination.**

9.1.6.1 **Immediate Termination.** Either party may terminate this Contract at any time with the consent of the other party. Nothing in this section will be construed to prohibit the Department's right to immediately terminate this Contract for the reasons listed in Sections 9.1.1 and 9.1.2 of this Contract.

9.1.6.2 **Termination for Convenience.** Either party may terminate this Contract by providing thirty (30) days written notice to the other party of the Contract's final date.

9.1.7 **Transition after Termination.** At the end of the contract term or other contract termination or cancellation, Contractor will 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 Contractor 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, Contractor will continue to provide necessary services in accordance with all terms and conditions of this Contract until all necessary client services are completely transferred.

9.1.8 **General Release.** The acceptance by Contractor or its assignees of the final payment under this Contract, whether by voucher, judgment of any court of competent jurisdiction, or any other administrative means, will constitute and operate as a general release to the State from all claims of any liability to the Contractor arising out of the performance of this Contract. This language does not limit the ability of the SSCC to pursue any action or other available remedy under Chapter 2260 of the Texas Government Code.

9.1.9 **Contract Dispute Resolution.** Should a dispute regarding the contract terms, definitions, or performance arise, both parties agree to use the Office of the Ombudsman to attempt to resolve any claim for breach of contract prior to the formal dispute resolution process provided for in Chapter 2260 of the Texas Government Code. If the Office of the Ombudsman cannot resolve the dispute to the satisfaction of both parties, then Contractor must use Chapter 2260 to attempt to resolve any claim for breach of contract. Neither the occurrence of an event, nor the pendency of a claim constitutes grounds for the suspension of performance by the SSCC, in whole or in part.

## 10. Certifications

10.1 **Certifications.** The certifications enumerated below represent material facts upon which DFPS relies when accepting a bid for this solicitation. If the Department later determines that Potential the SSCC knowingly rendered an erroneous certification, DFPS may pursue all available remedies in accordance with Texas and U.S. law. The SSCC further agrees that it will provide immediate written notice to DFPS if at any time The SSCC learns that any of the certifications provided for below were erroneous when submitted or have since become erroneous by reason of changed circumstances. **If the SSCC cannot certify the accuracy of all the statements contained in this section, The SSCC must provide written notice to DFPS detailing which of the below statements it cannot certify and why.** The SSCC acknowledges its continuing obligation to comply with the requirements of the

## Exhibit B: DFPS SSCC Uniform Contract Terms and Conditions

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following certifications contained in its Proposal, and will immediately notify DFPS of any changes in circumstances affecting these certifications:

- 10.1.1 **Certification Regarding Lobbying.** State and federal law place restrictions on the use of state and federal funds in regard to lobbying. The SSCC certifies, to the best of its knowledge and belief, that:
  - 10.1.1.1 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 SSCC, 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.
  - 10.1.1.2 If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any 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 undersigned will complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.
  - 10.1.1.3 The SSCC will require that the language of this certification be included in the award documents for subcontracts and that all subcontractors will certify and disclose accordingly.
  - 10.1.1.4 Payments of appropriated or other funds to The SSCC under any resulting agreement are not prohibited by Texas Government Code §556.005 or §556.008.
- 10.1.2 **Suspension, Ineligibility, and Voluntary Exclusion.** Executive Orders 12549, 13224 and 12689 require DFPS to screen each covered The SSCC to determine whether each has a right to obtain a contract in accordance with federal regulations on debarment, suspension, ineligibility, and voluntary exclusion. The SSCC certifies the following:
  - 10.1.2.1 That The SSCC is, to the best of its knowledge and belief, not on the specially designated nationals list or debarred, suspended, declared ineligible, or voluntarily excluded from participation in this solicitation or any resulting contract.
  - 10.1.2.2 That The SSCC will not knowingly enter into any subcontract with a person who is on the specially designated nationals list or debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by DFPS or the U.S. Department of Health and Human Services or U.S. Treasury Department, as applicable.
  - 10.1.2.3 That The SSCC will include this section regarding debarment, suspension, ineligibility, and voluntary exclusion, and the specially designated nationals list without modification in any subcontracts or solicitations for subcontracts.
- 10.1.3 **Child Support.** Under Texas Family Code Section 231.006, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.
- 10.1.4 **Drug-Free Workplace Certification.** The SSCC certifies that it will or will continue to provide a drug-free workplace by:

## Exhibit B: DFPS SSCC Uniform Contract Terms and Conditions

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- 10.1.4.1 Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- 10.1.4.2 Establishing an ongoing drug-free awareness program to inform employees about—
  - 10.1.4.2.1 The dangers of drug abuse in the workplace;
  - 10.1.4.2.2 The grantee's policy of maintaining a drug-free workplace;
  - 10.1.4.2.3 Any available drug counseling, rehabilitation, and employee assistance programs; and
  - 10.1.4.2.4 The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- 10.1.4.3 Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement;
- 10.1.4.4 Notifying the employee in the statement that, as a condition of employment under the grant, the employee will—
  - 10.1.4.4.1 Abide by the terms of the statement; and
  - 10.1.4.4.2 Notify the employer 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;
- 10.1.4.5 Notifying the agency in writing, within ten calendar days after receiving notice from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the federal agency has designated a central point for the receipt of such notices. Notice will include the identification number(s) of each affected grant;
- 10.1.4.6 Taking one of the following actions, within 30 calendar days of receiving notice, with respect to any employee who is so convicted—
  - 10.1.4.6.1 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
  - 10.1.4.6.2 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;
  - 10.1.4.6.3 Making a good faith effort to continue to maintain a drug-free workplace.
- 10.1.5 **Anti-Trust Certification.** Pursuant to 15 U.S.C. Sec. 1, et seq. and Tex. Bus. & Comm. Code Sec. 15.01, et seq., The SSCC certifies that neither the SSCC nor the firm, corporation, partnership, or institution represented by the SSCC, or anyone acting for such a firm, corporation, or institution has violated the anti-trust laws of this state, federal anti-trust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business.
- 10.1.6 **Deceptive Trade Practices.** The SSCC certifies that it has not been found guilty or liable of a Deceptive Trade Practices Act or any unfair business practice either in an administrative hearing or court suit within the last 5 years. The SSCC certifies that it has no officers who have served as officers of other entities who have been found guilty or liable of a Deceptive Trade Practices Act or any unfair business practice either in an administrative hearing or court suit within the last 5 years. The SSCC represents and warrants that within the last five years it has not been found guilty or

## Exhibit B: DFPS SSCC Uniform Contract Terms and Conditions

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liable of any investigation or proceeding by any federal or state securities regulator under any federal or state securities laws or regulations.

- 10.1.7 **Prohibited Responses and Contracts.** Pursuant to Texas Government Code §2155.004–006, The SSCC certifies that the individual or business entity named in this form is eligible to receive the specified contract and acknowledges that any contract concerning this certification may be terminated and payment withheld if this certification is inaccurate.
- 10.1.8 **Financial Interests and Gifts.** The SSCC certifies that neither The SSCC nor any person or entity that will participate financially in a contract has received compensation from DFPS for participation in preparation of specifications for a contract. The SSCC certifies that it has not given, offered to give, and does not intend to give at any time, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to any public servant or employee in connection with a contract.

10.2 **False Statements; Breach of Representations.** By signing this Contract, Contractor makes all the representations, warranties, guarantees, certifications, and affirmations included in this Contract. If Contractor signed this Contract with a false statement or it is subsequently determined that by DFPS that Contractor has violated any of the representations, warranties, guarantees, certifications, or affirmations included in this Contract, Contractor will be in default under this Contract and DFPS may terminate or void this Contract for cause and pursue other remedies available to the Department under this Contract and applicable law.