

Workforce Coordination Intent to Negotiate (ITN)

Invitation to Negotiate ITN # 1-AMI-VA-0822

Invitation to Negotiate ITN # 1-EBA-VA-0822

Issued:
August 19, 2022

Issued by:

AMIkids Virginia (AMI)
www.amikidsvirginia.org



Evidence-Based Associates (EBA)
www.evidencebasedassociates.com



On behalf of:

VIRGINIA DEPARTMENT OF JUVENILE JUSTICE

www.djj.virginia.gov

This ITN may include data that shall not be disclosed, duplicated, used, or disclosed – in whole or part – for any purposes other than to prepare a proposal or quotation. The data and information subject to this restriction are contained in all sheets.

Workforce Coordination ITN 8-19-2022

I. Purpose

Summary

On behalf of the Virginia Department of Juvenile Justice (VDJJ), the Regional Service Coordinators (RSCs), AMIkids Virginia (AMI) and Evidence-Based Associates (EBA), seek to establish contracts with multiple community-based provider organizations to support wraparound “education to employment” services for youth under the supervision of VDJJ. VDJJ’s balanced approach focuses on public safety, accountability, and competency development for all youth under supervision. Supervision includes youth on probation and youth on parole.

Probation supervision is a court-ordered disposition placing youth under the supervision of a Court Service Unit (CSU) in the community. Parole supervision is the supervision of youth in the community following release from commitment. In Fiscal Year 2021, there were 1,510 youth under probation supervision and 163 youth in commitment. This initiative is intended to connect older youth to training opportunities that lead to sustainable, long-term career prospects.

Beginning in October 2016, VDJJ contracted with AMIkids and EBA to coordinate services throughout the state through what has come to be known as the Regional Service Coordination (RSC) model of service delivery. AMIkids and EBA select and sub-contract with a network of public and private provider agencies to serve a range of clinical and non-clinical community-based and residential services.

Background

VDJJ’s mission is to protect the public by helping court involved youth become productive citizens by tailoring the right mix of accountability and rehabilitation to meet the identified risk and need levels for each youth who walks through our doors. We best accomplish our mission when we provide the youth in our system with support and opportunities that any adolescent needs to grow into a healthy, productive adult.

Youth placed on probation supervision are offered primary interventions to learn new skills and new ways of thinking. Services may include family counseling, career readiness training, substance abuse treatment, and other interventions. More than half of probation placements since FY2019 were 16- or 17-years of age, a critical age to prepare for the future by engaging in educational programs that lead to promising careers.

The average age of youth committed to VDJJ is 16.8 years, resulting in their release to the community beyond their 18th birthday. There are often missed opportunities to enroll in college, vocational programs, or trades that prepare most youth for the working world and long-term careers.

VDJJ’s Division of Education operates the Yvonne B. Miller High School and Post-Secondary Programs to provide education services to youth committed to Bon Air Juvenile Correctional Center (JCC). Youth committed to VDJJ and placed in alternative placement programs receive educational services from local educational agencies. Youth are also provided college and career training opportunities that vary by placement.

Post-Secondary students placed at Bon Air JCC are offered continuing education and/or job training skills in the following areas:

Apprenticeship Programs

- Barbering
- Graphic Design & Sign Writing
- Upholstery
- Industrial Sewing Machine Operator
- Cook

Simulation Programs

- Welding
- Heavy Machine Operator
- Post-Secondary opportunities are also offered through partnerships with local colleges and universities to include:
 - Community College Workforce Alliance
 - J. Sargeant Reynolds Community College
 - Virginia Commonwealth University
 - University of Virginia
 - Old Dominion University

In response to the increased demand for trade jobs in the-workforce, VDJJ is expanding post-secondary opportunities to meet the need for well trained, industry certified workers. Over a period of time, VDJJ is planning to offer entry level certifications in the areas of Plumbing, HVAC, and Electrical.

VDJJ's most recent published Data Resource Guide (DRG) reports the following population statistics for committed and paroled youth in fiscal year 2021:

- 207 youth were released from direct care.
- 82% (283) of youth released from direct care were released to active parole placements.
- Of the 283 youth placed on active parole supervision, 75% (213) were age 17 and older at the time of placement.
- The average length of stay (LOS) for all youth released was 18.2 months.

VDJJ's most recent published DRG reports the following statistics for probation placements in fiscal year 2021:

- The average age of youth on probation placement was 16.3 years.
- 81.8% of offenses that resulted in probation placement were for delinquent offenses, 5.3% were for technical offenses, 6.1% were for traffic offenses, and 6.8% were for status or other offenses.
- The average length of stay (LOS) on probation was 13.3 months.

The DRG is an annual publication that provides an overview of VDJJ, highlighting fiscal year data and trends in program and service areas. The DRG can be found on the VDJJ website or by visiting the following link:

<https://www.djj.virginia.gov/pages/about-djj/drg.htm>.

As noted throughout the data, youth committed to VDJJ mature into young adults while committed. Although VDJJ seeks to provide opportunities to prepare youth for a seamless transition, the length of some programs and/or program requirements, may not allow a youth to complete the program prior to the end of their length of stay. Our goal is to fill that gap by collaborating with community organizations to develop wraparound support to youth as they seek to complete job training and educational programs that lead to long-term career plans within the community.

This solicitation is seeking organizations to develop strategies that transition youth from education and training programs in the facility to compatible programs in the community and assist with job placement. This solicitation is also open to organizations seeking to include "education to employment" services for youth on probation supervision.

Interested organizations should communicate the ability to collaborate with community partners to increase the availability of services and resources to create a wraparound process. An example of wraparound support might include:

- Assessment of the youth's needs to create an individualized service and support plan.
- Partnerships with local vocational and workforce development centers: Workforce development programs which offer training curriculums and credentialing options to produce a high-quality workforce through job placement assistance, training, and education.

- Partnerships with local employers willing to hire VDJJ youth: There is a demand for employees in the community but youth leaving VDJJ are often faced with barriers such as little to no work history and reportable convictions. This often leads to minimum wage jobs with no benefits or career progression. Connecting young people with careers and training programs that offer advancements can reduce the likelihood of reoffending.
- Mentoring: Connecting youth to positive adult(s) in their communities can help improve behavior, develop problem-solving skills, and increase pro-social choices.
- Transportation Services: Youth often experience transportation barriers which result in missed job opportunities and increased absences. Offering transportation to and from work can increase a youth's chances of success.
- Program Incentives: Incentives can encourage positive behavior if used appropriately to meet specific needs. Incentives may include stipends to support food and other living expenses, gift cards, reimbursements, and other tangible rewards.
- Other partnerships/supports needed to overcome employment barriers.

These are just a few examples of support that a youth may need to be successful in completing post-secondary opportunities that lead to successful career connections. Organizations are not required to include nor are they limited to the items listed above.

Youth returning to the community from commitment in juvenile justice face many barriers. Organizations are encouraged to visit The National Reentry Resource Center at <https://nationalreentryresourcecenter.org/> to learn more about the needs of juvenile justice involved youth returning to the community.

Areas of Need

This solicitation is seeking providers to support transition services for youth entering the workforce across the state of Virginia, in all five of the VDJJ administrative regions. The priority areas include youth in the Richmond metropolitan area to include Court Service Units 11, 12, 13, and 14 in the counties of Chesterfield, and Henrico and the cities of Petersburg and Richmond; and the Hampton Roads area to include Court Service Units 1, 2, 3, 4, 5, 7, and 8, in the cities of Chesapeake, Hampton, Newport News, Norfolk, Portsmouth, Suffolk, and Virginia Beach.

While the VDJJ has the greatest need for workforce development services in the Richmond metropolitan and Hampton Roads areas, organizations seeking to provide services in other areas are also encouraged to apply. <https://www.djj.virginia.gov/pages/about-djj/drg.htm>

Applicants must specify the areas in which they are proposing to provide services. It is not a requirement to serve all cities and counties across the state. CSU coverage areas can be found in Attachment A - **Map of Administrative Regions**.

DJJ Parole Placements, FY 2021-2022			DJJ Probation Placements, FY 2021-2022		
CSU	FY2021	FY2022	CSU	FY2021	FY2022
001	5	2	001	56	48
002	11	8	002	94	68
003	3	5	003	25	14
004	18	12	004	57	65
005	11	8	005	39	41
006	5	3	006	14	29
007	14	13	007	60	51
008	9	2	008	36	20
009	3	3	009	22	18
010	3	0	010	26	37
011	6	6	011	13	15
012	12	8	012	48	53
013	10	11	013	67	58
014	6	6	014	85	78
015	6	3	015	52	29
016	10	5	016	61	63
017	1	0	017	26	38
018	1	3	018	24	42
019	3	3	019	69	122
020	1	1	020	39	32
021	1	2	021	35	52
022	4	4	022	69	54
023	1	4	023	36	29
024	5	3	024	71	99
025	5	3	025	50	67
026	6	2	026	67	56
027	2	0	027	72	60
029	1	0	028	18	20
02A	2	1	029	20	14
031	3	6	02A	8	11
<i>Total</i>	<i>168</i>	<i>127</i>	030	54	79
			031	98	79
			<i>Total</i>	<i>1,511</i>	<i>1,541</i>

Eligible Applicants: By time of contract award and initiation, selected applicants will be required to verify ability to meet subcontractor requirements listed in DSP contract. Immediately following award, applicant must be approved as a subcontractor through AMIkids (AMI) and/or Evidence-Based Associates (EBA), as applicable to the location of the program. Please see a sample standard Direct Service Provider (DSP) contract and Regional Service Coordinator (RSC) Model application process. The subcontractor agreement may be modified based on the award.

Statement of Work

Target Population and Project Scope: The target population will include males and females, at least 16-years of age, and open to youth on probation and/or parole supervision.

Youth referred for services can demonstrate various levels of criminogenic risk to reoffend and commonly display the following behaviors and needs:

- A. Criminal history and propensity to commit crimes
- B. History of running away from home, foster care, and/or residential placements
- C. History of association with anti-social companions (i.e., favorable attitudes towards violence, dishonesty, and rule breaking)
- D. Antisocial personality traits such as impulsivity, poor emotional regulation, and inadequate decision-making skills
- E. Low educational achievement
- F. History of low family involvement/history of poor supervision
- G. History of substance abuse
- H. History of self-destructive behavior
- I. History of mental health diagnoses (e.g., Post-Traumatic Stress disorder, Depression, Oppositional Defiant disorder, and Attention Deficit Hyperactivity disorder)
- J. Low or limited functioning youth
- K. History of poor school performance
- L. Lower levels of job readiness and independent living skills
- M. Need for focused intensive transition and community reintegration services
- N. History of trauma and exposure to violence

Youth will have a broad range of intervention needs that are addressed through community or sub-contracted service providers. Youth with clinical needs such as therapy, sex offender treatment, or substance abuse treatment will separately have access to treatment services and those services are not a part of this solicitation.

Youth participating in these programs and services will be on community supervision with VDJJ (i.e., probation or parole). Some youth particularly youth released from commitment, are placed upon electronic monitoring or GPS to monitor activities for a specified time in the community. In the event additional supervision is needed, the monitoring period may be extended by the Court Service Unit.

Collaboration with VDJJ Staff

The selected providers will be required to establish and maintain strong working relationships with VDJJ staff to ensure appropriate services are selected for youth.

Reporting Requirements

Progress Reports: Selected providers shall submit written monthly individualized progress reports to the VDJJ staff, Reentry Advocate, and Regional Service Coordinator (RSC). Monthly progress reports shall be due within 5 days following the end of each month of service. The template for progress reports must be approved by the assigned RSC and VDJJ and at a minimum, monthly progress reports shall include:

- A. Summary of provider coordination activities and contacts between the provider and the youth
- B. Progress towards achieving identified career goals
- C. Summaries of employment, vocational training, and/or other post-secondary involvement
- D. Revisions to employment and/or education goals

E. Summaries of mentor/mentee meetings

Discharge Summary: The selected provider shall submit a written discharge summary within 20 days of termination/completion of services to probation/parole officer, reentry advocate, and RSC agency. The template for discharge summary must be approved by the assigned RSC and VDJJ and at a minimum shall include:

- A. Status of discharge (successful or unsuccessful)
- B. Brief summary of discharge
- C. Overall progress made toward the identified measurable objectives
- D. Recommendations for continued services

Quality Assurance: The selected provider will be required to track a variety of performance measures and to report those measures to the Regional Service Coordinator (RSC) and VDJJ at regular intervals. Regional Service Coordinators will be responsible for monitoring compliance with deadlines and for aggregating reports for overall programmatic reviews regularly. Performance measures will be used to ensure that programs and services and all included interventions are delivered with high quality, as well as to assess program delivery processes, outputs, and outcomes. Specific programmatic goals and objectives shall be identified in the respondent's proposal and will vary based upon the type of programs and services provided. The RSC will assist the selected provider in development of performance measures, the creation of a quality improvement plan, corrective action plans (when necessary), and monitoring progress toward goals. Final performance measures and targets are subject to the approval of the RSC and VDJJ.

II. Proposal Instructions

General Instructions: Proposals in response to this ITN must be submitted electronically to both virginiaseservices@amikids.org and adminva@ebanetwork.com no later than 5:00 pm EST on Wednesday, October 12th, 2022. A single response may be submitted to both RSCs to include multiple service areas. All documents must meet the specifications below and must be submitted in a single Portable Document Format (PDF). Responses must be received by the stated deadline to be eligible for consideration. Late submissions will not be accepted. Postal mailed, faxed, and/or hand-delivered copies will not be accepted. The proposals received by the above date and time will be opened simultaneously. The schedule for review and selection is attached as Appendix B.

Program Narrative and Proposal Outline: Interested applicants must submit a program narrative that presents a detailed description of the proposed model of service delivery that will provide "education to employment" services to youth under VDJJ supervision. The narrative must be submitted utilizing 8.5"x 11" document size with 1" margins, size 12 point font. The narrative must not exceed 25 single-spaced, single-sided, typed pages and all pages shall be numbered. Attachments, forms, and manuals do not count against the maximum page limit for the narrative.

In addition to your narrative response, please provide:

- **Attachment A:** Organization Chart with identification of where the workforce coordination services fit within your organization.
- **Attachment B:** Detailed Budget Outline.

Proposals should be as thorough and detailed as possible so that the RSCs may properly evaluate your capabilities to provide the required services and must be submitted following the below outline and format to be considered. Proposals that deviate from the narrative outline may be excluded and/or may be subject to significant deductions in point values assigned by the review committee.

The narrative must include:

1. Organizational History, Capacity, and Experience

Provide a detailed description of the company and company's history. A brief overview of the offeror's capacity and experience including relevant experience providing Workforce Coordination Services or similar services to a similar population. If the organization is new to workforce development, describe your capacity and capability to deliver the services and your plan to be fully competent and functioning as a service provider by the time of contract execution. Describe the organization's knowledge of and experience working with at risk youth and/or youth involved in the juvenile justice system. Preference will be given to SWaM certified providers.

2. Staff Characteristics and Staffing Patterns

Describe the administrative management and staffing supervision structure of the Provider as it relates to the operation of these services. List the names, titles, credentials, qualifications, and experience of personnel to be assigned to the project, their role within the project, and duties that the position will perform. Provide an organizational chart, identifying key personnel/positions that will have management and oversight of Workforce Services. As needed, include a detailed plan for hiring qualified staff, to include the process for recruiting mentors. Include a list of position types (e.g., case manager, program coordinator), staff to youth ratios, minimum qualifications for each position, and willingness to receive and comply with VDJJ training requirements.

Note: All staff must undergo and pass necessary background checks. Please include a plan to conduct annual background checks on new and existing staff and a detailed plan for training program staff and mentors to work with this challenging population. Include the types and frequency of trainings.

3. Program Components

Describe specific plans for providing the proposed workforce development and/or workforce coordination services including what services will be provided, when will services be provided, who will provide services, how services will be provided, and proposed frequency, duration and dosage of each component. Include a thorough description of all available services and program components to include assessments (completed by or with the youth), linkage to employment services, hard and soft skill development, post-secondary schools, vocational trade programs, case management services, and connection and supervision of staff/youth or mentor/mentee matches. If a specific curriculum or model is utilized, provide a description and any information that supports the effectiveness of the model or approach. Explain the plan to transition youth to long-term career opportunities and natural supports within the community.

4. Target Population

Explain the target population and a description of any exclusionary criteria or excluded populations. If your program will offer services to meet the needs of specialized populations such as females and/or youth with disabilities, include a description here. Elaborate on interventions and/or strategies to address risk and responsivity barriers within phases of the program; these may include transportation barriers, motivation, developmental levels, and language barriers. *Consider interventions and/or strategies to support temporary and long-term transportation needs (for employment, classes, etc.), how will incentives/sanctions will be utilized and how they will be incorporated into programs (e.g., stipends), etc.*

5. Location(s)

Include the geographical area(s) in which the provider will offer services. Identify specific regions and localities, to include RSC Agency application or engagement. Provide description of the location in which youth services will take place (mentoring meetings, job skills training sessions, etc.): organizational structure, community, location, number of youth to be served and room capacity. Geographical area(s) identified by VDJJ as priority include the Richmond metro area and the Hampton Roads area.

6. Collaboration and Partnerships

Include a description of current collaborations and partnerships, as well as the organization's plan for leveraging a network of partner organizations. Describe any partnerships your agency has had with any organization(s) for these services within the past five years and your experience developing and maintaining partnerships. Attach letters of intent from partner organizations, as applicable. Provide any past or existing experience in working with the Court Service Units in the proposed geographical areas.

7. Program Evaluation

Describe the methods to evaluate the program or service and determine success, including program or service goals and objectives. Explain how the program or service will collect and track data. Provide a copy of any prior program evaluations as applicable.

8. Start-up Plan and Timeline

Provide a plan, inclusive of a timeline, to ensure successful startup and operation of the program or service, or the inclusion of youth served through this contract into existing programs. Explain how timely services are able to begin (Note: VDJJ expects services and programs to start within 30 days of contract award and for providers to initiate services within 5 days of receipt of a referral). Indicate in the proposal if serving parole youth, if assessments or services are able to begin prior to a youth's release from commitment (at Bon Air Juvenile Correctional Center, a local CPP Program or virtually).

9. Program Budget:

Provide a detailed description of the rates for your services and a budget, and budget narrative that describes expected costs and the methodology used for calculating rates, noting that this is a purchase of services contract with variable referral volume based upon CSU needs and no inherent guarantee of receiving referrals. Costs that may be considered when calculating rates include:

- Staff Training
- Staff Salaries/Wages
- Mentor stipends/salaries
- Youth Incentives
- Program Supplies
- Program Equipment
- Cost to support transportation (funds cannot be used to purchase vehicles). Allowable costs may include fuel, maintenance, and driver wages.
- Stipends to youth participants (if any)

Eligibility: Not-for-profit, public, and private for-profit youth-serving agencies may respond to this ITN. Though experience is not required to make application, preference may be given to those organizations with experience and a track record of success in providing workforce coordination services.

Time Frames and Initial Period of Contract: Service initiation is expected to begin within thirty (30) days of contract award and contract is expected to be made on or about November 1, 2022. The initial contract period is through the end of the current fiscal year (June 30, 2023), with annual options to renew for three successive one-year periods. Continued contracting is contingent upon (1) on-going needs of VDJJ as demonstrated by referral volume, (2) ability of the Offeror to effectively provide services, and (3) ability of Offeror to meet all contract terms including quality service delivery, submission of required reports, submission of data, tracking of identified performance measures, as well as the on-going availability of VDJJ funding.

Proposal Evaluation Criteria and Selection Process: Proposals will be selected for contract negotiation based on clearly stated criteria. Evaluation of proposals received will be conducted comprehensively, fairly and impartially. An evaluation committee of designated reviewers shall review and evaluate proposals. Structured quantitative scoring methods will be used to maximize the objectivity of the evaluation. (See Appendix B for list of rating criteria, points and scoring form).

Structured quantitative scoring methods will be used to maximize the objectivity of the evaluation. The evaluation committee of designated reviewers shall review and evaluate proposals. The committee will be composed of staff from VDJJ, AMIkids and EBA and include individuals with experience in, knowledge of, and program responsibility for program service and financing.

There is no limit on the number of vendors that may be qualified under this ITN.

Questions regarding this ITN should be directed to adminva@ebanetwork.com **AND** virginiaseservices@amikids.org. The deadline for questions is by 5pm EST on 08/31/2022. All questions must be in writing to both e-mail addresses to ensure all information is available to all bidders. All questions will receive a written e-mail response with a copy to all prospective bidders by 5pm EST on 09/14/2022 and posted on both RSC websites: <https://evidencebasedassociates.com/virginia-service-coordination/> and www.amikidsvirginia.org

ATTACHMENTS:

- Attachment A Map of Court Service Units and Regions
- Attachment B Scoring Rubric
- Attachment C Background Affidavit
- Attachment D AMIkids Subcontractor Agreement; Terms and Conditions
- Attachment E Evidence-Based Associates Subcontractor Agreement (with Terms and Conditions)

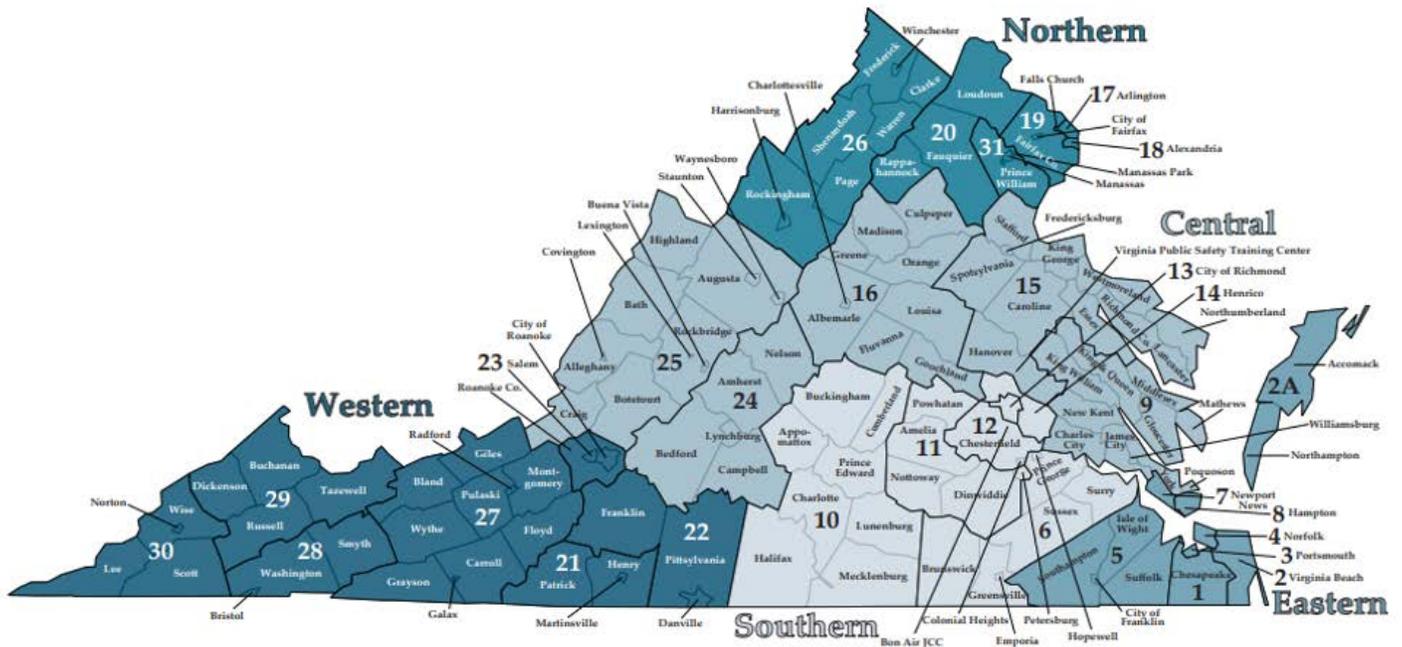
Map of the VADJJ’s Administrative Regions

The VADJJ’s Division of Community Programs is organized into five regions.

The geographically regions are Central, Eastern, Northern, Southern, and Western.

AMIkids serves as the Regional Service Coordinator for the Eastern, Southern and Western regions.

Evidence-Based Associates serves as the Regional Service Coordinator for the Central and Northern regions.



Central	Eastern	Northern	Southern	Western
CSUs: 9, 15, 16, 24, 25	CSUs: 1, 2, 2A, 3, 4, 5, 7, 8	CSUs: 17, 18, 19, 20, 26, 31	CSUs: 6, 10, 11, 12, 13, 14	CSUs: 21, 22, 23, 27, 28, 29, 30

ITN Proposal Scoring Rubric

Organizational History, Capacity and Experience		25 points+
Relevant experience providing Workforce Coordination Services or capacity and capability to deliver the services and your plan to be fully competent and functioning workforce provider.		15
Experience working with at risk youth populations.		10
<i>SWaM Certification</i>	<i>Additional 5 points will be awarded for SWaM certification (+5)</i>	
Staff Characteristics and Staffing Patterns		10 points
Staffing and job descriptions indicate all positions are clearly defined and meet the program components, without duplication.		5
Organization chart is clear and identifies key personnel/positions and their qualifications that will have management and direct oversight of Workforce Services		5
Background Affidavit Signed and submitted		Pass / Fail
Program Components		30 points
Detailed descriptions of specific plans for providing the proposed services (including frequency, duration and dosage)		5
Soft skills and case management components (higher ratings will demonstrate use of proven practice with evidence of effectiveness or detailed curriculum that aligns with 8 principles of evidence based interventions)		5
Hard skill (post-secondary schools, vocational trade programs, certifications, endorsement or trade types available).		10
Long term transition plan (including natural supports and skill longevity)		10
Capacity to Serve Target Population		15 points
Program can serve a wide range of youth (e.g. high risk youth, males, females, special needs) and develop relevant service plans to meet the identified needs (and risk factors).		5
Program can identify clear interventions to address risk and responsivity barriers within the program (e.g., transportation barriers, motivation, and language barriers.)		10
Location		10 points
Geographical area(s) identified to be served are in the areas identified as the greatest priority by DJJ (Richmond metro area, Hampton Roads area)		10
Collaboration and Partnerships		15 points
Current or long-standing partnerships with relevant community partners and educational centers. Attach letters of intent from partner organizations, as applicable. Include a description of your organization's current partnerships, as well as your organizations plan for leveraging a network of partner organizations.		10

Past or existing experience noted with Court Service Units in the proposed geographical areas.	5
Program Evaluation	15 points
Proposal includes clear goals and objectives and a manner to evaluate the program and determine success.	8
Program has internal data collection, tracking and submission processes.	7
Start-up Timeline	15 points
Plan for service or program start up that demonstrates ability to begin within 30 days of contract award.	5
Timely service initiation (Provider able to begin within 5 days of referral and/or able to provide pre-release services).	10
Program Budget:	15 points
Budget narrative describes reasonable expected costs with methodology used for calculating rates	15
Total Possible Points	155

Background Check Affidavit

As part of the DJJ RSC Model Quality Assurance procedures, we request PROVIDERS verify they are conducting appropriate employee background checks. Please review and complete the form below to verify your organization conducts appropriate employee background checks on all employees, volunteers, and individuals that have direct contact with DJJ Youth and/or family members and return to EBA and/or AMIKids. **If you are unsure or do not believe your organization conducts background checks as set forth below, please contact EBA: Kara Brooks, EBA kbrooks@ebanetwork.com and/or AMI: Korah Skuce, KSkuce@amikids.org immediately.**

Your Name (First, Last)

Position (e.g. Manager)

Organization Name ("PROVIDER")

PROVIDER is a subcontractor of (choose all that apply): EBA AMIKids

The PROVIDER shall be in compliance with all State laws, regulations, and licensure requirements relating to conducting criminal background checks of employees and volunteers. In particular, the PROVIDER agrees that all of its agents, employees, assignees, and volunteers providing Services to, or having direct contact with a child and/or family, must complete a criminal history check to include sex offender registry through a local police department, Sheriff's Department, or Virginia State Police office, a fingerprint check through the Virginia State Police and Federal Bureau of Investigation, and the Virginia Child Abuse and Neglect Central Registry (hereinafter, the "Central Registry"). The PROVIDER agrees that if the PROVIDER or any of its agents, employees, or assignees, having contact with Youth, are named in the Central Registry, the information shall be made available within one (1) business day to the PRIME CONTRACTOR (EBA and/or AMIKids), DJJ Staff and regulatory personnel. The PROVIDER shall remain in compliance with all Federal and State law, regulations, and licensure requirements relating to the conducting of criminal checks of its employees during the Term. *A list of VA DJJ Barrier Crimes available upon request.*

AFFIRMATION:

By signing below I represent and warrant to EBA and/or AMIKids that, to the best of my knowledge, information, and belief, PROVIDER has conducted all required background checks on all employees, volunteers, and other individuals that have direct contact with DJJ Youth and/or their family members in accordance with all applicable State laws, regulations, licensure requirements, agreements, and PROVIDER'S internal policies. (Please attach a copy of all relevant internal policies to this form).

Please note and explain any exceptions here:

I understand that any misrepresentation or falsification on my part may constitute a breach and/or grounds for termination of PROVIDER's Subcontractor Agreement with EBA and/or AMIKids.

Signature: _____ Date: _____

APPENDIX B

SCHEDULE OF REVIEW AND SELECTION

- August 19, 2022 -- Distribution of the ITN**
- August 31, 2022 -- Deadline for submitting questions**
- September 8, 2022- Virtual Pre-Proposal Meeting 10:00 am**
- September 14, 2022- Answers to questions posted**
- October 12, 2022-- Responses and Proposals due**
- October 19, 2022 -- Rater responses due by 5pm**
- October 21, 2022 – Finalists Selected**
- October 25, 2022 -- Award recipients announced**
- November 1 – November 15, 2022 Implementation date and Contract Commencement**

**AMIkids Direct Service Provider (DSP) Sample Subcontractor Agreement including
General Terms and Conditions & Special Terms and Conditions**

Virginia Department of Juvenile Justice (DJJ)

Transformation Initiative

Subcontractor Agreement ID (2022)

This SUBCONTRACTOR AGREEMENT (this "Agreement"), effective on November 1, 2022 (the "Effective Date"), is made by and between AMIkids, Inc. ("Regional Service Coordinator" or "RSC"), located at 5915 Benjamin Center Drive, Tampa, Florida, 33634 and _____ ("Direct Service Provider" or "DSP"), located at _____. RSC and DSP are referred to collectively as "Parties" and individually as a "Party".

WHEREAS, RSC has contracted with the Commonwealth of Virginia Department of Juvenile Justice ("the Commonwealth") to oversee the development, delivery and monitoring of performance management of a continuum of treatment services in residential and community settings for DJJ-involved youth, their families and their community supports;

WHEREAS, the purpose of this Agreement is to enable youth to achieve positive life outcomes as evidenced by a range of indicators including engagement in school work; a safe stable living situation; and abstinence from delinquent or criminal behavior;

WHEREAS, the expected outcome of the Services under this Agreement is the prevention or reduction of juvenile re-offending and a reduction in the number of youth being referred for juvenile commitment or residential services;

WHEREAS, DSP is a provider of community-based and/or residential services to Virginia DJJ-involved youth in Virginia; and

WHEREAS, RSC seeks to engage DSP to provide Services, as defined herein, and DSP does hereby agree to perform such Services, pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, which are hereby incorporated as integral parts of this Agreement and not as mere recitals hereto, the agreements of the parties specified herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

A. **Definitions.**

- a. **CSU.** Court Service Unit in the Commonwealth.
- b. **DJJ-Involved Youth (Youth).** Youth involved in various stages of the Virginia Juvenile Justice system (and their families), including youth supervised by the court, committed to DJJ, on community supervision, or placed on probation or parole. These youth generally demonstrate various levels of criminogenic risks to reoffend and display behaviors to include, but not limited to: delinquent history and propensity to commit delinquent acts/crimes in the future, running away from home, association with anti-social peers (i.e. favorable attitudes toward violence, dishonesty, and rule breaking), impulsivity, low level of educational achievement, mental health diagnoses, and poor school performance.

- c. **Intellectual Property Rights.** Intellectual property rights or similar proprietary rights, including (a) patent rights and utility models, (b) copyrights and database rights, (c) trademarks, trade names, domain names and trade dress and the goodwill associated therewith, (d) trade secrets, (e) mask works, and (f) industrial design rights; in each case, including any registrations of, applications to register, and renewals and extensions of, any of the foregoing in any jurisdiction in the world.
 - d. **Performance Objectives.** Standards developed by RSC by which DSPs will be evaluated during the Term of this Agreement
 - e. **PO.** Parole Officer or Probation Officer for DJJ-Involved Youth.
 - f. **Termination Date.** The date upon which the Agreement is terminated by one or both parties, or the date upon which the Agreement ends pursuant to its terms without any action by either Party.
 - g. **Contested Charges.** Charges which appear to be invalid, disallowed, or unreasonable.
- B. **Terms and Conditions.** Additional terms and conditions of this Subcontractor Agreement are set forth in Exhibit 1 (“DSP’s RFQ Response”), Appendix A (“Service Descriptions”), Appendix B (the “Fee Schedule”), Appendix C (Performance Objectives), Appendix D (the “General Terms and Conditions”), Appendix E (the “Special Terms and Conditions”), Appendix F (the “Confidentiality Agreement”), and Appendices G-I (DJJ Standard Operation Procedures (SOP) re: Non-Security Dress Code, Code of Conduct, and PREA Standards, if applicable). The aforementioned appendices and exhibits are fully incorporated into and made a part of this Subcontractor Agreement by this reference as if fully set forth herein. This Subcontractor Agreement and all appendices and exhibits hereto are referred to collectively as this “Agreement.” In the event of a conflict between Exhibit 1 and this Subcontractor Agreement or any Appendix, the Subcontractor Agreement or Appendix shall govern. All capitalized terms used in this Subcontractor Agreement and not defined herein have the meanings set forth in the General Terms and Conditions. By signing below, DSP hereby acknowledges DSP’s receipt of all documents referenced above.
- C. **Services.** DJJ-Involved Youth require services provided within a continuum of care associated with a variety of custodial and community settings, including, at least initially, short and long term residential settings, community-based alternatives to custody, and evidence-based and best practices types of intervention designed to enhance public safety and meet the needs of the involved youth and families. Appendix A, Service Descriptions, includes a comprehensive list of all services that a service provider may provide to DJJ-Involved Youth. DSP agrees to provide those services for which a fee is indicated in Appendix B (the “Services”) in accordance with the criteria for such Services set forth in Appendix A, DSP’s response to the RFQ attached hereto as Exhibit 1, and all other terms and conditions set forth herein. DSP shall meet all requirements for documentation, delivery of Services, and reporting timelines, as identified herein and by the appropriate licensing body for that Service. DSP shall provide Services at or above the quality level prevailing in the community for the provision of similar services at the time of performance. This Agreement shall not in any way be considered a guarantee by the RSC to the DSP that any Youth will be referred to the DSP.
- a. **Service Limits.** Services under this Agreement shall be limited to Youth, including males and females (and their families), typically ages 13-20, who are involved at various stages of Virginia’s Juvenile Justice System.

- b. Service Location. Youth and their families who are served under this Agreement will require Services across the Commonwealth, but Services *must* be delivered in close geographical proximity to where the Youth and families reside. DSP is required to serve any and all Youth who are appropriate for services and are appropriately referred.
- c. Dosage Guidelines. Generally, dosage refers to the amount of programming or treatment a Youth and family receive. Frequency, duration, intensity, and engagement all impact dosage considerations. DSP will adhere to general dosage guidelines, supported by emerging and developing research. Specifically, DSP, in conjunction with the RSC and DJJ, will establish a monthly minimum number of qualifying program hours per Youth and will track program participation for each Youth. Interventions that are considered in this dosage calculation must include specific targeting of criminogenic needs and delivery methods that are Evidence-Informed (Cognitive Behavioral, social skill building, anger control and emotional regulation skills). Structured time absent these qualifications, are not to be considered in the dosage calculations.

D. Reporting Requirements

- a. Evaluation and Assessments. The DSP shall complete evaluations and/or assessments and submit the written report to the RSC and PO two weeks prior to the Youth's scheduled court date unless otherwise agreed upon by the RSC or PO. If the DSP is unable to complete the evaluation or assessment in that timeframe, DSP will notify the PO and RSC immediately. The completed report is required for payment for Services.
- b. Monthly Summary Reporting. For Clinical and Behavioral Interventions, Residential Programming and Ancillary Services, the DSP shall submit Youth Monthly Summaries to their RSC, PO and CSU. Monthly Summaries shall be due by end of business day on the 5th of the month each month. If the 5th falls on a Saturday, due on the 4th. If the 5th falls on a Sunday, due on the 6th. The Monthly Summaries shall include:
 - i. Progress towards the identified measurable goals and objectives listed in the Youth's Individualized Service Plan
 - ii. Dates of Services and length of sessions/dosage
 - iii. YASI risk factors addressed
 - iv. Completion date or anticipated completion of each goal
- c. Discharge Reporting. For Clinical and Behavioral Interventions, Residential Programming and Ancillary Services, the DSP shall complete a Discharge Summary within 14 calendar days of termination of services and submit to their RSC and PO. The Discharge Summary may be combined with the most recent Monthly Summary and shall include:
 - i. Discharge Type
 - ii. Reason for discharge
 - iii. Overall progress made toward the identified measurable goals related to YASI risk factors
 - iv. Recommendations and after care plan
 - v. Status of Outcome Measures
- d. Quarterly and Annual Reports. The RSC will work collaboratively with each DSP to submit quarterly and annual reports. The reports shall reflect the effectiveness of services and outcome of the services for Youth served. The performance areas to be addressed and reported on may include, and not limited to the following:
 - i. Any AWOLs, successful and unsuccessful completions, length of stay

- ii. Number of Youth who substantially completed service plan goals
- iii. Average length of stay
- iv. Number of Youth attaining high school diploma, GED, and number of Youth receiving special educational services
- v. Number of Youth who participated in higher education or vocational training.
- vi. Number of serious incidents that follow DJJ's serious incident reporting policy and procedure
- vii. Number of treatment hours delivered to each Youth
- viii. Staff training hours targeting Evidence-Based services, per staff member and aggregated quarterly totals
- ix. Performance objective measurement reports

e. Incident Reporting

Subcontractor shall adhere to the final revised DSP Incident Report Form(s) and Process as approved by DJJ. The final forms and protocols will be included in the "Quality Assurance and Monitoring Plan for Direct Service Providers." Protocols and Forms will differ for youth in Direct Care status. See new Appendix J: Direct Care/Commitment Direct Service Provider Incident Report

See Appendix J: Direct Care/Commitment Direct Service Provider Incident Report & Service Provider and Local Partner Incident Report for Youth not in Direct Care Status

f. Electronic Records

All juvenile records and data, including electronic records, shall be maintained securely using means approved by DJJ Research and Information Services. The DSP shall ensure that all of their employees comply with the Commonwealth's Information Security Standard (aka SEC-501) for all information technology associated with the handling of sensitive data and information of the Department. This includes but is not limited to the use of an approved encryption product for sending email. The Commonwealth of Virginia uses Virtru encrypted e-mail. The use of any other alternative encryption software by DSPs will require approval by the DJJ IT Information Security Officer (ISO)

The current version of the Commonwealth's Information Security Standard can be found at <https://www.vita.virginia.gov/policy--governance/itrm-policies-standards/>

Variance, or non-compliance with this or the DJJ Information Security Program shall only occur with the approval of the DJJ Information Security Officer (ISO) and the DJJ Director.

- E. **Performance Objectives.** DSP's delivery of Services shall be evaluated against the Performance Objectives set forth in Appendix C and DSP's response to the RFQ attached hereto as Exhibit 1.
- F. **Monitoring and Oversight.** RSC shall, as a condition of its contract with the Commonwealth, monitor and oversee the delivery of Services. DSP shall cooperate with RSC by providing any requested records, reports, or documentation related to achievement of the Performance Objectives (including reports to POs) in a timely manner. Timeliness of reports shall be determined in the sole discretion of the RSC.
- G. **Fees.** RSC shall pay to DSP the fees set forth in Appendix B in consideration for the delivery of applicable Services, for the Term set forth herein, in accordance with the terms of this Agreement. Initial rates for

new DSPs and/or for new services for existing DSPs shall be established in collaboration with VA DJJ. DSPs shall not charge DJJ higher rates than rates charged to other government agencies and funders (e.g. Medicaid, OCS/CSA, DSS, etc.) for the same service. Rates may be increased at time of renewal subject to CPI and approval by DJJ.

- H. **Expenses.** RSC shall not reimburse DSP for any expenses unless such expenses are approved in advance, in writing, by RSC. See Billing Process/Payment section of this Agreement.
- I. **Notices.** All notices or other communications required under this Agreement shall be in writing and shall be deemed effective when received by either (i) hand delivery, (ii) registered mail, (iii) certified mail, return receipt requested, or (iv) overnight mail, addressed to the Party to be notified at the following address or to such other address as such Party shall specify by like notice hereunder:
- a. **RSC**
AMIkids, Inc.
Heyward Golden
5915 Benjamin Center Drive
Tampa, FL 33634
Hgd@amikids.org
- With a copy to:*
Korah Skuce
3329-F Wrightsville Ave
Wilmington, NC 28403
KSkuce@amikids.org
- b. **DSP**
- J. **Contract Managers.** Listed below are the Contract Managers for the respective parties. Communication regarding the Services to be delivered pursuant to this Agreement shall be directed to the Contract Manager for the respective party.
- a. **AMIkids, Inc. Manager**
Autumn Moss
AMoss@amikids.org
- b. **DSP Manager**
- K. **Term.** The Term of this Agreement shall include the Initial Term and all Renewal Terms, and shall end upon the expiration or termination of the Initial or then current Renewal Term, as described in the Terms and Conditions. The Initial Term and each Renewal Term shall be considered included within the "Term" for purposes of this Agreement.
- a. **Initial Term.** Unless terminated earlier as set forth in the Terms and Conditions, the initial term (the "Initial Term") of this Agreement shall commence on the "Effective Date" and end on June 30, 2023, unless earlier terminated according to the Special Terms and Conditions.

- b. Renewal Term. Subject to the terms and conditions of this Agreement, this Agreement shall renew for up to three successive one (1) year terms (“Renewal Terms”) unless either party gives notice of non-renewal to the other at least thirty (30) days prior to the expiration of the Initial Term or any Renewal Term. Exercise of the renewal option is at the RSC’s sole discretion and shall be contingent, at a minimum, upon satisfactory performance and subject to the availability of funds. Any renewal term may not exceed the term of the RSC contract with VADJJ.

[Signature page follows]

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IN WITNESS THEREOF, the parties have executed this Agreement as of the Effective Date.

AMIkids, Inc.

Provider Name.

By: _____
(signature)

By: _____
(signature)

Name: Heyward Golden
(print)

Name: _____
(print)

Title: Senior VP of Operations, AMIkids Inc.

Title: _____

Date: _____

Date: _____

SAMPLE - Subject to Change

Appendix D

General Terms and Conditions

- I. **ANTI-DISCRIMINATION:** DSP represents and warrants to the RSC that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians with Disabilities Act, the Americans with Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*.
- A. If the DSP is a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to a contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia, § 2.2-4343.1E*).
 - B. The DSP will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The DSP agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - C. The DSP, in all solicitations or advertisements for employees placed by or on behalf of the DSP, will state that such DSP is an equal opportunity employer.
 - D. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
- II. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By entering into a written contract with the RSC, the DSP certifies that the DSP does not, and shall not, during the performance of the contract for services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
- III. **DEBARMENT STATUS:** The DSP represents and warrants that it is not currently debarred by the Commonwealth of Virginia from providing services covered by this Agreement. DSP further certifies that it is not an agent of any person or entity that is currently debarred by the Commonwealth of Virginia.
- IV. **INSURANCE:** DSP shall, at minimum, have the following types and amounts of insurance coverage. DSP represents and warrants that it will maintain any applicable insurance coverage during the entire Term and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission. Prior to the Effective Date, DSP shall provide RSC with an insurance certificate evidencing the coverage and limits required under this Agreement. DSP shall provide at least thirty (30) days prior written notice to RSC before any material alteration of coverage may take effect. Failure of the DSP to obtain and maintain such insurance shall be a breach of this Agreement, for which the RSC shall have the right immediately to terminate this Agreement.

- A. Workers' Compensation. Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. If DSP fails to notify the RSC and the Commonwealth of increases in the number of employees that change its workers' compensation requirements under the Code of Virginia during the course of the contract, DSP shall be deemed in material breach of the Agreement. (**Only required if DSP has three or more employees)
- B. Employer's Liability. \$100,000.
- C. Commercial General Liability. Purchased on an Occurrence Basis of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia and the RSC must be named as an additional insured and so endorsed on the policy.
- D. Automobile Liability. \$1,000,000 combined single limit. DSP must assure that the required coverage is maintained by the DSP (or third party owner of such motor vehicle). The Commonwealth of Virginia and the RSC must be named as an additional insured and so endorsed on the policy.
- E. Professional Liability. Purchased on an Occurrence Basis of at least \$2,400,000 per occurrence, \$4,250,000 aggregate or such other amounts that are at least the applicable maximum amount that can be recovered per claim under the applicable section of the Virginia Code (currently 8.01-581.15). Professional Liability coverage is to include Nurse, Medical and Mental Healthcare Professional, Teacher and Social Services Professional coverages. These coverages must also specifically address, amongst other things, coverage for violation of civil rights, etc. or additional policies must be purchased covering these professionals at these same limits of liability. The Commonwealth of Virginia and the RSC must be named as an additional insured and so endorsed on the policy.
- F. Abuse & Molestation Liability (Sexual Misconduct Liability). Purchased on an Occurrence Basis of at least \$1,000,000 per occurrence, \$1,000,000 aggregate. The Commonwealth of Virginia and the RSC must be named as an additional insured and so endorsed on the policy.
- V. **DRUG-FREE WORKPLACE**: DSP agrees to (i) provide a drug-free workplace for the DSP's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the DSP's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the DSP that the DSP maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "*drug-free workplace*" means a site for the performance of work done in connection with this Agreement, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

- VI. **DEFAULT**. In case of failure to adequately deliver Services in accordance with this Agreement without reasonable justification, the RSC, after due oral or written notice, may procure them from other sources

and hold the DSP responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the RSC may have.

- VII. **AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH.** If DSP is organized as a stock or non-stock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership, it shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. If DSP is a business entity described above, it shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the Term of this Agreement. RSC may void this Agreement if DSP fails to remain in compliance with the provisions of this Section.

SAMPLE - Subject to Change

Appendix E

Special Terms and Conditions

I. COMPLIANCE WITH LAW AND POLICY.

- a. DSP shall comply with (1) RSC's policies, procedures, and Quality Assurance Standards, and (2) all local, state, and federal laws, rules, regulations, and codes, related to the performance of Services pursuant to this Agreement.
- b. DSP and/or its employees, agents, independent contractors, and representatives ("Personnel") provided under this Agreement shall obtain any licenses, protocols, certifications, and permits necessary and appropriate or required by RSC or another local, state or federal agency, to perform Services pursuant to this Agreement. Such licenses, protocols, certifications, and permits must be active, in good standing and up to date at all times during the Term. Prior to execution of this Agreement, DSP shall provide to the Contract Manager copies of all current licenses or certificates required for the delivery of Services.
- c. DSP shall be in accordance with all applicable laws, rules, and regulations and within their applicable scope of practice for their profession as set forth by the Department of Health Professions Board of Counseling's Regulations Governing the Practice of Professional Counseling (see Virginia Department of Health Professions - DHP <https://www.dhp.virginia.gov/>; <https://www.dhp.virginia.gov/Counseling/leg/LPC.docx>).
- d. Any and all waivers of RSC's policies, procedures, manuals, and/or Quality Assurance standards shall be reduced to writing and signed by both Parties.

II. **AMERICANS WITH DISABILITIES ACT.** DSP shall not exclude anyone from participating in; deny anyone the proceeds or benefits of; not otherwise subject any person(s) or entities to any form of discrimination based on disability. DSP shall comply with the pertinent portion of the Americans with Disabilities Act of 1990; P.L. 101-336.

III. **SUBCONTRACTING.** DSP shall not subcontract for any of the work performed pursuant to this Agreement without the written approval of the RSC. In any subcontractor agreement, DSP must impose terms and conditions at least as stringent as those in this Agreement. Approval of subcontracts may not be construed in any way to add liability or obligations to RSC and shall not relieve DSP of its obligations under this Agreement.

IV. **CHANGING LOCATIONS.** DSP shall not change the location from which it provides Services pursuant to this Agreement without written notification to the RSC.

V. **AUDIT.** DSP shall establish and maintain a reasonable accounting system that enables the RSC to readily identify DSP's use of funds in connection with this Agreement. The DSP shall retain all books, records, timesheets, receipts, agreements, and other documents ("Records") relative to this Agreement for five (5) years after the final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The RSC, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period. DSP shall provide copies of Records to RSC within seven (7) calendar days of a request by RSC.

VI. INTELLECTUAL PROPERTY.

- a. All inventions, works of authorship, and developments conceived, created, written, or generated by or on behalf of RSC ("IP"), whether solely or jointly, including without limitation, in connection with the Services hereunder and all intellectual property rights therein, shall be the sole and exclusive property of RSC. DSP agrees that, to the extent that the ownership of any contribution by DSP or its employees to the creation of the IP is not, by operation of law or otherwise, vested in RSC, DSP hereby assigns and agrees to assign to RSC all right, title and interest in and to such IP, including without limitation all the intellectual property rights therein, without the necessity of any further consideration.
- b. DSP agrees to execute any documents or take any actions as may reasonably be necessary, or as RSC may reasonably request, to perfect ownership of the IP. If DSP is unable or unwilling to execute any such document or take any such action, RSC may execute such document and take such action on DSP's behalf as DSP's agent and attorney-in-fact. The foregoing appointment is deemed a power coupled with an interest and is irrevocable.

VII. BILLING PROCESS/PAYMENT.

- a. DSP shall prepare and submit one monthly invoice organized by CSU to their respective Regional Service Coordinator (RSC) by the 5th calendar day of the month following the month in which Services were delivered. If the 5th falls on a weekend or holiday, invoices shall be submitted on the last business day prior to the 5th of **the month**. All invoices shall be submitted on a standardized AMIkids DSP Invoice Form and must contain: (A) name of youth served with DJJ number, (B) services provided, (C) dates of service, (D) units per service, and (E) the service charge per service unit (F) Service Start date (G) CSU billed with PO name.
- b. DSP shall prepare and submit Youth Monthly Summaries to their RSC, PO and CSU in accordance with Section D(b) of the Subcontractor Agreement.
- c. RSC will prepare an invoice for monthly services bundled for each referring CSU. RSC will submit the bundled invoice to the CSU by the 5th of the month following delivery of services. If the 5th falls on a weekend or holiday, invoices shall be submitted on the last business day prior to the 5th of the month.
- d. The Regional Service Coordinator will submit a monthly invoice to DJJ's Community Programs Funding Specialist for all services verified by the CSU.
- e. DJJ Accounts Payable Unit will pay the Regional Service Coordinator within thirty (30) days of receipt of the final approved invoice.
- f. Except for Contested Charges, RSC will pay the DSP within seven (7) days of receipt of payment from DJJ.
- g. Contested Charges.
 - i. Under special circumstances in which (1) DSP provides services outside the scope of this Agreement, or (2) RSC disagrees with the charges for Services within the scope of this Agreement, payment amounts for services may differ from invoiced amounts. In such cases, DSP shall be put

on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be invalid, disallowed, or unreasonable ("Contested Charges") will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached.

- ii. Upon determining that an invoice contains Contested Charges, the RSC shall promptly notify the DSP, in writing, that it has identified Contested Charges and the basis for the determination. RSC reserves the right to reduce or disallow the amount of any payment for Contested Charges.
 - iii. A DSP may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (Code of Virginia, § 2.2-4363).
 - h. Final Invoice. The DSP shall submit the final invoice for payment to the RSC no more than forty-five (45) calendar days after the Termination Date. If the DSP fails to submit such final invoice timely, all rights to payment are forfeited. RSC will not honor any requests submitted after the above time period.
 - i. Supplementary Expenditure. RSC, at its option and without notice to the DSP, shall have the right to make any payment or expenditure, on behalf of the DSP, in the event the DSP fails to make such payments or expenditures, and such act or failure to act jeopardizes the adequacy or availability of the Services to be provided pursuant to this Agreement. Without limitation, such expenditures by RSC may include payment for repairs affecting the life, health or safety of Youth or staff, utilities, insurance premiums, rent or mortgage payments, and claims for which liens may be attached to the DSP's property. Any payment by RSC shall be without prejudice to any of RSC's rights or remedies under this Agreement, at law, or in equity. All sums paid by RSC, including indirect costs incurred by RSC, pursuant to this paragraph, to bring a DSP into compliance with the terms of this Agreement, shall be immediately due and payable from the DSP. Such sums may be recovered by RSC by means of an adjustment (offset) to an invoice otherwise payable to the DSP under this Agreement. Payment of the cost described above shall not relieve DSP of the duty of full performance under this Agreement.
 - j. Availability of Funds. It is understood and agreed between the Parties herein that the RSC shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this Agreement.
 - k. Options. RSC has the option to modify the Agreement in the event the RSC's needs for programming change. Any increased dosage of service or changes in services shall be evidenced by an amendment executed by both parties. Any decreased dosage of service or changes in services shall be evidenced by a written notification from RSC to DSP. The optioned services may not commence before execution of the amendment. Changes agreed to under these options may result in a change to the Maximum Contract Dollar Amount.
- VIII. **MONITORING**. RSC will conduct periodic announced and unannounced programmatic and administrative monitoring to assess the DSP's compliance **with** this Agreement and applicable federal and state laws, rules and the RSC's policies and procedures. RSC shall permit persons duly authorized by the RSC to inspect any records, papers, documents, electronic documents, facilities, and services of the DSP that are relevant to this Agreement, and interview any clients and employees of the DSP under such conditions as the RSC deems appropriate. Following such inspection, the RSC will deliver to the DSP a list of its findings, including deficiencies regarding the manner in which said services are provided.

The DSP shall rectify all noted deficiencies specified by the RSC within the specified period of time set forth in the RSC's monitoring report. The DSP's failure to correct these deficiencies within the time specified by the RSC may be deemed to be in breach or default, and could result in termination of this Agreement.

- IX. **INVESTIGATION.** The RSC may make such reasonable investigations as deemed proper and necessary to determine the ability of the DSP to perform the Services and the DSP shall furnish to the RSC all such information and data for this purpose as may be requested. The RSC reserves the right to inspect DSP's physical facilities to satisfy questions regarding the DSP's capabilities. The RSC further reserves the right to refuse payment or to terminate this Agreement if the evidence submitted by, or investigations of, such DSP fails to satisfy the RSC that such DSP is properly qualified to carry out the obligations of this Agreement and to provide the Services contemplated therein.
- X. **INSPECTION.** The RSC reserves the right to conduct any test/inspection it may deem advisable to assure services conform to the standards set out in this Agreement.
- XI. **TERMINATION.**
- a. **Termination by Parties.** This Agreement may be terminated by either RSC or DSP:
- i. At any time by mutual written agreement of the Parties; or
 - ii. Immediately following the cancelation, termination, or expiration of the Prime Contract with the Commonwealth of Virginia DJJ, or
 - iii. By RSC, for convenience, upon at least thirty (30) days prior written notice; or
 - iv. Immediately upon a party's giving notice to the other party (the "Notice Party") of "just cause" to terminate this Agreement, based upon acts or omissions of the Notice Party. For this purpose, "just cause" shall include the following events or occurrences:
 1. The insolvency, appointment of a receiver, or assignment for the benefit of creditors, or the commencement or any proceedings by or against the Notice Party under bankruptcy or insolvency laws and the same is not dismissed within sixty (60) days;
 2. Any party's failure to fulfill its material obligations, representations, or warranties specified in this Agreement (including payment obligations), if such failure continues without cure for a period of thirty (30) days after notice thereof has been provided to the Notice Party;
 3. If RSC, in its sole discretion, believes that DSP has jeopardized the health, safety, or security of Youth in the care, custody, and control of the DSP or its staff.
- b. **Effect of Termination.**
- i. Upon the termination of this Agreement, neither Party shall have further rights or obligations hereunder, except with respect to any rights or obligations accruing prior to the date and time of termination or surviving termination in accordance with the terms

of this Agreement. Any compensation payable hereunder for Services furnished prior to the date of termination shall be paid in accordance with Section VII of this Agreement.

- ii. The termination provisions of this Section shall not be exclusive, but rather shall be in addition to any rights or remedies at law or in equity, or under this Agreement.
- iii. The provisions of this Agreement that require the performance of obligations by either Party after the termination of this Agreement shall survive such termination.
- iv. Unless retention of certain Confidential Records is required by this Agreement, law or regulation, upon termination of the Agreement, within thirty (30) days, all Confidential Information shall be returned to the Disclosing Party or destroyed.
- v. In the event this Agreement is terminated, DSP will work in partnership with the RSC and designated DJJ staff to provide coordination and transition services to an appropriate level of service to maintain the health and safety of any Youth receiving Services at the time of termination.

XII. **MAINTAINING A CONTINUUM OF SERVICES.** Should a Youth pose an imminent safety risk, DSP shall provide and coordinate appropriate crisis intervention and communicate closely with RSC and a designated DJJ staff. If DSP no longer desires to provide Services to a Youth, based on new behaviors or increased therapeutic needs, DSP shall give written notice to RSC and a designated DJJ staff if its desire to terminate services and a reasonable justification for doing so. Such termination shall be effective within thirty (30) days of giving written notice. Notwithstanding the above, Services may be terminated only if all pertinent parties, including the Courts, parent(s)/custodian(s), and RSC agree to such termination. If termination of Services is approved, DSP shall assist RSC in transition planning and assist, if requested, in the identification of an alternative placement option for the Youth. DSP shall ensure that program non-compliance and program failure are managed through graduated sanctions and internal referrals to alternative services within the continuum and not through program discharge without the agreement of DJJ. DSP will provide a minimum of 7 days' notice for requests for alternative services and/or placement. All graduated sanctions must be submitted and approved by the Regional Service Manager.

XIII. **DEBARMENT.** If DSP is an employer with more than an average of 50 employees for the previous 12 months and will receive compensation in excess of \$50,000 from this Agreement or an agreement with any agency of the Commonwealth to perform work or provide services, DSP shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to this Agreement or such other agreement with the Commonwealth. If DSP fails to comply with these provisions, it shall be debarred from contracting with any agency of the Commonwealth for a period up to one year. Such debarment shall cease upon DSP's registration and participation in the E-Verify program. If requested, DSP shall present a copy of its Maintain Company page from E-Verify to prove that it is enrolled in E-Verify.

XIV. **INDEMNIFICATION.**

- a. DSP shall indemnify, defend and hold harmless RSC and the Commonwealth of Virginia Department of Juvenile Justice against any claim that Services furnished hereunder by DSP, the content, format, or substance of which is not provided by RSC, infringe any worldwide patents, trade secrets or

copyrights. DSP shall not be liable for any claim of infringement arising from DSP's conformance with specifications provided by the RSC.

- b. DSP shall indemnify, defend and hold harmless RSC and the Commonwealth of Virginia Department of Juvenile Justice, their officers, directors, employees, agents and attorneys from and against any and all claims, demands, suits, awards, fines, judgments, liabilities, costs or expenses (including attorneys' fees) arising from or related to DSP's acts or omissions, other than those acts or omissions conforming with specifications provided by RSC, including, but not limited to:
- i. Acts, errors or omissions claims caused by DSP or any of its agents, employees, or independent contractors;
 - ii. Property damage claims caused by DSP or any of its agents, employees, or independent contractors;
 - iii. Personal bodily injury claims caused by DSP or any of its agents, employees, or independent contractors;
 - iv. Workers compensation claims made by or caused by DSP or any of its agents, employees, or independent contractors;
 - v. Automobile collision damages and injuries claims made by or caused by DSP or any of its agents, employees, or independent contractors; and
 - vi. Discrimination claims made by or caused by DSP or any of its agents, employees, or independent contractors.

XV. **DISPUTE RESOLUTION.** DSP and RSC are encouraged to resolve any issues in controversy arising from the award of a contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia, § 2.2-4366*), prior to seeking relief from the courts.

XVI. **SECURITY REQUIREMENTS.**

- a. If applicable, DSP shall be responsible for ensuring that all Personnel, equipment, tools and supplies/materials comply with any and all rules, regulations, and procedures of Commonwealth corrections and juvenile justice facilities. The Department of Corrections reserves the rights to deny entrance to anyone who is suspected of a breach of security or for failure to follow published rules, regulations or procedures.
- b. All Personnel entering a correctional facility will be subject to a search of their person and personal items. Such searches may be frisk searches, searches by metal detectors or searches by narcotics detected canines. In addition, all equipment, tools, supplies and materials will be subject to search or inventory at any time. Tools and materials must be carefully controlled at all times and locked when not in use. All ladders and movable lift equipment must be closely supervised when in use and brought out of the security compound when not in use.
- c. Any attempts to introduce contraband, to assist in escape, or to have unauthorized contact with the residents of the facility are prohibited and will be prosecuted under the provisions of the Code of Virginia. DSP's Personnel are prohibited from bringing into or taking out of the institution any items unless specifically approved. Any interaction between a DSP's employee and any resident which

assists the prisoner to escape is a felony and will be prosecuted. DSP's Personnel may not deliver, receive or otherwise transfer any item, no matter how harmless, to or from a resident with express permission of the Warden/Superintendent or his/her designee.

- d. DSP's Personnel or representatives are limited to movement to, from and within their assigned work area. No contact is allowed with resident unless expressly approved.
- e. No person who appears to be under the influence of drugs or alcohol will be allowed entry into a correctional facility.
- f. All DSPs' Personnel must be in possession of a valid identification with a recent, clear photo in order to enter a facility.
- g. All DSPs' Personnel are required to be dressed appropriately for the duties they are performing. The DSP's Personnel shall not wear any clothing that is similar to or could be mistaken for resident clothing. Clothing that is short, tight-fitting, or revealing is not appropriate attire for a prison environment. Individuals so dressed will be asked to change their clothing or leave the facility.

XVII. **EMPLOYEE BACKGROUND CHECKS.** DSP shall be in compliance with all State laws, regulations, and licensure requirements relating to conducting criminal background checks of employees and volunteers. DSP will ensure every person working with youth under the protection of DJJ be required to have the following background checks:

- a. A criminal history checks to include sex offender registry through a local police department, Sheriff's Department or Virginia State Police office
- b. Fingerprint checks through the Virginia State Police and Federal Bureau of Investigation
- c. Child Protective Services check through the Virginia Department of Social Services

Virginia Department of Juvenile Justice Barrier Crimes:

- a. Conviction of all felonies (To be reviewed on a case by case basis)
- b. Conviction of any misdemeanor assault offenses (To be reviewed on a case by case basis)
- c. Conviction of misdemeanor DUI or DUI related offense (To be reviewed on a case by case basis)
- d. Conviction of misdemeanor possession, sale or distribution of any illegal substances in the last five years
- e. Conviction of contributing to the delinquency of a minor
- f. Conviction of any sexually related offenses (including Prostitution and Indecent Exposure) in the last ten years.
- g. Convictions for the following misdemeanors will be reviewed on a case by case basis:
 - i. Bad Check Writing
 - ii. Trespassing
 - iii. Reckless Driving
 - iv. Lying
 - v. Cheating
 - vi. Stealing (theft or larceny)
 - vii. Any active jail time or probation or parole supervision at the time of the background check is conducted.
 - viii. Habitual misdemeanor convictions (To be reviewed on a case by case basis)

DSP shall conduct background checks on all staff and review all results for compliance with DJJ standards prior to hiring or other personnel action. DSP will facilitate or perform and pay for central registry checks and background checks. DSP agrees that all of its agents, employees, assignees, and volunteers providing

services to, or having direct contact with a Youth and/or family, must be checked against the Virginia Child Abuse and Neglect Central Registry (hereinafter, the "Central Registry"). DSP agrees that if it learns that any of its agents, employees, assignees, or volunteers, having contact with the Youth, are named in the Central Registry, DSP will immediately remove such person from providing Services and notify RSC, as well as any appropriate child placement and regulatory personnel of the Department of Social Services, the Department of Education, the Department of Behavioral Health and Development Services, and the designated DJJ staff. DSP shall remain in compliance with all Federal and State laws, regulations, and licensure requirements relating to conducting employee background checks during the Term of this Agreement. Failure to comply with the background screening requirements may result in termination of the Contract.

- XVIII. **DJJ PROCEDURES.** DSP shall comply with DJJ's Non-Security Dress Code and Code of Conduct (Appendices F and G).
- XIX. **PREA COMPLIANCE.** If applicable, DSP and its employees or representatives will comply with the Prison Rape Elimination Act (2003) ("PREA," Federal Law 42 U.S.C. 15601 et seq.) and with all applicable PREA Standards, DJJ procedures related to PREA and DJJ requirements related to PREA for preventing, detecting, monitoring, investigating, and eradicating any form of sexual abuse within DJJ facilities, programs, and offices whether owned, operated, or contracted. DSP's employees or representatives who work directly with juveniles in the custody of DJJ shall complete PREA training as part of their facility orientation. Failure to comply with PREA, including PREA standards (Appendix H) and DJJ Procedures (Appendices F and G) may result in termination of the Agreement.
- XX. **MANDATORY REPORTING.** DSP shall comply with the child abuse and neglect mandatory reporting requirements contained in Section 63.2-1509 of the Code of Virginia.
- XXI. **CONFIDENTIALITY.**
- a. **General Requirement.** Any information obtained by the DSP concerning any Youth pursuant to this Agreement shall be treated as Confidential. Use and/or disclosure of such information by the DSP shall be limited to purposes directly connected with the DSP's provision of Services under this Agreement. DSP agrees to adhere to all Federal and State laws and regulations regarding confidentiality of juvenile offender and student information, including the confidentiality provisions of Section 2.2-5210 of the Code of Virginia.
 - b. **Confidentiality Agreement.** DSP shall require all Personnel that have contact with individuals in the custody of DJJ, under the supervision of DJJ, or otherwise receiving services under this Agreement to sign the Confidentiality Agreement (Appendix E). DSP shall, upon request, provide signed copies of such Confidentiality Agreements, to RSC. Failure to comply with this Section XIX (b) shall constitute a material breach of this Agreement.
 - c. **Storage.** DSP shall maintain any records that indicate the identity of juveniles in the custody of DJJ in paper form, in a locked file cabinet at all times. Individuals with access to the locked file cabinet shall sign a Confidentiality Agreement.
- XXII. **THIRD PARTY RIGHTS.** This Agreement is neither intended nor shall it be construed to grant any rights, privileges or interest in any third party, except the Commonwealth, without the mutual written agreement of the Parties.

- XXIII. **ASSIGNMENT.** This Agreement shall not be assignable by the DSP in whole or in part without the written consent of the RSC.
- XXIV. **MODIFICATION, RE-NEGOTIATION, OR AMENDMENT.** Except as otherwise set forth herein, modifications or amendment of provisions of this contract shall only be valid when they have been reduced to writing and duly signed by all parties observing all the formalities of the original Agreement. RSC is not obligated to pay for costs related to this Agreement that were incurred prior to the date of the Agreement's execution or after the Termination Date. The Parties agree to re-negotiate this Agreement if federal and/or state revisions of any applicable laws, regulations or RSC policy, manuals, or quality assurance standards make changes in this Agreement necessary.
- XXV. **SURVIVAL.** Sections H (in main Agreement), I (in General Terms and Conditions), and VI, XI, XIII, XIV, XIX and XXIV (in Special Terms and Conditions) shall survive the termination of this Agreement.
- XXVI. **GOVERNING LAW.** This Agreement and the rights and obligations of the parties to and under this Agreement will be governed by and construed under the laws of the United States and the Commonwealth of Virginia without regard to the application of its conflict of laws provisions. Any litigation with respect to this Agreement shall be brought in the courts of the Commonwealth. DSP shall comply with all applicable federal, state and local laws, rules and regulations.
- XXVII. **WAIVER, SEVERABILITY.** No waiver will be implied from conduct or failure to enforce rights. No waiver will be effective unless in writing signed on behalf of the party against whom the waiver is asserted. If any of this Agreement is found invalid or unenforceable that term will be enforced to the maximum extent permitted by law and the remainder of the Agreement will remain in full force.
- XXVIII. **INDEPENDENT CONTRACTOR.** The parties are independent contractors and nothing contained herein will be construed as creating an agency, partnership, or other form of joint enterprise between the parties.
- XXIX. **ENTIRE AGREEMENT.** This Agreement shall constitute the entire agreement between the parties relating to this subject matter and supersedes all prior or simultaneous understandings, representations, discussions, negotiations, and agreements, whether written or oral.
- XXX. **FORCE MAJEURE.** Neither party will be liable to the other party or any third party for failure or delay in performing its obligations under this Agreement when such failure or delay is due to any cause beyond the control of the party concerned, including, without limitation, acts of God, governmental orders or restrictions, fire, or flood, provided that upon cessation of such events such party will thereupon promptly perform or complete the performance of its obligations hereunder.
- XXXI. **EXECUTION IN COUNTERPARTS.** This Agreement may be executed in one or more counterparts. Each counterpart will be an original, but all such counterparts will constitute a single instrument.
- XXXII. **PUBLICITY.** Neither party shall use the name or marks of the other or any of its Affiliates, of which the party is aware or should reasonably be aware are an affiliate of the other, in any advertising, marketing or promotion materials unless such permission has been given in writing by the respective party.
- XXXIII. **REPRESENTATION ON AUTHORITY OF PARTIES/SIGNATORIES.** Each party represents and warrants to the other that (i) the individual representative signing this Agreement on behalf of such party has the authority to do so; (ii) the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized; (iii) the Agreement is a valid and binding agreement

of the party, enforceable against the party in accordance with its terms; and (iv) the execution and delivery of this Agreement and performance of the duties and obligations contemplated hereby does not constitute a default under, or breach of, any instrument or obligation to which the party is bound.

XXXIV. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this Agreement, the Special Terms and Conditions shall apply.

SAMPLE - Subject to Change

Appendix F

ATTENTION: ALL PERSONNEL THAT HAVE ACCESS TO INDIVIDUALS IN THE CUSTODY OF DJJ, UNDER SUPERVISION OF DJJ, OR OTHERWISE PROVIDING SERVICES UNDER THIS AGREEMENT MUST SIGN THIS CONFIDENTIALITY AGREEMENT.

CONFIDENTIALITY AGREEMENT

I _____ (Receiving Party) hereby enter into this Confidentiality Agreement for the purpose of preventing the unauthorized disclosure of Confidential Information as defined below. I understand that I may learn or have access to Confidential Information and agree to protect Confidential Information against unauthorized access or disclosure.

1. **Definition of Confidential Information.** For the purpose of the Confidentiality Agreement, Confidential Information shall include, but is not limited to, the identifying information (e.g., name, birthdate), offense, social, medical, psychiatric, and psychological reports and records of individuals, whether identifiable or non-identifiable, who are or have been (i) before the court, (ii) under supervision, or (iii) receiving services from a court service unit or who are or have been committed to DJJ. (See § 16.1-300 of the Code of Virginia.) Confidential Information also specifically includes arrest information DJJ receives from other agencies for the purposes of evaluating recidivism of DJJ-served populations.
2. **Exclusions from Confidential Information.** Receiving Party's obligations under this Agreement do not extend to information that is:
 - (a) Publicly known at the time of disclosure or subsequently becomes publicly known through no fault of the Receiving Party; or
 - (b) Learned by the Receiving Party through legitimate means other than from the RSC, DJJ or DJJ's representatives (Disclosing Parties).
3. **Obligations of Receiving Party.** Receiving Party shall:
 - (a) Adhere to all federal and state laws and regulations regarding Confidential Information;
 - (b) Use the Confidential Information only for the purpose of fulfilling the goals of the proposed project;
 - (c) Hold and maintain the Confidential Information in strictest confidence;
 - (d) Agree to store all data on a password-protected computer or in a secure location (e.g., locked file cabinet or drawer);
 - (e) Require any employee or any other individual associated with this project that has or potentially could have access to the Confidential Information sign a confidentiality agreement;
 - (f) Agree to destroy or return to the Disclosing Party all Confidential Information or data within ten days of any request by any of the above-mentioned entities unless the Receiving Party is required by applicable law or contract to retain such information;
 - (g) Agree not to publish, copy, or otherwise disclose to others, or permit the use by others any Confidential Information (however, this does not preclude publication of aggregate data with prior permission of DJJ);
 - (h) Agree to refer any person requesting access to Confidential Information to DJJ;
 - (i) Agree not to publish, disclose, or associate DJJ's name with any publications arising from information received from DJJ without the express written permission of the Director of DJJ;

and

- (j) Agree that any publication, presentation, or disclosure of information received from DJJ will present the results or findings in aggregate form.

4. **Time Periods.** The nondisclosure provisions of this Agreement shall survive the termination of the Confidentiality Agreement and Receiving Party's duty to hold Confidential Information in confidence shall remain in effect perpetually.

This Confidentiality Agreement and the Receiving Party's obligations shall be binding on the representatives, assigns, and successors for the Receiving Party.

Project Name: Virginia Department of Juvenile Justice (DJJ) Transformative Initiative

Name Printed: _____

Signature: _____

Date: _____

DSP SHALL KEEP SIGNED COPIES OF THIS DOCUMENT ON FILE, AND SHALL PROVIDE SUCH COPIES TO RSC, UPON REQUEST.

SAMPLE - Subject to Change

**EBA Direct Service Provider (DSP) Sample Subcontractor Agreement including
General Terms and Conditions**



Virginia Department of Juvenile Justice (DJJ) Transformation Initiative Subcontractor Agreement

This SUBCONTRACTOR AGREEMENT (this “Agreement”), effective on _____ (the “Effective Date”), is made by and between EVIDENCE-BASED ASSOCIATES (“PRIME CONTRACTOR”) and _____ (“PROVIDER”). PRIME CONTRACTOR and PROVIDER are referred to collectively as “Parties” and individually as a “Party”.

WHEREAS, PRIME CONTRACTOR has contracted with the Commonwealth of Virginia Department of Juvenile Justice (“the Commonwealth” or “DJJ”) to oversee the development, delivery, quality monitoring, and performance management of a continuum of treatment and intervention services in residential and community-based settings for DJJ-involved youth, their families, and their community supports to prepare DJJ-involved youth to be successful citizens;

WHEREAS, the purpose of this Agreement is to improve the lives of DJJ-involved youth, strengthen both families and communities within the Commonwealth, and to ensure high quality and effective services are provided to DJJ-involved youth and families in a manner that is equitable and responsive to their individual needs and circumstances through trauma-informed response, effective intervention, and reducing barriers to access;

WHEREAS, the expected outcome of the Services under this Agreement is the prevention or reduction of juvenile re-offending, increased public safety, and a reduction in the number of youth being referred for juvenile commitment or residential services;

WHEREAS, PROVIDER is a provider of community-based and/or residential services to DJJ-involved youth in Virginia; and

WHEREAS, PRIME CONTRACTOR seeks to engage PROVIDER to provide Services, as defined herein, and PROVIDER does hereby agree to perform such Services, pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, which are hereby incorporated as integral parts of this Agreement and not as mere recitals hereto, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

A. **Definitions.**

- a. **Regional Service Coordinator (RSC).** The entity that will coordinate between the DSPs and DJJ to implement the community-based and/or residential services; the PRIME CONTRACTOR.
- b. **Direct Service Provider (DSP).** The private or public agency that delivers the community-based and/or residential services, under a subcontractor agreement with the RSC, to referred youth and their families; the PROVIDER.
- c. **DJJ Staff.** “DJJ Staff” means the referring or assigned DJJ case manager, to include the community-based Court Service Unit (“CSU”) Probation or Parole Officer, Direct Care staff including the Central Assessment Program (“CAP”) Case Manager, Community Placement Staff, behavioral health provider, or other staff member identified by DJJ, as applicable.
- d. **DJJ-Involved Youth (Youth).** Youth involved in various stages of the Virginia Juvenile Justice system (and their families), including youth supervised by the court, committed to DJJ, on community supervision, or placed on probation or parole. These youth generally demonstrate various levels of criminogenic risks to reoffend and display behaviors to include, but not limited to: delinquent history and propensity to commit delinquent acts/crimes in the future, running away from home, residential placements, association with

anti-social companions (i.e. favorable attitudes towards violence, dishonesty, and rule breaking), impulsivity, low levels of educational achievement, mental health diagnoses, and poor school performance.

- e. **Services.** The Direct Services that PROVIDER is both willing and able to provide to Youth and/or family members described in “EBA Service Definitions and Fees” document, which is attached as **Appendix A** and incorporated herein by reference. Direct Services are provided directly to the youth and family in accordance with this Agreement.
 - f. **Intellectual Property Rights.** All intellectual property rights or similar proprietary rights, including, but not limited to, (a) patent rights, (b) copyrights, (c) trademarks, trade names, domain names and trade dress and the goodwill associated therewith, and (d) trade secrets; in each case, including any registrations of, applications to register, and renewals and extensions of, any of the foregoing in any jurisdiction in the world.
 - g. **Performance Objectives.** Standards developed by PRIME CONTRACTOR and DJJ by which PROVIDER will be evaluated during the Term of this Agreement.
 - h. **Termination Date.** The date upon which the Agreement is terminated by one or both parties, or the date upon which the Agreement ends pursuant to its terms without any action by either Party.
 - i. **Contested Charges.** Charges billed by the PROVIDER which appear to be invalid, disallowed, or unreasonable.
 - j. **Referral.** The youth background, rationale, and request for services, submitted to PROVIDER from the PRIME CONTRACTOR.
- B. **Scope.** PROVIDER shall provide Services for the Term set forth herein, in accordance with the terms of this Agreement.
- a. **Services.**
 - i. The PROVIDER shall provide services at or above the quality standard in the industry at which the service is provided and as described in Appendix A, at the prices set forth herein.
 - ii. Service Type. PROVIDER shall indicate to PRIME CONTRACTOR, upon request and in advance of referrals for Services, the types of Services which PROVIDER is qualified and willing to provide, according to **Appendix A**. PROVIDER shall be obligated to notify the PRIME CONTRACTOR of changes in Services to include additions or closures of program Services. PROVIDER shall be obligated to provide these Services ONLY IF directed to do so in a Purchase of Service Order (POSO), as described below. PROVIDER shall not provide, nor shall PRIME CONTRACTOR be obligated to pay for, Services not included in a POSO.
 - iii. Geographic Region. PROVIDER shall indicate to PRIME CONTRACTOR, upon request and in advance of referrals for Services, the geographic regions within which the PROVIDER is able to provide Services. Unless indicated otherwise herein, PROVIDER shall only be obligated to provide Services in those identified geographic regions. PROVIDER shall notify the PRIME CONTRACTOR of changes to the geographic regions within which it is capable of providing Services pursuant to this Agreement within 3 days of the change. Applicable geographic regions are captured on the PRIME CONTRACTOR’s website on the “Provider Map”.
 - iv. Language. PROVIDER shall indicate to PRIME CONTRACTOR, upon request and in advance of referrals for Services, the languages and geographic regions within which the PROVIDER is able to provide Services in said languages.
 - b. **No Guarantee.** This Agreement shall not in any way be considered a guarantee by the PRIME CONTRACTOR to the PROVIDER that any youth will be referred to the PROVIDER.
- A. **Term.** Unless terminated earlier as set forth herein, the initial term (the “Initial Term”) of this Agreement shall commence September 1, 2022 and shall end on June 30, 2023. Subject to the terms and conditions of this

Agreement, the term of this Agreement will automatically renew immediately following the expiration, as applicable, of the Initial Term or applicable Renewal Term (as defined below), for successive one (1) year terms (each such additional term, a "Renewal Term" and, collectively, with the Initial Term, the "Term"). This Agreement may be renewed by the Parties, consistent with the PRIME CONTRACTOR's agreement with DJJ, and this Agreement shall terminate, upon the expiration or termination of the PRIME CONTRACTOR's contract with DJJ, if not terminated earlier as otherwise provided in this Agreement.

C. **Standards.**

- a. **Services Names and Definitions.** PROVIDER shall provide Direct Services according to the criteria defined in "EBA Service Definitions and Fees" (Appendix A). PROVIDER shall meet all requirements for documentation, delivery of service, and reporting timelines, as identified herein and by the appropriate licensing body for that Service. PROVIDER shall provide Services at or above the quality level prevailing in the community for the provision of similar Services at the time of performance. PRIME CONTRACTOR may not pay PROVIDER for Services delivered which are not consistent with the definition of the Service as described in Appendix A, or which are not met, as reasonably determined the PRIME CONTRACTOR per the Service quality guidelines. Care Coordination and related paperwork are considered part of the Direct Services and are not separately compensated hereunder.
- b. **Dosage Guidelines.** Generally, dosage refers to the amount of Services a youth and family are involved in. Frequency, duration, intensity and engagement all impact dosage considerations. PROVIDER, in conjunction with the PRIME CONTRACTOR and DJJ, shall establish a minimum and maximum number of qualifying program hours per participant and track program participation for each youth. Interventions that are considered in this dosage calculation must include specific targeting of criminogenic needs and delivery methods that are evidence-based (Cognitive behavioral, social skill building, anger control and emotional regulation skills) and conducted in the context of social learning theory. Specifically, the PROVIDER will adhere to the service request as set forth in the POSO and will track program participation for each Youth. The PROVIDER shall not exceed the designated maximum number of qualifying program hours or deviate from the Service modality requested ("Dosage Guidelines"). Requests for changes or alterations to the approved Dosage Guidelines on the EBA POSO shall be made to the appropriate designated DJJ Staff and PRIME CONTRACTOR.

D. **Licensure.** The PROVIDER represents and warrants that it/he/she shall (1) provide Services listed on the POSO and operate within one's scope of practice in accordance with all applicable laws, rules, and regulations as set forth by the Virginia Department of Health Professions, (2) duly holds all licenses, credentials, certifications, and/or other qualifications (collectively, "Qualifications") required by local, State, and Federal laws and regulations to provide Services (e.g., Licensed by VA Department of Health Professions, Department of Behavioral Health and Developmental Services, Department of Education, etc.) and (3) will furnish satisfactory proof of such Qualifications to the PRIME CONTRACTOR's authorized representative upon execution of this Agreement. PROVIDER will ensure that it and all individuals that provide Services hereunder maintain required Qualification in good standing at all times and will **immediately** notify the PRIME CONTRACTOR's authorized representative in the event such Qualification is suspended, withdrawn, or revoked. The PROVIDER agrees that such suspension, revocation, or withdrawal may constitute grounds for the immediate termination of this Agreement. PROVIDER further agrees to notify the PRIME CONTRACTOR if PROVIDER is appealing any action that might result in a change in the Qualification if the appeal is denied. Additionally, PROVIDER will ensure that all individuals providing Services hereunder act at all times in accordance with all applicable laws, rules, and regulations and within their applicable scope of practice.

- a. Misrepresentation of possession of such license shall constitute a breach of contract and terminate this Agreement without written notice and without financial obligation on the part of PRIME CONTRACTOR to pay PROVIDER's invoices.
- b. If a facility is placed on provisional license status, the PRIME CONTRACTOR will review the Youth's placement at that facility within thirty (30) calendar days to determine whether it is in the best interest of the Youth to continue placement or if removal is warranted, based on the facility's ability to meet the Youth's treatment needs identified in the treatment plan. No new referrals will be made to any facility with a provisional license.

E. Fees.

a. **Fee Schedule.**

- i. Fees. PRIME CONTRACTOR shall pay to PROVIDER according to Appendix A, in consideration for the delivery of Services, in accordance with the terms of this Agreement and the POSO. It is understood and agreed between the Parties herein that the PRIME CONTRACTOR shall be bound hereunder only to the extent of the funds available, or which may hereafter become available from DJJ for the purpose of this Agreement.
- ii. Should the PROVIDER elect to offer additional Services not included on the Service Definition and Fees included in Appendix A, the PROVIDER may make the request to the PRIME CONTRACTOR, and related qualifications to add the Service(s) by Addendum.
- iii. The PRIME CONTRACTOR shall not pay for Services at a higher rate than paid by Medicaid. The PROVIDER guarantees that the reimbursement rate received from the PRIME CONTRACTOR is the same rate received from other local governing bodies or agencies for like Services in the Commonwealth.

b. **Fee Schedule Updates.**

- i. The rates applicable to Services provided in accordance with this CONTRACT shall appear on Appendix A incorporated herein, and these rates shall apply to all Services provided during the contract Term; no changes will be made during the contract Term.
- ii. The PROVIDER may submit a request for rate increases for the following Term, to the PRIME CONTRACTOR with a rationale prior to expiration of the contract term;
- iii. Fees must align with PROVIDER rates charged to other government agencies; rate increases shall align and shall not exceed Consumer Price Index (CPI), unless set forth through state policies or legislation.
- iv. PRIME CONTRACTOR reserves the right to amend Appendix A, in its discretion, with approval from DJJ. If such changes are not acceptable to the PROVIDER, and PROVIDER notifies PRIME CONTRACTOR of its objection to a Fee Schedule update, PRIME CONTRACTOR will continue to pay the existing rates for Youth already placed with or served by the Provider. However, no new authorizations will be made until DJJ, PRIME CONTRACTOR, and PROVIDER agree upon the rate changes and amended herein.

F. Payment Terms

- a. **Monthly Invoices.** The PROVIDER shall prepare and submit one comprehensive monthly invoice, in the form and manner required by PRIME CONTRACTOR, to the PRIME CONTRACTOR, by the 5th day of the month following the month in which Services were delivered, for all Youth served. The PROVIDER shall bill the PRIME CONTRACTOR for any and all Services provided, within thirty (30) calendar days of the date on which the Service was provided. The PROVIDER shall bill the PRIME CONTRACTOR for the actual increments of Services provided to the Youth, not to exceed the Dosage Guidelines in the POSO. All invoices shall include an itemized report containing (A) Youth served, (B) Services provided, (C) the date of each Service, (D) number of units provided, (E) the service charge per Service, and (F) related CSU. Any invoice not submitted in the appropriate manner shall be invalid and no payment shall be due for such invalid invoice.
 - i. THE PROVIDER's invoice shall be accompanied by a Service Plan, Monthly Progress Report, and or Discharge Summary for each Service provided, as described in Section J, below. **The PROVIDER's payment shall not be processed until all required documentation is received.**
 - ii. In no case shall the PRIME CONTRACTOR be obligated to pay for Services rendered if the PROVIDER fails to submit an invoice within thirty-five (35) calendar days after the end of the calendar month in which the Services were provided, with the appropriate reports outlined herein.

- iii. The PROVIDER agrees to invoice, and the PRIME CONTRACTOR agrees to pay, for only those Services authorized by a POSO between the "Effective Date" and the "End Date" shown on the POSO and authorized by DJJ Staff.
 - iv. Unused units of Service shall not accumulate or transfer from month to month without prior written approval from the PRIME CONTRACTOR.
 - v. PROVIDER invoices which are correct, approved by the PRIME CONTRACTOR and the referring entity (e.g., CSU), accompanied by such documentation described in Section J, below, and which are received timely by the PRIME CONTRACTOR, shall be processed and paid within forty-five (45) calendar days, so long as all required signatures have been obtained. The PRIME CONTRACTOR shall pay the PROVIDER within seven (7) calendar days of receipt of payment from DJJ for all approved and verified Services. PRIME CONTRACTOR shall notify the PROVIDER, in writing, of the PRIME CONTRACTOR's intention to withhold payment and the reason. PROVIDER invoices received by the PRIME CONTRACTOR which are not correct shall be returned for correction.
- b. Final Invoices.** The PROVIDER shall submit the final invoice for payment to the PRIME CONTRACTOR no more than thirty-five (35) days after the Termination Date. If the PROVIDER fails to submit such final invoice timely, all rights to payment are forfeited. PRIME CONTRACTOR will not honor any requests submitted after the above time period.
- c. Expenses.** PRIME CONTRACTOR shall not reimburse PROVIDER for any expenses unless such expenses are approved in advance, in writing, by PRIME CONTRACTOR.
- d. Additional Charges.** The PROVIDER agrees that no Youth or member of the Youth's family will be charged a fee outside of the rate agreed to by the PROVIDER for the same Service, except Services specifically excluded, unless required by the Courts.
- e. Unauthorized Absences.**
- i. For residential placements, payment to the PROVIDER for unauthorized absences shall be made at the rates specified in the POSO, and such payment shall not exceed seventy-two (72) hours without prior written approval of the PRIME CONTRACTOR. Unauthorized absences include, but are not limited to, a Youth's placement in detention, hospitalization, or elopement, as determined by the PRIME CONTRACTOR. PROVIDER shall treat any unauthorized absences as "serious incidents" and shall provide such reports and notifications described in (J)(e)(ii)-(iii), below. Should the PRIME CONTRACTOR provide written approval to continue payments during unauthorized absences exceeding seventy-two (72) hours, such payments shall be made in accordance with a separate written agreement with the PROVIDER. The PROVIDER shall not be required to maintain a Youth's placement for more than seventy-two (72) hours following an unauthorized absence without prior written agreement by the PRIME CONTRACTOR to continue payments to hold the placement.
 - ii. For office-based community services, neither absences nor no-shows, whether authorized or not, will be funded.
 - iii. For community-based services provided in the home, the PROVIDER may bill for associated travel time in the event of an absence or no-show only once during the month, and only if good faith efforts to contact the family are made, as determined in PRIME CONTRACTOR'S reasonable discretion. PRIME CONTRACTOR reserves the right to approve or deny payment for travel time in its sole discretion.
- f. Medicaid/Private Insurance.**
- i. The PROVIDER acknowledges it shall use Private Insurance and Medicaid-funded Services whenever available for the appropriate treatment of youth receiving services. The PROVIDER shall meet all Medicaid requirements for documentation, delivery of Service, and reporting timelines. The PROVIDER shall submit all required documentation for approval by the Department of Medical Assistance Services (hereinafter, "DMAS") in a timely manner.

- ii. If the PROVIDER is Medicaid eligible, it shall confirm the status of Medicaid eligibility, and shall file for Medicaid reimbursement for eligible Youth and Services. If a Youth is eligible for Medicaid, then PROVIDER shall seek reimbursement for Services from DMAS. If the PROVIDER receives Virginia Medicaid payments for Services rendered under this Agreement, such payments shall constitute payment in full for those Services. The PRIME CONTRACTOR shall not reimburse the PROVIDER more than the Medicaid-authorized rate for the same Service. PRIME CONTRACTOR shall not be responsible for payment to PROVIDER for Medicaid-eligible Services.
- iii. Notwithstanding the above, if, through no fault of the PROVIDER, Medicaid denies a claim for Services, PRIME CONTRACTOR shall reimburse PROVIDER for such Services identified in the POSO. The PRIME CONTRACTOR shall not accept or pay invoices for Medicaid-eligible Services until DMAS makes a determination that Services are no longer reimbursable for a particular Youth. Should Medicaid be discontinued or denied (and the discontinuance or denial is not attributable to the fault of the PROVIDER), the PRIME CONTRACTOR shall pay invoices for Services outlined in the POSO.
- iv. The PROVIDER shall provide to the PRIME CONTRACTOR a copy of all Medicaid approval and denial certifications with the monthly invoice. The PRIME CONTRACTOR may, in its sole discretion, choose not to reimburse PROVIDER for Services if PROVIDER fails to timely provide such certifications.

g. Contested Charges.

- i. Under special circumstances in which (1) PROVIDER provides Services outside the scope of the POSO or this Agreement, or (2) PRIME CONTRACTOR disagrees with the charges for PROVIDER Services within the scope of this Agreement, payment amounts for Services may differ from invoiced amounts. In such cases, PROVIDER shall be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Contested Charges will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached.
- ii. Upon determining that an invoice contains Contested Charges, the PRIME CONTRACTOR shall promptly notify the PROVIDER, in writing, that it has identified Contested Charges and the basis for the determination. PRIME CONTRACTOR reserves the right to reduce or disallow the amount of any payment for Contested Charges.
- iii. If a Contested Charge is ultimately approved, after further investigation, by the designated DJJ entity, the PRIME CONTRACTOR will need to resubmit all required documentation and an updated invoice to the designated DJJ Staff for approval.
- iv. A PROVIDER may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (Code of Virginia, § 2.2-4363).

- G. Employee Background Checks.** The PROVIDER shall be in compliance with all State laws, regulations, and licensure requirements relating to conducting criminal background checks of employees and volunteers. In particular, the PROVIDER agrees that all of its agents, employees, assignees, and volunteers providing Services to, or having direct contact with a child and/or family, must complete a criminal history check to include sex offender registry through a local police department, Sheriff's Department, or Virginia State Police office, a fingerprint check through the Virginia State Police and Federal Bureau of Investigation, and the Virginia Child Abuse and Neglect Central Registry (hereinafter, the "Central Registry"). The PROVIDER agrees that if the PROVIDER or any of its agents, employees, or assignees, having contact with Youth, are named in the Central Registry, the information shall be made available within one (1) business day to the PRIME CONTRACTOR, DJJ Staff and regulatory personnel.. The PROVIDER shall remain in compliance with all Federal and State law, regulations, and licensure requirements relating to the conducting of criminal checks of its employees during the Term. *(A list of VA DJJ Barrier Crimes available upon request).*

H. Referral Process/Purchase of Services.

- a. PRIME CONTRACTOR shall issue a referral packet and POSO to PROVIDER, which shall notify PROVIDER of the need for Services. The POSO will describe which Services are requested and shall include Dosage Guidelines (including specific modality, as applicable, anticipated start dates, and approved units, etc.)
- b. Prior to commencing the delivery of Services, **and within three (3) business days of receipt of a referral packet or POSO** from PRIME CONTRACTOR, PROVIDER shall notify the PRIME CONTRACTOR and appropriate designated DJJ Staff of the available Service start date and PROVIDER assigned staff, as appropriate.
- c. PROVIDER will initiate/ begin community-based Services within 5 business days of the referral, or by the target start date identified on the POSO.
- d. For community-based services, PROVIDER will contact the Youth and/or family to coordinate and/or initiate Services within five (5) business days; PROVIDER shall communicate with the PRIME CONTRACTOR and DJJ Staff if the family is unresponsive or unable to be reached. PRIME CONTRACTOR shall not pay PROVIDER for (i) any Services not indicated on a POSO, (ii) incidental care coordination, documentation, or other Services provided or required as part of Direct Services, or (iii) any Services delivered which exceed the approved number of units in the POSO allotted for the Youth, unless PROVIDER receives prior written approval from PRIME CONTRACTOR.
- e. PROVIDER shall invoice PRIME CONTRACTOR only for those Services described in the POSO, at the rates established herein, and in accordance with the terms of this Agreement, unless PROVIDER receives prior written approval from PRIME CONTRACTOR.
- f. Should the PROVIDER receive a request from designated DJJ Staff to begin providing Services prior to receipt of a POSO, the PROVIDER must contact the PRIME CONTRACTOR to obtain a copy of the POSO and referral. If any provision in the POSO is inconsistent with the PROVIDER's placement agreement, the provisions of the POSO and this Agreement shall prevail.

I. Service Plans, Reporting, and Documentation. PROVIDER shall prepare written individual youth progress reports for distribution to DJJ Staff and PRIME CONTRACTOR. Reports shall be submitted to the PRIME CONTRACTOR by the PROVIDER by the 5th day following the end of the month during which services were delivered. All reports, including Evaluations, Service Plans and Progress Reports, shall include, in addition to the specific requirements listed below, the following: PROVIDER name, name of service provider assigned by PROVIDER (e.g. assigned staff/therapist name) and credentials (when applicable), staff contact information, supervisor (when applicable), Service name/type, modality of service, date of Service, assigned court service unit, the relevant Youth's first and last name, Youth juvenile number, the Youth's date of birth and/or age, and any other applicable requirements.

- a. **Assessments and Evaluations.** Assessments and Evaluations shall be conducted by an appropriately qualified professional and shall include a report that captures a summary of the clinical evaluation, case conceptualization, working diagnosis, answer(s) to referral question(s), and recommendations. Evaluation reports shall be sent, by the end date on the POSO, to the designated DJJ Staff and the PRIME CONTRACTOR, and shall include a minimum of the following:
 - i. Name and dates of interviews, records reviewed, testing inventories or instruments utilized; and
 - ii. Date of the report, signature and credentials of the evaluator, including a co-signor as necessary in accordance with applicable laws and regulations.
- b. **Service Plans.** PROVIDER shall design an individualized Service Plan (or Treatment Plan) in conjunction with the Youth, designated DJJ Staff and, when applicable, the parent(s)/guardian(s). Such Service Plan must be consistent with, and describe a reasonable plan to meet, the goals of the court in accordance with the DJJ-provided case plan, and reason for the referral. It must comport with the Youth's court supervision status, the criminological needs identified in the referral packet, YASI, and other related

assessments. Service Plans shall be sent to the designated DJJ Staff and the PRIME CONTRACTOR, and shall include the following:

- i. Overarching, measurable, achievable goals related to the reason for referral and, as applicable, Youth Assessment and Screening Instrument (“YASI”) Domains as identified at time of referral;
 - ii. Specific time-limited objectives and measurable action steps the youth (and/or family) will complete, Related tasks indicators for the achievement of identified outcomes as they apply to the Youth’s achievement of the overarching goal and discharge from Services; and
 - iii. Signatures of the Youth, the Youth’s parent(s)/custodian(s) (where applicable), and designated DJJ Staff.
- c. **Monthly Progress Reports.** PROVIDER shall submit written monthly reports addressing each goal of the treatment plan related to authorized Services on the POSO. Monthly Progress Reports shall be submitted to PRIME CONTRACTOR no later than the fifth (5th) day following the end of the month during which Services were delivered and must include the following:
- i. Progress towards the overarching goals and identified objectives listed in the Service Plan, related to the reason of the referral.
 - ii. Specific activities and strategies worked on during each session.
 - iii. Assessment of protective factors and the level of family engagement partnership, including specific strategies and activities.
 - i. Completion date or anticipated completion of each goal and objective.
 - ii. Revisions to measurable objectives.
 - iii. Reports shall include the following information regarding all Service provision:
 - (1) the date, time and duration of each Service unit,
 - (2) the purpose of Service,
 - (3) the names of the individuals involved in the session/ Service, and
 - (4) the location at which the Service was provided or the the Service delivery modality (e.g., Tele-health, telephone, etc.)
 - iv. Progress Reports shall include all case-related contacts.
- d. **Discharge Reports.** The PROVIDER shall submit a fully and accurately completed cumulative written Discharge Report to the PRIME CONTRACTOR and the designated DJJ Staff within 20 calendar days of termination of Services. The discharge plan must be completed prior to submission of the final invoice for payment. The discharge report shall include:
- i. Status of discharge (e.g., completion or non–complete).
 - ii. Overall progress made toward the identified measurable goals with emphasis on needs identified by the referring worker at time of referral.
 - iii. Overall progress made on items within the domains of the YASI.
 - iv. Overall protective factors at time of program/Service completion.
 - v. Youth-specific recommendations for continued Services or supports, with a Transition Plan as requested.
- e. **Safety Plans and Relapse Prevention Plans**
- i. PROVIDER shall provide Youth a mutually developed Relapse Prevention Plan (e.g., Sustainability Plan, Transition Plan, etc.) at the close of Services to include, without limitation, Substance Abuse Services, Services for Youth with Sexualized Behavior (YSB), Multi-Systemic Therapy (MST), and Functional Family Therapy (FFT), as appropriate.
 - ii. Relapse Prevention Plans shall be provided to the Youth and DJJ Staff at the time-of-Service termination and to the PRIME CONTRACTOR with the final invoice and within 20 calendar days of termination of Service.

- iii. **For Youth with Sexualized Behaviors**, the PROVIDER shall develop a functional and collaborative Relapse Prevention Safety Plan (RPSP) with the Youth, DJJ Staff, and parent(s) and/or guardian(s), when applicable, upon Service initiation or at the development of the Service Plan.
 - iv. All RPSPs will be based on DJJ's RPSP Guidelines, taking into account the Youth's risk level, individual needs, and responsivity to reduce risk, increase safety, and maximize the Youth's potential for pro-social development. PROVIDER shall provide the PRIME CONTRACTOR, referring DJJ Staff, Youth, and parent(s) and/or guardian(s), when applicable, a copy of the RPSP within the 30 days of initiation of Services. The RPSP shall be submitted to PRIME CONTRACTOR with the PROVIDER's invoice for the Youth's first month of receiving Services. (Reference document available from PRIME CONTRACTOR upon request).
 - v. The PROVIDER shall update and revise the RPSP with the Youth as needed throughout the delivery of Services; a final copy shall be provided to the Youth at the close of Services and attached to the Discharge Summary.
- f. **Other Documentation.**
- i. PROVIDER shall include details of the Feedback Session (as defined in the EBA Service Definitions and Fees) in the Evaluation Report, including the date and participants; or PROVIDER may submit a summary of the Service in a report with the billing.
 - ii. Upon request, the PROVIDER shall provide the PRIME CONTRACTOR with a copy of any reports, including, but not limited to, progress notes, safety plans, transition/relapse prevention plans, social histories, physical examinations, psychological exams, and psychiatric evaluations performed by the PROVIDER or while in the PROVIDER's care.
 - iii. PROVIDER and any of its subcontractors shall maintain such records as required by Section N, below.
 - iv. PROVIDER shall collect and maintain fiscal and statistical data on program outcomes pursuant to Sections K, L and N below.
- g. **Serious Incident Reporting.**
- i. General Rule. All serious incidents, *actual or alleged*, relating to a Youth shall be reported by the PROVIDER. Serious incidents include but are not limited to: Death; Fire; Alleged child abuse or neglect; Serious juvenile injury or illness; suicide attempt; Serious staff injury or illness; assault or altercation; Juvenile assault on staff; Staff arrest or serious misconduct; and any other serious occurrence out of the ordinary course of operations that is likely to attract attention of the media or the general public or that could result in litigation. (Refer to full list of serious incident types, definitions, and instructions included on the Commonwealth of Virginia Department of Juvenile Justice Service Provider and Local Partner Incident Report: <https://evidencebasedassociates.com/wp-content/uploads/2019/04/Direct-Care-DSP-Incident-Report-Form.docx> and <https://evidencebasedassociates.com/wp-content/uploads/2019/11/Service-Provider-Incident-Report-Not-In-Direct-Care-Status-11-1-2019.docx>)
 - ii. SIR Report. The Serious Incident Report (hereinafter, "SIR") shall provide a factual, concise account of the incident, on the DJJ-approved SIR Form within the approved time frames. The report shall include a minimum of: the name of the PROVIDER, the name of the Youth, the date and time of the actual incident, the location of the incident the names, titles, and locations of staff who responded, a description of the incident including a clear statement of what happened including any physical evidence, nature of the response including any use of physical force, any medical treatment, any external assistance, any program sanctions, criminal charges or justification when criminal charges are not sought in instances of assault causing serious injury, the action taken, the names of any witnesses, any recommendations, the name of the individual completing the report, the date of the report, and all notifications made. (Reference: DJJ Incident Reports available upon request).

- i. **SIR Notification.** Proper notification of the incident shall be made to (1) the appropriate public safety authority, as required by law and the State licensing board; (2) Verbal notification of the incident shall be provided to the Youth's parent(s)/custodian(s) and designated DJJ Staff on the day of the incident and (3) Written notification of the incident on the required form, shall be provided to the PRIME CONTRACTOR and designated DJJ Staff within one business day of the incident.
 - h. **Service Completion Data**
 - i. Submit individual Youth and Service completion information through the submission of the PRIME CONTRACTOR'S Service Completion Form or other approved EBA document, to capture the service initiation date, actual Service start date, Treatment Plan date, Service end date, total dosage, completion status, and progress towards goals. *Forms located on the EBA website.*
 - i. **Utilization Review**
 - i. PROVIDER shall ensure that the Youth is progressing toward the goals in the Treatment/Service Plan. The PROVIDER shall notify the PRIME CONTRACTOR and DJJ Staff if:
 - 1. Progress is not made over two (2) reporting periods,
 - 2. Following two (2) or more acts of omission or avoidance of the Youth and/or family in a single monthly reporting period, preventing the delivery of Services as specified in the POSO and Service Plan, including but not limited to, lack of participation or cancellation.
- J. **Quarterly and Annual Outcome Reports.** Each PROVIDER shall submit quarterly and annual reports, as requested, to reflect the effectiveness of Services and outcome of the Services for Youth served. The performance areas to be addressed shall include, without limitation, the following:
 - i. Summary utilization data (e.g., number of Youth served in various programs s) including decreased risk factors and increased protective factors at the time of program completion, when applicable;
 - ii. Summary of effectiveness of Services and outcomes;
 - iii. Attachment of reviews and reports prepared by licensing bodies;
 - iv. Summary of results of any self-audits, compliance audits, or quality assurance reviews;
 - v. Summary of continuous quality improvement efforts and performance improvement plans;
 - vi. Summary of completion status and treatment dosage goals (aggregate population);
 - vii. Summary of serious incidents;
 - viii. Summary of significant Staff development events or training;
 - ix. Attachment of quality assurance and/or fidelity reviews by Evidence Based Program (EBP) model proprietors' fidelity reports, to include without limitation Multi-Systemic Therapy (MST) Performance Improvement Review (PIR) and Functional Family Therapy (FFT) TYPE Report, as applicable; and
 - x. Performance Measures/Objectives.

FAILURE TO SUBMIT OUTCOME PROGRESS REPORTS TO THE PRIME CONTRACTOR WILL RESULT IN NON-PAYMENT OF SUBMITTED INVOICES.

- K. **Performance Objectives.** PROVIDER shall meet the applicable performance measures required by DJJ and PRIME CONTRACTOR in accordance with the Prime Contract. Developing Performance Objectives may be a collaborative process between DJJ, the PRIME CONTRACTOR, and the PROVIDER based on the service type. If the PROVIDER fails to comply with the improvement plan and/or repeatedly misses Performance Objectives, the PRIME CONTRACTOR may increase Programmatic Oversight to include supervision, monitoring visits, required training, suspension of referrals, charge a financial penalty, withhold payment for Services, and/or terminate this Agreement, at the discretion of PRIME CONTRACTOR.
- L. **Programmatic Oversight.** PRIME CONTRACTOR shall, as a condition of its contract with the Commonwealth, monitor and oversee the delivery of Services for Youth placed pursuant to this Agreement. PROVIDER shall cooperate with PRIME CONTRACTOR by providing any requested records, reports, or documentation related to achievement of the Performance Objectives (including reports to DJJ Staff) in a timely manner. PROVIDER agrees that PRIME CONTRACTOR may share such records, reports, and/or documentation with DJJ and DJJ's regional

service coordination agency's elsewhere within the Commonwealth pursuant to applicable law. Timeliness of reports shall be determined in the sole discretion of the PRIME CONTRACTOR. PRIME CONTRACTOR may conduct periodic, announced or unannounced, programmatic and administrative monitoring to assess the PROVIDER's compliance with this Agreement and applicable federal and state laws, rules, and the PRIME CONTRACTOR's policies and procedures. PRIME CONTRACTOR may also, at its discretion, participate in PROVIDER's staffing or supervision meetings or calls, PROVIDER shall permit persons duly authorized by the PRIME CONTRACTOR to inspect and evaluate any Services provided, to include records, papers, documents, electronic documents, facilities, goods, and services of the PROVIDER that are relevant to this Agreement, to include program evaluation tools in use by model purveyors, PRIME CONTRACTOR and/or DJJ (e.g. EBP model fidelity tools, Standardized Program Evaluation Protocol (SPEP)), and interview any clients, subcontractors, volunteers, and employees of the PROVIDER under such conditions as the PRIME CONTRACTOR deems appropriate. Following such inspection and evaluation, the PRIME CONTRACTOR will deliver to the PROVIDER a list of its findings, including strengths and deficiencies regarding the manner in which Services are provided. The PROVIDER shall rectify all noted deficiencies specified by the PRIME CONTRACTOR within the specified period of time set forth in the PRIME CONTRACTOR's monitoring report, which may include the development of a Quality Improvement Plan (QIP) or Corrective Action Plan (CAP) to include the PROVIDER'S actions to meet compliance with this agreement. If the PROVIDER fails to comply with the improvement plan, the PRIME CONTRACTOR may increase Programmatic Oversight to include supervision, monitoring visits, required training, suspension of referrals, withhold payment for Services, and/or terminate this Agreement, at the discretion of PRIME CONTRACTOR. The PROVIDER's failure to correct these deficiencies within the time specified by the PRIME CONTRACTOR may constitute a breach, and PRIME CONTRACTOR shall be entitled to withhold payment and/or terminate this Agreement. This Section M shall survive the termination of this Agreement.

- M. **Financial Oversight** PROVIDER shall establish and maintain a reasonable accounting system that enables the PRIME CONTRACTOR to readily identify PROVIDER'S assets, expenses, costs of goods, and use of funds. The PRIME CONTRACTOR and its authorized representatives shall have the right to audit, to examine, and to make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to this Agreement kept by or under the control of the PROVIDER, including, but not limited to, those kept by the PROVIDER, its employees, agents, assigns, successors, and subcontractors. Such records shall include, but shall not be limited to, accounting records; written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); all paid vouchers, including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; back-charge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence. PROVIDER shall, at all times during the term of this Subcontractor Agreement, and for a period of five (5) years after the completion of this Subcontractor Agreement (or longer if necessary for the purposes of an unresolved State, local or Federal audit), maintain such records, together with such supporting or underlying documents and materials. The PROVIDER shall, at any time requested by PRIME CONTRACTOR, whether during or after completion of this Subcontractor Agreement, and at PROVIDER'S own expense, make such records available for inspection and audit (including copies and extracts of records as required) by the PRIME CONTRACTOR. Such records shall be made available to the PRIME CONTRACTOR during normal business hours at the PROVIDER'S office or place of business and subject to a three-day written notice. In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for the PRIME CONTRACTOR. **PROVIDER shall ensure that the PRIME CONTRACTOR has these rights with PROVIDER'S employees, agents, assigns, successors, and subcontractors, and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between the PROVIDER and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the PROVIDER'S obligations to the PRIME CONTRACTOR.** If the audit discovers substantive findings related to fraud, misrepresentation, or non-performance, the PRIME CONTRACTOR may recoup the costs of the audit work from the PROVIDER. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the PROVIDER'S invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from

presentation of PRIME CONTRACTOR'S findings to PROVIDER. This Section N shall survive the termination of this Agreement.

N. **Notices.** All notices or other communications required under this Agreement shall be in writing and shall be deemed effective when received and made in writing by either (i) hand delivery, (ii) registered mail, (iii) certified mail, return receipt requested, (iv) overnight mail, or (v) electronic e-mail addressed to the Party to be notified at the following address or to such other address as such Party shall specify by like notice hereunder:

- a. **PRIME CONTRACTOR:** Kara Brooks, Project Director
MAILING ADDRESS: PO Box 214 Powhatan VA 23139
E-mail: kbrooks@ebanetwork.com
Phone: (804) 433-7554

With a copy to: Nicole Janer njaner@ebanetwork.com

All notices of legal issues required to be provided by the PRIME CONTRACTOR to the PROVIDER shall be directed to:

- b. **PROVIDER:** NAME: _____
MAILING ADDRESS: _____
EMAIL: _____
PHONE: _____

O. **Contract Managers.** Listed below are the Contract Managers for the respective parties. Communication regarding the Services to be delivered pursuant to this Agreement shall be directed to the Contract Manager for the respective party. All notices, including, but not limited to, Progress Reports, Serious Incident Reports, and billing required by this CONTRACT to be provided to the PRIME CONTRACTOR shall be directed to:

- a. **PRIME CONTRACTOR Manager:** Kara Brooks, Project Director
MAILING ADDRESS: PO Box 214 Powhatan VA 23139
E-mail: kbrooks@ebanetwork.com
Phone: (804) 433-7554

- b. **PROVIDER Manager:** NAME: _____
MAILING ADDRESS: _____
EMAIL: _____
PHONE: _____

P. **Additional Terms and Conditions.** Additional terms and conditions of this Subcontractor Agreement are set forth in Appendix A ("EBA Service Definitions and Fees"), Appendix B (the "EBA Terms and Conditions"), Attachment C (the "Confidentiality Agreement"), and Appendices D-F (DJJ Standard Operation Procedures (SOP) re: Non-Security Dress Code, Code of Conduct, and PREA Standards). The aforementioned appendices are fully incorporated into and made a part of this Subcontractor Agreement by this reference as if fully set forth herein. This Subcontractor Agreement and all appendices hereto are referred to collectively as this "Agreement." All capitalized terms used in this Subcontractor Agreement and not defined herein have the meanings set forth in the EBA Terms and Conditions. By signing below, PROVIDER hereby acknowledges PROVIDER's receipt of all documents referenced above.

Q. **ENTIRE AGREEMENT.** Any documents referred to in this Agreement but not attached hereto, including, but not limited to, any POSO, are incorporated herein by reference as if fully set forth. No other understandings, oral or written, are deemed to exist or to bind either of the parties hereto in relation to the client identified on the POSO. Any alterations, variations, modifications, or waivers of provisions of this Agreement shall be valid and effective

only when they have been reduced to writing, signed by an authorized representative of the PRIME CONTRACTOR and of the PROVIDER, and are attached to this Agreement. Where there exists any inconsistency between the provisions of this Subcontractor Agreement and of any other documents incorporated herein by reference or otherwise, the provisions of this Subcontractor Agreement shall control. This Agreement, including all applicable Attachments, constitutes the entire agreement between the Parties relating to this subject matter **and supersedes all prior or simultaneous understandings, representations, discussions, negotiations, and agreements, whether written or oral.**

IN WITNESS THEREOF, the parties have executed this Agreement as of the Effective Date.

Evidence-Based Associates
PRIME CONTRACTOR

PROVIDER

By: _____
(signature)

By: _____
(signature)

Name: _____
(print)

Name: _____
(print)

Title: _____

Title: _____

Date: _____

Date: _____

DRAFT

EBA Terms and Conditions

- I. **APPLICABLE LAWS AND COURTS.** This Agreement shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. PROVIDER shall comply with all applicable federal, state, and local laws, rules, and regulations.
- II. **ANTI-DISCRIMINATION:** PROVIDER represents and warrants to the PRIME CONTRACTOR that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*.
 - A. If the PROVIDER is a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to a contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia, § 2.2-4343.1E*).
 - B. The PROVIDER will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The PROVIDER agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - C. The PROVIDER, in all solicitations or advertisements for employees placed by or on behalf of the PROVIDER, will state that such PROVIDER is an equal opportunity employer.
 - D. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting these requirements.
 - E. If the PROVIDER employs more than five employees, the PROVIDER shall (i) provide annual training on the PROVIDER'S sexual harassment policy to all supervisors and employees providing services in the Commonwealth, except such supervisors or employees that are required to complete sexual harassment training provided by the Department of Human Resource Management, and (ii) post the PROVIDER'S sexual harassment policy in (a) a conspicuous public place in each building located in the Commonwealth that the PROVIDER owns or leases for business purposes and (b) the PROVIDER'S employee handbook.
 - F. If the PROVIDER violates one of these provisions, the PRIME CONTRACTOR may terminate the affected part of this contract for breach, or at its option, the whole contract.
 - G. In accordance with Executive Order 61 (2017), a prohibition on discrimination by the PROVIDER, in its employment practices, subcontracting practices, and delivery of goods or services, on the basis of race, sex, color, national origin, religion, sexual orientation, gender identity, age, political affiliation, disability, or veteran status, is hereby incorporated in this contract.
- III. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By entering into a written contract with the PRIME CONTRACTOR, the PROVIDER certifies that the PROVIDER does not, and shall not, during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
- IV. **DEBARMENT STATUS:** The PROVIDER represents and warrants that it is not currently debarred by the Commonwealth of Virginia from providing services covered by this Agreement. PROVIDER further certifies that it is not an agent of any person or entity that is currently debarred by the Commonwealth of Virginia nor is PROVIDER created or used for the purpose of circumventing a debarment decision against another vendor.

V. **INSURANCE:** By signing the AGREEMENT or accepting a Purchase of Services Order PROVIDER certifies it shall, at minimum, have and maintain at all times the following types and amounts of insurance coverage. PROVIDER represents and warrants that it will maintain any applicable insurance coverage during the entire Term and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission. Prior to the Effective Date, PROVIDER shall provide PRIME CONTRACTOR with an insurance certificate evidencing the coverage and limits required under this Agreement. PROVIDER shall provide at least thirty (30) days' prior written notice to PRIME CONTRACTOR before any material alteration of coverage may take effect. PROVIDER shall deliver to PRIME CONTRACTOR, upon written request, satisfactory evidence of such insurance at any time during or after the Term. Failure of the PROVIDER to obtain and maintain such insurance shall be a breach of this Agreement, for which the PRIME CONTRACTOR shall have the right immediately to terminate this Agreement without notice to the PROVIDER.

- A. Workers' Compensation. Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. PROVIDERS shall notify PRIME CONTRACTOR of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia*.
- B. Employer's Liability. \$100,000.
- C. Commercial General Liability. \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products, and completed operations coverage. **The Commonwealth of Virginia and the PRIME CONTRACTOR must be named as an additional insured and so endorsed on the policy.**
- D. Automobile Liability. \$1,000,000 combined single limit. Required only if a motor vehicle is to be used in the contract. PROVIDER must assure that the required coverage is maintained by the PROVIDER (or third-party owner of such motor vehicle).
- E. Professional Liability.
 - I. HealthCare Practitioner (to include Physicians, Podiatrists, Chiropractors, Physical Therapists, Clinical Psychologists, Clinical Social Workers, Professional Counselors, Hospitals, or Health Maintenance Organizations) \$2,550,000 per occurrence, \$4,250,000 aggregate. These limits shall increase each July 1 through fiscal year 2031 in accordance with *Code of Virginia* § 8.01-581.15.
 - II. All other Professions \$1,000,000 per occurrence, \$3,000,000 aggregate, unless otherwise outlined by the *Code of Virginia* § 8.01-581.15.

VI. **DRUG-FREE WORKPLACE:** PROVIDER agrees to (i) provide a drug-free workplace for the PROVIDER's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the PROVIDER's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the PROVIDER that the PROVIDER maintains a drug-free workplace; and (iv) **include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.**

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with this Agreement, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

VII. **DEFAULT.** In case of failure to adequately deliver services in accordance with this Agreement, the PRIME CONTRACTOR, after due oral or written notice, may procure them from other sources and hold the PROVIDER responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the PRIME CONTRACTOR may have.

- VIII. **AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH.** A PROVIDER organized as a stock or non-stock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. Any business entity described above that enters into a contract with a public body pursuant to the Virginia Public Procurement Act shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.
- IX. **CIVILITY IN THE WORKPLACE.** PROVIDER shall take all reasonable steps to ensure that no individual, while performing work on behalf of PROVIDER or any subcontractor of PROVIDER in connection with this agreement shall engage in 1) harassment (including sexual harassment), bullying, cyber-bullying, or threatening or violent conduct, or 2) discriminatory behavior on the basis of race, sex, color, national origin, religious belief, sexual orientation, gender identity or expression, age, political affiliation, veteran status, or disability.
- X. **COMPLIANCE WITH LAW AND POLICY.**
- A. PROVIDER shall comply with (1) PRIME CONTRACTOR's written policies, procedures, and standards, and (2) all local, state, and federal laws, rules, regulations, and codes, related to the performance of Services pursuant to this Agreement.
 - B. PROVIDER and/or its employees, agents, independent contractors, and representatives ("Personnel") provided under this Agreement shall obtain any licenses, protocols, certifications, and permits necessary and appropriate or required by PRIME CONTRACTOR or another local, state, or federal agency, to perform Services pursuant to this Agreement. Such licenses, protocols, certifications, and permits must be active and up to date at all times during the Term. Prior to execution of this Agreement, PROVIDER shall provide to the Contract Manager copies of all current licenses or certificates required for the delivery of Services.
 - C. Any and all waivers of PRIME CONTRACTOR's policies, procedures and/or standards shall be reduced to writing and signed by both Parties.
- XI. **AMERICANS WITH DISABILITIES ACT.** PROVIDER shall not exclude anyone from participating in; deny anyone he proceeds or benefits of; not otherwise subject any person(s) or entity(ies) to any form of discrimination based on the race, creed, color, national origin, age, sex, or disability. PROVIDER shall comply with the pertinent portion of the Americans with Disabilities Act of 1990; P.L. 101-336.
- XII. **SUBCONTRACTING.** PROVIDER shall not subcontract for any of the work performed pursuant to this Agreement without the written approval of the PRIME CONTRACTOR. In any subcontractor agreement, PROVIDER must impose terms and conditions at least as stringent as those in this Agreement. Approval of subcontracts may not be construed in any way to add liability or obligations to PRIME CONTRACTOR and shall not relieve PROVIDER of its obligations under this Agreement.
- XIII. **RECORD RETENTION.** The PROVIDER shall retain all books, records, timesheets, receipts, agreements, and other documents ("Records") relative to this contract for five (5) years after the final payment, or until audited by the Commonwealth of Virginia, whoever is sooner. The PRIME CONTRACTOR, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period. The PROVIDER and any subcontractors shall retain and, upon request, provide copies to PRIME CONTRACTOR of the following: disaggregated raw results and summary results from any stakeholder surveys administered, copies of scoring rubrics and other monitoring and quality assurance tools utilized, and fidelity and performance data collected, including fidelity and data provided by third-party model proprietors. PROVIDER shall provide copies of Records to PRIME CONTRACTOR within seven (7) days of a request by PRIME CONTRACTOR.
- XIV. **INTELLECTUAL PROPERTY.**
- A. All inventions, works of authorship, and developments conceived, created, written, or generated by or on behalf of PRIME CONTRACTOR ("IP"), whether solely or jointly, including without limitation, in connection with the Services hereunder and all intellectual property rights therein, shall be the sole and exclusive

property of PRIME CONTRACTOR. PROVIDER agrees that, to the extent that the ownership of any contribution by PROVIDER or its employees to the creation of the IP is not, by operation of law or otherwise, vested in PRIME CONTRACTOR, PROVIDER hereby assigns and agrees to assign to PRIME CONTRACTOR all right, title, and interest in and to such IP, including without limitation all the intellectual property rights therein, without the necessity of any further consideration.

- B. To the extent any of the rights, title, and interest in and to the IP or intellectual property rights therein cannot be assigned by PROVIDER to PRIME CONTRACTOR, PROVIDER hereby grants to PRIME CONTRACTOR an exclusive, royalty-free, transferable, irrevocable, worldwide, fully paid-up license (with rights to sublicense through multiple tiers of sublicensees) to fully use, practice and exploit those non-assignable rights, title, and interest. To the extent that the foregoing assignment and license are not enforceable, PROVIDER agrees to waive and never assert against PRIME CONTRACTOR those non-assignable and non-licensable rights, title, and interest.
- C. PROVIDER agrees to execute any documents or take any actions as may reasonably be necessary, or as PRIME CONTRACTOR may reasonably request, to perfect ownership of the IP. If PROVIDER is unable or unwilling to execute any such document or take any such action, PRIME CONTRACTOR may execute such document and take such action on PROVIDER's behalf as PROVIDER's agent and attorney-in-fact. The foregoing appointment is deemed a power coupled with an interest and is irrevocable.

XV. **NO EJECT/NO REJECT.**

PROVIDER shall serve any and all DJJ-involved Youth who are appropriately referred and for whom the Service is, in the discretion of the PROVIDER, clinically appropriate. This includes, but is not limited to, referrals made to programs based on the admission/exclusionary criteria, program description, Youth's identified needs, program availability, clinical judgement, responsivity barriers, and program interviews, when appropriate. A referral is appropriately referred if the PROVIDER has indicated to PRIME CONTRACTOR, pursuant to Section (B)(a) of the Subcontractor Agreement, that the PROVIDER has the capability and desire to provide such Service in the location in which the Service is referred. Upon initiation of Service with the Youth, it is feasible that a PROVIDER may communicate to the PRIME CONTRACTOR and the referring DJJ Staff the need for a higher level or different Service. The DJJ Staff should support any decisions about changes in Services and the PROVIDER will assist in a transition between Services, when applicable.

Maintaining a continuum of Services to all Youth in the DJJ system is considered an essential element in the successful performance of PRIME CONTRACTOR AND PROVIDER.

Should a Youth pose an imminent safety risk to themselves or others, the PROVIDER shall provide and coordinate appropriate crisis intervention and communicate closely with the PRIME CONTRACTOR and designated DJJ Staff. For Youth who struggle to adjust to Services or placement, the PROVIDER shall communicate with the PRIME CONTRACTOR and DJJ Staff to explore alternative supports (e.g., team meeting, family partnerships, additional supports, enhanced monitoring, modifications, etc.) to prevent a disruption in Services.

Importantly, alternative Services may be utilized from within the continuum or community resources and not through program discharge without the agreement of DJJ. If the PROVIDER no longer desires to provide Services to a Youth, based on new behaviors, increased needs, or other safety concerns, the PROVIDER shall provide written notice to PRIME CONTRACTOR **and** designated DJJ Staff of its desire to terminate Services, to include a reasonable justification for the notice. The termination shall be effective in thirty (30) days upon receipt of the notice from the PROVIDER. Additional Services may be available to support the Youth and PROVIDER until a termination or removal occurs.

Notwithstanding the above, Services may also be terminated if all parties, including the DJJ Staff, Courts, parent(s)/custodian(s), and the PRIME CONTRACTOR agree to such termination. If termination is approved, PROVIDER shall assist the PRIME CONTRACTOR in transition planning and assist, if requested, in the identification of an alternative Service for the Youth.

- XVI. **SUPPLEMENTARY EXPENDITURE.** PRIME CONTRACTOR, at its option and without notice to the Provider, shall have the right to make any payment or expenditure, on behalf of the PROVIDER, in the event the PROVIDER fails to make such payments or expenditures, and such act or failure to act jeopardizes the adequacy or availability of

the Services to be provided pursuant to this Agreement. Without limitation, such expenditures by PRIME CONTRACTOR may include payment for repairs affecting the life, health or safety of Youth or Staff, utilities, insurance premiums, rent or mortgage payments, and claims for which liens may be attached to the PROVIDER's property. Any payment by PRIME CONTRACTOR shall be without prejudice to any of PRIME CONTRACTOR's rights or remedies under this Agreement, at law, or in equity. All sums paid by PRIME CONTRACTOR, including indirect costs incurred by PRIME CONTRACTOR, pursuant to this paragraph, to bring a PROVIDER into compliance with the terms of this Agreement, shall be immediately due and payable from the PROVIDER. Such sums may be recovered by PRIME CONTRACTOR by means of an adjustment (offset) to an invoice otherwise payable to the PROVIDER under this Agreement. Payment of the cost described above shall not relieve PROVIDER of the duty of full performance under this Agreement.

- XVII. **OPTIONS.** PRIME CONTRACTOR has the option to modify the Agreement in the event the PRIME CONTRACTOR's needs for programming change. Any increased dosage of Service or changes in Services shall be evidenced by an amendment executed by both parties. The optioned Services may not commence before execution of the amendment.
- XVIII. **INVESTIGATION.** The PRIME CONTRACTOR may make such reasonable investigations as deemed proper and necessary to determine the ability of the PROVIDER to perform the Services and the PROVIDER shall furnish to the PRIME CONTRACTOR all such information and data for this purpose as may be requested. The PRIME CONTRACTOR further reserves the right to refuse payment or to terminate this Agreement if the evidence submitted by, or investigations of, such PROVIDER fails to satisfy the PRIME CONTRACTOR that such PROVIDER is properly qualified to carry out the obligations of this Agreement and to provide the Services contemplated therein.
- XIX. **TESTING AND INSPECTION.** The PRIME CONTRACTOR reserves the right to conduct any test/inspection it may deem advisable to assure Services conform to the standards set out in this Agreement.
- XX. **SUSPENSION OF WORK.** The PRIME CONTRACTOR may, in its sole discretion, suspend any or all activities under any POSO, at any time, when in the interests of the PRIME CONTRACTOR to do so. The PRIME CONTRACTOR shall provide the PROVIDER written notice outlining the particulars of suspension. Examples of the reason for suspension include, but are not limited to, budgetary constraints, or a declaration of emergency. After receiving a suspension notice, the PROVIDER shall immediately comply with the notice. Within ninety (90) days, or any longer period agreed to by the PROVIDER, the PRIME CONTRACTOR shall either (1) issue a notice authorizing resumption of work, at which time activity shall resume, or (2) terminate the Agreement. The PROVIDER will not receive compensation during the suspension period for the Services that are under suspension.
- XXI. **TERMINATION.**
- A. **Termination by Parties.** This Agreement may be terminated:
- i. This Agreement shall be terminable by PRIME CONTRACTOR, in its sole discretion, by providing written notice at least ten (10) days prior to the expiration of the Initial Term or then-current Renewal Term and such termination shall be effective on the last day of the Initial Term or the last day of the then-current Renewal Term.
 - II. By PROVIDER at the end of the Initial Term or then-current Renewal Term, provided that the PROVIDER provides at least sixty (60) days prior written notice to the PRIME CONTRACTOR. Such termination shall be effective on the last day of the Initial Term or the last day of the then-current Renewal Term (if written notice was timely provided). The PROVIDER shall be operating in a state of compliance with this Agreement at the time the notice is issued and shall remain in compliance for the duration of the notice period); or
 - III. At any time by *mutual written agreement* of the Parties; or
 - IV. By PRIME CONTRACTOR, for convenience, upon at least thirty (30) days prior written notice; or
 - V. Immediately if PRIME CONTRACTOR, in its sole discretion, believes that PROVIDER has jeopardized the health, safety, security of Youth in the care, custody, and control of the PROVIDER or its Staff; or

- VI. Immediately following the cancelation, termination, or expiration of the Prime Contract with DJJ.
- VII. By either Party, immediately, upon the other Party's giving notice to the other party (the "Notice Party") of "just cause" to terminate this Agreement, based upon acts or omissions of the Notice Party. For this purpose, "just cause" shall include the following events or occurrences:
 - 1. The insolvency, appointment of a receiver, or assignment for the benefit of creditors, or the commencement or any proceedings by or against the Notice Party under bankruptcy or insolvency laws and the same is not dismissed within sixty (60) days; or
 - 2. Failure to fulfill material obligations, representations, or warranties specified in this Agreement (including payment obligations), if such failure continues without cure for a period of thirty (30) days after notice thereof has been provided to the Notice Party.

B. Effect of Termination.

- I. Upon the termination of this Agreement, neither Party shall have further rights or obligations hereunder, except with respect to any rights or obligations accruing prior to the date and time of termination or surviving termination in accordance with the terms of this Agreement. PROVIDER shall be entitled to any fees payable hereunder for Services furnished prior to the date of termination.
- II. The termination provisions of this Section shall not be exclusive, but rather shall be in addition to any rights or remedies at law or in equity, or under this Agreement.
- III. The provisions of this Agreement that require the performance of obligations by either Party after the termination of this Agreement shall survive such termination.
- IV. Unless retention of certain Confidential Records is required by law or regulation, upon termination of the Agreement, within thirty (30) days, all Confidential Information shall be returned to the Disclosing Party or destroyed.
- V. **In the event this Agreement is terminated, PROVIDER will work in partnership with the PRIME CONTRACTOR and designated DJJ Staff to provide coordination and transition Services to an appropriate level of Service to maintain the health and safety of any Youth receiving Services at the time of termination.**

XXII. **DEBARMENT.** E-VERIFY PROGRAM: EFFECTIVE 12/1/13. Pursuant to Code of Virginia, §2.2-4308.2., any employer with more than an average of 50 employees for the previous 12 months entering into a contract in excess of \$50,000 with any agency of the Commonwealth to perform work **or provide services pursuant to such contract** shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to such public contract. Any such employer who fails to comply with these provisions shall be debarred from contracting with any agency of the Commonwealth for a period up to one year. Such debarment shall cease upon the employer's registration and participation in the E-Verify program. If requested, the employer shall present a copy of their Maintain Company page from E-Verify to prove that they are enrolled in E-Verify.

XXIII. **INDEMNIFICATION.**

- A. PROVIDER shall defend PRIME CONTRACTOR and the Commonwealth of Virginia Department of Juvenile Justice against any claim that Services furnished hereunder by PROVIDER, the content, format, or substance of which is not provided by PRIME CONTRACTOR, infringe any worldwide patents, trade secrets or copyrights. PROVIDER shall not be liable for any claim of infringement arising from PROVIDER's conformance with specifications provided by the PRIME CONTRACTOR.
- B. PROVIDER shall indemnify and hold harmless PRIME CONTRACTOR and the Commonwealth of Virginia Department of Juvenile Justice, their officers, directors, employees, agents and attorneys from and against any claims or actions brought by PROVIDER's employees, agents, independent contractors, clients, or any third parties, and from any and all damages, losses, expenses and reasonable attorney's fees and costs of

litigation, arising out of or resulting from any claim related to PROVIDER acts or omissions other than conformance with specifications provided by PRIME CONTRACTOR, including, but not limited to:

- I. Acts, errors or omissions claims caused by PROVIDER or any of its agents, employees, or independent contractors;
- II. Property damage claims caused by PROVIDER or any of its agents, employees, or independent contractors;
- III. Personal bodily injury claims caused by PROVIDER or any of its agents, employees, or independent contractors;
- IV. Workers compensation claims made by or caused by PROVIDER or any of its agents, employees, or independent contractors;
- V. Automobile collision damages and injuries claims made by or caused by PROVIDER or any of its agents, employees, or independent contractors; and
- VI. Discrimination claims made by or caused by PROVIDER or any of its agents, employees, or independent contractors.

c. Notwithstanding the foregoing, if the PROVIDER is a state or local agency, institution, board, or commissions (e.g., a Community Service Board), PROVIDER shall not be required to indemnify and hold harmless PRIME CONTRACTOR, but shall provide a [Liability Certificate of Coverage form](#) to PRIME CONTRACTOR.

XXIV. **DISPUTE RESOLUTION.** PROVIDER and the PRIME CONTRACTOR shall resolve any issues in controversy arising from the award of a contract or any contractual dispute first using Mediation, then binding arbitration using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia, § 2.2-4366*), prior to seeking relief from the courts.

XXV. **BACKGROUND CHECKS.** The PROVIDER shall be in compliance with all State laws, regulations and licensure requirements relating to conducting criminal background checks of employees and volunteers. PROVIDER will conduct criminal background checks on all employees, agents, or representatives who will be in a DJJ facility on more than two occasions. Any individual who has not satisfactorily completed a background check and is admitted to the facility for their first or second visit shall not be alone with a resident at any time. Contractor shall prohibit any representative who has not satisfactorily completed the background check in accordance with DJJ's requirements from entering DJJ facility on more than two occasions.

XXVI. **SECURITY REQUIREMENTS.** For PROVIDER Personnel on premises at a correctional facility:

- A. PROVIDER shall be responsible for ensuring that all Personnel, equipment, tools, and supplies/materials comply with any and all rules, regulations, and procedures of Commonwealth corrections and juvenile justice facilities. The Department of Corrections reserves the rights to deny entrance to anyone who is suspected of a breach of security or for failure to follow published rules, regulations, or procedures.
- B. All Personnel entering a correctional facility will be subject to a search of their person and personal items. Such searches may be frisk searches, searches by metal detectors or searches by narcotics detecting canines. In addition, all equipment, tools, supplies and materials will be subject to search or inventory at any time. Tools and materials must be carefully controlled at all times and locked when not in use. All ladders and movable lift equipment must be closely supervised when in use and brought out of the security compound when not in use.
- C. Any attempts to introduce contraband, to assist in escape, or to have unauthorized contact with the residents of the facility are prohibited and violators will be prosecuted under the provisions of the Code of Virginia. The PROVIDER's Personnel are prohibited from bringing into or taking out of the institution any items unless specifically approved. Any interaction between a PROVIDER's employee and any resident which assists the prisoner to escape is a felony and will be prosecuted. PROVIDER's Personnel may not

deliver, receive, or otherwise transfer any item, no matter how harmless, to or from a resident with express permission of the Warden/Superintendent or his/her designee.

- D. PROVIDER's Personnel or representatives are limited to movement to, from and within their assigned work area. No contact is allowed with resident unless expressly approved.
- E. No person who appears to be under the influence of drugs or alcohol will be allowed entry into a correctional facility.
- F. All PROVIDER'S Personnel must be in possession of a valid identification with a recent, clear photo in order to enter a facility.
- G. All PROVIDER'S Personnel are required to be dressed appropriately for the duties they are performing. The PROVIDER's Personnel shall not wear any clothing that is similar to or could be mistaken for resident clothing. Clothing that is short, tight-fitting, or revealing is not appropriate attire for a prison environment. Individuals so dressed will be asked to change their clothing or leave the facility.

XXVII. **DJJ PROCEDURES.** PROVIDER shall comply with DJJ's non-security dress code requirements and comply with DJJ's Code of Conduct when on premises at a correctional facility.

XXVIII. **PREA COMPLIANCE.** If applicable, PROVIDER and its employees or representatives will comply with the Prison Rape Elimination Act of 2003 ("PREA," Federal Law et seq.) and with all applicable PREA Standards, and DJJ procedures and requirements related to PREA for preventing, detecting, monitoring, investigating, and eradicating any form of sexual abuse within DJJ facilities, programs, and offices whether owned, operated, or contracted. PROVIDER'S employees or representatives who work directly with the juveniles in the custody of DJJ shall complete the PREA training as part of their facility orientation. Failure to comply with PREA, including PREA Standards and DJJ procedures may result in termination of the Agreement.

XXIX. **MANDATORY REPORTING.** PROVIDER shall comply with the applicable child abuse and neglect mandatory reporting requirements contained in Section 63.2-1509 of the Code of Virginia.

XXX. **CONFIDENTIALITY.**

- A. **General Requirements.** PROVIDER agrees to adhere to all Federal and State laws and regulations regarding confidentiality of juvenile offender and student information, including the use of required Consent to Exchange Information forms by other PROVIDERS and Sub-contractors.
- B. Any information obtained by the PROVIDER concerning any Youth pursuant to this Agreement shall be treated as confidential. Use and/or disclosure of such information by the PROVIDER shall be limited to purposes directly connected with the PROVIDER'S provision of Services under this Agreement. PROVIDER agrees to adhere to all Federal and State laws and regulations regarding confidentiality of juvenile offender and student information, including the confidentiality provisions of Section 16.1-300 of the Code of Virginia. This includes, but is not limited to, not photographing a Youth and not permitting media coverage of the Youth without the written permission of the parent(s) or the legal guardian(s). It further precludes audiovisual recording of the Youth as well as prohibits the Youth's participation in any research projects without the written permission of the parents(s) or the legal guardian(s).
- C. **Confidentiality Agreement.** PROVIDER shall require all Personnel that have contact with individuals in the custody of DJJ, under the supervision of DJJ, or otherwise receiving Services under this contract to sign the Confidentiality Agreement (Attachment C). PROVIDER shall, upon request, provide signed copies of such Confidentiality Agreements to PRIME CONTRACTOR.
- D. **Storage.** Contractor shall maintain any records that indicate the identity of juveniles in the custody of DJJ in paper form, in a locked file cabinet at all times. Individuals with access to the locked file cabinet shall sign a Confidentiality Agreement.
- E. **Electronic Records.** Any electronic records maintained by the PROVIDER pursuant to this Agreement shall be maintained in accordance with DJJ's Mutual Nondisclosure Agreement and DJJ's Security.

f. Information Security. PROVIDER shall use an encrypted e-mail product approved by DJJ Information Services to send and receive all e-mails containing data or any other identifying information (e.g., name, juvenile number) concerning Youth and families. All juvenile records and data, including electronic records, shall be maintained securely using means approved by DJJ Research and Information Services. PROVIDER shall be responsible for ensuring PROVIDER'S e-mail encryption product and information maintenance means are approved by the appropriate DJJ departments.

a. The PROVIDER shall also ensure that they comply with the Commonwealth of Virginia's Information Security Standard (aka SEC-501), as applicable, for all information technology associated with the handling of sensitive data and information of DJJ. The current version of the Commonwealth's Information Security Standard can be found at <HTTPS://WWW.VITA.VIRGINIA.GOV/POLICY--GOVERNANCE/ITRM-POLICIES-STANDARDS/> Variance, or non-compliance with this or the DJJ Information Security Program shall only occur with the approval of the DJJ Information Security Officer and the DJJ Director.

G. Failure to comply with this Section XXVIII shall constitute a material breach of this Agreement.

- XXXI. **THIRD PARTY RIGHTS.** This Agreement is neither intended nor shall it be construed to grant any rights, privileges, or interest in any third party without the mutual written agreement of the Parties.
- XXXII. **ASSIGNMENT.** This Agreement shall not be assignable by the PROVIDER in whole or in part without the written consent of the PRIME CONTRACTOR.
- XXXIII. **MODIFICATION, RE-NEGOTIATION, OR AMENDMENT.** Modifications or amendment of provisions of this contract shall only be valid when they have been reduced to writing and duly signed by all parties observing all the formalities of the original contract. PRIME CONTRACTOR is not obligated to pay for costs related to this contract that were incurred prior to the date of contract execution or after the termination of this Agreement. The Parties agree to re-negotiate this Agreement if federal and/or state revisions of any applicable laws, regulations, or PRIME CONTRACTOR policy, manuals, or service definitions make changes in this contract necessary.
- XXXIV. **SURVIVAL.** Sections XIII, XVII, XVIII, XX, XXII, XXIII, XXVIII shall survive the termination of this Agreement.
- XXXV. **GOVERNING LAW.** This Agreement and the rights and obligations of the parties to and under this agreement will be governed by and construed under the laws of the United States and the Commonwealth of Virginia without regard to the application of its conflict of laws provisions.
- XXXVI. **WAIVER; SEVERABILITY.** Except as otherwise specified in this Agreement, this Agreement may be amended or supplemented only by a writing that refers explicitly to this Agreement and that is signed on behalf of both parties. No waiver will be implied from conduct or failure to enforce rights. No waiver will be effective unless in a writing signed on behalf of the party against whom the waiver is asserted. If any of this Agreement is found invalid or unenforceable that term will be enforced to the maximum extent permitted by law and the remainder of the Agreement will remain in full force.
- XXXVII. **INDEPENDENT CONTRACTOR.** The parties are independent contractors and nothing contained herein will be construed as creating an agency, partnership, or other form of joint enterprise between the parties.
- XXXVIII. **ENTIRE AGREEMENT.** This Agreement shall constitute the entire agreement between the parties relating to this subject matter and supersedes all prior or simultaneous understandings, representations, discussions, negotiations, and agreements, whether written or oral.
- XXXIX. **FORCE MAJEURE.** Neither party will be liable to the other party or any third party for failure or delay in performing its obligations under this Agreement when such failure or delay is due to any cause beyond the control of the party concerned, including, without limitation, acts of God, governmental orders or restrictions, fire, or flood, provided that upon cessation of such events such party will thereupon promptly perform or complete the performance of its obligations hereunder.
- XL. **EXECUTION IN COUNTERPARTS.** This Agreement may be executed in one or more counterparts. Each counterpart will be an original, but all such counterparts will constitute a single instrument.

XLI. **PUBLICITY**. Neither party shall use the name or marks of the other or any of its Affiliates, of which the party is aware or should reasonably be aware are an affiliate of the other, in any advertising, marketing or promotion materials unless such permission has been given in writing by the respective party.

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