

STATE OF TEXAS

COUNTY OF TRAVIS

§  
§  
§

**PRE-EMPLOYMENT PHYSICAL EXAMINATION SERVICES CONTRACT CON0000588**

This contract will become effective **September 1, 2016**, and is by and between the **Texas Juvenile Justice Department**, hereafter called "TJJD," and **Occupational Health Centers of the Southwest d/b/a Concentra Medical Center, 5080 Spectrum Drive, Addison, TX 75001**, hereafter called "**Service Provider**," for the provision of pre-employment physical examination services. This contract is identified as contract number **CON0000588** and will expire on **August 31, 2017**.

This contract is entered into under the authority of Title 34 Texas Administrative Code Section 20.41, for the mutual considerations described in this contract.

**I. SERVICE PROVIDER**

- A. Service Provider certifies, by the signature of its authorized representative, that all Service Provider employees and subcontractors performing services under this contract hold licenses to practice medicine in the state of Texas as applicable and are in good standing with the Texas Medical Board. All Service Provider employees and subcontractors performing services under this contract shall maintain a valid license as applicable throughout the contract term and any subsequent extensions.
- B. Service Provider shall notify the TJJD if the above licenses become invalid during the term of this TJJD contract. Service Provider shall provide the TJJD with notice within twenty-four (24) hours of any disciplinary action against Service Provider or its employees and subcontractors performing services under this contract. Failure to provide proper notice of disciplinary action up to and including suspension of the required medical license constitutes a material breach of contract on behalf of Service Provider.
- C. For and in consideration of the payment of fees for pre-employment physical examination services, Service Provider shall:
  - 1. Provide pre-employment physical examinations , TX DOT physicals and TB tests, as needed, for job applicants referred by the;
  - 2. Prepare and submit the Pre-Employment Medical Exam Report for Hazardous Duty Positions attached as **Exhibit A**; and
  - 3. Provide consultation necessary to clarify Service Provider's report.
- D. Service Provider shall notify the TJJD if it is or becomes a covered entity under the Health Insurance Portability and Accountability Act (HIPAA). Service Provider shall secure any HIPAA consent or authorization necessary to provide or obtain TJJD protected health information.
- E. Service Provider shall perform the services described in this contract at any of the Concentra Offices listed on **Exhibit B**, attached hereto and incorporated herein by reference. Billing information will be provided in the employee's paperwork.

**II. TJJD**

For and in consideration of the services provided by Service Provider, the TJJD shall:

- A. Determine which job applicants shall be referred to Service Provider and make appropriate referrals.
- B. Pay for services rendered as described above in the following amounts: For actual services rendered in conducting the pre-employment physical examinations at a rate of **fifty dollars (\$50.00)** for pre- employment physicals and TX DOT physicals and **thirty dollars (\$30.00)** for each TB test.

### **III. CERTIFICATIONS**

#### **Article 1: Equal Opportunity**

Service Provider certifies compliance with all terms, provisions, and requirements of Titles VI and VII, Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and any other federal, state, local or other anti-discriminatory act, law, statute or regulation, along with all amendments and revisions of the acts, laws, statutes or regulations, in the performance of this contract, and will not discriminate against any child or youth, client, employee, or applicant for employment because of race, creed, religion, age, sex, color, national or ethnic origin, handicap, or any other illegal discriminatory basis or criteria.

#### **Article 2: Unfair Business Practices**

Service Provider certifies that neither it nor its officers have been found guilty in a judicial or state administrative agency proceeding of unfair business practices as set out in the Texas Business and Commerce Code and that no officer of Service Provider has served as an officer of another company which has been found guilty in a judicial or state administrative agency proceeding of unfair business practices. If the above certifications are false, this contract is void.

#### **Article 3: Franchise Taxes**

**Section 1:** Service Provider certifies that should Service Provider be subject to payment of Texas franchise taxes, all franchise taxes are current. If such certification is false this contract may be terminated at the option of the TJJD or other administrative error sanctions may be taken.

**Section 2:** If Service Provider is exempt from payment of Texas franchise taxes, Service Provider shall so indicate by attachment to this contract.

**Section 3:** If Service Provider's payment of Texas franchise taxes becomes delinquent during the term of this contract, Service Provider will notify the TJJD within 24 hours. If such delinquency cannot be cured within 24 hours and a copy of the Certification of Account Status proving payment of delinquent taxes cannot be provided to the TJJD, this contract may be terminated at the option of the TJJD or other administrative error sanctions may be taken under the provisions of this contract.

#### **Article 4: Asbestos Regulation Compliance**

If applicable, Service Provider certifies compliance with the Asbestos Hazard Emergency Response Act of 1986 (ASHERA) by having on file with the Texas Department of State Health Services (DSHS) a copy of Service Provider's ASHERA Management Plan for each facility Service Provider owns, leases, or otherwise uses as a school or is part of a school, grades kindergarten through 12. Prior to the initiation of services under this contract, Service Provider shall provide to the TJJD a certification of an asbestos-free environment or a copy of the DSHS acceptance and approval for Service Provider's ASHERA Asbestos Management Plan(s) (Management Plan(s)). Service Provider shall comply with the approved Management Plan during the term of this contract and any renewals; failure to do so shall be grounds for termination of this contract. Should DSHS approve a revised or modified Management Plan, a copy of the DSHS acceptance and approval of the revised or modified Management Plan shall be furnished to the TJJD.

## **Article 5: Human Immunodeficiency Virus Services Act Compliance**

**Section 1:** Service Provider certifies compliance with the Human Immunodeficiency Virus Services Act (Texas Health and Safety Code Chapter 85) requirements for maintenance of confidentiality regarding the human immunodeficiency virus (HIV) and its related conditions, including acquired immune deficiency syndrome (AIDS).

**Section 2:** Service Provider further certifies that it has developed and implemented workplace guidelines in accordance with the Human Immunodeficiency Virus Services Act. Service Provider may elect to use workplace guidelines developed and implemented by the TJJD. Should Service Provider not elect to use workplace guidelines developed and implemented by the TJJD, Service Provider agrees that its workplace guidelines shall be similar to the TJJD's as required by Section 85.113 of the Texas Health and Safety Code.

**Section 3:** In the absence of confidentiality guidelines, Service Provider is not eligible to receive state funds, and Service Provider agrees to refund to the state any state funds Service Provider receives while ineligible.

## **Article 6: Communicable Disease Prevention and Control Act Compliance**

Service Provider certifies compliance with the applicable provisions of the Communicable Disease Prevention and Control Act (Texas Health and Safety Code Chapter 81).

## **Article 7: Federal Confidentiality Compliance**

Any program that specializes, in whole or in part, in providing treatment, counseling, and/or assessment and referral services for youth with alcohol or other drug problems must comply with federal confidentiality regulations. Said regulations apply only to programs that are federally assisted either directly or indirectly. Service Provider certifies compliance with these federal requirements for confidentiality (42 USC 290dd-2; 42 CFR Part 2) and agrees to comply with said requirements for so long as this contract is in force.

## **Article 8: Required Disclosure of Lobbyist Activity**

Service Provider agrees that if, at any time during the term of this contract, an employee, director, subconsultant, or subcontractor of Service Provider is required to register as a lobbyist under Texas Government Code Chapter 305, Service Provider shall notify the TJJD and provide timely copies of all reports filed with the Texas Ethics Commission, as required by Chapter 305.

## **Article 9: Notification to the TJJD of Subconsultants and Subcontractors**

**Section 1:** Service Provider shall notify the TJJD of the selection and/or use of all subcontractors or subconsultants regularly used by Service Provider in performing or assessing the performance of Service Provider's duties under this contract, if paid or anticipated to be paid an amount exceeding \$5,000.00 during the term of this contract. Service Provider may not use subcontractors and subconsultants to perform Service Provider's duties under this contract without prior written approval of the TJJD. Approval will not be unreasonably withheld.

**Section 2:** No contractual relationship will exist between Service Provider's subconsultants or subcontractors and the TJJD. The TJJD shall have no responsibility whatsoever for the conduct, actions, or commissions (active or passive) of any sub-consultants or subcontractors in the performance of their duties under this contract.

**Section 3:** Service Provider shall be solely responsible for the management of any sub-consultants or subcontractors in the performance of their duties under this contract.

## **Article 10: Compliance with Child Support, Section 231.006, Texas Family Code**

Texas Family Code Section 231.006 provides that neither a child support obligor who is more than 30 days delinquent in paying child support nor a business entity in which the obligor is a sole proprietor,

partner, shareholder, or owner with an ownership interest of at least 25 percent is eligible to receive payments from state funds under this contract to provide property, materials, or services. **Under Section 231.006, Family Code, the vendor or applicant (Service Provider) certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.**

SERVICE PROVIDER MUST PROVIDE, IN THE SPACE BELOW, THE NAME AND SOCIAL SECURITY NUMBER OF AN INDIVIDUAL OWNER, A SOLE PROPRIETOR, AND ALL PARTNERS, SHAREHOLDERS, OR OWNERS WITH AN OWNERSHIP INTEREST OF AT LEAST TWENTY-FIVE (25) PERCENT OF THE BUSINESS ENTITY ENTERING INTO THIS CONTRACT.

For business entities with no identifiable owner of twenty-five percent (25%) or more of the entity, indicate with "NONE" on the first line below.

**NONE**

---

Name, Social Security Number, Percent (%)

**Article 11: Compliance with Section 572.054, Texas Government Code, Former Officer or Employee of the TJJD**

Service Provider certifies compliance with Texas Government Code Section 572.054. Service Provider has not employed a former officer or employee of the TJJD to perform services on Service Provider's behalf, to secure this contract, or to represent Service Provider in any manner prohibited by Section 572.054. A false certification could result in termination of this contract, withholding of payments, or other administrative error sanctions.

**Article 12: Compliance with Section 2252.901, Texas Government Code, Former or Retired Employee of the Agency**

Service Provider certifies compliance with Texas Government Code Section 2252.901, which provides, "[a] state agency may not enter into an employment contract, a professional services contract under Chapter 2254, or a consulting services contract under Chapter 2254 with a former or retired employee of the agency before the first anniversary of the last date on which the individual was employed by the agency, if appropriated money will be used to make payments under this contract. This section does not prohibit an agency from entering into a professional services contract with a corporation, firm, or other business entity that employs a former or retired employee of the agency within one year of the employee's leaving the agency, provided that the former or retired employee does not perform services on projects for the corporation, firm or other business entity that the employee worked on while employed by the agency." Service Provider certifies that he/she/it is not prohibited from entering into this contract because of any prior employment with the TJJD.

**Article 13: Specially Designated Nationals and Blocked Persons List; Debarment**

Service Provider certifies that it is not on the Specially Designated Nationals and Blocked Persons list (SDN List) maintained by the United States Department of the Treasury Office of Foreign Assets Control (OFAC), <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>.

Service Provider certifies that the responding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that Service Provider is in compliance with the State of Texas statutes and rules relating to procurement and that Service Provider is not listed on the federal government's terrorism watch list as described in Executive Order 13224, Executive Order on Terrorist Financing – Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective September 24, 2001. Entities ineligible for federal procurement are listed at <https://www.sam.gov>.

#### **Article 14: Terrorism**

The TJJD is federally mandated to adhere to the directions provided in the President's Executive Order 13224, Executive Order on Terrorist Financing – Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective September 24, 2001, and any subsequent changes made to it by cross-referencing service providers/vendors with The System for Award Management (SAM), <https://www.sam.gov>, which is inclusive of the United States Department of the Treasury Office of Foreign Assets Control (OFAC) Specially Designated Nationals and Blocked Persons list (SDN List) <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>.

#### **Article 15: Convictions for Hurricane Katrina or Rita**

**Under Section 2155.006, Government Code, the vendor (Service Provider) certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.**

Under Section 2155.006(b) of the Texas Government Code, "[a] state agency may not accept a bid or award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five-year period preceding the date of the bid or award, has been: (1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005 ; or (2) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005."

#### **Article 16: Antitrust**

Service Provider represents and warrants that neither Service Provider nor any firm, corporation, partnership, or institution represented by Service Provider, or anyone acting for such firm, corporation, partnership, or institution has, (1) violated the antitrust laws of the State of Texas under Chapter 15 of the Texas Business and Commerce Code or federal antitrust laws; or (2) communicated directly or indirectly any contents of your submitted Proposal to any competitor or any other person engaged in such line of business during the procurement process for this contract.

#### **Article 17: Intellectual Property Indemnification**

To the extent required by the Texas Constitution Service Provider will indemnify, defend and hold harmless the State of Texas and the TJJD against any action or claim brought against the State of Texas and/or the TJJD that is based on a claim that software infringes any patent rights, copyright rights or incorporated misappropriated trade secrets . Service Provider will pay any damages attributable to such claim that are awarded against the State of Texas and/or the TJJD in a judgment or settlement.

If the TJJD's use of the software becomes subject to a claim, or is likely to become subject to a claim, as determined through the sole opinion of the TJJD, Service Provider shall, at its own expense: (1) procure for the TJJD the right to continue using such software under the terms of this contract; or (2) replace or modify the software so that it is noninfringing.

#### **Article 18: Contracting with Executive Head of State Agency**

Pursuant to Texas Government Code Section 669.003, Service Provider certifies that he/she/it is not the executive head of the TJJD, a person who at any time during the four years before the date of this contract was the executive head of the TJJD, or a person or business entity that employs a

current or former executive head of a state agency.

#### **Article 19: Abandonment or Default**

If Service Provider defaults on this contract, the TJJJ reserves the right to cancel this contract without notice and either resolicit bids or award the contract to the next best responsive and responsible service provider. The defaulting Service Provider will not be considered in the resolicitation and may not be considered in future solicitations for the same type of work, unless the specifications or scope of work are significantly different. The period of suspension will be determined by the TJJJ based on the seriousness of the default.

#### **Article 20: Certain Bids and Contracts Prohibited**

Under Texas Government Code Section 2155.004, the TJJJ may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the TJJJ to participate in preparing the specifications or request for proposals on which the bid or contract is based. If Service Provider is not eligible, then this contract may be immediately terminated. **Under Section 2155.004, Government Code, the vendor (Service Provider) certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.**

#### **Article 21: Gifts and Gratuity**

By executing this contract, Service Provider certifies that he/she/it has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, discount, trip, favor, or service to a public servant in connection with this contract. Service Provider acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

#### **Article 22: By signature hereon, Service Provider certifies that:**

All statements and information prepared and submitted in relation to this contract are current, complete, and accurate.

When a Texas business address is shown hereon, that address is, in fact, the legal business address of Service Provider and Service Provider qualifies as a "Texas Bidder" under Texas Administrative Code Title 34, Section 20.32(68).

#### **Article 23: Access to Information**

Service Provider shall comply with all applicable requirements of the Texas Public Information Act, Chapter 552 of the Texas Government Code, and provide required information to TJJJ in a format accessible to the public.

#### **Article 24: Verification of Worker Eligibility**

**Section 1:** If Service Provider is not enrolled in the U.S. Department of Homeland Security's E-Verify system ("E-Verify") at the time of this contract award, Service Provider shall: (1) enroll in the E-Verify program within thirty (30) calendar days of this contract award; and thereafter (2) use E-Verify to initiate, within three (3) business days after the date of hire, verification of employment eligibility of all of Service Provider's new hires employed during this contract term to perform duties within Texas and all persons (including subcontractors) assigned by Service Provider to perform work pursuant to this contract, within the United States.

**Section 2:** If Service Provider is enrolled in E-Verify at time of this contract award, Service Provider shall use E-Verify to initiate, within three (3) business days after the date of hire, verification of

employment eligibility of all of Service Provider's new hires employed during this contract term to perform duties within Texas and all persons (including subcontractors) assigned by Service Provider to perform work pursuant to this contract, within the United States.

**Section 3:** Service Provider shall comply with the requirements of the E-Verify program Memorandum of Understanding (MOU). If the Department of Homeland Security (OHS) or the Social Security Administration (SSA) terminates Service Provider's MOU and denies access to the E-Verify system in accordance with the terms of the MOU, the TJJD may terminate this contract.

**Section 4:** Service Provider shall include the requirements of this clause, including this paragraph (appropriately modified for identification of the parties), in each subcontract under this contract that is for services or construction.

**Section 5:** Service Provider shall provide, upon request of the TJJD, an electronic or printed image of the confirmation or non-confirmation screen containing the E-Verify case verification number for attachment to the Form 1-9 for each of Service Provider's employees, subcontractors, and subcontractors' employees that meet the criteria above, following any required E-Verify protocols to allow for the provision of such information.

**Section 6:** If Service Provider fails to comply with the requirements of this clause, the TJJD may terminate this contract, withhold payment, or impose other administrative error sanctions.

**Section 7:** The requirements of this clause only apply to contracts for services or construction.

#### **IV. GENERAL PROVISIONS**

##### **Article 1: Relationship of Parties**

Service Provider is acting as an independent contractor and is wholly responsible for the day-to-day operations of its programs and employees; no joint venture, partnership, or agency exist nor shall be implied by the terms of this contract. No employee of Service Provider shall become an employee of the TJJD by virtue of this contract.

##### **Article 2: Indemnity**

Service Provider agrees to be liable for, and hereby does indemnify and hold harmless the TJJD and its officers, directors, agents, employees, and representatives from and against any and all liability for any and all claims, suits, demands, causes of action, and/or damages, (including costs of court and reasonable attorneys' fees) arising from or based upon misconduct, intentional or negligent acts, or intentional or negligent omissions on the part of Service Provider, its officers, directors, agents, representatives, employees, or visitors which arise out of or result from this contract or its performance.

##### **Article 3: Liability Insurance**

**Section 1:** Service Provider shall maintain liability insurance in the amount of \$300,000.00 for each occurrence of negligence. The insurance must cover injury to a youth that occurs when the youth is in Service Provider's care, custody or control.

**Section 2:** Service Provider shall provide proof of insurance documents to the TJJD Contracts Department, upon request.

**Section 3:** The required insurance coverage, in the above stated amount, must be maintained during the term of this contract and through any subsequent extensions. Failure to maintain the required insurance coverage may result in termination of this contract.

##### **Article 4: Confidentiality and Security**

**Section 1:** Service Provider agrees that all its employees will comply with state and federal law and with TJJD policies regarding the confidentiality of patient records and identifying information.

**Section 2:** Service Provider agrees that all information regarding the TJJD and/or its employees or youth that is gathered, produced, or otherwise derived from this Contract shall remain confidential subject to release only by permission of the TJJD.

**Section 3:** Service Provider's employees who visit any TJJD facility will comply with that facility's security

regulations.

**Section 4:** Identifying pictures, appearances, films, or reports of TJJD youth or employees may not be disclosed by Service Provider without the written consent of the youth or employee and, if under age 18, of his or her parent, guardian, or managing conservator.

#### **Article 5: Administrative Error Sanctions**

**Section 1:** The TJJD, based on information from monitoring or other verifiable sources, may terminate this contract for the reasons set forth in the article dealing with termination below, may require the Service Provider to take specific corrective actions in order to remain in compliance with the terms of this contract, or may impose recommendations from an audit or investigative findings upon 30 days' written notice to Service Provider.

**Section 2:** Service Provider shall cooperate fully with the TJJD and its authorized representatives in carrying out corrective action plans.

#### **Article 6: Termination**

**Section 1:** Service Provider may terminate, for convenience, its obligations under this contract by giving the TJJD thirty (30) days' written notice.

**Section 2:** The TJJD may terminate, for convenience, its obligations under this contract by giving Service Provider thirty (30) days' written notice.

**Section 3:** The TJJD shall terminate this contract in the event that the TJJD is not granted funding to pay for the herein described services or in the event that funding is lost due to either a reduction in the budget or a reallocation of budgeted funds.

**Section 4: Cause/Default/Breach:** If Service Provider fails to provide the goods or services contracted for according to the provisions of this contract, or fails to comply with any terms or conditions of this contract, the TJJD may, upon written notice of default or breach to Service Provider, immediately terminate all or any part of this contract. Termination is not an exclusive remedy, but exists in addition to any other rights and remedies provided in equity, by law, or under this contract. The TJJD may exercise any other right, remedy, or privilege available to it under applicable law or may proceed by appropriate court action to enforce the provisions of this contract. The exercise of any of the foregoing remedies will not constitute a termination of this contract unless the TJJD notifies Service Provider in writing prior to the exercise of such remedy.

#### **Article 7: Funding Out Clause**

This contract is contingent upon the continued availability of funding. If funds become unavailable through lack of appropriations, legislative budget cuts, amendment of the Appropriations Act, state agency consolidations, or any other disruption of current appropriations, provisions of the Termination Article shall apply. This contract is subject to termination, without penalty, either in whole or in part, if funds are not appropriated by the Texas Legislature.

#### **Article 8: Waiver**

No waiver by either party of any breach or default of the other under this contract shall operate as a waiver of any future or other breach or default, whether of a like or different character or nature.

#### **Article 9: Severability**

The provisions of this contract are severable. If any provision of this contract is determined by a court of law or other competent authority to be invalid and contrary to any federal, state, or local law, such invalidity shall not affect the other provisions or applications of this contract which shall be given effect without the invalid provision or application.

#### **Article 10: Contract Term**

The entire term of the contract shall begin **September 1, 2016**, and continue through **August 31, 2017**. The contract may be renewed provided funding is available and all parties agree in writing, via contract amendment. Any renewals shall be at the same terms and conditions, plus any mutually agreed to and approved changes.

#### **Article 11: Contract Amendment and Merger Clause**

This contract encompasses the complete and entire agreement of the parties. Neither party has made nor relied on any representations, stipulations, nor agreements other than those expressly contained in this contract. No other contracts or agreements, oral or written, shall constitute a part of this contract unless such is made in writing, executed by the parties hereto or their successors, and expressly made a part of this contract. This contract may only be amended or supplemented in a writing, executed by the parties hereto or their successors, and expressly made a part of this contract, except that the TJJD reserves the right to make unilateral minor administrative changes to correct typographical errors, change the TJJD contract identification number, or increase the "not to exceed" amount if necessary for continuation of services.

#### **Article 12: Notice of Changes**

**Section 1:** Service Provider shall notify the TJJD immediately in writing in advance of any significant change affecting Service Provider, including, but not limited to, change of Service Provider's name or identity, location of services, ownership or control, operating entity, payee identification number, and any other significant changes that may affect the delivery of services under the terms of this contract.

**Section 2:** Service Provider shall not transfer or assign this contract or enter into any subcontract for the services under this contract without prior written approval from the TJJD.

**Section 3:** Service Provider shall not relocate the services provided under this contract from the location stated in the preamble without prior written approval from the TJJD and a certification that the location to which services are to be relocated is in compliance with Chapter 244, Texas Local Government Code, if applicable.

#### **Article 13: Notice**

Required notices will be provided to the Director of Contracts, Procurement and Support Services at the TJJD Central Office at 11209 Metric Boulevard, Building H, Austin, Texas 78758, Post Office Box 12757, Austin, Texas 78711; and to the Service Provider at **5080 Spectrum Drive, Addison, TX 75001**.

#### **Article 14: Governing Law and Venue**

In any legal action arising under this contract, the laws of the State of Texas shall apply and venue will be in Travis County, Texas.

#### **Article 15: Problem Solving in the Ordinary Course of Business**

**Section 1:** The parties to this contract shall use the procedures contained in this Article for routine problem solving. These procedures may also be used if a party is asserting a claim for breach of contract. Should these procedures not resolve claims for breach of this contract, the procedures contained in Article 16 shall be followed thereafter.

**Section 2:** Informal Resolution: Service Provider and TJJD staff will communicate regularly and engage in informal problem solving efforts as a routine measure, thus preventing differences from becoming major problems. When routine measures have been exhausted, Service Provider and the TJJD staff are encouraged to utilize the following mechanism to resolve problems.

**Section 3:** Formal Resolution:

- a. Service Provider or the TJJD staff who wish to submit problems for resolution may do so in writing, including all relevant information and a recommended resolution (Statement of Problem).
- b. The Statement of Problem will be submitted to the designated contact, the Director of Business Services and Contracts, unless the problem specifically involves the designated contact, in which case, it will be submitted to the designated contact's supervisor.
- c. Problems are to be addressed within ten working days; a written decision will be sent to the individual or program that submitted it, to the designated contact, and to the designated contact's supervisor.

**Section 4:** Appeal: Service Provider or the TJJD staff desiring to appeal the decision may do so in writing within ten (10) working days of the date of written decision by providing all pertinent information relevant to the appeal to the designated contact's supervisor if the problem was originally addressed by the designated contact, or to the Director of Contracts, Procurement and Support Services if the problem was addressed by the designated contact's supervisor. When appealed, the problem shall be addressed within fourteen (14) working days, with written responses sent to the individual or program who submitted it, the designated contact, the designated contact's supervisor, and the Director of Contracts, Procurement and Support Services.

#### **Article 16: Claims for Breach of Contract**

**Section 1:** The dispute resolution process provided for in Chapter 2260 of the Texas Government Code, as further described herein, must be used by the TJJD and Service Provider to attempt to resolve any claim for breach of contract made by Service Provider.

- a. Service Provider's claim for breach of this contract that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260, Subchapter B, of the Texas Government Code. To initiate the process, Service Provider shall submit written notice, to the TJJD Executive Director no later than 180 days after the date of the event that gave rise to the claim, stated with particularity as outlined in Section 2260.051. Additionally, said notice shall specifically state that the provisions of Chapter 2260, Subchapter B, are being invoked. A copy of the notice shall also be given to all other representatives of the TJJD and Service Provider as would otherwise be entitled to notice under this contract. Compliance by Service Provider with Subchapter B is a condition precedent to the filing of a contested case proceeding under Chapter 2260, Subchapter C, of the Texas Government Code.
- b. The contested case process provided in Chapter 2260, Subchapter C, of the Texas Government Code is Service Provider's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by the TJJD if the parties are unable to resolve their disputes as discussed under subparagraph a. of this Section.
- c. Compliance with the contested case process provided in Subchapter C is a condition precedent to seeking consent to sue from the Texas Legislature under Chapter 107 of the Texas Civil Practices and Remedies Code. Neither the execution of this contract by the TJJD nor any other conduct of any representative of the TJJD relating to this contract shall be considered a waiver of sovereign immunity to suit.

**Section 2:** The submission, processing, and resolution of Service Provider's claim is governed by the published rules adopted by the TJJD pursuant to Chapter 2260 of the Texas Government Code as currently effective, hereafter enacted, or subsequently amended.

**Section 3:** Neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance by Service Provider, in whole or in part.

#### **Article 17: No Third Party Beneficiaries**

The terms of this contract are for the sole benefit of the parties to this contract and will not be construed to confer any rights on any other person.

#### **Article 18: Audit Clause**

Pursuant to Chapter 321 of the Texas Government Code and Texas Government Code Section 2262.154, Service Provider is hereby notified that the Texas State Auditor's Office (State Auditor) may conduct an audit or investigation of any entity receiving funds from the state directly under that contract or indirectly through a subcontract under the contract. Acceptance of funds directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the State Auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee an entity that is the subject of an audit or investigation by the State Auditor must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit. Service Provider shall ensure that this paragraph, concerning the State Auditor's authority to audit funds received indirectly by subcontractors through Service Provider and the requirement to cooperate, is included in any subcontract it awards.

Service Provider shall maintain and retain supporting fiscal documents adequate to ensure that claims for contract funds are in accordance with TJJD and State of Texas requirements \. Service Provider shall maintain all such documents and other records relating to this contract and the State's property for a period of seven (7) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. Service Provider shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all information related to the State's property, such as work papers, reports, books, data, files, software, records, and other supporting documents pertaining to this contract, for purposes of inspecting, monitoring, auditing, or evaluating by the TJJD, the State of Texas, or their authorized representatives. Service Provider shall cooperate with auditors and other authorized TJJD and State of Texas representatives and shall provide them with prompt access to all of such State's property as requested by the TJJD or the State of Texas. Service Provider's failure to comply with this Article shall constitute a material breach of this contract and shall authorize the TJJD, to the extent allowed by law, to immediately assess liquidated damages. The TJJD may require, at Service Provider's sole cost and expense, independent audits by a qualified certified public accounting firm of Service Provider's books and records or the State's property. The independent auditor shall provide the TJJD with a copy of such audit at the same time it is provided to Service Provider. The TJJD retains the right to issue a request for proposals for the services of an independent certified public accounting firm under this contract.

The TJJD may unilaterally amend this contract to comply with any rules and procedures of the State Auditor upon advance written notice to Service Provider.

#### **Article 19: Default**

If Service Provider defaults on this contract, the TJJD reserves the right to cancel this contract without notice and either resolicit bids or award the contract to the next best responsive and responsible service provider. The defaulting Service Provider will not be considered in the resolicitation and may not be considered in future solicitations for the same type of work , unless the specifications or scope of work are significantly different. The period of suspension will be determined by the agency based on the seriousness of the default.

#### **Article 20: Payment Terms and Debt Owed to State of Texas**

Terms of payment shall be in accordance with chapter 2251 of the Texas Government Code and in accordance with Section 403.0551 of the Texas Government Code, any payments owed to Service Provider under this contract will be applied toward elimination of Service Provider's indebtedness to the state or delinquency in payment of taxes to the state until the indebtedness or delinquency is paid in

full. Service Provider agrees that any payments due under this contract will be applied towards any debt Service Provider owes to the State of Texas, including, but not limited to, delinquent taxes and unpaid child support payments.

**Article 21: Buy Texas**

In performing this contract, Service Provider shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside of Texas.

**Article 22: Specifications**

Service Provider shall provide services in accordance with the specifications contained in this contract.

**Article 23: Assignment**

Without the prior written consent of the TJJD, Service Provider may not assign this contract, in whole or in part, or any right or duty required under it.

**Article 24: Compliance with Other Laws**

In the execution of this contract, Service Provider shall comply with all applicable federal, state, and local laws, including laws governing labor, equal employment opportunity, safety, and environmental protection. Service Provider shall make itself familiar with and at all times shall observe and comply with all federal, state, and local laws, ordinances, and regulations which in any manner affect performance under this contract.

**Article 25: Execution Authority**

Service Provider represents and warrants that the individual signing this contract is authorized to sign this document on behalf of Service Provider and to bind Service Provider under this contract.

IN WITNESS WHEREOF, the parties hereto have made and executed this contract as of the day and year last below written.

Texas Juvenile Justice Department



David Reilly  
Executive Director

12/5/16

Date

For Service Provider:



Signature

12/7/16

Date

Approved As To Form



TJJJ Attorney