

**CHILDREN'S BOARD OF HILLSBOROUGH COUNTY
ATTACHMENT 3**

**GENERAL TERMS AND CONDITIONS
STANDARD CONTRACT
COST REIMBURSEMENT CONTRACTS**

1. Services and Findings: The PROVIDER will provide for the residents of Hillsborough County the Services described in Attachment 1, Scope of Service, Service and Performance Objectives. The CHILDREN'S BOARD finds it to be in the public interest to provide children's services through the PROVIDER for the residents of Hillsborough County who are in need of such services. Pursuant to Section 125.901, Florida Statutes, as it existed prior to October 1, 1990, the CHILDREN'S BOARD finds it has authority to allocate and provide funds to PROVIDER. The CHILDREN'S BOARD finds that the best interest of the public will be served by entering into an agreement with the PROVIDER.

If an Empowerment Evaluation Matrix has been approved by the CHILDREN'S BOARD for this Agreement, the Empowerment Evaluation Matrix will describe the program's design, task management, evaluation design, and data collection. The Empowerment Evaluation Matrix for this Agreement, if any, shall state Agency's name and the Program's name as described on Attachment 1, Scope of Service, Service and Performance Objectives. The Empowerment Evaluation Matrix will serve as a current work plan for the Services. Parts of the Empowerment Evaluation Matrix may be modified only as described in paragraph 5 (f.)

2. Service Area: If possible, PROVIDER will maintain service sites which are accessible and convenient to the clients. PROVIDER will advise the CHILDREN'S BOARD in writing prior to any change in the location of service sites.

If an Empowerment Evaluation Matrix has been approved for this Agreement, and if the Empowerment Evaluation Matrix describes the location of service sites, the location of service sites may be modified only as described in paragraph 5 (f.)

A PROVIDER serving in designated zip codes or neighborhoods may serve residents of Hillsborough County residing outside of those designated areas only when providing Outside-Area Emergency Services which are Services reasonably necessary to help avoid a potentially serious risk to a person's health, safety, or welfare; or to help alleviate the effects of an event or incident that seriously affected a person's health, safety, or welfare if such event or incident occurred within 14 days prior to the event or incident first being known to PROVIDER or a subcontractor of PROVIDER. An Outside-Area Emergency Service is a Critical Incident that must be reported to the CHILDREN'S BOARD pursuant to paragraph 5.g.vi.

3. Term: PROVIDER will perform the Services during the period designated in paragraph 6, Term, on the Agreement Cover Sheet. This Agreement will terminate at midnight on the last date designated in paragraph 6, Term, on the Agreement Cover Sheet unless extended for an additional period by the CHILDREN'S BOARD by written notice to the PROVIDER prior to termination. If the CHILDREN'S BOARD elects to extend this Agreement, in each extension, the CHILDREN'S BOARD may increase or decrease the amount of the contract award or extend the term at no additional amount.

4. Payment: To receive payment, PROVIDER must perform the Services to the reasonable satisfaction of the CHILDREN'S BOARD.

To receive payment, the PROVIDER must submit to the CHILDREN'S BOARD:

a. The CHILDREN'S BOARD Reimbursement Request Forms, as appropriate, which if received by 5:00 p.m. on Friday, the payment will be released on the following Friday.

b. Other reports and information requested by the CHILDREN'S BOARD, including those reports listed in Attachment 1, Scope of Service, Service and Performance Objectives.

The CHILDREN'S BOARD will reimburse the PROVIDER for expenditures incurred and paid for the provision of Services. Reimbursement will be made according to the line item budget described in Attachment 2, Budget. The CHILDREN'S BOARD will not reimburse the PROVIDER for any expenditures in excess of the amount budgeted by line without prior approval or notification as described in paragraph 5 (d.) and (e.)

5. Modifications and Required Notifications:

a. General Requirements: Except for modifications made in accordance with the requirements of this paragraph 5 and that do not materially modify the Services, this Agreement may only be amended or modified in writing.

The PROVIDER may not rely on any verbal directive of any employee or agent of the CHILDREN'S BOARD which amends or modifies any part of this Agreement. No course of conduct by employees or agents of the CHILDREN'S BOARD will act as a waiver of any part of this Agreement and the CHILDREN'S BOARD will not be estopped nor may PROVIDER raise as a defense that the provisions of this Agreement have been amended or modified by verbal directions or by the acts or omissions by employees or agents of the CHILDREN'S BOARD.

b. Modifications Requiring Prior Approval by the CHILDREN'S BOARD: The PROVIDER must obtain the prior written approval of the CHILDREN'S BOARD to:

i. Change the number or assignments of staff providing the Services or the percent of time individual staff members spend performing the Services or administering the program funded by this Agreement. Staff resignations must be reported to the CHILDREN'S BOARD as soon as the agency has notice of the resignation. If an Empowerment Evaluation Matrix has been approved for this Agreement, and if the Empowerment Evaluation Matrix describes the staffing information in this subparagraph, such information may be modified only as described in paragraph 5 (f.)

ii. Expend funds in a manner or an amount that is inconsistent with the Budget or increase or decrease the Budget by an amount in excess of the amounts described below in the subparagraph entitled Budget Modifications Requiring Notification.

c. Modifications and Performance or Contract-related Events Requiring Notification: Subject to the other provisions of this paragraph and the rights of the CHILDREN'S BOARD under this Agreement, including, but not limited to, its rights under paragraph 15, Performance, the PROVIDER will notify the CHILDREN'S BOARD in writing as soon as reasonably possible either before or after any of the following occurs:

- (1) the PROVIDER changes the service site;
- (2) Services are not begun on the date of commencement described in this Agreement, or the Provider knows that the Services will not begin on the date specified herein, whichever occurs first;
- (3) the work of an assignee or subcontractor ceases or materially changes;
- (4) if the CHILDREN'S BOARD has authorized the PROVIDER to assign or subcontract a portion of the Services, the PROVIDER will furnish a copy of the assignment or subcontract to the CHILDREN'S BOARD;
- (5) funds from other sources which were budgeted to provide the Services are not available in the amounts or at the times planned;
- (6) the PROVIDER obtains funds to provide the Services in addition to those which were budgeted or the PROVIDER becomes aware of additional funds from other sources that are available to provide the Services;
- (7) the PROVIDER does not provide the scope or level of Services planned;
- (8) employees working in the program are terminated, reassigned, or resign;
- (9) the program is or may be adversely affected by any other situation or event including any media coverage, public inquiry, or regulatory inquiry or action against PROVIDER that may impact PROVIDER;
- (10) capital goods are: (i) moved to a location other than the location or locations described in this Agreement; or, (ii) used to provide services, functions or in activities not described in this Agreement; or, (iii) used in a program not described in this Agreement; or, (iv) lost, stolen, or in a condition that prevents their use as described in this Agreement;
- (11) cancellation or revision to the PROVIDER'S insurance applicable to the performance of the Services;
- (12) a written complaint by any person receiving Services funded in whole or in part by this Agreement, except that written notification to the CHILDREN'S BOARD must be given within 5 days after PROVIDER'S receipt of the complaint;
- (13) the PROVIDER'S governing Board or Executive Director changes. If the PROVIDER has a website, the Provider agrees to list their governing Board and Executive Director on their website; and
- (14) any change to information listed on Attachment 5: Addresses change.

Although the foregoing Modifications or Events do not require the prior approval of the CHILDREN'S BOARD, if the CHILDREN'S BOARD is notified by the PROVIDER or if the CHILDREN'S BOARD determines through inspection, review, or other means that any of the Modifications or Events has occurred or is about to occur, and the CHILDREN'S BOARD determines in its sole reasonable discretion that such Modifications or Events jeopardize the successful performance of the Services, the safety of clients or their families, or others; or the proper use of funds received from the CHILDREN'S BOARD, then the CHILDREN'S BOARD may exercise any of the remedies set forth in paragraph 15.

Proposed modifications other than those permitted in this paragraph 5 may be authorized by the CHILDREN'S BOARD in accordance with the Policies of the CHILDREN'S BOARD.

d. Budget Modifications Requiring Prior Approval - General Conditions: The PROVIDER may request to make budget modifications during the fiscal year in accordance with this Agreement and the CHILDREN'S BOARD'S procedures and forms. The PROVIDER must obtain the prior written approval of the CHILDREN'S BOARD to change the budget in excess of the limits described in e. Budget Modifications Requiring Notification below. A request for modification must be received by the CHILDREN'S BOARD at least 90 days prior to the end of the Agreement.

e. Budget Modifications Requiring Notification: Subject to paragraph ii below, PROVIDER is authorized to adjust the budget as follows without the prior approval of the CHILDREN'S BOARD:

i. Subtotal line items may be increased or decreased up to \$500 or 10%, whichever is greater.

ii. No single subtotal line item may be increased or decreased more than once each year without prior written CHILDREN'S BOARD approval.

f. Empowerment Evaluation Matrix Modifications: If an Empowerment Evaluation Matrix has been approved for this Agreement, the Empowerment Evaluation Matrix may be modified only as follows:

i. The representatives of the CHILDREN'S BOARD and PROVIDER authorized to modify the Empowerment Evaluation Matrix are called the Matrix Representatives. Each party will designate its Matrix Representative by written notice to the other party upon execution of this Agreement. Either party may change its Matrix Representative upon written notice to the other party.

ii. By written agreement of the Matrix Representatives, Columns 1-3 and 5-7 relating to Process Objectives, Activities, Responsible Parties, Indicator Measurements, Data Source, and Time of Measurements in the Empowerment Evaluation Matrix may be modified based upon a more current analysis of the appropriate methods to perform the Services or to resolve problems in the administration of the Empowerment Evaluation Matrix.

iii. It is the intent of the parties that the Empowerment Evaluation Matrix will be construed to be consistent with these General Terms and Conditions and the Budget, but the event of a conflict, the provisions of these General Terms and Conditions and the Budget shall take precedence.

g. Notifications of Critical Incidents Affecting Health, Safety, Welfare, or Unplanned Law Enforcement Involvement: Within one business day of PROVIDER knowing of a Critical Incident, PROVIDER shall notify the CHILDREN'S BOARD by telephone and in writing and provide the CHILDREN'S BOARD with a description of the incident and such other information as the CHILDREN'S BOARD may reasonably request in writing pursuant to Paragraph 8. A Critical Incident means any of the following incidents involving PROVIDER'S Participants or any Participant of a subcontractor of PROVIDER. A Participant means any person receiving any Service funded in whole or in part by this Agreement. A Critical Incident also includes any of the following incidents that include a specific reference to an Employee or volunteer. Employee means a PROVIDER officer or employee or volunteer, or an officer or employee or volunteer of a PROVIDER subcontractor under this Agreement, collectively called an Employee or volunteer in the following list. Nothing in this section shall be construed to imply that employees of PROVIDER'S subcontractors are employees of PROVIDER or that clients and participants of PROVIDER'S subcontractors are clients or participants of PROVIDER. All e-mail communications made or received by the CHILDREN'S BOARD are subject to the Florida Public Records Law, Chapter 119, Florida Statutes. Nothing in this paragraph relieves PROVIDER from directly reporting any matter to state, federal, or non-CHILDREN'S BOARD local agencies or law enforcement agencies when such reporting is required by law, including reporting to the Florida Abuse Hotline.

A CRITICAL INCIDENT is any:

i. Abduction – An incident in which an individual who does not have care and custody of a Participant has wrongfully taken the Participant.

ii. Abuse or Neglect – Reasonable cause to suspect that a Participant has been harmed or is believed to be threatened with harm from a person responsible for the care of the Participant. Arrest also includes the arrest of any PROVIDER officer for any reason.

iii. Arrest – Employee, PROVIDER volunteer, or Provider's subcontractor's volunteer's arrest for conduct or activity related to work for PROVIDER under this Agreement; death or harm to a Participant; or for a potentially disqualifying offense under level 2 background screening requirements as defined in Chapter 435, Florida Statutes.

iv. Death of Participant – The death of any Participant if the death may be related to or is alleged to have been related to Participant’s involvement in a PROVIDER program funded in whole or in part by this Agreement.

v. Illness of Participant – An illness of a Participant determined by a licensed health care professional to be life-threatening or the result of apparent abuse or neglect if PROVIDER has reason to believe that the illness or abuse or neglect may be related to or is alleged to have been related to Participant’s involvement in a PROVIDER program funded in whole or in part by this Agreement.

vi. Service Outside Designated Areas – PROVIDER or PROVIDER’S subcontractor’s Services funded in whole or in part by this Agreement are provided to a person residing outside of the PROVIDER’S service areas designated by this Agreement.

vii. Sexual Battery – An allegation of sexual battery involving a Participant or Employee or volunteer as evidenced by medical evidence or law enforcement involvement. Sexual battery includes Participant on Participant incidents, Employee on Participant, and Participant on Employee.

viii. Suicide or Suicide Attempt – The suicide of a Participant or an act that clearly reflects the physical attempt by a Participant to cause his or her own death, which results in bodily injury requiring medical treatment by a licensed health care professional.

ix. Other Serious Incidents – Any action, incident, misconduct, or malfeasance involving PROVIDER’S staff or volunteers that could potentially jeopardize the performance of this Agreement.

6. Reimbursement Forms: One reimbursement form must be submitted each month for each CHILDREN’S BOARD funded program. The final reimbursement form will be submitted to the CHILDREN’S BOARD within 45 days of the termination of this Agreement.

7. Incorporation of Agreement Documents: The Agreement between the CHILDREN’S BOARD and the PROVIDER consists of the following contract documents:

- (a) The page entitled "Agreement Cover Sheet;"
- (b) The page entitled "Agreement;"
- (c) Attachment 1 entitled "Scope of Service, Service and Performance Objectives;"
- (d) Attachment 2 entitled "Budget;"
- (e) Attachment 3 consisting of these "General Terms and Conditions;"
- (f) Attachment 4 entitled "Assignments and Subcontractors;"
- (g) Attachment 4a entitled “Roles and Responsibilities of Lead Agencies and Sub-Contracted Agencies” and
- (h) Attachment 5 entitled "Addresses."

8. Program Monitoring: The PROVIDER will submit progress reports and other information in such formats and at such times as may be prescribed by the CHILDREN’S BOARD, cooperate in site visits and other on-site monitoring (including, but not limited to: access to sites, clients, staff, fiscal and client records and logs, and the provision of related information), submit reports on any monitoring of the program funded in whole or in part by the CHILDREN’S BOARD conducted by federal, state, or local governmental agencies or other funders, and if the PROVIDER receives accreditation reviews, each accreditation review must be submitted to the CHILDREN’S BOARD within thirty (30) days after receipt by PROVIDER. All of the foregoing in this paragraph is referred to collectively as Program Monitoring in this paragraph. The PROVIDER agrees to such Program Monitoring to the extent it is not prohibited by law and does not involve disclosure to the CHILDREN’S BOARD of information which is confidential pursuant to law, statutory, judicial or otherwise, including but not limited to Chapters 39 and 415, Florida Statutes. All reports will be as detailed as may be reasonably requested by the CHILDREN’S BOARD and will be deemed incomplete if not satisfactory to the CHILDREN’S BOARD as determined in its sole reasonable discretion. All reports will contain the information, additional information, or be in the format as may be requested by the CHILDREN’S BOARD. The extent and scope of the Program Monitoring has been determined as a planning rather than an operational level decision of the CHILDREN’S BOARD and the CHILDREN’S BOARD will incur

no liability regarding the extent or scope of Program Monitoring provided. If approved by the Children's Board, the Children's Board will accept any report from another monitoring agency in lieu of reports customarily required by the Children's Board.

9. Records: The PROVIDER will maintain financial and accounting records (including electronic storage media), all original invoices and other documentation supporting the Reimbursement Request Forms submitted to the CHILDREN'S BOARD, and records to substantiate the eligibility of clients. The PROVIDER shall conduct transactions in accordance with generally accepted accounting principles and Florida Statutes. The PROVIDER will maintain such records and accounts including programmatic, property, personnel, and financial records as are deemed necessary by the CHILDREN'S BOARD to assure a proper accounting for all CHILDREN'S BOARD'S funds. The PROVIDER will maintain a separate record of revenues and expenses applicable to this Agreement for the purposes of review thereof. The PROVIDER will make or cause to be made available to the CHILDREN'S BOARD and its duly authorized representatives, for copying and examination, all such records with respect to any matters covered by this Agreement, and the PROVIDER will permit same to be copied and examined; excerpts or transcriptions to be made from such records; and reviews to be made of all agreements, invoices, materials, records of personnel and employment, and other data related to all matters covered by this Agreement. The Auditor General, Comptroller General and other agencies, whether local, state or federal will have the right to inspect and review the records of the PROVIDER. This paragraph will survive termination of this Agreement including any termination under paragraph 16, Termination, and the PROVIDER will retain for examination, copying, and review all of its records and supporting documentation applicable to this Agreement for five years after receipt of final payment from the CHILDREN'S BOARD. If a review has been initiated and findings have not been resolved at the end of five years, the records will be retained and this paragraph will survive until resolution of the review findings.

10. Insurance - Public Liability, Bodily Injury, and Property Damage: The PROVIDER will procure, pay for, and maintain, throughout the period of this Agreement, on behalf of PROVIDER and the CHILDREN'S BOARD, the following insurance coverages with responsible insurance companies, eligible to do business in the State of Florida, acceptable to the CHILDREN'S BOARD:

a. Commercial General Liability for the premises and operations of the PROVIDER including Personal Injury and Contractual for this Agreement, with the CHILDREN'S BOARD included as an additional insured for the operations of the PROVIDER, with limits for Bodily Injury, Property Damage and Personal Injury of not less than:

Each Occurrence	\$1,000,000
Personal Injury	\$1,000,000
General Aggregate	\$1,000,000
Products & Completed Operations	\$1,000,000
Damage to Rented Premises	\$50,000
If Provider rents premises for performance of the Services	

b. (1) Automobile Liability Insurance for PROVIDERS that own vehicles that may be used in carrying out this Agreement: Automobile Liability Insurance for the Provider's operation, maintenance and use of owned, non-owned, hired and leased automobiles, with the CHILDREN'S BOARD included as an additional insured, with a limit of not less than:

Bodily Injury & Property Damage Liability	\$500,000 Each Accident for entities with less than \$1,000,000 in assets \$1,000,000 Each Accident for entities with \$1,000,000 or greater in assets
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(2) Automobile Liability Insurance for PROVIDERS that do not own vehicles used in carrying out this Agreement: Hired and Non-Owned Automobile Liability coverage with the CHILDREN'S BOARD included as an additional insured, with a limit of not less than:

Bodily Injury & Property Damage Liability	\$500,000 Each Accident for entities with less than \$1,000,000 in assets \$1,000,000 Each Accident for entities with \$1,000,000 or greater in assets
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The PROVIDER will submit to the CHILDREN'S BOARD a certificate of insurance within 30 days of receiving an executed contract which describes the insurance maintained by the PROVIDER. The PROVIDER will provide written notice to the CHILDREN'S BOARD within 15 days of any cancellation or revision to the PROVIDER'S insurance applicable to the performance of the Services.

If PROVIDER certifies that any portion of the insurance requirements cannot be obtained or cannot be obtained at a

commercially reasonable cost to the funded program and provides such other information as requested by the CHILDREN'S BOARD in writing, the CHILDREN'S BOARD may replace any portion of the insurance requirements with such other requirements and program restrictions as determined by the CHILDREN'S BOARD.

11. Insurance and Right to Recover Fixed Assets: If this Agreement provides CHILDREN'S BOARD funds for the purchase of capital goods which have a value of \$5,000 or more and a normal expected life of 1 year or more, the PROVIDER will maintain insurance against loss or destruction of the full insurable value of such assets.

By at least 30 days' written notice to the PROVIDER, the CHILDREN'S BOARD may exercise its right to recover such capital goods except when the CHILDREN'S BOARD declares a potential or actual contract breach. If a potential or actual contract breach is declared in writing, then such equipment may be ordered returned immediately along with such accountings, production of records, and reports as the CHILDREN'S BOARD may direct in writing.

If this Agreement is for a program funded by the CHILDREN'S BOARD and another agency pursuant to a joint funding arrangement or agreement, the CHILDREN'S BOARD has a right to capital goods purchased with such joint funds. The CHILDREN'S BOARD'S interest in the capital goods will be in the same ratio as the CHILDREN'S BOARD'S funding used to purchase the capital goods is to the property's total purchase price. However, no such ownership or interest will exist in any vehicle unless the CHILDREN'S BOARD by separate written notice advises the PROVIDER of the CHILDREN'S BOARD'S intent to exercise the right granted by this Agreement. Unless so notified in writing by the CHILDREN'S BOARD, title to all vehicles will be vested exclusively in PROVIDER'S name.

If this Agreement funds improvements to property designated as Reimbursable Improvements in this Agreement, unless PROVIDER obtains the prior written approval of the CHILDREN'S BOARD, the PROVIDER must repay the funds received from the CHILDREN'S BOARD for such Reimbursable Improvements according to the following schedule:

Time PROVIDER'S Use or Occupancy stops	Amount of Reimbursable Improvement Funds to be returned:
Prior to the end of this Agreement	100%
After the end of this Agreement but prior to 1 year after the termination of this Agreement	80%
1 year or more after the end of this Agreement but prior to 2 years after the termination of this Agreement	70%
2 years or more after the end of this Agreement but prior to 3 years after the termination of this Agreement	50%
3 years or more after the end of this Agreement but prior to 4 years after the termination of this Agreement	40%
4 years or more after the end of this Agreement but prior to 5 years after the termination of this Agreement	25%
5 years or more after the termination of this Agreement	00%

As used in this Agreement, PROVIDER'S use stops when PROVIDER no longer uses the Reimbursable Improvement for the purposes described in the proposal. PROVIDER'S occupancy stops when PROVIDER no longer occupies and uses the portion of the property on which the Reimbursable Improvements were made.

Survival of paragraph: This paragraph and all the CHILDREN'S BOARD'S remedies permitted in this Agreement will survive the termination of this Agreement, including any termination under paragraph 16.

12. Indemnification: The PROVIDER will indemnify and hold harmless the CHILDREN'S BOARD, its agents, and employees from and against any and all liabilities, claims, judgments, or actions including court costs and attorney's fees that may hereafter at any time be made or brought by anyone on account of any personal injury, property damage, loss of monies, civil rights violation, or discrimination allegedly caused or occurring in whole or in part by any

breach of contract; negligent, wrongful or intentional act or omission; or based on any acts of fraud or defalcation of the PROVIDER, its agents, employees, or subcontractors, during performance under this Agreement.

In no event will the PROVIDER be liable for or have any obligation to defend the CHILDREN'S BOARD against such liability, claims, judgments, or actions, including costs and attorney's fees, arising out of the sole negligent acts of the CHILDREN'S BOARD.

13. Litigation Costs and Expenses

If any party institutes any legal suit, action, or proceeding against the other party arising out of or relating to this Agreement, the prevailing party in the suit, action, or proceeding shall be entitled to receive, and the non-prevailing party shall pay, in addition to all other remedies to which the prevailing party may be entitled, the costs and expenses incurred by the prevailing party in conducting or defending the suit, action, or proceeding, including any costs that are taxable pursuant to any applicable statute, rule, or guideline (including, but not limited to, the Statewide Uniform Guidelines for Taxation of Costs in Civil Actions), as well as costs not taxable thereunder and including all attorneys' fees and expenses, and court costs even if not recoverable by law including, without limitation, all fees, taxes, costs, and expenses incident to appellate, bankruptcy, reasonableness of the amount of attorneys' fees and costs and post-judgment proceedings. The prevailing party shall be that party which shall have prevailed on a majority, but not necessarily all, of the material issues which were adjudicated in such proceeding.

14. Insurance, Indemnification, Auditing, and Related Provisions for Governmental Entities: The following terms apply only to a PROVIDER who is a governmental agency, political subdivision, city, special district or other governmental body: (1) the PROVIDER may comply with the insurance requirements in this Agreement by submitting to the CHILDREN'S BOARD, upon request, written verification of liability protection in accordance with Section 768.28, Florida Statutes, or a written description of the manner by which property is protected against loss or destruction; (2) the CHILDREN'S BOARD will not be entitled to recover capital goods if PROVIDER is prohibited by law from allowing the contractual recovery of capital goods; (3) the PROVIDER'S indemnification will only be required to the extent such indemnification is within the legal authority of the PROVIDER, and nothing in this Agreement shall require the PROVIDER to indemnify or insure the CHILDREN'S BOARD for the CHILDREN'S BOARD'S negligence or to assume any liability for the CHILDREN'S BOARD'S negligence; (4) the CHILDREN'S BOARD may not require an audit except for the program activities funded by the CHILDREN'S BOARD; (5) the PROVIDER will be notified in writing by the CHILDREN'S BOARD of any default, noncompliance or violation of this Agreement, and the PROVIDER will have 15 days to correct the default, noncompliance or violation; (6) the PROVIDER may assert in an action or proceeding to enforce this Agreement that it lacks the legal authority to agree to paragraph 30, Costs of Litigation, but PROVIDER remains subject to paragraph 31 if it is determined in such action or proceeding (including any appeal) that PROVIDER does have the legal authority to contractually agree to the terms of paragraph 30; (7) the requirements of paragraph 18, Conflict of Interest, apply only to the program funded under this Agreement; and (8) paragraph 24, Title to Patents, Trademarks, Copyrights, and Other Materials does not apply to a PROVIDER who is part of the state university system or an agency thereof (a UNIVERSITY PROVIDER). The copyright, patent, or trademark on or for Intellectual Property defined in paragraph 24 which is developed by a UNIVERSITY PROVIDER will be owned by the UNIVERSITY PROVIDER. Such Intellectual Property will be first subject to any policy, contract, or rule of the UNIVERSITY PROVIDER which is generally applicable to its employees and which governs ownership and income from Intellectual Property (the Intellectual Property Policy). Subject to the share for an employee of the UNIVERSITY PROVIDER described in an agreement made pursuant to the Intellectual Property Policy by the UNIVERSITY PROVIDER with an employee of the UNIVERSITY PROVIDER regarding the division of income from the Intellectual Property, the CHILDREN'S BOARD will receive fifty percent of the UNIVERSITY PROVIDER'S share of the income from the Intellectual Property. The amount payable to the CHILDREN'S BOARD will not exceed the total amount paid by the CHILDREN'S BOARD to the UNIVERSITY PROVIDER under this Agreement. Payment will be made within 45 days after receipt by the UNIVERSITY PROVIDER.

Nothing in this Agreement is intended to be or will be deemed to be a waiver of either party's sovereign immunity. This paragraph will take precedence over any conflicting terms of this Agreement.

15. Auditing Cost Reimbursement Contracts and Return of Funds:

a. General: During the term of this Agreement, funds described in the attached budget will be used by PROVIDER solely for providing the Services described in Attachment 1. Misspent funds are funds received by the PROVIDER from the CHILDREN'S BOARD which are not spent in accordance with the attached budget or the terms of this Agreement. Misspent funds are subject to refund to the CHILDREN'S BOARD, or other resolution as determined in the sole reasonable discretion of the CHILDREN'S BOARD. The CHILDREN'S BOARD is not required to conduct an audit prior to finding that the PROVIDER has misspent funds.

Any other expenditures in the program funded by the CHILDREN'S BOARD which are determined by the CHILDREN'S BOARD not to be in accordance with the attached budget will constitute a breach of this Agreement.

The PROVIDER will return to the CHILDREN'S BOARD any overpayment due to unearned funds. Unearned funds means funds paid to PROVIDER by the CHILDREN'S BOARD which are not due PROVIDER under the attached budget or the terms of this Agreement.

In addition to any other remedy, the CHILDREN'S BOARD may offset any unearned or misspent funds against any other funds due PROVIDER for previous or subsequent agreements. Repayments will be made by PROVIDER in accordance with CHILDREN'S BOARD instructions.

b. Required Audits: For any PROVIDER fiscal year ending during the term of this Agreement and for any fiscal year during which revenues or expenditures are recognized by the PROVIDER for the program covered by this AGREEMENT, the PROVIDER will submit to the CHILDREN'S BOARD (within 180 days after the close of its fiscal year) year-end Financial Statements of the PROVIDER audited by a Certified Public Accountant (CPA) and any related management letters, any related communications or reports on internal control and any related reports on compliance with laws and regulations. In the event that the PROVIDER is unable to comply with the 180 day requirement, a request for an extension of time must be submitted to the CHILDREN'S BOARD prior to the end of the 180 day period. Failure to furnish an audit shall be a basis for denial and/or refund of project funds by the PROVIDER to the CHILDREN'S BOARD. The audit shall separately identify for the program funded by this Agreement, the revenues by funding source, expenditures, and any refunds or transfers; and present this information either in the body of the Financial Statements, in the footnotes to the Financial Statements, or in a supplementary schedule. The auditor's report must include an opinion on all of the basic financial statements of the PROVIDER. The audit shall be conducted in accordance with auditing standards auditing standards generally accepted in the United States of America as promulgated by the Auditing Standards Board of the American Institute of Certified Public Accountants (AICPA).

c. Payment for Required Audits: The cost of required audits may be paid for with funds from the CHILDREN'S BOARD as an administrative cost as included in the overhead/indirect cost expenditure in the attached Budget.

d. Compliance Audit Performed by a CPA Firm Retained by the CHILDREN'S BOARD: In addition to the required financial audit, the CHILDREN'S BOARD may select and retain a CPA firm to conduct a compliance audit or other accounting review of the program funded under this Agreement. The purpose of this audit will be to determine whether PROVIDER has complied with this Agreement. The audit may include: (1) a financial audit which means an examination of financial statements in order to express an opinion on the fairness with which they present financial position, results of operations, and changes in financial position in conformity with generally accepted accounting principles; an examination to determine whether operations are properly conducted in accordance with this Agreement and with legal and regulatory requirements; an examination of expenditures made by the PROVIDER with funds received from the CHILDREN'S BOARD to determine compliance with Florida Statutes and this Agreement; a report on internal accounting control; and other tests of accountability as deemed necessary; and (2) a management letter which means a statement of the auditor's comments and recommendations.

e. Payment for Compliance Audit Performed by a CPA Firm Retained by the CHILDREN'S BOARD: The CHILDREN'S BOARD will pay for the audit performed by a CPA firm retained by the CHILDREN'S BOARD, but the PROVIDER will reimburse the CHILDREN'S BOARD for the cost of the audit if a significant amount of disallowed costs are disclosed by the audit. The PROVIDER will reimburse the CHILDREN'S BOARD within 60 days of the written notice from the CHILDREN'S BOARD. The CHILDREN'S BOARD may withhold funds due under this Agreement as a means to recover the cost of the audit and any misspent funds. The CHILDREN'S BOARD will determine in its sole reasonable discretion whether amounts of misspent funds are significant.

f. Survival of Paragraph: This paragraph will survive the termination of this Agreement, including any termination under paragraph 16, and will be binding for a period of 5 years after receipt of final payment from the CHILDREN'S BOARD. If an audit has been initiated and findings have not been resolved at the end of five years, this paragraph will be binding until resolution of the audit findings.

g. Audits or Reviews of Newly Funded or Small Providers: If a PROVIDER is newly funded by the CHILDREN'S BOARD or is a PROVIDER with a current fiscal year budget of less than \$300,000, Board Policy 1B.1.02.1.13, Audit Requirements, will be applicable as determined by the CHILDREN'S BOARD.

16. **Performance:** In the event of default, noncompliance, or violation of this Agreement or unsatisfactory performance by the PROVIDER, its subcontractors, agents, consultants or suppliers, as determined by the CHILDREN'S

BOARD in its sole reasonable discretion, the CHILDREN'S BOARD may negotiate any acceptable remedy, provide additional training and assistance or, in its sole reasonable discretion and without any prior negotiation, impose in writing such sanctions as deemed appropriate. Such sanctions may include, but will not be limited to, withholding of payments, termination, or suspension of this Agreement in whole or in part. In such event, the CHILDREN'S BOARD will notify the PROVIDER 14 calendar days in advance of the effective date of such sanction except where the CHILDREN'S BOARD determines that such sanction, withholding of funds, termination, or suspension should become effective at an earlier or later date in which event such sanction, withholding of funds, termination, or suspension will be effective as provided in the notice. The PROVIDER will be reimbursed for those Services satisfactorily performed prior to the effective date of such sanction. In determining the amount to pay for such Services, the CBHC may increase or decrease the budget to describe the cost of providing the Services to the date of such sanction, withholding of funds, termination, or suspension, and then pay PROVIDER based on the revised budget.

17. Termination: This Agreement may be terminated at will by either party by giving 7 days' prior written notice to the other and specifying the effective date thereof.

In addition, this Agreement may be terminated by the CHILDREN'S BOARD for any breach by PROVIDER upon 24 hours' written notice. The CHILDREN'S BOARD, in writing and in its sole reasonable discretion, may waive any breach by the PROVIDER but such waiver will not constitute a waiver of any further breaches, including breaches of the same type.

This paragraph will not limit the CHILDREN'S BOARD'S other remedies under this Agreement.

If funds to be paid PROVIDER under this Agreement become unavailable, the CHILDREN'S BOARD may terminate this Agreement upon no less than 24 hours' written notice to the PROVIDER. The CHILDREN'S BOARD will determine the availability of funds.

Any termination notice will be delivered by certified mail, return receipt requested; or in person to the offices of the other party with proof of such delivery.

In the event of termination, the PROVIDER will be reimbursed according to the budgeted rates and terms of this Agreement for those Services satisfactorily performed prior to the effective date of termination as determined in the sole reasonable discretion of the CHILDREN'S BOARD. The term "budgeted rates" in this paragraph means those allocations and amounts contained in the attached Budget or the most recent amended Budget approved in writing by the CHILDREN'S BOARD. However, in the event of termination, the CBHC may increase or decrease the budget to describe the cost of providing the Services to the date of termination and then pay PROVIDER based on the revised budget. All rights and remedies of the CHILDREN'S BOARD and the PROVIDER to enforce this Agreement will survive termination of this Agreement.

18. Employment of Staff: The PROVIDER, at its expense, will employ staff to perform the Services. Such individuals will not be considered employees of the CHILDREN'S BOARD and are subject to the supervision, personnel practices, and policies of the PROVIDER. Unless otherwise approved in writing by the CHILDREN'S BOARD, all staff must meet qualifications stated in the application and any approved modifications. PROVIDER will have a policy and related procedure regarding background screening of paid and unpaid (volunteer) staff. The Children's Board values diversity and endorses provider organizations to reflect the Hillsborough County population.

19. Conflict of Interest: The PROVIDER represents that it presently has no conflicting interest, financial or otherwise, in the performance of this Agreement and will acquire no interest, either directly or indirectly, which would conflict in any manner with the performance of the Services. The PROVIDER will not retain any individual or company with whom the PROVIDER or any individual member thereof has a conflict of interest.

20. Non-Discrimination: The PROVIDER represents to the CHILDREN'S BOARD that the PROVIDER is in compliance with all applicable federal, state, and local civil rights laws and laws that protect persons with disabilities. PROVIDER will not, on the basis of race, color, national origin, religion, sex, age, disability, sexual identity, or marital status, or any other basis prohibited by law, discriminate in any form or manner against PROVIDER'S clients, applicants for Services, or employees or applicants for employment. This Agreement is conditioned on the veracity of this paragraph. Within 10 days of PROVIDER receiving notice that a discrimination complaint has been filed against PROVIDER or any of its employees, PROVIDER will notify the CHILDREN'S BOARD that a discrimination complaint or notice has been filed. The PROVIDER asserts that it has a procedure for handling discrimination complaints and has designated a staff person to receive such complaints.

21. Drug-Free Workplace: PROVIDER will comply with the Drug-free Workplace Act, Section 440.101,

Florida Statutes, and following sections.

22. Other Financial Support: The CHILDREN'S BOARD'S funds may not be used for expenditures for which funding is available from other sources. The PROVIDER may not use funds received from the CHILDREN'S BOARD to supplant funds previously or subsequently received from another source. The CHILDREN'S BOARD encourages use of its funds as financial match for securing funds from other sources. However, in such instances, the PROVIDER must obtain prior written approval from the CHILDREN'S BOARD. Revenues (including, but not limited to, subsidized child care funds or Medicaid) generated by the program supported by this Agreement but not included in the Budget (called Unbudgeted Program Income) shall be reported to the CHILDREN'S BOARD quarterly in the Provider Contract Report. The CHILDREN'S BOARD may reduce funds paid to PROVIDER up to the amount of Unbudgeted Program Income.

All providers must demonstrate efforts related to financial sustainability through funding diversification including but not limited to fund development (such as donations, special events, endowment, fund raising campaigns); applying for support through grants and contracts from government agencies or corporate and/or private foundations; imposing fees for services; business planning and development of social enterprises; or other funding opportunities. The CHILDREN'S BOARD will require that Provider develop a sustainability or strategic action plan and update annually which outlines organizational goals which include monitoring timelines for agency personnel and/or the Board of Directors.

23. Provider Representations: The PROVIDER represents that it is and will be during the term of this Agreement a corporation, a not-for-profit corporation, or a governmental agency operating in Hillsborough County.

24. Confidential Information: Unless required by the Florida Records Law, the PROVIDER will not disclose any information in writing to the CHILDREN'S BOARD which specifically identifies a client for any purpose not required by federal, state, or local laws and related regulations, except by written consent of the client, or his/her responsible parent or guardian where authorized by law.

25. Title to Patents, Trademarks, Copyrights, and Other Materials: If activities supported by this Agreement produce original writings, sound recordings, pictorials, reproductions, drawings or other graphic representations, and works of any similar nature (together called Intellectual Property), the CHILDREN'S BOARD may use, duplicate, and disclose such Intellectual Property in whole or in part, in any manner, for any purpose whatsoever and have others acting on behalf of the CHILDREN'S BOARD do so except, however, that to the extent that such Intellectual Property is confidential pursuant to law, statutory, judicial or otherwise, including, but not limited to, Chapters 39 and 415, Florida Statutes, said Intellectual Property will not be viewed, duplicated, disclosed, or used in any manner whatsoever by the CHILDREN'S BOARD. Title to Intellectual Property will vest in PROVIDER, but no copyright, trademark, or patent on or for Intellectual Property will be obtained in the name of the PROVIDER without the prior written approval of the CHILDREN'S BOARD. If the PROVIDER does not obtain title to the Intellectual Property, the CHILDREN'S BOARD may obtain in its name and may own all copyrights, trademarks, or patents on or for Intellectual Property. No person, firm or corporation, including PROVIDER, may use copyrighted or patented Intellectual Property or trademark without the prior written consent of the CHILDREN'S BOARD. Intellectual Property will not be used for personal gain of the PROVIDER or its employees, subcontractors, agents, or others.

26. Publicizing of CHILDREN'S BOARD Support: The PROVIDER agrees to acknowledge CHILDREN'S BOARD support on any agency and program materials, either electronic or print, and to utilize every reasonable opportunity to publicize the support received from the CHILDREN'S BOARD, including publishing the CHILDREN'S BOARD logo on the PROVIDER website home page, establishing a link to the CHILDREN'S BOARD website on the PROVIDER website, and displaying the CHILDREN'S BOARD logo in PROVIDER service locations and administrative offices.

PROVIDER agrees to acknowledge the CHILDREN'S BOARD in all program materials by publishing the CHILDREN'S BOARD logo with a statement such as "funding for services generously provided by the CHILDREN'S BOARD OF HILLSBOROUGH COUNTY". PROVIDER agrees to request that media also acknowledge the financial support received from the CHILDREN'S BOARD (e.g., radio, television, online publications, or newspaper.)

PROVIDER agrees to provide information about the CHILDREN'S BOARD each year to its employees and governing Board of Directors. PROVIDER agrees to notify the CHILDREN'S BOARD of all outreach activities in advance of the event.

27. Participation in 2-1-1 Human Services Data Base: If not already a participant, the PROVIDER agrees to participate in the 2-1-1 human services data base by listing its agency and program information and profile with www.211atyourfingertips.org. During this Agreement's term, the PROVIDER agrees to keep such information current in the on line data base.

28. Assignments and Subcontractors: The PROVIDER may not assign the responsibility of this Agreement to another party or subcontract any of the work contemplated under this Agreement, unless so specified in the Attachment entitled "Assignments and Subcontractors," or unless the PROVIDER obtains the prior written approval of the CHILDREN'S BOARD. No such approval will obligate the CHILDREN'S BOARD for more than the total dollar amount stated in this Agreement. All such assignments and subcontracts will be subject to the conditions of this Agreement and to any conditions the CHILDREN'S BOARD deems necessary.

Attached hereto is Attachment 4 "Assignments and Subcontractors," a listing of all subcontracts between PROVIDER and any entity providing any part of the services required under this Agreement. All such subcontracts must include a budget, and a description of contract deliverables in a form acceptable to the CHILDREN'S BOARD. Subcontracts must be approved as part of original Agreement by the CHILDREN'S BOARD, and PROVIDER must submit a signed copy of all subcontractor agreement(s) within 30 days of execution of the Agreement with the CHILDREN'S BOARD.

29. Coordination of Services and Values: Provider agrees to work with the CHILDREN'S BOARD, other agencies, families, funders, and community stakeholders to promote, implement and practice the philosophy and values of the CHILDREN'S BOARD; to enhance coordination across agencies and systems; to maximize resources, reduce duplication, promote continuity, fill service gaps; and to constantly improve service delivery.

30. Continuity of Operations and Emergency Management Services: Provider asserts that it has a plan regarding continuity of operations to insure that Provider's property and services are able to respond and recover from any natural and/or man-made disaster. The plan should include mission essential functions, delegations of authority and orders of succession, emergency communications among board, staff and volunteers (e.g., telephone calling tree, intranet, or other method/means), vital records and databases, personnel issues and coordination, funding continuity of programs, facility preparation, alternate facilities, training and testing, plan maintenance, role of agency in time of disaster, inventory of neighborhood resources, meeting the needs of people served.

In the event of a local, state, or federal government declaration of a state of emergency pursuant to Chapter 252, Florida Statutes, or similar authorization, for all or part of Hillsborough County, the Provider and the CHILDREN'S BOARD may agree in an Emergency Services Work Plan that all or part of the unperformed Services under this Agreement shall be suspended and/or that all or part of the unperformed Services shall be revised, modified, reorganized, or changed into services to carry out Emergency Management as defined in Chapter 252, Florida Statutes, or similar law, (called "Emergency Management Services" in this Agreement). Such Emergency Management Services shall be performed at the Disaster Recovery Center or other locations designated by the CHILDREN'S BOARD or other coordinating agency described below. The Emergency Services Work Plan may provide that all or part of the unpaid payments by the CHILDREN'S BOARD under this Agreement shall be used to pay Provider for such Emergency Management Services. A Typical Payment Plan for an Emergency Services Work Plan shall be for the CHILDREN'S BOARD to pay the unpaid portion of this Agreement in equal monthly installments during the remaining Term of this Agreement. The Emergency Management Services may be performed separately or in coordination with or under the direction of other government agencies and or community organizations such as United Way of Tampa Bay, Inc. Either with or without an Emergency Services Work Plan, the Provider shall assist in Emergency Management Services to the best of its ability. The PROVIDER will submit to the CHILDREN'S BOARD a Provider Disaster Verification Form within 30 days of receiving an executed contract which attests that an Emergency Services Work Plan is in place and up to date.

The CHILDREN'S BOARD may continue to pay the Provider for up to six months after a declaration of emergency in order to assist the Provider in recovering its financial and institutional capacity that may have been diminished in performing Emergency Management Services.

The Emergency Services Work Plan and any amendment may be in writing or by oral agreement recorded in any form of audio recording.

Provider shall incorporate this Continuity of Operations and Emergency Management Services clause in all subcontracts so that Provider's subcontractors have the same obligations toward Provider as Provider assumes toward the CHILDREN'S BOARD.

31. Costs of Litigation: The prevailing party in any litigation, administrative, or other proceeding arising out of the enforcement or interpretation of this Agreement will be entitled to recover from the other party the following fees, costs, and expenses: (1) Attorney fees in or prior to mediation, arbitration, trial court, appellate court, or before any administrative body; (2) All court, mediation, and arbitration costs; (3) Costs charged by the attorney, any consultant, or expert witness for copying, postage, long distance telephone calls, or preparing exhibits; (4) Travel costs charged by the attorney, any consultant, or expert witness while working on the dispute or claim including travel costs for investigation, review, or analysis; or in preparing audits; or in preparing opinions, reviewing documents, contracts, or accounting records; or in

preparing for or attending depositions, conferences, meetings, court, mediation, or arbitration; (5) Court reporter fees and costs; (6) Attorney, consultant or expert witness fees for all time spent in investigation, review, or analysis; or in preparing audits; or in preparing opinions, reviewing documents, contracts, or accounting records; or in research; or in preparing for or attending depositions, conferences, meetings, court, mediation, or arbitration; and (7) certified public accountant fees for all time spent working for the prevailing party on the dispute, including, but not limited to, time spent in investigation, review, or analysis; or on preparing audits; or in preparing opinions, reviewing documents, contracts, or accounting records; or in preparing for or attending depositions, conferences, meetings, court, mediation, or arbitration.

Nothing in this paragraph will be construed as requiring arbitration.

32. Public Entity Crimes: Per Section 287.133, Florida Statutes, a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

33. No Third-Party Beneficiaries: No third party will have any right to enforce this Agreement. This Agreement is intended for the sole benefit of the CHILDREN'S BOARD and the PROVIDER.

34. Governing Laws: This Agreement will be governed by the applicable laws, rules, and regulations of the State of Florida or the applicable laws, rules, and regulations of the United States when providing Services funded by the United States government.

35. Integration: This Agreement contains the entire agreement between the parties.

IN WITNESS WHEREOF, the PROVIDER and the CHILDREN'S BOARD have executed this Agreement by their authorized officials.

WITNESS:

Name of Provider

By: _____
Signature

By: _____
Signature of Authorized Official

(Printed Name)

(Printed Name of Authorized Official)

(Title)

(Title)

(Date)

WITNESS:

CHILDREN'S BOARD OF HILLSBOROUGH
COUNTY, FLORIDA

By: _____
Signature

By: _____
Executive Director

(Printed Name)

(Date)

(Title)