

THE MARYLAND DEPARTMENT OF HUMAN RESOURCES
RESIDENTIAL CHILD CARE CONTRACT

THIS CONTRACT is made this _____ day of _____, 2008 by and between the Maryland Department of Human Resources (hereinafter **DHR**) and _____ (hereinafter Contractor), whose _____ primary _____ business _____ address _____ is _____.

The Contractor's Taxpayer Identification Number is _____.

IN CONSIDERATION of the premises and the covenants herein, the parties agree as follows:

1. DEFINITIONS

- 1.1** Department means the Maryland Department of Human Resources
- 1.2** DSS means the referring Local Department of Social Services.
- 1.3** OAG means Office of Attorney General for DHR.
- 1.4** OIG means Office of Inspector General, a division of DHR.
- 1.5** OLM means Office of Licensing and Monitoring, a division of DHR.
- 1.6** Project Manager means Ruth Milliken, or designee, who is the sole point of contact relating to this Contract and the services provided hereunder.
- 1.7** SSA means Social Services Administration, a division of DHR.
- 1.8** State means the State of Maryland

2. SCOPE OF WORK

2.1 The Contractor shall provide Residential Child Care (RCC) services to youth referred by the local department of social services as set forth in the Specification attached hereto as Appendix I. These services shall be provided in accordance with this Contract and the following Appendices, which are attached and incorporated herein by reference. If there is any conflict between this Contract and the Appendices, the terms of the Contract shall govern. If there is any conflict among the Appendices, the following order of precedence shall determine the prevailing provision:

- Appendix I – DHR Specifications
- Appendix A – Rate Sheet
- Appendix E – Bid/Proposal Affidavit
- Appendix F – Contract Affidavit

The Project Manager may, at any time, by written order, make changes in the work within the general scope of the Contract. No other order, statement, or conduct of the Project Manager or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section.

3. TERM

Unless otherwise terminated earlier as provided in this Contract, the term of this Contract shall be from July 1, 2008 to June 30, 2009, with a one-year option to renew, at the unilateral right of the Department.

4. ELIGIBILITY

Eligibility for services under this Contract will be determined, by DHR as applicable, in accordance with prescribed procedures. It shall be the sole responsibility of DSS to interact with the Contractor regarding the goals of this program for specifically placed children.

5. CONSIDERATION AND PAYMENT

5.1 For each child placed by DSS, the allowance for services and the maximum number of child care years (beds) of services, if any, to be paid by DHR, will be the amount set by the Interagency Rates Committee (IRC) effective July 1 and any adjustment that may be made during the fiscal year. The current rate as indicated in Appendix A, attached to this Contract, is an estimated cost and includes a 6.5% increase over the fiscal year 2008 rate. If an overpayment occurs, the Contractor shall repay DSS the full amount of the overpayment. In any event, payment per child for the term of the Contract shall not exceed the rates per child and per service approved by the IRC. The Contractor may receive increased rates, on a case-by-case basis, for less than the term of the Contract based on the needs of the child and prior approval of DHR. Such costs will be billed monthly by the Contractor to the DSS that placed the child, on invoices made available for this purpose by DHR, within thirty (30) days after the close of the service month.

5.2 The Contractor agrees to reimburse DHR for any overpayment or disallowance within 30 days of DHR notice. If more than 30 days is required by the Contractor to fully reimburse DHR, then the Contractor hereby agrees to establish and submit a repayment plan, for DHR review and approval. The repayment plan shall satisfactorily specify a repayment schedule and address all overpayment or disallowance issues of which DHR has informed the Contractor.

5.3 Invoicing

DSS shall process State payment for services provided by the Contractor.

- a.** Each licensed Contractor will receive a draft monthly statement, which will be generated by MD CHESSIE at the beginning of the month for prior month placements. The Contractor will have five (5) business days to verify statements. If invoices are not complete, they will not be processed for payment. DSS and the Contractor will resolve

any disputes. On the 13th of the month, MD CHESSIE, based on placement validation by DSS, will generate revised statements if changes were made, and create a pay file for payment processing by the State Comptroller. Daily pay files will be generated for processing by DSS for placements validated after the 13th of the month.

b. Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after receipt of an approved invoice from the Contractor. Charges for late payment of invoices, other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, as applicable, are prohibited.

5.4 The Contractor will be compensated based upon the following:

- (a) From the day of admission through the day before discharge, with reimbursement being limited to reasonable, allocable and allowable expenses up to the time of discharge, subject to the provisions of COMAR 21.09, Contract Cost Principles and Procedures.
- (b) The rates set by the IRC and any adjustments.
- (c) The per diem or monthly rate for occupied beds up to the Contract maximum. The Contractor will reimburse DSS for any payments that have been made for unoccupied beds, either through repayment or offset. Unoccupied beds can be held and reimbursed for up to 30 days for a child who is AWOL, hospitalized, on an extended visit or at the request of the local department.
- (d) The per diem rate when a child is placed with the Contractor for less than a month.
- (e) The monthly rate when the child is placed with the Contractor for an entire month.

6 COSTS AND EFFICIENCY

6.1 Any revenue received by the Contractor as a result of current year operations in excess of the actual prorated costs of operations attributable to clients funded by DSS, which is less than or equal to 10% of the revenues as documented by the Contractor's annual audit, will be deemed as available for transfer to retained earnings. The amount greater than 10% will be refunded to DSS in accordance with its share of the utilization of Contractor's program. The amount transferred to retained earnings may be used in one of the following manners, as certified by the Contractor to DHR:

- (a) to defray prior or future years' operating expenses, exclusive of the costs of pursuing any claims or litigation against DHR or DSS;
- (b) to expand services based on licensing requirements;
- (c) to offset the per-client cost rate increases in subsequent years;
- (d) to expand services in response to users' group needs; or
- (e) for any other alternative accepted by DHR.

6.2 A detailed report shall be submitted to DHR, as part of the Audit Report under Section 40, herein detailing how the retained earnings were spent. The report shall quantify how the prior State fiscal year's excess funds, which were transferred to retained earnings under 10% rule below, were used and whether the use of these funds was in accordance with one or more of the five contract guidelines. The report is subject to audit by the State of Maryland and Federal

auditors.

6.3 Reimbursement of the cost of medical care for the foster child is provided under the medical care programs of the State and local health departments.

6.4 Payment of these funds is contingent upon DHR's receiving federal and State general funds to pay for the cost of services. DHR will give timely notice to the Contractor in the event DHR does not receive the funds to pay for the total cost of the services provided under this Contract.

6.5 Should allotments to DHR from State or federal funds be insufficient to enable DHR to make payments equal to the estimated funding shown in Appendix A for all service elements, the parties agree to renegotiate the services and rates to be provided. Any such negotiation will be based on the actual costs of the Contractor in providing the services purchased by DHR. If the Contractor should agree to provide the services for less than the Contractor's actual cost, DHR agrees to recognize specifically that it is not funding actual costs and further agrees not to use as a baseline for budgeting or inflation purposes any contract in which the Contractor has agreed to accept reimbursement at less than actual costs. The Contractor agrees that upon its acceptance of the agreed-to consideration under the Contract, it waives its right, if any, to seek additional compensation from DHR.

6.6 This is a Purchase of Care Contract with a Contractor paid for in part by federal funds. The Contractor is not considered to be a subrecipient of federal assistance funds for purposes of OMB Circular A-128 or A-133 or any other purposes.

6.7 The determination of the propriety of charging costs to the programs covered by this Contract shall specifically be in accordance with the following, all of which are incorporated by reference herein: (i) the Cost Guidelines for Residential Care Providers (08/2007 Revision), which can be found at the following website: www.dhr.state.md.us/ssa/license.htm; (ii) the Standards of Accounting for Voluntary Health and Welfare Organizations, Revised 1988; (iii) the Code of Federal Regulations, Title 45, Part 74, Administration of Grants; (iv) OMB Circular A-110, Uniform Administrative Requirements for Grants and other Contracts with Institutions of Higher Education, Hospitals and other Non-profit Organizations; and (v) OMB Circular A-122, Cost Principles for Non-profit Organizations. All expenditures must be reasonable and their cost similar to like goods and services.

7. CONTINGENT FEE PROHIBITION

The Contractor warrants and certifies that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Contractor, to solicit or secure this Contract, and that it has not paid, or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this Contract.

8. NON-AVAILABILITY OF FUNDING

If the General Assembly fails to appropriate funds or if funds are not otherwise made

available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any non-recurring cost incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

9. NON-HIRING OF STATE OFFICIALS AND EMPLOYEES

No official or employee of the State, as defined under State Government Article, §15-102, Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract, shall, during the pendency and term of this Contract and while serving as an official or employee of the State, become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

10. INDEPENDENT CONTRACTOR STATUS

The Contractor is an independent Contractor and neither the Contractor nor its employees, agents, or representatives shall be considered employees, agents, or representatives of the State or DHR. Nothing contained in this Contract is intended or should be construed as creating the relationship of co-partners, joint ventures, or an association between the State or DHR and the Contractor.

From any amount due the Contractor, there will be no deductions for federal income tax or FICA payments, or for any State income tax, or for any other purposes that are associated with any employer-employee relationship, unless required by law. Payment of federal income tax, FICA, and any State income tax is the responsibility of the Contractor.

11. EMPLOYEES OF CONTRACTOR

The Contractor and employees of the Contractor having direct contact with children in a residential child care program shall be at least 21 years of age. The Contractor shall employ a Program Administrator, who is certified as required by Maryland law. The Program Administrator shall be responsible for the day-to-day management and operation of the residential child care program.

12. CRIMINAL BACKGROUND INVESTIGATION

The Contractor shall complete criminal background investigations required by §§ 5-560 through 5-568, Family Law Article, Annotated Code of Maryland and any applicable Department of Human Resources' regulations or policies.

13. MARYLAND LAW

The place of performance of this Contract shall be the State of Maryland. The terms of the Contract and its execution are subject to all applicable Maryland laws and regulations and may be subject to approval of the Office of the Attorney General, the Maryland Department of Budget and Management, the Board of Public Works, and other agencies of Maryland as required under said laws and regulations. This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.

14. COMPLIANCE WITH LAWS

The Contractor hereby warrants that:

- a. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified.
- b. It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, or the Federal Government, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract.
- c. It shall comply with all applicable federal, State and local governmental laws, regulations and standards applicable to its activities and obligations under this Contract, including Department of Human Resources' foster care and child care licensing regulations, COMAR 07.05.01.02., the Governor's Office for Children regulation, COMAR 14.31.05, 14.31.06 and 14.31.07.
- d. It shall obtain, at its expense, all licenses, permits, insurance and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

15. PRE-EXISTING REGULATIONS

In accordance with the provisions of §11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, the regulations set forth in COMAR Title 21 in effect on the date of execution of this Contract are applicable to this Contract.

16. SUBCONTRACTING AND SUCCESSOR IN INTEREST

16.1 The Contractor shall not subcontract any portion of the residential foster care services provided under this Contract without obtaining the prior written approval of the Project Manager. The Contractor shall not assign this Contract, or any of its rights or obligations hereunder, without the prior written approval of the Project Manager. Any such subcontract or assignment,

including the terms and conditions of any such agreement, shall be subject to the unilateral determination of the Project Manager. DHR shall not be responsible for the fulfillment of the Contractor's obligation to the subcontractors.

16.2 The Contractor shall notify the Project Manager, in writing, regarding its intent or thirty (30) days before its final decision, to merge, acquire or be acquired by another organization (novation). The Contractor shall provide the Project Manager with the documentation required by COMAR 21.05.02.24.

16.3 The Contractor shall notify the Project Manager, in writing, within twenty-four (24) hours of a filing of bankruptcy and identify DHR and the State of Maryland as a secured creditor.

17. MINORITY BUSINESS ENTERPRISE GOAL

An MBE subcontract participation goal of zero (0) percent of the total current amount has been established for this Contract.

18. NONDISCRIMINATION IN EMPLOYMENT

The Contractor shall not discriminate against any employee or applicant for employment because of marital status, race, color, religion, sex, age, physical or mental disability, national origin, or sexual orientation. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination because of their race, color, religion, sex, age, physical or mental disability, national origin, or sexual orientation. The Contractor shall post in conspicuous places, available for employees and applicants for employment, notices to be provided by the Project Manager or by the governmental agency exercising jurisdiction, setting forth the substance of this clause.

19. CONFLICT OF INTEREST

The Contractor shall ensure that there is no real or perceived conflict of interest for members of the Board of Directors, group home officers, employees, agents, assigns and volunteers during the term of the Contract, including prohibiting a person from serving as a member of the Board of Directors if the person is compensated by the group home for providing goods and services. If the Contractor has any clients, which would be perceived as improper in its alliance to DHR at the time of Contract award, or obtains any such clients during the term of this Contract, the Contractor shall notify the Project Manager. However, all relationship or business transactions between the Board of Directors, Contractor, employees or vendors shall be reported to the Project Manager.

The Project Manager shall make the final determination as to whether any activity constitutes a conflict of interest, pursuant to this provision. The Project Manager's decision shall be final and without recourse; however, the Project Manager will not make any decision without providing the Contractor with an opportunity to present comments. Failure to cancel or terminate such client activity shall constitute a material breach of the Contract, and the Contract is subject to termination. See provisions of COMAR 21.05.08.08 (B) and State Finance and

Procurement Article, Sections 13-211 and 212.

20. DRUG AND ALCOHOL FREE WORKPLACE

The Contractor shall maintain a drug and alcohol free workplace, in accordance with COMAR 21.11.08, Drug and Alcohol Free Work Place.

21. AMERICANS WITH DISABILITIES ACT COMPLIANCE

The Contractor agrees that, in providing any aid, benefit, service, program, or activity, under this Contract on behalf of DHR, it will not:

- (a) deny any individual the opportunity to participate in or benefit from the aid, benefit, or service equal to that provided others;
- (b) provide a qualified individual with a disability with any aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;
- (c) provide different or separate aid, benefits, or services to individuals or classes of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aid, benefits, or services that are as effective as those provided to others;
- (d) deny a qualified individual with a disability the opportunity to participate as a member of any planning or advisory boards; or
- (e) otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage or opportunity enjoyed by others receiving the aid, benefit, or service.

The Contractor agrees further to not utilize criteria or methods of administration that have the effect of subjecting anyone to discrimination on the basis of disability, or have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the Department of Human Resources program with respect to individuals with disabilities.

22. CONFIDENTIALITY AND SAFEGUARDING CLIENT INFORMATION

Except in accordance with a court order, neither party shall use or disclose any information concerning a recipient of the services provided under this Contract for any purposes not directly connected with the administration of such services, except upon written consent of the other party and the recipient or his/her responsible parent, guardian, or legal representative or as required by §§ 10-611, et seq., State Government Article and Human Services Article §§ 1-201 to 1-205, Maryland Annotated Code and COMAR 07.01.07.

Nothing in this Contract shall prevent DHR, any DSS or the Contractor from using and disclosing statistical data derived from information concerning a recipient of the services provided under this Contract so long as that statistical data does not identify any recipient of such services.

23. COMPLIANCE WITH HIPAA

The Contractor shall comply with all applicable requirements of the federal Health Insurance Portability and Accountability Act, 42 U.S.C. § 1320 *et seq.* (“HIPAA”) and its implementing regulations, including 45 CFR Parts 160 and 164. The Contractor also agrees to comply with, to the extent applicable, the Maryland Confidentiality of Medical Records Act (“MCMRA”), §§ 4-301 *et seq.*, Health General Article, Annotated Code of Maryland. This obligation includes:

(a) Adhering to the privacy and security requirements for protected health information and medical records under HIPAA and MCMRA and making transmission of all electronic information compliance with HIPAA requirements; and

(b) Adhering to the privacy and security requirements for protected health information and medical records under HIPAA and MCMRA and making transmission of all electronic information compliance with HIPAA requirements; and

(c) Otherwise providing good information management practices regarding all information and medical records. If, in connection with this Contract or at any time during the term of this Contract, the State determines that functions to be performed in accordance with the Specifications constitute business associate functions as defined in HIPAA, the Contractor acknowledges its obligation to execute a business associate agreement as required by HIPAA regulations at 45 CFR § 164.501.

Protected Health Information, as defined in HIPAA regulations at 45 CFR 160.103 and 164.501, means information transmitted as defined in the regulations, that is individually identifiable; that is created or received by a healthcare provider, health plan, public health authority, employer, life insurer, school or university, or healthcare clearinghouse, and that is related to the past, present, or future physical or mental health or condition of an individual, to the provision of healthcare of an individual, or to the past, present, or future payment for the provision of healthcare to an individual. The definition excludes certain education records as well as employment records held by a covered entity in its role as employer.

24. INSURANCE

The Contractor agrees to maintain throughout the term of this Contract the following insurances: (i) workers’ compensation and unemployment compensation as required by law; (ii) commercial general liability, with a minimum of \$1,000,000 per occurrence and \$3,000,000 in aggregate, such policy endorsed to cover the indemnification provisions of Section 25 of this Contract; (iii) motor vehicle liability of not less than \$500,000 combined single limit per

accident; (iv) professional liability with a limit of at least \$1,000,000 per incident and \$3,000,000 aggregate for each occurrence ; (v) any other forms of coverage as may be required by COMAR 14.31.05.04.B(4).

25. INDEMNIFICATION

25.1 The Contractor shall indemnify the State against liability for any suits, actions, or claims of any character arising from or relating to the performance of the Contractor or its subcontractors under this Contract.

25.2 The State has no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim or action of any character is brought by any person not party to this Contract against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.

25.3 The State has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract. The State shall only be liable up to the amount for which it is found liable under the Maryland Tort Claims Act, §§ 12-101, *et seq.*, State Government Article, Annotated Code of Maryland.

25.4 The Contractor shall immediately notify the Project Manager of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from or relating to the Contractor's obligations under the Contract, and will cooperate, assist, and consult with the State in the defense or investigation of any claim, suit, or action made or filed against the State as a result of or relating to the Contractor's performance under this Contract.

26. DELAYS AND EXTENSIONS OF TIME

The Contractor agrees to perform this Contract continuously and diligently. No charges or claims for damages shall be made by the Contractor for any delays or hindrances, regardless of cause, in the performance of services under this Contract. Time extensions may be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a State Contract, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or the delays of a subcontractor or supplier arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor, subcontractor, or suppliers.

27. SUSPENSION OF WORK

The Project Manager unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the State may determine to be appropriate for the benefit of DHR in providing for the care and protection of children entrusted to the Contractor or for the convenience of the State

28. TERMINATION FOR CONVENIENCE

The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or, from time to time, in part, whenever the Project Manager shall determine that such termination is in the best interest of the State. The State will ensure that the Contractor is paid for all reasonable, allowable and allocable costs associated with the termination of this Contract. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by COMAR 21.07.01.12A(2).

29. TERMINATION FOR DEFAULT

If the Contractor fails to fulfill its obligations under this Contract properly and in a timely manner, or otherwise violates any provision of the Contract (to include maintaining its license to operate as a group home), the State may terminate the Contract for default. The Project Manager shall give the Contractor thirty (30) days prior written notice of such default, and if the Contractor has not submitted a corrective action plan within seven (7) days and cured such default within the thirty (30) day period, the Project Manager may, by written notice, within five (5) days after expiration of this period, terminate the Contract. The notice shall specify the acts or omissions relied on as cause for termination. All finished or unfinished supplies and services provided by the Contractor shall, at the State's option, become DHR's property. The State shall pay the Contractor fair and equitable compensation for satisfactory performance up to the effective date of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

30. ADDITIONAL REMEDIES FOR BREACH OF CONTRACT

In addition to any remedies available to the State in law or in equity, if the Contractor fails to comply with any material provision of the Contract, the State, after providing such notice as is appropriate to the particular breach, may take the following action against the Contractor: (i) suspend placements; (ii) removal placements; (iii) withhold payments; or, (iv) non-renew the Contract.

31. DISPUTES

This Contract shall be subject to the provisions of Title 15, Subtitle 2, State Finance and Procurement Article, Annotated Code of Maryland, and COMAR 21.10. (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Contracts Administrator's decision. Unless a lesser period is provided by statute, regulation, or this Contract, the Contractor must file a written notice of claim with the Project Manager within thirty (30) days after the basis for the claim is

known or should have been known, whichever is earlier. Contemporaneously with or within thirty (30) days of the filing of a notice of claim, but no later than the date of final payment under this Contract, the Contractor must submit to the Project Manager its written claim containing the information specified in COMAR 21.10.04.02.

32. MERGER, AMENDMENTS, AND/OR MODIFICATIONS

This Contract, together with the Appendices attached hereto and incorporated herein by reference, represents the complete, entire, total and final Contract between DHR and the Contractor. No other understanding or representation, oral or written, regarding the subject matter of this Contract, shall be deemed to exist or to bind DHR and the Contractor hereto, and any such understanding or representation existing prior to the execution of this Contract is hereby specifically and entirely superceded thereby. DHR and the Contractor expressly reserve the right to amend, alter, vary, modify or waive any provision of this Contract, provided only that:

- (a) such amendment, alteration, variation, modification, or waiver must first be approved in writing by the Project Manager, subject to any additional approvals required by State law; and
- (b) after the provisions of (a) above have been fully satisfied, such amendment, alteration, variation, modification, or waiver shall be valid only when reduced to a writing which has been duly signed by each and every signatory to the original of this Contract or, in the alternative, to any and all legal successors to the aforesaid signatories.

33. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

By signing and submitting this Contract, the Contractor certifies to the best of its knowledge and belief that:

- (a) it and its principals (including, but not limited to, its officers, directors, partners, or any of its employees directly involved in obtaining or performing contracts with public bodies) are not presently and have never been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this or other transactions with any public entity, including the State pursuant to §§ 16-101 et seq. of the State Finance & Procurement Article, Annotated Code of Maryland;
- (b) it was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to §§ 16-101 et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and
- (c) it is not a successor-in-interest, assignee, subsidiary, or affiliate of a suspended or

debarred business.

Where the Contractor is unable to certify to any of the above, it shall attach an explanation to this Contract, in the appropriate sections of the Contract's Bid/Proposal Affidavit. The Contractor further agrees by signing this Contract that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion," without modification, in all transactions covered by this Contract and in all solicitations for covered transactions.

34. FINANCIAL DISCLOSURE

The Contractor shall comply with the provisions of §13-221 of the State Finance and Procurement Article, Annotated Code of Maryland, which requires that every business that enters into contracts, leases or other contracts with the State or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more shall, within thirty (30) days of the time when the aggregate value of these contracts, leases or other contracts reaches \$100,000, file with the Secretary of State of Maryland a list that contains the name and addresses of: any resident agent of the business; each officer of the business; and if, known, each person who has beneficial ownership of the business.

35. POLITICAL CONTRIBUTION DISCLOSURE

The Contractor shall comply with §§ 14-101 through 14-108, Election Law Article, Annotated Code of Maryland, which requires that every person that enters into contracts, leases or other contracts with the State, a county, or an incorporated municipality, or their agencies, during a any 12-month period in which the person receives in the aggregate \$100,000 or more, shall file with the State Administrative Board of Election Laws a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Administrative Board of Election Laws:

- (a) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two (2) calendar years; and
- (b) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on:
 - (i) February 5, to cover the six (6)-month period ending January 31; and
 - (ii) August 5, to cover the six (6)-month period ending July 31.

36. FALSE STATEMENTS

Contractor is advised that §11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland provides as follows:

- (a) In connection with a procurement contract, a person may not willfully; (i) falsify,

conceal, or suppress a material fact by any scheme or device; (ii) make a false or fraudulent statement or representation of a material fact; or, (iii) use a false writing or document that contains a false or fraudulent statement or entry of a material fact.

(b) A person may not aid or conspire with another person to commit an act under subsection (a) of this section. A person who violates any provision of this section is guilty of a felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding five (5) years or both.

37. REPORTS

The Contractor shall:

- (a) Collect statistical data as identified in Appendix I.B.(o) on a regular basis and make appropriate reports as required by DHR (Appendix B). This report is to be completed on a fiscal year (July 1-June 30) basis and is due on or before December 2 of each contract year.
- (b) Submit an audit report on or by December 2 of each contract year.
- (c) Submit a Monthly Child Placement Census Report; the form can be found at the following website: www.dhr.state.md.us/ssa/license.htm.

38. RETENTION OF RECORDS

38.1 The Contractor shall retain all books, records, including documents that reflect all direct or indirect costs expended in the performance of this Contract for a period of no less than three (3) years after the date of final payment, in accordance with COMAR 21.07.01.21. The determination of the propriety of charging costs to the programs covered by this Contract and the methods of accounting for such costs shall be in accordance with guidelines in Appendix C.

38.2 The Contractor shall maintain program records required by this Contract and agrees that a program and facilities review, including but not limited to meetings with consumers, review of service records, review of service policy and procedural issuances, review of allocation of staff time, staffing ratios and job descriptions, and meetings with staff directly or indirectly involved in the provision of services, may be conducted upon reasonable notice at any reasonable time by federal and/or State personnel whose official duties require such review or meetings and such other persons as are authorized by DHR. The Contractor shall maintain such program statistical records as are required by DHR and produce program narrative and statistical data in accordance with the requirements of DHR's monitoring and evaluation system, and any Federal Fund Enhancements efforts in accordance with COMAR 14.31.05, Licensing and Monitoring of Residential Child Care Programs. The Contractor shall be prepared to establish and maintain a daily census of vacant and filled beds including children placed by a non-Maryland agency, and report this electronically via the Internet having the ability to send and receive e-mail and data via broadband Internet connection.

38.3 For Treatment Foster Care programs and Group Homes covered by the State's Medicaid Rehabilitation Option, the Contractor agrees to participate in the State of Maryland's efforts to maximize allowable federal reimbursements. In agreeing to participate in the States efforts to

maximize federal revenues, the Contractor agrees to maintain appropriate documentation of attendance records, and overall, will comply with the requirements detailed in COMAR 10.09.36 (General Medical Assistance Provider Participation). Failure to comply with this provision and the regulations identified in COMAR, is considered a material breach and may result in penalties, including termination of the Contract.

39. RIGHTS TO RECORDS

39.1 The Contractor agrees that all documents and materials, including, but not limited to, reports, work papers, studies, computations, and data prepared by the Contractor for purposes of this Contract shall be the sole property of DHR and shall be available to DHR at any time. DHR shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.

39.2 Notwithstanding anything to the contrary in this Contract, Contractor shall have the right to retain a copy of all its work papers and administrative records but shall not be entitled to use such documents except for the benefit of the State or the Contractor's internal record keeping requirements.

39.3 The Contractor will provide information and data when requested for use in reports required by the Child Welfare Accountability Act of 2006 and other reports required of the Department by the General Assembly of Maryland.

40. AUDITS

40.1 The Contractor shall use its fiscal records as a basis for an audit that it submits to DHR in accord with Appendix C, on or before December 2. The audit must comply with the federal citations listed in Section 6.7. Time extensions will be granted only in accordance with Section 26. Audits submitted after the stipulated date may result in Contractor fines. Fines may be imposed as described in Cost Guidelines for Residential Care Providers (08/2007 Revision). The Contractor shall have the right to appeal the imposition of such fines upon notice to the Project Manager.

40.2 On or before December 2 of each Contract year, the Contractor shall submit to the Project Manager and OIG, an annual audit report of its financial records from an independent Certified Public Accountant (CPA) in the format specified in Appendix C. New IRC Rates will not be granted to any Contractor who has not complied with this requirement. The certified financial audit shall include the comparison of actual revenues and expenditures to the budget submitted to the Interagency Rate Committee for the purpose of generating the program's rate. The Contractor shall comply with this requirement regardless of whether it uses a different fiscal year than the one used by the State; in doing so, the information contained in the audit must be presented using as a basis the State's fiscal year (July 1 to June 30). Failure to submit a completed, official independent auditor's report in the proper format within the cited time frame will be considered a violation of contractual obligations and may be cause for suspension of referrals and or termination of the contract.

40.3 This audit must be conducted by an independent CPA or firm either currently licensed by the State of Maryland, or eligible for reciprocal licensing under the Business Occupations and Professions Article, §2-308(a), Annotated Code of Maryland.

40.4 For programs providing residential care services to youth outside the State of Maryland, the Contractor shall audit its records in a manner consistent with the laws of the state within which the program is located and the policies of the appropriate rate setting body of Maryland or the jurisdiction within which the program is located.

40.5 The independent audit report shall serve as one of the tools used by DHR to perform contract adjustment analyses. All costs incurred by the Contractor in the performance of service under this Contract shall be clearly identified and supported by journals, ledgers, properly executed payrolls, time records, personnel records, conditions of employment, invoices, canceled checks, contracts, vouchers, inventory records which include both equipment and supplies, board minutes, or other official documentation evidencing in proper detail the nature and propriety of the charges. The allocation method used to assign any actual indirect costs to this Contract must be documented in detail and made available for audit by the State.

40.6 At any time during normal business hours, and as deemed necessary by the State, the Contractor agrees that the State or any of its duly authorized representatives shall have access to and the right to audit any supporting document, including but not limited to all of the records stated above, for a period of five (5) years after completion of the Contract, final payment by the State, or any applicable statute of limitations, whichever is longer. The Contractor shall permit the State to make excerpts or transcripts from the photocopies of all such records the State auditor deems appropriate. The Contractor further agrees that the independent CPA or firm hired by the Contractor will allow DHR to examine any of the working papers considered or used in preparing the audit for the time period detailed above. The Contractor shall give the State or any of its duly authorized representatives explicit authorization to review and copy any records maintained by another government agency which are related to the expenditures incurred by the Contractor in the performance of services under this Contract or in compliance with this Contract and applicable laws and regulations. These agencies may include, but are not limited to, the Comptroller of the Treasury, State Department of Assessments and Taxation, and State Unemployment Insurance Fund. The Contractor acknowledges that DHR is authorized by it to review and copy any such records, and hereby certifies that its execution of this Contract is evidence of this authorization and may be construed by these agencies as authorizing the release of any such records to DHR upon the request of DHR, with no further written authorization from the Contractor being necessary.

40.7 The State, or its employees, agents or designees, including auditors in the Office of Inspector General, may make unannounced visits to the Contractor's facility at any time. In all other instances, the Contractor shall make its facility available for inspection or visits by the State upon two (2) business days notice.

41. LOSS OF DATA

In the event of loss of any data or records necessary for the performance of this Contract, where such loss is due to the error or negligence of the Contractor, subcontractors, or agents, the Contractor shall be responsible, irrespective of cost to the Contractor, for recreating such lost

data or records on a schedule set by the Project Manager.

42. PUBLICITY

As a condition of funding support received under this Contract, the Contractor shall make the results and accomplishments of its contract-supported activities known to the public, only after prior approval by the Project Manager. An acknowledgment of DHR's support will be made through the use of the following or comparable statement: "This project was supported by funds granted by the Department of Human Resources." The Contractor agrees to submit to the Project Manager, reprints of publications describing work or services supported in whole or in part by DHR during the term of this Contract.

43. INSPECTION OF PREMISES

The Contractor agrees to permit authorized officials of the State to inspect, at reasonable times the plant, place of business, job site of the Contractor or of any subcontractor, or any other location that is related to the performance of the Contract. Such inspections shall include general inspections and performance audits of the Contractor or its subcontractors by officials designated by the Secretary of DHR or her designee.

44. COMMERCIAL NONDISCRIMINATION

44.1 As a condition of entering into this Agreement, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

44.2 As a condition of entering into this Agreement, upon the Maryland Human Relations Commission's request, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past 4 years on any of its contracts that were undertaken within the state of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination

Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that is requested by the State. Contractor understands that violation of this clause is a material breach of this Agreement and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

45. ADMINISTRATIVE

45.1 Project Manager. All matters relating to the interpretation and/or compliance with this Contract shall be referred to the Project Manager for determination.

45.2 Notices. All notices hereunder shall be in writing and either delivered personally or sent by certified or registered mail, postage prepaid as follows:

If to the State:

**Department of Human Resources
Social Services Administration
Ruth Milliken, Project Manager
311 W. Saratoga Street, 5th Floor
Baltimore, Maryland 21201**

If to the Contractor:

The remainder of this page is left intentionally blank.

45.3 Department Personnel

DHR/SSA Executive Director or Designee Social Services Administration
Department of Human Resources
311 W. Saratoga Street, 5th Floor
Baltimore, MD 21201
Phone: 410-767-7216

DHR/OLM Executive Director Office of Licensing and Monitoring
Department of Human Resources
311 W. Saratoga Street, 4th Floor
Baltimore, MD 21201
Phone: 410-767-7712

DHR/OIG Deputy Inspector General
Department of Human Resources
100 S. Charles Street, Room 1608
Baltimore, MD 21201
Phone: 443-378-4007

45.4 DSS Contact

All contacts regarding child services shall be between the Contractor and the child's caseworker designated by the relevant DSS. DSS shall identify a Project Officer who shall be responsible for coordinating with the Contractor all services under this Contract for a child. See Appendix I.

The remainder of this page is left intentionally blank.

In WITNESS WHEREOF, the parties have executed this Contract and have caused their respective seals to be affixed hereto on or before the day and year first written above.

ATTEST:

(Witness)

FOR:

Typed Name of Contractor

Signature of Administrator

Title

Date Signed

FOR: The Department of Human Resources

Cathy F. Mols
Executive Director

Date Signed

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Assistant Attorney General

Date: _____

Appendix A
PURCHASE OF CARE CONTRACT BETWEEN THE MARYLAND DEPARTMENT
OF HUMAN RESOURCES AND
FOR THE PERIOD OF JULY 1, 2008 TO JUNE 30, 2009

Purchase of Residential Child Care

Estimated Annual Rates To Be Paid *

Estimated Annual Rate: \$

Maximum Child Care Years (Beds) to be Purchased:

Total Maximum Contract Amount: \$

Address, City, State and Zip Code of Service Site:

Child Care
Years (Beds)

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

TOTAL CHILD CARE YEARS (must equal maximum child care years (beds))

Contractor's SIGNATURE

* Actual rates will be determined by the Interagency Rates Committee.

Appendix B
State Fiscal Year 2009 - July 1, 2008 to June 30, 2009

Department of Human Resources - Private Contractor Annual Report
Submit to Social Services Administration by December 2, 2009

Agency _____ Program _____

Section I. Demographics of DHR youth served (Answers reflect ONLY DHR children and youth)

1a. Fiscal year - Total admissions _____ (actual number);

1b. Total discharges _____ (actual number)

1c. Number of rejections _____ (actual number)

1d. Number of ejections _____ (actual number)

2a. Racial breakdown of Admissions:

Asian #____, %____; Black/African American #____, %____; White #____, %____;

American Indian or Alaskan Native #____ %____; Pacific Islander or Native

Hawaiian #____ % ____; Unable to determine #____, %____.

2b. Ethnic breakdown of Admissions: Hispanic # ____, % ____ Non-Hispanic

____, % ____, Unable to determine # ____, % ____

Note: Self-identification or self-reporting is the preferred method of gathering information on race and ethnicity (note: children of Hispanic origin may be of any race). The child (if old enough) should be asked, or the information should be obtained from the child's family members. "Unable to determine" should only be used if there is no one who can provide the information or if the child/family refuses to provide it.

3. Age at admission 0-5 #____, %____; 6-10 #____, %____;

11-15 #____, %____; 16-18 #____, %____; Over 18 #____, %____

4. Gender of admissions: male #____, %____ female #____, %____

5. Previous placements: higher #____, %____ lateral #____, %____

lower #_____, %_____

Previous placement refers to the immediate placement prior to admission into your program. A lateral move refers to movement from one program into another of the same type. Base on following continuum:

(Highest level of care) Psychiatric Hospitalization - Residential Treatment Center (RTC) - Therapeutic Group Home - Large Group Home **or** Small Group Home - Alternative Living Unit - Treatment Foster Care - Semi independent living - Independent living - Regular Foster Care - Shelter Care - Kinship Care - Biological Family Home **(Least restrictive level of care)**

6a. Racial breakdown of (See question 2 above):

Asian #_____, %_____; Black/African American #_____, %_____; White #_____, %_____;

American Indian or Alaskan Native #____ %____; Pacific Islander or Native

Hawaiian #____ % ____; Unable to determine #____, %_____.

6b. Ethnic breakdown of discharges Hispanic #____, % ____ Non-Hispanic

#____, % ____ Unable to determine #____, % ____

7. Age at discharge 0-5 #____, %____; 6-10 #____, %_____;

11-15 #____, %____; 16-18 #____, %____; Over 18 #____, %_____

8. Gender of discharges: male #____, %____ female #____, %_____

9. Placements of discharges: (Use same scale as shown in 6 above)

higher #____, %____ lateral #____, %____ lower #____, %_____

Length of placement:

0-3 months #____, % ____ **3 months - 1 year** #____, % ____ **1 Year – 18 months** #____, % ____ **over 18 month's** #____, % ____

Section II. Outcomes of DHR youth served

Safety Outcome: Children shall be protected and safe from abuse and harm.

1. Safety Indicator: Of all children and youth in your program during the period under review what **number and percentage**, if any, were the subjects of substantiated or indicated maltreatment by a foster parent or agency staff?

number _____ percentage _____

2. Safety Indicator: Of all the children and youth in your program during the period under review, what **number and percentage**, were the subjects of critical incident reports involving physical harm to them from any source?

number _____ percentage _____

Permanence Outcome: Children will have permanence and stability in their living situations.

Permanence Indicator: Of all the children and youth discharged from your program during the period under review, what **number and percentage** were reunified with their family **or placed in adoptive homes** within 24 months **following** the time of removal from **their** home.

number _____ percentage _____

Well-being Indicators: # of runaways ____, # critical incidents ____, # of school aged children enrolled in school ____, # of children receiving supportive services according to the case plan ____.

Section III. (optional) Ranking your program strengths and issues confronted.

Use additional sheets as needed.

Place in rank order the five greatest achievements/successes of your program during the past year.

(a = greatest achievement your program experienced during the past year.)

- a.
- b.
- c.
- d.
- e.

Place in rank order the five greatest problems your program has faced during the past year and **what have you done about them?** (a = greatest problem your program faced.)

a.

b.

c.

d.

e.

Please note any program changes and/or expansion impacting your program. (Use additional pages if needed.)

Appendix C

ANNUAL AUDIT REPORT REQUIREMENTS

The audit submitted must be expanded to include procedures that give assurances of program integrity, compliance, with applicable laws and regulations, and the propriety of use of funds. It must contain all of the following:

- o Statement that the Generally Accepted Accounting Principles and the Generally Accepted Auditing Standards established by the American Institute of Certified Public Accountants was followed.
- o Opinion Statement on Financial Statements.
- o Report on Compliance.
- o Comments on Prior Audit findings and completion of Corrective Actions, if applicable.
- o Financial Statements.
 - 1. Balance Sheet,
 - 2. Statement of Revenue and Expense, and
 - 3. Functional Distribution of Expenses
 - a. Basic Care
 - b. Special Education
 - c. Management and General

Other Schedules

- 1. Identification of the specific sources of funds received;
- 2. Comparison of budgeted expenses to actual expenses;
- 3. Computation of rate determination for actual cost of care per month;
- 4. Comparison of payment rate to actual rate from 3; and
- 5. Determination of overpayment and underpayment per service function.

For Contractor having more than one contract with SSA, discrete Financial Statements and Other Schedules must be provided for each contract, i.e., there must be an audit of each entity as well as a separate accounting for each SSA- funded program. Contractor having contracts with other units of DHR or other Executive Departments of the State of Maryland, other States, Federal sources, etc., must list each source of revenue, amount of contract, services provided, etc., separately.

The annual audit report of the Contractor's financial records must be submitted from an independent certified public accountant **to the Social Services Administration, 311 W. Saratoga Street, 5th Floor, Baltimore, MD 21201, Attn: Audit Coordinator** and **the Office of the Inspector General, 100 S. Charles Street, Room 1608, Baltimore, MD 21201** in the format specified by **December 2, 2009**. Submission of this report to another party does **not** fulfill this requirement.

Appendix D

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard For LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award document for sub awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature

Title

Agency / Organization

Date

Appendix E

BID/PROPOSAL AFFIDAVIT

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

I am the (title) _____ and the duly authorized representative of (business) _____ and that I possess the legal authority to make this Affidavit on behalf of myself and the business for which I am acting.

B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

The undersigned bidder hereby certifies and agrees that the following information is correct: In preparing its bid on this project, the bidder has considered all proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in “discrimination” as defined in §19-103 of the State Finance and Procurement Article of the Annotated Code of Maryland. “Discrimination” means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or commercial treatment of a vendor, subcontractor, or commercial customer on the basis of race, color, religion, ancestry, or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendors, supplier’s or commercial customer’s employees or owners. “Discrimination” also includes retaliating against any person or other entity for reporting any incident of “discrimination”. Without limiting any other provision of the solicitation on this project, it is understood that, if the certification is false, such false certification constitutes grounds for the State to reject the bid submitted by the bidder on this project, and terminate any contract awarded based on the bid. As part of its bid or proposal, the bidder herewith submits a list of all instances within the past 4 years where there has been a final adjudicated determination in a legal or administrative proceeding in the state of Maryland that the bidder discriminated against subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that determination, including any remedial action taken. Bidder agrees to comply in all respects with the State’s Commercial Nondiscrimination Policy as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland.

C. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business (as is defined in §16-101(b) of the State Finance and Procurement

Article of the Annotated Code of Maryland), or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies, has been convicted of, or has had probation before judgment imposed pursuant to Criminal Procedure Article, §6-220, Annotated Code of Maryland, or has pleaded nolo contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows (indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

_____.

D. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies, has:

- (1) Been convicted under state or federal statute of:
 - (a) a criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or
 - (b) fraud, embezzlement, theft, forgery, falsification or destruction of records, or receiving stolen property;
- (2) Been convicted of any criminal violation of a state or federal antitrust statute;
- (3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §1961, et seq., or the Mail Fraud Act, 18 U.S.C. §1341, et seq., for acts in connection with the submission of bids or proposals for a public or private contract;
- (4) Been convicted of a violation of the State Minority Business Enterprise Law, §14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (5) Been convicted of a violation of the §11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;

- (6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsection (1) through (5) above;
- (7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of bids or proposals for a public or private contract; or
- (8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract; or
- (9) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§B — C and subsections (1) through (8) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

_____.

E. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows (list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension):

_____.

F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

- (1) The business was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to §16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and
- (2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows (you must indicate the reasons why the affirmations cannot be given without qualification):
_____.

G. SUB-CONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, has knowingly entered into a contract with a public body under which a person debarred or suspended under Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

H. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business has:

- (1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying bid or offer that is being submitted;
- (2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the bid price or price proposal of the bidder or offeror or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying bid or offer is submitted.

I. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of §13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which require that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year

under which the business is to receive in the aggregate \$100,000 or more shall, within 30 days of the time when the aggregate value of the contracts, leases, or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

J. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Election Law Article, §§14-101—14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State of Maryland, including its agencies or a political subdivision of the State, during a calendar year in which the person receives in the aggregate \$100,000 or more shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.

K. DRUG AND ALCOHOL FREE WORKPLACE

(Applicable to all contracts unless the contract is for a law enforcement agency and the agency head or the agency head's designee has determined that application of COMAR 21.11.08 and this certification would be inappropriate in connection with the law enforcement agency's undercover operations.)

I CERTIFY THAT:

- (1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.
- (2) By submission of its bid or offer, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:
 - (a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;
 - (b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
 - (c) Prohibit its employees from working under the influence of drugs or alcohol;
 - (d) Not hire or assign to work on the contract anyone whom the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a

bona fide drug or alcohol abuse assistance or rehabilitation program;

- (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
- (f) Establish drug and alcohol abuse awareness programs to inform its employees about:
 - (i) The dangers of drug and alcohol abuse in the workplace;
 - (ii) The business' policy of maintaining a drug and alcohol free workplace;
 - (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
- (g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §K(2)(b), above;
- (h) Notify its employees in the statement required by §K(2)(b), above, that as a condition of continued employment on the contract, the employee shall:
 - (i) Abide by the terms of the statement; and
 - (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;
- (i) Notify the Contracts Administrator within 10 days after receiving notice under §K(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;
- (j) Within 30 days after receiving notice under §K(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:
 - (i) Take appropriate personnel action against an employee, up to and including termination; or

- (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and
 - (k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §K(2)(a)—(j), above.
- (3) If the business is an individual, the individual shall certify and agree as set forth in §K(4), below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.
- (4) I acknowledge and agree that:
 - (a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;
 - (b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and
 - (c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

L. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

- (1) The business named above is a (domestic ☐) (foreign ☐) corporation registered in accordance with the Corporations and Associations Article, Annotated Code of Maryland, and that it is in good standing and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation, and that the name and address of its resident agent filed with the State Department of Assessments and Taxation is:

Name: _____

Address: _____

(If not applicable, so state).
- (2) Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Department of Labor,

Licensing, and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

M. CONTINGENT FEES

I FURTHER AFFIRM THAT:

The business has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the business, to solicit or secure the Contract, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of the Contract.

N. Repealed.

O. ACKNOWLEDGEMENT

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the Procurement Officer and may be distributed to units of: (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and (4) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of this bid or proposal shall be construed to supersede, amend, modify or waive, on behalf of the State of Maryland, or any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms and covenants undertaken by the above business with respect to (1) this Affidavit, (2) the contract, and (3) other Affidavits comprising part of the contract.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____ By: _____

(Authorized Representative and Affiant)

Appendix F

CONTRACT AFFIDAVIT

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

I am the (title) _____ and the duly authorized representative of (business) _____ and that I possess the legal authority to make this Affidavit on behalf of myself and the business for which I am acting.

B. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

(1) The business named above is a (domestic ____) (foreign ____) corporation registered in accordance with the Corporations and Associations Article, Annotated Code of Maryland, and that it is in good standing and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation, and that the name and address of its resident agent filed with the State Department of Assessments and Taxation is:

Name: _____
Address: _____

(2) Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Department of Labor, Licensing, and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

C. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Bid/Proposal Affidavit dated _____, 20____, and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____
By: _____ (Authorized Representative and Affiant)

**Affidavit of Agreement
Maryland Living Wage Requirements-Service Contracts**

Contract No. _____

Name of Contractor _____

Address _____

City _____ State _____ Zip Code _____

If the Contract is Exempt from the Living Wage Law

The Undersigned, being an authorized representative of the above named Contractor, hereby affirms that the Contract is exempt from Maryland's Living Wage Law for the following reasons: (check all that apply)

- ☐ Bidder/Offeror is a nonprofit organization
- ☐ Bidder/Offeror is a public service company
- ☐ Bidder/Offeror employs 10 or fewer employees and the proposed contract value is less than \$500,000
- ☐ Bidder/Offeror employs more than 10 employees and the proposed contract value is less than \$100,000

If the Contract is a Living Wage Contract

A. The Undersigned, being an authorized representative of the above named Contractor, hereby affirms our commitment to comply with Title 18, State Finance and Procurement Article, Annotated Code of Maryland and, if required, to submit all payroll reports to the Commissioner of Labor and Industry with regard to the above stated contract. The Bidder/Offeror agrees to pay covered employees who are subject to living wage at least the living wage rate in effect at the time service is provided for hours spent on State contract activities, and to ensure that its Subcontractors who are not exempt also pay the required living wage rate to their covered employees who are subject to the living wage for hours spent on a State contract for services. The Contractor agrees to comply with, and ensure its Subcontractors comply with, the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate established by the Commissioner of Labor and Industry, automatically upon the effective date of the revised wage rate.

Advisory 2007-1
Appendix G
12/10/07

Appendix G (continued)

**Affidavit of Agreement
Maryland Living Wage Requirements-Service Contracts**

B. _____ (initial here if applicable) The Bidder/Offeror affirms it has no covered employees for the following reasons: (check all that apply)

- All employee(s) proposed to work on the State contract will spend less than one-half of the employee's time during every work week on the State contract;
- All employee(s) proposed to work on the State contract will be 17 years of age or younger during the duration of the State contract; or
- All employee(s) proposed to work on the State contract will work less than 13 consecutive weeks on the State contract.

The Commissioner of Labor and Industry reserves the right to request payroll records and other data that the Commissioner deems sufficient to confirm these affirmations at any time.

Name of Authorized Representative: _____

Signature of Authorized Representative Date

Title

Witness Name (Typed or Printed)

Witness Signature Date

Appendix H

ADDRESSES OF LOCAL DEPARTMENTS

ALLEGANY COUNTY DSS 1 Frederick Street Cumberland, Maryland 21502-1420 Phone: 1-301-784-7099 Fax: 1-301-874-7244	ANNE ARUNDEL COUNTY DSS 80 West Street Annapolis, Maryland 21401-1787 Phone: 410-269-4600 Fax: 410-974-8566
BALTIMORE CITY DSS 1910 North Broadway Baltimore, Maryland 21213 Phone: 443-423-6300 Fax: 443-423-4406	BALTIMORE COUNTY DSS 6401 York Road Drumcastle Government Center Towson, Maryland 21212 Phone: 410-853-3930 Fax: 410-853-3955 or 3925
CALVERT COUNTY DSS 200 Duke Street Prince Frederick, Maryland 20678 Phone: 1-443-550-6900 Fax: 1-140-286-7429	CAROLINE COUNTY DSS 207 South Third Street Denton, Maryland 21629 Phone: 1-410-819-4500 Fax: 1-410-479-5762
CARROLL COUNTY DSS 10 Distillery Drive Westminster, Maryland 21157 Phone: 1-410-386-3306 Fax: 1-410-386-3429	CECIL COUNTY DSS 170 East Main Street Elkton, Maryland 21921 Phone: 1-410-996-0307 Fax: 1-410-996-0464
CHARLES COUNTY DSS 200 Kent Avenue La Plata, Maryland 20646 Phone: 1-301-392-6600 Fax: 1-301-870-3958	DORCHESTER COUNTY DSS 627 Race Street Cambridge, Maryland 21613 Phone: 1-410-901-4141 Fax: 1-410-901-1047
FREDERICK COUNTY DSS 100 East All Saints Street Frederick, Maryland 21701 Phone: 1-301-600-4555 Fax: 301-394-4550	GARRETT COUNTY DSS 12578 Garrett Highway Oakland, Maryland 21550 Phone: 1-301-533-3025 Fax: 1-301-334-5449

HARFORD COUNTY DSS 2 South Bond Street Bel Air, Maryland 21014 Phone: 1-410-836-4955 Fax: 1-410-836-4945	HOWARD COUNTY DSS 7121 Columbia Gateway Drive Columbia Maryland 21046 Phone: 410-872-8700 Fax: 1-410-872-4231
KENT COUNTY DSS 350 High Street Chestertown, Maryland 21620 Phone: 1-410-810-7720 Fax: 1-410-778-1497	MONTGOMERY COUNTY DSS The Dept. of Health & Human Services 401 Hungerford Drive – 5 th Floor Rockville, Maryland 20850 Phone: 1-240-777-1245 Fax: 1-240-777-1494
PRINCE GEORGE’S COUNTY DSS 805 Brightseat Road Landover, Maryland 20785 Phone: 1-301-909-7010 Fax: 1-301-909-7012	QUEEN ANNE’S COUNTY DSS 125 Comet Drive Centreville, Maryland 21617 Phone: 1-410-758-8000 Fax: 1-410-758-8110 or 8111
ST. MARY’S COUNTY DSS 23110 Leonard Hall Drive Leonardtown, Maryland 20650 Phone: 1-240-895-7173 Fax: 1-240-895-7099	SOMERSET COUNTY DSS 30397 Mt. Vernon Road Princess Anne, Maryland 21853 Phone: 1-410-677-4330 Fax: 1-410-677-4300
TALBOT COUNTY DSS 301 Bay Street Easton, Maryland 21601 Phone: 1-410 770-4848 Fax: 1-410-820-7067	WASHINGTON COUNTY DSS 122 North Potomac Street Hagerstown, Maryland 21741-1419 Phone: 1-240-420-2120 Fax: 1-240-420-2111
WICOMICO COUNTY DSS 201 Baptist Street Salisbury, Maryland 21802-2298 Phone: 1-410-713-3900 Fax: 1-410-713-3930	WORCESTER COUNTY DSS 299 Commerce Street Snow Hill, Maryland 21863 Phone: 1-410-677-6806 Fax: 1-410-677-6811

Appendix I

SPECIFICATIONS

A. PROGRAM DESCRIPTION

(a) Subject to the continuing availability of federal and State funds, DHR shall purchase, and the Contractor shall provide, a Program of Residential Child Care for children placed by local departments of social services. COMAR 14.31.05.03.B(35)(a) defines a residential child care program as an entity that provides care for children 24-hours-per-day within a structured set of services and activities that are designed to achieve specific objectives relative to the needs of the children served including the provision of: food, clothing, shelter, education, social services, health, mental health, recreation or any combination of these services and activities. DHR/DSS shall use the services of its Contractor at its sole discretion and makes no promises of a referral or the number of referrals. The Program provided shall be in accordance with all relevant Maryland statutes and Department of Human Resources' regulations concerning private foster care. See COMAR 07.05.02; the Governor's Office for Children's regulation for Residential Care of Children. See COMAR 14.31.05, 14.31.06, and 14.31.07; and the Contractor's approved budget. The program provided shall be consistent with the goals and requirements of DHR'S out-of-home placement program, COMAR 07.02.11. The Contractor shall fulfill the licensing requirements under §§ 5-507 through 5-509 of the Family Law Article, Title 7, subtitle 9 of the Health-General Article, or §§2-123 through 2-125, Article 83C, Annotated Code of Maryland.

(b) DHR shall have the unilateral right to order written changes in the work to be performed by the Contractor, but only within the scope of the services to be performed.

(c) The Contractor shall provide a plan for the residential child care Program's interaction with the surrounding community, including a mechanism for responding to complaints.

B. METHOD OF DELIVERY OF SERVICES

(a) Local department staff will search MD CHESSIE for a vacancy with a Contractor. Once it has been determined that there is a vacancy in MD CHESSIE, the Contractor shall be called to verify that they are placing a child with them. The local department of social services (hereinafter DSS) shall, before or upon admission, give to the Contractor social history information, available reports on psychological and/or psychiatric evaluations, medical histories, family and school information, and other pertinent data determined by DSS as required for the care of the child. For emergency shelter care placements, the required data must be provided not later than seventy-two (72) hours from the time of admission. In the event the data is not received from DSS within the 72 hours, the emergency shelter care Contractor must request the data in writing with a copy of the request to the DHR Licensing Coordinator in order to be deemed in compliance with this provision.

(b) No child is to be accepted without a formal referral information package including

a social history and related referrals. This subsection (b) does not apply to emergency shelter care placements.

(c) The Contractor shall fill each and every Program vacancy with any and all referred children who meet the criteria stated on the Contractor Group Home Profile as described in the SCYFIS Profile filed by the Contractor with the Governor's Office for Children. All such children are to be provided all Program services. If the Contractor rejects a referred or ejects a child in care who does meet the Profile criteria, DSS and DHR'S Executive Director (or his/her designee) shall receive written documentation within twenty-four (24) hours of the reason for the rejection.

(d) The Contractor, upon accepting a child for admission, shall provide the level of supervision and therapy necessary for the safety of all residents and staff. As part of its overall budget, and of each service plan, the Contractor shall provide each child with Basic Life Needs requirements, in accordance with the provisions of COMAR 14.31.06. In emergency shelter care placements, if a child is placed without sufficient clothing, the Contractor must notify DSS and the DHR Licensing Coordinator to be deemed in compliance with this provision for the purpose of facilitating transfers.

(e) When the Contractor accepts a child for admission, the DSS and the Contractor shall mutually:

- (i) develop a service plan to delegate responsibilities and define the services to be provided;
- (ii) determine the approximate length of stay in care;
- (iii) develop and facilitate a family visitation plan; and
- (iv) promote the permanency goal of the Department by knowing the elements of the child's Permanency Plan and actively work with the DSS staff to address permanency issues.

(f) The Contractor shall notify DSS within twenty-four (24) hours when it is unable to comply with the approved plan for any reason.

(g) The Contractor shall complete a written re-evaluation of the service plan for each child, covering at a minimum the child's adjustment, the use of the Contractor's services, and the further goals of the service plan for the child, at least once every three (3) months, with a copy sent immediately to DSS. Scheduled team meetings among relevant invited employees of the Contractor and DSS shall take place at least every six (6) months to review, re-assess and, if necessary, revise the service plan for each child. This subsection (g) does not apply to emergency shelter care placements.

(h) The Contractor shall have the right to change the child's service plan when, as a result of the Contractor's regular evaluation of the plan and after prior review and final approval

by DSS of the proposed change, such change appears necessary to ensure the child's best interests. The Contractor shall notify DSS forty-eight (48) hours in advance and in writing of any scheduled substantive changes in the service plan. Such notice shall include, but not be limited to, detailed information concerning any proposed adjustment of fees. In no event shall the fees exceed the estimated amounts listed in Appendix A, unless the Interagency Rate Committee has established a change (increase or decrease) to be effective after July 1 or later in the fiscal year.

(i) The Contractor shall ensure that medical services are, at an absolute minimum, adequate and sufficient for the individual needs of each child in its care, with at least two (2) semi-annual dental examinations and one (1) annual physical examination for each child, as well as all routine, follow-up referrals and emergency medical services in accordance with the Maryland Medical Assistance program, EPSDT standards and any Managed Health Care Organization. The Contractor shall also ensure complete documentation by all health care providers of all medical care provided in the child's Health Passport provided by DSS or other forms prescribed by DHRIN addition the Contractor must provide copies of the results of medical examination s, tests or procedures requested by the DSS. DSS shall obtain authorization for medical procedures and emergency medical care, as well as certification of each child prior to placement for the Maryland Medical Assistance Program. When applicable, the health insurance of a given child's parent(s) shall be utilized.

(j) When the child is ready to leave the Contractor's facility, or otherwise can no longer use its services, DSS shall arrange for the child to return to his or her family, or to an appropriate alternate placement. The Contractor and DSS shall consult each other in planning the discharge.

(k) The Contractor shall furnish DSS with a detailed discharge plan, in accordance with COMAR 14.31.06, on the child's treatment and progress at least thirty (30) days before a planned discharge. The Contractor must notify such DSS immediately if any child placed by DSS under the terms of this Contract leaves the facility without prior notice to DSS. For emergency shelter placements, the detailed written report referenced above shall be provided to DSS within 72 hours of discharge.

(l) The Contractor shall give DSS at least seventy-two (72) hours notice of any unplanned discharge, unless extraordinary circumstances involving a high and immediate risk to the child's safety, or danger to others, prohibit notice. Unplanned discharges shall be extremely rare occurrences, involving only the most unusual cases.

(m) Except as otherwise defined in the child's service plan or in the case of an emergency shelter placement, which is defined in COMAR 14.31.05.03.B(12) as the immediate placement of a child in a residential child care program because the placing agency or individual satisfactorily documents that it is physically impossible to accomplish a planned placement as required by this chapter and good practice, a child shall not be moved to another location within the Contractor's Program(s) without the prior written notice to and written consent from the DSS responsible for the placement or ongoing case management for the child. Notice of the intent to move a child shall be given to DSS at least thirty (30) calendar days before the proposed move.

DSS shall give written consent to the proposed move within fifteen (15) calendar days of receipt of the notice. Consent by DSS shall not be withheld without good cause. The failure of DSS to give written consent to a request to change placement shall not be deemed a waiver of the notice and consent provisions herein. The notice shall include the reason for the transfer and name and location to which the child will be transferred. In the case of an emergency, the Contractor shall notify the DSS prior to transfer, and in all cases shall provide written notification of the transfer within 24 hours from the time the child leaves the program. Where the DSS sets up family involvement meetings in accordance with DHR'S Family Centered Practice Model, the Contractor must participate in these sessions upon an invitation of the Local Department. The Contractor shall agree to have their staff trained in this model should DHR offer such training.

(n) In accordance with the requirements of COMAR 14.31.06.14B, the Contractor shall report to DSS and DHR/OLM all child abuse and neglect reports in writing within twenty-four (24) hours after an incident, involving a child in its care. The Contractor shall report community complaints that the residential child care program receives and the resolution of the complaint within ten (10) days. If any member of the Contractor's staff is accused of neglecting or abusing any child in the Contractor's care, this fact must be reported to the Licensing Coordinator and to DSS'S child protective services staff and/or local law enforcement authorities for possible investigation, by telephone immediately after the critical incident in question, and again in writing within forty-eight (48) hours after telephone notification in accordance with the provisions of COMAR 07.02.07.04, and with full cooperation in any such investigation by the Contractor. The Contractor shall also report all critical incidents as required by COMAR 14.31.06.18 A. Critical incidents to be reported shall include but are not limited to: child injury leading to treatment at a hospital (as an inpatient or outpatient) or at an urgent care clinic; child absent without official leave (AWOL), or failure to return to the facility/family within a reasonable, age-appropriate time frame; a child actually or allegedly abused, neglected, assaulted and/or mistreated by the facility's staff; any contacts with law enforcement officials, based on a complaint or investigation; any structural or environmental issues at a facility creating a health risk; any alleged incident in the community; community or neighborhood presentations relating to the facility or its residents, inquiries from elected or other public officials regarding facility operations, incidents or other alleged problems; or any other critical incident that reasonably produces community concern or notoriety.

(o) The Contractor shall submit to the OLM at DHR an Annual Report highlighting, and describing the Contractor's accomplishments and/or difficulties during the calendar year. This report shall be submitted not later than December 2 of each contract year. Emergency shelter care Contractor will provide an Annual Report within the limits of the Program. The Annual Report shall, at a minimum, include the following:

- (i) a detailed description of all efforts made to ensure appropriate services while reasonably managing costs, and the success/failure of those efforts as measured in both time and money saved;
- (ii) a percentage-rate breakdown reflecting the number of times in the calendar year that the Contractor needed, with DHR approval, to add or change services included in the original Contract, to maintain the safety

and well-being of the child(ren), including suggestions for reducing the need for, and frequency/cost of, such changes, as well as practical examples to support the suggestions; and

- (iii) goals for the following calendar year, based on information and data developed during the current and prior calendar years, with specific strategies for realizing these goals and specific measuring plans for determining whether they have been met by the end of the following year.

(p) The Contractor shall within five (5) business days of the due date send to the local department of social services' caseworker the individual service plan required by COMAR 14.31.06.17.C.

(q) The Contractor shall provide access to health care services including transportation under § 5-533 of the Family Law Article. The Contractor shall maintain health care records during the placement of a child, in its residential child care program, including but not limited to:

- (i) Health Insurance Information;
- (ii) A history of primary and preventative care and any arrangements made for continuing care;
- (iii) A history of the health care provided for behavioral, mental, or substance abuse disorders and any arrangements made for continuing care; and
- (iv) Documentation of doctor and dentist visits using forms designated by the Department if made available.

The Contractor shall comply with §7-309 of the Education Article requiring:

- (i) Enrollment of the child in the local school system where the residential childcare program is located. The CONTRATOR shall responsible for the enrollment of the child in accordance with COMAR 13A.08.07.02 Outcome information/data to be reported to DHR shall be reported in accordance with requirements outlined in Appendix B.
- (ii) Expeditiously initiating and monitoring the transfer of the academic records of a child in the operator's care from the transferring school to insure that the academic records are transferred to the school that the child will be attending while living in the operator's care;
- (iii) Requesting a meeting with the child's teachers at the time of enrollment and at any other time the school or teacher requests; and signing the child's report card, insure the report card is returned to school, and include a copy of the report card in the child's case record.

- (r) The Contractor shall participate in the following:
- (i) Quality Assurance processes adopted by DHR;
 - (ii) Collecting of research data and evaluation activities concerning their programs;
 - (iii) Utilization reviews completed by DHR;
 - (iv) Training sessions offered by the Department; and,
 - (v) Components of the outcomes measurement system developed by State Placing Agencies and the Governor's Office for Children.
- (s) Contractor shall provide each service site location for each child. The Contractor shall ask in writing for SSA's specific permission in writing to place children in the care of DHR/DSS in locations not listed in the Contract. DHR has the right to limit the Contractor to serving children in the care of DHR/DSS from certain jurisdictions or limiting the Contractor from expanding locations into certain jurisdictions or areas.
- (t) Contractor shall provide to the SSA Project Manager updated information: e-mail address, telephone and actual contact person.
- (u) Contractor must provide the services that are included in their IRC rates and the Provider Profile in SCYFIS along with the levels of intensity. These must be followed for admissions and discharges.
- (v) Contractor shall adhere to the Council on Accreditation standards of Public Agency-Risk Prevention and Management (Appendix J), which can be found at the following website: www.coasstandards.org/publicstandards, and any successor website or pertinent standard.
- (w) Contractor shall provide Assessments, which will meet Council on Accreditation Standards (Appendix K).
- (x) Contractor shall adhere to the Council on Accreditation Standards related to Behavior and Management Support (Appendix L) that are applicable to the Department of Human Resources and does not use restrictive behavior techniques unless it is necessary to prevent serious harm.

Appendix J



Risk Prevention and Management

PA-RPM 3: MEDICATION CONTROL AND ADMINISTRATION

The agency ensures safe, uniform medication control and administration.

NA: The agency does not prescribe, dispense, administer, or store medication.

PURPOSE: *Comprehensive, systematic, and effective risk prevention and management practices reduce the agency's risk, loss, and liability exposure.*

PA-RPM 3.01

Personnel directly involved in medication control and administration receive training and demonstrate competence in medication control and administration, and knowledge of applicable legal requirements.

Related PA-RPM 3.05

Interpretation: Personnel who have not completed training must work under the supervision of qualified staff.

PA-RPM 3.02

When medication is initially prescribed, the agency or the prescribing physician:

- a. obtains the written, informed consent of the service recipient, and/or a legal guardian;
- b. fully explains the benefits, risks, and alternatives.

Interpretation: The agency obtains consent for over-the-counter medication, either at the initiation of service or upon administration of the medication.

NA: The agency does not prescribe medication.

PA-RPM 3.03

When individuals are receiving prescription medication, administration of over-the-counter medications should be done in consultation with a qualified medical professional to identify possible adverse interaction of medications.

NA: The agency does not prescribe or administer medication.

PA-RPM 3.04

Protocols and controls governing the proper administration and storage of medication include:



- a. locked, supervised storage with access limited to authorized personnel;
- b. packaging in childproof containers and labeling with the name of person served, medication name, dosage, prescribing physician name, and number or code identifying the written order;
- c. appropriate disposal of out-of-date or unused medication, syringes, medical waste, or medication prescribed to former persons served;
- d. a record of who received medications, what medications were dispensed or administered, and when and by whom medications were dispensed or administered;
- e. protocols for the administration of over-the-counter medications; and
- f. a prohibition against dispensing drug samples without a prescription.

NA: The agency does not dispense, administer, or store medication.

PA-RPM 3.05

Personnel observe and assess the effects of medication on the service recipient and consult with medical professionals, as necessary.

Related PA-RPM 2.01

NA: The agency does not prescribe or administer medication.

Appendix K



ASSESSMENT MATRIX

Screening/Intake Assessment	Comprehensive Basic Assessment	Comprehensive Psychosocial Assessment
Applicable Service Sections		
<ul style="list-style-type: none"> Child and Family Development and Support Services, Parent Education Groups only (PA-CFD) Counseling, Support, and Education Services (PA-CSE) Crisis Response and Information Services (PA-CRI) Outreach Services (PA-OS) Social Development and Enrichment Services for Children and Youth (PA-SDE) Workforce Development and Support Services; and Financial Asset Building Services (PA-WDS) 	<ul style="list-style-type: none"> Adult Day Services (PA-ADS) Adult Protective Services (PA-APS) Case Management Services (PA-CM) Child and Family Development and Support Services (PA-CFD) Child Protective Services (PA-CPS) Domestic Violence (PA-DV) Employee Assistance Program Services (PA-EAP) Family Preservation and Stabilization Services (PA-FPS) Foster Care Services (PA-FC) Group Living Services (PA-GLS) Guardianship Services for Minors (PA-GSM) Home Care and Support Services (PA-HCS) Immigrant and Refugee Resettlement (PA-IRR) Kinship Care Services (PA-KC) Pregnancy Support Services (PA-PS) Respite Care (PA-RC) Shelter Services (PA-SH) Supported Community Living Services (PA-SCL) Vocational Rehabilitation Services (PA-VOC) Volunteer Mentoring Services (PA-VM) Youth Independent Living (PA-YIL) 	<ul style="list-style-type: none"> Day Treatment Services (PA-DTX) Opioid Treatment (PA-OTP) Outpatient Mental Health Services (PA-MH) Psychiatric Rehabilitation Services (PA-PSR) Residential Treatment Services (PA-RTX) Services for Substance Use Conditions (PA-SA) Wilderness and Adventure-Based Therapeutic Outdoor Services (PA-WT)
Assessment Elements		
<i>Intake or screening assessments include:</i> <ol style="list-style-type: none"> identifying information, including name, date of birth and social insurance number (if available); current residence; emergency health needs; emergency contacts (if any); safety, imminent danger or risk of future harm, as applicable; and legal status. 	<i>Comprehensive basic assessments include:</i> <ol style="list-style-type: none"> information gathered for a screening/intake assessment; a preliminary evaluation of the request or need for service; the person's and/or family's strengths and resources; family relationships and formal and informal support systems; the person's past or current use of services from this organization or other organizations; independent living skills, activities of daily living assessment, as applicable; a screening for family violence, abuse, or neglect, or exploitation; mental health status and developmental screening, as applicable; trauma screening; alcohol and other drug use screening; educational and vocational information; financial status, including financial assistance and insurance coverage; housing status, history, and a description of living conditions; and other information necessary to provide services. 	<i>Comprehensive psychosocial assessments include:</i> <ol style="list-style-type: none"> information gathered for the screening/intake assessment and basic assessment; psychiatric issues; a mental status exam; alcohol and other drug use assessment; and assessment of non-substance addictive behaviors.

Note: The elements of the matrix can be tailored according to the needs of specific individuals or service design.

Appendix L



Behavior Support and Management

PA-BSM 2: BEHAVIOR SUPPORT AND MANAGEMENT PRACTICES

A culture and structure exists within every facility and foster home that promotes respect, healing, and positive behavior and prevents the need for restrictive behavior management interventions.

PURPOSE: *The agency's behavior support and management policies and practices promote positive behavior and protect the safety of service recipients and staff.*

PA-BSM 2.01

The agency:

- a. provides an explanation for and offers a copy of its written behavior support and management philosophy and procedures to service recipients or their parents or legal guardians at admission;
- b. informs service recipients or parents or legal guardians of strategies used to maintain a safe environment and prevent the need for restrictive behavior management interventions;
- c. has procedures that address harassment and violence towards other service recipients, personnel, and, as applicable, foster parents;
- d. obtains the service recipient's or parent's or legal guardian's consent when restrictive behavior management interventions are part of the treatment modality; and
- e. when the service recipient is a minor, notifies the parents or legal guardians promptly when manual restraint, mechanical restraint, or locked seclusion were used.

Interpretation: Consent should be reviewed on an annual basis.

Research Note: The service recipient, and/or parent or legal guardian, has the right to refuse consent to treatment and the agency may determine that the individual cannot be served as a result of refusal. Such consent should not exceed one year.

PA-BSM 2.02

Personnel and foster parents support positive behavior by:

- a. developing positive relationships with service recipients;
- b. building on strengths and reinforcing positive behavior; and
- c. responding consistently to all incidents of harassment or violence.

PA-BSM 2.03

The agency prohibits:

- a. the use of restrictive behavior management interventions by service recipients, peers, or any person other than trained, qualified staff, or foster parents;
- b. chemical restraint;
- c. excessive or inappropriate use of behavior management interventions as, for example, a form of discipline or compliance, or



- for the convenience of staff or foster parents; and
- d. use of restrictive behavior management interventions in response to property damage that does not involve imminent danger to self or others.

Interpretation: Chemical restraints do not include situations when a psychopharmacological drug: (1) is used according to the requirements for treatment authorized by a court; or (2) is administered in an emergency to prevent immediate, substantial, and irreversible deterioration of a person's mental status when prescribed by a physician or other qualified medical practitioner. "Excessive or inappropriate use" of behavior management interventions refers to use that is not consistent with the requirements of BSM 5.

Note: Refer to COA's glossary for a definition of chemical restraint.

PA-BSM 2.04

Each service recipient participates in a screening of the potential risk of harm to self or others to determine the need for behavior support and management interventions.

Interpretation: Agencies that prohibit the use of restrictive behavior management interventions may conduct a program wide assessment of the potential risk of harm by or to clients to determine the most appropriate behavior support and management interventions. Any agency that provides direct care and supervision to children, vulnerable adults, or individuals with a history of danger to self or others must conduct individual assessments.

PA-BSM 2.05

Service recipients identified as being in need of restrictive behavior management interventions are assessed for:

- a. antecedents to harassing, violent, or out-of-control behavior;
- b. the effectiveness of previous uses of behavioral interventions;
- c. psychological and social factors that can influence use of such interventions; and
- d. medical conditions or factors that could put the person at risk.

Interpretation: Medical factors may include issues related to use of medications, such as an insulin imbalance. Psychological and social factors may include psychosis, history of abuse or other trauma, or claustrophobia.

Research Note: A common traumatic element is the massive control of one person over another. For individuals with a history of abuse or other trauma, undergoing a restrictive behavior management intervention can be extraordinarily retraumatizing.



NA: The agency prohibits the use of restrictive behavior management interventions.

PA-BSM 2.06

A behavior support and management plan is based on assessment results and:

- a. identifies strategies that will help the person de-escalate their behavior and prevent harassing, violent, or out-of-control behavior;
- b. specifies interventions that may or may not be used;
- c. is modified as necessary; and
- d. is developed and signed by the person, his/her parent or legal guardian, and the foster parent or personnel, as appropriate.

Note: The behavior support plan, sometimes called a crisis plan, can be part of, and reviewed with, the overall service or treatment plan.

NA: The agency prohibits the use of restrictive behavior management interventions.

**ADDENDUM
to the RESIDENTIAL CHILD CARE CONTRACT**

By agreement of the parties, this Addendum is made as of this ____ day of _____ to the Residential Child Care Contract entered into by and between the STATE OF MARYLAND, acting through the Maryland Department of Human Resources (DHR) on May __, 2008, hereinafter "RCC Contract".

WHEREAS, the parties agree to provide residential child care services to youth referred by the local department of social services as outlined in the RCC Contract; and

WHEREAS, the parties agree, in the interest of administrative efficiency, to modify the RCC Contract by use of this contemporaneously-executed Addendum; and

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in the RCC Contract and in this Addendum, the receipt and sufficiency of which are hereby acknowledged, DHR and the Contractor hereby agree as follows:

1. A new Table of Contents is added to the RCC Contract:

TABLE OF CONTENTS

List of Appendices

Appendix A	Rate Sheet
Appendix B	Contractor Annual Report
Appendix C	Annual Audit Report Requirements
Appendix D	Certification Regarding Lobbying
Appendix E	Bid/Proposal Affidavit
Appendix F	Contract Affidavit
Appendix G	Affidavit of Agreement Maryland Living Wage Requirements-Service Contracts
Appendix G-1	Living Wage Requirements for Service Contracts
Appendix H	Addresses of Local Departments
Appendix I	Specifications
Appendix J	COA Risk Prevention and Management
Appendix K	COA Assessment Matrix
Appendix L	COA Behavior Support and Management

2. A new Section 46 Living Wage Requirements is added:

A State contract for services valued at \$100,000 or more may be subject to Title 18, State Finance and Procurement Article, Annotated Code of Maryland. Additional information regarding the State's Living Wage requirement is contained below and in the following section entitled *Living Wage Requirements for Service Contracts listed as Appendix G-1*.

Contractors and Subcontractors subject to the Living Wage Law shall pay each covered employee at least \$11.30 per hour, if State contract services valued at 50% or more of the total value of the contract are performed in the Tier 1 Area. If State contract services valued at 50% or more of the total contract value are performed in the Tier 2 Area, an Offeror shall pay each covered employee at least \$8.50 per hour. The specific Living Wage rate is determined by whether a majority of services take place in a Tier 1 Area or Tier 2 Area of the State. The Tier 1 Area includes Montgomery, Prince George's, Howard, Anne Arundel, and Baltimore Counties, and Baltimore City. The Tier 2 Area includes any county in the State not included in the Tier 1 Area. If the employees who perform the services are not located in the State, the head of the unit responsible for a State contract pursuant to §18-102 (d) shall assign the tier based upon where the recipients of the services are located.

This contract has been determined to be a **Tier** _____ contract.

3. A new Appendix G-1 The Living Wage Requirements for Service Contracts is added and attached hereto.

4. All other terms and provisions of the RCC Contract shall continue in full force and effect.

IN WITNESS THEREOF, the parties have executed this Contract as of the date above first written.

ATTEST:

(Witness)

FOR:

Typed Name of Contractor

Signature of Administrator

Title

Date Signed

FOR: The Department of Human Resources

Cathy F. Mols
Executive Director

Date Signed

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Assistant Attorney General

Date: _____

Living Wage Requirements for Service Contracts.

21.11.10 Living Wage

Authority: State Finance and Procurement Article, Title 18, Annotated Code of Maryland

.01 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Employee" means an individual who satisfies the criteria of the employer-employee relationship test which examines:

- (a) If the employer has the power to select and hire the employee;
- (b) If the employer pays the employee wages;
- (c) If the employer has the power to discharge the employee;
- (d) If the employer has the power to control the employee's conduct; and
- (e) If the work is part of the regular business of the employer.

(2) "Employer" means:

- (a) A contractor who:
 - (i) Has a State contract for services valued at \$500,000 or more; or
 - (ii) Employs more than 10 employees and has a State contract for services valued at greater than \$100,000 but less than \$500,000; or
- (b) A subcontractor who:
 - (i) Performs work for a contractor who is an employer subject to the Living Wage Law on a State contract for services that is valued at \$500,000 or more; or

(ii) Employs more than 10 employees and performs work for a contractor who is an employer subject to the Living Wage Law on a State contract for services that is valued at \$100,000 or more but less than \$500,000.

(3) Services.

(a) "Services" means the rendering of time, effort, or work, rather than the furnishing of a specific physical product other than reports incidental to the required performance.

(b) "Services" includes maintenance as defined in COMAR 21.01.02.01B(53) but does not include construction work or the purchase of goods.

(4) "Tier 1 Area" means Montgomery County, Prince George's County, Howard County, Anne Arundel County, Baltimore County, and Baltimore City.

(5) "Tier 2 Area" means any county in the State not included in the Tier 1 Area.

.02 Employees Covered Under the Living Wage Law.

A. The Living Wage applies to an employee who:

(1) Is 18 years old or older or who will turn 18 during the duration of a State contract for services subject to the Living Wage Law; and

(2) Spends at least one-half of the employee's time during any work week on a State contract for services subject to the Living Wage Law.

B. The Living Wage does not apply to an employee who works less than 13 consecutive weeks and full-time on a contract subject to the Living Wage Law.

.03 Employee Health Insurance.

A. An employer who reduces the wages paid to an employee based on the employer's share of the health insurance premium, as provided in §18-103(c), State Finance and Procurement Article, Annotated Code of Maryland, may not lower an employee's wage rate below the minimum wage as set in Labor and Employment Article, §3-413, Annotated Code of Maryland.

B. An employer who reduces the wages paid to an employee based on the employer's share of the health insurance premium shall comply with the record reporting requirements of Regulation .05 of this chapter.

.04 Employee Deferred Compensation Plan.

A. An employer may reduce the wage rates paid under State Finance and Procurement Article, §18-103(a), Annotated Code of Maryland, by not more than 50 cents of the hourly cost of the employer's contribution to an employee's deferred compensation plan.

B. An employer who reduces the wages paid to an employee based on the employer's contribution to an employee's deferred compensation plan may not lower the employee's wage rate below the minimum wage as set in Labor and Employment Article, §3-413, Annotated Code of Maryland.

C. An employer who reduces an employee's wage rate under §A of this regulation shall comply with the record reporting requirements of Regulation .05 of this chapter.

.05 Employer Reporting and Posting Requirements.

A. On the day that work on the contract begins, an employer to a State contract for services subject to the Living Wage Law shall file with the Commissioner of Labor and Industry the following:

(1) If the employer reduces the wages paid to its employees covered by the Living Wage based upon the employer's share of the health insurance premium:

(a) Documentation of the employer's cost and proof of payment for each employee under the employer's health insurance plan;

(b) The methodology that the employer uses to determine the hourly amount of health insurance deduction for each employee; and

(c) Signature cards or other documentation reflecting that the employee has authorized a deduction for health insurance;

(2) If the employer reduces the wages paid to its employees based upon the employer's contribution to an employee deferred compensation plan:

(a) The name of the employee deferred compensation plan;

(b) Proof that the deductions from the wages paid to an employee for the employee deferred compensation plan are being deposited in a bona fide deferred compensation plan; and

(c) Signature cards or other documentation reflecting that the employee has authorized a deduction for the employee deferred compensation plan;

(3) A list of the three most commonly used languages at the worksite;

(4) A copy of the Commissioner's "Contractor and Employee Information Form" and the "Subcontractor and Employee Information Form"; and

(5) Any other pertinent information that the Commissioner considers necessary.

B. An employer shall post the Commissioner of Labor and Industry's "Notice to Employees—Wage Requirements" on the day that work on the contract begins. Within 10 days after the posting of the notice, an employer shall submit to the Commissioner of Labor and Industry a copy of the Commissioner's "Certification of Posting the Wage Requirement Notice".

C. Subject to the provisions of §G of this regulation, within 14 days after the end of each payroll period, an employer shall submit to the Commissioner of Labor and Industry a complete copy of the following:

- (1) The employee's payroll records for those employees who are covered under the living wage law pursuant to Regulation .02 of this chapter; and
- (2) Each subcontractor's payroll records for those employees who are covered under the living wage law pursuant to Regulation .02 of this chapter.

D. Each payroll record that is submitted pursuant to §C of this regulation shall list the following:

- (1) The name, address, and telephone number of the contractor or the subcontractor;
- (2) The name, location, and project number of the job; and
- (3) Each employee's:
 - (a) Name and at least the last four digits of the employee's Social Security number;
 - (b) Current address;
 - (c) Daily and straight time and any time over 40 hours in one work week;
 - (d) Total straight time and overtime hours for the payroll period;
 - (e) Rate of pay;
 - (f) Amount of deduction for health benefits, if any;
 - (g) Amount of deduction for the employee deferred compensation plan, if any; and
 - (h) Gross wages.

E. An employer submitting payroll records pursuant to §C of this regulation shall submit a statement that is signed by the contractor that indicates the following:

(1) The payroll records are correct; and

(2) The wage rate paid is not less than that required in State Finance and Procurement Article, §18-103, Annotated Code of Maryland.

F. The Commissioner may request that an employer periodically submit data, in a form acceptable to the Commissioner, including but not limited to payroll records, for those employees performing work in connection with a State contract for services.

G. Waivers.

(1) Request for a Waiver.

(a) An employer may submit to the Commissioner of Labor and Industry a written request for a waiver of the reporting requirements of §§C and F of this regulation.

(b) The request for the waiver shall state the reasons why the employer seeks a waiver.

(c) The Commissioner may, for good cause shown, waive the reporting requirements of §§C and F of this regulation.

(2) If the Commissioner waives the reporting requirements under this section, the Commissioner retains the right to:

(a) Audit the employer at any time;

(b) Reinstate the reporting requirements at any time;

(c) Change the interval for the submission of payroll records; or

(d) Do all of the actions in §G(2)(a)—(c) of this regulation.

(3) If the Commissioner waives the reporting requirements under this section, the employer is required to post a copy of the waiver notice in the same location as the employer posts the notice to employees of wage requirements.

.06 Employer Record Retention Requirements.

An employer shall retain the following records at the worksite or at a readily accessible location for 3 years:

A. Payroll records covering work performed at the worksite; and

B. Copies of health insurance plans and employee deferred compensation plans.

.07 Determination of Tier 1 or Tier 2.

A. If services under a contract subject to State Finance and Procurement Article, Title 18, Annotated Code of Maryland, are capable of being performed in both Tier 1 and Tier 2, the head of the unit responsible for a State contract pursuant to State Finance and Procurement Article, §18-102(d), Annotated Code of Maryland, shall assign the tier based upon where the majority of the services are performed.

B. If the employees who perform the services are not located in the State, the head of the unit responsible for a State contract pursuant to State Finance and Procurement Article, §18-102(d), Annotated Code of Maryland, shall assign the tier based upon where the recipients of the services are located.

.08 Wage Rate Changes During Term of Contract.

An employer subject to State Finance and Procurement Article, Title 18, Annotated Code of Maryland, shall comply with the rate requirements during the initial term of the contract and all subsequent renewal periods including any increases in the wage rate, if adjusted, automatically upon the effective date of the revised wage rate.

.09 Prohibitions.

An employer may not split or subdivide a contract, pay an employee through a third party, or treat an employee as a subcontractor or independent contractor, or assign work to employees to avoid the imposition of any of the requirements of State Finance and Procurement Article, Title 18, Annotated Code of Maryland, or this chapter.

.10 Rules of Procedure for Hearings.

A. This regulation supplements the requirements of the Administrative Procedure Act, State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.

B. The Commissioner of Labor and Industry may delegate the authority to conduct the hearing to the Office of Administrative Hearings.

C. The administrative law judge may:

- (1) Administer oaths and affirmations;
- (2) Rule on procedural matters and offers of proof and receive relevant evidence;
- (3) Regulate the course of the hearing and the conduct of the parties and their counsel;
- (4) Examine any witness;
- (5) Compel the production of records, books, papers, and other evidence; and
- (6) Take any other appropriate action authorized by statute or regulation.

D. Hearing Procedure.

- (1) The administrative law judge shall:
 - (a) Call the title of the case;
 - (b) Explain briefly the purpose and nature of the hearing;

(c) Recite any charges, complaints, or other matters involved; and

(d) Administer the oath to all persons who are summoned or who intend to testify.

(2) Counsel or any party may be heard on any preliminary matter, exception, or motion, and any stipulation entered into by the parties shall be received.

(3) The following exhibits shall be introduced:

(a) If the administrative law judge is the Commissioner of Labor and Industry's designee, a copy of the letter designating the administrative law judge to preside at the hearing;

(b) A copy of the order for hearing sent to each interested party entitled to receive notice pursuant to State Finance and Procurement Article, §18-107, Annotated Code of Maryland; and

(c) Information obtained by the Commissioner of Labor and Industry as a result of any investigation pursuant to State Finance and Procurement Article, §18-107, Annotated Code of Maryland.

(4) The assistant attorney general shall proceed first and shall present evidence of any investigation made by the Commissioner of Labor and Industry.

(5) Subject to applicable statutes and rules governing the practice and procedure, each party or counsel representing a party may:

(a) Call witnesses;

(b) Offer evidence, including rebuttal evidence;

(c) Cross-examine any witness that another party or the agency calls; and

(d) Present summation and argument.

E. Determination of Administrative Law Judge.

(1) Within 7 days after the conclusion of the hearing, the administrative law judge shall issue a written proposed determination, which includes proposed findings of fact

and conclusions of law, and the amount of restitution and liquidated damages to be assessed under State Finance and Procurement Article, §18-108, Annotated Code of Maryland.

(2) The proposed determination or an accompanying letter shall notify the parties that they may file written exceptions with, and present arguments to, the Commissioner of Labor and Industry.

(3) The administrative law judge shall serve, personally or by mail, a copy of the proposed determination on each party present or represented at the hearing.

(4) The proposed determination of the administrative law judge shall become the final order of the Commissioner of Labor and Industry unless exceptions are filed or the Commissioner orders review.

F. Review.

(1) Within 5 days from the postmark date of the proposed determination:

(a) The Commissioner of Labor and Industry may order review; or

(b) A party adversely affected by the proposed determination may request review in writing to the Commissioner.

(2) A request for review shall contain a concise statement identifying each portion of the administrative law judge's proposed determination for which a review is requested.

(3) A request for review shall be mailed to all other parties to the proceeding.

(4) After review of the proceedings with or without a hearing, the Commissioner shall:

(a) Issue an order based on findings of fact;

(b) Affirm, modify, or vacate the proposed determination, or proposed penalty, or direct other appropriate relief; and

(c) Mail copies of the order to all affected parties.

G. A party aggrieved by a final order of the Commissioner of Labor and Industry may obtain judicial review by filing a written petition with the appropriate circuit court within 30 days of issuance of the final order.

Title 21

STATE PROCUREMENT REGULATIONS

Subtitle 11 SOCIOECONOMIC POLICIES

21.11.10 Living Wage

Authority: State Finance and Procurement Article, Title 18, Annotated Code of Maryland

Notice of Final Action

[07-247-F]

On February 5, 2008, the Commissioner of Labor and Industry adopted new Regulations .01—.10 under a new chapter, COMAR 21.11.10 Living Wage. This action, which was proposed for adoption in 34:19 Md. R. 1706 —1709 (September 14, 2007) and repropoed in 34:26 Md. R. 2285—2287 (December 21, 2007), has been adopted as repropoed.

Effective Date: February 25, 2008.