



Community Based Care: Hardee, Highlands & Polk Counties

## **Requirements of Contracting with Heartland for Children, Inc.**

**Last updated: 6/19/20**

### **Access to Records**

Provider must allow public access to all documents, papers, letters, or other public records as defined in subsection 119.011(12), F.S., and as prescribed by subsection 119.07(1) F.S., made or received by the provider in conjunction with this contract except that public records which are made confidential by law must be protected from disclosure. It is expressly understood that the provider's failure to comply with this provision shall constitute an immediate breach of contract for which HFC may unilaterally terminate the contract.

### **Adherence to Federal, State, and Local Laws**

If a contract contains federal funds the provider shall comply with the provisions of 45 CFR, Part 75, and other applicable regulations. If this contract contains federal funds and is over \$100,000, the provider shall comply with all applicable standards, orders, or regulations issued under section 306 of the Clean Air Act, as amended (42 U.S.C. 7401 et seq.), section 508 of the Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 et seq.), Executive Order 11738, as amended and where applicable, and Environmental Protection Agency regulations (40 CFR, Part 30). The provider shall report any violations of the above to HFC. No federal funds received in connection with this contract may be used by the provider, or agent acting for the provider or subcontractor, to influence legislation or appropriations pending before the Congress or any State legislature, including state legislature, state agency and judicial branch. If a contract contains federal funding in excess of \$100,000, the provider must, prior to contract execution, complete the Certification Regarding Lobbying form. If a Disclosure of Lobbying Activities form, Standard Form LLL, is required, it may be obtained from the contract manager. All disclosure forms as required by the Certification Regarding Lobbying form must be completed and returned to the contract manager, prior to payment under this contract. Unauthorized aliens shall not be employed. HFC shall consider the employment of unauthorized aliens a violation of section 274A(e) of the Immigration and Nationality Act (8 U.S.C. 1324 a) and section 101 of the Immigration Reform and Control Act of 1986. Such violation shall be cause for unilateral cancellation of this contract by HFC. If a contract contains \$10,000 or more of federal funds, the provider shall comply with Executive Order 11246, Equal Employment Opportunity, as amended by Executive Order 11375 and others, and as supplemented in Department of Labor regulation 41 CFR, Part 60 and 45 CFR, Part 75, if applicable. If this contract contains federal funds and provides services to children up to age 18, the provider shall comply with the Pro-Children Act of 1994 (20 U.S.C. 6081). Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for

each violation and/or the imposition of an administrative compliance order on the responsible entity.

In accordance with subsection 112.3187(2), F.S., the provider and its subcontractors shall not retaliate against any employee for reporting violations of law, rule, or regulation that creates substantial and specific danger to the public's health, safety, or welfare to an appropriate agency. Furthermore, agencies or independent contractors shall not retaliate against any person who discloses information to an appropriate agency alleging improper use of governmental office, gross waste of funds, or any other abuse or gross neglect of duty on the part of an agency, public officer, or employee. The provider and any subcontractor shall inform its employees that they and other persons may file a complaint with the Office of Chief Inspector General, Agency Inspector General, the Florida Commission on Human Relations or the Whistle-blower's Hotline number at 1-800-543-5353.

### **Insurance Requirements-Professional and General Liability**

By execution of a contract, unless it is a state agency or subdivision as defined by subsection 768.28(2), F.S., the provider accepts full responsibility for identifying and determining the type(s) and extent of liability insurance necessary to provide reasonable financial protections for the provider and the clients to be served under this Agreement. The limits of coverage under each policy maintained by the provider do not limit the provider's liability and obligations under this Agreement. Upon the execution of this Agreement, the provider shall furnish HFC written verification supporting both the determination and existence of such insurance coverage. Such coverage may be provided by a self-insurance program established and operating under the laws of the State of Florida. Provider shall notify HFC of any change of such coverage within forty-eight (48) hours of such change. Provider will also maintain statutory worker's compensation insurance per Florida statutory limits covering all employees engaged in any work associated with this Agreement. Each policy shall name HFC and the State of Florida, Department of Children and Families as an additional insured.

### **Insurance Requirements-Transportation and Automobile Liability**

Provider must provide or require staff who transport clients in their personal and/or rental automobiles (in order to carry out their job responsibilities) to obtain minimum bodily injury insurance as required by Florida law and/or the Department of Children and Families. Transportation operation must comply with state motor vehicle laws, requirements and standards, including the following restrictions:

- a. All drivers must have a valid State of Florida driver's license,
- b. The number of people in a vehicle used to transport clients shall not exceed the number of available seats and appropriate restraining devices. All persons in a vehicle shall use restraining devices while in transit, in accordance with Section 316.613, Florida Statutes; and
- c. All vehicles used to transport six or more children shall be equipped with first aid kits.

Providers will conduct driving record checks and insurance checks on all employees who transport clients in their personal vehicles at the time of hire and once a year at a minimum.

## **Audits, Inspections, Investigations, Records and Retention**

Provider shall establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by the Department under this contract. Provider will retain all client records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to this Agreement for a period of six (6) years after completion of the Agreement or longer when required by law. In the event an audit is required by this contract, records shall be retained for a minimum period of six (6) years after the audit report is issued or until resolution of any audit findings or litigation based on the terms of this contract, at no additional cost to the HFC. Upon demand, at no additional cost to HFC, the provider will facilitate the duplication and transfer of any records or documents during the required retention period as specified in this section. Provider will assure that these records shall be subject at all reasonable times to inspection, review, copying, or audit by HFC and Federal, State, or other personnel duly authorized by HFC and/or the Department. At all reasonable times for as long as records are maintained, persons duly authorized by HFC and/or the Department and Federal auditors, pursuant to 45 CFR, section 75, shall be allowed full access to and the right to examine any of the provider's contracts and related records and documents, regardless of the form in which kept. Provider will supply a financial and compliance audit to HFC as specified in this Agreement and in any referenced Attachments and/or Exhibits and ensure that all related party transactions are disclosed to the auditor. Provider shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by HFC or the office of The Inspector General (section 20.055, F.S.).

## **Compliance with Employment Laws**

Provider shall observe and conduct its activities with respect to co-workers, HFC and Provider's personnel, and others in compliance with all applicable Federal, State, and local laws, rules, and regulations, including discrimination laws and those governing the appropriate treatment of employees in the workplace. Provider understands that the Department, the Agency for Workforce Innovation, and Workforce Florida, Inc., have jointly implemented an initiative to empower recipients in the Temporary Assistance to Needy Families Program to enter and remain in gainful employment. HFC encourages provider participation with the Agency for Workforce Innovation and Workforce Florida. The provider also understands HFC's support of the Department's Operation Full Employment initiative to assist young adults aging out of the dependency system. HFC and the Department encourage provider participation with the local independent living programs to offer gainful employment to youth in foster care and young adults transitioning from the foster care system.

## **Civil Rights Requirements**

Provider shall not discriminate against any employee in the performance of this Agreement or against any applicant for employment because of age, race, religion, color, disability, national origin, marital status or sex sexual orientation, gender identity in accordance with Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, or the Florida Civil Rights Act of 1992, as amended and as applicable. The provider also agrees not to discriminate against any applicant, client or employee in service delivery or benefits in connection with any of its programs and activities in accordance with 45 CFR 80, 83, 84, 90, and 91, Title VI of the Civil Rights Act of 1964, or the Florida Civil Rights Act of 1992, as amended and as applicable, and CFOP 60-16. The provider further assures that these requirements are complied with by all

contractors, subcontractors, subgrantees, or others with whom it arranges to provide services or benefits to clients or employees in connection with any of its programs and activities. This is required for all contracted service providers that have one (1) or more clients. Provider shall complete the Civil Rights Compliance Checklist, CF Form 946, in accordance with CFOP 60-16 and 45 CFR Part 80. This is required for all providers that have fifteen (15) or more employees. Subcontractors who are on the discriminatory vendor list may not transact business with any public entity, in accordance with the provisions of section 287.134, F.S. In support to the Deaf and Hard-of-Hearing:

- a. The provider and its subcontractors, where direct services are provided, shall comply with section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as implemented by 45 C.F.R. Part 84 (hereinafter referred to as Section 504) and the Americans with Disabilities Act of 1990, 42 U.S.C. 12131, as implemented by 28 C.F.R. Part 35 (hereinafter referred to as ADA), and the Department of Children and Families Operating Procedure (CFOP) 60-10, Chapter 4, entitled “Auxiliary Aids and Services for Persons Who Are Deaf or Hard-of-Hearing.”
- b. If the provider or any of its subcontractors employs 15 or more employees, the Provider shall designate a Single-Point-of-Contact (one per firm) to ensure effective communication with deaf or hard-of-hearing customers or companions in accordance with Section 504, the ADA, and CFOP 60-10, Chapter 4. The name and contact information for the provider’s Single-Point-of-Contact shall be furnished to HFC’s Contract Manager within 14 calendar days of execution of the agreement.
- c. The provider shall, within 30 days of the effective date of this requirement, contractually require that its subcontractors comply with section 504, the ADA, and CFOP 60-10, Chapter 4. A Single-Point-of-Contact shall be required for each subcontractor that employs 15 or more employees. This Single-Point-of-Contact will ensure effective communication with deaf or hard-of-hearing customers or companions in accordance with Section 504 and the ADA and coordinate activities and reports with the provider’s Single-Point-of-Contact.
- d. The Single-Point-of-Contact shall ensure that employees are aware of the requirements, roles & responsibilities, and contact points associated compliance with Section 504, the ADA, and CFOP 60-10, Chapter 4. Further, employees of providers, or its subcontractors, with 15 or more employees shall annually receive training for “Serving Customers who are Deaf or Hard of Hearing” and attest in writing that they are familiar with the requirements of Section 504, the ADA, and CFOP 60-10, Chapter 4. The annual signed Attestation of Understanding shall be maintained in the employee’s personnel file.
- e. The provider’s Single-Point-of-Contact will ensure that conspicuous Notices which provide information about the availability of appropriate auxiliary aids and services at no-cost to the deaf or hard-

of-hearing customers or companions are posted near where people enter or are admitted within the agent locations. The approved Notice can be downloaded through the Internet at: <https://www.myflfamilies.com/service-programs/individual-with-disability/providers/DCF-posters.shtml>.

- f. The provider and its subcontractors shall document the customer's or companion's preferred method of communication and any requested auxiliary aids/services provided in the customer's record. Documentation, with supporting justification, must also be made if any request was not honored. The provider shall submit Compliance Reports monthly, not later than the 5<sup>th</sup> day of each month, to the HFC Contract Manager. The provider shall distribute Customer Feedback forms to customers or companions, and provide assistance in completing the forms as requested by the customer or companion.

If customers or companions are referred to other agencies, the provider must ensure that the receiving agency is notified of the customer's or companion's preferred method of communication and any auxiliary aids/service needs.

### **Americans with Disabilities Act**

Provider shall comply with the Americans with Disabilities Act. The following clause must be printed on all notifications of services delivered outside the individual family home in community-based facilities that are sent to potential participants. If notifications are by telephone, the following information must be given to all potential participants.

If you need an accommodation because of a disability in order to participate in the (Insert type of program) program, contact (Insert Designated Provider's Staff Member) at least two weeks prior to the first session date at (Insert Provider's Phone Number) between the hours of (Insert Hours of Operation), calls can be received (Insert Days of Operation).

### **Incident Reporting**

Provider, and any subcontractors, shall comply with HFC's Risk Management and Incident Reporting Policy, HFC 3-301. Provider shall document all reportable incidents as specified in the policy and procedure and forward to HFC Quality Management via email to [riskmanagement@heartlandforchildren.org](mailto:riskmanagement@heartlandforchildren.org) or via fax to (863) 519-8913. In addition, Provider shall make immediate notification to HFC in the event the Provider, any of its employees, or caregivers become subjects of an active child protective services investigation or are involved in any other unusual incident which could potentially have a negative effect upon youth in the provider's care.

The provider and any subcontractor must comply with and inform its employees of the following mandatory reporting requirements:

Each employee of the provider, and of any subcontractor, providing services in connection with any HFC contract who has any knowledge of a reportable incident as defined in CFOP 180-4, shall report such incident as follows: 1) reportable incidents that may involve an immediate or impending impact on the health or safety of a client shall be immediately reported to the HFC contract manager; and 2) other reportable incidents shall be reported to

the Department's Office of Inspector General by completing a Notification/Investigation Request (form CF 1934) and emailing the request to the Office of Inspector General at [ig\\_complaints@myflfamilies.com](mailto:ig_complaints@myflfamilies.com). The provider and subcontractor may also mail the completed form to the Office of Inspector General, 1317 Winewood Boulevard, Building 5, 2nd Floor, Tallahassee, Florida, 32399-0700; or via fax at (850) 488-1428. CFOP 180-4 can be obtained from the HFC contract manager and is available at <https://www.myflfamilies.com/admin/publications/policies.asp>

### **Reporting of Abuse and /or Neglect**

Provider, and its employees, shall immediately report knowledge or reasonable suspicion of abuse, neglect, or exploitation of a child, aged person, or disabled adult to the Florida Abuse Hotline on the statewide toll-free telephone number (1-800-96ABUSE) as required by Sections 39.201, 39.202 and 415.1034, Florida Statutes.

### **Grievance System and Client Concerns**

Provider shall develop and implement a grievance procedure to ensure concerns are identified and resolved timely. Concerns received by HFC concerning services rendered by Provider shall be resolved in accordance with HFC's Consumer Grievances Policy and Procedure, HFC 3-300. Provider shall submit the information necessary for HFC to resolve client concerns. Provider shall attend hearings and otherwise cooperate with HFC in the resolution of client concerns.

### **Testimony**

Upon request by HFC, the Department, or a court of law, Provider shall provide employees to testify as expert and/or fact witnesses in judicial or administrative proceedings relating to clients served under contract with HFC. This shall be provided without additional compensation from HFC and as a normal and necessary part of the services to be performed under contract with HFC.

### **Disaster Preparedness/Emergency Response Plan**

If the tasks to be performed pursuant to a contract with HFC include the physical care or supervision of clients, the provider shall submit to the HFC contract manager in accordance with the dates specified in referenced contract attachments, a disaster preparedness/emergency response plan. This plan shall include at a minimum: pre-disaster planning, record protection, persons responsible, method of evacuation (if needed), the address of the emergency shelter to be utilized (if applicable) and the method of notification of HFC in the event of an evacuation, and a recovery plan that would allow Provider to continue performance of contracted services in the event of an actual disaster. The plan should also address health related disasters. The plan must be updated on a yearly basis. For the purpose of disaster planning, the term supervision includes the responsibility of HFC, or its contracted agents, to ensure the safety, permanency and well-being of a child who is under the jurisdiction of a dependency court. Children may be served in their homes, be placed in a licensed/non-licensed relative/non-relative home, or be placed in a licensed foster care setting. HFC agrees to respond in writing within 30 days of receipt of the plan and any updates accepting, rejecting, or requesting modifications.

- i. Provider's Disaster Preparedness/Emergency Response Plan should include specifications for alternative accommodations and supplies in the event of a man-made or natural disaster.

- ii. Immediately after an emergency period, the Provider will conduct face-to-face contact for all their active clients, which shall include continued efforts to pursue the location of clients on runaway status. Provider shall make the determination as to whether conditions are safe for their employees prior to making face-to-face visits.
- iii. In the days to follow such an 'emergency' period, the Provider will make available to all its personnel an Employee Assistance Program for services.

### **Health Insurance Portability and Accountability Act Compliance**

Provider shall comply with 45 CFR, Parts 160, 162, or 164 relating to the security and privacy of client protected health information (PHI). Specific responsibilities of Provider shall include notifying clients about their privacy rights, designating a Privacy Officer, adopting and implementing privacy policy and procedures which minimally establish safeguards to protect the privacy of health care information and set boundaries on the use and release of health records, and training employees so they understand such policies. If required by 45 CFR, Parts 160, 162, and 164, the following provisions shall apply [CFR 164.504(e)(2)(ii)]:

- a. The Provider hereby agrees not to use or disclose PHI except as permitted or required by contract, state or federal law.
- b. The Provider agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by contract or applicable law.
- c. The Provider agrees to report to HFC any use or disclosure of PHI not provided for by contract or applicable law.
- d. The Provider hereby assures HFC that if any PHI received from HFC or the Department, or received by the Provider on HFC's or the Department's behalf, is furnished to Provider's subcontractors or agents in the performance of tasks required by contract with HFC, that those subcontractors or agents must first have agreed to the same restrictions and conditions that apply to the Provider with respect to such information.
- e. The Provider agrees to make PHI available in accordance with 45 C.F.R. 164.
- f. The Provider agrees to make PHI available for amendment and to incorporate any amendments to PHI in accordance with 45 C.F.R. 164.526.
- g. The Provider agrees to make available the information required to provide an accounting of disclosures in accordance with 45 C.F.R. 164.528.
- h. The Provider agrees to make its internal practices, books and records relating to the use and disclosure of PHI received from HFC or the Department, or created or received by the Provider on behalf of HFC or the Department available for purposes of determining the Provider's compliance with these assurances.
- i. The Provider agrees that at the termination of their contract with HFC, if feasible and where not inconsistent with other provisions of the contract concerning record retention, it will return or destroy all PHI received from HFC or the Department or received by the Provider on behalf of HFC or the Department, that the Provider still maintains regardless of form. If not feasible, the protections of the contract with HFC are hereby extended to that PHI which may then be used only for such purposes as make the return or destruction infeasible.
- j. Return the original signed copy of the Security Agreement Form, CF- 114, to the HFC Contract Manager, if applicable.
- k. Ensure the provision and documentation of pre-service and in-service training for professional and paraprofessional personnel.

The Provider must comply with all rules, regulations, and statutes that apply to confidentiality of clients served and not release any information regarding any families or children served. This responsibility extends to all of the officers, employees, volunteers, and agents of the provider. The Provider hereby acknowledges that failure to abide by the requirements of confidentiality statutes constitutes a criminal offense as set forth in section 39.202, Florida Statutes. The failure of other providers or entities does not alleviate the provider from any accountability for tasks or services that the Provider is obligated to perform pursuant to their contract with HFC.

### **Computer-Related Crimes**

Provider shall comply with Chapter 815, Florida Statutes, Computer Related Crimes.

### **Morals Clause**

The Provider understands that performance under a contract with HFC involves the expenditure of public funds from both the state and federal governments, and that the acceptance of such funds obligates the Provider to perform its services in accordance with the highest standards of ethical and moral conduct. In compliance with the provisions of sections 11.062 and 216.347, F.S., which prohibit the expenditure of contract funds for the purpose of lobbying the Legislature, judicial branch, or a state agency, Provider may not use public funds for purposes of lobbying, or for political contributions, or for any expense related to such activities.

The Provider understands HFC is an agency mandated to conduct business in the Sunshine, pursuant to Florida Law, and that all issues relating to the business of HFC and the Provider are public record and subject to full disclosure. The Provider understands that attempting to exercise undue influence on HFC and its employees to allow deviation or variance from the contracted terms other than through a negotiated and publicly disclosed amendment, is prohibited by the State of Florida. The Provider's conduct is subject to all state and federal laws governing the conduct of entities engaged in the business of providing services to government.

Unless exempted by law, all public records are subject to public inspection and copying under Florida's Public Records Law, Chapter 119, F.S. Any claim by provider of proprietary or trade secret confidentiality for any information contained in provider's documents (reports, deliverables, or work papers, etc., in paper or electronic form) submitted in connection with HFC's contract will be waived, unless the claimed confidential information is submitted in accordance with the following:

- a. The provider must clearly label any portion of the documents, data or records submitted that it considers exempt from public inspection or disclosure pursuant to Florida's Public Records Law as proprietary or trade secret.
- b. The labeling will include a justification citing specific statutes and facts that authorize exemption of the information from public disclosure.
- c. If different exemptions are claimed to be applicable to different portions of the protected information, the provider shall include information correlating the nature of the claims to the particular protected information.

HFC, when required to comply with a public records request including documents submitted by the provider, may require the provider to expeditiously submit redacted copies of documents marked as confidential or trade secret in accordance with the requirements noted above. Accompanying the submission shall be an updated version of the justification for exemption of public disclosure correlated specifically to the redacted information. The redacted copy must



exclude or obliterate only those exact portions that are claimed to be proprietary or trade secret. If the provider fails to promptly submit a redacted copy and updated justification in accordance with this paragraph, HFC is authorized to produce the records sought without any redaction of proprietary or trade secret information.

HFC is not obligated to agree with the provider's claim of exemption on the basis of proprietary or trade secret confidentiality and the provider shall be responsible for defending its claim that each and every portion of the redaction of proprietary or trade secret information are exempt from inspection and copying under Florida's Public Records Law.

### **Gratuities**

The provider agrees that it will not offer to give or give any gift to any HFC employee. As part of the consideration for contracting with HFC, the parties intend that this provision will survive the contract for a period of two years. In addition to any other remedies available to HFC, any violation of this provision will result in referral of the provider's name and description of the violation of this term to the Department for the potential inclusion of the provider's name on the suspended vendors list for an appropriate period. The provider will ensure that its subcontractors, if any, comply with these provisions.

### **Patents, Copyrights, and Royalties**

1. It is agreed that all intellectual property, inventions, written or electronically created materials, including manuals, presentations, films, or other copyrightable materials, arising in relation to Provider's performance under this agreement, and the performance of all of its officers, agents, and subcontractors in relation to this agreement, are works for hire for the benefit of the Department, fully compensated for by the contract amount, and that neither the Provider nor any of its officers, agents, nor its subcontractors may claim any interest in any intellectual property rights accruing under or in connection with the performance of this agreement. It is specifically agreed that the Department shall have exclusive rights to all data processing software falling within the terms of section 119.084, F.S., which arises or is developed in the course of or as a result of works or services performed under this agreement, or in any way connected herewith. Notwithstanding the foregoing provision, if the Provider is a university and a member of the State University System of Florida, then section 1004.23, F.S., shall apply.
2. If the Provider uses or delivers to the Department for its use or the use of its employees, agents, or contractors, any design, device, or materials covered by letters, patent, or copyright, it is mutually agreed and understood without exception that the compensation paid pursuant to this agreement includes all royalties or costs arising from the use of such design, device, or materials in any way involved in the work contemplated by this agreement.
3. All applicable agreements shall include a provision that the Federal awarding agency reserves all patent rights with respect to any discovery or invention that arises or is developed in the course of or under the agreement. Notwithstanding the foregoing provision, if the Provider or one of its subcontractors is a university and a member of the State University System of Florida, then section 1004.23, F.S., shall apply, but the Department shall retain a perpetual, fully paid, nonexclusive license for its use and the use of its contractors of any resulting patented, copyrighted, or trademarked work products.

## **Remedies**

In the event of a breach of contract, each party acknowledges that the injury to the other would be irreparable, and the monetary amount of damage therefore would be difficult or impossible to determine. Each party shall have all remedies available at law or equity, specifically including, without limitation, entitlement as a matter of course to an injunction or similar equitable relief if so ordered by a court of competent jurisdiction, without bond or with a nominal bond if allowed by law.

## **Avoidance of Violations; Modification**

Notwithstanding any provision of the contract with HFC, the parties shall not violate any applicable laws, rules, or regulations. The parties shall modify the contract to the extent necessary to comply with such laws, rules, and regulations.

## **Inurement**

Notwithstanding any provision of the contract with HFC, Provider shall enjoy no personal inurement under a contract with HFC beyond incidental private benefit, and the contract shall be construed by the parties consistent with this intent.

## **Provider Indemnity**

The Provider, upon reasonable notice, shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall indemnify, defend, and hold harmless HFC, and their officers, agents, and employees, from suits, actions, damages, and costs of every name and description, including attorney's fees, to the extent proximately caused by any alleged act or omission by the Provider, its agents, employees, partners, or subcontractors; provided, however, that the Provider shall not defend, indemnify or hold harmless for that portion of any suit, action, loss, costs (including attorney's fees) or damages proximately caused by the negligent acts or omissions or other wrongful conduct of HFC, its agents, employees, partners or subcontractors or any third party. The following additional terms will also apply:

- a. The Provider shall fully indemnify, defend, and hold harmless HFC from any suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right, related to or arising from the Provider's performance of this Agreement; provided, however, that the foregoing obligation shall not apply to HFC's misuse or modification of the Provider's products or HFC operation or use of Provider's products in a manner not contemplated by the Contract or the act or omission of a third party. If any product is the subject of an infringement suit, or in the Provider's opinion is likely to become the subject of such a suit, the Provider may at its sole expense procure for HFC the right to continue using the product or to modify it to become non-infringing. HFC shall not be liable for any royalties. If the Provider removes an infringing product because it is not reasonably able to modify that product or secure HFC the right to continue to use that product, the Provider shall immediately replace that product with a non-infringing product that HFC reasonably determines to be of equal or better functionality or be liable for HFC's reasonable cost in so doing.

- b. If either party is an agency or subdivision of the State, its obligation to indemnify, defend and hold harmless the other party shall be to the extent permitted by law and without waiving limits of sovereign immunity.

### **Notice of Claims**

Each party shall give written notice to the other party, as soon as practicable, of any lawsuit, claim, disciplinary action, investigation, or complaint which involves, or may involve, the services provided under contract with HFC or may adversely impact HFC or the Department.

### **Dispute Resolution and Attorney's Fees**

The parties agree to cooperate in resolving any differences in interpreting the contract with HFC or to resolve disputes as to the adequacy of the parties' compliance with their respective obligations under the contract. Each party shall designate one person to act as the party's representative for dispute resolution purposes, and shall notify the other party of the person's name and business address and telephone number. Within five (5) working days from delivery to the designated representative of the other party of a written request for dispute resolution, the representatives will conduct a face to face meeting for the purpose of resolving the disagreement amicably. If the representatives are unable to reach a mutually satisfactory resolution, either representative may request referral of the issue to the CEO/Executive Directors of the respective parties. Upon referral to this second step, the CEO/Executive Directors shall confer in an attempt to resolve the issue. Any controversy or claim arising out of or relating to the contract that has not been resolved by the respective CEO/Executive Directors shall be settled by arbitration in Polk County, Florida, in accordance with the Florida Arbitration Code. The decision in the arbitration shall be final and binding on the parties and judgment upon the rendered arbitration award may be entered in any court having jurisdiction. The parties will bear equally the expenses of the arbitrator(s). In the event of any mediation, arbitration, litigation, or legal, administrative or bankruptcy proceedings (collectively, "Proceedings") involving the parties to the contract and arising out of their performance of the contract or the transactions contemplated by the contract, the parties will bear equally the expenses of the arbitrator and any subsequent legal proceedings including mediation, arbitration, litigation or legal administrative proceeding if such expenses are awarded by the court.

### **Applicable Law and Courts**

All contracts with HFC shall be governed by the internal laws of the State of Florida (without regard to conflict of laws or similar concepts). Jurisdiction and venue shall lie, and all legal proceedings shall be brought, in the Tenth Judicial Circuit in and for Polk County, Florida, or in the United States District Court for the Middle District of Florida.

### **Cooperation**

The parties agree to cooperate and execute all documents to implement and carry out the provisions of a contract with HFC.

### **Control**

To the extent the provisions of the Provider's contract with HFC directly conflict with the provisions of the Standard Contract between HFC and the Department, the provisions of the

Standard Contract shall control. However, a conflict shall not exist to the extent the provisions of a contract with HFC impose obligations in addition to those contained in the Standard Contract.

### **Contracting Terms**

General contracting terms will be defined as specified in HFC policy 3-503 Contract Procurement.

### **Professional Qualifications**

Provider shall comply with the applicable staffing qualifications and requirements (including level 2 background screening) of Section 435.04, Florida Statutes; Section 402.731, Florida Statutes; Section 491.012, Florida Statutes; and any applicable law, statute, rule or regulation (including Attachments, referenced Exhibits and the Standard Contract between the Department and HFC).

- a. Provider staff, student interns and volunteers shall successfully comply with the good moral character and required background screening in accordance with Florida Statute, Sections 435.01 – 435.11, prior to employment. The Provider must conduct and receive the required clearances for Level 2 background checks on all staff and volunteers prior to the date of hire.
- b. The Provider shall ensure that any relevant subcontractor staff and the Provider's subcontractor's student interns and volunteers, meet the qualification, screening, and certification requirements as required by Rules 65C-14, Florida Administrative Code and/or 65C-15, Florida Administrative Code, sections 39.001 (2), 435.04, 402.731, 402.40, and 491.012, Florida Statutes.
- c. Personnel records shall, at a minimum, contain job descriptions, applications, Level 2 background screenings, educational achievements and qualifications, training records, evaluations, confidentiality form and security agreement form; and shall be maintained and accessible for periodic review by HFC.
- d. All employees having access to client related information and/or direct contact with clients served under contract with HFC must sign a Confidentiality Statement and Non-Disclosure Agreement, an example of which is included along with the executed contract and is also available from the HFC Contract Manager. The Provider may utilize their own forms if all relevant information included on the HFC forms is included.
- e. The Provider or its subcontractor shall conduct a reference check of any current or former Department or any Lead Agency or subcontractor employee who applies and is being considered for employment prior to the appointment of the individual. The reference check will be documented in writing and maintained in the employee's personnel file. The Department, Lead Agency, and subcontractor will not give a neutral reference, and the provider will not accept a neutral reference, for any current or former employee seeking employment with the Department, Lead Agency, provider or other subcontractor.

### **Staff Training**

Provider staff, student interns and volunteers having direct contact with children and families referred by HFC shall complete orientation training within ninety (90) days of start date. This

training shall at a minimum include confidentiality issues, identification of indicators for child abuse and neglect, abandonment and mandatory reporting. The provider shall provide the latest DCF Security Awareness Training (available at [www.myflfamilies.com/general-information/dcf-training](http://www.myflfamilies.com/general-information/dcf-training)) to all of its employees and subcontractors who have access to Department information systems. This training must be renewed annually within 30 days of the release date for the updated training. Each employee's/volunteer's/student intern's personnel file shall document the subject, date, and number of hours of training the employee/volunteer/student intern has completed.

### **Subcontractors**

Provider will be acting in all respects as an independent Subcontractor under applicable law and may not be considered or permitted to be an officer, agent, or employee of HFC or the State of Florida. Neither the provider nor its agents, employees, subcontractors or assignees shall represent to others that it has the authority to bind HFC or the Department unless specifically authorized in writing to do so.

There is no subcontracting permitted under the terms of a contract with HFC without prior written approval from HFC. Any subcontracts for direct service to children must have prior written approval from HFC prior to service delivery. Responsibility for reimbursement to the subcontractor will rest solely with the Provider. If the Provider requests permission to subcontract any work associated with the services provided under contract with HFC it shall include with its request the identity of the third party provider with which it seeks to subcontract. HFC will notify the Provider not later than ten (10) business days after receipt of such request of its decision to approve or disapprove the request. If Provider is permitted to subcontract under the terms of this agreement, the Provider must include in all subcontracts the substance of all clauses in the DCF Standard Contract that mention or describe subcontractor compliance. The Provider must also include in all subcontracts the substance of all clauses applicable to the portion of the Provider's performance being subcontracted. The Provider shall be responsible for service delivery, monitoring and quality assurance of all subcontracts entered into by the Provider under this provision. The Provider shall develop written procedures for monitoring of subcontracts. Copies of all annual initial monitoring reports on subcontractors will be available upon request of the HFC Contract Manager. The Provider will notify the HFC Contract Manager within forty-eight (48) hours of conditions related to subcontractor performance that could impair continued service delivery. The Provider will submit to the HFC Contract Manager copies of all monitoring reports and findings within thirty (30) days of the completion of each evaluation. The Provider will also submit to the HFC Contract Manager copies of finalized corrective action plans.

### **Service Location(s)**

The Provider shall notify the HFC Contract Manager, in writing, at least ninety (90) days in advance of any change in the street address and/or mailing address of the Provider's administrative office or service location. The Provider shall notify the HFC Contract Manager, in writing, within 48 hours of any change in the facsimiles, phone numbers or e-mail addresses of the Provider's administrative office or service location.

### **Bonding**

Unless the Provider is an authorized governmental entity of the State of Florida, Provider shall furnish evidence of employee's dishonesty/mismanagement of funds insurance to cover all officers, employees and agents of Provider authorized to handle funds received or disbursed

under a contract with HFC. The insurance or bond shall be in an amount commensurate with the funds handled, the degree of risk, as determined by the surety company.

### **Off-shore Utilization and Confidential Data**

Neither the Lead Agency nor its subcontractors shall utilize any off-shore businesses, services, facilities, equipment, personnel or processing capabilities in carrying out the terms of this agreement. Nor shall the Lead Agency or any subcontractor be allowed to carry out services in a manner that would permit the overseas dissemination of any account information or other information deemed confidential by Florida Statutes. Confidential data must be maintained in accordance with Florida law and Department procedures unless the provider has established departmentally approved procedures to address the confidentiality of data.

### **No-Reject; No-Eject Policy**

Provider agrees not to differentiate or discriminate in the access to, treatment of, or quality of the services to individuals on the basis of race, color, national origin, gender, age, religion, ancestry, marital status, sexual orientation, place of residence, health status, disability, or source of payment or any other factor or characteristic. Clients to be served shall receive services in the same manner, with the same standards, and within the same availability.

### **HFC Data Systems**

Provider will obtain access and enter all client and service related data into any designated HFC Data System, such as Mind Share, and designated State Data System, such as Florida Safe Families Network, as required under HFC policies and procedures or contract. Provider will utilize data and reports within these systems as management tools to ensure compliance and quality of service delivery.

### **Revenue Maximization**

As applicable to the Provider's individual service delivery, Provider will comply with revenue maximization requirements including, but not limited to, completing case plans, judicial reviews, and eligibility forms for Title IV-E Foster Care, Temporary Assistance to Needy Families (TANF), TANF/Relative Caregiver Program, TANF/Title IV-A, Emergency Assistance, Adoption Assistance, Title IV-B, and Title IV-E.

### **Violence in the Workplace**

Provider shall develop and implement a policy and procedure concerning Violence in the Workplace.

### **Security Obligations**

Providers with access to HFC or state information systems shall identify an appropriately skilled individual to function as its Data Security Officer. This Security Officer shall act as the liaison to HFC's Security Team and will maintain an appropriate level of data security for the information Provider is collecting or using in the performance of its contracted duties. This includes approving and tracking all Providers' employees that request system or information access and ensuring that user access has been removed from all terminated Provider employees. Provider will ensure that all Provider employees who have access to HFC or Department information are

provided a copy of HFC's Policy 3-208, titled Data Security Access, which includes a copy of CFOP 50-2 as an attachment, and annually sign the DCF Security Agreement form CF 0114. The signed original form must be forwarded to HFC's Security Officer and a copy maintained in the employee's personnel file.

The provider shall hold HFC and the Department harmless from any loss or damage incurred by HFC or the Department as a result of information technology used, provided or accessed by the provider.

The provider shall provide the latest DCF Security Awareness Training to all of its employees and subcontractors who have access to Department information.

The provider shall make every effort to protect and avoid unauthorized release of any personal or confidential information by ensuring both data and storage devices are encrypted as prescribed in DCF CFOP 50-2. If encryption of these devices is not possible, then the provider shall assure that unencrypted personal and confidential information and data will not be stored on unencrypted storage devices. The provider shall require the same of all subcontractors.

The provider agrees to notify the HFC contract manager as soon as possible, but no later than five (5) business days following the determination of any breach or potential breach of personal and confidential data. The provider shall require the same notification requirements of all subcontractors.

The provider shall provide notice to affected parties and HFC no later than 45 days following the determination of any breach or potential breach of personal or confidential data provided in section 817.568, F.S. The provider shall require the same notification requirements of all subcontractors. The Provider must offer measures deemed appropriate by the Department to mitigate or avoid injury to any person as a result of a breach.

### **Client Satisfaction**

Provider agrees to administer a client satisfaction survey as part of their quality assurance/quality improvement plan. An analysis of the survey's results and an action plan to improve areas of service delivery shall be available to HFC upon request. In addition, Provider shall participate in any client satisfaction activities requested by HFC.

### **Information Technology Resources**

If HFC contract funds are being utilized, the Provider must receive written approval from the appropriate HFC approving authority prior to the purchase of any Information Technology Resource made as part of the contract with HFC. The Provider agrees to secure prior written approval by means of an Information Resources Request form before the purchase of any Information Technology Resource. The HFC Contract Manager or HFC designee is responsible for serving as the liaison between the Provider and Information Systems during the completion of the Information Resource Request/Information Technology Resource process. The Information Technology Resources are data processing hardware, software, services, supplies, maintenance, training, personnel and facilities. The Provider will not be reimbursed for any Information Technology Resource purchases made prior to obtaining HFC's written approval.

## **Quality Improvement**

Provider shall participate in and comply with the requirement of HFC's quality improvement process, including implementation of corrective action plans and credentialing requirements and compliance with all protocols, policies and guidelines established by HFC.

Provider shall request each client or his parent, custodian or legal guardian to execute a release of information form, permitting HFC to review and analyze the Services provided to that client, as necessary.

## **Coordination With Other Providers/Entities**

The Provider will maintain effective contact and communication with HFC, appropriate protective investigations referral source, dependency court and other persons and agencies necessary to assure efficient service provision and coordination.

The Provider will work with HFC to mobilize community partnerships toward an integrated system of care for children and families.

## **Coordination of Benefits**

Any costs or services paid for under any other Contract, Subcontract or agreement or from any other source are not eligible for payment under a contract with HFC.

## **Medicaid Billing**

HFC and the Provider specifically agree and acknowledge that the Medicaid Program is the payer of last resort and:

1. In no event shall the Provider bill the Medicaid program for services or expenses for Medicaid recipients for which the Provider has already been paid by another liable third party, and
2. Provider services covered under the Florida Medicaid program for Medicaid recipients may be billed to the Medicaid program by the Provider, unless the Provider is already being paid by any other liable third party, and
3. Authorized Provider services to non-Medicaid recipients, or for non-Medicaid covered services, may only be billed to HFC or any other non-Medicaid first or third party payer, and
4. The Provider shall identify and report Medicaid earnings separate from all other fees, and
5. Medicaid earnings cannot be used as local match, and
6. The Provider shall ensure that Medicaid payments are accounted for in compliance with federal regulations, and
7. In no event shall both Medicaid and HFC be billed for the same service.

## **Notice**

Any notice, that is required under a contract with HFC shall be in writing, and sent by U.S. Postal Service or any expedited delivery service that provides verification of delivery or by hand delivery. Said notice shall be sent to the representative of HFC responsible for the administration of the program, to the designated address contained in the contract.



## Local Advocacy Council

In accordance with Chapter 402, Florida Statutes, the Provider must comply with all of the Florida Statewide Advocacy Council's requirements by allowing access to records of clients and the ability to make use of, unless otherwise protected by law, all client records, files and reports in any program, service or facility that is operated, funded, licensed or regulated by the Department for the purposes of investigations and monitoring.

## Restriction of Service Delivery

HFC reserves the right to restrict or exclude any subcontractor employee from delivering services under the terms and conditions of this contract.

## Employment Eligibility Verification

1. **Definitions.** As used in this clause:

“Employee assigned to the contract” means all persons employed during the contract term by the provider to perform work pursuant to this contract within the United States and its territories, and all persons (including subcontractors) assigned by the provider to perform work pursuant to the contract with the HFC.

“Subcontract” means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

“Subcontractor” means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime provider or another subcontractor.

2. Enrollment and verification requirements.

a. The provider shall:

- (i) **Enroll.** Enroll as a provider in the E-Verify program within 30 calendar days of contract award;
- (ii) **Verify all new employees.** Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility. All new employees assigned by the provider/subcontractor to perform work pursuant to the contract with DCF shall be verified as employment eligible within 3 business days after the date of hire; and

b. The provider shall comply, for the period of performance of this contract, with the requirement of the E-Verify program enrollment.

- (i) The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the provider's enrollment and deny access to the E-Verify system in accordance with the terms of the enrollment. In such case, the provider will be referred to a DHS or SSA suspension or debarment official.

- (ii) During the period between termination of the enrollment and a decision by the suspension or debarment official whether to suspend or debar, the provider is excused from its obligations under paragraph (b) of this clause. If the suspension or debarment official determines not to suspend or debar the provider, then the provider must reenroll in E-Verify.
3. **Web site.** Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: <http://www.dhs.gov/E-Verify>.
  4. **Individuals previously verified.** The provider is not required by this clause to perform additional employment verification using E-Verify for any employee whose employment eligibility was previously verified by the provider through the E-Verify program.
  5. **Individuals performing work prior to the E-verify requirement.** Employees assigned to and performing work pursuant to this contract prior to February 04, 2011 do not require employment eligibility verification through E-verify.
  6. **Evidence.** Of the use of the E-Verify system will be maintained in the employee's personnel file.
  7. **Subcontracts.** The provider shall include the requirements of this clause, including this paragraph (7) (appropriately modified for identification of the parties), in each subcontract.