

# 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.
- 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.
- V. **INSURANCE:** PROVIDER shall, at minimum, have 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.** Coverage is compulsory for employers of three or more employees, to include the employer. PROVIDERS who fail to notify the PRIME CONTRACTOR and the Commonwealth of increases in the number of employees that change their workers' compensation requirements

under the Code of Virginia during the course of the contract shall be in noncompliance with the contract.

- 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. PROVIDER must assure that the required coverage is maintained by the PROVIDER (or third-party owner of such motor vehicle). (\*\*Only required if there is a "company vehicle".)
- E. Professional Liability. \$2,400,000 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.

- 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. **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.
- X. **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.
- XI. **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.
- XII. **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. PROVIDER shall provide copies of Records to PRIME CONTRACTOR within seven (7) days of a request by PRIME CONTRACTOR.
- XIII. **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.
- XIV. **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, 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.

***Maintaining a continuum 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, the PROVIDER shall provide and coordinate appropriate crisis intervention and communicate closely with the PRIME CONTRACTOR and designated DJJ staff. If the PROVIDER no longer desires to provide Services to a Youth, based on new behaviors or increased need, the PROVIDER shall provide written notice to PRIME CONTRACTOR and designated DJJ staff of its desire to terminate services and a reasonable justification for doing so, which termination shall be effective within thirty (30) days.

Notwithstanding the above, Services may also be terminated if all parties, including the 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 placement option for the youth.

- XV. **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.
- XVI. **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.
- XVII. **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.
- XVIII. **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.
- XIX. **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.
- XX. **TERMINATION.**
- A. **Termination by Parties.** This Agreement may be terminated:
- I. 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

- II. At any time by *mutual written agreement* of the Parties; or
- III. By PRIME CONTRACTOR, for convenience, upon at least thirty (30) days prior written notice; or
- IV. 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
- V. Immediately following the cancelation, termination or expiration of the Prime Contract with DJJ.
- VI. 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.**

XXI. **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.

XXII. **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.

XXIII. **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.

XXIV. **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.

XXV. **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.

XXVI. **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.

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

XXVIII. **CONFIDENTIALITY**.

- A. **General Requirements**. 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).
- B. **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 (Appendix D)**. PROVIDER shall, upon request, provide signed copies of such Confidentiality Agreements to PRIME CONTRACTOR.
- C. **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.
- D. **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.

- E. 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.
- F. Failure to comply with this Section XXVIII shall constitute a material breach of this Agreement.
- XXIX. 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.
- XXX. ASSIGNMENT. This Agreement shall not be assignable by the PROVIDER in whole or in part without the written consent of the PRIME CONTRACTOR.
- XXXI. 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.
- XXXII. SURVIVAL. Sections XIII, XVII, XVIII, XX, XXII, XXIII, XXVIII shall survive the termination of this Agreement.
- XXXIII. 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.
- XXXIV. 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.
- XXXV. 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.
- XXXVI. 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.
- XXXVII. 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.
- XXXVIII. 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.
- XXXIX. 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.