STATE OF TEXAS §

COUNTY OF TRAVIS §

CONTRACT RN113 FOR THERAPEUTIC AND GROUP HOME AND FOSTER CARE RESIDENTIAL PROGRAMS FOR MALE AND FEMALE JUVENILE OFFENDERS

This contract effective January 1, 2011 is by and between the **Texas Youth Commission**, hereinafter **TYC**, and National MENTOR Healthcare, LLC dba Texas MENTOR, hereinafter referred to as **Service Provider**, for the provision of male and female residential programs for therapeutic and group home and foster care residential programs, located at 4818 East Ben White Blvd., Suite 108, Austin, Texas 78741. This contract number RN113, will expire on August 31, 2011, unless renewed per Section IV, Article 10.

This contract is entered into under the authority of §61.037, Human Resources Code, for the mutual considerations described in this contract.

This Agreement is composed of the following documents:

1. This Contract, including all attachments;
2. Service Provider's Best and Final Offer (BAFO) dated August 31, 2010; (attached as Exhibit E)
3. Service Provider's Proposed Program Overview (attached as Exhibit A of Contract);
4. Service Provider's Historically Underutilized Business (HUB) Subcontracting Plan (to be attached as Exhibit B of Contract);
5. TYC 2011 Cost Report for Residential Providers (attached as Exhibit C of Contract);
6. Service Provider's proposal dated July 20, 2010(attached as Exhibit D of Contract); and
7. RFP #694-0-0852 issued June 24, 2010 and Amendments A#001, A#002, and A#003.

In the event there is conflict between the Agreement documents, the order of precedence shall be the order listed above.

I. SERVICE PROVIDER

For and in consideration of the payment of fees for providing residential services in accordance with this Agreement, Service Provider will:

A. Appoint members to a Youth Placement Committee that will be established. This committee will consist of members from TYC and National MENTOR Healthcare, LLC dba Texas MENTOR. The committee will review youth for placement into the Therapeutic and Group Home and Foster Care Residential Program. Youth will transition to the Therapeutic and Group Home and Foster Care Residential Program at a number of youth to be determined.

B. Obtain and maintain a license or certification listed in the RFP for the full term of the contract and any subsequent extensions. National MENTOR Healthcare, LLC dba Texas MENTOR is licensed by the Texas Department of Family and Protective Service. Permit Number are 1002007, 1002107, 1001786, 997846, and 1001926 .

C. Comply with all applicable laws, including TYC rules related to the listed services and treatment provided to youth being served under this contract. Any amendments made to applicable TYC rules during the term of this contract apply to the Service Provider as of the effective date of the amendments.

D. Comply with Service Provider's Proposed Program Overview attached as Exhibit A and Service Provider's Proposal, except to the extent it is in conflict with TYC Residential Standards and TYC General Administrative Policy, which take precedence over Service Provider's documentation. TYC General Administrative Policies (Rules) and TYC Standards:

1. Service Provider must comply with all assigned TYC Rules and all related Standards and any subsequent amendments to these policies and standards, which apply to residential programs. These policies can be reviewed at the TYC Internet Home Page:

   (http://austin.tyc.state.tx.us/Cfinternet/gap/index.html).

   If there are subsequent changes to the applicable TYC Policies that result in a significant change in the scope of work for providing services, TYC will negotiate in good faith regarding any changes that affect the rate.

2. Service Provider shall agree to the terms and conditions stated in the TYC Contract for Residential Services before commencement of services. The provisions that apply to all residential contractors in the TYC Contract for Residential Services are attached as Exhibit F of RFP # 694-0-0852.

E. Maintain a "meets standards" overall performance and monitoring measure rating.

F. Implement and maintain a program for providing health care services.

1. Enroll eligible youth in Medicaid or other assistance programs for health care.
2. For youth not eligible for Medicaid or other assistance programs for health care, obtain authorization and secure an encumbrance number from the TYC Primary Service Worker prior to incurring expenses. These requirements do not apply in the case of a bona fide emergency, in which case notification will be given no later than the next working day after the emergency. Private insurance and governmental assistance programs will be utilized for health care when possible. Promptly send bills to the TYC District Office no later than five (5) work days after receipt of the invoice. Costs incurred that do not meet these requirements are the responsibility of the Service Provider.

G. Notify the TYC Director of Contracts, Procurement and Support Services in writing of all revenue sources and reimbursements from third parties for any and all costs or services associated exclusively with a youth served under this contract. Billing more than one revenue source for the same costs or services provided a single youth is prohibited and shall be recouped or administrative error sanctions shall be imposed as set forth herein. Neither a youth nor his/her parents or guardians will be required to pay for the support of the youth in the program, unless otherwise ordered.

H. Submit claims to the TYC District Office on invoices bearing Service Provider's name and address no later than five (5) work-days from the last day of the month for which payment is requested. Invoices must contain names of youth, TYC numbers and the dates present in the program. The youth is present for payment purposes when he/she is present until 12:01 a.m. or is authorized by the TYC Contract Care Administrator to be away.

I. Complete and submit annually to the TYC Director of Contracts, Procurement and Support Services the TYC Cost Report for Residential Providers in accordance with the Overview of Rules and Procedures. The TYC Cost Report for Residential Providers is due on or before June 30 of the year following the end of Service Provider's fiscal year.

J. Afford TYC access to TYC youth and all records and/or information on TYC youth at all times.

K. Forward copies of all audits, monitoring, and investigative reports completed by any entity to the TYC Quality Assurance Manager within five (5) work days of receipt.

L. Allow TYC/designee to perform monitoring, performance evaluations, investigations, or audits.

1. Provide access, inspection, and reproduction to all records related to services rendered under this contract that are necessary to facilitate monitoring, performance evaluations, investigations or audits.
2. Records include, but are not limited to, contracts, notes, real property documents, accounting/financial records, written policies and procedures, correspondence, performance evaluation data and reports, and any other information pertinent to revenues, costs, expenses, and performance of services provided under this contract belonging to either the Service Provider, its subsidiaries, parent and/or affiliate(s), including subconsultants, subcontractors, employees, and any and all related parties to the contract. Related Party is defined below.
3. Upon request by TYC, provide facilities to TYC/designee to perform any of the functions listed in this subsection, as well as adequate and appropriate workspace and copier.

M. Maintain all financial records in accordance with generally accepted accounting principles. Follow TYC fiscal management policies and procedures in submitting timely billing and maintaining financial records, programmatic and supporting documents, statistical records or any other records required to be kept under this contract.

N. Maintain and retain records for a minimum of four (4) years after the termination of the contract period. If any litigation, claims, disputes, or audit involving these records begins before the four (4) years period expires, the Service Provider will keep the records and documents until all litigation, claims, disputes, or audit findings are resolved. Resolution is when a final order is issued in litigation, or a written agreement is entered into between TYC and the Service Provider. Contract period means the beginning date through the ending date specified in the original contract or any amendments. * **Retention requirements for treatment and education records will be 18 years of age plus 10 years unless otherwise mandated by licensing requirements.**

O. Disclose in writing to the TYC Director of Contracts, Procurement and Support Services any transactions with related parties providing goods or services to the Service Provider, the cost of which is included in the rate per day paid by TYC.

1. A related party always includes a family member by blood or marriage, (i.e., spouse, parents, grandparents, child(ren), grandchild(ren), aunt, uncle, niece, nephew, first cousins). In addition, a related party is defined as any person or entity involved with the Service Provider in any manner that would result in the ability of either party to significantly influence the management or operation of the other. Examples of related parties include, but are not limited to, parent companies, subsidiaries, as well as, principle investors, owners, or managers and their relatives listed above.
2. Service Provider must report to TYC any transaction with a related party that could result in excessive profits from its relationship with the related party. If excessive profits are found to have occurred, administrative error sanctions may be imposed.
3. Any violation of this section can be considered a breach and could result in administrative error sanctions or contract termination.

P. Comply with the Residential Contract Program Case Management Requirements, listed as Exhibit G of RFP and incorporated into this contract as if set forth therein. Service Provider

agrees that any amendment(s) made to Requirements in Exhibit G during the term of the contract apply to the Service Provider as of the effective date of the said amendment(s).

Q. Require any of Service Provider's employees or employees of subcontractors to cooperate with or testify in judicial proceedings, youth disciplinary hearings, legislative and administrative hearings or investigations, at the request of TYC. Service Provider will provide required documentation in a timely manner and provide office space and a telephone for youth disciplinary hearings, upon request.

R. Obtain an independent audit according to the following requirements:

1. If the Service Provider has contracted with a subcontractor to perform its primary management responsibilities, the independent audit shall be performed for the subcontractor's financial statements. Otherwise, the independent audit shall be performed for the Service Provider's financial statements.
2. If more than $400,000 is received annually under this contract, an annual independent audit must be obtained; otherwise a biannual independent audit must be obtained.
3. The audited financial statements, notes, opinions, and, if applicable, the schedule of findings and questioned costs shall be submitted to the TYC Quality Assurance Manager no later than 30 days after receipt from the independent auditor. However, audited financial statements must be submitted no later than 10 months following the reporting period to the TYC Quality Assurance Manager.
4. Independent audits must be performed according to Generally Accepted Auditing Standards and any other standards that apply to the Service Provider or subcontractor.
5. The independent audit must be performed by a Certified Public Accountant or firm licensed to practice public accountancy in the state in which the audit is performed.
6. The independent audit must comply with the Single Audit Act of 1984 if the Service Provider or subcontractor is a local government or non-profit organization.

S. Ensure a computer setup with at least the following: Microsoft© Office 2003 (for Word documents and Excel spreadsheets), local Internet service provider (ISP) and an e-mail account.

T. Notify TYC if Service Provider is or becomes a covered entity under the Health Insurance Portability and Accountability Act (HIPPA). Service Provider is to secure any HIPPA consent or authorization necessary to provide to or obtain from TYC protected health information.

U. To the extent required by law, take any actions necessary to comply with any Plan TYC develops requiring contracted residential service providers to become certified by the American Correctional Association. TYC will provide advance notice of any Plan impacting Service Provider and will provide not less than 90 (ninety) days notice before obligations under this Section begin.

V. Allow TYC education and treatment staff to review documents related to those services as provided to youth at any time.

II. TYC

For and in consideration of the services provided to TYC youth in placement by Service Provider, TYC will:

A. Determine which youth are eligible for referral to Service Provider's program and make appropriate referrals. TYC will appoint members to the Youth Placement Committee referenced in Section I – A.

B. Pay for services rendered by Service Provider at the rates as follows: **$95.79 per day per regular juvenile offender.**

For payment purposes, this includes up to five (5) days that youth may be away from the program. An authorization may be granted and the limit extended for unusual circumstances by the TYC Contract Care Administrator.

C. Pay for a placement for a youth up to three (3) days following an escape, only if the Service Provider agrees that the youth can return to the program.

D. Terms of payment shall be in accordance with Chapter 2251, Texas Government Code and Texas Government Code 403.0551 that payment owing to the Service Provider under this contract will be applied toward elimination of the Service Provider's indebtedness to the state, delinquency in payment of taxes to the state, or delinquency in payment of taxes that the Comptroller administers or collects until the indebtedness or delinquency is paid in full.

E. Pay health care bills authorized by the designated TYC Staff. Encourage the use of vendors who use the current Maximum Affordable Payment Schedule (MAPS) established by the Texas Department of Assistive and Rehabilitative Services. Provide assistance to the Service Provider on Medicaid procedures.

F. Complete monitoring of Service Provider's program according to the formal monitoring schedule and standards developed by Central Office Contract Administration.

G. Remove youth from the program within ten (10) days when Service Provider determines that the youth can no longer remain in the program due to treatment or behavioral issues. Service Provider must include a notice to TYC of any youth removed from the program within 24 hours.

H. Remove TYC youth from Service Provider's program when conditions exist that threaten the health, safety and welfare of TYC youth in the program. Service Provider must include a notice to TYC of any youth removed from the program within 24 hours.

I. Provide all required information for each youth referred to Service Provider.

J. Designate TYC staff for quality assurance and monitoring visits.

K. Provide access to TYC applications and information resources via web as needed.

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 or 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 it or its officers have not 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 TYC 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 TYC 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 TYC, this contract may be terminated at the option of TYC or other administrative error sanctions may be taken under the provisions of the contract.

ARTICLE 4: ASBESTOS REGULATION COMPLIANCE

If applicable, Service Provider certifies compliance with the Asbestos Hazard Emergency Response Act of 1986 (AHERA) by having on file with the Texas Department of State Health Services (DSHS) a copy of Service Provider's AHERA Management Plan for each facility the Service Provider owns, leases, or otherwise uses as a school or is part of a school, grades kindergarten through 12, inclusive where applicable. Prior to the initiation of services under this contract, Service Provider shall provide to TYC a certification of an asbestos-free environment or a copy of the DSHS acceptance and approval for the Service Provider's AHERA Asbestos 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 the 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 TYC.

ARTICLE 5: HUMAN IMMUNODEFICIENCY VIRUS SERVICES ACT COMPLIANCE

Section 1: Service Provider certifies compliance with the HIV Services Act, [Vernon's Texas Code Annotated (VTCA); Health and Safety Code, Section 85.001, et seq] requirements for maintenance of confidentiality regarding HIV and its related conditions, including Acquired Immunodeficiency Syndrome (AIDS).

Section 2: Service Provider further certifies that workplace guidelines are developed and implemented. Service Provider may elect to use workplace guidelines developed and implemented by TYC. Should Service Provider not elect to use workplace guidelines developed and implemented by TYC, Service Provider agrees its workplace guidelines shall be similar to TYC's as required by §85.113, Texas Health & 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 & CONTROL ACT COMPLIANCE

Service Provider certifies compliance with the applicable provisions of the Communicable Disease Prevention and Control Act, [Vernon's Texas Code Annotated (VTCA); Health & Safety Code, Section 81.001 et seq].

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 the 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 Section 290 dd-2; 42 CFR Part 2] and agrees to comply with said requirements for so long as this contract is in force.

ARTICLE 8: EDUCATIONAL REQUIREMENT

Service Provider is responsible for implementing and ensuring that youth placed in their program are provided with the appropriate educational services as required by state and federal law.

ARTICLE 9: RESTRICTION ON POSSESSION OF WEAPONS

Service Provider agrees that Service Provider or any associates providing services on behalf of Service Provider, shall not carry or possess any type of firearm or other weapon as defined by Texas Penal Code Section 46.02 while rendering services to TYC youth under this contract. This prohibition includes the carrying of a concealed handgun licensed under the authority of Chapter 411, Subchapter H, Texas Government Code. Service Provider shall be under an affirmative duty to keep weapons out of the possession of TYC youth in Service Provider's care.

ARTICLE 10: REQUIRED DISCLOSURE OF LOBBYIST ACTIVITY

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

ARTICLE 11: NOTIFICATION TO TYC OF SUBCONSULTANTS & SUBCONTRACTOR'S

Section 1: TYC shall be notified of the selection and/or use of all subcontractors, or subconsultants regularly used by the 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, and they are subject to the approval of TYC; said approval will not be unreasonably withheld.

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

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

ARTICLE 12: COMPLIANCE WITH CHILD SUPPORT, §231.006, FAMILY CODE

Under Section 231.006 of the Texas Family Code (relating to child support), contractor represents and warrants that Contractor is not ineligible to receive the specified payment and acknowledges that this Contract may be terminated and payment withheld if this representation and warranty is inaccurate.

For nonprofit corporations with no identifiable owner of twenty-five percent (25%) or more of the corporation, indicate with "none" on the first line below.

_____
Name, Social Security Number, Percent (%)

_____
Name, Social Security Number, Percent (%)

_____
Name, Social Security Number, Percent (%)

_____
Name, Social Security Number, Percent (%)

ARTICLE 13: COMPLIANCE WITH §572.054, TEXAS GOVERNMENT CODE, FORMER OFFICER OR EMPLOYEE OF TYC

Service Provider certifies compliance with §572.054, Texas Government Code. Service Provider has not employed a former officer or employee of TYC to perform services on Service Provider's behalf, to secure this contract or to represent Service Provider in any manner prohibited by the referenced statute. A false certification could result in termination of this contract.

ARTICLE 14: SIGNATORY AUTHORITY

The undersigned signatory certifies by his/her signature that he/she has the authority to bind the Service Provider to the contract provisions stated herein.

ARTICLE 15: COMPLIANCE WITH §2252.901, TEXAS GOVERNMENT CODE, FORMER OR RETIRED EMPLOYEE OF THE AGENCY

Service Provider certifies compliance with §2252.901, Texas Government Code, 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 the 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 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 is not prohibited from entering into this contract because of any prior employment with TYC.

ARTICLE 16: SPECIALLY DESIGNATED NATIONALS AND BLOCKED PERSONS LIST

Service Provider certifies that it is not on the list of Specially Designated Nationals and Blocked Persons maintained by the Office of Foreign Assets Control.

ARTICLE 17: COMPLIANCE WITH §2161.253, TEXAS GOVERNMENT CODE, GOOD FAITH COMPLIANCE WITH HISTORICALLY UNDERUTILIZED BUSINESS (HUB) SUBCONTRACTING PLAN

Service Provider certifies compliance with §2161.253, Texas Government Code. Service Provider agrees to make good faith efforts to implement the HUB subcontracting Plan. Service Provider agrees to submit to TYC monthly compliance reports (HUB Subcontracting Plan Prime Contractor Progress Assessment Report) for the term of the contract.

ARTICLE 18: FINGER PRINT AND CRIMINAL BACKGROUND CHECKS

Service Provider will:

. As directed, provide information regarding persons providing services under this Agreement and personnel access for a criminal background check including, but not limited to, fingerprinting check, criminal records check, sex offender registration records check, and drug test. Criminal background checks shall be conducted at TYC's expense and through TYC or TYC's contract providers for each of the Service Provider's employees, agents, consultants, subcontractors, subcontractor's employees, and volunteer workers. Any Service Provider employee, agent, consultant, subcontractor, subcontractor's employee, or volunteer worker who is unwilling to provide or who does not provide required information will not be allowed to work under this agreement. Any Service Provider employee, agent, consultant, subcontractor, subcontractor's employee, or volunteer worker shall not work under this agreement until the criminal background check is completed and approval is obtained from TYC's Director of Human Resources.

1. Notify TYC's Director of Human Resources of any employee, agent, consultant, subcontractor, subcontractor's employee, or volunteer worker who works with TYC youth and who is arrested, indicted, or charged with a criminal offense or who resigns while under investigation for inappropriate conduct or policy violations. Such employee, agent, consultant, subcontractor, subcontractor's employee, or volunteer worker shall be immediately suspended from working under this agreement unless authorized by TYC's Director of Human Resources.

   TYC will approve any Service Provider employee, agent, consultant, subcontractor, subcontractor's employee, or volunteer worker in accordance with TYC policies and procedures. TYC's designated contact for criminal background checks is the Director of Human Resources (512) 459-2501.

ARTICLE 19: VIOLATION OF FEDERAL LAW RELATING TO RECONSTRUCTION EFFORTS AS A RESULT OF HURRICANES RITA, KATRINA OR ANY OTHER DISASTER AFTER SEPTEMBER 24, 2005

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. Under Section 2155.006 of the Texas Government Code, the bidder certifies that the individual or business entity named in this bid is not ineligible to receive the specified contract and acknowledges that any contract resulting may be terminated and payment withheld if this certification is inaccurate.

IV. GENERAL TERMS AND CONDITIONS

ARTICLE 1: RELATIONSHIP OF PARTIES – Independent Contractor

The Service Provider is acting as an independent contractor and is wholly responsible in providing the services under this RFP and for the day-to-day operations of its programs and employees; no joint venture, partnership, or agency exists nor shall be implied by the terms of this contract. No employee of Service Provider shall become an employee of TYC by virtue of this contract. Should Service Provider subcontract any of the services required in this RFP. Service Provider expressly understands and acknowledges that in entering into such subcontract(s), TYC is in no manner liable to any subcontractor(s) of Service Provider. In no event shall this provision relieve bidder of the responsibility for ensuring that the services rendered under all subcontracts are rendered in compliance with this RFP.

ARTICLE 2: INDEMNITY

Service Provider agrees to be liable for, and hereby does indemnify and hold harmless TYC 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 omissions on the part of Service Provider, its officers, directors, agents, representatives, employees, or visitors which may arise out of or could result from this contract.

For the purposes of this Contract, the term "Work" is defined as all reports, statistical analyses, work papers, work products, materials, approaches, designs, specifications, systems, documentation, methodologies, concepts, research materials, intellectual property or other property developed, produced, or generated in connection with this Contract. All work performed pursuant to this Contract is made the exclusive property of TYC. All right, title and interest in and to said property shall vest in TYC upon creation and shall be deemed to be a work for hire and made in the course of the services rendered pursuant to this Contract. To the extent that title to any such work may not, by operation of law, vest in TYC, or such work may not be considered a work made for hire, all rights, title and interest therein are hereby irrevocably assigned to TYC. TYC shall have the right to obtain and to hold in its name any and all patents, copyrights, registrations or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof.

Service Provider must give TYC and/or the State of Texas, as well as any person designated by TYC and/or the State of Texas, all assistance required to perfect the rights defined herein without any charge or expense beyond those amounts payable to Service Provider for the services rendered under this Contract.

ARTICLE 3: LIABILITY INSURANCE

Section 1: Service Provider represents and warrants that it will, within five (5) business days of executing this Contract, provide TYC with current certificates of insurance or other

proof acceptable to TYC of the following insurance coverage: Standards Workers Compensation Insurance, covering all personnel who will provide services under this Contract; Commercial General Liability Insurance, personal injury and advertising injury with, at a minimum, the following limits: $500,000.00 minimum each occurrence; $1,000,000.00 per general aggregate. 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 TYC Quality Assurance Manager, upon request.

Section 3: The required insurance coverage must be maintained during the term of this contract and any subsequent extensions in the above stated amount. Failure to maintain the required insurance coverage may result in termination of this contract or any other administrative error sanctions.

ARTICLE 4: CONFIDENTIALITY AND SECURITY

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

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

Section 3: Service Provider's employees who visit any TYC facility will comply with that facility's security regulations.

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

ARTICLE 5: ADMINISTRATIVE ERROR SANCTIONS

Section 1: TYC, 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, or take other actions including, but not limited to:

a. Require the Service Provider to take specific corrective actions in order to remain in compliance with the terms of this contract; and/or
b. Recoup payment made to Service Provider; and/or
c. Impose recommendations from audit or investigative findings, and minor or major sanctions; and/or
d. Assess liquidated damages for each instance of non-compliance with the terms of this contract equal to $150 multiplied by the average daily population of TYC youth placed with the Service Provider in the preceding month; and/or
e. Suspend, place into abeyance, or remove any contractual rights including, but not limited to, withholding payment, moratorium on placements, population limitations and/or removal of all youth presently in the program.

Section 2: Service Provider shall cooperate fully with TYC and its authorized representative in carrying out corrective action plans.

ARTICLE 6: TERMINATION

Section 1: Service Provider may terminate its obligations under this contract for convenience by giving thirty (30) days notice and assisting in relocating youth in the program to other placements.

Section 2: TYC may terminate for convenience its obligations under this contract by giving thirty (30) days notice, or immediately in the event youth are removed from the program when conditions exist that threaten the health, safety or welfare of TYC youth in the program, or in the event of breach of contract by Service Provider.

Section 3: TYC may terminate its obligations under this contract with the Service Provider for failing to complete the corrective action specified and no extenuating circumstances exist; or is non-compliant with any area of the contract; or is below average in any single TYC performance measure; or is below standards in overall performance measure rating.

Section 4: TYC shall terminate this contract in the event that TYC 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.

ARTICLE 7: 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 8: SEVERABILITY

If any part of this contract is contrary to any federal, state, or local law, it is not applicable and such invalidity shall not affect the other provisions or applications of this agreement which can be given effect without the invalid provision or application and to that end the provisions of this contract are declared to be severable.

ARTICLE 9: CONTRACT AMENDMENT

No other agreements, oral or written, shall constitute a part of this contract unless such be made in writing, executed by the parties hereto or their successors, and expressly made a part thereof.

ARTICLE 10: CONTRACT RENEWAL

The contract will not be automatically renewed. The contract may be renewed provided that both parties agree in writing to do so prior to the expiration date. The rate and services may be renegotiated based on performance and service delivery and the mutual agreement of both parties.

ARTICLE 11: NOTICE OF CHANGES

Section 1: Service Provider shall notify TYC immediately in writing in advance of any significant change affecting the Service Provider, including but not limited to change of Service Provider's name or identity, location of services, ownership or control, operating entity, governing board membership, key personnel, payee identification number, and other significant changes including residential, educational or clinical services/programming that may affect the delivery of services under the terms of this contract.

Section 2: Service Provider shall refrain from transferring or assigning this contract or from entering into any subcontract for the services under this contract without prior written approval from TYC.

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 TYC and a certification that the location to which services are to be relocated is in compliance with Chapter 224, Local Government Code.

Required notices will be provided to the Contract Specialist at **4900 North Lamar, Austin, Texas 78751**, and to the Service Provider at: **4818 E. Ben White Blvd., Suite 108, Austin, Texas 78741.**

ARTICLE 12: 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 13: 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 including claims for breach of contract. Should these procedures not resolve claims for breach of contract, the procedures contained in Article 14 shall be followed thereafter.

Section 2: Informal Resolution: Contract Service Providers and TYC 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, TYC staff are encouraged to utilize the following mechanism to resolve problems.

Section 3: Formal Resolution:

a. Contract Service Providers or TYC staff who wish to submit problems for resolution may do so in writing, including all relevant information and a recommended resolution.

b. The statement of problem will be submitted to the TYC Program Evaluator unless the problem specifically involves the TYC Program Evaluator, in which case, it will be submitted to the Quality Assurance Administrator.

c. Problems are resolved within ten working days; written responses will be sent to the individual or program that submitted it, TYC Program Evaluator and Quality Assurance Administrator.

Section 4: **Appeal:** Service Provider desiring to appeal the decision may do so within ten days by writing all pertinent information relevant to the appeal to the Quality Assurance Administrator or Quality Assurance Manager if the problem wasn't resolved by the Quality Assurance Administrator. When appealed, the problem shall be resolved within 14 working days; responses will be sent to the individual or program who submitted it; TYC Program Evaluator; Quality Assurance Administrator; and Quality Assurance Manager.

ARTICLE 14: CLAIMS FOR BREACH OF CONTRACT

Section 1: The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used, as further described herein, by the Texas Youth Commission and Service Provider to attempt to resolve any claim for breach of contract made by the 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 Government Code. To initiate the process, the Service Provider shall submit written notice, as required by Subchapter B, to the Executive Director. 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 Texas Youth Commission and the Service Provider otherwise entitled to notice under the parties' contract. Compliance by the Service Provider with Subchapter B is a condition precedent to the

filing of a contested case proceeding under Chapter 2260, Subchapter C, of the Government Code.

b. The contested case process provided in Chapter 2260, Subchapter C, of the Government Code is the Service Provider's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by the Texas Youth Commission if the parties are unable to resolve their disputes under subparagraph A. of this paragraph.

c. Compliance with the contested case process provided in subchapter C is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code. Neither the execution of this contract by the Texas Youth Commission nor any other conduct of any representative of the Texas Youth Commission relating to the contract shall be considered a waiver of sovereign immunity to suit.

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

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

ARTICLE 15: NO THIRD PARTY BENEFICIARIES

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

ARTICLE 16: RIGHT TO AUDIT

Service Provider understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office, TYC or any successor agency, to conduct an audit or investigation in connection with those funds. Service Provider further agrees to cooperate fully with the above parties in the conduct of the audit or investigation, including providing all records requested. Service Provider shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the 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 TYC and State of Texas requirements. Service Provider shall maintain all such documents and other records relating to this Agreement and the State's property for a period of four (4) 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 Agreement, for purposes of inspecting, monitoring, auditing, or evaluating by TYC, the State of Texas or their authorized representatives. Service Provider shall cooperate with auditors and other authorized TYC and State of Texas representatives and shall provide them with prompt access to all of such State's property as requested by TYC or the State of Texas. By example and not as an exclusion to other breaches or failures, Service Provider's failure to comply with this Section shall constitute a material breach of this Agreement and shall authorize TYC to immediately assess the liquidated damages for such failure. For purposes of this Section, the "State's property" includes, but is not limited to, "Work" as defined in the RFO. TYC 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 TYC with a copy of such audit at the same time it is provided to Service Provider. TYC retains the right to issue a request for proposals for the services of an independent certified public accounting

firm under this Agreement. In addition to and without limitation on the other audit provisions of this Agreement, pursuant to Section 2262.003, Tex Government Code, the State Auditor may conduct an audit or investigation of the Service Provider or any other entity or person receiving funds from the state directly under this Agreement or indirectly through a subcontract under this Agreement. The acceptance of funds by the Service Provider or any other entity or person directly under this Agreement or indirectly through a subcontract under this Agreement 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. This Agreement may be amended unilaterally by TYC to comply with any rules and procedures of the State Auditor in the implementation and enforcement of Section 2262.003. Under procedures provided by the State Auditor on September 5, 2003, in addition to the above, (1) the Service Provider understands that the acceptance of funds under this Agreement acts as acceptance of the authority of the State Auditor to conduct an audit or investigation in connection with those funds; (2) the Service Provider further agrees to cooperate fully with the State Auditor in the conduct of the audit or investigation, including providing all records requested; and (3) the Service Provider shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors through the Service Provider and the requirement to cooperate is included in any subcontract it awards.

ARTICLE 17: PAYMENTS

Prior to authorizing payment to Service Provider, TYC shall evaluate Service Provider's performance using the performance standards set forth in all documents constituting this Contract. Service Provider shall provide invoices to TYC for Services performed. Invoices must be submitted not later than the 15th day of the month after the Services are completed. No payment whatsoever shall be made under this contract without the prior submission of detailed, correct invoices. Subject to the foregoing, TYC must make all payments in accordance with the Texas Prompt Payment Act, Gov't Code, Chapter 2251. Payments under this Contract are subject to the availability of appropriated funds. Service Provider acknowledges and agrees that payments for services provided under this Contract are contingent upon TYC's receipt of funds appropriated by the Texas Legislature.

Service Provider shall invoice Owner for work performed by vendor identification number, building, and purchase order number. Invoices must include the Contract number, the number of employees that worked on the job and the number of hours.

ARTICLE 18: ASSIGNMENTS

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

ARTICLE 19: APPLICABLE LAW AND CONFORMING AMENDMENTS

Service Provider must comply with all laws, regulations, requirements and guidelines applicable to a Service Provider providing services to the State of Texas as these laws, regulations, requirements and guidelines currently exist and as they are amended throughout the term of this Contract. TYC reserves the right, in its sole discretion, to unilaterally amend this Contract throughout its term to incorporate any modifications necessary for TYC's or Service Provider's compliance with all applicable State and federal laws, and regulations.

ARTICLE 20: DECEPTIVE TRADE PRACTICES; UNFAIR BUSINESS PRACTICES

Service Provider represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Tex. Bus. & Com. Code, Chapter 17, or allegations of any unfair business practice in any administrative hearing or court suit and that Service Provider has not been found to be liable for such practices in such proceedings. Service Provider certifies that it has no officers who have served as officers of other entities who have been the subject allegations of

Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.

ARTICLE 21: EQUAL OPPORTUNITY

Service Provider represents and warrants that it shall not discriminate against any person on the basis of race, color, national origin, creed, religion, political belief, sex, sexual orientation, age, and disability in the performance of this Contract.

ARTICLE 22: 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 or institution has (1) violated the antitrust laws of the State of Texas under Tex. Bus. & Com. Code, Chapter 15, or the federal antitrust laws; or (2) communicated directly or indirectly any contents of the proposal to any competitor or any other person engaged in such line of business during the procurement process for this Contract.

ARTICLE 23: NO CONFLICTS

Service Provider represents and warrants that Service Provider has no actual or potential conflicts of interest in providing services to the State of Texas under this Contract and that Service Provider's provision of services under this Contract would not reasonably create an appearance of impropriety.

ARTICLE 24: FINANCIAL INTERESTS; GIFTS

Service Provider represents and warrants that neither Service Provider nor any person or entity that will participate financially in this Contract has received compensation from TYC or any agency of the State of Texas for participation in preparation of specifications for this Contract. Service Provider represents and warrants that it has not given, offered to give, and does not intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to any public servant or employee in connection with this Contract.

ARTICLE 25: FELONY CRIMINAL CONVICTIONS

Service Provider represents and warrants that Service Provider has not and Service Provider's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Service Provider has fully advised TYC as to the facts and circumstances surrounding the conviction.

ARTICLE 26: FALSE STATEMENTS; BREACH OF REPRESENTATIONS

By signature to this Contract, Service Provider makes all the representations, warranties, guarantees, certifications and affirmations included in this Contract. If Service Provider signed its Proposal with a false statement or signs this Contract with a false statement or it is subsequently determined that Service Provider has violated any of the representations, warranties, guarantees, certifications or affirmations included in this Contract, Service Provider shall be in default under this Contract and TYC may terminate or void this Contract for cause and pursue other remedies available to TYC under this Contract and applicable law.

ARTICLE 27: FORCE MAJEURE

Except as otherwise provided, neither Service Provider nor TYC nor any agency of the State of Texas, shall be liable to the other for any delay in, or failure of performance, of a requirement contained in this

Contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, strike, fires, explosions, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing with proof of receipt within three (3) business days of the existence of such force majeure or otherwise waive this right as a defense.

ARTICLE 28: DEBTS OR DELINQUENCIES TO STATE

The Comptroller is prohibited from issuing any payment to a person or entity that has been reported as having an indebtedness or delinquency to the state. Service Provider agrees that, to the extent Service Provider owes any debt or delinquent taxes to the State of Texas, any payments or other amounts Service Provider is otherwise owed under this Contract shall be applied toward the debt or delinquent taxes until the debt or delinquent taxes are paid in full. Service Provider agrees to comply with all applicable laws regarding satisfaction of debts or delinquencies to the State of Texas.

ARTICLE 29: BUY TEXAS

In accordance with Gov't Code, Section 2155.4441, the State of Texas requires that during the performance of a contract for services, Service Provider shall purchase products and materials produced in the State of Texas when available at a price and time comparable to products and materials produced outside the state.

ARTICLE 30: RECORDS RETENTION

Upon award, TYC will provide a copy of the General Administrative Policy regarding the State of Texas Records Retention Schedule.

ARTICLE 31: ABANDONMENT OR DEFAULT

If Service Provider is found to be in default under any provision of this Contract, TYC may cancel the Contract without notice and either re-solicit or award the contract to the next best responsive and responsible Respondent. In the event of abandonment or default, Service Provider will be responsible for paying damages to TYC including but not limited to re-procurement costs, and any consequential damages to the State of Texas or TYC resulting from Service Provider's non-performance. The defaulting Service Provider will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work is significantly changed.

ARTICLE 32: FUNDING OUT CLAUSE

This contract is subject to cancellation, without penalty, either in whole or in part if funds are not appropriated by the Texas Legislature.

ARTICLE 33: MERGER

This Contract contains the entire agreement between Service Provider and TYC and supersedes any prior understandings or oral or written agreements between TYC and Service Provider on the matters contained herein. No modification, alteration, or waiver of any term, covenant, or condition of this Contract and any attachments shall be valid unless in writing and executed by TYC and Service Provider.

ARTICLE 34: RECYCLED/REMANUFACTURED/ENVIRONMENTALLY SENSITIVE PRODUCTS

Texas State law requires that a purchasing preference be given to any product made from recycled material if the product meets written specifications as to quality and quantity. If a product proposed contains recycled material, please identify the item number and report the percent of all recycled material in the product and the percent of post-consumer material used in the product. "Post-consumer" means material that has been recycled after sale to a consumer as opposed to reuse of manufacturing waste material prior to sale. In addition, identify any products that meet the criteria of "environmentally sensitive."

ARTICLE 35: PROPRIETARY OR CONFIDENTIAL INFORMATION

Responses may include proprietary or confidential information. TYC will take reasonable precautions in protecting such information provided that it is clearly identified as proprietary or confidential on the page on which it appears.

ARTICLE 36: PUBLIC DISCLOSURE

No public disclosures or news releases pertaining to this RFP/Contract shall be made without prior written approval of the TYC.

ARTICLE 37: RIGHT OF OFFSET

In the event the TYC determines that Service Provider owes money to the TYC under any contract or purchase order, the TYC, upon providing Service Provider with written notice of its intent to offset, shall have the right to withhold monies due Service Provider with respect to this Contract or purchase order or with respect to any contract or purchase order with the TYC and apply such monies to the money due to the TYC.

ARTICLE 38: FEDERAL, STATE, AND LOCAL REQUIREMENTS

Service Provider shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2's to common law employees. Service Provider is responsible for both federal and State unemployment insurance coverage and standard Worker's Compensation Insurance coverage. Service Provider shall comply with all federal and State tax laws and withholding requirements. The State of Texas shall not be liable to Service Provider or its employees for any Unemployment or Workers' Compensation coverage, or federal or State withholding requirements. Service Provider shall indemnify the State of Texas and shall pay all costs, penalties, or losses resulting from Service Provider's omission or breach of this Section.

ARTICLE 39: COMPLIANCE WITH APPLICABLE RULES, REGULATIONS, POLICIES, PROCEDURES, AND LAWS

A. Service Provider shall provide services to TYC that are in compliance with all applicable local, state, and federal laws, rules and regulations now in effect or that become effective during the term hereof including but not limited to, Civil Rights Act of 1964; Title VII of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; the Age of Discrimination in Employment Act; the Immigration Act of 1990 and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IMRIRA) enacted on September 30, 1996; Code of Federal Regulations, Title 42, Part 2 (regarding information about drug and alcohol abuse offenders); Environmental Protection Agency (EPA) Rules and Regulations; Texas Code of Criminal Procedure; Texas Health and Safety Code, Chapters 85, 595, 611; Texas Administrative Code, Title 25, Chapter 403, Subchapter K (regarding offender

identifying information); the Americans with Disabilities Act of 1990; the Civil Rights Act of 1991; Occupational Safety and Health Act (OSHA) of 1970; Section 231.006, Texas Family Code; Texas Government Code, Chapter 508, 783, 2254, 2259, and 2260; Local Government Code, Chapter 244; and any and all relevant federal and state financial cost principles and audit requirements; and any and all rules, policies and procedures established from time to time by the TYC.

B. When differences between applicable standards exist, the higher standard, as defined by the TYC, will prevail.

ARTICLE 40: PATENT, TRADEMARK, COPYRIGHT AND OTHER INFRINGEMENT CLAIMS

Service Provider shall indemnify, save and hold harmless the State of Texas from and against claims of patent, trademark, copyright, trade secret or other proprietary rights, violations or infringements arising from the State's or Service Provider's use of or acquisition of any services or other items provided to the State of Texas by Service Provider or otherwise to which the State of Texas has access as a result of Service Provider's performance under this Contract, provided that the State shall notify Service Provider of any such claim within a reasonable time of the State's receiving notice of any such claim. If Service Provider is notified of any claim subject to this section, Service Provider shall notify TYC of such claim within five (5) business days of such notice. No settlement of any such claim shall be made by Service Provider without TYC's prior written approval.

Service Provider shall reimburse the State of Texas for any claims, damages, losses, costs, expenses, judgments or any other amounts, including, but not limited to, attorneys' fees and court costs, arising from any such claim. Service Provider shall pay all reasonable costs of the State's counsel and shall also pay costs of multiple counsel, if required to avoid conflicts of interest. Service Provider represents that it has determined what licenses, patents and permits are required under this Contract and has acquired all such licenses, patents and permits.

ARTICLE 41: NO LIABILITY UPON TERMINATION

If this Contract is terminated for any reason, TYC and the State of Texas shall not be liable to Service Provider for any damages, claims, losses, or any other amounts arising from or related to any such termination. However, Service Provider may be entitled to the remedies provided in Government Code, Chapter 2260.

ARTICLE 42: LIMITATION ON AUTHORITY; NO OTHER OBLIGATIONS

Service Provider shall have no authority to act for or on behalf of TYC or the State of Texas except as expressly provided for in this Contract; no other authority, power or use is granted or implied. Service Provider may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State of Texas or the TYC.

ARTICLE 43: REDACTION CLAUSE

Redacted Electronic Copy: Under House Bill 3430, 80th Texas Legislature, (transferring §2177.052, Tex. Gov't Code, to Chapter 322, Tex. Gov't Code and redesignating it as §322.020) and as per the following requirements, no later than two (2) business days after Awarded Vendor's receipt of notice from Texas Youth Commission of Awarded Vendor's tentative contract award, the Awarded Vendor (and no other vendors) must deliver to Texas Youth Commission two (2) electronic copies of its complete proposal. Awarded Vendor shall deliver these electronic copies to Texas Youth Commission via overnight delivery in compliance with all of the following requirements:

□ Two (2) CDs, each containing a copy of Awarded Vendor's Proposal, in searchable pdf format, which has excised, blacked out, or otherwise redacted information from its Proposal that Awarded Vendor reasonably considers to be confidential and exempt from public disclosure under the Texas Public Information Act, Chapter 552 of the Texas Government Code (this should be a de minimis portion, if any, of Awarded Vendor's Proposal, such as social security numbers). Each CD shall also contain an Appendix for Awarded Vendor's Proposal which provides a cross reference for the location of all information redacted by Awarded Vendor and a general description of the redacted information. These two (2) identical CDs should be entitled "For Public Release: Redacted Version of [Name of Awarded Vendor]'s Proposal and Exhibits: Texas Youth Commission's RFP No. 694-0-0852."

□ The Texas Legislative Budget Board has now implemented this contracts database. For information regarding the LBB website, go to
http://www.statutes.legis.state.tx.us/SOTWDocs/GV/htm/GV.322.htm#322.020

□ See the LBB website at www.lbb.state.tx.us <http://www.lbb.state.tx.us/>. Texas Youth Commission shall upload to the LBB's contracts database the text of the complete contract (with limited redaction and appendix) no later than ten (10) days after date of contract award. In submitting a Proposal in response to this RFP, Vendors acknowledge that they understand and accept this requirement."

ARTICLE 44: SPECIFICATIONS

The services performed shall be in accordance with the purchase specifications herein. TYC will determine the answers to all questions that may arise as to the interpretation of the specifications and the quality or acceptability of work performed. TYC will decide the rate of progress of the work and the acceptable fulfillment of the service on the part of the Service Provider.

ARTICLE 45: ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY, STANDARDS, AS REQUIRED BY 1 TAC CHAPTER 213

1) Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation. 2) Vendor shall provide DIR with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard"
(http://www.buyaccessible.gov). Vendors not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format.
Additional information regarding the "Buy Accessible Wizard"
or obtaining a copy of the VPAT is located at http://www.section508.gov/.

ARTICLE 46: NOTICE

It is good practice to designate who receives formal notices and the acceptable manner for the delivery of such notice in a contract. Examples of notice provisions include:

Delivery of Notices.

Any notice required or permitted to be given under this contract by one party to the other party shall be in writing and shall be given and deemed to have been given immediately if delivered in person to the recipient's address set forth in this section or on the date of certified receipt if placed in the United States mail, postage pre-paid by registered or certified mail with return receipt requested, addressed to the receiving party at the address hereinafter specified.

Service Provider's Mailing Address.

The mailing address of the Service Provider for all purposes under this contract and for all notices hereunder will be: **4818 E. Ben White Blvd., Suite 108, Austin, Texas 78741.**

Texas Youth Commission Mailing Address.

The address for all purposes under this contract and for all notices hereunder shall be sent by registered or certified mail with return receipt to: Texas Youth Commission, P. O. Box 4260, Austin, Texas 78765, Attn: Barbara Kelley, Contract Specialist, 2nd Floor.

ARTICLE 47: SUBSTITUTIONS

Substitutions are not permitted without the written approval of the Texas Youth Commission.

ARTICLE 48: TAXES

Purchases made for state uses are exempt from Texas State Sales Tax and Federal Excise Tax. An Excise Tax Exemption Certificate will be furnished upon written request to the Texas Youth Commission.

ARTICLE 49: PAST PERFORMANCE

A Respondent's past performance will be measured based upon pass/fail criteria, in compliance with applicable provisions of §§2155.074, 2155.075, 2156.007, 2157.003, and 2157.125, Gov't Code. Respondents may fail this selection criterion for any of the following conditions:
- A score of less than 90% in the Vendor Performance System,
- Currently under a Corrective Action Plan through the TYC,
- Having repeated negative Vendor Performance Reports for the same reason,
- Having purchase orders that have been cancelled in the previous 12 months for non-performance (i.e. late delivery, etc.). Contractor performance information is located on the CPA web site at: http://www.window.state.tx.us/procurement/prog/contractor_performance/

TYC may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through the Vendor Performance Tracking System (as authorized by 34 Texas Administrative Code §20.108), TYC may examine other sources of vendor performance including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts. Any such investigations shall be at the sole discretion of TYC, and any negative findings, as determined by TYC, may result in non-award to the Respondent.

ARTICLE 50: FEDERAL STATUTE incorporated by Reference

Drug Free Workplace Act of 1988 41 USC 701

ARTICLE 51: SMOKING

The Texas Youth Commission has a policy of being a smoke-free agency. The policy reflects our commitment to providing a healthy environment for all our employees and visitors. This policy prohibits smoking within any state building or on the grounds. Contractor, by acceptance of this contract, agrees to abide by this policy when on the property of TYC.

For the Texas Youth Commission:

Cheryln K Townsend — 11/23/10

Cheryln K. Townsend, Executive Director — Date

For the Service Provider:

12/4/10

Signature — Doris Davila — Executive Director — Date

Approved as to form:

TYC Attorney — 11/10/10 — Date