

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

ELISA W., by her next friend, Elizabeth Barricelli; ALEXANDRIA R., by her next friend, Alison Max Rothschild; THIERRY E., by his next friend, Amy Mulzer; AYANNA J., by her next friend, Meyghan McCrea; OLIVIA and ANA-MARIA R., by their next friend, Dawn Cardi; XAVION M., by his next friend, Michael B. Mushlin; DAMEON C., by his next friend, Reverend Doctor Gwendolyn Hadley-Hall; TYRONE M., by his next friend, Bishop Lillian Robinson-Wiltshire; and BRITTNEY W., by her next friend, Liza Camellerie, individually and on behalf of a class of all others similarly situated, and LETITIA JAMES, the Public Advocate for the City of New York,

Plaintiffs,

-against-

THE CITY OF NEW YORK; the NEW YORK CITY ADMINISTRATION FOR CHILDREN'S SERVICES; GLADYS CARRIÓN, Commissioner of the New York City Administration for Children's Services, in her official capacity; the STATE OF NEW YORK; the NEW YORK STATE OFFICE OF CHILDREN AND FAMILY SERVICES; and SHEILA J. POOLE, Acting Commissioner of the New York State Office of Children and Family Services, in her official capacity,

Defendants.

15 Civ. \_\_\_\_\_

**CLASS ACTION COMPLAINT FOR  
INJUNCTIVE AND  
DECLARATORY RELIEF**

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### **PRELIMINARY STATEMENT**

1. Foster care is supposed to be safe and temporary. For children in New York City's foster care system, it is neither. Children in New York City's foster care system are in one of the most dangerous foster care systems in the country, and they spend longer in foster care than do foster children almost anywhere else in the country. The emotional damage—and, far too often, abuse—suffered by these children at the hands of a system designed to keep them safe is unacceptable. That the responsible state and city officials have known about these problems and done nothing to fix them is inexcusable.

2. Ten named plaintiffs, all children in foster care in New York City, bring this lawsuit as a civil rights action on behalf of all children who are now or will be in the foster care custody of the Commissioner of New York City's Administration for Children's Services ("ACS") ("Plaintiff Children"). They seek both declaratory and injunctive relief against the city and state agencies and officials responsible for violating their rights under the United States Constitution, federal law, and New York state law and regulations. Plaintiff Letitia James, as Public Advocate for the City of New York, who has received myriad constituent complaints concerning foster care, brings this lawsuit seeking injunctive and declaratory relief against the City Defendants to ensure that ACS promptly remedies the systemic failures that have been plaguing New York City's foster care system for too long.

3. Defendants are the City of New York ("City"), ACS, Gladys Carrión, Commissioner of ACS, in her official capacity (collectively, "City Defendants"); the State of New York, the New York State Office of Children and Family Services ("OCFS"), and Sheila J. Poole, Acting Commissioner of OCFS, in her official capacity (collectively, "State Defendants").

4. Through a pattern and practice of long-standing and well-documented action and inaction, Defendants—who are responsible for protecting New York City’s foster children—fail to keep these children safe. And, instead of ensuring that New York City’s foster children grow up in safe, permanent families, Defendants’ policies and customs cause far too many children to grow up in the custody of the state, without a home or family to call their own:

- a. New York City children make up the majority of children in foster care in New York State, which has one of the worst rates of maltreatment in foster care of any jurisdiction in this country.
- b. Children in foster care in New York City spend two times as much time in state custody as children in the rest of New York State, and over double the amount of time in state custody as children in the rest of the nation.
- c. It takes longer to return New York City children in foster care to their parents than in the rest of New York State and the rest of the nation. The most recent federal data available shows that New York City performs worse on this measure than all but five other states and territories.
- d. It takes longer for a foster child to be adopted in New York City than anywhere else in the country. New York City has performed worse on this measure than every state since at least 2007.
- e. Many children who are without a permanent home never get adopted at all and leave the foster care system only when they get too old to stay in it any longer. Approximately 1,000 children “age out” of the foster care system each year, often winding up homeless and without any adult with whom they have a permanent connection.

5. New York City's child welfare system is causing devastating, ongoing and long-lasting harm to New York City children in its care:

- a. Children who are separated from their parents to whom they could be returned weep at the end of visits with their parents but continue to live in foster care well beyond the time they could be returned home.
- b. Parents whose children are removed because they need services are unable to gain access to the right services and thus are unable to regain custody of their children.
- c. Children who cannot be safely returned to their parents languish in foster care, many moving from place to place, growing older and more damaged by their experiences, not knowing to which adults to form attachments, or trusting no adults at all.
- d. Children traumatized by the disruptions in their young lives do not know where they will be living from one month to the next, or whether there are any adults on whom they can rely. Often by the time a decision is made about what the plan should be for their future, they are irreparably damaged by their experiences in foster care.

6. These consequences are the result of systemic deficiencies in which:

- a. The state agency, OCFS, is responsible for foster care across New York State and for ensuring that federal foster care funds are spent as required by the governing federal statutes and state statutes and regulations

consistent with federal law, but neither monitors nor enforces those laws and regulations.

- b. The city agency, ACS, in whose legal custody all foster children are placed, delegates its responsibility for the day-to-day care of these children by contract to 29 agencies (the “Contract Agencies”), paying hundreds of millions of dollars to the Contract Agencies for foster care services but failing to ensure they meet minimum professional standards or provide adequate and meaningful oversight to ensure compliance with federal and state law and the applicable contracts.
- c. The damage that is being done to children in foster care in New York City as a direct result of these structural failures in the New York City child welfare system is both avoidable and a violation of these children’s statutory and constitutional rights.

7. The illegal conduct of which Plaintiffs complain has plagued New York City’s foster care system for far too long—a fact well known to Defendants, all of whom have been in a position to change it.

8. Plaintiffs seek a ruling from this Court that the structural deficiencies and long-standing actions and inactions described in this complaint violate the statutory and constitutional rights of all children dependent on the New York City foster care system for their safety, their well-being and their futures. They seek an equitable injunction against the responsible city and state officials and agencies named as Defendants in this lawsuit, directing that appropriate relief be granted so that New York City’s foster children are no longer irreparably harmed by the

system that is supposed to protect them. These children have a right to a safe and nurturing childhood. Plaintiffs ask this Court to protect that right.

## **PARTIES**

### **I. The Named Plaintiff Children**

#### **Elisa W.**

9. Plaintiff Elisa W. is a 16 year old girl in the twelfth grade. ACS removed her from her biological mother when she was approximately four years old. She has been in ACS custody for the past 12 years—over two thirds of her life.

10. Plaintiff Elisa W. appears through her next friend, Elizabeth Barricelli. Ms. Barricelli has been an elementary school teacher for over 30 years and currently teaches elementary school science at a public school in Brooklyn. Ms. Barricelli taught Elisa W. from 2006 to 2010 when Elisa W. was in elementary school and they recently reconnected. Ms. Barricelli is familiar with Elisa W.'s background and education. Ms. Barricelli is truly dedicated to Elisa W.'s best interests.

11. ACS removed Plaintiff Elisa W. from her biological mother when she was four years old because of allegations of physical abuse. At the time, Elisa W.'s biological mother was approximately 19 years old and living in a mother-child foster placement in New York City.

12. Over the past 12 years, ACS has shuffled Plaintiff Elisa W. through so many foster placements that she is unable to account for all of them—a direct result of ACS's failure to ensure an appropriate foster placement that could meet her needs. In the last two years alone, Elisa W. has been in four foster placements. Elisa W. has attended at least seven schools over the course of her young life.



13. Plaintiff Elisa W. has a reported history of physical and suspected sexual abuse while in ACS custody.

14. In the first foster placement Plaintiff Elisa W. can remember, she was sexually abused by the nephew of her then-foster mother. She was just six years old at the time. She did not report the incident to anyone because she did not want to get in trouble. At this same placement, Elisa W. was subjected to other physical, psychological and emotional abuse, including being forced by her then-foster mother to sleep in a bug-infested bedroom and being forced to walk around the foster home naked after bathing. Once, Plaintiff Elisa W.'s then-foster mother beat her and denied her food as punishment for purportedly telling her biological mother that she was being beaten by her foster mother; however, the allegation had been made by the foster mother's own daughter pretending to be Elisa W. Upon information and belief, Elisa W.'s then-foster mother would allow family members with violent criminal records in the home. Elisa W. reports feeling like "just a total stranger" in this foster placement.

15. In approximately 2006, Elisa W. was placed in another foster placement, and again suffered severe physical, psychological and emotional abuse, including sexual abuse by multiple relatives of her then-foster mother. Elisa W.'s teachers made multiple reports of physical abuse to her caseworker, including when Elisa W.'s then-foster mother punched her in the face. Upon information and belief, neither the Contract Agency nor ACS took any action in response to these reports. Her then-foster mother neglected Elisa W., who often went to school unkempt and underfed; her teacher at the time, her next friend Ms. Barricelli, often had to buy Elisa W. snacks during the school day and maintained a clean uniform at school for her. Plaintiff Elisa W. remained in this abusive foster placement for five years—a direct result of ACS's failure to ensure that the Contract Agency to which ACS had delegated day-to-day care of this

young girl was keeping her safe. On April 28, 2014, Plaintiff Elisa W. was assigned to a different Contract Agency when it was determined she needed “therapeutic foster placements”. Although Plaintiff Elisa W. is from New York City, the Contract Agency first placed her in a home in Suffolk County and then in a home in Nassau County. However, at the time—and to this day—the only person Elisa W. considers a friend lives in New York City.

16. As a result of the great emotional damage Elisa W. has suffered while in ACS custody for the past 12 years, this young girl has suffered and continues to suffer from a variety of mental health problems. Her diagnoses include depression, bipolar disorder and post-traumatic stress disorder. She has been on anti-depressants and mood stabilizers since she was 11 years old. In July 2014, Elisa W. requested she be placed in a mental health facility because of her mental health concerns. Elisa W. remained there for two months. Since her hospitalization, she has been placed on heavy doses of psychotropic medication; she reports that, as a result, she can barely string a sentence together and no longer looks people in the eye because she gets nervous.

17. In addition to failing to keep Plaintiff Elisa W. free from physical, psychological and emotional harm while in its custody, ACS has also failed to take reasonable and appropriate steps consistent with professional standards to place Elisa W. in a permanent home. Twice, Plaintiff Elisa W.’s biological mother conditionally surrendered her parental rights so Elisa W. could be adopted. Neither adoption was ever finalized. In approximately 2010, Plaintiff Elisa W.’s aunt expressed interest in adopting Elisa W. This adoption was not finalized. In 2012, after Plaintiff Elisa W. already had been in foster care for approximately eight years, her biological mother’s parental rights were terminated. Although her aunt has been considered as an adoptive resource since then, the Contract Agency, ACS and Plaintiff Elisa W.’s law guardian

have not taken steps to pursue this possibility or sought out other non-relative adoption possibilities for Plaintiff Elisa W. to finally have a permanent home and family to call her own. Indeed, Elisa W. fears that she will “age out” of foster care—where she has spent the last 12 years being abused, neglected and shuffled from place to place—and return to living with her biological mother. Elisa W. fears that if this happens she will be unable to attend college.

18. Plaintiff Elisa W. describes her stay in foster care by noting that when she was younger she did well in school and had an extensive vocabulary, but now, as a result of her experiences in foster care and medication regimen, she has difficulty concentrating. She expresses great frustration that the Contract Agency and ACS are unresponsive to her requests for driving lessons and a state identification card—normal requests for a 16 year old girl. For the 12 years Elisa W. has been in foster care, the Contract Agency, ACS and Plaintiff Elisa W.’s law guardian have been making decisions about her life but, as she puts it—“no one ever asks me what I want”.

19. During the 12 years that Plaintiff Elisa W. has been in the custody of ACS, Defendants repeatedly have violated her constitutional, statutory and contractual rights by failing to protect her from physical, psychological and emotional harm; by failing to provide services to ensure her physical, psychological and emotional well-being; by failing to ensure the provision of appropriate foster care placements consistent with professional standards or of a meaningful, timely and appropriate plan to enable her to be safely returned to her biological mother or, if that were not possible within a reasonable period of time, to place her in a permanent home. ACS has further failed to exercise meaningful oversight over the Contract Agencies to which ACS has delegated the day-to-day care of, and case planning responsibility for, this child. As a direct result of Defendants’ actions and inactions, Elisa W. has suffered and continues to suffer

irreparable harm and continues to be subjected to the lasting emotional damage that is a consequence of a child being harmed while in foster care, of not knowing where she will grow up and of believing that there is no family she can call her own. Because of Defendants' actions and inactions, Plaintiff Elisa W. is being deprived of the opportunity for a childhood that is reasonably free from harm and that provides the opportunity for stability and healthy development.

**Alexandria R.**

20. Plaintiff Alexandria R. is a 12 year old girl in the fifth grade. ACS removed her from her biological mother's home on August 9, 2007. Plaintiff Alexandria R.'s permanency goal currently is to be returned to her parent. She has been in the custody of ACS for the past eight years—over two thirds of her life.

21. Plaintiff Alexandria R. appears through her next friend, Alison Max Rothschild. Ms. Rothschild is the director of a private school in New York City. Ms. Rothschild knows Alexandria R. and her current foster parents, and is familiar with her background including her education. Ms. Rothschild is truly dedicated to Alexandria R.'s best interests.

22. Upon information and belief, this is Plaintiff Alexandria R.'s second time in foster care. Upon information and belief, ACS removed her from her biological mother a few months after she was born, placed her in a kinship foster placement with her maternal great-grandmother for three and a half years and returned her to her biological mother for a few months—only to remove her and again place her in foster care in 2007.

23. Plaintiff Alexandria R. is not the only child that ACS has removed from her biological mother and placed into foster care. Plaintiff Alexandria R. has six siblings: (1) a 15 year old sister, Andrea R.; (2) a 13 year old brother, Kavon L.; (3) an 11 year old brother, Russell

W.; (4) a nine year old brother, Anton W.; (5) a seven year old sister, Naomi M.W.; and (6) a 20 month old sister, Raquel W. All of her siblings are currently in foster care.

24. In 2006, ACS opened a preventive services case involving Plaintiff Alexandria R.'s biological mother because then six year old Andrea R. had jumped out of a second floor window after being locked in her bedroom. In August 2007, ACS removed Plaintiff Alexandria R. and her then-living siblings from their home and placed them in ACS custody because their biological mother's boyfriend was physically abusing Alexandria R.'s brother, Kavon L. Now seven year old Naomi M.W. was born five months later and ACS took custody of her at birth. On or about May 13, 2015, ACS removed Plaintiff Alexandria R.'s youngest sister, 22 month old Raquel W., from their biological mother due to allegations of neglect.

25. From 2007 to 2011, between the time she was four and eight years old, ACS bounced Plaintiff Alexandria R. from placement to placement due to its failure to ensure an appropriate foster placement that could meet her needs. During her first four years in ACS custody, ACS placed Plaintiff Alexandria R. in approximately eight different foster homes and with two different Contract Agencies. When she was approximately eight years old, Plaintiff Alexandria R. spent approximately six months in the mental health unit of a residential treatment facility. Her then-foster parents dropped her off, telling her they would return the next morning to pick her up, and never returned. As a result, Plaintiff Alexandria R. suffered severe emotional trauma, compounding the emotional harm she was already experiencing from being moved from place to place.

26. ACS moved Plaintiff Alexandria R. to her current foster placement on November 11, 2011, when she was eight years old. She has now lived there for over three and a half years. At 12 years old, this is the longest she has ever lived in one place—a direct result of ACS's

failure to develop and implement an appropriate case plan and provide appropriate services consistent with professional standards to enable this young girl to be safely returned to her biological mother or, if that were not possible within a reasonable period of time, to ensure that she can grow up in a permanent family.

27. Plaintiff Alexandria R. has a reported history of physical and suspected sexual abuse. Upon information and belief, the physical and suspected sexual abuse has taken place while Plaintiff Alexandria R. has been in ACS custody, and includes physical abuse by her biological mother during an unsupervised visit at her then-foster home.

28. As a result of the great emotional damage Alexandria R. has suffered while in ACS custody for the past eight years, this young girl has suffered and continues to suffer from a variety of mental health problems. Her diagnoses over the past eight years have only grown more serious during her time in foster care and have included adjustment disorder (2007), adjustment disorder with mixed disturbance emotions and conduct (*i.e.*, mood and behavioral problems) (2009), disorder of childhood (2009) and post-traumatic stress disorder (2014 to present). She also suffers from learning disabilities and is behind her peers in school.

29. Since being placed in ACS custody, Plaintiff Alexandria R. has suffered severe emotional and behavioral problems, including physical aggression toward herself and others. She has an extreme distrust of people she views as “in the system”, including her doctors and therapists. She also has difficulty controlling her emotions. As recently as late 2014, Plaintiff Alexandria R. became highly emotional and distraught, including hysterically crying and becoming physically aggressive, when her biological mother missed a family therapy appointment.

30. In addition to failing to keep Plaintiff Alexandria R. free from physical, psychological and emotional harm while in its custody, ACS has also failed to take reasonable and appropriate steps consistent with professional standards to place Alexandria R. in a permanent home. In approximately 2012, after she already had been in foster care for over four years, Plaintiff Alexandria R.'s permanency goal was changed to adoption and the Contract Agency to which ACS has delegated day-to-day responsibility for this child told this nine year old girl that she would be adopted by her foster parents. However, the adoption did not take place, even though her foster parents remain interested in adopting her, and this has created serious additional damage to Alexandria R.'s emotional state. She is now angry and does not understand why her foster parents have not been able to adopt her yet.

31. In July 2013, Plaintiff Alexandria R.'s permanency goal was changed from adoption to return to parent. Upon information and belief, this is because ACS attorneys failed to take necessary steps to obtain the termination of her biological mother's parental rights.

32. After already languishing in foster care for almost eight years, and with none of her siblings currently living with her or her biological mother, Plaintiff Alexandria R.'s permanency goal currently is to be returned to her parent. Plaintiff Alexandria R. reportedly lives in fear that she will be moved yet again by ACS and has been deeply harmed by the continuing uncertainty about where and how she will grow up.

33. During the almost eight years that Plaintiff Alexandria R. has been in the custody of ACS, Defendants repeatedly have violated her constitutional, statutory and contractual rights by failing to protect her from physical, psychological and emotional harm; by failing to provide services to ensure her physical, psychological and emotional well-being; by failing to ensure the provision of appropriate foster care placements consistent with professional standards or of a

meaningful, timely and appropriate plan to enable her to be safely returned to her biological mother or, if that were not possible within a reasonable period of time, to place her in a permanent home. ACS has further failed to exercise adequate and meaningful oversight over the Contract Agencies to which ACS has delegated the day-to-day care of, and case planning responsibility for, this child. As a direct result of Defendants' actions and inactions, Alexandria R. has suffered and continues to suffer irreparable harm and continues to be subjected to the lasting emotional damage that is a consequence of a child being harmed while in foster care, of not knowing where she will grow up and of believing that there is no family she can call her own. Because of Defendants' actions and inactions, Plaintiff Alexandria R. is being deprived of the opportunity for a childhood that is reasonably free from harm and that provides the opportunity for stability and healthy development.

**Thierry E.**

34. Plaintiff Thierry E. is a three year old boy. ACS removed him from his biological mother on September 27, 2013. His permanency goal currently is to be returned to his parent. He has been in ACS custody for the past 21 months—nearly half his life.

35. Plaintiff Thierry E. appears through his next friend, Amy Mulzer. Ms. Mulzer is an Acting Assistant Professor of Lawyering at New York University School of Law. The primary focus of her research includes: Adoption, Child Welfare, Family Law, Parental Rights and Poverty Law. Prior to joining the lawyering faculty at NYU, Ms. Mulzer spent five years representing low-income parents whose children were in foster care or at risk of being placed in foster care, first as a staff attorney at Brooklyn Defender Services and then as an appellate attorney on the assigned counsel panel for the Appellate Division, Second Department. Ms. Mulzer is truly dedicated to Thierry E.'s best interests.



36. On or about August 15, 2013, Thierry E.'s mother, who has been a public school teacher for the past 11 years, called Safe Horizon, a domestic violence hotline, to request information about how she could remove Thierry E.'s biological father from her home. Safe Horizon reported the call to the Statewide Central Register of Child Abuse and Maltreatment and ACS opened an investigation. There was not and never has been any allegation that anyone abused Thierry E. or that his mother failed to provide him with appropriate, loving care. On September 23, 2013, Thierry E.'s mother obtained an order of protection from the Family Court against Thierry E.'s father. In her petition, she alleged that Thierry E.'s father had held a knife to her throat threatening to kill her, strangled her at least three times, punched her in the face and threw household furniture at her. Thierry E.'s mother has not been in a relationship with Thierry E.'s father since September 2013 and does not intend to re-enter a relationship with him.

37. ACS removed Plaintiff Thierry E. from his home on September 27, 2013, while his mother was at work, without taking necessary steps or making reasonable efforts to determine whether Thierry E. could remain safely at home with his mother. His father was no longer living in the house.

38. The Contract Agency to which ACS had delegated the day-to-day care of, and case planning responsibility for, Plaintiff Thierry E. first moved him to a foster placement far away from his mother's home and required visits to take place at the Contract Agency's office in the Bronx, even though he and his mother had lived in Manhattan. Moreover, the foster mother spoke only Spanish and Thierry E., then two years old, did not speak any Spanish. As a result, Thierry E.'s language and speech development was severely stunted. Thierry E.'s mother had him evaluated in March 2014 and the speech therapist recommended speech therapy twice a week, but the Contract Agency refused to provide this service.

39. On May 13, 2014, during a visit at the Contract Agency, Plaintiff Thierry E.'s mother noticed a severe rash while changing his diaper and reported this and other concerns to the Family Court. On June 21, 2014, the Family Court ordered that Thierry E. be transferred to a new Contract Agency. Thierry E. was moved to a second foster placement two days later.

40. Plaintiff Thierry E. has now been in foster care for 21 months—nearly half his life. This is a direct result of ACS's failure to develop and implement an appropriate case plan and provide appropriate services consistent with professional standards to enable this young boy to be returned to his mother or, if that were not possible within a reasonable period of time, to ensure that he would grow up in a permanent family.

41. Plaintiff Thierry E. has suffered emotional harm as a result of spending nearly half his life in ACS custody without a permanent family. All indications are that he misses his mother very much. At the end of his twice weekly visits with his mother, he cries uncontrollably. When his mother expressed concern at this behavior, Thierry E.'s therapist told her that he had to "get used to it" because this was "his life now".

42. ACS continues to fail to ensure that Plaintiff Thierry E. is receiving appropriate services. Although Thierry E. currently receives therapy, Thierry E.'s mother has expressed concerns that the therapy being provided by the Contract Agency is focused on normalizing Thierry E.'s separation from his mother rather than trying to help him prepare to be returned to her care—even though his permanency goal remains to be returned to his parent.

43. In addition to failing to keep Plaintiff Thierry E. free from emotional harm while in its custody, ACS has also failed to take reasonable and appropriate steps consistent with professional standards to place Thierry E. in a permanent home.

44. Although ACS removed Plaintiff Thierry E. from his home over 20 months ago, there has been no fact-finding hearing or disposition of ACS's neglect petition against Thierry E.'s biological mother. The fact-finding hearing has been postponed several times.

45. Plaintiff Thierry E. had his first permanency hearing in December 2014—after he had already been in ACS custody for over a year.

46. Plaintiff Thierry E.'s permanency goal remains to be returned to his parent. His biological mother wants nothing more than to finally bring her son home. She has completed parenting classes, domestic violence counseling and mental health evaluations in accordance with the two different Contract Agencies' instructions. In documents filed with the Family Court, the Contract Agency has stated that Thierry E.'s mother "comes prepared to her visits with activities to do with her son and also tries to reinforce parenting skills that will help her son's vocabulary and pronunciation."

47. Since his removal over 21 months ago, ACS has made no effort to ensure that this little boy is returned to the mother he misses, and that his permanency goal—reunification with his biological mother—is implemented as soon as possible.

48. During the nearly two years that Plaintiff Thierry E. has been in the custody of ACS, Defendants repeatedly have violated his constitutional, statutory and contractual rights by failing to protect him from psychological and emotional harm; by failing to provide services to ensure his physical, psychological and emotional well-being; by failing to ensure the provision of appropriate foster care placements consistent with professional standards or of a meaningful, timely and appropriate plan to enable him to be safely returned to his mother or, if that were not possible within a reasonable period of time, to place him in a permanent home. ACS has further failed to exercise adequate and meaningful oversight over the Contract Agencies to which ACS

has delegated the day-to-day care of, and case planning responsibility for, this child. As a direct result of Defendants' actions and inactions, Thierry E. has suffered and continues to suffer irreparable harm and continues to be subjected to the lasting emotional damage that is a consequence of a child being harmed while in foster care, of not knowing where he will grow up and of believing that there is no family he can call his own. Because of Defendants' actions and inactions, Plaintiff Thierry E. is being deprived of the opportunity for a childhood that is reasonably free from harm and that provides the opportunity for stability and healthy development.

**Ayanna J.**

49. Plaintiff Ayanna J. is a two and a half year old girl. ACS removed her from her biological mother on November 2, 2012—three days after she was born. Her permanency goal currently is adoption. She has been in ACS custody for the past two and a half years—virtually her entire life.

50. Plaintiff Ayanna J. appears through her next friend, Meyghan McCrea. Meyghan McCrea is an attorney in private practice in New York City. She was previously employed as a Family Court Legal Services Attorney for ACS. Ms. McCrea has known Ayanna J. since March 2013 and has had regular contact with her since that time. Ms. McCrea has met Ayanna J.'s current foster parent and babysitter. Ms. McCrea is truly dedicated to Ayanna J.'s best interests.

51. Plaintiff Ayanna J. has two siblings: (1) a nine year old sister, Alyssa L., and (2) a sister, Angela L., who was beaten to death by her biological mother's boyfriend in March 2010, when she was 19 months old. Documents filed with the Family Court allege that, given Angela L.'s extensive injuries, Plaintiff's biological mother knew or should have known about the ongoing abuse that her daughter suffered. These documents also allege that Plaintiff Ayanna J.'s

biological mother delayed seeking medical care for Angela L., lied to hospital staff about the source of the child's injuries and instructed her other daughter, Alyssa L., who was then three and a half years old, to lie about what had occurred.

52. The day after Angela L. died, ACS filed a petition against Ayanna J.'s biological mother alleging severe and repeated abuse. In October 2012, the Family Court made a finding of abuse against Ayanna J.'s biological mother. On appeal in June 2014, the New York State Appellate Division found that Ayanna J.'s biological mother "severely abused [Angela L.] and derivatively severely abused the subject child [Alyssa L.]".

53. Plaintiff Ayanna J. was born after her sister Angela L. died. Due to the prior finding of abuse against her biological mother, ACS placed Plaintiff Ayanna J. in custody and in her current foster placement on November 2, 2012—three days after she was born. In March 2013, the Family Court made a finding of derivative abuse as to Ayanna J. and on September 30, 2014, the Family Court amended its finding to severe abuse as to Ayanna J. based on the Appellate Division's June 2014 finding.

54. Since being placed in foster care two and a half years ago, Plaintiff Ayanna J. has had approximately eight caseworkers at the Contract Agency to which ACS has delegated her day-to-day care.

55. While in the custody of ACS, Plaintiff Ayanna J. has had supervised visits with her biological mother and father at the Contract Agency. During one such visit in September 2013, Plaintiff Ayanna J.'s biological father became angry and began screaming at Ayanna J.'s biological mother in front of Ayanna J., who was not even two years old at the time. Upon information and belief, at least one Contract Agency visit was discontinued because Ayanna J.'s biological parents were fighting. Ayanna J.'s biological father has not visited Plaintiff Ayanna J.

since April 2014. Upon information and belief, visits at Ayanna J.'s biological mother's home were suspended after she threatened to physically assault a caseworker. Ayanna J. continues to have supervised visits with her biological mother twice per week at the Contract Agency. During one such visit in July 2014, Ayanna J.'s biological mother allowed her biological father to speak with Plaintiff Ayanna J. over the phone despite such contact being prohibited.

56. Plaintiff Ayanna J. has languished in the custody of ACS for the past two and a half years—a direct result of ACS's failure to develop and implement an appropriate case plan and provide appropriate services consistent with professional standards to enable this young girl to be safely returned to her mother or, if that were not possible within a reasonable period of time, to ensure that she can grow up in a permanent family.

57. As a result of her continued placement in ACS custody, Plaintiff Ayanna J. has suffered great emotional harm. In 2013, Ayanna J. cried hysterically during supervised visits with her biological mother at the Contract Agency. Now that she is older, Ayanna J. expresses the desire to not attend visits with her biological mother, will not leave her babysitter to visit with her biological mother, or will ask for her babysitter in the middle of a visit with her biological mother. These visits have caused and continue to cause great stress, confusion and psychological harm to this young child.

58. In addition to failing to keep Plaintiff Ayanna J. free from emotional harm while in its custody, ACS has also failed to take reasonable and appropriate steps consistent with reasonable professional standards to place Ayanna J. in a permanent home.

59. On April 9, 2014, Plaintiff Ayanna J.'s permanency goal was changed from return to parent to adoption. Her current foster parent has indicated a willingness to adopt her.

60. A petition for termination of parental rights (“TPR”) was filed on April 28, 2014, after Plaintiff Ayanna J. already had been in foster care for almost one and a half years. The TPR proceedings were adjourned repeatedly due to ACS’s failure to ensure that all parties were prepared for court on scheduled hearing dates to resolve the permanency issues in this case. On April 27, 2015, almost a year after the TPR petition was filed, the assigned New York Family Court judge heard one day of testimony related to the TPR proceeding and continued the case until mid-June 2015. The next day, that Family Court judge was reassigned to another court. On June 22, 2015, Plaintiff Ayanna J.’s TPR proceeding was re-assigned to a new New York Family Court judge, who declared a mistrial and postponed a new trial until October 2015.

61. After languishing in foster care for two and a half years, Plaintiff Ayanna J.’s permanency goal remains to be adopted.

62. During the two and a half years that Plaintiff Ayanna J. has been in the custody of ACS, Defendants repeatedly have violated her constitutional, statutory and contractual rights by failing to protect her from psychological and emotional harm; by failing to provide services to ensure her physical, psychological and emotional well-being; by failing to ensure the provision of appropriate foster care placements consistent with professional standards or of a meaningful, timely and appropriate plan to enable her to be safely returned to her biological mother or, if that were not possible within a reasonable period of time, to place her in a permanent home. ACS has further failed to exercise adequate and meaningful oversight over the Contract Agencies to which ACS has delegated the day-to-day care of, and case planning responsibility for, this child. As a direct result of Defendants’ actions and inactions, Ayanna J. has suffered and continues to suffer irreparable harm and continues to be subjected to the lasting emotional damage that is a consequence of a child being harmed while in foster care, of not knowing where she will grow

up and of believing that there is no family she can call her own. Because of Defendants' actions and inactions, Plaintiff Ayanna J. is being deprived of the opportunity for a childhood that is reasonably free from harm and that provides the opportunity for stability and healthy development.

**Olivia R. and Ana-Maria R.**

63. Plaintiff Olivia R. is a five year old girl in the first grade, and Plaintiff Ana-Maria R. is a four year old girl in pre-kindergarten. ACS removed them from their biological mother's home on June 8, 2011. The permanency goal for both children currently is adoption. They have been in ACS custody for more than four years.

64. Plaintiffs Olivia and Ana-Maria R. appear through their next friend, Dawn Cardi. Ms. Cardi is an attorney in private practice in New York City, specializing in criminal and family law. She is appointed and has served as a certified Law Guardian in the First Department of the Appellate Division, representing children in complex family law proceedings. She is truly dedicated to Olivia and Ana-Maria R.'s best interests.

65. Upon information and belief, this is Plaintiffs Olivia and Ana-Maria R.'s second time in ACS custody. Upon information and belief, ACS removed Plaintiffs Olivia and Ana-Maria R. from their biological parents in January 2011, they spent a few months in a foster placement and then ACS returned them home. On June 8, 2011, when Olivia R. was two years old and Ana-Maria R. was eight months old, ACS again removed the girls from their home and placed them into ACS custody, reportedly due to domestic violence between their biological parents and their biological mother's alcohol and drug use.



66. The Contract Agency to which ACS delegated the day-to-day care of, and case planning responsibility for, Plaintiffs Olivia and Ana-Maria R. initially placed them in a non-kinship foster placement—the third place they had been moved to in six months.

67. In March 2012, the Contract Agency returned Olivia and Ana-Maria R. to their biological mother on a trial discharge. In June 2012, their biological mother dropped them off at the foster home where they had been living and did not return to pick them up. She did not visit the children again until July 24, 2012.

68. ACS has allowed Plaintiffs Olivia and Ana-Maria R. to be bounced in and out of foster care for almost the entirety of their young lives, and they now have been in ACS custody for the past four years—a direct result of ACS’s failure to develop and implement an appropriate case plan and provide appropriate services consistent with professional standards to enable these young girls to be safely returned to their biological mother or, if that were not possible within a reasonable period of time, to ensure that they can grow up in a permanent family.

69. Plaintiffs Olivia and Ana-Maria R. have suffered physical and emotional abuse while in ACS custody. In October 2013, Plaintiff Olivia R., who was four years old at the time, was sexually abused by her biological mother’s friend during an unsupervised visit. Plaintiff Ana-Maria R. was present during that abuse. Although the Contract Agency was made aware of this abuse at that time, upon information and belief, neither the Contract Agency nor ACS took any action in response to the report. More recently, Plaintiff Olivia R. reported the incident to her therapist, who (as a mandated reporter) informed the Statewide Central Register of Child Abuse and Maltreatment and the police, and an investigation is underway. Plaintiffs Olivia and Ana-Maria R.’s biological mother has not visited with the children since November 26, 2014.

70. As a result of the emotional harm they have suffered while in ACS custody for the past four years, Plaintiffs Olivia and Ana-Maria R. have suffered and continue to suffer from a variety of mental health problems. Olivia R.'s diagnoses include Attention Deficit Hyperactivity Disorder, Developmental Coordination Disorder and Disruptive Behavior Disorder. She is in a special education setting at school. Ana-Maria R.'s diagnoses include Attention Deficit Hyperactivity Disorder, Anger Management, and Conduct Disorder. She is being evaluated for placement in a special education setting at school.

71. Since being placed in ACS custody, Plaintiffs Olivia and Ana-Maria R. have suffered severe emotional and behavioral problems. Olivia R. has developed serious trust issues and she wets the bed before any visit with her biological mother. Ana-Maria R. demonstrates severe hyperactivity and aggression. At school, she often would hit her teacher, tear things off the wall or break other items. In January 2015, her pre-kindergarten program would not allow her to attend classes until she was medicated for these behavioral problems. She did not start receiving medication until June 2015.

72. ACS has failed to ensure that Plaintiffs Olivia and Ana-Maria R. are provided with the necessary and appropriate services to ensure their physical, psychological and emotional well-being. One of their caseworkers recommended that the girls enroll in Bridges to Health Program ("B2H")—a Medicaid waiver program that provides support for children in foster care who are medically fragile, have a developmental disability or are severely emotionally disturbed. Upon information and belief, when their foster mother initially requested these services, the Contract Agency declined to submit the request because an agency caseworker said "that's a lot of paperwork". Upon information and belief, Plaintiffs Olivia and Ana-Maria R. still do not have B2H services.

73. In addition to failing to keep Plaintiffs Olivia and Ana-Maria R. free from physical, psychological and emotional harm while in its custody, ACS also has failed to take reasonable and appropriate steps consistent with reasonable professional standards to place Plaintiffs Olivia and Ana-Maria R. in a permanent home.

74. Plaintiffs Olivia and Ana-Maria R.'s permanency goal was not changed from return to parent to adoption until March 1, 2014—after they had been in ACS custody for almost three years. Olivia and Ana-Maria R.'s current foster mother has indicated a willingness to adopt them. TPR petitions were filed approximately eight months later in November 2014. Upon information and belief, on May 28, 2015, the judge made an oral statement that parental rights would be terminated; however, because none of the attorneys present had drafted a proposed order, that ruling has not been finalized and Olivia and Ana-Maria R. are not yet freed for adoption.

75. During the four years that Plaintiffs Olivia and Ana-Maria R. have been in the custody of ACS, Defendants repeatedly have violated their constitutional, statutory and contractual rights by failing to protect them from physical, psychological and emotional harm; by failing to provide services to ensure their physical, psychological and emotional well-being; by failing to ensure the provision of appropriate foster care placements consistent with professional standards or of a meaningful, timely and appropriate plan to enable them to be safely returned to their biological mother or, if that were not possible within a reasonable period of time, to place them in a permanent home. ACS has further failed to exercise adequate and meaningful oversight over the Contract Agencies to which ACS has delegated the day-to-day care of, and case planning responsibility for, these children. As a direct result of Defendants' actions and inactions, Plaintiffs Olivia and Ana-Maria R. have suffered and continue to suffer irreparable

harm and continue to be subjected to the lasting emotional damage that is a consequence of children being harmed while in foster care, of not knowing where they will grow up and of believing that there is no family they can call their own. Because of Defendants' actions and inactions, Plaintiffs Olivia and Ana-Maria R. are being deprived of the opportunity for a childhood that is reasonably free from harm and that provides the opportunity for stability and healthy development.

**Xavion M.**

76. Plaintiff Xavion M. is a five year old boy in the first grade. ACS removed him from his biological mother due to an allegation of neglect 15 days after he was born. Plaintiff Xavion M.'s permanency goal currently is adoption. He has been in ACS custody for over five years—nearly his entire life.

77. Plaintiff Xavion M. appears through his next friend, Michael B. Mushlin. Mr. Mushlin is a Law Professor at Pace University School of Law in New York City, where he has taught for the last 30 years. His scholarship has included maltreatment of children in foster care. Previously, he worked as a public interest and civil rights lawyer for 15 years as a staff attorney with Harlem Assertion of Rights, Inc., as a staff attorney and Project Director of the Prisoners Rights Project of the Legal Aid Society, and as Associate Director of the Children's Rights Project of the American Civil Liberties Union. He is truly dedicated to Xavion M.'s best interests.

78. Plaintiff Xavion M. is not the only child that ACS has removed from his biological mother and placed into foster care. Plaintiff Xavion M. has two siblings: (1) a 12 year old brother, Vincent D., and (2) an 11 year old sister, Zahara D. Plaintiff Xavion M.'s siblings have been in ACS custody for the past six years. Upon information and belief, at least

one Family Court judge has referred to these two children as “unadoptable” and their permanency goals remain that they be returned to their parent.

79. The Contract Agency to which ACS delegated the day-to-day care of, and case planning responsibility for, this young boy first placed Plaintiff Xavion M. with a fictive kin foster parent, who was a friend of his biological mother. On December 21, 2011, when Xavion M. was just two years old, he was moved to a second, non-kinship, foster placement. When he arrived, he was anemic and malnourished. He has resided in this foster placement for well over three years—a direct result of ACS’s failure to develop and implement an appropriate case plan and provide appropriate services consistent with professional standards to enable this young boy to be safely returned to his biological mother or, if that were not possible within a reasonable period of time, to ensure that he can grow up in a permanent family.

80. Since being placed in foster care over five years ago, Plaintiff Xavion M. has had approximately four caseworkers at the Contract Agency to which ACS has delegated his care and case planning.

81. Plaintiff Xavion M., who has been in ACS custody for over five years, has weekly supervised visits with his biological mother and older siblings. Upon information and belief, Plaintiff Xavion M.’s brother hit and kicked him during a recent visit.

82. The Contract Agency to which ACS has delegated the day-to-day care of, and case planning responsibility for, this boy has not provided Plaintiff Xavion M. with necessary services for his physical and emotional well-being. Although his teacher recommended that an Individualized Education Program be written for him, Xavion M. has not received the evaluation necessary because his biological mother refuses to give consent.

83. As a result of the over five years that Plaintiff Xavion M. has spent in ACS custody, Xavion M. has suffered severe emotional damage. He has started to exhibit increased behavioral problems, including becoming aggressive and violent at home and at school; he also is having difficulty concentrating at school. At five years old, he will only sleep in the same bed as his foster mother and will not sleep through the night.

84. In addition to failing to keep Plaintiff Xavion M. free from physical, psychological and emotional harm while in its custody, ACS has also failed to take reasonable and appropriate steps consistent with reasonable professional standards to place Xavion M. in a permanent home.

85. On July 21, 2014—after Plaintiff Xavion M. had been in foster care for almost five years—Xavion’s permanency goal was changed from return to parent to adoption. This goal change occurred only after the Family Court judge handling Xavion M. and his siblings’ case instructed Xavion M.’s caseworkers at the Contract Agency to file a petition to terminate the parental rights of Xavion M.’s biological mother and begin adoption proceedings. Xavion M.’s current foster mother has indicated a willingness to adopt. Almost a year later, no TPR petition has been filed.

86. Despite the court’s instruction, the Contract Agency plans to return Xavion M. to his biological mother after first returning Xavion M.’s older siblings to his mother on a trial basis. Indeed, papers filed in Family Court in March 2015 state that the “Agency is working with [biological mother] for reunification”. At a family team conference on June 24, 2015, the Contract Agency said it will pursue granting Xavion M.’s biological mother unsupervised visits despite the fact that Xavion M.’s therapist has stated that Xavion M. is not ready for this and that Xavion M.’s permanency goal is adoption. The long-standing inconsistency in planning for this

child's future is increasing the insecurity and emotional damage this child is experiencing in foster care.

87. During the over five years that Plaintiff Xavion M. has been in the custody of ACS, Defendants repeatedly have violated his constitutional, statutory and contractual rights by failing to protect him from physical, psychological and emotional harm; by failing to provide services to ensure his physical, psychological and emotional well-being; by failing to ensure the provision of appropriate foster care placements consistent with professional standards or of a meaningful, timely and appropriate plan to enable him to be safely returned to his biological mother or, if that were not possible within a reasonable period of time, to place him in a permanent home. ACS has further failed to exercise adequate and meaningful oversight over the Contract Agencies to which ACS has delegated the day-to-day care of, and case planning responsibility for, this child. As a direct result of Defendants' actions and inactions, Xavion M. has suffered and continues to suffer irreparable harm and continues to be subjected to the lasting emotional damage that is a consequence of a child being harmed while in foster care, of not knowing where he will grow up and of believing that there is no family he can call his own. Because of Defendants' actions and inactions, Plaintiff Xavion M. is being deprived of the opportunity for a childhood that is reasonably free from harm and that provides the opportunity for stability and healthy development.

**Dameon C.**

88. Plaintiff Dameon C. is a four year old boy with special needs. ACS removed him from his biological mother, who was then incarcerated, nine days after he was born. His permanency goal currently is adoption. He has been in ACS custody for over four years—nearly his entire life.

89. Plaintiff Dameon C. appears through his next friend, Reverend Doctor Gwendolyn Hadley-Hall. Reverend Doctor Hadley-Hall is an associate pastor at Christ Temple United Baptist Church in Brooklyn. Prior to entering the ministry, Reverend Doctor Hadley-Hall was a teacher at public elementary schools in New York City for 30 years. She is truly dedicated to Dameon C.'s best interests.

90. The Contract Agency to which ACS delegated the day-to-day care of, and case planning responsibility for, this boy first placed Plaintiff Dameon C. in a foster placement.

91. On Christmas Eve 2011, when Plaintiff Dameon C. was nine months old, he was returned to his mother on a trial basis when she was released from jail. They were placed in a mother-child drug and alcohol rehabilitation center. His former foster parent would often take Dameon C. for two to three weeks at a time with his biological mother's consent because Dameon C.'s behavior deteriorated drastically when he was moved to his mother's care. He began banging his head, which he continues to do now at age four. In July 2012, his biological mother was expelled from the rehabilitation center and Dameon C. was returned to his former foster placement, where he remains to this day. He has been in foster care virtually his entire life—a direct result of ACS's failure to develop and implement an appropriate case plan and provide appropriate services consistent with professional standards to enable this young boy to be safely returned to his biological mother or, if that were not possible within a reasonable period of time, to ensure that he can grow up in a permanent family.

92. While in ACS custody, Plaintiff Dameon C. has had regular visits with his biological mother. In February 2014, when Dameon was almost three years old, his mother kicked him during the first unsupervised overnight visit at her drug treatment facility. Although she is still permitted to have supervised visits with him, she did not have contact with Dameon C.



between December 2014 and April 23, 2015, at which time she began attending supervised visits with Dameon C. again. However, in recent weeks, Dameon C.'s biological mother has disappeared from her drug treatment program and has not attended visits with him or contacted him since.

93. In addition to failing to keep Plaintiff Dameon C. safe from physical abuse and emotional damage, ACS has also failed to ensure that he is provided with necessary services to ensure his physical, psychological and emotional well-being. Although he has been diagnosed with Attention Deficit Hyperactivity Disorder and Oppositional Defiant Disorder, he was placed on the waiting list for B2H.

94. ACS also has failed to take reasonable and appropriate steps to place Plaintiff Dameon C. in a permanent home. Dameon C.'s permanency goal was not changed to adoption until November 3, 2014—after he had already been in ACS custody for over three and a half years. A TPR petition was filed thereafter. Plaintiff Dameon C.'s next court date had been scheduled for June 2, 2015, but has been postponed until November 2015.

95. During the over four years that Plaintiff Dameon C. has been in the custody of ACS, Defendants repeatedly have violated his constitutional, statutory and contractual rights by failing to protect him from physical, psychological and emotional harm; by failing to provide services to ensure his physical, psychological and emotional well-being; by failing to ensure the provision of appropriate foster care placements consistent with professional standards or of a meaningful, timely and appropriate plan to enable him to be safely returned to his biological mother or, if that were not possible within a reasonable period of time, to place him in a permanent home. ACS has further failed to exercise adequate and meaningful oversight over the Contract Agencies to which ACS has delegated the day-to-day care of, and case planning

responsibility for, this child. As a direct result of Defendants' actions and inactions, Dameon C. has suffered and continues to suffer irreparable harm and continues to be subjected to the lasting emotional damage that is a consequence of a child being harmed while in foster care, of not knowing where he will grow up and of believing that there is no family he can call his own. Because of Defendants' actions and inactions, Plaintiff Dameon C. is being deprived of the opportunity for a childhood that is reasonably free from harm and that provides the opportunity for stability and healthy development.

**Tyrone M.**

96. Plaintiff Tyrone M. is a seven year old boy with special needs. ACS removed him from his biological mother 12 days after he was born. His permanency goal currently is adoption. He has been in ACS custody for over seven years—nearly his entire life.

97. Plaintiff Tyrone M. appears through his next friend, Bishop Lillian Robinson-Wiltshire. Bishop Robinson-Wiltshire is the Senior Pastor and Overseer of Cathedral of Christ Community Ministries in Brooklyn. Prior to entering the ministry 30 years ago, Bishop Robinson-Wiltshire was a family counselor and worked with families dealing with abuse and neglect. Bishop Robinson-Wiltshire has also served as a foster parent to older children. She is truly dedicated to Tyrone M.'s best interests.

98. Twelve days after he was born, ACS removed Plaintiff Tyrone M. from his biological mother when she tested positive for cocaine after giving birth to him.

99. The Contract Agency to which ACS delegated the day-to-day care of, and case planning responsibility for, this young boy first placed Plaintiff Tyrone M. in a kinship foster placement with his aunt. On June 23, 2014, ACS removed him from his aunt's home after she failed a random drug screening. The Contract Agency then placed him in a non-kinship foster

placement where he currently resides. Plaintiff Tyrone M. has now spent his entire life in ACS custody—a direct result of ACS’s failure to develop and implement an appropriate case plan and provide appropriate services consistent with professional standards to enable this young boy to be safely returned to his biological mother or, if that were not possible within a reasonable period of time, to ensure that he can grow up in a permanent family.

100. ACS also has also failed to keep Plaintiff Tyrone M. free from physical, psychological, and emotional harm while in its custody. When he arrived at his current foster placement, his health and behavior indicated severe neglect. He suffered from severe dental problems. He went to sleep in his clothing every night because in his previous foster placement he had not been provided with such basic care as being taught to undress or change into pajamas before bed.

101. As a result of the emotional harm he has suffered while in ACS custody for the past seven years, Plaintiff Tyrone M. suffered and continues to suffer from a variety of mental health problems. His diagnoses include Pervasive Developmental Disorder, Developmental Coordination Disorder, Communication Disorder and Attention Deficit Hyperactivity Disorder. Tyrone M. also exhibits severe behavioral problems and often becomes violent at school and throws chairs or pencils. As a result, his school has barred him from eating in the lunchroom with other students and from attending school-sponsored field trips.

102. ACS has also failed to ensure that Plaintiff Tyrone M. is provided with the necessary services to ensure his physical and emotional well-being. For example, although his Individualized Education Program states that he is required to receive psychological counseling outside of school, upon information and belief, it has taken the Contract Agency over a year to even begin the process for getting Tyrone M. mental health services.

103. In addition to failing to keep Plaintiff Tyrone M. physically free from harm while in its custody, ACS has also failed to take reasonable and appropriate steps consistent with reasonable professional standards to place Plaintiff Tyrone M. in a permanent home.

104. After almost seven years in foster care, his biological mother recently voluntarily surrendered her parental rights. Although he is now free to be adopted, it is not clear that he will be adopted by his current foster parent and, upon information and belief, the Contract Agency, ACS and Plaintiff Tyrone M.'s law guardian have not sought out other adoption possibilities for Plaintiff Tyrone M. to have a permanent home and family to call his own.

105. During the over seven years that Plaintiff Tyrone M. has been in the custody of ACS, Defendants repeatedly have violated his constitutional, statutory and contractual rights by failing to protect him from physical, psychological and emotional harm; by failing to provide services to ensure his physical, psychological and emotional well-being; by failing to ensure the provision of appropriate foster care placements consistent with professional standards or of a meaningful, timely and appropriate plan to enable him to be safely returned to his biological mother or, if that were not possible within a reasonable period of time, to place him in a permanent home. ACS has further failed to exercise adequate and meaningful oversight over the Contract Agencies to which ACS has delegated the day-to-day care of, and case planning responsibility for, this child. As a direct result of Defendants' actions and inactions, Tyrone M. has suffered and continues to suffer irreparable harm and continues to be subjected to the lasting emotional damage that is a consequence of a child being harmed while in foster care, of not knowing where he will grow up and of believing that there is no family he can call his own. Because of Defendants' actions and inactions, Plaintiff Tyrone M. is being deprived of the

opportunity for a childhood that is reasonably free from harm and that provides the opportunity for stability and healthy development.

**Brittney W.**

106. Plaintiff Brittney W. is a six year old girl with special needs. ACS removed her from her biological mother and placed her into ACS custody on May 10, 2011. Her permanency goal currently is to be returned to her parent. She has been in ACS custody for over four years—most of her life.

107. Plaintiff Brittney W. appears through her next friend, Liza Camellerie. Ms. Camellerie is an attorney in private practice in New York City. She currently serves on the assigned panel for Family Court in Manhattan, representing children and parents in Article 10 cases, among others. She also spent six years as a Family Court Legal Services (“FCLS”) Attorney for ACS, four of which were spent as a supervisor to 25 to 30 other FCLS attorneys. Ms. Camellerie is truly dedicated to Brittney W.’s best interests.

108. Shortly after Plaintiff Brittney W. was born, a report was called in to the Statewide Central Register of Child Abuse and Maltreatment alleging that her biological mother’s own mental incapacity and developmental delays prevented her from caring for her infant daughter. Brittney W. was placed into voluntary kinship care with her biological mother’s niece by agreement with ACS.

109. On May 10, 2011, when Plaintiff Brittney W. was two years old, ACS remanded her into custody because her mother’s niece could no longer care for Brittney W.

110. The Contract Agency to which ACS delegated the day-to-day care of, and case planning responsibility for, this young girl then placed Plaintiff Brittney W. in a non-kinship foster placement. She has been residing in this foster placement for over four years—a direct

result of ACS's failure to develop and implement an appropriate case plan and provide appropriate services consistent with professional standards to enable this young girl to be safely returned to her mother or, if that were not possible within a reasonable period of time, to ensure that she can grow up in a permanent family.

111. After over four years in foster care, Plaintiff Brittney W.'s permanency goal is to be returned to her parent. Upon information and belief, Plaintiff Brittney W.'s lawyer does not think that her biological mother's mental incapacities allow her to provide appropriate care for Brittney W. Upon information and belief, the Contract Agency to which ACS has delegated the care and case planning responsibility for this child has taken the position that Brittney W.'s biological mother can provide care if she has 24-hour medical support. Upon information and belief, because Brittney's W.'s doctor reports that there is no reason why 24-hour support is medically necessary, the Contract Agency is trying to arrange for Brittany W.'s biological mother to have medical and other support during daytime hours. Brittney W.'s current foster mother has indicated a willingness to adopt. No TPR petition has been filed.

112. During the four years that Plaintiff Brittney W. has been in the custody of ACS, Defendants repeatedly have violated her constitutional, statutory and contractual rights by failing to protect her from physical, psychological and emotional harm; by failing to provide services to ensure her physical, psychological and emotional well-being; by failing to ensure the provision of appropriate foster care placements consistent with professional standards or of a meaningful, timely and appropriate plan to enable her to be safely returned to her biological mother or, if that were not possible within a reasonable period of time, to place her in a permanent home. ACS has further failed to exercise adequate and meaningful oversight over the Contract Agencies to which ACS has delegated the day-to-day care of, and case planning responsibility for, this child.

As a direct result of defendants' actions and inactions, Brittney W. has suffered and continues to suffer irreparable harm and continues to be subjected to the lasting emotional damage that is a consequence of a child being harmed while in foster care, of not knowing where she will grow up and of believing that there is no family she can call her own. Because of Defendants' actions and inactions, Plaintiff Brittney W. is being deprived of the opportunity for a childhood that is reasonably free from harm and that provides the opportunity for stability and healthy development.

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113. All of Defendants' actions and inactions as described herein substantially depart from accepted professional judgment and constitute deliberate indifference to the harms, risk of harms and violations of legal rights suffered by the Named Plaintiff Children.

## **II. The Public Advocate for the City of New York**

114. Plaintiff Letitia James is the Public Advocate for the City of New York (the "Public Advocate"). In this capacity, the Public Advocate ensures that the city government serves its citizens by exercising oversight of city agencies, investigating citizen complaints regarding city services, and making proposals or seeking relief to address perceived shortcomings or failures.

115. Just two months into her tenure, the Public Advocate introduced a law, Int. 0104-2014, that would require ACS to report information related to youth in the foster care system on an annual basis. This law ensures that the City monitors which supports and resources these young adults use and identifies ongoing educational barriers they experience and problems they might encounter with homelessness or law enforcement. In September 2014, the Office of the Public Advocate issued a policy report concerning youth "aging out" of the foster care system.

The report provided recommendations to improve data collection, access to housing, and coordination of services for young people aging out of the system. On September 30, 2014, Int. 0104-2014 was signed into law.

116. On an ongoing basis, the Office of the Public Advocate Constituent Affairs Department (“the Constituent Affairs Department”) receives complaints from constituents in all five boroughs alleging deficiencies and lapses in responsibilities by both ACS and Contract Agencies. Constituent complaints alleged, for instance, failure to investigate allegations of abuse of children in ACS custody, failure to initiate timely TPR proceedings, failure to follow proper procedures when removing children from their family home or foster home, failure to provide required services for both biological parents and foster children, failure to honor ACS vouchers and potentially retaliatory practices against those who complained directly to ACS or Contract Agencies. In total, the Constituent Affairs Department has received 259 complaints regarding ACS since January 1, 2014.

117. As a result of ongoing complaints, the Public Advocate identified ACS as an agency whose practices warrant investigation.

118. Upon learning that New York City keeps children in foster care longer than almost every jurisdiction in the country, the Office of the Public Advocate began to examine obstacles to permanency and established a hotline to hear directly from foster children and their advocates about their experiences.

119. In November 2014, the Office of the Public Advocate requested a copy of all contracts ACS holds with individual Contract Agencies; on November 17, 2014, ACS responded with electronic copies of all the contracts it has with the 29 Contract Agencies. On or about February 6, 2015, the Office requested all data collected by ACS used to produce “Scorecard”



evaluations (*see infra* ¶¶ 214–17) of the Contract Agencies from 2012 to 2014, in addition to the Scorecard evaluations themselves and any related documentation. After receiving no response, the Office of the Public Advocate repeated the request on February 27, 2015. A meeting was held on March 11, 2015, at which the document request was made for a third time and denied by ACS.

120. On or about April 1, 2015, the Office of the Public Advocate sent a letter to ACS threatening legal action if they did not comply with the data request and also requested access to ACS's Legal Tracking System in order to investigate constituent complaints concerning significant delays and inefficiencies occurring in Family Court proceedings in which ACS is involved. Following this correspondence, ACS provided Scorecard evaluations, but did not provide the underlying data used to produce them, or the other requested information.

121. Also in April 2015, the Office of the Public Advocate launched a multilingual hotline to learn first-hand from children and their advocates about the current barriers to receiving better services while in foster care and obtaining a safe and permanent home. Participants in the hotline were asked to complete a survey. The survey's questions varied based on the type of respondent—typically a child, birth parent or foster parent—and asked about the child's trajectory in foster care, permanency planning, services provided and cases of maltreatment in care.

122. Combining anecdotal reports from the hotline and publicly available data, the Office of the Public Advocate identified several deficiencies including, but not limited to, ACS removal of children without proper court process, failure to identify and provide adequate services for parents of children in care and subsequent delays in reunification, failure to place children appropriately and thus creating instability, failure of ACS and the Contract Agencies to

be prepared for court dates, failure of ACS to recruit, train and support adoptive placements, failure to engage in concurrent planning, failure to protect children from maltreatment and failure to provide adequate health and mental health services to children in care. Those deficiencies and recommendations for addressing them were cited in a report that was issued on July 2, 2015.

### **III. Defendants**

123. Defendant City of New York (“City”) was, and is, a municipal entity created and authorized under the laws of the State of New York. It is authorized by law to maintain and ultimately is responsible for the New York City Administration for Children’s Services, which acts as its agent in the area of protecting the safety and welfare of children in the City. The City assumes the risks incidental to the maintenance of the New York City Administration for Children’s Services and its employment of attorneys, caseworkers and others.

124. Defendant New York City Administration for Children's Services (“ACS”) was, and is, a municipal agency of the City responsible for protecting the safety and welfare of all children in New York City. At all times relevant hereto, the officials, agents and employees of ACS were acting under the color of state law in the course and scope of their duties and functions as agents, servants, employees and officials of ACS and otherwise performed and engaged in conduct incidental to the performance of their lawful duties. The officials, agents and employees were acting for, and on behalf of, ACS at all times relevant herein with the power and authority vested in them as agents and employees of ACS and the City and incidental to their lawful pursuit of their duties as officials, employees and agents of ACS.

125. Defendant Gladys Carrión is Commissioner of ACS and is sued solely in her official capacity. She is responsible for ACS’s policies, practices and operations, and for ensuring that ACS and the private agencies with which it contracts comply with all applicable

federal and state laws, pursuant to the Charter of the City of New York, Chapter 24-B §§ 615 and 617. All children in foster care in New York City are in the custody of Defendant Carrión, and she is responsible for ensuring their health, safety and well-being, including, but not limited to, their freedom from maltreatment while in state custody and their placement in a permanent home within a reasonable period of time.

126. Defendant State of New York (“State”) was, and is, a governmental entity. It is authorized by law to maintain and is ultimately responsible for the New York State Office of Children and Family Services, which acts as its agent in the area of foster care, adoption and adoption assistance for children in New York State. The State assumes the risks incidental to the maintenance of the New York State Office of Children and Family Services.

127. Defendant New York State Office of Children and Family Services (“OCFS”) was, and is, an agency of the State responsible for programs involving foster care, adoption and adoption assistance for children in New York State. At all times relevant hereto, the officials, agents and employees of OCFS were acting under the color of state law in the course and scope of their duties and functions as agents, servants, employees and officials of OCFS and otherwise performed and engaged in conduct incidental to the performance of their lawful duties. The officials, agents and employees were acting for, and on behalf of, OCFS at all times relevant herein with the power and authority vested in them as agents and employees of OCFS and the State and incidental to their lawful pursuit of their duties as officials, employees and agents of OCFS.

128. Defendant Sheila J. Poole is Acting Commissioner of OCFS and is sued solely in her official capacity. She is responsible for the policies, practices and operation of OCFS, for ensuring OCFS’s compliance with all applicable federal and state law, pursuant to New York

State Social Services Law §§ 11 and 17, and for providing oversight to all social services districts in the state.

### **JURISDICTION AND VENUE**

129. This action arises under the Constitution and laws of the United States, including 42 U.S.C. § 1983. The Court has jurisdiction over the federal claims pursuant to 28 U.S.C. §§ 1331 and 1343(a). The Court may exercise supplemental jurisdiction over the claims based on New York law pursuant to 28 U.S.C. § 1367(a).

130. This Court has jurisdiction to issue declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2002 and Rule 57 of the Federal Rules of Civil Procedure.

131. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b) because the claims arise in this district. Although OCFS and ACS are responsible for children from all five boroughs of New York City, including those in the Eastern District of New York, the Commissioner of ACS has custody of all Plaintiff Children, and ACS's administrative and managerial functions are operated out of its headquarters, which is located in the Southern District of New York.

### **CLASS ACTION ALLEGATIONS**

132. This action is properly maintained as a class action pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure.

133. The general class is defined as all children who are now or will be in the foster care custody of the Commissioner of New York City's Administration for Children's Services ("Plaintiff Children" or the "Class").

134. The Class is sufficiently numerous to make joinder impracticable. As of April 2015, there were approximately 11,137 children in the foster care custody of the Commissioner of ACS.

135. The questions of fact and law raised by Named Plaintiff Children's claims are common to and typical of those of each putative member of the Class whom they seek to represent. The Named Plaintiff Children and Plaintiff Children rely on Defendants for foster care services in New York City and wholly depend on the State and City Defendants for provision of those services. Defendants' long-standing and well-documented actions and inactions substantially depart from accepted professional judgment and constitute deliberate indifference to the harm, risk of harm and violations of legal rights suffered by the Named Plaintiff Children and Plaintiff Children.

136. Questions of fact common to the Class include:

- a. whether State and City Defendants fail to protect Plaintiff Children from physical, psychological and emotional harm;
- b. whether State and City Defendants fail to ensure meaningful case plans to enable Plaintiff Children to be safely returned to their parents or, if that were not possible within a reasonable period of time, to place them in permanent homes;
- c. whether State and City Defendants fail to provide foster care placements and services that ensure Plaintiff Children's well-being; and
- d. whether ACS fails to exercise adequate and meaningful oversight over the Contract Agencies to which ACS has delegated the day-to-day care of, and case planning responsibility for, Plaintiff Children.

137. Questions of law common to the Class include:

- a. whether Defendants' long-standing and well-documented actions and inactions violate Plaintiff Children's substantive rights under the due process clause of the Fourteenth Amendment to the United States Constitution;
- b. whether Defendants' long-standing and well-documented actions and inactions violate Plaintiff Children's right to a permanent home and family under the First, Ninth and Fourteenth Amendments to the United States Constitution;
- c. whether Defendants' long-standing and well-documented actions and inactions violate Plaintiff Children's rights under the Adoption Assistance and Child Welfare Act of 1980, as amended by the Adoption and Safe Families Act of 1997;
- d. whether Defendants' long-standing and well-documented actions and inactions violate Plaintiff Children's rights under New York State Social Services Law and regulations adopted pursuant thereto; and
- e. whether City Defendants' actions and inactions violate Plaintiff Children's rights as third party beneficiaries to the contracts between the City Defendants and the Contract Agencies to which ACS has delegated the day-to-day care of, and case planning responsibility for, Plaintiff Children.

138. The violations of law and resulting harms averred by Named Plaintiffs are typical of the legal violations and harms and/or risk of harms experienced by all Plaintiff Children in the Class.

139. Named Plaintiffs will fairly and adequately protect the interests of the Class that they seek to represent. Named Plaintiffs and Plaintiff Children are represented by the following attorneys who are competent and experienced in class action litigation, child welfare litigation and complex civil litigation:

- a. Marcia Robinson Lowry, an attorney with A Better Childhood, Inc., a non-profit legal advocacy organization, who has substantial experience and expertise in federal child welfare class actions nationally; and
- b. Attorneys from Cravath, Swaine & Moore LLP, including attorney Julie A. North, a Member of the Firm, who has significant experience in complex litigation in state and federal courts throughout the United States.

Plaintiff Children's attorneys have identified and thoroughly investigated all claims in this action and have committed sufficient resources to represent the Class through trial and any appeals. Each Named Plaintiff appears by a next friend pursuant to Federal Rule of Civil Procedure 17(c), and each next friend is sufficiently familiar with the facts of the child's situation and dedicated to the child's best interests to fairly and adequately represent the child's best interests in this litigation.

140. Defendants have acted or failed to act on grounds generally applicable to all members of the Class, necessitating class-wide declaratory and injunctive relief. Counsel for Plaintiff Children know of no conflict among the Class members.

**STRUCTURE OF THE NEW YORK CITY CHILD WELFARE SYSTEM**

141. Children in foster care in New York City are in the legal custody of the Commissioner of ACS (currently, Defendant Carrión) (“ACS custody”). At all times, ACS maintains legal custody and legal responsibility for all children in foster care in New York City.

142. Pursuant to its Charter, the City of New York and Defendant Carrión, as Commissioner of ACS, are responsible for ensuring that ACS complies with federal and state law.

143. New York State provides funding to New York City that is spent on child welfare services, and, through OCFS, is responsible for overseeing ACS and ensuring that ACS complies with all applicable federal and state laws. OCFS is also responsible for ensuring that ACS complies with all elements of the state plans (which OCFS signs as a condition of receiving child welfare funds from the United States Department of Health and Human Services) that document how the state will comply with certain core policies and procedures intended to, among other things, either enable children in foster care to be reunited with their families and/or ensure timely efforts to find a permanent home for children who cannot be reunited with their families.

144. Pursuant to the Constitution and federal and state statutory law, ACS, as the custodian of children in foster care in New York City, is required to:

- a. Protect each child in foster care from physical, psychological and emotional harm, U.S. Const. amend. XIV;
- b. Provide to each child in foster care the services necessary to ensure his or her physical, psychological and emotional well-being, U.S. Const. amend. XIV;



- c. Provide to each child in foster care conditions, treatment and care consistent with the purpose and assumptions of custody, U.S. Const. amend. XIV;
- d. Ensure that each child in foster care is not maintained in custody longer than is necessary to accomplish the purpose of custody, U.S. Const. amend. XIV;
- e. Provide each child in foster care with a permanent home and family within a reasonable period of time, U.S. Const. amends. I, IX, XIV;
- f. Place each child in foster care in a foster placement that conforms to nationally recommended professional standards, 42 U.S.C. § 671(a)(10);
- g. Provide for each child in foster care a written case plan that includes a plan to provide safe, appropriate and stable foster care placements and implement that plan, 42 U.S.C. §§ 671(a)(16), 675(1)(A);
- h. Provide for each child in foster care a written case plan that ensures that the child receives safe and proper care while in foster care and implement that plan, 42 U.S.C. §§ 671(a)(16), 675(1)(B);
- i. Provide for each child in foster care a written case plan that ensures the provision of services to facilitate reunification or, where that is not possible, a permanent home for the child and implement that plan, 42 U.S.C. §§ 671(a)(16), 675(1)(B);
- j. Provide for each child in foster care, where reunification is not possible or appropriate, a written case plan that ensures the location of an adoptive or

other permanent home for the child and implement that plan, 42 U.S.C. §§ 671(a)(16), 675(1)(E);

- k. Provide for each child in foster care a written case plan that ensures the educational stability of the child while in foster care and implement that plan, 42 U.S.C. §§ 671(a)(16), 675(1)(G);
- l. Maintain a case review system in which each child in foster care has a case plan designed to achieve safe, appropriate and stable foster care placements, 42 U.S.C. §§ 671(a)(16), 675(5)(A);
- m. Maintain a case review system in which the status of each child in foster care is reviewed every six months by a court, or person responsible for case management, for purposes of determining the safety of the child, the continuing necessity and appropriateness of the foster placement, the extent of compliance with the permanency plan and the projected date of permanency, 42 U.S.C. §§ 671(a)(16), 675(5)(B), 675(5)(C);
- n. Maintain a case review system that ensures that for each child that has been in foster care for 15 of the most recent 22 months, ACS files a petition to terminate the parental rights of the child's parents and concurrently identifies, recruits, processes and approves a qualified family for an adoption, or documents compelling reasons for determining that filing such a petition would not be in the best interest of the child, 42 U.S.C. §§ 671(a)(16), 675(5)(B), 675 (5)(E);
- o. Provide to each child in foster care quality services to protect his or her safety and health, 42 U.S.C. § 671(a)(22);

- p. Timely create meaningful and appropriate Family Assessment and Service Plans, New York State Social Services Law § 409-e;
- q. Timely plan and complete meaningful and appropriate Family Assessment and Service Plan reviews, New York State Social Services Law § 409-e and N.Y. Comp. Codes R. & Regs. tit. 18, § 430.12;
- r. Place each child in a foster placement that meets standards for continuity and appropriate level of placement, N.Y. Comp. Codes R. & Regs. tit. 18, § 430.11;
- s. File a petition to terminate parental rights for each child who has been in foster care for 15 out of the most recent 22 months or, where applicable, appropriately document an exception, New York State Social Services Law § 384-b, N.Y. Comp. Codes R. & Regs. tit. 18, §§ 430.12 and 431.9; and
- t. Provide each child in foster care who has been freed for adoption with meaningful and appropriate adoption services, including evaluation of the child's placement and pre-placement needs, recruitment of and a home study for prospective adoptive parents, placement planning, supervision and post-adoption services, New York State Social Services Law §§ 372-b, 372-e and N.Y. Comp. Codes R. & Regs. tit. 18, § 421.8.

145. By contract, ACS has delegated the care of the City's children in foster care to agencies ("Contract Agencies"). ACS currently has entered into valid and enforceable contracts with 29 Contract Agencies. The contracts into which ACS has entered with each of the Contract Agencies (referred to herein as the "Agreements") require the Contract Agencies to comply with

all applicable ACS policies, as well as state and federal law. The Agreements also require the Contract Agencies to provide comprehensive foster care services as defined in the Agreements.<sup>1</sup>

146. Regardless of the terms of the Agreements, by law, ACS at all times maintains legal custody of and legal responsibility for all children in foster care in New York City. However, ACS has failed and continues to fail to ensure the protection of Plaintiff Children's rights under federal and state constitutional and statutory law.

147. Children in New York City enter foster care in one of two ways—they can be voluntarily placed into foster care by their parents,<sup>2</sup> or they can be removed from their parents by ACS. Most children in foster care in New York City have been removed from their parents. When children are removed from their parents, the removal is either (a) pursuant to a Family Court finding that the child is in danger of abuse or neglect if left with his or her parents or (b) on an emergency basis, subject to a later finding by the Family Court that the child would have been in danger of abuse or neglect if he or she had been left with his or her legal parents. In both cases, the Family Court must hold a fact-finding hearing to determine whether the child was in danger of being abused or neglected if left with his or her parents. After the fact-finding hearing, the Family Court holds a disposition hearing to determine whether the child can safely be returned home or should remain in foster care pending the completion of certain actions (*e.g.*, treatment for drug or alcohol addiction, anger management classes, etc.).

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<sup>1</sup> Each Agreement between the Contract Agency and ACS is for a particular set of foster placement services. Therefore, one Contract Agency may have multiple Agreements with ACS, each for a different type of placement. Appendix A lists, to the best of our information and belief, the Agreements which were current as of November 2014 (*see* ¶ 119) and that are still in force today.

<sup>2</sup> Unless otherwise specified, the term “parents” as used herein refers to the person(s) who have legal custody or legal responsibility for the child prior to his or her entry into foster care, and may include biological parents, grandparents, adoptive parents or other legal guardians.

148. Once a child enters foster care, ACS “places” the child with a Contract Agency, to which ACS delegates the day-to-day care of, and case planning responsibility for, the child. Upon information and belief, placement with a Contract Agency is determined largely by which Contract Agency has availability when placement is sought, not by a determination of the child’s health, safety or permanency needs, or of the ability of a potential available placement to meet those needs.

149. The Contract Agency with which the child has been placed then assigns the child a foster placement, which can be either a traditional home-like setting or residential facility.<sup>3</sup> Upon information and belief, foster placements are determined largely by availability at the time the placement is sought, not by a determination of the child’s health, safety or permanency needs, or of the ability of a potential available placement to meet those needs.

150. Once a child is placed with a Contract Agency, caseworkers employed by that Contract Agency are responsible for generating and recommending a case plan for the child.

151. Pursuant to federal and state law, ACS is required to ensure that a case plan meeting statutory criteria and professional standards is prepared for each child in foster care. In New York, these case plans are referred to as Family Assessment and Service Plans (“FASP”). Each child’s FASP must describe, among other things, the child’s physical and mental health needs, the child’s permanency goal, the services necessary to meet the child’s physical and mental needs as identified in the case plan and the services necessary to help the child achieve his or her permanency goal as identified in the case plan.

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<sup>3</sup> Residential facilities include boarding homes, group homes, group residences, and institutions or residential treatment facilities. Residential facilities are the most restrictive settings, usually intended for the placement of older children with severe clinical, medical, mental and/or behavioral problems.

152. Pursuant to state and federal law, ACS also is responsible for ensuring that each child's case plan is implemented, and for providing each child in its custody with the services necessary to meet the child's physical and mental needs as identified in the case plan and the services necessary to help the child achieve his or her permanency goal as identified in the case plan.

153. ACS delegates the preparation of such case plans and the provision of such services to the Contract Agency with which the child has been placed. However, ACS fails to ensure that the Contract Agencies prepare meaningful and appropriate FASPs for each child in ACS custody, as required by state law. ACS also fails to ensure that the Contract Agencies provide the services necessary to meet both the child's physical and mental needs and to help the child achieve his or her permanency goal (as identified in the case plan), as required by law.

154. Foster care is intended to be temporary—a short-term placement until a child can be safely reunified with his or her parents or, where that is not possible, placed into another stable, permanent home.

155. Accordingly, federal and state law require ACS to ensure that each child in foster care has a "permanency goal" and that reasonable efforts are made to reach each child's established permanency goal within a reasonable period of time. There are five possible permanency goals: (1) return to parent; (2) adoption; (3) legal guardianship or kinship guardianship; (4) placement with a relative; and (5) another planned permanent living arrangement ("APPLA"), the permanency goal given to children who will "age out" of the foster care system.

156. ACS delegates case planning responsibility, including assigning permanency goals and making reasonable efforts toward permanency goals, to the Contract Agency with

which each child in ACS custody has been placed. However, ACS fails to ensure that the Contract Agencies engage in meaningful and appropriate permanency planning, as required by federal and state law.

157. Federal law requires ACS to ensure that caseworkers engage in concurrent planning, so that each child in ACS custody has a primary permanency goal and a secondary permanency goal, both of which the caseworker must work toward simultaneously. For example, if a child's primary permanency goal is "return to parent" and the secondary permanency goal is "adoption", concurrent planning requires simultaneous provision of necessary services so that the child can be returned home safely and recruitment of potential adoptive parents in the event the child is unable to be returned home safely. The purpose of concurrent planning is to limit the harm caused to the child by a lengthy stay in foster care by ensuring that the child is placed into a permanent home within a reasonable period of time.

158. ACS delegates case planning responsibility, including engaging in concurrent planning, to the Contract Agency with which each child in ACS custody has been placed. However, ACS fails to ensure that the Contract Agencies engage in meaningful and appropriate concurrent planning, as required by federal law.

159. Federal and state law require ACS to ensure that a child's case plan is periodically reviewed to ensure that the child's permanency goal is appropriate and that progress is being made toward safely returning the child to his or her parent or, if that were not possible within a reasonable period of time, placing the child in a permanent home. By state statute, an initial FASP review must be held between 60 and 90 days after the child is placed in foster care, and subsequent FASP reviews must be held no less than every six months thereafter. ACS must ensure that the caseworker and all relevant persons, including, but not limited to, the parents of

the child, relatives, the foster parent and the child, if old enough, participate in the FASP reviews. However, ACS fails to ensure that meaningful and appropriate FASP reviews occur as required by state law.

160. By state statute, a permanency hearing must be held in the Family Court within eight months of a child's removal from his or her parents and every six months thereafter, and that permanency hearing must be completed within 30 days. The purpose of permanency hearings is to provide each child in ACS custody with timely judicial review of the child's permanency goal and whether progress has been made toward achieving that goal.

161. Because ACS fails to ensure that all parties are prepared for court and that Contract Agencies submit necessary paperwork in a timely fashion, such permanency hearings often are not completed within the time period required by state law. In many if not most instances, the permanency hearings are held before the Family Court has even made a determination about whether the parent from whom the child was removed has in fact neglected or abused the child.

162. Federal and state law provide that ACS must, after a child is removed from his or her parents, make a reasonable effort to preserve family relationships, which includes providing services to the child's parents. Federal law and policy dictate that the preferred course of action is to reunify the child with his or her parents.

163. ACS has delegated its responsibility to make reasonable efforts to reunify each child in its custody with his or her parents to the Contract Agency with which the child has been placed. However, ACS fails to ensure that reasonable efforts are being made or that necessary services are being provided to enable children in ACS custody to be returned home within a reasonable period of time, as required by federal and state law.



164. Even while efforts are being made to reunify a child with his or her parents, federal law and professional standards also require ACS to ensure that concurrent planning—*i.e.*, to pursue another permanency option for the child in the event that the child cannot safely be returned to his or her parents (*see supra* ¶ 157)—occurs. That means that ACS should not wait months or years until reunification efforts have failed to begin alternative permanency planning, including identifying other potential permanent homes for the child.

165. Federal and state law require ACS to determine within a reasonable period of time whether or not a child in foster care can be safely and appropriately returned to his or her parents, and if not, to initiate a petition to terminate parental rights so that the child is legally available to be adopted. ACS has delegated the responsibility for making that determination to the Contract Agency with which each child in ACS custody has been placed. However, ACS fails to ensure that the Contract Agency makes that determination within a reasonable time, as required by federal and state law.

166. Under federal and state law, ACS must file a petition to terminate parental rights (“TPR”) when a child has been in foster care for 15 of the previous 22 months, subject to certain exceptions that must be documented. Under state law, ACS must file a TPR petition (a) within 30 days of establishing a primary permanency goal of “adoption”; (b) within 60 days of completing a FASP that documents abandonment or permanent neglect of a child; and (c) within 60 days of a judicial determination that a child was abandoned. ACS has delegated its responsibility to file TPR petitions to the Contract Agency with which each child in its custody has been placed. However, ACS fails to ensure that TPR petitions are filed within the time periods required by federal and state law.

167. Once parental rights have been terminated and a child in ACS custody is considered “freed” for adoption, state statutory law and regulations require ACS to take a number of additional steps to place that child into a permanent home, including (a) timely acting on applications by persons looking to adopt children; (b) initiating and completing adoption studies (evaluations of an applicant’s ability to be an adoptive parent) within certain time periods; (c) placing children in adoptive homes within certain time periods; and (d) finalizing adoptions within certain time periods. However, as the concept of concurrent planning (*see supra* ¶ 157) makes clear, ACS should have been identifying other potential permanent homes for the child well before the child is freed for adoption. ACS has delegated these responsibilities to the Contract Agency with which each child in its custody has been placed; however, ACS fails to ensure that the necessary and appropriate steps are taken to develop an appropriate pool of adoptive families and to place children who have been freed for adoption into adoptive homes, as required by state law.

168. Although ACS has delegated the provision of comprehensive foster care services in New York City to 29 Contract Agencies, that delegation does not and cannot supplant ACS’s responsibilities to Plaintiff Children under federal and state law. ACS has legal custody of all children in foster care in New York City. ACS accordingly has legal responsibility for ensuring that the rights of all children in foster care in New York City are protected—which ACS has failed, and continues to fail, to do.

**FACTUAL ALLEGATIONS REGARDING SYSTEMIC DEFICIENCIES  
PLAGUING NEW YORK CITY'S FOSTER CARE SYSTEM AND  
RESULTING HARM TO PLAINTIFF CHILDREN**

169. The experiences and current situations of the Named Plaintiff Children as described above are neither unusual nor aberrational. Rather, they are merely examples that are far too typical of the irreparable harm being suffered by all children in ACS custody.

170. Defendants are harming Plaintiff Children by:

- a. failing to protect Plaintiff Children from physical, psychological and emotional harm;
- b. failing to ensure the development and implementation of meaningful case plans to enable Plaintiff Children to be safely returned to their parents or, if that were not possible within a reasonable period of time, to place them in permanent homes; and
- c. failing to provide foster care placements and services to ensure Plaintiff Children's well-being.

171. These harms are a direct result of Defendants' long-standing and well documented actions and inactions and Defendants' failure to remedy structural and systemic deficiencies that have plagued New York City's foster care system for years:

- a. ACS fails to exercise adequate and meaningful oversight over the Contract Agencies to which ACS has delegated the day-to-day care of, and case planning responsibility for, Plaintiff Children.

- b. ACS fails to ensure that Contract Agency caseworkers are assigned caseloads and receive appropriate training consistent with professional standards.
- c. ACS fails to provide a system for making foster placements consistent with federal and state law and minimum professional standards.
- d. ACS fails to ensure case and service plans are developed and implemented consistent with federal and state law and minimum professional standards.
- e. ACS fails to take all necessary and available action to ensure timely adjudication of family court proceedings involving children in ACS custody consistent with federal and state law and minimum professional standards.

All of Defendants' actions and inactions as described herein substantially depart from accepted professional judgment and constitute deliberate indifference to the harm, risk of harm and violations of legal rights suffered by Plaintiff Children.

172. Put simply, as a result of Defendants' failures, caseworkers employed by the Contract Agencies to which ACS has delegated the care of Plaintiff Children often are inexperienced, undertrained, under-supervised, overworked and underpaid; case planning often is sloppy and ineffective; there are not enough suitable and appropriate foster and pre-adoptive placements to meet Plaintiff Children's needs; and a lack of urgency and accountability pervades New York City's foster care system.

173. Defendants have long been aware of these systemic failures and the resulting harm to the vulnerable children in ACS custody. Since 2000, OCFS has undergone two federal performance audits of the New York State child welfare system, known as Child and Family

Services Reviews (“CFSR”). These reviews are conducted by the United States Department of Health and Human Services to assess the performance of child welfare systems across the country, including the outcomes achieved for children, to identify areas in which systemic improvement is required to assure appropriate outcomes for children, and to implement corrective actions where outcomes for children are found to be deficient. States are evaluated on seven outcome indicators of safety, permanency and well-being—the unequivocal goals of all foster care systems pursuant to federal statutory law—and on seven systemic factors that affect the state’s capacity to deliver foster care services effectively.

174. The two federal audits completed to date revealed myriad areas in which the New York State foster care system was causing harm to the children in its care, and that New York State’s foster care system was getting worse. The first CFSR audit, which was published in 2002, found that New York State failed to conform to federal expectations in five of the seven safety, permanency and well-being indicators, and in three of the seven systemic factors. Seven years later, New York State performed worse. During the second CFSR audit, which was published in 2009, the federal government determined that New York State failed to conform to federal expectations in all seven safety, permanency and well-being indicators, and in five of the seven systemic factors. New York State’s CFSR results are heavily influenced by New York City’s child welfare system, which accounted for well over 60% of children in foster care in New York State in both 2002 and 2009.

175. Notwithstanding having had 13 years to improve performance since the first CFSR audit of New York State, Defendants continue to place New York City children in ACS custody at significant risk of harm. The most recent federal data available shows that children in

New York State spend longer in foster care and are more likely to be maltreated while in foster care than children in virtually all other states.

176. Defendants are not acting with sufficient urgency to address these known failures or to meet their legal obligations to protect the children in New York City's foster care system.

**I. DEFENDANTS ARE CAUSING IRREPARABLE HARM TO CHILDREN IN ACS CUSTODY.**

**A. Defendants Fail To Protect Children in ACS Custody from Maltreatment.**

177. Maltreatment of children in foster care is a significant problem in New York City.

178. New York City currently accounts for almost 60% of children in foster care in New York State, which lags far behind the nation with respect to the protection of children in foster care.

179. Based on the most recent federal data available, New York State ranks 46th out of 48 states and territories for instances of substantiated or indicated maltreatment of children while in foster care. Put simply, children in New York are more likely to be harmed while under the state's protection than children in virtually every other state.

180. New York State has had a high rate of maltreatment in foster care for years. In both the 2002 and 2009 CFSRs, the federal government found that New York State did not meet the national standard for the rate of maltreatment in foster care. Based on the most recent federal data available, New York State did not meet the national standard for 2013.

181. Upon information and belief, the high rate of maltreatment in care in New York State is largely driven by maltreatment of children in ACS custody in New York City, which accounts for the majority of children in foster care in New York State.

182. All investigations of maltreatment, including those pertaining to children in foster care custody, begin with a call to the Statewide Central Register of Child Abuse and

Maltreatment (“SCR”). According to ACS, in 2014, SCR received 1,987 reports of maltreatment of children in ACS custody (*i.e.*, children in foster care in New York City). ACS’s Office of Special Investigation investigates reports of maltreatment made to the SCR, including those for children already in foster care; a report of maltreatment is “substantiated” when sufficient evidence is found to support a determination that a child was in fact maltreated. Of the 1,987 reports of maltreatment in foster care received by SCR in 2014, 28% were substantiated. The Children’s Bureau of the federal government does not publish comparable data.

183. The high rate of maltreatment of children in ACS custody is a direct result of Defendants’ long-standing and well-documented actions and inactions and Defendants’ failure to remedy structural and systemic deficiencies that have plagued New York City’s foster care system for years. ACS’s failure to ensure that Plaintiff Children are protected from maltreatment substantially departs from accepted professional judgment and demonstrates a deliberate indifference to the risk of harm to Plaintiff Children.

**B. Defendants Fail To Provide Children in ACS Custody with Permanent Homes and Families Within a Reasonable Time.**

184. Foster care is intended to be temporary. Children who do not grow up in stable family environments are less likely to complete their education, to form healthy relationships or to be otherwise prepared to live healthy, satisfying adult lives. Accordingly, federal and state law and professional standards dictate that foster children should be placed in permanent homes as quickly as is safely possible, whether with their parents, another relative or an adoptive family.

185. But ACS allows Plaintiff Children to languish for years in foster care without permanent homes or families to call their own. Indeed, the most recent federal data available shows that New York City lags far behind the rest of New York State and the nation as a whole

in placing children in foster care custody in permanent homes. As a result, children spend longer in foster care custody in New York City than virtually everywhere else in the nation.

1. Defendants Fail To Ensure Children Are Timely and Safely Reunified with Their Parents.

186. Federal and state law provide that ACS must, in the first instance, make reasonable efforts to preserve a child's relationship with his or her family. After a child is removed from home due to allegations of abuse or neglect, federal and state law and policy dictate that the preferred course of action is to reunify the child with his or her parents. Reunification, however, is only appropriate where the reason for removal has been addressed through appropriate services to the family so that the child's safety is assured. As a result, ACS must ensure the provision of appropriate and effective services<sup>4</sup> so that children in ACS custody can safely return home.

187. ACS fails to ensure that children in ACS custody are safely returned to their parents within a reasonable period of time.

- a. It takes longer to return children in foster care to their parents in New York City than in the rest of New York State and the rest of the nation as a whole. The most recent federal data available shows that children in New York City had spent a median of over a year—12.6 months—in foster care before being reunified with their parents, while children in the rest of New York State spent a median of 10.8 months, and children in the rest of the nation spent a median of 8.6 months in foster care prior to reunification.

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<sup>4</sup> Necessary reunification services, which should be established and set forth in the child's case plan, may include psychological evaluations and/or care, substance abuse treatment, parenting classes or assistance, or assistance with accessing adequate housing.



- b. New York City takes longer to return children in foster care to their parents than all but five other states and territories. Based on the most recent available federal data comparing the median number of days children spent in foster care prior to being returned to their parents, New York City ranks 48th of 53 jurisdictions.

188. ACS also fails to ensure that children are safely returned to their parents.

Children who are eventually reunified with their legal parents too often re-enter foster care due to further abuse or neglect. In 2014, 13.9% of foster care placements in New York City were of children who had been in foster care within the previous three years. Failed reunifications cause harm to children both as a result of additional maltreatment—in the worst cases, severe injury or even death—and the trauma that accompanies repeated family separation.

2. Defendants Fail To Ensure a Timely Permanent Home for Children in ACS Custody when Reunification Is Not Possible.

189. When a child cannot be returned safely to his or her parents, federal and state law require ACS to promptly find children in its custody alternative permanent homes, typically through adoption or kinship guardianship.

190. However, ACS fails to secure timely adoptions for too many children in its custody who cannot safely be returned to their parents. Instead, these children languish in ACS custody for years without a permanent home or family to call their own.

- a. For children who cannot be safely returned to their parents, it takes longer to be adopted in New York City than in the rest of New York State. It also takes longer to be adopted in New York City than in *every other state in the nation*.

- b. Children who were adopted in New York City in 2013 spent a median of 55.8 months—over 4.5 years—in foster care prior to adoption. In contrast, children in the rest of New York State spent almost two years less time—a median of 32.6 months—in foster care prior to being adopted, and children in the rest of the nation spent less than half that amount of time—a median of 26.9 months—in foster care prior to being adopted.
- c. Based on the most recent available federal data comparing the median number of days children spent in foster care prior to being adopted, New York City *ranks dead last*—a fact that has been true since at least 2007.

191. The City Defendants are well aware that it takes over 4.5 years for a child to be adopted in New York City. The City has published that fact for the past five years in its Mayor's Management Reports.

3. Defendants' Failure To Provide Children in ACS Custody Permanent Homes Within a Reasonable Period of Time Causes Irreparable Harm.

192. Research has shown that permanent homes and families are critical to ensuring a child's healthy development and continue to confer benefits that contribute to the child's success throughout life. Being placed with a permanent family helps infants with brain development; young children with self esteem, healthy attachment and behavior regulation; and adolescents with independence and healthy boundary-setting. Parental support and a stable, familiar environment also help children cope after traumatic experiences.

193. Conversely, research has shown that children suffer when they grow up in state custody without the protective effects of a permanent home and family. Each year,

approximately 1,000 young people “age out” of New York City’s foster care system, the vast majority on their own with virtually no safety net. These children suffer irreparable harm.

Research has shown that children who “age out” of foster care are more likely than their peers to be unemployed, homeless and incarcerated as adults; are more likely to have drug dependence and post-traumatic stress disorder; and are less likely to have graduated high school, attended college, or to have a savings or checking account.

194. Too frequently, caseworkers push children to accept the permanency goal of APPLA—the goal given to children who will “age out” of the foster care system—at young ages, often failing to explore other options, such as adoption or placement with a relative. ACS allows too many children who cannot safely be returned home to be deemed “unadoptable” without making reasonable efforts to search for or secure permanent homes for those children. ACS also fails to explore alternative permanency options for older teens who may express that they do not want to be adopted but who would nevertheless benefit from a permanent and stable adult connection.

195. Defendants have long been aware of the harm children suffer when they do not grow up in a permanent home or have a permanent family. In February 2011, Defendant OCFS sent ACS and the Contract Agencies an informational letter stating that “children who have a significant connection to an adult generally fare better” and that “[s]tudies of youth who leave foster care without a safe, permanent family reveal consistently negative life outcomes.” However, Defendants have made no meaningful efforts to improve permanency for Plaintiff Children.

196. ACS’s failure to provide Plaintiff Children with permanent homes within a reasonable period of time is a direct result of Defendants’ long-standing and well-documented

actions and inactions and Defendants' failure to remedy structural and systemic deficiencies that have plagued New York City's foster care system for years. ACS's failure to ensure that Plaintiff Children are placed in permanent homes within a reasonable period of time substantially departs from accepted professional judgment and demonstrates a deliberate indifference to the risk of harm to Plaintiff Children.

C. Defendants Fail To Provide Foster Placements and Services that Ensure the Well-Being of Children in ACS Custody.

197. Federal and state law and professional standards require ACS to ensure foster care services are provided in a manner that ensures the well-being of each child in ACS custody.

198. Federal and state law and professional standards require ACS to ensure that each child in ACS custody is placed in the most appropriate, least restrictive placement available. The abrupt and overwhelming change of being removed from his or her parents and placed into ACS custody can further traumatize a child. In the process of initial placement, children are removed, often abruptly, from familiar surroundings and lose everything known and comforting. Research has shown that change of this magnitude has a detrimental effect on brain and neurological function and other negative physiological effects.<sup>5</sup> Accordingly, foster placements should be based on an assessment of the individual child's needs and should promote stability and continuity by placing children with relatives, keeping children in their communities and schools, and keeping siblings together whenever possible.

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<sup>5</sup> This is one reason why children, especially very young children, often regress in their development and behaviors (*e.g.*, toilet training, talking, etc.) after being removed from their parents. Separation from family, and the resulting attachment disruption, may intensify these negative physiological effects and is particularly devastating for younger children.

199. Instead, ACS further harms Plaintiff Children by putting them in inappropriate foster placements ill-equipped to meet their needs, which results in far too many children being shuffled from foster placement to foster placement:

- a. In December 2011, ACS published data stating that 14% of children then in ACS custody had experienced more than six transfers while in foster care; and additional 16% had been shuffled from between three and five placements.
- b. More recently, in July 2015, the Public Advocate published a report, finding that 26% of the foster children surveyed had experienced five or more transfers while in ACS custody.

200. Being shuffled from foster placement to foster placement negatively affects a child's well-being. Children may be dropped off at a new place with no explanation for where they are going and why. This degree of turbulence can lead to emotional trauma and attachment disorders, and causes children to lose all sense of stability and security. Frequent moves may result in children losing contact with siblings, other family members, friends and adults in their community who may have been involved in their lives.

201. Multiple placements can also cause educational interruptions and compromise the child's ability to finish school. Federal statutory law and reasonable professional standards require ACS to make reasonable efforts to keep children in the same school whenever possible.

202. As a result, for too many children in ACS custody, moving foster placements means changing schools, losing teachers and friends. In 2009, Children's Rights, a national advocacy organization for abused and neglected children, ACS and the Legal Aid Society Juvenile Rights Practice conducted a study of children in New York City's foster care system

(referred to herein as “The Long Road Home Study”).<sup>6</sup> The Long Road Home Study found that 30% of children studied had experienced at least one school transfer within the past year and that children who had experienced more than one placement move in a one-year period were significantly more likely to have experienced a school transfer as well.

203. The failure to provide educational stability—like the failure to provide placement stability—further damages children in ACS custody. School is often the one place where children who are being abused or neglected at home feel safe, so changing schools can be traumatic. Research has also shown that children in foster care have lower standardized test scores, poorer academic performance and higher rates of grade retention, absenteeism, tardiness, truancy and dropout than their peers. According to data from the New York City Department of Education, foster youth in 8th grade score significantly lower than their peers in English and math.

204. Federal and state law also require ACS to ensure that all children in its legal custody receive the necessary services to ensure their well-being. This includes adequate medical, dental and mental health assessments and follow-up care; educational assessments and services; independent living services; substance abuse treatment; or family planning services, as needed.

205. However, ACS fails to ensure that all children in its custody are provided with these essential services to ensure their well-being:

- a. New York City fails to meet the national standard for providing adequate medical, dental and mental health care. In the 2009 CFSR, for example,

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<sup>6</sup> The results of this study were published in a November 2009 report entitled “The Long Road Home: A Study of Children Stranded in New York City Foster Care”.

the federal government determined that only 73% of children in New York City received adequate services to meet their physical and mental health needs—well below the national benchmark of 95%.

- b. The Long Road Home Study found that ACS failed to ensure the provision of necessary mental health services for a substantial number of children in its custody—16% of children studied who needed a mental health assessment, 19% of children studied who needed individual therapy and 11% of children studied who needed psychotropic medication had not received those critical mental health services within the past year. The study also found that many children who needed the B2H Medicaid waiver program did not receive it because caseworkers failed to make timely referrals or because there were not enough slots in the program.

206. These services are critical to the well-being of children in ACS custody, who are particularly vulnerable to irreparable physical, psychological and emotional damage from ACS's failure to provide necessary services. Children in foster care custody often have experienced severe and chronic trauma, including physical or sexual abuse, neglect and domestic or community violence, as well as other stressors such as extreme poverty or parental substance abuse. Research has shown that children exposed to repeated traumatic stress or pervasive neglect, including children removed from their home due to abuse or neglect, manifest increased physical, psychological and emotional problems later in life. Being placed in and left to languish in foster care without a permanent home or family further compounds these problems.

207. According to the National Child Traumatic Stress Network, exposure to trauma derails development in children of all ages. Young children (five and younger) may experience

sensitivity to noise, avoidance of contact, heightened startle response, confusion about what is dangerous and who to go to for protection, and fear of being separated from familiar people and places. School-aged children (ages six to 12) may exhibit emotional swings, learning problems, specific anxieties and fears, attention seeking behavior and reversion to younger behaviors. Adolescents (13 to 21) may have difficulty imagining or planning for the future, over- or underestimate danger, display inappropriate aggression, and engage in reckless and/or self-destructive behaviors.

208. Accordingly, it is critical that all children in ACS custody are properly assessed and receive necessary services as soon as possible to facilitate their recovery from the trauma they already have experienced. However, ACS fails to ensure that all children in its custody are provided with these critical services within a reasonable period of time.

209. ACS also fails to ensure that the quality of services being provided to Plaintiff Children is consistent with professional standards. Upon information and belief, many Contract Agencies do not directly provide services; instead, they refer foster children to other service providers with which the City contracts. However, upon information and belief, the City Defendants do not exercise adequate and meaningful oversight over these service providers. Upon information and belief, most mental health services provided to children in ACS custody are ineffective and of poor quality, but ACS continues to renew contracts with these substandard service providers while the few quality service providers have lengthy waiting lists.

210. ACS's failure to provide Plaintiff Children with appropriate foster care placements consistent with professional standards and services to ensure their physical, psychological and emotional well-being is a direct result of Defendants' long-standing and well-documented actions and inactions and Defendants' failure to remedy structural and systemic



deficiencies that have plagued New York City's foster care system for years. These failures substantially depart from accepted professional judgment and demonstrate a deliberate indifference to the risk of harm to Plaintiff Children.

## **II. DEFENDANTS HAVE FAILED TO REMEDY THE SYSTEMIC DEFICIENCIES PLAGUING NEW YORK CITY'S CHILD WELFARE SYSTEM**

211. The harms described in ¶¶ 177–210 are a direct result of Defendants' long-standing and well-documented actions and inactions and Defendants' failure to remedy structural and systemic deficiencies that have plagued New York City's foster care system for years, including:

- a. the City Defendants' failure to exercise adequate and meaningful oversight over the Contract Agencies to which ACS has delegated the day-to-day care of, and case planning responsibility for, Plaintiff Children to ensure foster care services are provided consistent with federal and state law and minimum professional standards;
- b. ACS's failure to ensure that Contract Agency caseworkers are assigned caseloads and receive appropriate training consistent with professional standards;
- c. ACS's failure to provide a system for making foster placements consistent with federal and state law and minimum professional standards;
- d. ACS's failure to ensure case and service plans are developed and implemented consistent with federal and state law and minimum professional standards; and

- e. ACS's failure to take all necessary and available action to ensure timely adjudication of family court proceedings involving children in ACS custody consistent with federal and state law and minimum professional standards.

These failures substantially depart from accepted professional judgment and demonstrate a deliberate indifference to the harm, risk of harm and violations of rights suffered by Plaintiff Children.

- A. City Defendants Fail To Exercise Adequate and Meaningful Oversight over Contract Agencies.

212. By contract, ACS delegates its responsibility to provide children in its custody with foster care services to Contract Agencies. However, ACS at all times maintains legal custody of and legal responsibility for all children in foster care in New York City. ACS thus has an obligation to Plaintiff Children to ensure that Contract Agencies are providing foster care services consistent with all applicable law and professional standards. ACS fails to do so.

213. Instead, ACS does not meaningfully supervise Contract Agencies or hold them accountable for underperformance. As a result, ACS shirks its legal obligations to Plaintiff Children while the City pays millions of dollars to Contract Agencies for the provision of foster care services without ensuring that those services are adequately provided to Plaintiff Children.

214. Under the Agreements, ACS is expressly required to supervise, monitor, audit and review the activities of the Contract Agencies. Currently, ACS conducts an annual evaluation, called "Scorecard", of each Contract Agency to evaluate process, practice and outcome indicators in safety, permanency and well-being. According to ACS's 2014 Scorecard Methodology, the Scorecard evaluation involves reviewing a combination of case-specific and

aggregate data. Each Contract Agency then receives a letter grade (from A to F) indicating its performance for safety, for permanency and for well-being.

215. The Scorecard evaluations are flawed and ineffective for at least the following reasons:

- a. ACS fails to measure several key performance metrics. For example, ACS has failed to develop Scorecard measures to evaluate whether Contract Agencies are successfully engaging in concurrent planning and whether Contract Agencies are making efforts to recruit non-kinship foster parents and adoptive parents.
- b. Upon information and belief, the results of the Scorecard evaluations do not accurately reflect each Contract Agency's performance in providing foster care services to children in ACS custody.
- c. ACS's performance standards are simply too low—upon information and belief, the majority of Contract Agencies receive “passing” grades even though New York City has one of the worst foster care systems in the nation.

216. ACS also fails to hold Contract Agencies accountable for underperformance on the Scorecard evaluations. According to ACS's 2014 Scorecard Methodology, ACS's Agency Program Assistance team (“APA”) analyzes the Scorecard data to identify areas of strength and weakness for each Contract Agency and works collaboratively with each Contract Agency and with ACS to improve performance. APA sets benchmarks throughout the year for each Contract Agency; however these benchmarks are *relative* and set by taking into account the Contract Agency's current performance, ACS standards and system-wide performance.

217. When performance is “considerably or persistently poor”, APA can use “accountability mechanisms” in order to drive performance. However, ACS does not adequately use its accountability mechanisms to ensure appropriate performance of the Contract Agencies. ACS’s failure to make Scorecard data publicly available further decreases accountability.

218. As a direct result of ACS’s failure to meaningfully oversee the Contract Agencies, Plaintiff Children suffer irreparable harm because there simply are no consequences for the failure to protect them from physical, psychological and emotional harm; the failure to enable them to be safely returned to their parents or, if that were not possible within a reasonable period of time, to place them in permanent homes; and the failure to provide them with appropriate foster placements and necessary services to ensure their well-being.

B. Defendants Fail To Ensure an Adequately Staffed and Appropriately Trained Child Welfare Workforce.

219. No foster care system can effectively perform its basic functions absent a well-trained, experienced and adequately staffed workforce. In New York City, ACS has delegated its obligation to care for the children in state custody to Contract Agencies, who in turn employ the caseworkers that directly interact with children in foster care and their families. However, ACS fails to ensure that these caseworkers are adequately trained, supervised and staffed, consistent with professional standards.

1. Defendants Fail To Ensure Caseworkers Are Adequately Trained and Supervised.

220. Caseworkers must be fluent in governing policy and procedure and familiar with current best practices. Consistent with professional standards, a foster care system should require pre-service training, which must be completed before caseworkers can carry an active caseload, and mandatory annual in-service training designed to refresh caseworkers in basic

policy and procedure and to teach advances in policy and in the field. In addition, it is critical to ensure appropriate supervision.

221. ACS fails to ensure that Contract Agency caseworkers receive adequate training or supervision. In 2009, the Long Road Home Study, which was performed in conjunction with ACS, found that a substantial proportion of caseworkers had not received any training before being given responsibility for a caseload of foster children. That same study also found that the quality of caseworker supervision at Contract Agencies was questionable.

## 2. Caseworkers Carry Unmanageable Caseloads.

222. Child welfare research has shown that high caseworker caseloads negatively impact children in foster care. Caseworkers with high caseloads have less time to interact with children, families and service providers and provide meaningful and appropriate case plans, necessary services, and timely casework and decision-making. It is therefore critical that caseworkers have manageable caseloads.

223. However, in New York City, ACS fails to ensure that all Contract Agency caseworkers carry caseloads consistent with professional standards.

224. The Child Welfare League of America (“CWLA”), a coalition of private and public agencies that develops child welfare policies and promotes sound child welfare practice, has established nationally recognized standards for caseworker caseloads. The standards governing foster care caseworkers limit caseloads to between 12 and 15 children per worker. The Council on Accreditation (“COA”), an accrediting body that partners with human service organizations to improve child welfare service delivery outcomes, recommends that caseloads for foster care caseworkers be limited to between eight and 15 children per worker, depending on the needs of the children.

225. Upon information and belief, ACS fails to ensure that Contract Agencies comply with these caseload standards, and many caseworkers' caseloads in New York City exceed this standard by a wide margin. The Long Road Home Study found that caseworker caseloads exceed recommended sizes. Similarly, at a briefing in January 2013, a member of ACS's senior management under the previous administration stated that caseloads could range from 16 to 24 children, noting that this was far too high.

226. Excessive caseloads overburden caseworkers and prevent them from performing casework consistent with federal and state law and professional standards.

227. High caseloads also contribute to burnout and turnover among caseworkers. Research has shown that Contract Agency caseworker turnover is associated with children experiencing multiple placements, receiving fewer services, staying in foster care longer and failing to achieve permanency. When a case changes hands from caseworker to caseworker, relationships are severed and valuable information is lost. ACS does not publish system-wide data regarding foster care caseworker turnover; upon information and belief, ACS does not collect such data. In 2006, the Council of Family and Child Caring Agencies reported Contract Agency caseworker turnover rates of 40%. In 2009, the Long Road Home Study reported that caseworker turnover is a major barrier to permanency. Upon information and belief, high foster care caseworker turnover rates persist.

3. Defendants Fail To Ensure Regular Caseworker Visits To Children in Foster Homes or Congregate Care.

228. Caseworkers must have regular face-to-face contact with children in foster care, parents, and foster parents or child care workers. The primary purpose of these contacts is to ensure the safety and well-being of the children, to engage families in planning for their children, to assess the strengths and needs of all family members and caregivers, and to address the needs

of all family members and caregivers in order to move children out of foster care and into permanent homes.

229. COA recommends that caseworkers meet separately with children, parents and foster parents at least once a month. ACS policy requires a minimum of monthly contact between caseworkers and children in foster care.

230. However, ACS fails to ensure that caseworkers are making sufficient contacts with children, parents and foster parents to ensure the safety and well-being of children in ACS custody. The Long Road Home Study, which was prepared in conjunction with ACS in 2009, found that caseworkers did not maintain adequate contact with children, parents and foster parents.

231. Moreover, upon information and belief, ACS fails to ensure that Contract Agencies make unannounced visits to ensure that children in ACS custody are protected from maltreatment. Upon information and belief, ACS also fails to ensure that visits with children take place privately and out of the presence of the child's caretaker.

232. ACS's failure to ensure that Contract Agency caseworkers maintain contact with key persons to ensure the safety and well-being of children in its care substantially departs from reasonable professional standards and demonstrates a deliberate indifference to the risk of harm to Plaintiff Children.

233. As a direct result of ACS's failure to ensure that caseworkers maintain regular contact with children, parents and foster parents, Plaintiff Children frequently suffer harm because their assigned caseworkers are unable to meaningfully assess the child's safety and well-being and to provide necessary services to place the child into a permanent home. ACS's failure to ensure that Contract Agency caseworkers make sufficient contacts with the children in ACS

custody substantially departs from accepted professional judgment and demonstrates a deliberate indifference to the risk of harm to Plaintiff Children.

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234. As a direct result of Defendants' failure to ensure that the first point of contact for all Plaintiff Children—the Contract Agency caseworkers—are trained, supervised, staffed and performing visits consistent with professional standards, Plaintiff Children frequently suffer harm because their assigned caseworkers are ill-prepared to make the judgments necessary to promote their safety, permanency and well-being, unable to meaningfully address their complex and varied needs and unable to meaningfully assess the child's safety and well-being or provide necessary services. ACS's failures as described above substantially depart from accepted professional judgment and demonstrate a deliberate indifference to the harm, risk of harm and violations of legal rights suffered by Plaintiff Children.

C. Defendants' Processes for Making Foster Placements in New York City Are Deficient.

235. When ACS removes a child from his or her parents, ACS is obligated to provide a safe temporary home for that child until he or she is discharged from foster care. Federal and state law require ACS to ensure that each child in ACS custody is placed in the most appropriate, least restrictive placement available. Professional standards dictate that foster placements be based on an assessment of the individual child's needs and promote stability and continuity by placing children with relatives, keeping children in their communities and schools, and keeping siblings together whenever possible.

236. In order to meet the needs of a large and diverse foster care population, ACS must ensure the recruitment and maintenance of a sufficient number of homes to accommodate the



number of children currently in custody and additional children as they enter the system on an ongoing basis. In addition, a sufficient array of placement types must be available to meet children's needs. The types of placements will range from "basic" foster homes that provide ordinary parental care to children without heightened therapeutic needs, to more "therapeutic", "intensive" or "specialized" foster homes that receive additional training and support for the care of more high-needs children, to more highly structured or "restrictive" group homes and residential programs suitable for children who cannot yet thrive in a family setting. In addition, placements may vary in terms of their likelihood to develop into permanent or adoptive homes if the child cannot safely be returned to his parents.

237. Placement in a stable and appropriate foster home can be critical to a child's chances of securing a permanent home because a child who cannot safely be returned to his parent is most likely to be adopted by kin or a foster parent.

238. However, ACS fails to ensure that Contract Agencies recruit and retain an adequate number and variety of placements to meet Plaintiff Children's needs. In particular, ACS fails to ensure that a sufficient number of pre-adoptive homes are recruited and retained, particularly for children who cannot safely be returned to their parents but who are "hard to place" into adoptive homes, such as adolescents, children with health or behavioral problems and large sibling groups.

239. Pursuant to the Agreements, the City pays each Contract Agency per diem payments for every day a child is in foster care, thus incentivizing Contract Agencies to keep children in care longer. As a result, Contract Agencies may not pursue adoptive resources with urgency or offer sufficient resources for persons who are interested in adopting foster children. Upon information and belief, Contract Agencies often tell individuals interested in adoption that

they are “in the business of fostering, not adoption”—even though ACS has delegated to them *both* the care of children who safely can be returned to their parents *and* the care of children in need of adoption and waiting desperately for a permanent home and family to call their own.

240. The City and State Defendants have long been aware of, and have failed to fix, this systemic failure. Indeed, Defendant Carrión recently admitted that ACS “really need[s] to do a better job of publicizing . . . we need to do more to get the message out that these children are waiting and that they need adoptive homes.” However, the City Defendants have recently taken actions that will make these problems worse—by defunding the only two voluntary service providers whose sole mission was to find adoptive homes for older and “hard to place” children in foster care. During a March 2015 City Council meeting, Commissioner Carrión stated that the defunding of these two agencies “wasn’t a great loss”.

241. ACS also lacks an effective system for appropriately matching Plaintiff Children with the most appropriate foster placement to meet their needs. Upon information and belief, ACS does not assess a child’s safety, health or permanency needs prior to placing the child with a Contract Agency. Instead, ACS makes a blind placement decision based on which Contract Agency has availability at the time the placement is sought. Upon information and belief, the Contract Agency does not assess a child’s safety, health or permanency needs prior to placing the child into a foster placement. Instead, the Contract Agency makes the determination based on which foster placement has availability at the time the placement is sought.

242. Put simply, ACS fails to ensure that the children in its custody who cannot, or who are least likely to, return home safely are placed in pre-adoptive foster placements that are more likely to turn into permanent adoptive homes. Instead, ACS places the child with whatever Contract Agency has availability at the time the placement is sought.

243. Moreover, ACS also fails to ensure that children who are unlikely to be safely returned to their parents and who will not be adopted by kin or their current foster parent are quickly placed with Contract Agencies capable of individually recruiting adoptive parents.

244. As a direct result of these failures, Plaintiff Children frequently are harmed because they are not placed in the best foster home to meet their safety and permanency needs. ACS's failure to recruit and retain a sufficient number of foster homes and to match children in its custody with foster placements that meet their needs substantially departs from accepted professional judgment and demonstrates a deliberate indifference to the harm, risk of harm and violations of rights suffered by Plaintiff Children.

D. ACS Fails To Ensure that Meaningful Case Plans and Service Plans for Foster Children Are Developed and Implemented.

245. Federal and state law require caseworkers to establish a permanency goal and to develop a strategic plan for achieving that goal. This includes establishing a permanency goal, engaging in concurrent planning, developing and implementing service plans to promote reunification, and recruiting and securing an alternative permanent home for children who cannot be safely returned home.

246. According to OCFS's own standards, caseworkers in New York State should establish a child's permanency goal within 30 days of the child entering the foster care system. However, by OCFS's own measure, nearly one-third of children entering foster care for the first time do not have a documented permanency goal within 90 days of admission.

247. Federal and state law and policy require caseworkers in New York City to conduct concurrent permanency planning as soon as a child is taken into foster care, so that there is a primary permanency plan and a secondary permanency plan that caseworkers pursue simultaneously. ACS fails to ensure that concurrent planning occurs. Upon information and

belief, caseworkers do not begin to engage in non-reunification permanency planning until long after it becomes clear that the child's parents will not be able to safely care for the child.

248. As a direct result of these systemic deficiencies, New York City's foster children stay in the system for far too long. This is no secret to ACS. ACS has been aware of rampant case planning deficiencies in New York City for years.

- a. In the 2002 and 2009 CFSRs, the federal government concluded that appropriate permanency goals were not established in a timely manner for children in foster care in New York State.
- b. Similarly, the Long Road Home Study, which was prepared in conjunction with ACS in 2009, found that children in ACS custody spent a long time in foster care before their permanency goal was changed to adoption, alternative permanency options were not adequately explored and concurrent planning was not sufficiently documented.

249. As a direct result of Defendants' failures (as described in this section) to ensure the provision of meaningful and appropriate case plans, Plaintiff Children frequently grow up in ACS custody without a permanent home or family to call their own. ACS's failure to ensure that meaningful and appropriate case planning occurs substantially departs from accepted professional judgment and demonstrates a deliberate indifference to the harms, risk of harms, and violations of legal rights being suffered by Plaintiff Children.

1. ACS Fails To Ensure Services Are Provided To Sustain Family Ties and Support Reunification When It Is Safely Possible.

250. After a child is removed from home due to abuse or neglect, federal and state law and policy dictate that the preferred course of action is to reunify the child with his or her

parents. Reunification, however, is only appropriate where the reason for removal has been addressed through appropriate services to the family so that the child's safety is assured.

However, ACS fails to ensure the provision of meaningful case planning and effective services to support reunification:

- a. ACS often fails to ensure that Contract Agencies involve parents in case planning and service planning for their children. In the 2009 CFSR, the federal government found that ACS had adequately assured family involvement in case and services planning in only 45% of cases—well below the national standard of 95%.
- b. ACS fails to ensure that the reunification services required are adequately tailored to ensure that the child in ACS custody can safely be returned home. Often the services Contract Agencies require and refer parents to do not correspond to the conduct that led to the removal of the child from the home in the first place. For example, most parents are required to attend standardized anger management or parenting classes even though neither of those classes offer the particularized support that a parent may need. Upon information and belief, Contract Agencies do not evaluate services to determine if services better suited to a parent's needs are available or, if they do, it is not until after the parent has completed standardized classes. Upon information and belief, Family Court judges are often reluctant to return children to their parents where the issue giving rise to the initial removal has not been addressed.

- c. ACS fails to ensure that required services are evidence-based and represent recent innovations in the field. For example, required mental health services often do not incorporate trauma-based practice or cognitive behavioral therapy.
- d. ACS fails to ensure that required services accomplish the purpose they purport to—ensuring children in ACS custody can be returned home within a reasonable period of time. Upon information and belief, neither ACS nor the Contract Agencies perform regular evaluations of what services correspond to successful reunifications.
- e. ACS fails to ensure efficiency and coordination among multiple service providers, fails to ensure that required services are not duplicative of one another and fails to consider whether it is logistically possible for parents to comply with service plans (while also potentially searching for housing or employment, or working)—all of which delays children in foster care being returned to their parents.
- f. ACS fails to ensure services are available to parents so that children in ACS custody can be returned home within a reasonable period of time. Contract Agencies frequently require parents to take a certain action or to obtain a certain service so that the child in foster care can return home, but that same parent is not provided with critical assistance in taking that action or obtaining that service. For example, many parents are required to obtain permanent housing before their children in ACS custody can be returned. However, ACS fails to provide assistance with completing

applications for public housing or expediting those applications. When mental health services are required, parents find they have no access to mental health services in their community or are unable to afford the appropriate services.

- g. ACS also fails to ensure alternative services are available to parents so that children in ACS custody can be returned home within a reasonable period of time. Upon information and belief, if suitable group classes do not exist, Contract Agencies do not seek out alternative arrangements, such as therapy or counseling, to meet a parent's needs more quickly.

251. ACS's failure to ensure that reunification services are appropriately tailored, effective and sufficiently available prevents or delays reunification, even though many parents could resume custody of their children if the proper services were provided consistent with federal and state law and professional standards.

252. These systemic failures have long been known to ACS. In 2003, the New York City Child Welfare Advisory Panel noted that ACS failed to ensure that parents knew how to get information about services or other issues, or whether or not someone from ACS or the Contract Agency was responsible for ensuring the service plan would be carried out and that services would be provided. The Long Road Home Study, which was conducted in 2009 in conjunction with ACS, found that substantial numbers of parents did not receive necessary reunification services due to both parents' lack of participation and casework failures.

253. ACS has failed to address these problems and children in ACS custody have suffered as a direct result.

2. ACS Fails To Ensure Timely Adoptions.

254. When a child has been in foster care for 15 of the last 22 months, federal and state law require ACS to file a petition to terminate parental rights unless certain compelling circumstances exist and are documented. ACS has delegated its responsibility to timely file TPR petitions to the Contract Agencies. However, ACS fails to ensure that TPR petitions are timely filed consistent with federal and state law.

255. Defendants are well aware of this failure. In December 2011, ACS reported that New York City was failing to meet federal and state law standards for the overwhelming majority of children in ACS custody. For FY 2010—the most recent 12-month period for which this data is available—ACS reported that 94.9% of children who had been in ACS custody for the past 18 months did not have a TPR petition filed.

256. ACS's failure to file TPR petitions in accordance with the time periods set by federal and state law is not a new problem. In the 2002 CFSR, the federal government reported that in New York State, caseworker turnover, staffing shortages, transfer of cases and caseworkers' lack of familiarity with cases slowed down the TPR process. In the 2002 CFSR Report, the federal government also reported that delays in Family Court, including "lengthy adjournments", "w[ere] seen as the greatest barrier" to the timely termination of parental rights. In the 2009 CFSR, the federal government concluded that New York State met federal requirements regarding timely termination of parental rights in only 62% of cases reviewed—far less than the 90% required to meet the national standard—and was not consistent in documenting compelling reasons when a termination of parental rights petition was not filed. Upon information and belief, the CFSR results for New York State are heavily influenced by New York City's child welfare system, which accounted for over 60% of children in foster care in New York State in both 2002 and 2009.



257. Once both parents' rights have been either voluntarily surrendered or terminated, a child is considered "freed" or legally available to be adopted into a permanent home and family. New York State regulations require that a child be freed for adoption within 12 months of his or her permanency goal changing to adoption.

258. However, ACS fails to ensure that children in its custody are freed for adoption within a reasonable time period. In New York City, it takes longer for a child in foster care to be freed for adoption than anywhere else in the country. Based on the most recent federal data available, it takes nearly two times longer to be freed for adoption in New York City than in the rest of New York State (42.2 months versus 22.1 months), and 2.5 times longer to be freed for adoption in New York City than in the rest of the nation (42.2 months versus 16.8 months).

259. ACS also fails to act on applications from potential adoptive families within the time periods set by state law.

260. When a foster parent or other person wants to adopt a child in foster care in New York City, he or she must submit an application. By state law, an adoption application must be acted upon within six months and such action must be sufficiently documented.

261. Then a potential adoptive parent must undergo an adoption study during which his or her fitness to be an adoptive parent is assessed. Completion of adoption studies are subject to strict timelines under state law. Priority for completion of an adoption study is determined by the characteristics of the child that the applicant seeks to adopt. Those who seek to adopt children with the age, racial and other characteristics of the highest proportion of children waiting to be adopted are given first priority. Second priority is given to those who seek to adopt photo-listed children. All other applicants are given third priority. For applicants with first priority, an adoption study should be offered within 30 days. An adoption study must be

completed within four months of initiation, subject to appropriate documentation of an exception.

262. When a foster parent applies to adopt a child, the adoption study must be completed within two months of application when the child is legally free for adoption or within four months of application when the child is not legally free for adoption.

263. Pursuant to state law, ACS must place a child who has been legally freed for adoption in an adoptive home within six months, or document an appropriate exception. State law also requires that adoptions be finalized within 12 months of the child placement in an adoptive home.

264. Upon information and belief, ACS fails to ensure that Contract Agencies comply with the timelines set by state law for conducting adoption studies and acting on adoption applications.

265. Upon information and belief, ACS fails to ensure that applications to become an adoptive parent are acted upon within six months as required by state law.

266. Upon information and belief, ACS fails to ensure that Contract Agencies offer to complete adoption studies within six months.

267. Upon information and belief, ACS fails to ensure that Contract Agencies offer to initiate adoption studies for those with first priority within 30 days.

268. Upon information and belief, ACS fails to ensure that Contract Agencies complete adoption studies within four months of beginning the study or that an exception is appropriately documented.

269. Upon information and belief, ACS fails to ensure that Contract Agencies complete adoption studies within two months of an application by a foster parent to adopt a child who is legally freed for adoption.

270. Upon information and belief, ACS fails to ensure that Contract Agencies complete adoption studies within four months of an application by a foster parent to adopt a child who is not legally freed for adoption.

271. Upon information and belief, ACS fails to ensure that Contract Agencies place children who have been legally freed for adoption into adoptive homes within six months, or that an exception is appropriately documented.

272. ACS fails to ensure that children in its custody have finalized adoptions within 12 months of the child being placed in an adoptive home, as required by state law. In September 2012, ACS reported that 72% of children did not have finalized adoptions within 12 months of being placed in an adoptive home.<sup>7</sup>

273. Defendants' failures to ensure that Contract Agencies process adoption applications, conduct adoption studies, place children in adoptive homes and finalize adoptions within the time periods set by state law further delays providing these children in ACS custody—who likely have already been in foster care for many months or even years—with a permanent home and family.

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<sup>7</sup> 517 of the 1,825 children (28%) in adoptive placements on March 31, 2011 were adopted within 12 months of being adoptively placed.

E. Defendants Fail To Ensure Timely Adjudication of Family Court Proceedings Involving Children in Foster Care.

274. Defendants' failure to ensure that Family Court proceedings are adjudicated in a timely fashion consistent with state law contributes significantly to the length of time New York City children spend in foster care without permanent homes and families.

275. State law requires that a child who is placed into foster care have a permanency hearing within eight months of being placed into foster care and every six months thereafter. That hearing must be completed within 30 days. The purpose of permanency hearings is to monitor the child's safety and well-being, the family's progress, and efforts to return the child home or to find the child another permanent home. Upon information and belief, Defendants fail to ensure that all children in ACS custody receive timely permanency hearings as required by state law.

276. The Long Road Home Study, which was prepared in 2009 in conjunction with ACS, detailed the following findings with respect to delays in Family Court proceedings involving children in ACS custody:

- a. The length of time between a child's entry into foster care and the Family Court's completion of the fact-finding and disposition hearings was extremely long for many children;
- b. Many children in ACS custody do not receive timely permanency hearings as required by state law;
- c. The most common reasons for permanency hearing delays were that the Contract Agency had not submitted the permanency hearing report on time, that the Family Court did not have sufficient time for the hearing, that Contract Agency caseworkers were not present, that the permanency

hearing report did not sufficiently address the issues in the case, and that ACS caseworkers were not present; and

- d. Termination of parental rights proceedings were extremely delayed for most children.

Additionally, the study noted that the number of adjournments and the length of time between adjournments of all types of Family Court proceedings contribute to children's lengthy stays in foster care in New York City. The published study stated:

“[T]he Court gives ACS and the [Contract Agencies] many chances (and multiple hearing adjournments) to present evidence and provide necessary services to parents, even after they have been slow and negligent in doing so.”

Finally, the study found that a lack of accountability in Family Court proceedings contributes to delays in placing children in ACS custody into permanent homes and families, stating:

“The Court's decision-making is hampered by poor-quality casework by ACS and the [Contract Agencies]. The Court depends on ACS and the [Contract Agencies] to provide appropriate services to children and families and to inform the Court's decision-making through assessments of the children's progress toward permanency . . . [J]udges and referees expressed frustration with the quality of the agencies' case practices – and the fact that many caseworkers seem to see their role as only documenting parents' attendance at services rather than providing the Court with clinical assessments of parents' progress. In addition . . . the parties infrequently make applications or motions to the Court for relief to address pressing issues and try to move cases forward.”

277. In 2010, the New York County Lawyers' Association Task Force on the Family Court released a report recognizing two causes for delay in Family Court: (1) a shortage of Family Court judges and (2) a culture of delay. The Task Force made a number of recommendations to minimize delay and enhance the effectiveness of litigation, including:

- a. scheduling trials where a child has been removed within 45 days of the first appearance;
- b. requiring compliance with timely production and filing of documents, as well as attendance at status and trial conferences;
- c. scheduling times certain for trial conferences;
- d. holding trials in block times on consecutive days;
- e. refraining from adjourning trials for more than 30 days, and then only for good cause shown; and
- f. disciplining attorneys and other personnel who are unprepared, late or fail to appear.

278. Defendants' failure to ensure that ACS and Contract Agency attorneys and caseworkers are appropriately staffed with caseloads consistent with professional standards and given necessary support further contributes to delays in Family Court proceedings.

279. Upon information and belief, delays continue to plague the vast majority of Family Court proceedings involving children in ACS custody in New York City.

280. Defendants' failures result in delays in Family Court proceedings involving children in ACS custody in New York City and include:

- a. the State's failure to ensure adequate judicial resources are devoted to Family Court in New York City;
- b. the State's failure to provide Family Court judges in New York City with sufficient resources, including referees or law clerks with social work experience;

- c. Defendants' failure to ensure that ACS and Contract Agency attorneys and caseworkers have caseloads consistent with professional standards;
- d. ACS's failure to ensure that attorneys and caseworkers appear at all Family Court proceedings prepared;
- e. ACS's failure to ensure that attorneys and caseworkers do not request adjournments absent good cause shown;
- f. ACS's failure to ensure that necessary paperwork is prepared in accordance with reasonable professional standards and submitted to the Family Court in a timely fashion; and
- g. ACS's failure to ensure that caseworkers are trained to give the Court detailed assessments of children and parents' progress in accordance with reasonable professional standards.

281. A three- or six-month adjournment is a long time to a child in ACS custody who is struggling with the uncertainty and emotional harm of not knowing if or when he or she will be moved again and of not having a permanent home and family to call his or her own. Defendants have an obligation to ensure that all service providers, including caseworkers and attorneys, recognize the urgency of Family Court proceedings for Plaintiff Children, who are languishing in ACS custody.

282. As a direct result of Defendants' failure to ensure that all reasonable efforts are made to ensure the timely adjudication of Family Court proceedings involving children in its custody, Plaintiff Children suffer harm by being forced to grow up in ACS custody rather than in a permanent home. Defendants' failures substantially depart from reasonable professional

standards and demonstrate a deliberate indifference to the harms, risk of harms and violations of legal rights suffered by Plaintiff Children.

**CAUSES OF ACTION**

**FIRST CAUSE OF ACTION**

**(Substantive Due Process under the U.S. Constitution)  
(Asserted by the Named Plaintiff Children and Plaintiff Children against Defendants)**

283. Each of the foregoing allegations is incorporated as if fully set forth herein.

284. A state assumes an affirmative duty under the Fourteenth Amendment to the United States Constitution to provide reasonable care to and to protect from harm a child it has taken into its foster care custody.

285. The foregoing actions and inactions of Defendants City of New York, ACS, Gladys Carrión, in her official capacity, State of New York, OCFS and Sheila J. Poole, in her official capacity, constitute a policy, pattern, practice or custom that is inconsistent with the exercise of accepted professional judgment and amounts to deliberate indifference to the constitutionally protected liberty and privacy interests of all Named Plaintiff Children and Plaintiff Children. As a result, all Named Plaintiff Children and Plaintiff Children have been, and are at risk of being, deprived of substantive due process rights conferred upon them by the Fourteenth Amendment to the United States Constitution.

286. These substantive due process rights include, but are not limited to:

- a. the right to freedom from maltreatment while in foster care;
- b. the right to protection from unnecessary intrusions into the child's emotional well-being while in government custody;



- c. the right to services necessary to prevent unreasonable and unnecessary intrusions into the child's emotional well-being while in government custody;
- d. the right to conditions and duration of foster care reasonably related to the purpose of government custody;
- e. the right to treatment and care consistent with the purpose and assumptions of government custody; and
- f. the right not to be maintained in custody longer than is necessary to accomplish the purpose to be served by taking a child into government custody.

## **SECOND CAUSE OF ACTION**

**(First, Ninth and Fourteenth Amendments to the U.S. Constitution)  
(Asserted by the Named Plaintiff Children and Plaintiff Children against Defendants)**

287. Each of the foregoing allegations is incorporated as if fully set forth herein.

288. The foregoing actions and inactions of Defendants City of New York, ACS, Gladys Carrión, in her official capacity, State of New York, OCFS and Sheila J. Poole, in her official capacity constitute a policy, pattern, practice or custom that is inconsistent with the exercise of professional judgment and amounts to deliberate indifference to Plaintiffs' constitutional rights. As a result, all Named Plaintiff Children and Plaintiff Children have been, and are at risk of being, deprived of the right to a permanent home and family derived from the First Amendment right of association, the Ninth Amendment's reservation of rights to the people and the Fourteenth Amendment's substantive due process protections.

**THIRD CAUSE OF ACTION**

**(The Adoption Assistance and Child Welfare Act of 1980, 42 U.S.C. § 670 *et seq.*)  
(Asserted by the Named Plaintiff Children and Plaintiff Children against the State  
Defendants and City Defendants and by the Public Advocate against the City Defendants)**

289. Each of the foregoing allegations is incorporated as if fully set forth herein.

290. The foregoing actions and inactions of Defendants City of New York, ACS, Gladys Carrión, in her official capacity, State of New York, OCFS and Sheila J. Poole, in her official capacity, constitute a policy, pattern, practice or custom of depriving the Named Plaintiff Children and Plaintiff Children of the rights conferred upon them by the Adoption Assistance and Child Welfare Act of 1980, as amended by the Adoption and Safe Families Act of 1997, to:

- a. placement in a foster placement that conforms to nationally recommended professional standards, 42 U.S.C. § 671(a)(10);
- b. a written case plan that includes a plan to provide safe, appropriate and stable foster care placements, 42 U.S.C. §§ 671(a)(16), 675(1)(A);
- c. a written case plan that ensures that the child receives safe and proper care while in foster care and implementation of that plan, 42 U.S.C. §§ 671(a)(16), 675(1)(B);
- d. a written case plan that ensures provision of services to parents, children and foster parents to facilitate reunification, or where that is not possible, the permanent placement of the child and implementation of that plan, 42 U.S.C. §§ 671(a)(16), 675(1)(B);
- e. a written case plan, where appropriate, that ensures the location of an adoptive or other permanent home for the child and implementation of that plan, 42 U.S.C. §§ 671(a)(16), 675(1)(E);

- f. a written case plan that ensures the educational stability of the child while in foster care and implementation of that plan,  
42 U.S.C. §§ 671(a)(16), 675(1)(G);
- g. a case review system in which each child has a case plan designed to achieve safe and appropriate foster care placements,  
42 U.S.C. §§ 671(a)(16), 675(5)(A);
- h. a case review system in which the status of the child is reviewed no less frequently than every six months by a court, or person responsible for case management, for purposes of determining the safety of the child, continuing necessity and appropriateness of the placement, extent of compliance with the permanency plan and projected date of permanency,  
42 U.S.C. §§ 671(a)(16), 675(5)(B), 675(5)(C);
- i. a case review system that ensures that for each child that has been in foster care for 15 of the most recent 22 months, the state files a petition to terminate the parental rights of the child's parents and, concurrently identifies, recruits, processes, and approves a qualified family for an adoption, or documents compelling reason for determining that filing such a petition would not be in the best interests of the child,  
42 U.S.C. §§ 671(a)(16), 675(5)(B), 675 (5)(E); and
- j. receive quality services to protect each child's safety and health,  
42 U.S.C. § 671(a)(22).

291. As a direct result of the City Defendants' failure to comply with the Adoption Assistance and Child Welfare Act of 1980, as amended by the Adoption and Safe Families Act

of 1997, the Office of the Public Advocate has been forced to expend resources investigating and responding to complaints. The Defendants' continued failure to adhere to the provisions of the law will result in the expenditure of similar resources in the future.

**FOURTH CAUSE OF ACTION**

**(New York State Social Services Law)  
(Asserted by the Named Plaintiff Children, Plaintiff Children and the Public Advocate  
against the City Defendants)**

292. Each of the foregoing allegations is incorporated as if fully set forth herein.

293. The foregoing actions and inactions of Defendants City of New York, ACS, Gladys Carrión, in her official capacity, State of New York, OCFS and Sheila J. Poole, in her official capacity, constitute a deprivation of rights conferred on the Named Plaintiff Children and Plaintiff Children by provisions of the New York State Social Services Law and regulations adopted thereto, including:

- a. provision of various adoption services, such as evaluation of a child's placement needs and pre-placement needs, recruitment of a home study for prospective adoptive parents, placement planning and supervision, as required under New York State Social Services Law § 372-b;
- b. timely action on adoption applications and documentation of all action taken on such, as required under New York State Social Services Law § 372-e;
- c. furnishing adoptive parent applicants with reasons for agency failure to act on applications and denial of applications, as required under New York State Social Services Law § 372-e;

- d. termination of parental rights for children in foster care for 15 out of the most recent 22 months and, where applicable, appropriate documentation of exceptions, as required under  
New York State Social Services Law § 384-b;
- e. timely completion of adoption home studies, as required under  
18 N.Y. Comp. Codes R. & Regs. tit. 18, §§ 421.14, 421.15 and 421.19;
- f. timely and complete preparation and amendment of the FASP, as required under New York State Social Services Law § 409-e and  
18 N.Y. Comp. Codes R. & Regs. tit. 18, §§ 428.6 and 428.7;
- g. placement in a foster placement that meets standards for continuity and appropriate level of placement, as required under  
18 N.Y. Comp. R. & Regs. tit. 18, § 430.11;
- h. timely implementation of the FASP and timely occurrence and completion of FASP reviews, as required under  
18 N.Y. Comp. Codes R. & Regs. tit. 18, § 430.12;
- i. timely initiation of proceedings to terminate parental rights, as required under 18 N.Y. Comp. Codes R. & Regs. tit. 18, §§ 430.12 and 431.9;
- j. timely placement in adoptive homes, as required under  
18 N.Y. Comp. Codes R. & Regs. tit. 18, § 430.12; and
- k. timely completion of adoptions of children who are legally free for adoption, as required under  
18 N.Y. Comp. Codes R. & Regs. tit. 18, § 430.12.

294. As a direct result of the City Defendants' failure to comply with New York State Social Services Law and regulations adopted thereto, the Office of the Public Advocate has been forced to expend resources investigating and responding to complaints. The Defendants' continued failure to adhere to the provisions of the law will result in the expenditure of similar resources in the future.

### **FIFTH CAUSE OF ACTION**

#### **(Common Law Contract)**

#### **(Asserted by the Named Plaintiff Children, Plaintiff Children and the Public Advocate against the City Defendants)**

295. Each of the foregoing allegations is incorporated as if fully set forth herein.

296. The Agreements for the purchase of foster care services between ACS and the Contract Agencies constitute valid, binding and enforceable contracts.<sup>8</sup>

297. The Public Advocate is a member of New York's City Council (the "Council"). Charter of the City of New York, Chapter 2 § 22. The Council is charged with reviewing "on a regular and continuous basis the activities of the agencies of the city, including their service goals and performance and management efficiency." Charter of the City of New York, Chapter 2 § 29(a)(2). Further, the Council is charged with overseeing "patterns of contractual spending by city agencies" and "procedures for evaluating contractor performance." Charter of the City of New York, Chapter 2 § 30(2), (4).

298. Under the terms of the Agreements, ACS pays hundreds of millions of dollars to Contract Agencies that agree to "provide comprehensive family foster care services as set forth

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<sup>8</sup> To the best of our information and belief, the Agreements, which are listed in Appendix A, were current as of November 2014 (*see* ¶ 119) and are still in force today. Attached hereto as Exhibit 1 is a copy of an excerpt of one such Agreement between ACS and a Contract Agency, which has been modified to include the relevant portion of the Agreement. The Agreements are substantively identical from Contract Agency to Contract Agency, with the exception of the contracting parties and the contract amount.

in this Agreement, the Law, court orders and mandates, ACS Policies, the Fiscal Manual”<sup>9</sup> and several appendices to each Agreement. Agreement for the Purchase of Regular Family Foster Care Services Part II, Section 2.01(A) (General Requirements).

299. Under the terms of the Agreement—and by law—the management and supervisory staff of ACS, on behalf of the Commissioner of ACS, “has the ultimate responsibility for the protection and preservation of the welfare of each child receiving services”, and “has the ultimate authority for making all decisions relative to the welfare of such child”. Agreement for the Purchase of Regular Family Foster Care Services Part II, Section 4.01(A) (Responsibility and Authority of ACS and Procedure for Final Decisions on Issues Related to Services Provided to the Client).

300. City Defendants have breached and failed to enforce the Agreements, which were intended for the benefit of the Named Plaintiff Children and Plaintiff Children, and over which the Public Advocate has oversight.

301. The Agreements state that “ACS and the Contractor agree that the fundamental purpose of [the] Agreement is to provide the best available services, care and treatment to Foster Children who are entrusted to the Contractors care, and further ensure that the health, welfare and fundamental rights of the Foster Children shall be the guiding principle for all decisions which affect their lives”. Agreement for the Purchase of Regular Family Foster Care Services Part II, Section 4.01(B) (Responsibility and Authority of ACS and Procedure for Final Decisions on Issues Related to Services Provided to the Client).

302. As a direct and causal result of City Defendants’ breach of the Agreements, the Named Plaintiff Children and Plaintiff Children have been harmed.

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<sup>9</sup> This language may differ to account for the type of foster placement services provided for in the Agreement but, in substance, the provisions are identical.

**PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff Children respectfully request that this Honorable Court:

- a. Assert jurisdiction over this action;
- b. Order that Plaintiff Children may maintain this action as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure;
- c. Pursuant to Rule 57 of the Federal Rules of Civil Procedure, declare unconstitutional and unlawful:
  1. Defendants' violation of Plaintiff Children's right to be free from harm under the Fourteenth Amendment to the United States Constitution;
  2. Defendants' violation of Plaintiff Children's rights under the First, Ninth and Fourteenth Amendments to the United States Constitution;
  3. Defendants' violation of Plaintiff Children's rights under the Adoption Assistance and Child Welfare Act of 1980, as amended by the Adoption and Safe Families Act of 1997, 42 U.S.C. § 670 *et seq.*;
  4. City Defendants' violation of Plaintiff Children's rights under New York Social Services Law and regulations adopted thereto; and
  5. City Defendants' violation of Plaintiff Children's rights under the Agreements with the Contract Agencies.



d. Permanently enjoin Defendants from subjecting Plaintiff Children to practices that violate their rights, including:

1. Enjoin City Defendants from placing children with Contract Agencies that do not maintain caseloads for all workers providing direct supervision and planning for children that conform to accepted professional standards, as developed by either the COA and/or the CWLA, or a workload analysis conducted by ACS. Require that ACS independently and periodically verify that every Contract Agency meets and maintains the applicable caseload standards and its verification process and that the results shall be public information.
2. Require City Defendants to develop a process for matching children with Contract Agencies that takes into account the child's need for permanence, the child's service needs, and the Agency's demonstrated ability to provide timely permanence for children, and timely and necessary individualized services for children and families based on timelines set by ACS in accordance with federal and state law and accepted professional standards. Require that ACS independently and periodically verify that each Contract Agency meets and maintains the applicable standards set by ACS and its verification process and that the results shall be public information.

3. Enjoin ACS from placing children in Contract Agencies that do not ensure that all workers receive training that OCFS and ACS shall approve and certify as meeting accepted professional training standards. Require that ACS independently and periodically verify that the approved training is being provided to all workers, and their verification process and that the results shall be public information.
4. Enjoin ACS from placing children in any Contract Agency unless at least 90% of the case plans for children currently placed with the Agency (a) meet federal requirements (as set forth in 42 U.S.C. §§ 671(a)(16), 675(1)) and accepted professional standards as set by COA and/or CWLA, (b) are created in a timely fashion pursuant to applicable regulations and (c) are implemented consistent with professional standards. Require that ACS independently and periodically verify that each Contract Agency with which ACS places children meets such standards, and their verification process and that the results shall be public information.
5. Enjoin ACS from placing children with any Contract Agency unless the Agency has demonstrated, and ACS has ascertained, that it conducts permanency planning, including concurrent planning, that it has the resources to provide individualized and effective reunification services and that it has the resources to develop and implement individualized adoptive recruitment for

children whose permanency goal is adoption. Require that, in conducting this assessment, ACS be guided by timelines to achieve permanency goals set by ACS in accordance with federal and state law and accepted professional standards. Require that ACS independently and periodically verify that each Contract Agency with which it places children shall meet these standards, and rank the agencies in their effectiveness in doing so. Require that their verification process and the results, including the Contract Agency rankings, shall be public information.

6. Require that ACS develop and fund post-permanency services of sufficient duration to provide all possible support for the successful reunification, guardianship or adoption of foster children.
7. Require that ACS ensure that its attorneys and attorneys employed by the Contract Agencies take all reasonable steps necessary (including not seeking adjournments except in extraordinary circumstances) to proceed to the adjudication and disposition in Article 10 proceedings within three months and, when a termination of parental rights process is necessary, to proceed to a disposition of that proceeding within four months of the petition being filed. Require that ACS collect and maintain detailed information on this, which shall be public record.
8. Require that City and State Defendants regularly collect and independently verify the information necessary to determine the

Contract Agencies' compliance with the provisions of the state statutes and regulations enumerated in paragraph 293 above and provide public reports of each Agency's compliance with each of these requirements. Require that the Defendants require corrective action of any Contract Agency failing to achieve at least 75% compliance with these requirements for two continuous six-month periods, and shall terminate the contract of any Agency that fails to achieve at least 75% compliance for a two-year period.

9. Require that OCFS conduct annual case record reviews of a statistically significant sample of children in ACS custody to measure the degree to which children in ACS custody are receiving timely permanence, as required by state and federal law, and the degree to which they are being maltreated in care; issue annual public reports on the findings of these case record reviews; and require corrective action when necessary.
10. The Court shall appoint a Special Master either with special expertise in the areas covered by the Remedial Order, or who shall appoint an Expert Panel to report to the Special Master, to determine whether the standards developed by Defendants comport with acceptable professional standards, and to monitor and report on Defendants' compliance with their obligations as contained in the Court's Order. Plaintiffs shall have the right to enforce the provisions of the Court Order entered pursuant to Federal Rule of

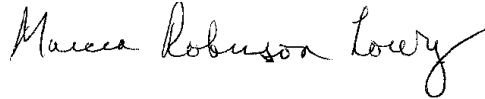
Civil Procedure 65(d), and the Court shall have continuing jurisdiction to oversee compliance with that Order.

- e. Award Plaintiff Children the reasonable costs and expenses incurred in the prosecutions of this action, including reasonable attorneys' fees, pursuant to 28 U.S.C. § 1920 and 42 U.S.C. § 1988, and the Federal Rules of Civil Procedure 23(e) and (h).
- f. Grant such other and further equitable relief as the Court deems just, necessary and proper to protect Plaintiff Children from further harm while in Defendants' custody in foster care.

Dated: New York, NY  
July 8, 2015

Respectfully submitted,

by



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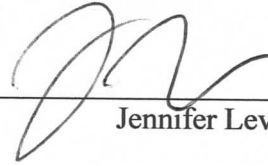
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*Attorneys for Plaintiffs Elisa W., by her next friend, Elizabeth Barricelli; Alexandria R., by her next friend, Alison Max Rothschild; Thierry E., by his next friend, Amy Mulzer; Ayanna J., by her next friend, Meyghan McCrea; Olivia and Ana-Maria R., by their next friend, Dawn Cardi; Xavion M., by his next friend, Michael B. Mushlin; Dameon C., by his next friend, Reverend Doctor Gwendolyn Hadley-Hall; Tyrone M., by his next friend, Bishop Lillian Robinson-Wiltshire; and Brittney W., by her next friend, Liza Camellerie, individually and on behalf of a class of all others similarly situated,*



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**Appendix A**<sup>1</sup>

<b>Contract Agency</b>	<b>Type of Contract</b> <sup>2</sup>	<b>Execution Date</b> <sup>3</sup>	<b>Modification Date (where applicable)</b> <sup>4</sup>	<b>Contract Term</b> <sup>5</sup>	<b>Contract Amount</b> <sup>6</sup>	<b>Scope of Services: General Requirements</b> <sup>7</sup>	<b>Responsibility and Authority of ACS and Procedure for Final Decisions on Issues Related to Services Provided to the Client</b> <sup>8</sup>
Abbott House	Agreement for the Purchase of Regular Family Foster Care Services	April 25, 2011		July 1, 2011 to June 30, 2016	\$32,620,141.00	Part II, Section 2.01(A)	Part II, Section 4.01(A) and (B)

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<sup>1</sup> Appendix A lists all contracts between Defendant City of New York, acting through Defendant New York City Administration for Children's Services ("ACS"), and the Contract Agencies ("Agreements"). (*See* Compl. ¶ 145 n.1.)

<sup>2</sup> Each Agreement between the Contract Agency and ACS is for a particular set of foster placement services. Therefore, one Contract Agency may have multiple Agreements with ACS, each for a different type of placement. (*Id.*)

<sup>3</sup> The "Execution Date" represents the date on which the Agreement was signed by ACS and the Contract Agency.

<sup>4</sup> The "Modification Date" represents the date, where applicable, on which the Agreement was modified during the original term of the Agreement.

<sup>5</sup> The "Contract Term" represents the duration of the Agreement between ACS and the Contract Agency.

<sup>6</sup> The "Contract Amount" represents the amount ACS pays to the Contract Agency for its services under the Agreement.

<sup>7</sup> This column provides the exact provision of each Agreement that corresponds to the provision alleged in Paragraph 298 of the Complaint.

<sup>8</sup> This column provides the exact provision of each Agreement that corresponds to the provision alleged in Paragraphs 299 and 301 of the Complaint.



<b>Contract Agency</b>	<b>Type of Contract<sup>2</sup></b>	<b>Execution Date<sup>3</sup></b>	<b>Modification Date (where applicable)<sup>4</sup></b>	<b>Contract Term<sup>5</sup></b>	<b>Contract Amount<sup>6</sup></b>	<b>Scope of Services: General Requirements<sup>7</sup></b>	<b>Responsibility and Authority of ACS and Procedure for Final Decisions on Issues Related to Services Provided to the Client<sup>8</sup></b>
	Agreement for the Purchase of Specialized Treatment Family Foster Care Services: Foster Children with Moderate to Severe Emotional Disorders	May 12, 2011		July 1, 2011 to June 30, 2016	\$7,214,229.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)
Cardinal McCloskey Community Services	Agreement for the Purchase of Regular Family Foster Care Services	April 27, 2011		July 1, 2011 to June 30, 2016	\$40,982,185.00	Part II, Section 2.01(A)	Part II, Section 4.01(A) and (B)
	Agreement for the Purchase of Specialized Treatment Family Foster Care Services: Foster Children with Moderate to Severe Emotional Disorders	May 20, 2011		July 1, 2011 to June 30, 2016	\$7,631,125.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)
Catholic Guardian Services	Agreement for the Purchase of Regular Family Foster Care Services	April 28, 2011		July 1, 2011 to June 30, 2016	\$113,120,889.00	Part II, Section 2.01(A)	Part II, Section 4.01(A) and (B)

Contract Agency	Type of Contract <sup>2</sup>	Execution Date <sup>3</sup>	Modification Date (where applicable) <sup>4</sup>	Contract Term <sup>5</sup>	Contract Amount <sup>6</sup>	Scope of Services: General Requirements <sup>7</sup>	Responsibility and Authority of ACS and Procedure for Final Decisions on Issues Related to Services Provided to the Client <sup>8</sup>
	Agreement for the Purchase of Regular Residential Care Services	February 23, 2011	December 20, 2013	April 1, 2011 to June 30, 2014	\$8,093,067.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)
		May 27, 2014 (Renewal) <sup>9</sup>		July 1, 2014 to June 30, 2017	\$10,357,397.00		
	Agreement for the Purchase of Specialized Family Foster Care Services: Foster Children with MR/DD <sup>10</sup>	May 2, 2011		July 1, 2011 to June 30, 2016	\$1,712,751.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)
	Agreement for the Purchase of Specialized Family Foster Care Services: Foster Children with Special Medical Needs <sup>11</sup>	May 12, 2011		July 1, 2011 to June 30, 2016	\$8,778,093.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)

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<sup>9</sup> The Agreements often provide ACS with the option to renew, and any renewal contract currently in effect (and cited herein) incorporates the provisions of the initial Agreement by reference. Therefore, the Contract Agency is still bound by its obligations and duties under the initial Agreement.

<sup>10</sup> Agreement is for the purchase of specialized family foster care services for foster children with mental retardation, development delays and/or disabilities.

<sup>11</sup> Agreement is for the purchase of specialized family foster care services for foster children with special medical needs including HIV and/or AIDS.

<b>Contract Agency</b>	<b>Type of Contract<sup>2</sup></b>	<b>Execution Date<sup>3</sup></b>	<b>Modification Date (where applicable)<sup>4</sup></b>	<b>Contract Term<sup>5</sup></b>	<b>Contract Amount<sup>6</sup></b>	<b>Scope of Services: General Requirements<sup>7</sup></b>	<b>Responsibility and Authority of ACS and Procedure for Final Decisions on Issues Related to Services Provided to the Client<sup>8</sup></b>
	Agreement for the Purchase of Specialized Treatment Family Foster Care Services: Foster Children with Moderate to Severe Emotional Disorders	May 12, 2011		July 1, 2011 to June 30, 2016	\$29,432,509.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)
Cayuga Home for Children	Agreement for the Purchase of Specialized Treatment Family Foster Care Services: Foster Children with Moderate to Severe Emotional Disorders	May 16, 2011	May 21, 2013	July 1, 2011 to June 30, 2016	\$6,197,603.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)
The Children's Aid Society	Agreement for the Purchase of Regular Family Foster Care Services	April 29, 2011	First modification: September 5, 2012  Second modification: August 5, 2013	July 1, 2011 to June 30, 2016	\$55,125,034.00	Part II, Section 2.01(A)	Part II, Section 4.01(A) and (B)

<b>Contract Agency</b>	<b>Type of Contract<sup>2</sup></b>	<b>Execution Date<sup>3</sup></b>	<b>Modification Date (where applicable)<sup>4</sup></b>	<b>Contract Term<sup>5</sup></b>	<b>Contract Amount<sup>6</sup></b>	<b>Scope of Services: General Requirements<sup>7</sup></b>	<b>Responsibility and Authority of ACS and Procedure for Final Decisions on Issues Related to Services Provided to the Client<sup>8</sup></b>
	Agreement for the Purchase of Specialized Family Foster Care Services: Foster Children with MR/DD	May 6, 2011		July 1, 2011 to June 30, 2016	\$4,621,164.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)
	Agreement for the Purchase of Specialized Family Foster Care Services: Foster Children with Special Medical Needs	May 13, 2011		July 1, 2011 to June 30, 2016	\$29,575,452.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)
	Agreement for the Purchase of Specialized Treatment Family Foster Care Services: Foster Children with Moderate to Severe Emotional Disorders	May 13, 2011		July 1, 2011 to June 30, 2016	\$25,007,007.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)

Contract Agency	Type of Contract <sup>2</sup>	Execution Date <sup>3</sup>	Modification Date (where applicable) <sup>4</sup>	Contract Term <sup>5</sup>	Contract Amount <sup>6</sup>	Scope of Services: General Requirements <sup>7</sup>	Responsibility and Authority of ACS and Procedure for Final Decisions on Issues Related to Services Provided to the Client <sup>8</sup>
The Children's Village	Agreement for the Purchase of Regular Family Foster Care Services	May 18, 2011		July 1, 2011 to June 30, 2016	\$27,027,467.00	Part II, Section 2.01(A)	Part II, Section 4.01(A) and (B)
		May 24, 2012 <sup>12</sup>		July 1, 2012 to June 20, 2016	Unknown		
	Agreement for the Purchase of Regular Residential Care Services	March 4, 2011	February 12, 2014	April 1, 2011 to June 30, 2014	\$30,980,569.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)
		May 23, 2014 (Renewal)		July 1, 2014 to June 30, 2017	\$36,133,610.00		
	Agreement for the Purchase of Specialized Treatment Family Foster Care Services: Foster Children with Moderate to Severe Emotional Disorders	June 6, 2011		July 1, 2011 to June 30, 2016	\$12,330,034.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)
		May 24, 2012 <sup>13</sup>	October 10, 2012	July 1, 2012 to June 20, 2016	\$4,880,957.00		

<sup>12</sup> This represents an assignment of the Agreement between ACS and Harlem Dowling-West Side Center for Children and Family Services to The Children's Village. All information provided is for the term of the Agreement assigned to Children's Village. Under the assignment, The Children's Village accepts all obligations and duties under the Agreement.

<sup>13</sup> This represents an assignment of the Agreement between ACS and Harlem Dowling-West Side Center for Children and Family Services to The Children's Village. All information provided is for the term of the Agreement assigned to Children's Village. Under the assignment, The Children's Village accepts all obligations and duties under the Agreement.

<b>Contract Agency</b>	<b>Type of Contract<sup>2</sup></b>	<b>Execution Date<sup>3</sup></b>	<b>Modification Date (where applicable)<sup>4</sup></b>	<b>Contract Term<sup>5</sup></b>	<b>Contract Amount<sup>6</sup></b>	<b>Scope of Services: General Requirements<sup>7</sup></b>	<b>Responsibility and Authority of ACS and Procedure for Final Decisions on Issues Related to Services Provided to the Client<sup>8</sup></b>
	Agreement for the Purchase of Specialized Residential Care Services: Rapid Intervention Center Services	February 23, 2011		April 1, 2011 to June 30, 2014	\$5,025,496.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)
		May 6, 2014 (Renewal)		July 1, 2014 to June 30, 2017	\$3,857,212.00		
	Agreement for the Purchase of Specialized Residential Care Services: Foster Children with Sexual Behavior Problems and Foster Children Who Have Sexually Abusive Behaviors	February 8, 2011	January 29, 2014	April 1, 2011 to June 30, 2014	\$5,736,433.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)
		May 6, 2014 (Renewal)		July 1, 2014 to June 30, 2017	\$7,397,633.00		
Coalition for Hispanic Family Services	Agreement for the Purchase of Regular Family Foster Care Services	April 28, 2011		July 1, 2011 to June 30, 2016	\$28,152,199.00	Part II, Section 2.01(A)	Part II, Section 4.01(A) and (B)

<b>Contract Agency</b>	<b>Type of Contract<sup>2</sup></b>	<b>Execution Date<sup>3</sup></b>	<b>Modification Date (where applicable)<sup>4</sup></b>	<b>Contract Term<sup>5</sup></b>	<b>Contract Amount<sup>6</sup></b>	<b>Scope of Services: General Requirements<sup>7</sup></b>	<b>Responsibility and Authority of ACS and Procedure for Final Decisions on Issues Related to Services Provided to the Client<sup>8</sup></b>
	Agreement for the Purchase of Specialized Treatment Family Foster Care Services: Foster Children with Moderate to Severe Emotional Disorders	June 3, 2011		July 1, 2011 to June 30, 2016	\$12,184,248.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)
Community Counseling & Mediation Services	Agreement for the Purchase of Regular Family Foster Care Services <sup>14</sup>	May 6, 2011		July 1, 2011 to June 30, 2016	\$7,308,387.00	Part II, Section 2.01(A)	Part II, Section 4.01(A) and (B)
Edwin Gould Services for Children and Families	Agreement for the Purchase of Regular Family Foster Care Services	May 5, 2011		July 1, 2011 to June 30, 2016	\$101,200,567.00	Part II, Section 2.01(A)	Part II, Section 4.01(A) and (B)
Sheltering Arms <sup>15</sup>	Agreement for the Purchase of Regular Family Foster Care Services	May 2, 2011	August 16, 2012	July 1, 2011 to June 30, 2016	\$45,571,723.00	Part II, Section 2.01(A)	Part II, Section 4.01(A) and (B)

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<sup>14</sup> Attached hereto as Exhibit 1.

<sup>15</sup> In February 2015, Episcopal Social Services changed its name to Sheltering Arms.

<b>Contract Agency</b>	<b>Type of Contract<sup>2</sup></b>	<b>Execution Date<sup>3</sup></b>	<b>Modification Date (where applicable)<sup>4</sup></b>	<b>Contract Term<sup>5</sup></b>	<b>Contract Amount<sup>6</sup></b>	<b>Scope of Services: General Requirements<sup>7</sup></b>	<b>Responsibility and Authority of ACS and Procedure for Final Decisions on Issues Related to Services Provided to the Client<sup>8</sup></b>
	Agreement for the Purchase of Regular Residential Care Services	February 14, 2011	December 5, 2013	April 1, 2011 to June 30, 2014	\$6,463,360.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)
		May 28, 2014 (Renewal)		July 1, 2014 to June 30, 2017	\$6,659,346.00		
Forestdale, Inc.	Agreement for the Purchase of Regular Family Foster Care Services	May 2, 2011		July 1, 2011 to June 30, 2016	\$54,307,026.00	Part II, Section 2.01 (A)	Part II, Section 4.01(A) and (B)
	Agreement for the Purchase of Specialized Treatment Family Foster Care Services: Foster Children with Moderate to Severe Emotional Disorders	May 18, 2011	July 27, 2012	July 1, 2011 to June 30, 2016	\$6,738,683.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)
Good Shepherd Services	Agreement for the Purchase of Regular Family Foster Care Services	April 26, 2011		July 1, 2011 to June 30, 2016	\$48,041,837.00	Part II, Section 2.01(A)	Part II, Section 4.01(A) and (B)



Contract Agency	Type of Contract <sup>2</sup>	Execution Date <sup>3</sup>	Modification Date (where applicable) <sup>4</sup>	Contract Term <sup>5</sup>	Contract Amount <sup>6</sup>	Scope of Services: General Requirements <sup>7</sup>	Responsibility and Authority of ACS and Procedure for Final Decisions on Issues Related to Services Provided to the Client <sup>8</sup>
	Agreement for the Purchase of Specialized Treatment Family Foster Care Services: Foster Children with Moderate to Severe Emotional Disorders	May 16, 2011		July 1, 2011 to June 30, 2016	\$14,777,797.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)
	Agreement for the Purchase of Specialized Residential Care Services: Rapid Intervention Center Services	February 17, 2011	July 1, 2014	April 1, 2011 to June 30, 2014	\$12,807,224.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)
		May 23, 2014 (Renewal)		July 1, 2014 to June 30, 2017	\$8,323,187.00		
Graham Windham	Agreement for the Purchase of Regular Family Foster Care Services	April 26, 2011		July 1, 2011 to June 30, 2016	\$98,971,277.00	Part II, Section 2.01(A)	Part II, Section 4.01(A) and (B)
	Agreement for the Purchase of Regular Residential Care Services	February 11, 2011	December 10, 2013	April 1, 2011 to June 30, 2014	\$19,969,972.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)
		May 27, 2014 (Renewal)		July 1, 2014 to June 30, 2017	\$20,093,682.00		

<b>Contract Agency</b>	<b>Type of Contract<sup>2</sup></b>	<b>Execution Date<sup>3</sup></b>	<b>Modification Date (where applicable)<sup>4</sup></b>	<b>Contract Term<sup>5</sup></b>	<b>Contract Amount<sup>6</sup></b>	<b>Scope of Services: General Requirements<sup>7</sup></b>	<b>Responsibility and Authority of ACS and Procedure for Final Decisions on Issues Related to Services Provided to the Client<sup>8</sup></b>
	Agreement for the Purchase of Specialized Treatment Family Foster Care Services: Foster Children with Moderate to Severe Emotional Disorders	May 12, 2011		July 1, 2011 to June 30, 2016	\$20,233,547.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)
Inwood House	Agreement for the Purchase of Regular Family Foster Care Services	May 12, 2011		July 1, 2011 to June 30, 2016	\$5,492,417.00	Part II, Section 2.01(A)	Part II, Section 4.01(A) and (B)
	Agreement for the Purchase of Regular Residential Care Services	February 15, 2011	January 29, 2014	April 1, 2011 to June 30, 2014	\$12,588,781.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)
		June 4, 2014 (Renewal)		July 1, 2014 to June 30, 2017	\$11,155,610.00		
Jewish Board of Family and Children Services	Agreement for the Purchase of Regular Residential Care Services	February 10, 2011	December 13, 2013	April 1, 2011 to June 30, 2014	\$30,540,022.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)
		May 23, 2014 (Renewal)		July 1, 2014 to June 30, 2017	\$31,681,430.00		

<b>Contract Agency</b>	<b>Type of Contract<sup>2</sup></b>	<b>Execution Date<sup>3</sup></b>	<b>Modification Date (where applicable)<sup>4</sup></b>	<b>Contract Term<sup>5</sup></b>	<b>Contract Amount<sup>6</sup></b>	<b>Scope of Services: General Requirements<sup>7</sup></b>	<b>Responsibility and Authority of ACS and Procedure for Final Decisions on Issues Related to Services Provided to the Client<sup>8</sup></b>
	Agreement for the Purchase of Specialized Residential Care Services: Rapid Intervention Center Services	February 9, 2011		April 1, 2011 to June 30, 2014	\$7,719,642.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)
		May 23, 2014 (Renewal)		July 1, 2014 to June 30, 2017	\$8,194,802.00		
Jewish Child Care Association	Agreement for the Purchase of Regular Family Foster Care Services	May 9, 2011		July 1, 2011 to June 30, 2016	\$46,893,541.00	Part II, Section 2.01(A)	Part II, Section 4.01(A) and (B)
	Agreement for the Purchase of Regular Residential Care Services	February 16, 2011		April 1, 2011 to June 30, 2014	\$39,222,695.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)
		June 9, 2014 (Renewal)		July 1, 2014 to June 30, 2017	\$37,577,196.00		
	Agreement for the Purchase of Specialized Family Foster Care Services: Foster Children with Special Medical Needs	May 12, 2011		July 1, 2011 to June 30, 2016	\$5,954,067.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)

<b>Contract Agency</b>	<b>Type of Contract<sup>2</sup></b>	<b>Execution Date<sup>3</sup></b>	<b>Modification Date (where applicable)<sup>4</sup></b>	<b>Contract Term<sup>5</sup></b>	<b>Contract Amount<sup>6</sup></b>	<b>Scope of Services: General Requirements<sup>7</sup></b>	<b>Responsibility and Authority of ACS and Procedure for Final Decisions on Issues Related to Services Provided to the Client<sup>8</sup></b>
	Agreement for the Purchase of Specialized Family Foster Care Services: Foster Children Who Have Been Sexually Exploited	June 7, 2011	August 19, 2013	July 1, 2011 to June 30, 2016	\$5,153,487.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)
	Agreement for the Purchase of Specialized Treatment Family Foster Care Services: Foster Children with Moderate to Severe Emotional Disorders	May 23, 2011		July 1, 2011 to June 30, 2016	\$37,224,720.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)
	Agreement for the Purchase of Specialized Residential Care Services: Foster Children with MR/DD	February 16, 2011		April 1, 2011 to June 30, 2014	\$20,637,715.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)
		April 22, 2014 (Renewal)		July 1, 2014 to June 30, 2017	\$42,997,847.00		

Contract Agency	Type of Contract <sup>2</sup>	Execution Date <sup>3</sup>	Modification Date (where applicable) <sup>4</sup>	Contract Term <sup>5</sup>	Contract Amount <sup>6</sup>	Scope of Services: General Requirements <sup>7</sup>	Responsibility and Authority of ACS and Procedure for Final Decisions on Issues Related to Services Provided to the Client <sup>8</sup>
	Agreement for the Purchase of Specialized Residential Care Services: Foster Children Who Have Been Sexually Exploited	February 16, 2011		April 1, 2011 to June 30, 2014	\$5,085,389.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)
		April 22, 2014 (Renewal)		July 1, 2014 to June 30, 2017	\$5,559,687.00		
Leake & Watts	Agreement for the Purchase of Regular Family Foster Care Services	May 11, 2011		July 1, 2011 to June 30, 2016	\$37,842,101.00	Part II, Section 2.01(A)	Part II, Section 4.01(A) and (B)
	Agreement for the Purchase of Regular Residential Care Services	March 3, 2011	December 10, 2013	April 1, 2011 to June 30, 2014	\$4,362,472.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)
		May 28, 2014 (Renewal)		July 1, 2014 to June 30, 2017	\$4,061,071.00		
	Agreement for the Purchase of Specialized Treatment Family Foster Care Services: Foster Children with Moderate to Severe Emotional Disorders	May 11, 2011		July 1, 2011 to June 30, 2016	\$3,593,687.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)

<b>Contract Agency</b>	<b>Type of Contract<sup>2</sup></b>	<b>Execution Date<sup>3</sup></b>	<b>Modification Date (where applicable)<sup>4</sup></b>	<b>Contract Term<sup>5</sup></b>	<b>Contract Amount<sup>6</sup></b>	<b>Scope of Services: General Requirements<sup>7</sup></b>	<b>Responsibility and Authority of ACS and Procedure for Final Decisions on Issues Related to Services Provided to the Client<sup>8</sup></b>
Little Flower Children & Family Services of New York	Agreement for the Purchase of Regular Family Foster Care Services	May 6, 2011		July 1, 2011 to June 30, 2016	\$88,302,176.00	Part II, Section 2.01(A)	Part II, Section 4.01(A) and (B)
Lutheran Social Services	Agreement for the Purchase of Regular Family Foster Care Services	April 25, 2011		July 1, 2011 to June 30, 2016	\$21,054,395.00	Part II, Section 2.01(A)	Part II, Section 4.01(A) and (B)
	Agreement for the Purchase of Regular Residential Care Services	February 7, 2011	December 5, 2013	April 1, 2011 to June 30, 2014	\$3,950,366.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)
		May 28, 2014 (Renewal)		July 1, 2014 to June 30, 2017	\$3,223,787.00		
Martin de Porres Group Homes	Agreement for the Purchase of Specialized Residential Care Services: Foster Children with Sexual Behavior Problems and Foster Children Who Have Sexually Abusive Behaviors	February 7, 2011		April 1, 2011 to June 30, 2014	\$2,054,140.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)
		May 6, 2014 (Renewal)		July 1, 2014 to June 30, 2017	\$2,438,348.00		
MercyFirst	Agreement for the Purchase of Regular Family Foster Care Services	April 28, 2011		July 1, 2011 to June 30, 2016	\$65,147,483.00	Part II, Section 2.01(A)	Part II, Section 4.01(A) and (B)

Contract Agency	Type of Contract <sup>2</sup>	Execution Date <sup>3</sup>	Modification Date (where applicable) <sup>4</sup>	Contract Term <sup>5</sup>	Contract Amount <sup>6</sup>	Scope of Services: General Requirements <sup>7</sup>	Responsibility and Authority of ACS and Procedure for Final Decisions on Issues Related to Services Provided to the Client <sup>8</sup>
	Agreement for the Purchase of Regular Residential Care Services	February 17, 2011	December 4, 2013	April 1, 2011 to June 30, 2014	\$31,794,459.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)
		June 4, 2014 (Renewal)		July 1, 2014 to June 30, 2017	\$15,154,548.00		
	Agreement for the Purchase of Specialized Treatment Family Foster Care Services: Foster Children with Moderate to Severe Emotional Disorders	May 12, 2011		July 1, 2011 to June 30, 2016	\$8,398,419.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)
	Agreement for the Purchase of Specialized Residential Care Services: Foster Children with Sexual Behavior Problems and Foster Children Who Have Sexually Abusive Behaviors	February 17, 2011		April 1, 2011 to June 30, 2014	\$4,173,742.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)
		May 14, 2014 (Renewal)		July 1, 2014 to June 30, 2017	\$4,485,962.00		

<b>Contract Agency</b>	<b>Type of Contract<sup>2</sup></b>	<b>Execution Date<sup>3</sup></b>	<b>Modification Date (where applicable)<sup>4</sup></b>	<b>Contract Term<sup>5</sup></b>	<b>Contract Amount<sup>6</sup></b>	<b>Scope of Services: General Requirements<sup>7</sup></b>	<b>Responsibility and Authority of ACS and Procedure for Final Decisions on Issues Related to Services Provided to the Client<sup>8</sup></b>
New Alternatives for Children	Agreement for the Purchase of Specialized Family Foster Care Services: Foster Children with MR/DD	April 29, 2011		July 1, 2011 to June 30, 2016	\$10,081,761.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)
	Agreement for the Purchase of Specialized Family Foster Care Services: Foster Children with Special Medical Needs	May 12, 2011		July 1, 2011 to June 30, 2016	\$19,329,177.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)
	Specialized Treatment Family Foster Care (Children with Moderate to Severe Emotional Disorders)	May 12, 2011	August 2, 2012	July 1, 2011 to June 30, 2016	\$10,142,649.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)
The New York Foundling	Agreement for the Purchase of Regular Family Foster Care Services	April 20, 2011		July 1, 2011 to June 30, 2016	\$102,571,421.00	Part II, Section 2.01(A)	Part II, Section 4.01(A) and (B)



<b>Contract Agency</b>	<b>Type of Contract<sup>2</sup></b>	<b>Execution Date<sup>3</sup></b>	<b>Modification Date (where applicable)<sup>4</sup></b>	<b>Contract Term<sup>5</sup></b>	<b>Contract Amount<sup>6</sup></b>	<b>Scope of Services: General Requirements<sup>7</sup></b>	<b>Responsibility and Authority of ACS and Procedure for Final Decisions on Issues Related to Services Provided to the Client<sup>8</sup></b>
	Agreement for the Purchase of Regular Residential Care Services	February 7, 2011	First modification: April 4, 2013  Second modification: December 3, 2013	April 1, 2011 to June 30, 2014	\$24,482,998.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)
		May 21, 2014 (Renewal)		July 1, 2014 to June 30, 2017	\$12,145,552.00		
	Agreement for the Purchase of Specialized Treatment Family Foster Care Services: Foster Children with Moderate to Severe Emotional Disorders	May 10, 2011		July 1, 2011 to June 30, 2016	\$30,247,247.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)
Ohel Children's Home and Family Services	Agreement for the Purchase of Regular Family Foster Care Services	May 6, 2011		July 1, 2011 to June 30, 2016	\$4,339,249.00	Part II, Section 2.01(A)	Part II, Section 4.01(A) and (B)
Saint Dominic's Home	Agreement for the Purchase of Regular Family Foster Care Services	May 4, 2011		July 1, 2011 to June 30, 2016	\$41,220,075.00	Part II, Section 2.01 (A)	Part II, Section 4.01(A) and (B)

<b>Contract Agency</b>	<b>Type of Contract<sup>2</sup></b>	<b>Execution Date<sup>3</sup></b>	<b>Modification Date (where applicable)<sup>4</sup></b>	<b>Contract Term<sup>5</sup></b>	<b>Contract Amount<sup>6</sup></b>	<b>Scope of Services: General Requirements<sup>7</sup></b>	<b>Responsibility and Authority of ACS and Procedure for Final Decisions on Issues Related to Services Provided to the Client<sup>8</sup></b>
	Agreement for the Purchase of Specialized Treatment Family Foster Care Services: Foster Children with Moderate to Severe Emotional Disorders	May 12, 2011		July 1, 2011 to June 30, 2016	\$7,526,901.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)
Saint John's Residence for Boys	Agreement for the Purchase of Regular Residential Care Services	February 10, 2011	December 3, 2013	April 1, 2011 to June 30, 2014	\$11,759,549.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)
		May 21, 2014 (Renewal)		July 1, 2014 to June 30, 2017	\$12,048,961.00		
Saint Vincent's Services	Agreement for the Purchase of Regular Family Foster Care Services	April 20, 2011		July 1, 2011 to June 30, 2016	\$73,624,372.00	Part II, Section 2.01(A)	Part II, Section 4.01(A) and (B)
	Agreement for the Purchase of Regular Residential Care Services	March 1, 2011	July 2, 2012	April 1, 2011 to June 30, 2014	\$16,695,445.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)
		June 2, 2014 (Renewal)		July 1, 2014 to June 30, 2017	\$14,020,812.00		

<b>Contract Agency</b>	<b>Type of Contract<sup>2</sup></b>	<b>Execution Date<sup>3</sup></b>	<b>Modification Date (where applicable)<sup>4</sup></b>	<b>Contract Term<sup>5</sup></b>	<b>Contract Amount<sup>6</sup></b>	<b>Scope of Services: General Requirements<sup>7</sup></b>	<b>Responsibility and Authority of ACS and Procedure for Final Decisions on Issues Related to Services Provided to the Client<sup>8</sup></b>
	Agreement for the Purchase of Specialized Family Foster Care Services: Foster Children with Special Medical Needs	May 9, 2011		July 1, 2011 to June 30, 2016	\$10,385,844.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)
SCO Family of Services	Agreement for the Purchase of Regular Family Foster Care Services	May 2, 2011		July 1, 2011 to June 30, 2016	\$145,833,024.00	Part II, Section 2.01(A)	Part II, Section 4.01(A) and (B)
	Agreement for the Purchase of Regular Residential Care Services	February 15, 2011	First modification: March 2, 2012  Second modification: June 14, 2012  Third modification: April 11, 2014	April 1, 2011 to June 30, 2014	\$41,194,011.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)
		June 13, 2014 (Renewal)		July 1, 2014 to June 30, 2017	\$40,116,505.00		

<b>Contract Agency</b>	<b>Type of Contract<sup>2</sup></b>	<b>Execution Date<sup>3</sup></b>	<b>Modification Date (where applicable)<sup>4</sup></b>	<b>Contract Term<sup>5</sup></b>	<b>Contract Amount<sup>6</sup></b>	<b>Scope of Services: General Requirements<sup>7</sup></b>	<b>Responsibility and Authority of ACS and Procedure for Final Decisions on Issues Related to Services Provided to the Client<sup>8</sup></b>
	Agreement for the Purchase of Specialized Treatment Family Foster Care Services: Foster Children with Moderate to Severe Emotional Disorders	May 18, 2011		July 1, 2011 to June 30, 2016	\$37,805,928.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)
	Agreement for the Purchase of Specialized Residential Care Services: Foster Children with MR/DD	February 9, 2011	February 14, 2013	April 1, 2011 to June 30, 2014	\$26,190,867.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)
		May 1, 2014 (Renewal)		July 1, 2014 to June 30, 2017	\$32,841,664.00		
Seamen's Society for Children & Families	Agreement for the Purchase of Regular Family Foster Care Services	April 21, 2011		July 1, 2011 to June 30, 2016	\$48,460,000.00	Part II, Section 2.01(A)	Part II, Section 4.01(A) and (B)

<b>Contract Agency</b>	<b>Type of Contract<sup>2</sup></b>	<b>Execution Date<sup>3</sup></b>	<b>Modification Date (where applicable)<sup>4</sup></b>	<b>Contract Term<sup>5</sup></b>	<b>Contract Amount<sup>6</sup></b>	<b>Scope of Services: General Requirements<sup>7</sup></b>	<b>Responsibility and Authority of ACS and Procedure for Final Decisions on Issues Related to Services Provided to the Client<sup>8</sup></b>
	Agreement for the Purchase of Specialized Treatment Family Foster Care Services: Foster Children with Moderate to Severe Emotional Disorders	May 17, 2011	November 22, 2013	July 1, 2011 to June 30, 2016	\$13,012,034.00	Part II, Section 2.01(B)	Part II, Section 4.01(A) and (B)

# Exhibit 1

**APPROVAL AS TO FORM OF A CONTRACT BY STANDARD TYPE OF CLASS**

AGENCY: ACS

EPIN: 06811P0020007

CONTRACT: Family Foster Care - CWS RFP

I hereby approve as to form the annexed contract by standard type of class. This approval is valid until 10/11/2011 and for a maximum of 26 contracts. The above approval is made on the express understanding that the substantive language of the subject contracts will not be altered or changed in any way without prior submission to the Office of the Corporation Counsel for approval, provided, however, that blank spaces in the contracts requiring names, dates, dollar amounts or other similar details may be completed.

Expiration	Additional Number Allowed	Total Number Allowed	Date Added	Approved By
10/11/2011	26	26	04/11/2011	Electronically Signed By STEVEN CUSHMAN
/ /	0	0	/ /	

APPROVED AS TO FORM  
CERTIFIED AS TO LEGAL AUTHORITY

Electronically Signed By STEVEN  
CUSHMAN

ACTING CORPORATION COUNSEL

DATE: 04/11/2011 11:16

**AGREEMENT FOR THE PURCHASE OF  
REGULAR FAMILY FOSTER CARE SERVICES**

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### **ATTACHMENTS**

Appendix A:	General Provisions Governing Contracts For Consultants, Professional, Technical, Human And Client Services
Attachment I	The RFP
Attachment II	The Contractor's Proposal and if applicable any Negotiated Addendum to the Proposal
Attachment III	The Foster Care Quality Assurance Standards
Attachment IV	The Budget and Funded Capacity
Attachment V	Delegation and Centralization of Case Management Casework Requirements

B/RD.RFFC.A10  
1-08-10

**AGREEMENT FOR THE PURCHASE OF  
REGULAR FAMILY FOSTER CARE SERVICES**

THIS AGREEMENT, dated this 6<sup>th</sup> day of May, 2011 between the City of New York ("City") acting through City Administration for Children's Services ("ACS" or "Department") with offices at 150 William Street, New York, New York 10038 and Community Counseling and Mediation Services, Inc. ("Contractor") located at One Hoyt Street, Brooklyn, NY 11201.

**W I T N E S S E T H**

WHEREAS, the Commissioner of ACS, which is an authorized agency as defined by SSL § 371(10), is charged with the responsibility for the administration of all child welfare services in the City; and

WHEREAS, ACS wishes to serve Foster Children and their families in their neighborhood of origin by placing them in Foster Homes within their communities whenever appropriate; and

WHEREAS, the Commissioner may provide child welfare services through an authorized agency as defined in the SSL; and

WHEREAS, the Contractor is an authorized agency as defined in the SSL; and

WHEREAS, ACS issued a Request for Proposals with a release date of May 20, 2009 and a Procurement Identification Number 0682009CWSCP ("RFP") to establish family foster care services that will ensure the safety, permanency, and well-being of all New York City children and strengthen families; and

WHEREAS, the Contractor submitted a proposal in response to the RFP to provide the necessary family foster care services and the Contractor's proposal was accepted by ACS; and

WHEREAS, ACS requested the Contractor to provide family foster care services in accordance with the terms and conditions contained in this Agreement; and

WHEREAS, the Contractor under the terms of its corporate authority has the power to provide family foster care services and is willing and able to provide these services pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement the parties have agreed and so hereby agree as follows:

**AGREEMENT FOR THE PURCHASE OF  
REGULAR FAMILY FOSTER CARE SERVICES**

**PART I**

**ARTICLE 1. CONTRACTOR SITE ADDRESSES  
AND FUNDED CAPACITY**

**Section 1.01 Contractor Funded Capacity**

The Contractor's funded capacity by borough is listed in the Budget attached as Attachment IV.

**ARTICLE 2. CONTRACT AMOUNT**

**Section 2.01 Contract Amount**

ACS shall pay to the Contractor and the Contractor has agreed to accept for the services provided pursuant to this Agreement, an amount not to exceed \$7,308,387.00 for the five (5) year period from July 1, 2011 through June 30, 2016 in accordance with this Agreement and the Budget attached as Attachment IV. The Contractor must demonstrate that the work has been completed in a form satisfactory to ACS prior to payment in accordance with the terms of this Agreement.

**ARTICLE 3. TERM OF AGREEMENT**

**Section 3.01 Term**

The term of this Agreement shall begin on July 1, 2011 for a period of five (5) years through June 30, 2016.

**Section 3.02 Renewal**

A. ACS shall have the sole option to renew this Agreement for a maximum additional four (4) year term from July 1, 2016 through June 30, 2020.

B. ACS in its sole discretion may modify the length of the renewal option listed in Section 3.02(A) of this Part I. The total term of this Agreement after the exercise of the above option to renew shall not exceed nine (9) years. Any extensions of this Agreement may be made by ACS in its sole discretion and in accordance with the PPBR. All renewals and extensions shall be on substantially the same terms and conditions contained in this Agreement.

C. ACS may renew this Agreement by giving written notice to the Contractor no less than sixty (60) days prior to the expiration date of this Agreement including any renewal term. At each renewal interval, ACS agrees to reconsider and decide as it deems appropriate in its own discretion the target numbers for performance goals if requested to do so by the Contractor in

light of changing economic, social, or other conditions that make it necessary to reconsider those numbers. The exercise of each renewal option shall be subject to all required approvals, including ACS established criteria, the Law, and the appropriation of funds.

### **Section 3.03 Appropriation of Funds**

Since the term of this Agreement involves performance by the Contractor in a subsequent City Fiscal Year(s), funding for this Agreement is subject to the appropriation of funds for such subsequent City Fiscal Year(s).

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**AGREEMENT FOR THE PURCHASE OF REGULAR  
FAMILY FOSTER CARE SERVICES**

**PART II**

**ARTICLE 1. DEFINITIONS AND ACRONYMS**

**Section 1.01 Definitions**

Whenever the following terms and phrases are used in this Agreement and the attachments annexed to this Agreement, they shall have the following meanings, unless it is expressly indicated that such term or phrase is to have a different or additional meaning. All such other terms and phrases that shall not be specifically defined in this Part II, shall have the meaning ascribed to it by Law, or, in the event that such term or phrase is not described in the Law, it shall have the meaning as is commonly ascribed to it.

A. "ACS Policies" shall mean all applicable ACS policies, procedures guidelines, bulletins and standards, as amended. ACS Policies are incorporated by reference and may be found via the Contractor's access to ACS' intranet website at <http://10.239.3.195:8080/docushare/dsweb/View/Collection-4166>.

B. "Administrator" or "Commissioner" or "Agency Head" shall mean the Commissioner of ACS or her/his duly authorized representative. The term "duly authorized representative" shall include any person or persons acting within the limits of her/his authority.

C. "Case Planning" shall mean the following functions and activities of the Contractor in connection with Recipients of Services which includes but is not limited to: conducting ongoing safety assessments for all children in a household and performing the regulatory function of child protective service monitor; scheduling required Family Team Conferences with the appropriate attendees; assessing service needs of children in care and their families; planning for service needs; arranging for service provision; coordinating service provision and/or participating in joint planning, when appropriate; evaluating the outcome of service provision; completing, approving and implementing the FASP; conducting minimum required casework contacts; and providing necessary documentation in the case record. The Contractor, through its assigned caseworker(s), carries out planning functions for the entire family unit. When a family is authorized to receive services from a single foster care provider, that provider is always the primary planning foster care provider. The primary planning foster care provider always has the responsibility to coordinate services for the entire family, to prepare the single, family-focused case record and to arrange and conduct Service Plan Review conferences. The above definition may change from time to time based on changes in ACS Policies, the Law, Federal and State Court orders, and stipulations of settlement or decree.

D. "City" shall mean the City of New York, its departments and political subdivisions.

E. "Comptroller" shall mean the Comptroller of the City of New York.

F. "CONNECTIONS" or "CNNX" means the New York State automated system designed to create a single integrated statement system for collecting and recording child protective, preventive, foster care and adoption services information.

G. "Day" shall mean a calendar day unless otherwise specified in this Agreement.

H. "Days of Care" shall mean the number of days in which a Foster Child is in placement in, and physically present at, a program operated by the Contractor, plus the number of days of allowable absences during the time in which the Foster Child is in placement in such program.

I. "Fiscal Manual" shall mean a set of instructions provided by ACS to the Contractor documenting the applicable policies and procedures of ACS for Contractor to use in such matters as record-keeping, bookkeeping, reporting, invoicing and claiming, budgeting, cost allocating, procurement and payroll, as may be amended by ACS. The Fiscal Manual is incorporated by reference and may be found online at [www.nyc.gov/acs](http://www.nyc.gov/acs).

J. "Foster Child (ren)" shall mean a person or persons placed in and receiving services from the Contractor's family foster care program pursuant to this Agreement, ACS Policies and the Law. Generally, Foster Children meet the following criteria:

1. The child/youth is under the age of eighteen (18) years or is between the ages of eighteen (18) and twenty one (21) years and entered foster care before his/her eighteenth (18<sup>th</sup>) birthday and has consented to remain in foster care past his/her eighteenth (18<sup>th</sup>) birthday; and

a. is a student attending a school, college or university; or  
b. is regularly attending a course of vocational or technical training designed to prepare him or her for gainful employment; or  
c. lacks the skills or ability to live independently.

2. The child/youth is cared for away from his/her home twenty four (24) hours a day in a Foster Home, Residential Care Facility or combination thereof.

3. The child's/youth's care and custody or guardianship and custody has been transferred to an authorized agency pursuant to the provisions of SSL §§ 384 or 384-a or the child/youth has been placed with a social services official pursuant to Article 3, 7 or 10 of the Family Court Act.

K. "Foster Home" shall mean a residence owned, leased or otherwise under the control of a single person or family who has been approved or certified by an authorized agency to care for children, and such person or family receives payment from the agency for the care of such children.



1. "Approved Relative Foster Home" shall mean a Foster Home in which the foster parent is a relative within the second or third degree of the parent(s) or stepparent(s) of the child and who is approved to care for specific related children in accordance with 18 NYCRR 443.7 (for expedited approval) and/or with 18 NYCRR 443.3, or any successor or amended regulations, for full approval.

2. "Certified Foster Home" shall mean a Foster Home in which the foster parent is certified to care for the number of children indicated on the certificate in accordance with the requirements of 18 NYCRR 443.7 (for expedited certification) and 18 NYCRR 443.3 or any successor or amended regulations.

L. "Law(s)" shall mean all applicable Federal, State and City laws, regulations, ordinances and rules and any successor and any amendments thereto including but not limited to the New York City Charter, the New York City Administrative Code, a local law of the City of New York, and any ordinance, rule or regulation having the force of law and including any waivers issued by OCFS.

M. "Office of Children and Family Services" or "OCFS" shall mean the New York State Office of Children and Family Services which is responsible for, among other things, regulating and monitoring child welfare services in New York State.

N. "Planned Placement" shall mean the placement of a child/youth with the Contractor following a planning process whereby, at the time of the placement, a placement packet (psychiatric, psychological and psychosocial) has been completed.

O. "Planned Placement Vacancy" shall mean a Contractor vacancy that may be filled by a Planned Placement.

P. "Recipients of Services" shall mean a child, his/her family unit, biological, adoptive or other family unit entrusted with the care of the child, his siblings and significant others related or unrelated to a child/youth who are determined by the Contractor and ACS to be an actual or potential source of support, care or assistance for the Foster Child.

Q. "Regular Placement" shall mean the placement of a child/youth into Foster Care which must be made immediately because of the need to ensure the safety and the welfare of the child/youth.

R. "Regular Placement Vacancy" shall mean a Contractor vacancy that may be filled by a Regular Placement.

S. "Residential Care Facility" shall mean a foster care facility other than a Foster Home. Such facilities include:

1. "Agency Operated Boarding Home" or "AOBH" shall mean a family-type home for the care and maintenance of not more than six (6) children operated by an authorized agency in quarters or premises owned, leased, or otherwise under the control of such authorized

agency except as may be permitted under 18 NYCRR 427.3.

2. "Supervised Independent Living" or "SILP" shall mean special type of AOBH in which up to four (4) youth are allowed to reside on their own in the community, in a living unit separate from the authorized agency's other Residential Care Facilities, under the supervision of an authorized agency. Such facility is intended to serve as a transitional experience for youth whose permanency planning goal is "discharge to independent living."

3. "Group Home" shall mean a licensed family-type home operated and staffed by an authorized agency for the care and maintenance of seven (7) to twelve (12) Foster Children.

4. "Group Residence" shall mean a licensed institution operated and staffed by an authorized agency for the care and maintenance of up to twenty five (25) children.

5. "Institution" shall mean a licensed facility operated and staffed by an authorized agency for the care and maintenance of thirteen (13) or more Foster Children.

T. "State" shall mean the State of New York.

U. "Suspended Payment" shall mean the cessation of payments by the City to the Contractor when a Foster Child placed with the Contractor is not physically present and is not on an allowable absence.

## **Section 1.02 Acronyms**

Whenever the following acronyms are used in this Agreement and the attachments annexed to this Agreement, they shall have the following meanings, unless it is expressly indicated that such acronym is to have a different or additional meaning.

AIDS – Acquired Immune Deficiency Syndrome

APLA – Another Planned Living Arrangement

B2H – Bridges to Health

CCRS – Child Care Review System

CIN – Client Identification Number

CPA – Certified Public Accountant

CSC – Child Safety Conference

DCJS – New York State Division of Criminal Justice Services

FASP – Family Assessment and Service Plan

FBI – Federal Bureau of Investigation

FCLS – Administration for Children's Services Division of Family Court Legal Services

FTC – Family Team Conference

GAAP – Generally Accepted Accounting Principles

HIV – Human Immune-deficiency Disease

IEP – Individualized Education Plans

LTS – Legal Tracking System

NYCRR – New York Codes, Rules and Regulations  
OASAS – New York State Office of Alcoholism and Substance Abuse Services  
PH – Permanency Hearing  
PINS – Person In Need of Supervision  
PYA – Preparing Youth for Adulthood  
SCR – New York State Central Register of Child Abuse and Maltreatment  
SSL – New York State Social Services Law  
SSPS – Statewide Service Payment System  
TPR – Termination of Parental Rights

## **ARTICLE 2. SCOPE OF SERVICES**

### **Section 2.01 General Requirements**

A. The Contractor shall provide comprehensive family foster care services as set forth in this Agreement, the Law, court orders and mandates, ACS Policies, the Fiscal Manual and the following documents which are attached to this Agreement and made a part of this Agreement:

1. Appendix A: General Provisions Governing Contracts For Consultants, Professional, Technical, Human And Client Services;
2. Attachment I: The RFP;
3. Attachment II: The Contractor's Proposal and if applicable any Negotiated Addendum to the Proposal;
4. Attachment III: The Foster Care Quality Assurance Standards;
5. Attachment IV: The Budget and Funded Capacity; and
6. Attachment V: Delegation and Centralization of Case Management Casework Requirements.

B. Attachment III, Attachment IV, and Attachment V may be revised at the sole discretion of ACS allowing for a (30) thirty-day comment period prior to implementation. Attachment II may be modified only upon mutual written agreement of the parties.

C. ACS reserves the right to issue ACS Policies for the purposes of explaining new and existing standards, policies or procedures. Any such ACS Policies shall be submitted to the Contractor for review and discussion at least thirty (30) days prior to final publication and implementation. The Contractor should use this time to submit comments to ACS. Any new ACS Policies shall be applied prospectively. The Contractor shall comply with ACS Policies, the Law, Federal or State Court orders, and stipulations of settlement or decree.

### **Section 2.02 Key Components and Approaches**

A. The Contractor shall ensure that placement and supportive services are in place and available to promote timely reunification between Foster Children and their families, while ensuring safe and stable foster care experiences for Foster Children in settings that are as familial and least restrictive as possible consistent with the needs of the Foster Child. ACS shall share

with the Contractor as soon as possible any current assessment of the Foster Child's needs and any identified safety issues.

B. ACS shall provide the Contractor with all relevant information regarding the needs of the child/youth and family for children/youth referred to the Contractor.

C. The Contractor shall operate according to the following principals and practices in efforts to maximize and improve safety, permanency and well-being for Foster Children:

1. Minimized periods of time spent in foster care and timely permanency through family reunification or adoption according to the strengths and needs of each Foster Child and his/her family.

2. Placement stability that minimizes the occurrence of replacements and relocations including movements from family foster care to residential care, and provides consistency in care throughout the time that Foster Children remain in care.

3. In the event a Foster Child is removed from family foster care to residential care, the Contractor shall make efforts to minimize the length of time spent in residential care, returning the Foster Child to a family setting as soon as possible consistent with the needs and behaviors of the Foster Child as determined at the FTC.

4. Except where otherwise indicated for the safety and well-being of a Foster Child, the Contractor shall make efforts to place Foster Children in a Foster Home that is in the same community in which their birth parents/caretaker resides.

5. Safety from abuse and neglect while in foster care.

6. Implement discharge planning and services to avoid re-entry of a Foster Child into foster care after discharge.

7. Implement services and support for Foster Children to develop to their fullest potential and become healthy, educated, and constructive members of the community with successful transitions to adulthood.

8. Create and foster permanent adult connections for all Foster Children, including older Foster Children, when they leave foster care.

### **Section 2.03 Staff Training and Development**

A. The Contractor shall continually assess the training needs of the Contractor's staff based on the population of Foster Children in the Contractor's care and tailor the training to ensure that its staff receives appropriate training.

B. In addition to the standards and expectations set forth in the *Foster Care Quality Assurance Standards*, the Contractor shall ensure that all Contractor staff except administrative

and support staff shall receive training each year to enhance their understanding of the needs and characteristics of the population in care and their skills to provide emotional support and care, and appropriately manage the behavior of Foster Children. Such training shall include the following:

1. Training on trauma, the impact of abuse/maltreatment on children/youth, and the steps the Contractor's staff can take to mitigate past trauma and prevent additional trauma;
2. Training on the complex social, medical, developmental, nutritional and emotional needs of Foster Children, the effect of those needs on their normal growth and development, and demands and skills required in caring for Foster Children;
3. Education on the importance of initial and ongoing medical and mental health treatment and the importance of keeping scheduled appointments as well as compliance with treatment and on basic pharmacology as needed for Foster Children, including but not limited to the actions, side effects, and possible adverse reactions of medications that such Foster Children may be taking and basic information about administering medication and the dangers that can result from missed or improperly-administered doses of medications;
4. Training on behavior modification and management;
5. Training on youth development and permanency practice; and
6. Training on the Family Court process.

#### **Section 2.04 Recruitment, Training and Certification of Foster and Adoptive Parents**

##### **A. Identification of Prospective Foster Parents and Adoptive Parents**

##### **1. Recruitment**

a. The Contractor shall recruit prospective foster parents and adoptive parents who are able to provide a safe and nurturing environment in accordance with the Law and ACS Policies, and have the capacity and interest to become foster and/or adoptive parents. The Contractor shall establish a sufficient number of Foster Homes consistent with the capacity established in this Agreement to serve children/youth in need of foster care services, placing Foster Children within or as close to their communities as possible. ACS will provide and the Contractor shall base its efforts for the recruitment and retention of foster parents on placement data that indicates the need for homes in particular communities for Foster Children by age group, gender, medical conditions, culture, ethnicity, language, and the demand for homes that can support sibling groups. ACS shall assess the placement data and adjust recruitment targets in a timely manner. The Contractor shall also conduct specialized recruitment in efforts to recruit and identify foster parents who are willing to care for Foster Children with specialized needs.

b. When a child/youth is placed with the Contractor, the Contractor shall make efforts where appropriate to recruit, as foster parents, individuals with whom the Foster Child already has a positive relationship, including relatives and non-relatives.

2. Preparation of Foster and Adoptive Parents: The Contractor shall provide all prospective foster and adoptive parents with an orientation on foster parenting prior to accepting their application or prior to conducting their home study. The Contractor shall ensure that prospective foster and adoptive parent applicants satisfactorily complete training as required by Law and ACS Policies, including the *Foster Care Quality Assurance Standards*, prior to receiving certification as foster parents. For kinship homes identified by ACS, the Contractor shall assess the home in accordance with ACS Policies and the Law.

#### B. Certification or Approval

1. Compliance with Law: The Contractor shall ensure that all Foster Homes, including emergency Foster Homes, are certified or approved in accordance with the Law including 18 NYCRR Part 443 and any successor or amended regulation.

2. Application: The Contractor shall screen all prospective foster and adoptive parents, which must include verification of age, source of income or receipt of Public Assistance, education history, and employment history.

3. Statewide Central Register of Abuse and Maltreatment Clearance: The Contractor shall clear all members of the prospective foster and adoptive parents household with the SCR to determine whether any member of the household including the applicant has been or is currently the subject of an indicated child abuse/maltreatment report. In the event the applicant or any person residing in the home that is eighteen (18) years of age or older has lived for any period of time in another state during the previous five (5) years, the Contractor shall also inquire of each state the individual has resided in within the previous five (5) years whether the individuals have been the subject of an indicated abuse or maltreatment report in that state. ACS shall provide the Contractor with the contact information for clearance requests in all states. The Contractor shall include, as a part of the household, any in-home, out of home or emergency caretakers that provide child care for the prospective foster parents in the foster parent home study. The Contractor shall ensure that all such caretakers are cleared with the SCR to determine whether they have been or are currently the subject of an indicated child abuse/maltreatment report.

4. Fingerprinting and Criminal History Record Check: The Contractor shall conduct criminal history records checks with the DCJS and the FBI for every prospective foster and adoptive parent and each person over the age of eighteen (18) years of age who currently resides in the home of such prospective foster and adoptive parent before the foster and adoptive parent can be approved or certified for the placement of a Foster Child. In furtherance of the criminal history record check, the Contractor shall obtain and/or arrange for the taking of fingerprints and obtain signed 'Consent for the Release of Confidential Information' forms from every applicant and every person eighteen (18) years of age and older, including Foster Children who are over eighteen (18) years of age, who currently reside in the home of such prospective or



existing foster parent in the manner prescribed by OCFS and such other information as is required by the OCFS, DCJS and the FBI. Once collected, the Contractor shall arrange for the submission of fingerprints and signed consent forms to OCFS. In the event there is an indication of a criminal history, the Contractor shall comply with ACS Policies and the provisions set forth in the Law including 18 NYCRR 443.7 when seeking certification or approval for a Foster Home on an emergency basis; or 18 NYCRR 443.8 when seeking certification of a prospective foster parent; or 18 NYCRR 443.9 when seeking concurrent certification or approval of an individual as both a foster and adoptive parent, or any successor or amended regulations to determine whether or not to certify or approve the foster parent application.

5. Home Study: The Contractor shall conduct a Home Study that meets all New York State licensing, certification and/or approval requirements in accordance with ACS Policies and the Law including 18 NYCRR Part 443 or any successor or amended regulation. The Contractor shall ensure that all emergency Foster Homes are certified or approved pursuant to the Law including 18 NYCRR 443.7 or any successor or amended regulation.

6. References: The Contractor shall obtain three (3) references for each prospective foster and adoptive parent. One (1) reference shall be in writing, and two (2) shall be obtained through face-to-face interviews conducted by qualified staff of the Contractor. The Contractor must document each reference in the applicant's foster parent record.

7. Recertification: The Contractor shall ensure that the certification or approval for each Foster Home is renewed on an annual basis, including an update of the home study, in accordance with ACS Policies and the Law including 18 NYCRR 443.10 or any successor or amended regulation. The Contractor shall establish a protocol for immediate replacement of the Foster Child with another foster parent in the event that his/her foster parents not meet the recertification requirements.

8. Concurrent Certification: The Contractor shall ensure that all individuals applying to be both foster and adoptive parents are certified or approved pursuant to the Law including 18 NYCRR 443.9 or any successor or amended regulation.

#### C. Foster Parent Training

1. Training: The Contractor shall ensure that foster parents receive ongoing in-service training that takes into account the needs of the foster parents and the population of Foster Children served. The Contractor shall ensure that foster parents receive a minimum of six (6) hours of such training annually and make efforts to connect foster parents to an additional six (6) hours of training through community based supports and/or ACS provided training.

2. Training for Re-Certification or Re-Approval: The Contractor shall ensure that all foster parents complete all required training contained in the ACS Foster Parent Agreement form in order to be re-certified or re-approved as foster parents.

3. Recordkeeping and Documentation of Foster Parent Training in CONNECTIONS: The Contractor shall document all training that is administered to foster

parents in accordance with ACS Policies including the *Foster Care Quality Assurance Standards*.

## **Section 2.05 Support Services for Foster and Pre-Adoptive Parents**

### **A. Communication between the Contractor and Foster and Pre-Adoptive Parents:**

The Contractor shall maintain and foster ongoing communication with all foster and pre-adoptive parents. The Contractor shall encourage foster parents to communicate to case planners and other appropriate Contractor staff issues regarding key events in their Foster Child's life, including but not limited to birthdays, holidays, first days of school, changes to parent or sibling visitation orders, meetings with school staff, Family Court hearings, service plan reviews and other conferences. The Contractor shall instruct foster parents to contact the Contractor when an event, situation or emergency occurs that falls outside of the foster parents' general responsibilities, the foster parent feels they cannot handle without assistance.

**B. Engagement with Foster Children:** The Contractor shall instruct foster and pre-adoptive parents to both engage their Foster Children in the decision making process regarding their future, and offer them an opportunity for meaningful participation in that process. The Contractor shall involve Foster Children in their own case planning and encourage them to serve as advocates on their own behalf as appropriate to their age/developmental level.

**C. Working with Foster Parents:** The Contractor shall offer support that is aimed at recruiting and retaining foster parents.

1. The Contractor shall hold regular meetings with groups of foster parents to obtain feedback about the quality of the Contractor's available support systems. The Contractor shall work with foster parents and utilize data from such meetings to develop a foster parent support plan, which shall be updated at least once a year.

2. The Contractor shall provide foster parents with emergency on-call support, which shall be available twenty-four (24) hours day, seven (7) days a week and shall include, but not be limited to crisis intervention support.

3. The Contractor shall collaborate with each foster family on the development of an emergency/evacuation plan for their Foster Home.

4. The Contractor shall provide every foster parent with an emergency wallet card with instructions on how to contact their caseworker, their caseworker's supervisor, a Contractor administrator, and the ACS Office of Advocacy by telephone and email.

5. The Contractor shall supply each foster parent with a photo-identification card upon the foster parent's request, and ensure options are available for foster parents to receive their monthly stipends by direct deposit upon request.

6. The Contractor shall develop and implement procedures to address foster parents' concerns. The Contractor shall work with foster parents to create and sustain a network



of foster parent support groups. The Contractor shall also implement and options to dispense information discussed during support group meetings for foster parents that are unable to attend support group meetings.

7. The Contractor shall ensure that foster parents are a part of the decision making process during FTC's and other conferences.

8. The Contractor shall ensure that foster parents have a meaningful role in the development of the Contractor's policies and program planning activities.

9. The Contractor shall educate foster parents on parental mental health and its impact on Foster Children.

## **Section 2.06 Adoption Services**

A. Recruitment: The Contractor shall facilitate where appropriate foster parents to adopt Foster Children in their care. In such situations, when foster parents intend to adopt, the Contractor shall complete an adoption home study and have approved adoptive parents sign an adoption placement agreement once the child/youth is freed for adoption. For Foster Children who are freed for adoption and are not placed in a home that will adopt, the Contractor shall make diligent efforts to recruit and identify adoptive homes.

B. Home Study: The Contractor shall conduct or arrange for a home study of all prospective adoptive parents pursuant to the Law including 18 NYCRR Part 421 or any successor or amended regulation. The Contractor shall educate prospective adoptive parents about the types of trauma that can be caused by abuse and maltreatment in addition to the behaviors that can result from such trauma.

C. Filing for Adoption in Family Court: For each adoption, the Contractor shall require and take steps necessary for the prospective adoptive parents to file an adoption petition in the Family Court as soon as practicable from the date of notice that the Foster Child has been legally freed for adoption, except when the Foster Child was freed for adoption through an extra-judicial surrender, in which case the petition may not be filed until at least forty-five (45) days after the surrender was executed; or the Foster Child was freed for adoption through an order of a court committing custody and guardianship of the Foster Child to the Commissioner and to the authorized foster care provider pursuant to the provisions of SSL § 384-b in which case, the petition may not be filed until at least thirty (30) days after service of the order of commitment on the birth parent(s)/caretaker(s).

D. Comprehensive Adoption Report: The Contractor shall maintain and update comprehensive adoption reports, including objective and comprehensive information on the Foster Child, the adoptive family, and the birth parents/caretakers, to facilitate expeditious adoptions and assist family court judges and/or surrogates when determining whether adoption is in the best interest of a Foster Child.

## **Section 2.07 Referral, Intake and Placement**

A. Placement: A child/youth is deemed to have been placed with the Contractor on the day on which the child/youth enters the Contractor's care pursuant to a referral to the Contractor by ACS.

### **B. Referral and Intake**

1. ACS, pursuant to the Commissioner's responsibility and authority under Article 6 of the SSL and the City Administrative Code, shall, in its sole discretion, refer children/youth in need of service, for placement with the Contractor. Both parties agree to comply with all Laws prohibiting discrimination in placement on the basis of any factors including, but not limited to race, religion, color, national origin, disability, age, sexual orientation and gender identity, and each child/youth will have access to quality services. The parties shall, where practicable, recognize the statutorily permissible desire for in-religion placement, in accordance with SSL §373 and in a manner consistent with the principles of equal protection and non-discrimination as defined in other applicable Law. Pursuant to 18 NYCRR 441.11, the parties shall preserve and protect the religious faith of the child/youth.

2. Notwithstanding any provision to the contrary contained in this Agreement, ACS shall have complete and final authority over all placement decisions and referrals for placement.

3. If a parent physically appears at the Contractor's offices seeking voluntary placement of a child/youth, the Contractor shall, in compliance with all Laws and ACS Policies, refer that child/youth to the appropriate ACS office. Thereafter, ACS shall determine whether the child/youth needs placement and, if necessary, ACS shall place the child/youth.

4. The Contractor may recommend that a child/youth referred to ACS for placement is placed in its care.

5. In accordance with this Agreement including Section 2.01 of Part II of this Agreement entitled "General Requirements," the Contractor shall make best efforts to find a foster family able and willing to provide care for children/youth referred by ACS who meet the criteria for family level of placement.

### **C. Capacity and Vacancy Reporting and Wait List**

1. The Contractor shall report its capacity, Regular Placement Vacancies, and Planned Placement Vacancies to ACS as follows:

a. Capacity. The Contractor shall accurately report its capacity on a monthly basis or more frequently as requested by ACS.

b. Regular Placement Vacancy Reporting. The Contractor shall report to ACS its Regular Placement Vacancies on a daily basis by 10:00 AM or as soon as possible

thereafter.

c. Planned Placement Vacancy Reporting. The Contractor shall report to ACS its Planned Placement Vacancies every Monday and Thursday by 12:00 pm (noon) or as soon as possible thereafter via the Vacancy Control database.

d. Back-up Staff: The Contractor shall designate one person and an additional back-up staff person from its intake section as a liaison who will report vacancies to ACS.

2. The Contractor's failure to report vacancies in accordance with this Agreement, including ACS Policies, shall trigger an immediate review of the Contractor's vacancy reporting process and may result in the suspension of the Contractor's intake.

3. Waitlist: For Planned Placements, the Contractor may place children/youth referred to it on a waitlist in the event the Contractor does not have a vacancy. Notwithstanding the Contractor's ability to place a referred child/youth on the Contractor's waitlist, ACS may in its sole discretion place the child/youth with another foster care provider.

## **Section 2.08 Permanency Planning**

### **A. Service Plan Design and Delivery**

1. Upon the placement of a Foster Child with the Contractor in accordance with this Agreement, the Contractor shall provide case planning, permanency and supportive services in accordance with all Laws and ACS Policies.

2. Notwithstanding Section 2.08 (A)(1), above, case planning responsibility for Foster Children who are being transferred to a residential care provider from the Contractor's family foster program shall be transferred to the residential care provider or retained by the Contractor in accordance with ACS Policies.

3. For cases in which the Contractor does not have case planning responsibility for a Foster Child in its care, the Contractor shall be responsible for cooperating with the case planning foster care provider to ensure well-coordinated services. Such cooperation shall include:

- a. Coordination of visitation between the Foster Children and their birth parents/caretakers;
- b. Coordination of visitation between siblings;
- c. Completing relevant portions of the FASP; and
- d. When necessary, attendance at FTCs.

4. The Contractor shall prepare foster parents with knowledge about the needs of a child/youth before placing the child/youth in such foster parent's home. After placement of a Foster Child, the Contractor shall continue to provide foster parents with appropriate educational and information services, as needed, specific to the Foster Child placed a foster parent's home. The Contractor shall adhere to the provisions of the Law including 18 NYCRR 443.2 or any successor or amended regulation regarding authorized agency operating requirements.

B. Case Opening Criteria and Procedures

1. Intake and Admissions

a. The Contractor and the Contractor's staff shall be available twenty-four (24) hours a day, seven (7) days a week, to receive intake referrals from ACS.

b. The Contractor shall implement and document policies and procedures that define the intake and placement process for Foster Children entering the Contractor's care, and that clearly delineates the types and intensity of services provided to meet the needs of the Foster Children. The Contractor's intake and placement process must comply with this Agreement and ACS Policies.

c. ACS shall assign a CIN to each Foster Child, document eligibility requirements and placement/payment information in CNNX and document other required systems to support payment to the Contractor within three (3) business days of the Foster Child's placement.

d. The Contractor shall verify with ACS that a case record is opened immediately upon the admission of each Foster Child entering the Contractor's care. The Contractor shall maintain a Uniform Case Record in accordance with the Law. The Contractor shall have specified procedures for obtaining admission information on Foster Child, including receiving information from ACS and integrating it into Foster Child's immediate service plan.

2. The First Two (2) Business Days after Placement

a. Foster Home Visit: The Contractor's staff shall visit each Foster Home, including the homes of kinship foster parents, within two (2) business days after a Foster Child has been placed in such Foster Home, during which time the Contractor shall perform a safety and risk assessment of the Foster Home as well as a permanency assessment. All visits and contacts to a Foster Home shall be conducted in accordance with the Law and ACS Policies.

b. Initial Contact with Birth Parents/Caretakers: The Contractor shall initiate contact with birth parents/caretakers within the first two (2) business days of such Foster Child's placement in a Foster Home in efforts to engage the birth parents/caretakers in the permanency planning process.

### 3. Visitation and Establishment of Visitation Plan

a. Responsibility for Visits: In accordance with ACS Policies, the Contractor shall arrange and facilitate visits and other forms of contact between Foster Children, their birth parents/caretakers, and among separated siblings. When appropriate, the Contractor may facilitate visits between Foster Children and other significant adults in their life.

b. Sibling Contact: The Contractor shall ensure that all siblings and half siblings be placed together whenever possible, unless such placement would be a risk to a Foster Child's health and safety. When placement together is not possible or appropriate, the Contractor shall arrange frequent opportunities for sibling visits, communication by telephone, letters, and or other forms of regular and meaningful contact.

c. Scheduling: When making visitation arrangements, the Contractor shall take into consideration the schedules and transportation options of all those involved, including birth parents/caretakers, Foster Children, and foster parents. The Contractor shall ensure that Foster Children are actively involved in their own visitation planning and scheduling process. The Contractor shall facilitate evening and weekend hours for supervised visits to take place. The Contractor may comply with this requirement by collaborating with community-based partners who offer space during evening and/or weekend hours. When making visitation arrangements, the Contractor shall take into consideration travel distance, cost and safety issues, including situations involving domestic violence where visits must be monitored carefully so as not to compromise the safety of the Foster Children and their birth parent(s)/caretaker(s), as well as cultural, religious and language issues.

d. Onset of Visiting: In accordance with ACS Policies, the Contractor shall ensure that each Foster Child has an initial visit with their birth parents/caretakers within two (2) business days of removal or a new placement.

e. Activities and Location: When the goal is reunification, Foster Child - birth parent/caretaker visits shall serve as preparation for reunification, allowing birth parents/caretakers to resume as much parental responsibility as possible while maintaining the safety of the Foster Child. When making visitation arrangements, the Contractor shall accommodate Foster Children and their birth parents'/caretakers' schedules. The Contractor shall make efforts to provide a private comfortable space equipped with age-appropriate toys and materials when visits take place at the Contractor's site.

f. Supervision: The Contractor shall comply with ACS Policies regarding visitation between Foster Children and birth parents/caretakers including the *Best Practice Guidelines for Family Visiting Arrangements for Children in Foster Care, August 28, 2006* or any successor or amended guideline. Visitation shall be unsupervised unless the Contractor can justify and/or document reasons that supervision should be supervised. ACS and the Contractor acknowledge that these decisions are sometimes made by the Family Court.



g. Visitation and the Visiting Plan

i. Visitation between a Foster Child and his/her birth parents/caretakers shall not be suspended or limited in a punitive manner solely due to the birth parents'/caretakers' lack of compliance with the outlined services developed by the Contractor, unless such noncompliance is directly related to the birth parents'/caretakers' ability to keep their child/youth safe. Additionally, the Contractor shall not prohibit visitation as a form of discipline or punishment for the Foster Child.

ii. When reunification is the permanency goal, and unless the Contractor can justify and/or document reasons to the contrary, visitation frequency and length shall increase over time, with the level of any supervision deemed necessary decreasing over time as consistent with the well-being and safety of the Foster Child. The Contractor shall ensure that a Foster Child with a goal of reunification have visitation with his/her birth/caretaker family at least once a week, except for infants, which shall have visitation with their birth/caretaker family at least twice a week. Whenever reunification is the permanency goal for a Foster Child, that Foster Child's visitation plan shall evolve from one (1) visit to two (2) visits per week to more frequent visits of greater length, to overnight and weekend visits, leading to trial and then final discharge.

iii. The Contractor shall evaluate each Foster Child's visitation plan at least on a quarterly basis. During supervised visits, the Contractor shall observe and assess birth parent/caretaker-Foster Child interactions to understand the birth parents'/caretakers' progress in modifying their own behavior so that birth parents/caretakers can eventually care for the Foster Child safely. For unsupervised visits, the Contractor shall discuss how the visit went with the birth parents/caretakers and Foster Child separately, and with any other adult who was a part of the visit in efforts to understand and assess birth parents'/caretakers' capacity to care safely for the Foster Child. If a Foster Child's visitation plan has not progressed between quarterly reviews, the Contractor shall document the reasons the visitation plan has not progressed clearly in the case record. At a minimum, the Contractor shall review each Foster Child's visitation plan and level of supervision at all FTC's, service plan reviews, dispositional and permanency hearings, and at any other court dates. The Contractor and ACS acknowledge that court orders pertaining to visitation can only be modified in court.

iv. When considering a change in visiting plan, the Contractor shall have a caseworker present at all or part of a visit to assess case circumstances and progress, in order to ensure that the proposed change in the visitation plan is appropriate. Except as indicated below, Foster Children shall not be trial or final discharged from foster care without first having experienced successful overnight and weekend visits with the birth parent/caretaker over a period of time. The only exception is for cases where there is a court order for an immediate discharge for a Foster Child, where the Contractor shall comply with the provisions of the court order regardless of whether or not there have been prior overnight and/or weekend visits. At the same time, the Contractor shall remain fully involved in assessing and acting as needed to keep the Foster Child safe unless a court order for an immediate discharge/case closure precludes such ongoing involvement. The Contractor may contact FCLS and recommend

appealing court ordered discharges with which the Contractor disagrees due to safety or risk concerns.

v. Visits with Birth Parents/Caretakers Who are Incarcerated:

The Contractor acknowledges that birth parents/caretakers who are incarcerated retain their parental rights to visits until their rights are terminated or a court has suspended visitation. Upon birth parent/caretaker incarceration, the Contractor shall establish a new visitation plan. When the permanency goal is reunification, the Contractor shall arrange for visits at least once a month between Foster Children and their birth parents/caretakers who are incarcerated within fifty (50) miles of the Foster Child's placement. If a Foster Child's birth parent/caretaker is incarcerated further than fifty (50) miles from the Foster Child's placement, visitation shall be carried out in accordance with the established visiting plan. When the whereabouts of a birth parent/caretaker are unknown, the Contractor in accordance with ACS Policies shall inquire as to whether the birth parent/caretaker may have been arrested and is incarcerated.

h. Visiting Initiatives: The Contractor shall work with the Community Partnership in the community, if any, to locate visitation hosts for Foster Children and their families and additional community venues where visitations can be hosted.

C. Engagement and Assessment: Engagement and assessment are core responsibilities of the Contractor. The Contractor shall engage Foster Children, birth parents/caretakers, discharge resources, and foster parents on a regular basis throughout the permanency planning process. The Contractor shall document the Contractor's engagement and assessment efforts in each Foster Child's case record. The Contractor shall use engagement and assessment information obtained on behalf of each Foster Child to inform and enhance case planning, service delivery and service coordination for each Foster Child. Such information shall be applied and incorporated in appropriate situations, settings, meetings and appointments, including but not limited to FTCs. In addition to the assessment requirements set forth below, the Contractor shall initiate conversations with appropriate individuals, including Contractor's staff, service providers, family members and foster parents, about the needs of each Foster Child. Furthermore, the Contractor shall assist Foster Children ten (10) and older to articulate their own needs.

1. Birth Parent/Caretaker Engagement

a. Placement Transition Meeting: In accordance with ACS Policies, the Contractor shall schedule and facilitate an initial meeting with the birth parents/caretakers ("Placement Transition Meeting") within two (2) business days of each Foster Child's placement for the purpose of educating birthparents/caretakers about their child's placement and educating them about family foster care (*see also* Section 2.08(B)(3)(d) of this Part II entitled "Onset of Visiting"). The Contractor shall assign a staff member to each Foster Child's birth parent/caretaker for the initial meeting.

b. The Contractor shall ensure that birth parents/caretakers are part of the Foster Child's programming while in family foster care with birth parents/caretakers being engaged throughout the Foster Child's planning process.

c. The Contractor shall ensure that birth parents/caretakers are engaged, appraised and involved with every aspect of the Foster Child's life, including but not limited to decisions regarding the service plan, education, medical issues, development and overall wellbeing. When possible, the Contractor shall take measures to facilitate the attendance of birth parents/caretakers at occurrences such as school conferences and medical appointments, and shall update birth parents/caretakers on the outcome of such events when they are unable to attend.

2. Safety and Risk Assessments: The Contractor shall conduct regular safety and risk assessments for each Foster Child and any other children living in a Foster Home. The initial safety and risk assessment shall occur during the initial visit made within two (2) business days of placing a Foster Child in a Foster Home. The Contractor shall also conduct safety and risk assessments with regard to the factors that led to each Foster Child's placement into foster care. The Contractor shall conduct all safety and risk assessments in accordance with the Law, ACS Policies, and OCFS guidelines.

3. Permanency Assessments: During the initial visit to a Foster Home, which is required to be conducted within two (2) business days of a Foster Child's placement, the Contractor shall begin assessing each Foster Child's permanency options, with such assessments continuing throughout the duration of each Foster Child's placement. The Contractor shall assess the permanency needs of each Foster Child, develop a permanency plan, and work to reach established permanency goals as soon as possible. The Contractor shall conduct all permanency assessments in compliance with the Law, ACS Policies and OCFS guidelines.

4. Initial Assessment/Evaluation: The Contractor shall complete an initial comprehensive assessment/evaluation for each Foster Child within thirty (30) days of placement. The initial comprehensive assessment/evaluation shall incorporate the input of clinical and social work experts and practitioners as appropriate to the needs of each Foster Child, including but not limited to a pediatric/adolescent medicine specialist, a developmental specialist, psychiatrist, psychologist, social workers, and educational, recreational, and vocational specialists. The Contractor shall ensure that the comprehensive assessment/evaluation integrates the results of any assessments done prior to the Foster Child's referral to foster care, assessments done since the Foster Child's placement and an assessment for past trauma (including incest and other sexual abuse) and presenting trauma symptoms.

5. Additional Foster Child Assessments: The Contractor shall conduct the following screenings/evaluations/assessments within thirty (30) days of each Foster Child's placement into foster care, in accordance with this Agreement and ACS Policies:

a. Medical health and developmental screenings (Section 2.15(C) of this Part II entitled "Health Services");

b. Mental health screenings, including chemical dependency/use screening for Foster Children age ten (10) years and older (Section 2.15(B) of this Part II entitled "Mental Health Services");



- c. Domestic Violence Screening; and
- d. Educational assessment.

D. Services Related to Abuse and Neglect

1. The Contractor shall ensure that Contractor's staff are trained in and carry out their responsibilities to report alleged child abuse or maltreatment in accordance with the Law.
2. When an allegation of abuse or neglect is accepted by the SCR, the Contractor shall cooperate in any steps deemed necessary by ACS to ensure the safety of the Foster Child, the Foster Child's siblings, or other children/youth in care. Where necessary, ACS shall, in cooperation with the Contractor, establish a plan for responding to the alleged abuse or neglect, and the Contractor shall carry out such plan.

**Section 2.09 Family Team Conference Model and Child Safety Conferences**

A. Family Team Conference Model: The Contractor shall utilize the FTC model as a fundamental approach to case planning. The FTC model is designed to engage families and community members in critical child welfare decisions related to safety, risk, well-being, and service planning. Decisions are made jointly and service plans are developed by the family, the social supports, community supports and service providers. The FTC model shall serve as the main tool for encouraging and supporting decision making for each case as well as a central mechanism for organizing and facilitating the Contractor's work with Foster Children and families, while focusing on safety and permanency. The Contractor shall partner with ACS in the FTC model. The Contractor's foster care program shall incorporate the principles and guidelines of the FTC model and ensure that FTCs promote practices that reflect ACS' core principles, thus enhancing children's safety and well-being. The Contractor shall conduct and/or participate in all FTC in accordance with ACS Policies, including the *Foster Care Quality and Assurance Standards*.

B. The Contractor shall conduct and/or participate in conferences as required by and in accordance with ACS Policies.

C. Other Types of Required Conferences

1. Parent to Parent Meetings: In accordance with ACS Policies, the Contractor shall facilitate a parent-to-parent meeting between the birth parents/caretakers and foster parents to occur immediately following the Placement Transition Meeting.

2. Initial Child Safety Conferences: Initial CSCs are held through the ACS Division of Child Protection for the purpose of making placement decisions, and are generally held after an emergency removal, because ACS Child Protective Services is considering a removal, or when some other legal intervention is deemed necessary to keep a Foster Child safe. All of the people who have an impact and/or can contribute to the safety of a Foster Child are gathered to meet and determine the most appropriate intervention for a Foster Child who is determined to be at risk and/or in imminent danger. When the Contractor already has a previous

relationship with a family involved in an initial CSC, the Contractor shall provide all information pertaining to the history of the family as it relates to ACS and the Contractor, making such information accessible for the initial CSC.

3. Follow-up Child Safety Conference: The follow-up CSC is a collaborative process through which families, their support system, various ACS staff, caseworkers, foster parents, service providers and other involved community partners meet to review the initial safety plan that developed at the initial CSC, the appropriateness of the Foster Child's placement, and to define a more comprehensive service plan for the family and permanency plan for the Foster Child. The Contractor shall attend all follow-up CSCs, notify foster parents about any scheduled follow-up CSC's, and educate foster parents about their role in the CSC. The Contractor shall be available to meet with ACS staff prior to follow-CSCs for purposes of preparation.

## **Section 2.10 Program Services**

### **A. Coordination and Delivery of Services**

1. Service Planning: The Contractor shall implement or arrange for the six (6) permissible permanency plans pursuant to the Law, which in order of consideration are:

- a. Returning the Foster Child to their birth parent/caretaker;
- b. Placement for adoption with the filing of a petition to terminate parental rights;
- c. Referral for legal guardianship;
- d. Permanent placement with a fit and willing relative;
- e. APLA - which can only be selected in the event there is a

compelling reason why none of the other possible permanency plans is in the Foster Child's best interests; or

- f. Adult Residential Care.

2. Service Plan Reviews: The Contractor shall conduct service plan reviews for each Foster Child in accordance with the Law including 18 NYCRR 428.9 and 18 NYCRR 430.12, or any successor or amended regulation.

3. Family Assessment and Service Plan: The Contractor shall create and maintain written service plans for each Foster Child, which shall be documented in the CNX system. The Contractor shall create service plans in conjunction with birth parents/caretakers, Foster Children, foster parents and others in accordance with the Law including 18 NYCRR Part 428 or any successor or amended regulation. The Contractor shall design service plans utilizing the FTC model, and shall specify the steps to be taken by each participant of the FTC, timeframes for accomplishment of goals, and concrete actions to monitor the progress of each Foster Child and their birth/caretaker families.

4. Permanency Planning: The Contractor shall work with appropriate individuals in each Foster Child's life to develop a plan to successfully discharge the Foster

Child with the preferred goal being reunification. The Contractor shall conduct all such permanency planning efforts in accordance with the provisions of the Law. For Foster Children that have not been reunified after fifteen (15) months in foster care, the Contractor shall commence a TPR proceeding, unless there is a compelling reason that indicates filing a TPR proceeding is not in the Foster Child's best interests.

5. Concurrent Planning: Unless determined to be inappropriate in a particular case, the Contractor shall engage in concurrent planning upon intake of each Foster Child for adoption or another custodial arrangement in addition to facilitating the formal service goal of reunification. The Contractor shall carry out such efforts to expedite alternate permanency goals in the event that reunification with birth parents/caretakers is ultimately determined not to be the appropriate plan and the circumstances result in the termination of the birth parent's/caretaker's parental rights.

6. Planning for Teens: The Contractor shall ensure that older Foster Children are given the opportunity and encouraged to be active participants in their own permanency plans. The goal of APLA shall only be used when there is a compelling reason why none of the other permanency plans are in the Foster Child's best interest and shall be used with a concurrent family-based plan. Furthermore, the goal of APLA can only be assigned after an FTC. The Contractor acknowledges that there is no age limit for adoption, which shall remain a viable option for adolescents and young adults. The Contractor shall inform all youth that are eighteen (18) years old and older that they can consent to their own adoption without a TPR. The Contractor shall provide support to and explore reasons and concerns offered by adolescents that are ambivalent about adoption or indicate that they do not wish to be adopted.

#### B. Casework Contacts

1. Foster Children, Birth Parents/Caretakers and Foster Parents: The Contractor shall conduct casework contacts with Foster Children, birth parents/caretakers or relatives, and foster parents in accordance with the Law including 18 NYCRR 441.21, 18 NYCRR 423.4 and 18 NYCRR 443.4 or any successor or amended regulations.

2. Discharge Resource: The Contractor shall use casework contacts as a forum for discussing and reviewing all changes of identified discharge resources with Foster Children and their birth parents/caretakers and foster and adoptive parents, if applicable.

### Section 2.11 Transfer of the Foster Child

A. Transfer within the Contractor's Care: It may be necessary in order to meet the needs of a Foster Child to transfer the case within the Contractor's family foster care program. Transfers within the Contractor's care shall be made in accordance with ACS Policies and this Agreement.

**B. Transfer Out of the Contractor's Care**

1. It may be necessary in order to meet the needs of a Foster Child to transfer the case to another foster care provider. Transfers to another foster care provider shall be done in accordance with ACS Policies and this Agreement.

2. When a Foster Child is transferred to another foster care provider, the Contractor shall ensure that the Foster Child's health care is up to date, and that health records, including the Foster Child's medical passport, are fully updated, and that such information is shared with the foster care provider to whom the Foster Child has been transferred. The Contractor shall provide a discharge health summary and updated medical passport to the new foster care provider within fifteen (15) days of the transfer.

3. In the case of a planned transfer of a Foster Child to another foster care provider, the Contractor shall enable the Foster Child to participate in the plan to the extent that the Foster Child is of an age and capacity to engage in the planning process, including a discussion with the Foster Child about the reason for transfer, exploration of Foster Child's feeling about the move and as discussed in the FTC a visit by the Foster Child to the new Residential Care Facility or Foster Home prior to transfer.

4. Case planning responsibility for Foster Children who are transferred to residential care shall transfer to the residential care provider or be retained by the Contractor in accordance with ACS Policies.

5. If the Contractor maintains case planning of a Foster Child transferred out of the Contractor's care, the Contractor shall be responsible for performing all adoption, legal and recruitment activity in a timely fashion. The Contractor shall be responsible for completing the FASP, if the FASP is due, within forty five (45) days of transfer.

**Section 2.12 Removal from a Foster Home**

A. In accordance with ACS Policies, an FTC must be held prior to the removal of a Foster Child from a Foster Home, except where the health or safety of the Foster Child requires that the Foster Child be removed immediately from the Foster Home. If a decision is made at the FTC to proceed with the removal, the Contractor shall comply with all ACS Policies regarding such recommendation.

B. In the event the Foster Child must be removed immediately from the Foster Home due to health or safety issues, the Contractor shall conduct an FTC in accordance with ACS Policies.

## **Section 2.13 Case Closing Criteria and Procedures**

### **A. Discharge from Foster Care**

1. In accordance with ACS Policies, an FTC must be held before the Contractor can discharge a Foster Child from foster care. Before a Foster Child can be reunified with their birth/caretaker family, the Contractor shall first determine whether the birth parent(s)/caretaker(s) will be able to provide a safe and nurturing home for the Foster Child. The Contractor shall link birth families/caretakers with community-based services, such as after school programs, child care, support groups, and in-home supports.

#### **2. Trial Discharge**

a. i. During the trial discharge period, the Contractor shall monitor the home to assess the birth/caretaker family's interactions with the Foster Child; continue conversations with key service providers regarding the ongoing ability of the birth parents/caretakers to care safely for their child; and shall be responsible for returning the child/youth back into foster care if the child/youth cannot safely remain with his/her birth parents/caretakers. The Contractor shall provide continued casework contacts and home monitoring during trial discharge in accordance with ACS Policies. The Contractor shall provide a minimum of one (1) face-to-face casework contact and one (1) home monitoring visit per month during this period. The Contractor shall provide additional casework contacts as necessary in the event that more than one Foster Child is returning home; one or more Foster Children has special needs; one or more Foster Children is under the age of six (6) years old; one (1) or more Foster Children had previously been returned home and then re-entered foster care after a prior trial or final discharge; or birth parent(s)/caretaker(s) need advocacy and assistance in securing community-based services for themselves and/or their children.

ii. For trial discharges where Foster Children are reunified with a birth parent/caretaker or relative in cases where the Family Court has made a finding of abuse/maltreatment, the Contractor must ensure that an enhanced level of casework contact and/or monitoring is scheduled during the trial discharge period for a minimum of six (6) months. Enhanced monitoring shall include conferences with school or day care personnel, with medical providers, with other service providers, and family members and supporters.

b. In the event a Foster Child that has been reunified with his/her birth/caretaker family can no longer remain safely in the home, the Contractor shall make efforts to place the Foster Child with the foster parent that cared for the Foster Child prior to discharge when possible and appropriate.

### **B. Discharge to Adoption**

1. Once a decision has been made to change a Foster Child's goal to adoption, the Contractor shall facilitate a conference with the Foster Child's foster parent concerning their desire to adopt the Foster Child. In the event the foster parent does not wish to



adopt, or if the Foster Child is not in a Foster Home setting, prior to freeing the Foster Child, the Contractor shall provide or arrange for recruiting efforts in accordance with ACS Policies.

2. When a Foster Child is to be discharged to adoption, the Contractor shall facilitate the transition process of the Foster Child into the adoptive family's home with efforts that shall include visits to the home, and regular monitoring of the placement. Prior to discharging a Foster Child, the Contractor shall ensure that both the Foster Child and adoptive family have the support they need to remain together as an intact family, including physical and mental health services, support groups, chemical dependency/use education and prevention, educational advocacy and assistance and other services. When appropriate, the Contractor shall also help families to engage with community-based programs.

C. Discharge to Another Planned Living Arrangement: When planning the discharge of a Foster Child to APLA, the Contractor shall provide the following:

1. The Foster Child has been connected to a caring adult who has made a commitment to the Foster Child emotional well-being beyond the age of twenty-one (21), including a demonstrated willingness to provide a place to live;
2. The Foster Child has safe and stable housing;
3. The Foster Child is in possession of needed government documents such as birth certificates or and social security cards and any immigration issues have been resolved to the extent possible;
4. The Foster Child is in possession of any other necessary documents as required;
5. The Foster Child is enrolled in an educational or vocational program, and/or is employed or has another stable source of income;
6. The Foster Child is referred to community-based medical care, mental health care, chemical dependency/use treatment, aftercare, and other clinical services as needed;
7. The Foster Child has medical benefits coverage, and all paperwork for transitioning to community Medicaid has been submitted; and
8. The Contractor shall provide guidance to young people who will require clinical supports through the application process for supportive housing or other services available through adult social service, health, and mental health systems.

D. Discharge to Adult Residential Care: When discharging a Foster Child to adult residential care, the Contractor shall facilitate the Foster Child's enrollment in Medicaid, Social Security, and other government assistance programs as early as possible and as soon as is appropriate. The Contractor shall:

1. Commence planning for discharge to adult residential care at or before the Foster Child's sixteenth (16<sup>th</sup>) birthday or as soon as practicable for a Foster Child who enters Foster Care at sixteen (16) years of age or older;

2. Refer the Foster Child to a facility and/or program that will be able to begin serving him/her upon discharge; and

3. Make best efforts to connect the Foster Child to a caring adult who is willing to make a commitment to the youth's future well-being beyond the age of twenty-one (21), despite the fact that the youth will not be living in the adult's home.

E. Unplanned Discharges: The Contractor shall document all unplanned discharges, including Foster Children missing from foster care, parental removal of voluntarily placed Foster Children, and court ordered discharges that are effective immediately. In the event of an unplanned discharge, the Contractor shall act to the full extent of its authority to ensure safety of the Foster Child through continued oversight, assessment, prudent decision-making and service planning until the final discharge. Documentation requirements include:

1. Assessment of circumstances under which Foster Child was discharged;

2. Assessment of Foster Child's current situation and identification of required services to prevent replacement; and

3. Diligent efforts to locate a Foster Child that is missing from foster care in accordance with ACS Policies.

## **Section 2.14 Discharge Planning, Aftercare and Final Discharge**

A. Establishing Necessary Aftercare Services: As part of the discharge plan, the Contractor shall ensure that children and their families are connected to services and supports needed to maintain safety and stability and to continue progress made during the foster care placement. The Contractor shall develop and maintain linkage agreements with community based service providers in order to assist families and facilitate a smooth transition for Foster Children that are returning to their community of origin upon discharge. Among the services that should be considered are the OCFS Aftercare Service Programs.

### **B. Health Care Related Discharge Planning**

1. The Contractor shall ensure that all Foster Children's health care is up-to-date and all referrals are followed up prior to discharge, including filing all paperwork for transitioning into community Medicaid. The Contractor shall ensure that health services are available to all Foster Children discharged from placement and help Foster Children obtain medical coverage by assisting with the Medicaid application process or linking Foster Children to low-premium health insurance options. The Contractor shall ensure that health records are up-to-date and all records are transferred to the discharge resource person and the post-discharge health services provider, as appropriate.

2. The Contractor shall work with the discharge resource person and/or the Foster Child, as age appropriate, to identify and establish a linkage with the Foster Child's post-discharge primary care provider and mental health provider, if applicable.

C. Bridges to Health Waiver Program: For Foster Children that are enrolled in B2H while in care and will continue to receive these services upon discharge, the Contractor shall ensure that the B2H Health Care Integration Provider is familiar with each Foster Child's discharge plan and working with the discharge resource to ensure an uninterrupted continuation of services. The Contractor shall actively participate in any B2H team meetings related to discharge planning.

D. Final Discharge: The Contractor may not final discharge a Foster Child without Family Court approval.

E. Post-Discharge: The Contractor shall provide post-discharge supervision in accordance with the Law and ACS Policies. The Contractor shall provide post-discharge services for a minimum of three (3) months and a maximum of six (6) months for Foster Children discharged from foster care with extensions provided when necessary and/or appropriate, including youth between the ages of eighteen (18) and (21) that are discharged to APLA.

## **Section 2.15 Services for Foster Children**

### **A. Educational Services**

1. Education Plan: The Contractor shall provide for or work in collaboration with an educational provider for the provision of an educational plan for each Foster Child that is based on an assessment of each Foster Child's educational level and complies with the Law, this Agreement and ACS Policies. The Contractor shall work with foster parents, birth/caretaker family members and school personnel to develop and monitor plans for each Foster Child's educational achievement.

2. Educational Liaison: The Contractor shall identify at least one (1) educational liaison with experience in education programming or a related field. The identified staff member(s) shall in conjunction with other Contractor staff as appropriate:

a. Be able to make use of educational data; any educational performance data provided by ACS throughout the year; and educational information obtained by the Contractor's caseworkers in support of best practice and case planning;

b. Work with caseworkers, foster parents and birth parents/caretakers to address any educational concerns; build and maintain collaborative relationships with the schools; provide advocacy on behalf of Foster Children; negotiate with appropriate school staff to ensure the implementation of recommended and appropriate educational services; and monitor the Foster Child's performance and experiences in school;



c. Make contact with each Foster Child's school within a short time of the Foster Child's entering foster care to track areas in need of improvement and develop educational plans; and

d. Give particular focus to helping Foster Children achieve the best possible educational outcome, including school stability, attendance, access to appropriate assessments and services, and academic progression.

3. Special Education Planning: The Contractor shall implement special education planning for a Foster Child when necessary.

a. The Contractor shall obtain copies of the Foster Child's IEP and evaluations conducted by or on behalf of the school, and incorporate the IEP goals into the Foster Child's overall service plan.

b. The Contractor shall advocate with schools for the provision of necessary educational services; obtain legal assistance from education advocacy programs; and make use of technical assistance from ACS and community resources when necessary.

4. Communication with Foster Child's School

a. The Contractor's staff shall meet regularly with school guidance counselors, teachers, and other school staff to determine that each Foster Child is developing at sufficient competency levels in the subjects of reading and mathematics.

b. The Contractor shall ensure that adolescents are receiving appropriate educational services placing them on track to achieve a Regent's high school diploma, except for situations where this standard is deemed unrealistic by an assessment of the particular Foster Child's capacity. In situations when attainment of a Regent's high school diploma is deemed to be unrealistic, the Contractor's staff shall assist the Foster Child and family in the development of an alternative educational plan to maximize the Foster Child's reading and mathematic competency.

c. The Contractor is encouraged to secure and/or provide tutorial services to every Foster Child whose reading or math scores are two (2) or more grades below their age-appropriate levels.

d. The Contractor shall engage each birth parent/caretaker as active participants in the Foster Child's education, and work to facilitate the birth parent/caretaker's involvement with the Foster Child's school.

B. Mental Health Services

1. Screenings: For each Foster Child, the Contractor shall complete age appropriate mental health screenings within thirty (30) days from the date of placement. In

addition to the initial mental health screenings, the Contractor shall conduct annual mental health screenings for each Foster Child. The mental health screening shall include a substance abuse screening in accordance with ACS Policies and Section 2.15(D) of this Part II entitled "Substance Abuse Services."

## 2. Treatment

a. If a Foster Child's psychological and/or psychiatric evaluation indicates a need for further mental health or behavioral health services, the Contractor shall arrange for follow-up treatment.

b. When deemed appropriate by a qualified mental health professional, the Contractor shall ensure that a mental health or behavioral health service treatment plan is developed, a copy of which shall be included in the case record of the Foster Child.

c. The Contractor shall ensure that mental health services are delivered by qualified licensed mental health providers, and that services are documented in the Uniform Case Record maintained by the Contractor.

3. The Contractor shall develop linkages with mental health support service providers, which can serve the Contractor's families, and provide birth parents/caretakers and foster parents with basic information about the Foster Child and his/her mental health. The Contractor shall make best efforts to ensure that birth parents/caretakers and foster parents are meaningfully engaged in the Foster Child's mental health treatment. The Contractor shall develop linkages with New York State Office of Mental Health home and community based services waiver programs for Foster Children with serious emotional disturbances.

## C. Health Services

1. Continuum of Care: The Contractor shall ensure that each Foster Child's medical needs are met, and that Foster Children have access to a full range of specialty, sub-specialty, ancillary, dental and hospital services. The Contractor shall ensure that all medical services are provided directly or through linkage agreements with hospitals and specialty networks, and/or through primary care physicians who are affiliated and/or have admitting privileges with a hospital network. The Contractor shall ensure that both the Contractor's services and those provided through external sources shall be neighborhood-based for the Foster Children receiving medical treatment. The Contractor shall monitor and coordinate all healthcare services.

2. Medical Services: The Contractor shall coordinate all primary and sub-specialty care for Foster Children with providers that:

a. Offer health care services that are delivered or directed by a licensed medical professional;

- b. Can explain diagnoses and treatment modalities;
- c. Are accessible to each Foster Child;
- d. Offer continuity of care from infancy through adolescence and young adulthood; and
- e. Maintain a private and accessible centralized system in which a comprehensive record of the Foster Child's health information is stored and maintained.

3. Initial and Comprehensive Health and Development Screenings

- a. The Contractor shall ensure that each Foster Child receives an immediate health screening upon placement. For each Foster Child, the Contractor shall complete comprehensive health and development screenings within thirty (30) days from the date of placement.
- b. The comprehensive health and developmental screenings shall include an age appropriate vision, hearing and dentals assessment for each Foster Child. The Contractor shall ensure that the comprehensive health and development screening is performed by each Foster Child's identified primary care provider, that the immunization/vaccination status of each Foster Child is reviewed by appropriate healthcare professionals, and that the Foster Child's immunization/vaccination status is up-to-date.
- c. The Contractor shall implement a protocol to ensure that the ACS Medical Triage Packet for each Foster Child entering placement is reviewed by the Contractor's health services staff and incorporated into the Foster Child's medical records. The Contractor and its staff shall follow up and carry out recommendations contained in the ACS Medical Triage Packet.

4. Referral to Bridges to Health Waiver Program: The Contractor shall refer eligible Foster Children who are emotionally disturbed, developmentally disabled or medically fragile to the B2H program.

5. Referral to Specialized Services: When indicated to be appropriate by a medical or mental health assessment of a Foster Child, the Contractor shall facilitate the Foster Child's enrollment/referral to an appropriate community based clinical service provider. In the event the Contractor does not provide the specialized health or mental health services required by a Foster Child, the Contractor shall develop formal referral linkages with organizations that can provide such services. The Contractor shall also link with community-based chemical dependence/abuse programs to address the full range and family chemical dependency/use prevention, counseling, education, treatment and aftercare needs. The Contractor shall ensure that all Foster Children and birth/caretaker family members with chemical dependency/use disorders shall be referred to an OASAS-licensed treatment program.

6. Emergency Medical Services: The Contractor shall arrange for on-call availability of a primary care physician or appropriate coverage for any urgent medical and medical and mental health consultations sought by a caseworker or foster parent regarding a Foster Child on a twenty-four (24) hour a day, seven (7) days a week basis. The Contractor shall implement a protocol to ensure that all emergency care information is shared with foster care staff, social workers, foster parents, and all relevant medical and health care providers in a timely fashion.

7. Medication Management: The Contractor shall implement a medication management plan to serve as a guide for health services providers and a Foster Child's foster parent. The Contractor shall implement policies/procedures and provide adequate training to staff, foster parents, and birth parents/caretakers to assure proper and safe medication administration. The Contractor shall implement a specialized medication management plan for Foster Children requiring medication for chronic conditions, to ensure appropriate monitoring of dosage, dispensing, and duration. The Contractor shall ensure that all medication shall be kept in well-lit, locked storage areas that provide sufficient privacy for uninterrupted handling of medication. The Contractor shall also ensure that individual Foster Homes store any necessary medication in locked cabinets or labeled containers that are out of reach of Foster Children.

8. Consent: In accordance with the Law and ACS Policies including the *Administration for Children's Services Procedure No. 102/Bulletin 99-1 "Guidelines for Providing Medical Consents for Children in Foster Care"* as amended, the Contractor must first seek informed consent for medication provision to Foster Children from the birth parent(s)/caretaker(s), unless the birthparent(s)/caretaker(s) rights have been terminated or surrendered.

9. Psychotropic Medication

a. In addition to the elements of informed consent indicated above, informed consent prior to the administration of psychotropic medications shall include the following information from the prescribing psychiatrist: reasons for prescribing the medication; name and dosage of medication and the date prescribed; previous non-pharmacological interventions, and expected results of the medication and potential side effects. The Contractor shall ensure that psychiatrists prescribing psychotropic medication communicate regularly with any other clinicians providing mental health services to the Foster Child.

b. The Contractor shall ensure that every Foster Child shall be cleared medically with appropriate indicated lab tests performed in the twelve (12) week period preceding the administration of psychotropic medication. Thereafter, the prescribing physician or an equivalent shall observe all Foster Children receiving psychotropic medication at least once a month and document the observations in the case record.

c. The Contractor shall ensure that all Foster Children on psychotropic medication shall be given a physical examination and appropriate indicated lab tests at a minimum of every six (6) months or based on the frequency required by State health standards.

d. The Contractor shall maintain an up-to-date list of all current medications, a current treatment plan, and copies of medication consent forms for each Foster Child receiving such treatment. The Contractor shall ensure that the psychiatrist for a Foster Child receiving psychotropic medication(s) shall assume responsibility for medical aspects of mental health care provided by the Contractor in all phases of intervention. The Contractor shall ensure that all Foster Children prescribed psychotropic medication are required to receive concurrent non-medical mental health treatment, unless indicated by the Foster Child's condition or treatment needs.

D. Substance Abuse Services: The Contractor shall ensure that the mental health screening of each Foster Child includes questions and/or instruments related to the Foster Child's history of use or abuse of alcohol and/or other drugs. Such screenings shall be conducted in accordance with the Law. The Contractor shall ensure that Foster Children's experimenting with substances receive alcohol and other drug education and counseling, which shall be provided either on site or by referral to a community based OASAS licensed program. In the event there has been chemical dependency/use in a Foster Child's birth/caretaker family, the Foster Child shall be referred to a treatment program unless otherwise indicated. The Contractor shall offer services or a referral for services to birth parents/caretakers that require chemical dependence/use treatment.

E. Enrichment/Recreational Activities: The Contractor shall ensure that Foster Children are provided recreational opportunities pursuant to the Law including 18 NYCRR 442.20 or any successor or amended regulation.

F. Financial Literacy and Employment Training: The Contractor shall provide Foster Children with financial literacy and employment training where appropriate and in accordance with the Foster Child's age and development.

G. Legal Services: The Contractor shall submit timely and complete permanency reports to FCLS; attend Family Court proceedings; and comply with all Court orders. The Contractor shall ensure that staff with substantive knowledge of any given case situation appear in court when determined to be necessary by ACS. The Contractor shall provide FCLS attorneys with updated information including Foster Child status, location, assigned caseworker and supervisor. The Contractor shall maintain contact with FCLS attorneys to review any important developments, and communicate with lawyers for Foster Children as necessary, pursuant to ACS Policies. The Contractor and its staff must cooperate with FCLS attorneys during preparation for trial and court appearances. The Contractor shall retain legal counsel for TPRs as well as other situations where representation is needed at no additional costs to ACS.

H. Sexual Health Education and Services: The Contractor shall ensure that all Foster Children aged twelve (12) years old and over, and younger Foster Children who are sexually active, receive comprehensive information about family planning and sexual health issues, and have access to the full range of services including contraception, options counseling, and education and treatment related to sexually transmitted diseases and HIV/AIDS. The Contractor



shall also adhere to ACS Policies regarding comprehensive sexual health information and services for Foster Children.

I. Transportation: The Contractor shall ensure that transportation services are readily available to transport Foster Children to the hospital, medical and mental health appointments and other sub specialty providers as necessary.

J. Preparing Youth for Adulthood (PYA): The Contractor shall prepare each Foster Child that is fourteen (14) years of age and older, regardless of their permanency plan, for adulthood through classes, extra-curricular activities, individual instruction and other methods in accordance with the Law and ACS Policies. The Contractor shall make efforts ensure that Foster Children will: establish permanent connections with adults, always reside in stable living conditions, are afforded opportunities to advance their education and personal development, are encouraged to take increasing responsibility for their work and life decisions, have their individual needs met, and will receive ongoing support after aging out of foster care.

K. Housing Services: On behalf of Foster Children returning to birth parents/caretakers or transitioning to APLA or out of foster care, the Contractor and the Contractor's staff shall provide the following support services:

1. Understanding the community characteristics, resources, and needs, and successfully negotiating services for Foster Children within a neighborhood-based environment;
2. Helping Foster Children find adequate and affordable housing upon discharge from foster care;
3. Ensuring that all Foster Children have an appropriate and stable living arrangement available prior to discharge;
4. Develop relationships with existing housing providers and, whenever possible, develop its own housing resources; and
5. Finding stable housing – stable housing is defined as housing in which there is a reasonable expectation that the residence will remain accessible for the first twelve (12) months after discharge.

L. Family Planning Services: The Contractor shall notify all Foster Children twelve (12) years and older and Foster Children younger than twelve (12) years old who are known to be sexually active of the availability of family planning services within thirty (30) days after placement and every six (6) months thereafter, and provide them with such services upon request. The Contractor shall ensure that such notification is made both in writing and verbally and must be recorded in each Foster Child's medical record and in CNX as part of the Foster Child's health history. The Contractor shall ensure that such notice complies with the Law including 18 NYCRR Part 463.2 or any successor or amended regulation. The notice must inform the Foster Child of the Foster Child's rights to confidential sexual and reproductive health

services and social, educational, health, and medical family planning services and shall not convey religious beliefs regarding family planning.

## **Section 2.16 Support Services for Birth Parents/Caretakers**

A. Various Support Services: The Contractor shall facilitate supportive services for birth parents/caretakers, including but not limited to day care, parent training, support groups, advocacy, legal assistance, housing assistance and/or financial assistance where indicated through active referral and case planning by a caseworker. The Contractor shall provide birth parents/caretakers and other significant family members of the Foster Child with referrals and access to services to meet identified needs related to their medical and mental health, chemical dependency, domestic violence, and educational and/or vocational services in efforts to accomplish FASP goals. The Contractor shall support additional needs and presenting circumstances of birth parents/caretakers and extended family members to achieve successful reunification, including, but are not limited to:

1. Assistance with job training and finding employment;
2. Cultural and linguistic barriers to services;
3. Connections to community supports and services;
4. Immigration status services;
5. Education and information regarding the impact of incarceration on permanency plans;
6. Information regarding legal status pertaining to family court proceedings, including PINS petitions; and
7. Support for responding to children's/youth's sexual orientation and/or gender identity/gender expression.

B. Parenting Skills Education: The Contractor shall provide birth parents/caretakers with parenting skills training that is culturally sensitive and delivered in a manner that is responsive to the needs of the specific parent. The Contractor shall provide individualized parenting skills training in cases where group participation is not appropriate. The Contractor shall provide parenting skills training and psycho-education to birth parents/caretakers to address the issues that led to their child's/youth's placement in foster care, including the implementation and operation of an internal system to provide parent education, and/or identify external resources where the Contractor can refer birth parents/caretakers.

C. Domestic Violence Services: The Contractor shall conduct timely domestic violence assessments for each Foster Child and his/her family in accordance with ACS Policies. The Contractor shall refer all non-abusive birth parents/caretakers to appropriate services when appropriate, including domestic violence programs. When appropriate, the Contractor shall make referrals law enforcement agencies or the courts for legal intervention. The Contractor shall engage birth parent's/caretakers that are survivors of domestic violence in developing a strategy for increasing their safety and preparing in advance for the possibility of future violence. The Contractor shall take into account a family's history of domestic violence when planning or making recommendations about visitation between birth parents/caretakers and Foster Children, to ensure that such arrangements do not endanger the Foster Child or the non-abusive birth

parent/caretaker. The Contractor shall ensure that any Foster Child's visits with an abusive birth parent/caretaker shall be planned with the non-abusive birth parent/caretaker to minimize risk.

D. Alcohol and Substance Abuse Services: The Contractor shall conduct a risk behavior assessment of each birth parent/caretaker, which shall include the history of use, abuse or dependence of alcohol or other drugs. The Contractor shall make substance abuse/chemical dependency services available for any birth parent/caretaker who abuses alcohol or any other dependency inducing substance, either through the Contractor's own OASAS licensed program, if applicable, or by referral to a community-based OASAS licensed treatment provider. Once the Contractor has referred a parent for treatment, the Contractor shall communicate with the treatment provider about the birth parent's/caretaker's compliance and progress in treatment, and shall make necessary efforts to coordinate the delivery of services, aftercare, and discharge planning to ensure Foster Child safety and a supportive transition for reunification or other appropriate permanency goals.

E. Mental Health Services

1. The Contractor shall assess birth parents/caretakers to determine the presence of mental health issues, and provide or arrange for any necessary follow-up assessments, diagnoses, testing, psychotherapy, specialized therapies and interventions when appropriate. The Contractor shall refer birth parents/caretakers that require intensive mental health services to programs that are able to provide comprehensive services, including but not limited to mental health case management programs and assertive community treatment teams. The Contractor shall develop linkages with home and community based clinical service providers, mental health case management programs for adults.

2. The Contractor shall ensure that birth parents/caretakers receive education about parental mental health and its impact on children/youth.

3. The Contractor shall obtain appropriate releases for confidential and protected information, and maintain frequent communication with mental health providers in order to effectively coordinate services to families receiving them.

F. Housing and Housing Subsidy Services: The Contractor shall assess the need for and arrange for individuals and families to improve housing conditions. Services shall include, helping individuals and families obtain necessary home repairs; identifying and arranging for the correction of sub-standard rental housing conditions or code violations; finding suitable and adequate alternative housing; help in obtaining available and needed assistance; and relief from public agencies that regulate housing, including assistance in obtaining legal services when necessary. The Contractor shall refer mentally ill birth parents/caretakers that need supportive housing, as appropriate, to New York-New York III and/or other supportive programs as appropriate in order to reunite with their Foster Children. Whenever the Contractor determines that a lack of adequate housing is the primary factor preventing the discharge of a Foster Child, the Contractor shall determine if the family is otherwise eligible for a housing subsidy, and if so, make a referral to ACS for the provision of a housing subsidy in accordance with the Law.



G. Birth Parents/Caretakers of Foster Children with Serious Health and Mental Health Needs: The Contractor shall make support services available, directly or by referral, to foster parents and birth parents/caretakers that are caring for Foster Children with serious health and mental health needs.

H. Health Education: The Contractor shall provide birth parents/caretakers with health education focused on the specific needs of the Foster Child.

I. Foster Parents as Resources to Birth Parents/Caretakers: When appropriate, the Contractor shall encourage and provide foster parents with the ability to become actively involved with a Foster Child's birth/caretaker family before, during and after placement, with foster parents serving as resources to birth parents/caretakers.

J. Transportation: The Contractor shall provide birth parents/caretakers with transportation to office and family visits.

K. Involvement of Birth Parents/Caretakers in the Provision of Foster Care Services: The Contractor shall encourage involvement of birth parents/caretakers in the provision of services to their child/youth and document the Contractor's efforts to encourage birth parents/caretakers involvement as well as the actual involvement of the birth parents/caretakers in the provision of services to their child/youth. The Contractor shall ensure that the birth parents/caretakers are trained in applicable special needs curriculum and is involved in the case planning for their child/youth.

### **ARTICLE 3. LITIGATION CLAIMS INVOLVING FOSTER CHILDREN**

#### **Section 3.01 Litigation Claims Involving Foster Children**

A. The Contractor shall notify the ACS Office of the General Counsel and ACS shall notify the Contractor of all litigation concerning a Foster Child within a reasonable time of acquiring this information and the Contractor shall forthwith provide ACS with all pertinent papers and documentation in advance of any pending court hearings or litigation. The Contractor shall provide its own legal representation when requested to do so by ACS. The Contractor shall, within three (3) business days, notify ACS in writing of the results of such court hearings or litigation.

B. In cases involving a Foster Child who is the subject of litigation, including writs of habeas corpus, ACS, after consultation with the Contractor, reserves the right to make an independent evaluation of the matter, including, but not limited to review of the Contractor's records and contacts with the Foster Child and/or the birth family/caretakers, foster family and significant others. The decision of ACS shall be binding on the Contractor in accordance with Article 4 of this Part II entitled "Responsibility and Authority of ACS and Resolution of Certain Disputes."

C. In a court proceeding involving a Foster Child, the Contractor may, with the consent of ACS, make such appeals as are provided by Law.

D. The Contractor shall expeditiously pursue appropriate legal action for the appointment of a guardian ad litem to protect the rights of a Foster Child with respect to all monetary benefit claims, including but not limited to tort, contract or inheritance claims. The Contractor, when appropriate, shall arrange for or assist a Foster Child in retaining legal counsel. The Contractor shall forthwith notify ACS of all circumstances necessitating legal representation of the Foster Child in all such instances, including but not limited to matters of a criminal nature or juvenile delinquency.

E. If a Foster Child commits an act in a Foster Home in which he/she is a resident which is a crime, or if committed by an adult would constitute a crime, the Contractor may report such act to the appropriate law enforcement officials. The Contractor shall report such acts in writing to the appropriate ACS personnel prior to taking any affirmative action with respect to such acts or as soon as possible thereafter.

#### **ARTICLE 4. RESPONSIBILITY AND AUTHORITY OF ACS AND RESOLUTION OF CERTAIN DISPUTES**

##### **Section 4.01 Responsibility and Authority of ACS and Procedure for Final Decisions on Issues Related to Services Provided to the Client**

A. It is recognized and agreed by the parties that the Commissioner has the ultimate responsibility for the protection and preservation of the welfare of each child receiving services under this Agreement. It is further recognized and agreed by the parties that the Commissioner has the ultimate authority for making all decisions relative to the welfare of such child and that the management and supervisory staff of ACS carries out such responsibilities on behalf of the Commissioner and in accordance with the authority vested in the Commissioner. It is further recognized and agreed that the Contractor's Board of Directors shall have responsibility and control of its day to day affairs and programs.

B. ACS and the Contractor agree that the fundamental purpose of this Agreement is to provide the best available services, care and treatment to Foster Children who are entrusted to the Contractor's care, and further to ensure that the health, welfare and fundamental rights of the Foster Children shall be the guiding principle for all decisions which affect their lives. The Contractor agrees to take such steps as may be necessary to ensure that the services, care, treatment and support, that Recipients of Services require, are provided.

C. Resolution of Disputes Between ACS and the Contractor: The parties agree to comply with the protocols and procedures set forth in this Section 4.01(C) in the event of a dispute between the Contractor's staff and ACS's staff relating to case planning, case practice and service planning, and positions to be taken at any court or administrative hearing. ACS and the Contractor acknowledge the need to address disputes governed by this Section expeditiously, and agree to cooperate with each other in such situations and/or inquiries to the fullest extent possible. Failure of the Contractor to report any dispute or submit an appeal within the time

frames indicated below shall constitute a waiver of any such dispute.

1. If after the performance of an internal review of its position, the Contractor's Executive Director disagrees with ACS on a decision relating to case planning, case practice and service planning, and/or a position to be taken at any court or administrative hearing, the Contractor shall present its position and recommendation in writing ("Notice of Dispute") within five (5) business days of the occurrence of an event giving rise to the dispute to the appropriate ACS Assistant/Associate Commissioner for the ACS organizational unit involved. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the Contractor relies in support of its position. The ACS Assistant/Associate Commissioner will make every reasonable and good faith attempt to resolve the dispute after due consideration of the opinion, expertise and professional judgment of the Contractor, and render a written decision within five (5) business days from the date the dispute was referred to him/her. If the ACS Assistant/Associate Commissioner is unavailable to meet or unable to render a decision within such five (5) business days, the time for decision-making may be extended at ACS sole discretion.

2. If the dispute remains unresolved after the decision of the ACS Assistant/Associate Commissioner or undecided after thirty (30) days from the date the Contractor submitted the dispute to ACS, the Contractor, may appeal the decision or non-decision, as the case may be, by submitting its appeal in writing to the ACS Deputy Commissioner responsible for the ACS organizational unit involved within five (5) business days of (i) the Contractor's receipt of the ACS Assistant/Associate Commissioner's decision or (ii) thirty (30) days from the date the Contractor submitted the dispute to ACS. A copy of Contractor's appeal must be submitted simultaneously to the ACS Assistant/Associate Commissioner to whom the original dispute was referred. The written appeal must contain the following information and documentation (i) a brief statement of the substance of the dispute and the reason(s) the Contractor contends the dispute was wrongly decided by the ACS Assistant/Associate Commissioner; (ii) a copy of the decision of the ACS Assistant/Associate Commissioner, if any, and (iii) a copy of all materials submitted by the Contractor to the ACS Assistant or Associate Commissioner. The ACS Deputy Commissioner will make every reasonable and good faith attempt to resolve the dispute after due consideration of the opinion, expertise and professional judgment of the Contractor, and render a written decision within five (5) business days from the date the dispute was referred to him/her. If the ACS Deputy Commissioner is unavailable to meet or unable to render a decision within five (5) business days, the time for decision-making may be extended at ACS's sole discretion.

3. If the dispute remains unresolved after the decision of the ACS Deputy Commissioner or undecided after thirty (30) days from the date the Contractor submitted the dispute to the ACS Deputy Commissioner, the Contractor, may appeal the decision or non-decision, as the case may be, by submitting its final appeal in writing to the ACS Commissioner within five (5) business days of (i) the Contractor's receipt of the ACS Deputy Commissioner's decision or (ii) thirty (30) days from the date the Contractor submitted the dispute to the ACS Deputy Commissioner. The written final appeal must contain the following information and documentation (i) a brief statement of the substance of the dispute and the reason(s) the Contractor contends the dispute was wrongly decided by the ACS Assistant/Associate

Commissioner and the ACS Deputy Commissioner; (ii) a copy of the decisions of the ACS Assistant/Associate Commissioner and ACS Deputy Commissioner, if any, and (iii) a copy of all materials submitted by the Contractor to the ACS Assistant/Associate Commissioner and the ACS Deputy Commissioner. The Commissioner will make every reasonable and good faith attempt to promptly resolve the dispute after due consideration of the opinion, expertise and professional judgment of the Contractor.

4. The decision of the Commissioner shall be binding upon all parties.

5. At any stage during the above described procedure, where a decision is made which the Contractor does not wish to present to the next level of supervision such decision shall promptly be carried out by the Contractor to the extent that it is required to do so and to the extent that it is not required to carry out such decision, the Contractor shall not impede the carrying out of such decision.

6. During the pendency of the appeal procedure described above, the Contractor shall take no action which may undermine or impede the then current decision of ACS.

## **ARTICLE 5. PERSONNEL**

### **Section 5.01 Staffing**

A. The Contractor shall comply with the provisions contained in this Agreement in regard to its employees, staffing and personnel. Furthermore, the Contractor expressly covenants and agrees that any and all rights and powers conferred upon ACS thereby are intended by the parties to ensure proper and consistent personnel standards and procedures regarding the provision of services set forth in this Agreement, and do not vest in ACS any of the Contractor's rights or obligations in connection with its employees nor to give ACS any direct control over employees of the Contractor, nor to vest in the Contractor or any of its employees any rights as against ACS. The Contractor's personnel shall be employed on the basis of standards established by the Contractor, which have been approved by ACS and appropriate State agencies.

1. The Contractor shall make every effort to maintain sufficient qualified staff, facilities and equipment, in accordance with the Law and ACS Policies. The Contractor shall provide the services required pursuant to this Agreement and provide written notice to ACS within twenty four (24) hours whenever it is unable to do so.

2. The Contractor shall have the responsibility of recruiting, hiring, training, supervising and retaining appropriate personnel in accordance with Section 2.01 of this Part II entitled "General Requirements." All applicants shall complete employment applications which shall include inquiries relative to the applicant's most recent employers and prior criminal convictions. The use of this information in the applicant's evaluation shall be consistent with Article 23-A of the New York State Correction Law or any successor or amended Law.

B. Subject to the provisions of this Agreement, the Contractor through its executive

staff shall manage its affairs and programs and shall have the responsibility for the day-to-day provision of services to and for each Foster Child in accordance with this Agreement.

## **Section 5.02 Verification of Credentials, References and Screening Current and Prospective Employees**

A. The Contractor shall be responsible for the verification of credentials and references and screening of all current and prospective employees. The Contractor shall comply with all applicable Laws when performing background checks, including providing appropriate notices where required in accordance with New York State General Business Law Sections 380-c (b) and 380-g(d). Such screening shall include but not be limited to:

1. Obtaining current background declarations indicating criminal conviction records, if any, and conducting a record review through the DCJS for current and prospective employees who have the potential for direct contact with children;
2. Inquiry to the SCR: The Contractor shall provide written notice to each prospective employee applying for a position in which there is potential for direct contact with children of its intention to make inquiry of the SCR;
3. For prospective employees, written inquiries to at least three (3) of the applicant's most recent prior employers, if applicable. The Contractor shall use its best efforts to obtain a response to such inquiry prior to placing the prospective employee on the payroll; and
4. Fingerprinting all prospective employees who have the potential for direct contact with children in accordance with SSL § 378-a and all other Laws. The fingerprinting processing fee may be paid either by the prospective employee or by the Contractor. In either case, the fee will not be paid or reimbursed by ACS.

B. The Contractor may retain an employee who has the potential for direct contact with children on a probationary basis in accordance with ACS Policies, pending the results of the record review conducted by DCJS and the SCR. For such probationary hires, the Contractor shall keep in confidential personnel files documentation describing supervision and measures taken to ensure the safety of children with whom such staff is working, pending background clearance. The Contractor shall notify ACS of decisions to hire employees on a probationary basis pending the results of a criminal background check.

C. The Contractor shall make employment decisions concerning prospective employees with a criminal record in accordance with the Law. The Contractor will refer to the New York State Correction Law Article # 23-A, §750-§755, when considering applicants with previous criminal convictions. In the event the Contractor hires a candidate with a criminal record, the Contractor shall document the basis for the decision to hire such employee, which shall be signed and approved by the Contractor's executive director. The Contractor shall inform ACS of decisions to hire employees with criminal records.



### **Section 5.03 Suspected Abuse or Maltreatment of Children/Youth**

A. If the Contractor has reasonable cause to suspect that an employee of the Contractor working or providing services in connection with this Agreement has abused, maltreated, neglected, assaulted or endangered the welfare of any child/youth, the Contractor shall, immediately report such belief to the SCR, and take appropriate action to remove the employee from the proximity of all children/youth while the matter is being investigated. The Contractor shall immediately notify ACS of any Contractor reports made to the SCR regarding employees of the Contractor.

B. ACS reserves the right to conduct its own investigation with regard to any employee of the Contractor for which the Contractor has filed an SCR report. The Contractor agrees to fully cooperate with any such investigation.

C. 1. If there is a finding of indicated abuse, maltreatment or neglect by the Contractor's employee, the Contractor shall immediately take action to ensure the permanent removal of the employee from the proximity of all children/youth, and ACS and/or the Contractor may take appropriate legal action or disciplinary action, if necessary, to accomplish such removal.

2. If, notwithstanding the finding of indicated abuse, maltreatment or neglect by the Contractor's employee in question, the Contractor believes that there are special mitigating circumstances in the matter, the Contractor shall promptly submit a written request to the Commissioner for a review of the matter. This request shall contain a complete explanation, including all pertinent documentation, and the actions the Contractor intends to take, in regard to the employee. During the review process the employee shall remain removed from proximity to all children/youth. The Commissioner or his/her designee shall review the matter and may meet with the Contractor and/or the employee and shall promptly notify the Contractor of the Commissioner's decision concerning the permanent removal of the employee from the proximity of all children/youth.

### **Section 5.04 Employee Review**

A. ACS reserves the right to request that the Contractor review the performance of any employee who has direct contact with children and/or families referred by ACS pursuant to this Agreement. Upon completion of the review, the Contractor shall take appropriate action, with respect to the employee, and thereafter notify ACS of such action.

B. The Contractor reserves the right to request that ACS review the performance of any employee who has direct contact with children and/or families referred by ACS pursuant to this Agreement. Upon completion of the review, ACS shall take appropriate action, with respect to the employee, and thereafter notify the Contractor of such action.

### **Section 5.05 Hiring and Dismissal of Certain Employees**

The Contractor shall advise the Commissioner reasonably in advance in writing, whenever the Contractor hires or dismisses a chief executive officer, chief fiscal officer, or program director of foster care services. The Contractor shall include in the notice of the dismissal of a chief executive officer, chief fiscal officer, or program director of foster care services the reason(s) for the dismissal. The Commissioner shall keep all such information confidential, except that the Commissioner may make disclosures to persons who have a legally cognizable interest in said information. Additionally, the Contractor shall forward a copy of the particular resume(s) to ACS for new hires in accordance with ACS Policies.

### **Section 5.06 Collective Bargaining**

The Contractor acknowledges that neither the City nor ACS is responsible or shall be liable for any obligations contained in any agreement into which Contractor or a representative of Contractor has entered concerning the collective bargaining rights or benefits of its employees paid in full or in part by funds provided through this Agreement. Furthermore, the Contractor agrees to abide by all applicable Laws governing the use of funds in connection with union activities.

## **ARTICLE 6. RECORDKEEPING AND REPORTING**

### **Section 6.01 General**

A. The Contractor shall maintain adequate program files and fiscal records, and shall ensure that its staff follow appropriate record keeping practices and procedures for all records in the Contractor's possession. The Contractor's records shall comply with all Laws and ACS Policies regarding recordkeeping. The Contractor shall keep separate files and records for each Recipient of Service so that they may be readily identifiable from those relating to other activities of the Contractor. In addition to information normally kept by the Contractor in individual files, such as basic information about the individual, describing and recording each use of the services by the individual, and the individual's progress, the Contractor shall include such other information in individual files as ACS may reasonably require. The files and records of each recipient shall be made available to ACS at reasonable times upon reasonable notice and request.

B. The Contractor shall upon reasonable notice and request by ACS, provide information and records relating to Foster Children in the custody of ACS. ACS shall have access to information and records including, but not limited to, information and records pertaining to programs, birth parents/caretakers, foster parents, Foster Children and compliance with legally mandated activities. The Contractor shall collect and maintain all information and records reasonably requested by ACS.

C. The Contractor shall ensure that its staff, consultants and subcontractors shall at reasonable times and upon reasonable notice, be made available to ACS or its counsel upon request for consultation either at the office of the Contractor or at the offices of ACS.

## **Section 6.02 Statistical Records**

A. The Contractor agrees to produce and maintain reasonable program statistical records as required by ACS and to produce program narrative and statistical data at times prescribed by and on forms furnished by ACS. ACS shall use its best efforts to minimize duplicative record requests.

B. The Contractor agrees to collect statistical data of a fiscal nature on a regular basis and to make fiscal statistical reports at times prescribed by and on forms furnished by ACS.

## **Section 6.03 Case Records**

A. The Contractor shall maintain adequate case files and shall ensure that staff follow appropriate record-keeping and retention practices and procedures in a manner that is in compliance with and supports all Laws and is consistent with ACS Policies. The Contractor shall cooperate with ACS assessment and evaluation systems. The Contractor shall ensure that its appropriate staff are trained in the use of CNNX, LTS, CCRS, and SSPS and any subsequent tracking systems or databases as required by ACS, OCFS or the Law. The Contractor shall ensure the caseworker, shall have primary responsibility for the development, documentation and maintenance of all case records within his/her caseload. The Contractor's policies and procedures shall clearly define the requirements of the caseworker and child care worker in documenting and maintaining case records, including required forms, content and format of other documentation, and storage. The Contractor shall ensure that primary case record information is documented and maintained in CNNX. The Contractor shall maintain hard copies of all other information that cannot be captured in CNNX in physical case records. The Contractor shall ensure that case records contain: demographic and contact information; the reason for a request or referral for services; up-to-date assessments; copies of all signed consent forms; a description of services provided by referral; and documentation of routine supervisory review. The Contractor's documentation procedures shall also define the documentation requirements for all service providers, including but not limited to, medical, psychiatric, chemical dependency/use prevention, and treatment and after care providers as well as education professionals.

B. CONNECTIONS (CNNX): The Contractor shall ensure that relevant staff members are knowledgeable and proficient in CNNX. The Contractor shall document all processes and activities into CNNX that pertain to Foster Children and their families, including case information, health, education and permanency hearing reports. The Contractor shall ensure that all relevant staff receives the necessary training, and are informed of pertinent policies and procedures regarding CNNX.

C. Family Case Record/Child Case Record: The Contractor shall maintain a physical case record for each Foster Child, which shall document all services and treatment provided to each Foster Child. The case record shall be indexed to reflect the organization and documentation in the record. The Contractor shall also retain and maintain supportive records and documents, including but not limited to, applications for services, assessments, evaluations, education and medical reports, legal documents and collateral contacts. The Contractor shall



maintain case records in accordance with the Law including 18 NYCRR Part 428 or any successor or amended regulations.

D. Foster Parent Case Record: The Contractor shall maintain a detailed and current foster parent case record, which shall be updated as needed. The Contractor shall maintain foster parent records in accordance with the Law including 18 NYCRR 443.2(f) or any successor or amended regulation. The Contractor shall maintain the foster parent case record in accordance with the Law and ACS Policies including the *Foster Care Quality Assurance Standards*.

#### **Section 6.04 Medical Records and Related Documentation**

A. Authorization for Release of Health Information and Consent Form: The Contractor shall request written authorization from birth parents/caretakers for medical care including medical and/or psychological assessments, immunizations and medical treatment, and for emergency medical or surgical care at the time the care is necessary, at the time of placement for cases where the Foster Child is voluntarily placed, or within ten (10) days after admission into care in emergency or court-ordered placements. In those instances when birth parents/caretakers are unable, unavailable, or unwilling to sign a release, the Contractor shall ensure that the case planner complies with the Law and ACS Policies with regard to obtaining medical consent. The Contractor shall make diligent efforts to contact birth parents/caretakers for consent whenever there is a significant change in the health status of the Foster Child requiring non-routine medical attention, surgery or administration of psychotropic medication. The Contractor shall ensure that all consent forms are retained in the medical record and CNNX health narrative as part of the Foster Child's health history.

B. Health Records and Documentation: The Contractor shall maintain complete health information in each Foster Child's CNNX case record and shall comply with all Laws and ACS Policies. In addition to the requirements for the medical documentation contained in CNNX, the Contractor shall establish a comprehensive health history for each Foster Child by working with the birth family/caretaker and known previous health providers for each Foster Child. The medical record shall include, but not be limited to: a complete medical history, dental history, immunization record, an admission physical exam and all subsequent physical exams, records of all medical treatment, consent(s) for treatment, and any other appropriate documentation related to medications and procedures, diagnostic and therapeutic. The Contractor shall comply with all timelines for collection of such information as required by ACS Policies. In efforts to maintain each Foster Child's confidentiality and to maximize the delivery of effective health care services and health care coordination, the Contractor shall ensure that all child welfare health service providers responsible for a Foster Child's care receive health information about a Foster Child's health status and history on a "need to know" basis, and as appropriate. The Contractor shall maintain each Foster Child's individual medical history in an organized and readily transferable manner that details all critical information regarding the Foster Child's health status and history.

1. Physical Examination: The Contractor shall document the results of each Foster Child's physical examinations using the Child's Health Record, Form DSS-711 or a comparable form. The Contractor shall include in this form the results of initial and periodic

health examinations given to each Foster Child. The Contractor shall ensure that the Child's Health Record contains a section describing a plan for each Foster Child's health needs and documents all on-going medical treatment. The Contractor shall ensure that the Child's Health Record includes information on all specialty referrals, copies of laboratory results, and summary discharge notes from any hospitalizations. The Contractor shall include the Foster Child's CIN in each Foster Child's health record. The Contractor shall comply with the Law including 18 NYCRR 441.22 or any successor or amended regulation with regard to health and medical services for Foster Children.

2. Continuing Health History: The Contractor shall maintain a hard copy of each Foster Child's health history and other relevant health documents that cannot be recorded in CNNX.

3. Health Summary Form: The Contractor shall maintain a health summary form for each Foster Child. The health summary shall include results of the initial comprehensive health and mental health examinations; substance use/abuse status; health care providers; dental, vision and hearing test results; current immunization history and any information regarding follow up referrals and evaluations. The Contractor shall complete the summary form during the first six (6) months of placement. The Contractor shall update the health summary form every six (6) months the Foster Child remains in care in conjunction with the FASP.

4. Medical Passport: The Contractor shall maintain a medical passport for each Foster Child and ensure that it is updated by health service providers with each visit. The medical passport shall not be used as a substitute for the full medical record. The Contractor shall keep a copy of each Foster Child's most up-to-date medical passport in their medical records. The Contractor shall ensure that the medical passport is updated as often as possible and at minimum of every six (6) months.

#### C. Mental Health Screening and Treatment Documentation

1. Medication-Related Documentation: The Contractor shall ensure that all medications administered to Foster Children while in care are documented in each Foster Child's medical record. Such information shall include, but not be limited to:

- a. The name of the medication(s) currently being taken by the Foster Child, including dose and dosage schedule;
- b. The purpose of the medication(s) or condition/diagnosis being treated or managed;
- c. The name and credentials of the prescriber;
- d. Documentation of appropriate consent and consent procedures followed by the provider;

e. All associated health facility visits, specialty and subspecialty care associated with the medication;

f. Documentation that the Contractor has provided appropriate administration of the medication;

g. Documentation of non-compliance to prescribed medications;

h. Documentation of any allergies or adverse reactions that the Foster Child may have had to any past medication(s), and the incident report associated with each adverse reaction while the Foster Child was in the Contractor's care; and

i. Documentation of training on medication administration for all foster care parents including Model Approach to Partnerships in Parenting (MAPP) training.

2. Psychotropic Medication Documentation: The Contractor shall ensure that the following information is documented for Foster Children receiving psychotropic medication:

a. Documentation of appropriate informed consent procedures followed by the Contractor prior to initial administration of the medication;

b. Documentation of appropriate initial and follow-up laboratory exams;

c. Documentation of recent one (1) month physical exam prior to initiation/change of treatment regimen;

d. Documentation of monthly evaluation or appropriate explanation for exception to this requirement by a child psychiatrist or other appropriate health care provider; and

e. Documentation of appropriate monitoring of the Foster Child's reaction to any treatment or medication.

#### **Section 6.05 Independent Reporting**

A. The Contractor shall notify ACS immediately in the event of a situation, which presents an imminent danger to the health or welfare of any Foster Child. For purposes of this clause, immediate notice shall mean providing notice to ACS as soon as practicably possible without placing the Foster Child in any further danger.

B. The Contractor shall report fatalities, serious accidents and incidents, and injuries of any Foster Child to ACS within twenty-four (24) hours of receiving notice. The Contractor shall immediately send notification to ACS's Shared Services Response Team upon knowledge of any such incident, and shall follow up with a comprehensive report within twenty-

four (24) hours of the initial notification. The Contractor shall comply with the Law with regarding to reporting including 18 NYCRR 441.7 and 18 NYCRR 441.8 or any successor or amended regulation. The Contractor shall submit a copy of each critical incident report within twenty-four (24) hours of completion of the report to its commercial general liability insurance carrier and to the City of New York Law Department Affirmative Litigation Division.

#### **Section 6.06 Family Planning Services**

The Contractor shall ensure that the notification of the availability of family planning services pursuant to Section 2.15(L) of this Part II entitled "Family Planning Services" is recorded in each Foster Child's medical record and in CNNX as part of the Foster Child's health history.

#### **Section 6.07 Court Documents**

Upon request, the Contractor shall furnish documents to FCLS attorneys for their work on cases involving Foster Children. Such requests for documents may include, but not be limited to, case records, FTC and other conference summaries, FASPs, notes, medical records and evaluations, as well as written reports prepared specifically for the Court. The Contractor shall ensure that any documents are furnished, whenever possible, within a reasonable time in advance of the Court hearing, giving the attorney an opportunity to discuss the use of the documents with the Contractor. The Contractor shall also submit PH reports to FCLS attorneys pursuant to ACS Policies and established timeframes.

#### **Section 6.08 Independent Audit Reports**

If the Contractor has an independent audit performed of the records relating to this Agreement, a true copy of the audit report shall be provided to ACS within thirty (30) days after acceptance by the Contractor.

#### **Section 6.09 Disposal of Confidential Data**

The Contractor acknowledges that each Foster Child's case record and any documents contained therein are confidential. Other confidential items include, but are not limited to, documents containing: child/youth and family names, addresses, social security numbers, case information, details of allegations of abuse, confidential employee information, medical information, and other personal information. The Contractor shall comply with all Laws regarding record retention and disposal.

#### **Section 6.10 Record Keeping Systems Maintenance and Utilization**

A. Legal Tracking System (LTS): The Contractor shall designate at least one (1) LTS liaison for all LTS-related issues and updates, including PH reports. The Contractor shall ensure that the LTS Liaison is able to communicate regularly with designated individuals at ACS when necessary. The Contractor shall use LTS during the regular course of business to carry out duties which include but are not limited to, reviewing Court orders, hearing outcomes, and attorneys'

court action summaries. The Contractor shall ensure that manager and supervisor level staff run and review LTS reports about PH report timeliness and submission rates, in addition to utilizing other management tools available in LTS in efforts to improve the delivery of program services. The Contractor shall follow all applicable ACS Policies and OCFS procedures when submitting PH reports from CNNX to FCLS attorneys. The Contractor shall update CNNX as soon as possible regarding changes in assigned caseworker or other information as listed in LTS. The Contractor shall not disclose any information contained in LTS to third parties, absent instruction from ACS.

B. Child Care Review System (CCRS): CCRS is a statewide system used to track Foster Children as well as PINS. ACS shall open a CCRS case within three (3) business days of a Foster Child's placement. ACS and the Contractor shall mutually strive to keep CCRS accurate and timely at all times. Once ACS opens a CCRS case, the Contractor shall enter data related to any Foster Child absence and return to care, inter- and intra agency transfers, and adoption codes.

#### **Section 6.11 Change in Corporate Structure**

Any contemplated fundamental change in the Contractor's corporate structure (such as merger with another entity or fundamental changes in governance) which will affect the provision of services covered by this Agreement shall be reported to ACS in writing at the earliest feasible time, but in no case later than ninety (90) days prior to the contemplated change. In the event that a merger is contemplated, the Contractor shall notify ACS when a plan of merger is filed with a state agency.

### **ARTICLE 7. CONTRACTOR'S STANDARDS AND PROCEDURES**

#### **Section 7.01 Standards and Procedures**

A. The Contractor agrees to comply with the following requirements and expressly covenants and agrees that any and all rights and powers conferred upon ACS in this Agreement are intended by the parties to ensure proper and consistent personnel standards and procedures regarding Foster Care services and Recipients of Services which constitute the subject matter of this Agreement, and are not intended to vest ACS with any of the Contractor's rights or obligations in connection with its employees nor to give ACS any direct control over such employees of the Contractor, nor to vest in the Contractor or any of its employees any rights as against ACS.

B. The Contractor shall create and maintain written plans that detail all management systems and the manner in which they are designed to ensure proper planning and implementation of programmatic operations and fiscal administrative policies and procedures ("Standards and Procedures"). The Contractor's Standards and Procedures shall include the records and maintenance of: personnel management systems; fiscal management systems, including procurement and cash management systems; facility management systems; program management systems; and parents' decision-making systems.

C. The Contractor shall submit to ACS immediately upon ACS' request a copy of all Standards and Procedures requested by ACS. The Standards and Procedures requested by ACS may include but not be limited to:

1. Organizational papers such as a true copy of the Certificates of Incorporation filed with the New York Secretary of State, by-laws, and any other related documentation reasonably requested by ACS;
2. Personnel policy practices including such matters as job descriptions and qualification requirements, hiring and selection practice, personnel grievance procedures, benefits and leave, salary increases, holiday schedules and other related matters;
3. Purchasing policy and procedures;
4. Fiscal Policies and Procedures;
5. Intake and Planning Procedures; and
6. Completed Safety Plan that provides specific and detailed procedures for responding to a range of incidents.

D. ACS may direct the Contractor at any time, and from time to time, to rescind, modify or add to its Standards and Procedures to bring the Standards and Procedures in compliance with this Agreement, the Law and ACS Policies.

#### **Section 7.02 Client Grievance Procedures**

A. The Contractor shall establish procedures through which Recipients of Services may present complaints and grievances about the provision of any service under this Agreement. The Contractor shall advise Recipients of Services of these procedures and of their right to appeal thereafter to ACS.

B. If the Contractor is unable to resolve the problem and the Recipient of Service initiates an appeal to ACS, the Contractor shall forward a summary of the relevant information to ACS. ACS shall confer with all the parties, either separately or jointly, and may request such additional information and material, as it deems necessary.

C. If the Recipient of Service and the Contractor can not come to an agreement concerning the Recipient's complaints and grievances, ACS shall have the right to make a final determination pursuant to Article 4 of this Part II entitled "Responsibility and Authority of ACS and Resolution of Certain Disputes."

D. In circumstances where the Law or due process requires, the Contractor shall advise the Recipient of Service of his/her right to request a fair hearing by OCFS.



### **Section 7.03 Security and Emergency Plan**

A. Prior to the commencement of services under this Agreement, Contractor shall submit for ACS' review and approval a written plan to provide for the safety and security of clients, participants, staff, and the Contractor's facility, which shall include emergency procedures, including first aid and cardiopulmonary resuscitation training; evacuation procedures; and the identification of the means by which safety and security of clients, participants, staff, and the Contractor's facility will be maintained throughout the term of this Agreement. Such a plan will insure its clients' basic needs are met in the event of a City-wide emergency or natural and man-made disasters, including extremes of weather, blackouts and other regional and national emergencies. The Contractor shall maintain a file of emergency contacts for each client and participant, which shall include the names, addresses, telephone numbers, and locations where such contacts can be reached. Submission of a security plan applying to all of the Contractor's operations rather than specifically to the City-funded operations shall be sufficient to comply with the terms of this requirement. The provisions of this Section shall not apply to programs housed in courts or other City-operated locations.

B. In the event that a State of Emergency (SOE) is declared by the Mayor of the City, the City may suspend Contractor's normal operations until further notice. No damages shall be assessed for suspension of normal services during this time. All other terms and conditions of this Agreement shall remain in effect, except as modified by a contract amendment registered pursuant to New York City Charter §328 or other appropriate contract action. The Contractor may, at the request of and in a manner determined by ACS, assist ACS in carrying out emergency procedures during a State of Emergency. Emergency procedures shall remain in effect until the Mayor has determined that the SOE has expired. In consideration thereof, the City agrees to indemnify the Contractor against all claims by third parties arising out of the actions of its employees during the SOE that are directed by the City and not otherwise required to be performed under this Agreement, except for those arising out of the employees' gross negligence or intentional misconduct.

### **Section 7.04 Continuity of Operations Plan**

Prior to the commencement of services under this Agreement, Contractor shall submit for ACS' review and approval a written Continuity of Operations Plan (COOP) for its business which indicates its ability to continue the provision of essential services to ACS in the event that a State of Emergency is declared by the Mayor. The Contractor should seek guidance from ACS on how to develop a COOP plan. A COOP plan includes, but is not limited to: the identification of an alternate site of business; appointment of alternate personnel for identified essential staff; development of protocols for the safekeeping of vital business records; and, a transportation contingency plan for its employees.

## **ARTICLE 8. FISCAL PROVISIONS**

### **Section 8.01 General**

Should the needs of the City child welfare system call for changes to this Agreement, ACS

reserves the right to select a different payment structure. ACS would do so with consideration of the needs of the Contractor and would attempt to integrate the Contractor's concerns into any new payment structure that might be introduced.

## **Section 8.02 Payment**

A. ACS payment to the Contractor is subject to the terms of this Agreement, ACS receipt of funds and cost allocation using an appropriate cost allocation plan. ACS shall not pay the Contractor for any child/youth not placed in accordance with this Agreement.

B. ACS agrees to pay to the Contractor on a monthly basis an amount based on an administrative per diem rate set by ACS ("Per Diem Rate") and a foster parent stipend rate as set by OCFS and the Budget contained in Attachment IV to this Agreement (except as Attachment IV may be subsequently amended or modified by ACS in accordance with adjustments in the Per Diem Rate and adjustments in the ACS budget allocation) which is equal to the applicable Per Diem Rate and the foster parent stipend rate as multiplied by each Day of Care provided by the Contractor and approved by ACS for each Foster Child in the Contractor's care. The Contractor shall not be paid for any Foster Child who has been transferred to another provider or any case that is in a Suspended Payment status in accordance with the Fiscal Manual. ACS shall make the monthly payments to the Contractor after the submission of appropriate documentation as ACS may require and after the Contractor's electronic submission of Days of Care to SSPS which must be completed by the seventh (7<sup>th</sup>) business day before the end of the following month. Such payment shall be made in accordance with ACS Policies.

C. Notwithstanding anything to the contrary contained in this Agreement, payment for services provided by the Contractor pursuant to this Agreement must be authorized by ACS and shall be effective from the date the service was commenced and authorized by ACS.

D. In the event the Contractor fails to comply with the Fiscal Manual regarding approval of special and exceptional need rates, ACS may disallow the rate and recoup any amount overpaid to the Contractor in connection with the Contractor's non-compliance.

## **Section 8.03 Statewide Service Payment System**

SSPS is a statewide payment system used to process Per Diem Rate payment for services provided to Foster Children. When submitting requests for per diem payment for services, the Contractor shall:

1. Submit an initial request for payment of services for each month by the fifth (5<sup>th</sup>) business day of the following month.
2. Submit the final request for payment of services for each month by the seventh (7<sup>th</sup>) business day before the end of the following month.
3. Work with ACS staff to reconcile any discrepancies.



#### **Section 8.04 Advance**

The amount of any advance to be paid to Contractor under this Agreement shall be determined solely by ACS in accordance with the Fiscal Manual and any applicable Comptroller directives. The funds shall be used exclusively for the payment of expenditures and obligations authorized by and properly incurred pursuant to the Budget.

#### **Section 8.05 Cost of Living Increases**

Where the Contractor's industry has experienced an increase in costs (*e.g.*, salary, wage or fringe benefit cost of living increases, a change in the prevailing or living wage, a renegotiated collective bargaining agreement, an industry-wide increase in the Producer Price Index (PPI) for fuel or energy) that exceeds the Budget, and the Office of Management and Budget (OMB) or another independent agency has determined in writing that additional funds will be made available to a City agency for the class of contracts pursuant to which the Contractor provides the same or substantially similar services, then the Department shall reimburse the Contractor for such increases in costs to the extent that such increases have been authorized by the City for contracts within such class of contracts and to the extent that funds are appropriated for such purposes. Any cost of living increase will not be effective unless and until an amendment to the contract is registered pursuant to New York City Charter §328.

#### **Section 8.06 Special Payments, Miscellaneous Expenses and Additional Funding**

##### **A. Special Payments**

1. ACS shall in accordance with the Law and the Fiscal Manual including the *Administration for Children's Services Payment Bulletin FC 07-12* or any amended or succeeding bulletin ("Payment Bulletin") reimburse the Contractor for Special Payments expenses listed specifically in the Payment Bulletin ("Special Payments") to the extent that such expenses comply with this Agreement and the Fiscal Manual including the Payment Bulletin.

2. ACS payment/reimbursement to the Contractor pursuant to this Section 8.06(A) is subject to the following:

- a. The allocation for Special Payments as provided in the Budget;
- b. The Contractor's submission of the proposed Special Payment if required by the Payment Bulletin and ACS advanced approval of the expense if required by the Payment Bulletin; and
- c. The Contractor's timely and appropriate submission of invoices/requests for reimbursement in compliance with Section 8.06(E) entitled "Reimbursement Requirements" and the Fiscal Manual including the Payment Bulletin. Any invoice/request for reimbursement which does not comply with the Fiscal Manual including the Payment Bulletin and is received after the time frame indicated in the Payment Bulletin may be disallowed.

B. Miscellaneous Expenses

1. ACS may, in accordance with this Agreement and the Fiscal Manual including the Payment Bulletin, reimburse the Contractor for expenses which are not specifically listed in the Payment Bulletin and/or expenses which are not included in the Special Payment allocation.

2. ACS payment/reimbursement to the Contractor pursuant to this Section 8.06(B) is subject to the following:

a. The allocation for Miscellaneous Expenses as provided in the Budget;

b. As required by this Agreement, ACS Policies and/or the Fiscal Manual, the Contractor's submission of the proposed expense to ACS and ACS advanced approval of the expense; and

c. The Contractor's timely and appropriate submission of invoices/requests for reimbursement in compliance with Section 8.06(E) entitled "Reimbursement Requirements" and the Fiscal Manual including the Payment Bulletin. The Contractor must submit invoices/requests for reimbursement to ACS by the deadline for submission of invoices/requests for reimbursement outlined in the Payment Bulletin. Any invoice/request for reimbursement which does not comply with the Fiscal Manual including the Payment Bulletin and is received after the time frame indicated in the Payment Bulletin may be disallowed.

C. Preparing Youth for Adulthood (PYA) Funding and Reinvestment Funding

1. General: Notwithstanding any provision contained in this Agreement, ACS may in ACS' sole discretion provide the Contractor with funding for the following initiatives: PYA which supports Foster Children in and transitioning from foster care and reinvestment funding ("Reinvestment Funding") to strengthen the Contractor's family foster care program. The Contractor shall use this additional funding, if any, in accordance with this Agreement, ACS Policies, the Fiscal Manual and the Law and such additional funding shall be subject to cost allocation.

2. PYA Funding: The Contractor shall use PYA Funding to support special services and supports for Foster Children who are ages fourteen (14) years of age and older consistent with this Agreement, ACS Policies, and the Fiscal Manual.

3. Reinvestment Funding: The Contractor shall use Reinvestment Funding to support permanency for children/youth including aftercare preparation and services to help expedite and stabilize permanency for Foster Children and to provide services to Foster Children who are ages twelve (12) years of age and older to reduce movements within Foster Care and step-ups to residential care.

4. ACS payment/reimbursement to the Contractor pursuant to this Section 8.06(C) is subject to the following:

a. The allocations for PYA and Reinvestment as they appear in the Budget;

b. As required by this Agreement, ACS Policies, and/or the Fiscal Manual, the Contractor's submission of the proposed expense to ACS and ACS advanced approval of the expense; and

c. The Contractor's timely and appropriate submission of invoices/requests for reimbursement in compliance with Section 8.06(E) entitled "Reimbursement Requirements" and the Fiscal Manual including the Payment Bulletin. The Contractor must submit invoices/requests for reimbursement to ACS by the deadline for submission of invoices/requests for reimbursement outlined in the Payment Bulletin. Any invoice/request for reimbursement which does not comply with the Fiscal Manual including the Payment Bulletin and is received after the time frame indicated in the Payment Bulletin may be disallowed.

5. If PYA or Reinvestment Funding is reduced in any fiscal year for reasons other than census reduction, ACS shall discuss the scope of the PYA or reinvestment program, as the case may be, with the Contractor's representative organization.

D. Additional Funding

1. ACS may from time to time and in ACS' sole discretion provide the Contractor with additional funding for ACS specified program initiatives. The Contractor shall use this additional funding, if any, in accordance with this Agreement, ACS Policies and the Law and such additional funding shall be subject to cost allocation.

2. ACS payment/reimbursement to the Contractor pursuant to this Section 8.06(D) is subject to the following:

a. The specified additional funding allocation as provided in the Budget;

b. The Contractor's submission of the proposed expense to ACS and ACS advanced approval of the expense; and

c. The Contractor's timely and appropriate submission of invoices/requests for reimbursement in compliance with Section 8.06(E) entitled "Reimbursement Requirements" and the Fiscal Manual including the Payment Bulletin. The Contractor must submit invoices/requests for reimbursement to ACS by the deadline for submission of invoices/requests for reimbursement outlined in the Payment Bulletin. Any invoice/request for reimbursement which does not comply with the Fiscal Manual including the

Payment Bulletin and is received after the time frame indicated in the Payment Bulletin may be disallowed.

**E. Reimbursement Requirements**

1. The Contractor shall submit all invoices/requests for reimbursement on a form acceptable to ACS for Special Payments, expenses related to PYA Funding, Reinvestment Funding and all other expenses outlined in the Payment Bulletin and this Section 8.06 no later than the deadline for invoices/requests for reimbursement provided in the Payment Bulletin. Any invoice/request for reimbursement which does not comply with ACS Policies and is received after the time frame indicated in the Payment Bulletin may be disallowed.

2. ACS' rate of reimbursement to the Contractor for any expense in connection with this Agreement including Special Payments and/or expenses listed in the Payment Bulletin shall not exceed the maximum amount allocable by Law, ACS Policies, the Fiscal Manual including the Payment Bulletin and the Budget.

**Section 8.07 Budget Modifications and Amendments**

All increases and decreases of the Budget shall become effective only by duly executed and approved amendments to this Agreement.

**Section 8.08 Accounts**

A. The Contractor shall establish and maintain one or more separate accounts for the funds obtained from or through the City of New York related to this and all other agreements with the City, and shall maintain records for such account to track and clearly identify the funds obligated through this Agreement.

B. The Contractor shall provide to ACS immediately upon request copies of all bank records including bank statements and cancelled checks.

C. The Contractor shall notify ACS of the names, titles, and business addresses of such persons authorized by the Contractor to receive, handle or disburse monies under this Agreement, including the company name and company address where such persons are not employees of the Contractor. Such notification must be in writing and furnished to ACS within five (5) days from the execution of this Agreement, and within five (5) days from any subsequent change or substitution of authorized signatories.

**Section 8.09 Reporting Requirements**

The Contractor shall file annually and shall provide to ACS upon request the following reports:

1. IRS Form 990 upon submission to the IRS, and any subsequent amendments to Form 990;

2. All forms mandated by the State in the Standards of Payment system at the time they are submitted to the State; and

3. Reports required by the City Comptroller no later than six (6) months after close of the Fiscal Year.

#### **Section 8.10 Final Payment**

Notwithstanding anything to the contrary contained in this Agreement, final payment shall be deemed to have occurred upon the occurrence of any of the following events:

1. the expiration of six (6) years and ninety (90) days from the date of the Contractor's submission of forms/documentation required by the New York State Standards of Payment for Foster Care of Children Program Manual to ACS and/or OCFS, if no draft audit has been issued; or

2. the later of (i) issuance of the final audit (as defined in Section 10.02 of this Part II entitled "Audit by ACS" and Section 10.03 of this Part II entitled "ACS Audit Dispute Resolution") or (ii) execution of a Settlement Agreement between the Comptroller's Office and the Contractor after completion of an Appeal Conference as provided for in Section 10.03 of this Part II entitled "ACS Audit Dispute Resolution"; or

3. filing by the Contractor of a final judicial resolution of any contested audit or disallowance; or

4. filing with the Comptroller of the certificate for the final payment under this Agreement; or

5. acceptance by the Contractor or its assignees of the final payment under this Agreement, whether by voucher, judgment of any court of competent jurisdiction or any other administrative means.

#### **Section 8.11 Compliance with the Law and Policies**

All payments using City, State and Federal dollars made to or by the Contractor in connection with this Agreement and the services provided pursuant to this Agreement shall comply with the Law, this Agreement and all OCFS and ACS policies, procedures and bulletins in effect at the time of payment.

#### **Section 8.12 Cost Allocation**

A. ACS requires the Contractor to fairly and accurately allocate costs which are attributable to the operation of two or more programs among such programs by a method which represents the benefit of such costs to each program, or a method as set forth in the *New York State Standards of Payment for Foster Care of Children Program Manual*. The Contractor shall

have a cost allocation plan setting forth such fair and accurate allocation of costs and shall submit its cost allocation plan to ACS within thirty (30) days of ACS' request. The Contractor's cost allocation plan shall be updated annually.

B. The Contractor shall not receive reimbursement from another funding source, including the City or another department of the City, when City funding pursuant to this Agreement is fully covering a particular expense, except upon the express written permission of ACS. Written permission of ACS shall not be required where the supplemental funding is intended to improve the service to be provided. Notwithstanding the provisions of this paragraph, the Contractor shall be permitted to seek private or public support to fund the costs of delivering work. Reimbursement for clients being served by the Contractor in a distinctly different program shall not be construed as payment for duplication of contracted services.

C. In no event shall the Contractor submit duplicate costs for reimbursement to separate City, State or Federal agencies. In the event of duplicative billing, ACS shall have the right to offset or recoup the duplicative billed amount from the Contractor.

D. The Contractor shall:

1. Establish an allocation methodology that fairly, reasonably, and accurately apportions costs and include that allocation methodology in its cost allocation plan;
2. For each fiscal year, maintain books, records, documents and other evidence, in sufficient detail to support all claims against the Contractor's family foster care program, including those that have been made on a cost allocation basis;
3. Make the records available for review by ACS or its representative(s) upon reasonable notice and request; and
4. Review allocation percentages on an annual basis and adjust them as necessary to reflect a reasonable cost distribution among programs.

### **Section 8.13 Family Court Sanctions**

In the event the Family Court imposes a fine or sanction against ACS which arises out of an act or failure to act by the Contractor, ACS may, in its sole reasonable discretion, and on a case by case basis in discussion with the Contractor, direct the Contractor to pay the fine or sanction, in whole or in part, and the Contractor herewith agrees to make such payment, or ACS may, in its sole discretion, withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the said fine or sanction.



## ARTICLE 9. DENIAL OF REIMBURSEMENT

### Section 9.01 Denial of Reimbursement

A. 1. Expenditures by the Contractor for the care and maintenance of a Foster Child, and the administration thereof, shall not be reimbursed in whole or in part by ACS in such instances when, by an act or failure to act by the Contractor ACS has been denied reimbursement by the Federal Department of Health and Human Services pursuant to the Law including Title IV-E of the Social Security Act. Moreover, the City may order the Contractor to make repayment, and the Contractor herewith agrees to make such repayment, of any monies previously paid as reimbursement under the terms of this Agreement for which ACS was denied reimbursement by the State and for which such denial of reimbursement was attributable to an act or a failure to act by the Contractor.

2. In the event that another provider or providers have cared for the Foster Child during a period of time which is the subject of a denial of reimbursement, ACS shall, in its sole reasonable discretion, allocate the liability among the Contractor and the other provider or providers in accordance with procedures promulgated by ACS.

B. Contractor Liability: The Contractor shall be liable for any denial of reimbursement imposed upon ACS by OCFS pursuant to the Law including Title IV-E of the Social Security Act when such denial results from an act or failure to act by the Contractor.

## ARTICLE 10. AUDIT

### Section 10.01 Contractor's Audit

The Contractor shall conduct an annual financial audit performed by an independent CPA. The Contractor shall submit the annual audit to ACS' Office of Audit, 150 William Street, 10<sup>th</sup> Floor, New York, New York 10038 within thirty (30) days after the Contractor's receipt of the final report but no later than nine (9) months after the audit period. The Contractor shall provide within thirty (30) days of ACS' request copies of all ACS requested records. The audit period shall be for a one (1) year period beginning July 1<sup>st</sup>. The audit must contain an opinion regarding the Contractor's financial statements in conformity with GAAP and shall contain a separate opinion of the adequacy of the Contractor's internal controls to safeguard its assets.

### Section 10.02 Audit by ACS

A. ACS may conduct an audit of the Contractor at ACS' discretion and the Contractor shall fully cooperate with all requests for documentation in accordance with this Agreement. The ACS audit shall be conducted in accordance with the *New York State Standards of Payment for Foster Care of Children Program Manual*. If an audit is conducted by ACS, a draft of such audit must be issued within six (6) years and ninety (90) days from the date the Contractor submits applicable forms/documentation required by the *New York State Standards of Payment for Foster Care of Children Program Manual* to both OCFS and ACS and the final audit shall be issued within ninety (90) days of the Contractor's submission to ACS of a written

response to the draft audit. If the Contractor fails to submit to ACS a written response to the draft within thirty (30) days of Contractor's receipt of the draft audit, the Contractor shall be deemed to have accepted the contents of the draft audit. The Contractor may request from ACS an extension to the thirty (30) day comment period and such extension shall be granted at ACS' sole discretion and must be in writing.

B. In the event the Contractor submits a written response to the draft audit and the Contractor's objections are supported by voluminous data or require that the auditors visit the Contractor's offices to review its books and record or if the Contractor's records are complex in nature, ACS may, in its sole discretion, extend the ninety (90) day period in which it shall issue the final audit, by an additional ninety (90) days. ACS in its sole discretion may provide for further extensions beyond the ninety (90) days. In any instance where ACS is materially prevented from completing a draft or final audit as a result of the conduct of the Contractor, the time period during which the Contractor's actions (or in-actions) prevented such completion of the draft or final audit, shall not be included, and shall specifically be excluded, for purposes of computing the time periods for issuing the draft or final audit.

C. The Contractor shall be afforded an audit exit conference, prior to the issuance of a final audit. At the exit conference the preliminary findings of the auditors shall be made known to the Contractor as well as a brief explanation of the basis upon which the auditors have made such preliminary findings. The Contractor may be represented at the exit conference by anyone authorized by the Contractor to act on its behalf.

D. The fiscal records of the Contractor under this Agreement shall be examined by ACS at such times as ACS considers necessary.

E. The performances of ACS auditors shall be in accordance with GAAP and only those rules, regulations and procedures in effect at the time of actual expenditure will apply.

### **Section 10.03 ACS Audit Dispute Resolution**

The following subsections establish procedures for resolving disputes arising from an ACS audit of the Contractor.

1. A copy of the final audit report shall be forwarded to the Contractor by ACS.

2. ACS shall notify the Contractor, in writing, within thirty (30) days of ACS' acceptance of the final audit of the action ACS intends to take as a result of the final audit, if any, and of the Contractor's right to have any of the Contractor's audit objections be reviewed by the ACS Audit Review and Appeals Panel ("Final Audit Notification").

3. The audit shall be considered final and ACS shall take such action as noted in the Final Audit Notification, unless the Contractor requests, in writing, within thirty (30) days of receipt of the Final Audit Notification, that the Contractor's audit objections be reviewed by the ACS Audit Review and Appeals Panel ("Appeal Request"). The Appeal Request must



contain all objections and disputes concerning the audit and briefly detail the specific items of the final audit with which the Contractor disagrees. The Contractor may request a conference ("Appeal Conference") with the ACS Audit Review and Appeals Panel in its Appeal Request. The purpose of the Appeal Conference is to give the Contractor an opportunity to make an oral presentation and to document its objections to the audit findings, and to give the Audit Review and Appeals Panel an opportunity to clarify any issues.

4. If the Contractor fails to request an Appeal Conference in its Appeal Request, the ACS Audit Review and Appeals Panel shall make its determination based on the final audit, the Final Audit Notification and the Appeal Request.

5. If the Appeal Request contains a request for an Appeal Conference, the Appeal Conference shall be scheduled within thirty (30) days or as soon thereafter as possible. The Contractor will be notified, in writing, of the date and location of the Appeal Conference.

6. At the Appeal Conference the Contractor may make an oral and/or written presentation and respond to questions of the ACS Audit Review and Appeals Panel. There shall be no post-conference submissions, unless specifically requested by the ACS Audit Review and Appeals Panel.

7. The ACS Audit Review and Appeals Panel shall make a determination regarding all items originally objected to by the Contractor. The Contractor shall be advised, in writing, of the ACS Audit Review and Appeals Panel's decision. The ACS Audit Review and Appeals Panel shall provide a detailed statement of the factual basis underlying its decision regarding any disallowance.

8. The decision of the ACS Audit Review and Appeals Panel shall be final and bindings on the parties. The ACS Audit Review and Appeals Panel may negotiate settlements regarding ACS audits or refer part or the entire audit back to the auditors.

9. The informed review procedure set forth above shall not be deemed to constitute a waiver, by either party, of any and all other rights or remedies at law or pursuant to this Agreement.

10. All notices to be provided pursuant to this Article shall be certified mail, return receipt requested.

#### **Section 10.04 Recoupment**

A. When any audit of the Contractor discloses overpayments and/or disallowed costs, which were previously made by the City to the Contractor, pursuant to any agreement between the Contractor and the City including this Agreement, ACS may, at its option, withhold for purposes of set-off monies due and owing to the Contractor. The Contractor may propose a re-payment schedule; however such repayment schedule must be submitted to ACS within thirty (30) days from the Contractor's receipt of ACS' notification of overpayment and/or

disallowance. ACS in its sole discretion may accept or deny the Contractor's proposed repayment schedule.

B. Before ACS commences recoupment through set-off, based upon an ACS audit pursuant to this Agreement, the Contractor shall be afforded the opportunity to convene the audit dispute resolution procedure, as more fully described in this Article, and no set-off shall be made until such procedures are completed.

C. If an audit by ACS conducted pursuant to Section 10.02 of this Part II entitled "Audit by ACS" discloses an underpayment by ACS, ACS in its sole discretion, may pay the amount of the underpayment to the Contractor or offset the amount against amount owed by the Contractor to ACS, if any.

#### **Section 10.05 Federal Audit Requirements**

If applicable, the Contractor shall fulfill the audit requirements of the Federal Office of Management and Budget Circular A-133, "Audits of Institutions of Higher Education and Other Non-Profit Organizations," and shall provide such audit to ACS within thirty (30) days after its receipt of the final audit by the Contractor from the preparing accountant.

#### **Section 10.06 State Charities Registration and Audit Requirements**

If the Contractor is required by New York State law to register with and make annual filings to the Charities Bureau of the New York State Department of Law, timely compliance with such requirements shall be deemed a material term of this Agreement. The Contractor shall make available to ACS all such filings, including any audit and/or financial report required to be submitted with such filings, within thirty (30) days of receiving such final audit or financial report from its preparer, and in no event later than ten (10) days following the filing of such audit or financial report with the Charities Bureau.

### **ARTICLE 11. MONITORING, EVALUATION AND QUALITY IMPROVEMENT**

#### **Section 11.01 Monitoring, Evaluation and Quality Improvement**

A. The Contractor shall have a quality assurance plan in place that describes how it will provide quality assurance, planning and program evaluation for Foster Children placed in its care.

B. Contractor Participation in Collection of Information for Review Procedures: The Contractor shall participate in on-going ACS assessment, evaluation, and monitoring review procedures on the performance of Foster Care services and provide all information appropriate to allow ACS to conduct these review procedures and complete a full review of the Contractor's family foster care program.

C. ACS Data Collection and Program Evaluation

1. ACS shall collect and monitor data as part of a full evaluation process and monitor program performance indicators as appropriate and as needed. ACS shall provide data and the evaluation to the Contractor in a timely manner, as appropriate, to support the Contractor's decisions regarding any needed changes.

2. ACS will establish and notify the Contractor of evaluation standards prior to their implementation. Standards will be established in advance of the evaluation period. The Contractor will be afforded the opportunity to rebut an evaluation before it is made final by ACS.

3. ACS may in its sole discretion:

a. Implement monitoring methods including, but not limited to, direct contact with Recipients of Services including Foster Children and birth/caretaker families and foster families by telephone or mail to assess the sufficiency, efficiency and adequacy of the services performed.

b. Have ACS personnel visit the Contractor to enable ACS to assess and determine the effectiveness of the Contractor's staff on a regular basis. During site visits, ACS personnel may provide technical assistance in solving problems affecting the provision of family foster care services.

c. Review all program activities, procedures, records, and records recording, and conduct other evaluatory activities as ACS deems necessary and appropriate, including, at reasonable times, unannounced and unscheduled visits.

d. Duplicate all of Contractor's records, forms, and other data, which ACS deems necessary as they relate to this Agreement.

D. ACS shall provide the Executive Director and Board of Directors of the Contractor with written information concerning the results of monitoring visit or evaluation.

E. All records of the Contractor kept pursuant to this Agreement shall be subject at all reasonable times to inspection, review or audit by City, State, or Federal personnel and other personnel duly authorized by ACS.

F. The Contractor agrees that a program and facilities review, including unannounced visits, meeting with Foster Children and birth/caretaker families and foster families, review of service records, review of service policy and procedural issuances, review of staffing ratios and job descriptions, and meetings with any staff directly or indirectly involved in the provision of services, may be conducted at any reasonable time by ACS, State and Federal personnel, or other persons duly authorized by ACS.

G. Monitoring and evaluation performed pursuant to this Agreement shall be in addition to, and shall not be deemed to limit, the right of the Comptroller, ACS and any Federal

or State governmental entity or their designees from conducting fiscal audits or other evaluations.

H. The parties to this Agreement recognize ACS's duty and authority to supervise, monitor, audit and review the activities of the Contractor in providing the family foster care services contemplated in this Agreement. The Contractor agrees to comply with ACS Policies and to provide the information required for any review or evaluation requested by ACS. The Contractor further agrees to implement corrective action plans required by ACS.

#### **Section 11.02 Capacity Building and Oversight (CBO) Review for Not-For-Profit Contractors**

If requested by ACS, the Contractor must complete the Mayor's Office of Contract Services (MOCS) Capacity Building and Oversight (CBO) Review process. As part of that process, the Contractor must submit specified documents to the CBO unit of MOCS, which then conducts an evaluation of the Contractor and its operations for compliance with the terms of its contracts, its own by-laws, internal fiscal controls, applicable laws and regulations, and best practices in not-for-profit organization administration. The specified documents may include, but are not limited to, the Contractor's Internal Revenue Service ("IRS") determination of tax exemption, the most recent IRS Form 990 filing; the most recent audited financial statement (including the auditor's letter to the management), the functional budget for the current fiscal year in the format approved by the Board of Directors, an organizational chart identifying key staff by title, a copy of the most recently-approved Board Minutes, the by-laws of the corporation, a roster of the membership of the Board of Directors and a list of Board committees, the Contractor's current policies and procedures as adopted, and any other organizational documents, whether or not they are specifically required to be maintained pursuant to this contract or applicable laws and regulations. In the course of the CBO review process, MOCS may make recommendations to the Contractor, request the Contractor to take certain remedial actions and/or to implement certain policy changes. Any such recommendations and the Contractor's responses thereto, will be provided to the Department for its consideration and any appropriate actions under this contract.

### **ARTICLE 12. TERMINATION/EXPIRATION**

#### **Section 12.01 Termination**

A. In addition to the termination rights set forth in Article 10 of Appendix A of this Agreement, ACS and the Contractor shall have the right to unilaterally terminate this Agreement in whole or in part, upon sixty (60) days' written notice to the other subject to the terms of this Agreement including Section 12.02(A) of this Part II entitled "Responsibilities after Notice of Termination or Expiration."

B. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date. The City shall pay for services provided in accordance with this Agreement prior to the termination date. Any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the

termination date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease agreement, oral or written, entered into between the Contractor and its landlord.

## **Section 12.02 Responsibilities after Notice of Termination or Expiration**

A. Upon ACS's receipt of the Contractor's notice to terminate this Agreement or the Contractor's receipt of ACS' notice of termination or expiration of this Agreement, ACS shall make its best efforts to arrange for the transfer or discharge of all Foster Children to another foster care provider, as soon as possible. Notwithstanding any provision in this Agreement, the Contractor agrees to continue to provide all care and services required by this Agreement and the Law for all Foster Children in the Contractor's care and not to discharge or refuse to continue to provide care and services to such charges until all Foster Children are transferred or discharged at the Commissioner's direction. ACS shall pay the Contractor the rate established in this Agreement or any modified rate established by OCFS, until all Foster Children are transferred or discharged. The City agrees to bring to the attention of OCFS the Contractor's costs and expenses in closeout.

B. Upon notice of termination or expiration, the Contractor shall comply with all ACS close-out procedures, including but not limited to:

1. Accounting for and refunding to ACS, within thirty (30) days after notice of termination or expiration, any unexpended funds which have been provided to the Contractor pursuant to this Agreement;
2. Furnishing within thirty (30) days after notice of termination or expiration an inventory to ACS of all equipment, appurtenances and property purchased through or provided under this Agreement and carrying out any ACS or City directive concerning the disposition of such equipment, appurtenances and property;
3. Turning over to ACS or its designees all books, records, documents and material specifically relating to this Agreement that the Department has requested be turned over;
4. Submitting to ACS, within ninety (90) days after termination or expiration, final report of receipt and expenditures of funds relating to the Agreement. The report shall be made by a CPA or a licensed public accountant;
5. Transmitting forthwith to ACS copies of all case records; and
6. Providing reasonable assistance to ACS in the transition, if any, to a new contractor.

C. This Section shall survive the termination or expiration of this Agreement.

### **Section 12.03 Threatened Termination by Contractor**

The Contractor expressly agrees that it will not join together with other family foster care and/or residential care providers under contract with ACS to threaten termination of their respective agreements for the purpose of coercing ACS to modify or renegotiate the terms of an existing agreement. This provision is not intended to proscribe consultation among such ACS contracted family foster care and/or residential care providers.

### **Section 12.04 Miscellaneous**

The requirements, rights and remedies provided in this Article shall not be exclusive and are in addition to all other requirements, rights and remedies provided by Law or under this Agreement, including Article 10 of Appendix A entitled "Termination, Default and Reduction in Funding."

## **ARTICLE 13. SURVIVAL OF TERMS**

### **Section 13.01 Survival of Terms**

Notwithstanding any other provision in this Agreement to the contrary, the provisions of this Agreement which are specified as surviving and/or provisions which by their nature contemplate effectiveness beyond the termination or expiration of this Agreement shall survive termination or expiration of this Agreement. Any such surviving provisions which require for their effectiveness the survival of other provisions of this Agreement shall also survive termination or expiration of this Agreement.

## **ARTICLE 14. CONTROLLING ORDER**

### **Section 14.01 Controlling Order**

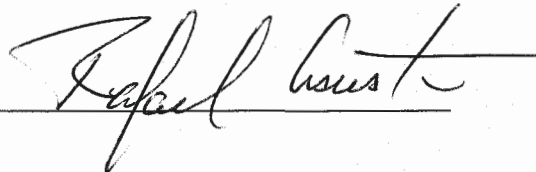
ACS' Request for Proposals ("RFP"), Contractor's proposal ("Proposal") and the negotiated addendum ("Negotiated Addendum") (if any) to the Proposal are attached hereto and made a part hereof. The terms and conditions of Part I and II and Appendix A of this Agreement shall govern in the event of any conflict with the RFP, the Proposal and the Negotiated Addendum to the Proposal. In the event that the Agreement is silent on any point, the terms and conditions of the RFP shall govern over any conflicting provision(s) of the Proposal and the Negotiated Addendum to the Proposal. In the event that the RFP is silent on any point, the terms and conditions of the Negotiated Addendum to the proposal shall govern over any conflicting provisions of the Proposal. Therefore, the controlling order shall be (1) the Agreement; (2) Attachment I - the RFP; (3) Attachment IV - the Budget; (4) Attachment II - the Negotiated Addendum; (5) Attachment II - the Proposal.

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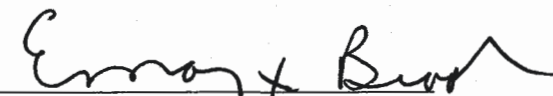
IN WITNESS WHEREOF, the parties have duly executed this Agreement on the date first above written.

CITY OF NEW YORK  
ADMINISTRATION FOR CHILDREN'S SERVICES  
COMMISSIONER

By 

Corporate Contractor  
Affix Corporate Seal:

Community Counseling & Mediation  
CONTRACTOR

By 

Title President & CEO

11 - 2675243

Fed. Employer I.D. No. or  
Soc. Sec. No

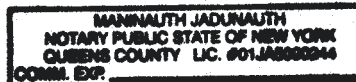
STATE OF NEW YORK )

:ss:

COUNTY OF NEW YORK )

On this 16<sup>th</sup> day of May 20 11, before me personally came  
Rafael Acosta, to me known and known to me to be  
Deputy ACO of the ADMINISTRATION FOR  
 CHILDREN'S SERVICES of the CITY OF NEW YORK, the person described in and who is  
 duly authorized to execute the foregoing instrument on behalf of the Commissioner, and he  
 acknowledged to me that he executed the same for the purpose therein mentioned.

[Signature]  
 NOTARY PUBLIC



STATE OF ) New York

:ss:

COUNTY OF ) New York

On this 9<sup>th</sup> day of May 20 11, before me personally came  
Emory X. Brooks, to me known, who, being by me duly sworn, did  
 depose and say that he resides at 1 Hoyt St 7th Fl Bklyn, NY 11201, that he is the  
President & CEO of the  
Community Counseling & Mediation, the corporation described in and  
 which executed the above instrument; that he knows the seal of said corporation; that the seal  
 affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of  
 Directors of said corporation, and that he signed his name thereto by like order.

[Signature]  
 NOTARY PUBLIC

LARRY SMITH JR.  
 NOTARY PUBLIC, State of New York  
 No. 01SM6186354  
 Qualified in Kings County  
 Commission Expires April 28, 2012



## APPENDIX A

### **GENERAL PROVISIONS GOVERNING CONTRACTS FOR CONSULTANTS, PROFESSIONAL, TECHNICAL, HUMAN and CLIENT SERVICES**

#### ARTICLE 1 - DEFINITIONS

##### Section 1.01 Definitions

The following words and expressions, or pronouns used in their stead, shall, wherever they appear in this Agreement, be construed as follows, unless a different meaning is clear from the context:

- A. "Agency Chief Contracting Officer" or "ACCO" shall mean the position delegated authority by the Agency Head to organize and supervise the procurement activity of subordinate Agency staff in conjunction with the City Chief Procurement Officer.
- B. "Agreement" shall mean the various documents, including this Appendix A, that constitute the contract between the Contractor and the City.
- C. "City" shall mean The City of New York.
- D. "City Chief Procurement Officer" or "CCPO" shall mean the position delegated authority by the Mayor to coordinate and oversee the procurement activity of Mayoral agency staff, including the ACCOs.
- E. "Commissioner" or "Agency Head" shall mean the head of the Department or his or her duly authorized representative. The term "duly authorized representative" shall include any person or persons acting within the limits of his or her authority.
- F. "Comptroller" shall mean the Comptroller of the City of New York.
- G. "Contractor" shall mean the entity entering into this Agreement with the Department.
- H. "Days" shall mean calendar days unless otherwise specifically noted to mean business days.
- I. "Department" or "Agency" shall mean the City agency that has entered into this Agreement.
- J. "Law" or "Laws" shall mean the New York City Charter ("Charter"), the New York City Administrative Code ("Admin. Code"), a local rule of the City of New York, the Constitutions of the United States and the State of New York, a statute of the United States or of the State of New York and any ordinance, rule or regulation having the force of law and adopted pursuant thereto, as amended, and common law.

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K. "Procurement Policy Board" or "PPB" shall mean the board established pursuant to Charter § 311 whose function is to establish comprehensive and consistent procurement policies and rules which have broad application throughout the City.

L. "PPB Rules" shall mean the rules of the Procurement Policy Board as set forth in Title 9 of the Rules of the City of New York ("RCNY"), § 1-01 et seq.

M. "State" shall mean the State of New York.

**ARTICLE 2 - REPRESENTATIONS  
AND WARRANTIES**

**Section 2.01 Procurement of Agreement**

A. The Contractor represents and warrants that no person or entity (other than an officer, partner, or employee working solely for the Contractor) has been employed or retained to solicit or secure this Agreement upon any agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other direct or indirect compensation. Notwithstanding the preceding sentence, the Contractor may retain consultants to draft proposals, negotiate contracts, and perform other similar services. The Contractor further represents and warrants that no payment, gift, or thing of value has been made, given, or promised to obtain this or any other agreement between the parties. The Contractor makes such representations and warranties to induce the City to enter into this Agreement and the City relies upon such representations and warranties in the execution of this Agreement.

B. For any breach or violation of the representations and warranties set forth in Paragraph A above, the Commissioner shall have the right to annul this Agreement without liability, entitling the City to recover all monies paid to the Contractor; and the Contractor shall not make claim for, or be entitled to recover, any sum or sums due under this Agreement. The rights and remedies of the City provided in this Section are not exclusive and are in addition to all other rights and remedies allowed by Law or under this Agreement.

**Section 2.02 Conflicts of Interest**

A. The Contractor represents and warrants that neither it nor any of its directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly, which conflicts in any manner or degree with the performance of this Agreement. The Contractor further represents and warrants that no person having such interest or possible interest shall be employed by or connected with the Contractor in the performance of this Agreement.

B. Consistent with Charter § 2604 and other related provisions of the Charter, the Admin. Code and the New York State Penal Law, no elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this Agreement which affects his or her personal

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interest or the interest of any corporation, partnership or other entity in which he or she is, directly or indirectly, interested; nor shall any such official, officer, employee, or person have any interest in, or in the proceeds of, this Agreement. This Paragraph B shall not prevent directors, officers, members, partners, or employees of the Contractor from participating in decisions relating to this Agreement where their sole personal interest is in the Contractor.

C. The Contractor shall not employ a person or permit a person to serve as a member of the Board of Directors or as an officer of the Contractor if such employment or service would violate Chapter 68 of the Charter.

**[PARAGRAPHS D-H ARE APPLICABLE ONLY TO HUMAN OR CLIENT SERVICE CONTRACTS.]**

D. Except as provided in Paragraph E below, the Contractor's employees and members of their immediate families, as defined in Paragraph F below, may not serve on the Board of Directors of the Contractor ("Board"), or any committee with authority to order personnel actions affecting his or her job, or which, either by rule or by practice, regularly nominates, recommends or screens candidates for employment in the program to be operated pursuant to this Agreement.

E. If the Board has more than five (5) members, then Contractor's employees and members of their immediate families may serve on the Board, or any committee with authority to order personnel actions affecting his or her job, or which, either by rule or by practice, regularly nominates, recommends or screens candidates for employment in the program to be operated pursuant to this Agreement, provided that (i) Contractor's employees and members of their immediate families are prohibited from voting on any such personnel matters, including but not limited to any matters directly affecting their own salary or other compensation, and shall fully disclose all conflicts and potential conflicts to the Board, and (ii) Contractor's employees and members of their immediate families may not serve in the capacity either of Chairperson or Treasurer of the Board (or equivalent titles), nor constitute more than one-third of either the Board or any such committee.

F. Without the prior written consent of the Commissioner, no person may hold a job or position with the Contractor over which a member of his or her immediate family exercises any supervisory, managerial or other authority whatsoever whether such authority is reflected in a job title or otherwise, unless such job or position is wholly voluntary and unpaid. A member of an immediate family includes: husband, wife, domestic partner, father, father-in-law, mother, mother-in-law, brother, brother-in-law, sister, sister-in-law, son, son-in-law, daughter, daughter-in-law, niece, nephew, aunt, uncle, first cousin, and separated spouse. Where a member of an immediate family has that status because of that person's relationship to a spouse (e.g., father-in-law), that status shall also apply to a relative of a domestic partner. For purposes of this Section, a member of the Board is deemed to exercise authority over all employees of the Contractor.

G. If the Contractor has contracts with the City that in the aggregate during any twelve-month period have a value of more than One Million Dollars (\$1,000,000) and such amount constitutes more than fifty percent (50%) of the Contractor's total revenues, then the

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Contractor must have a minimum of five (5) persons on its Board.

H. Paragraphs D-H of this Section 2.02 apply only if Contractor is a not-for-profit corporation.

### **Section 2.03 Fair Practices**

A. The Contractor and each person signing on its behalf certifies, under penalties of perjury, that to the best of its, his or her knowledge and belief:

1. The prices and other material terms set forth in this Agreement have been arrived at independently, without collusion, consultation, communication, or agreement with any other bidder or proposer or with any competitor as to any matter relating to such prices or terms for the purpose of restricting competition;

2. Unless otherwise required by Law or where a schedule of rates or prices is uniformly established by a government agency through regulation, policy or directive, the prices and other material terms set forth in this Agreement which have been quoted in this Agreement and on the bid or proposal submitted by the Contractor have not been knowingly disclosed by the Contractor, directly or indirectly, to any other bidder or proposer or to any competitor prior to the bid or proposal opening; and

3. No attempt has been made or will be made by the Contractor to induce any other person or entity to submit or not to submit a bid or proposal for the purpose of restricting competition.

B. The fact that the Contractor (i) has published price lists, rates, or tariffs covering items being procured, (ii) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (iii) has sold the same items to other customers at the same prices and/or terms being bid or proposed, does not constitute, without more, a disclosure within the meaning of this Section.

### **Section 2.04 VENDEX**

The Contractor represents and warrants that it and its principals have duly executed and filed all required VENDEX Questionnaires and, if applicable, Certificates of No Change, pursuant to PPB Rule § 2-08 and in accordance with the policies and procedures of the Mayor's Office of Contract Services. The Contractor understands that the Department's reliance upon the completeness and veracity of the information stated therein is a material condition to the execution of this Agreement, and represents and warrants that the information it and its principals have provided is accurate and complete.

### **Section 2.05 Political Activity**

The Contractor's provision of services under this Agreement shall not include any partisan political activity or any activity to further the election or defeat of any candidate for

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public, political, or party office, nor shall any of the funds provided under this Agreement be used for such purposes.

**Section 2.06 Religious Activity**

There shall be no religious worship, instruction or proselytizing as part of or in connection with the Contractor's provision of services under this Agreement, nor shall any of the funds provided under this Agreement be used for such purposes.

**Section 2.07 Unlawful Discriminatory Practices: Admin. Code § 6-123**

As required by Admin. Code § 6-123, the Contractor will not engage in any unlawful discriminatory practice as defined in and pursuant to the terms of Title 8 of the City Administrative Code. The Contractor shall include a provision in any agreement with a first-level subcontractor performing services under this Agreement for an amount in excess of Fifty Thousand Dollars (\$50,000) that such subcontractor shall not engage in any such unlawful discriminatory practice.

**Section 2.08 Bankruptcy and Reorganization**

In the event that the Contractor files for bankruptcy or reorganization under Chapter Seven or Chapter Eleven of the United States Bankruptcy Code, the Contractor shall disclose such action to the Department within seven (7) days of filing.

**ARTICLE 3 - ASSIGNMENT AND SUBCONTRACTING****Section 3.01 Assignment**

A. The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, or the right to execute it, or the right, title or interest in or to it or any part of it, or assign, by power of attorney or otherwise, any of the monies due or to become due under this Agreement, without the prior written consent of the Commissioner. The giving of any such consent to a particular assignment shall not dispense with the necessity of such consent to any further or other assignments. Any such assignment, transfer, conveyance or other disposition without such written consent shall be void.

B. Before entering into any such assignment, transfer, conveyance or other disposal of this Agreement, the Contractor shall submit a written request for approval to the Department giving the name and address of the proposed assignee. The proposed assignee's VENDEX questionnaire must be submitted within thirty (30) Days after the ACCO has granted preliminary written approval of the proposed assignee, if required. Upon the request of the Department, the Contractor shall provide any other information demonstrating that the proposed assignee has the necessary facilities, skill, integrity, past experience and financial resources to perform the specified services in accordance with the terms and conditions of this Agreement. The Agency shall make a final determination in writing approving or disapproving the assignee after receiving all requested information.



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C. Failure to obtain the prior written consent to such an assignment, transfer, conveyance, or other disposition may result in the revocation and annulment of this Agreement, at the option of the Commissioner. The City shall thereupon be relieved and discharged from any further liability and obligation to the Contractor, its assignees, or transferees, who shall forfeit all monies earned under this Agreement, except so much as may be necessary to pay the Contractor's employees.

D. The provisions of this Section shall not hinder, prevent, or affect an assignment by the Contractor for the benefit of its creditors made pursuant to the Laws of the State.

E. This Agreement may be assigned, in whole or in part, by the City to any corporation, agency, or instrumentality having authority to accept such assignment. The City shall provide the Contractor with written notice of any such assignment.

**Section 3.02 Subcontracting**

A. The Contractor shall not enter into any subcontract for an amount greater than Five Thousand Dollars (\$5,000) for the performance of its obligations, in whole or in part, under this Agreement without the prior approval by the Department of the subcontractor. The Department hereby grants approval for all subcontracts for an amount that does not exceed Five Thousand Dollars (\$5,000). The Contractor must submit monthly reports to the Department indicating all such subcontractors. All subcontracts must be in writing.

B. Prior to entering into any subcontract for an amount greater than Five Thousand Dollars (\$5,000), the Contractor shall submit a written request for the approval of the proposed subcontractor to the Department giving the name and address of the proposed subcontractor and the portion of the services that it is to perform and furnish. At the request of the Department, a copy of the proposed subcontract shall be submitted to the Department. The proposed subcontractor's VENDEX Questionnaire must be submitted, if required, within thirty (30) Days after the ACCO has granted preliminary approval of the proposed subcontractor. Upon the request of the Department, the Contractor shall provide any other information demonstrating that the proposed subcontractor has the necessary facilities, skill, integrity, past experience and financial resources to perform the specified services in accordance with the terms and conditions of this Agreement. The Agency shall make a final determination in writing approving or disapproving the subcontractor after receiving all requested information. For proposed subcontracts that do not exceed Twenty-five Thousand Dollars (\$25,000), the Department's approval shall be deemed granted if the Department does not issue a written approval or disapproval within forty-five (45) Days of the Department's receipt of the written request for approval or, if applicable, within forty-five (45) Days of the Department's acknowledged receipt of fully completed VENDEX Questionnaires for the subcontractor.

C. All subcontracts shall contain provisions specifying that:

1. The work performed by the subcontractor must be in accordance with the terms of the agreement between the City and the Contractor;

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2. Nothing contained in the agreement between the Contractor and the subcontractor shall impair the rights of the City;

3. Nothing contained in the agreement between the Contractor and the subcontractor, or under the agreement between the City and the Contractor, shall create any contractual relation between the subcontractor and the City; and

4. The subcontractor specifically agrees to be bound by Section 4.07 and Article 5 of this Appendix A and specifically agrees that the City may enforce such provisions directly against the subcontractor as if the City were a party to the subcontract.

D. The Contractor agrees that it is as fully responsible to the Department for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by such subcontractors as it is for the acts and omissions of any person directly employed by it.

E. For determining the value of a subcontract, all subcontracts with the same subcontractor shall be aggregated.

F. The Department may revoke the approval of a subcontractor granted or deemed granted pursuant to Paragraphs (A) and (B) of this section if revocation is deemed to be in the interest of the City in writing on no less than ten (10) Days notice unless a shorter period is warranted by considerations of health, safety, integrity issues or other similar factors. Upon the effective date of such revocation, the Contractor shall cause the subcontractor to cease all work under the Agreement. The City shall not incur any further obligation for services performed by such subcontractor pursuant to this Agreement beyond the effective date of the revocation. The City shall pay for services provided by the subcontractor in accordance with this Agreement prior to the effective date of revocation.

G. The Department's approval of a subcontractor shall not relieve the Contractor of any of its responsibilities, duties and liabilities under this Agreement. At the request of the Department, the Contractor shall provide the Department a copy of any subcontract.

H. Individual employer-employee contracts are not subcontracts subject to the requirements of this Section.

## **ARTICLE 4 - LABOR PROVISIONS**

### **Section 4.01 Independent Contractor Status**

The Contractor and the Department agree that the Contractor is an independent contractor and not an employee of the Department or the City. Accordingly, neither the Contractor nor its employees or agents will hold themselves out as, or claim to be, officers or employees of the City, or of any department, agency or unit of the City, by reason of this Agreement, and they will not, by reason of this Agreement, make any claim, demand or application to or for any right or benefit applicable to an officer or employee of the City, including, but not limited to, Workers'

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Compensation coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage or employee retirement membership or credit.

**Section 4.02 Employees**

All persons who are employed by the Contractor and all consultants or independent contractors who are retained by the Contractor to perform services under this Agreement are neither employees of the City nor under contract with the City. The Contractor, and not the City, is responsible for their work, direction, compensation, and personal conduct while engaged under this Agreement. Nothing in the Agreement shall impose any liability or duty on the City for the acts, omissions, liabilities or obligations of the Contractor, or any officer, employee, or agent of the Contractor, or for taxes of any nature, or for any right or benefit applicable to an officer or employee of the City, including, but not limited to, Workers' Compensation coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage or employee retirement membership or credit. Except as specifically stated in this Agreement, nothing in this Agreement shall impose any liability or duty on the City to any person or entity.

**Section 4.03 Removal of Individuals Performing Work**

The Contractor shall not have anyone perform work under this Agreement who is not competent, faithful and skilled in the work for which he or she shall be employed. Whenever the Commissioner shall inform the Contractor, in writing, that any individual is, in his or her opinion, incompetent, unfaithful, or unskilled, such individual shall no longer perform work under this Agreement. Prior to making a determination to direct a Contractor that an individual shall no longer perform work under this Agreement, the Commissioner shall provide the Contractor an opportunity to be heard on no less than five (5) Days' written notice. The Commissioner may direct the Contractor not to allow the individual from performing work under the Agreement pending the opportunity to be heard and the Commissioner's determination.

**Section 4.04 Minimum Wage**

Except for those employees whose minimum wage is required to be fixed pursuant to Sections 220 or 230 of the New York State Labor Law or by City Administrative Code § 6-109, all persons employed by the Contractor in the performance of this Agreement shall be paid, without subsequent deduction or rebate, unless expressly authorized by Law, not less than the minimum wage as prescribed by Law. Any breach of this Section shall be deemed a material breach of this Agreement.

**Section 4.05 Non-Discrimination: New York State Labor Law § 220-e**

A. If this Agreement is for the construction, alteration or repair of any public building or public work or for the manufacture, sale, or distribution of materials, equipment, or supplies, the Contractor agrees, as required by New York State Labor Law § 220-e, that:

1. In the hiring of employees for the performance of work under this Agreement or any subcontract hereunder, neither the Contractor, subcontractor, nor any



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person acting on behalf of such Contractor or subcontractor, shall by reason of race, creed, color, disability, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;

2. Neither the Contractor, subcontractor, nor any person on his or her behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Agreement on account of race, creed, color, disability, sex or national origin;

3. There may be deducted from the amount payable to the Contractor by the City under this Agreement a penalty of Fifty Dollars (\$50) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Agreement; and

4. This Agreement may be terminated by the City, and all monies due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this Section.

B. The provisions of this Section shall be limited to operations performed within the territorial limits of the State of New York.

**Section 4.06 Non-Discrimination: Admin. Code § 6-108**

If this Agreement is for the construction, alteration or repair of buildings or the construction or repair of streets or highways, or for the manufacture, sale, or distribution of materials, equipment or supplies, the Contractor agrees, as required by New York City Administrative Code § 6-108, that:

A. It shall be unlawful for any person engaged in the construction, alteration or repair of buildings or engaged in the construction or repair of streets or highways pursuant to a contract with the City or engaged in the manufacture, sale or distribution of materials, equipment or supplies pursuant to a contract with the City to refuse to employ or to refuse to continue in any employment any person on account of the race, color or creed of such person.

B. It shall be unlawful for any person or any servant, agent or employee of any person, described in Paragraph A above, to ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color, creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.

C. Breach of the foregoing provisions shall be deemed a breach of a material provision of this Agreement.

D. Any person, or the employee, manager or owner of or officer of such firm or corporation who shall violate any of the provisions of this Section shall, upon conviction thereof, be punished by a fine of not more than One Hundred Dollars (\$100) or by imprisonment for not

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more than thirty (30) Days, or both.

**Section 4.07 Non-Discrimination: E.O. 50 -- Equal Employment Opportunity**

A. This Agreement is subject to the requirements of City Executive Order No. 50 (1980) ("E.O. 50"), as revised, and the rules set forth at 66 RCNY § 10-01 et seq. No agreement will be awarded unless and until these requirements have been complied with in their entirety. The Contractor agrees that it:

1. Will not discriminate unlawfully against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation or citizenship status with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment;
2. Will not discriminate unlawfully in the selection of subcontractors on the basis of the owners', partners' or shareholders' race, color, creed, national origin, sex, age, disability, marital status, sexual orientation, or citizenship status;
3. Will state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that all qualified applicants will receive consideration for employment without unlawful discrimination based on race, color, creed, national origin, sex, age, disability, marital status, sexual orientation or citizenship status, and that it is an equal employment opportunity employer;
4. Will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments under E.O. 50 and the rules and regulations promulgated thereunder;
5. Will furnish before this Agreement is awarded all information and reports including an Employment Report which are required by E.O. 50, the rules and regulations promulgated thereunder, and orders of the City Department of Small Business Services, Division of Labor Services ("DLS"); and
6. Will permit DLS to have access to all relevant books, records, and accounts for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

B. The Contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of this Agreement and noncompliance with E.O. 50 and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of DLS, the Director of DLS may direct the Commissioner to impose any or all of the following sanctions:

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1. Disapproval of the Contractor; and/or
2. Suspension or termination of the Agreement; and/or
3. Declaring the Contractor in default; and/or
4. In lieu of any of the foregoing sanctions, imposition of an employment program.

C. Failure to comply with E.O. 50 and the rules and regulations promulgated thereunder in one or more instances may result in the Department declaring the Contractor to be non-responsible.

D. The Contractor agrees to include the provisions of the foregoing Paragraphs in every subcontract or purchase order in excess of One Hundred Thousand Dollars (\$100,000) to which it becomes a party unless exempted by E.O. 50 and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Director of DLS as a means of enforcing such provisions including sanctions for noncompliance. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor or vendor for purposes of this Paragraph.

E. The Contractor further agrees that it will refrain from entering into any subcontract or modification thereof subject to E.O. 50 and the rules and regulations promulgated thereunder with a subcontractor who is not in compliance with the requirements of E.O. 50 and the rules and regulations promulgated thereunder. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor for purposes of this Paragraph.

F. Nothing contained in this Section shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, that is operated, supervised or controlled by or in connection with a religious organization, from lawfully limiting employment or lawfully giving preference to persons of the same religion or denomination or from lawfully making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.

## **ARTICLE 5 - RECORDS, AUDITS, REPORTS, AND INVESTIGATIONS**

### **Section 5.01 Books and Records**

The Contractor agrees to maintain separate and accurate books, records, documents and other evidence, and to utilize appropriate accounting procedures and practices, which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.

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**Section 5.02 Retention of Records**

The Contractor agrees to retain all books, records, and other documents relevant to this Agreement, including those required pursuant to Section 5.01, for six years after the final payment or expiration or termination of this Agreement, or for a period otherwise prescribed by Law, whichever is later. In addition, if any litigation, claim, or audit concerning this Agreement has commenced before the expiration of the six-year period, the records must be retained until the completion of such litigation, claim, or audit. Any books, records and other documents that are created in an electronic format in the regular course of business may be retained in an electronic format. Any books, records, and other documents that are created in the regular course of business as a paper copy may be retained in an electronic format provided that the records satisfy the requirements of New York Civil Practice Law and Rules ("CPLR") 4539(b), including the requirement that the reproduction is created in a manner "which does not permit additions, deletions, or changes without leaving a record of such additions, deletions, or changes." Furthermore, the Contractor agrees to waive any objection to the admissibility of any such books, records or other documents on the grounds that such documents do not satisfy CPLR 4539(b).

**Section 5.03 Inspection**

A. At any time during the Agreement or during the record retention period set forth in section 5.02, the City, including the Department and the Department's Office of the Inspector General, as well as City, State and federal auditors and any other persons duly authorized by the City shall, upon reasonable notice, have full access to and the right to examine and copy all books, records, and other documents maintained or retained by or on behalf of the Contractor pursuant to this Article. Notwithstanding any provision herein regarding notice of inspection, all books, records and other documents of the Contractor kept pursuant to this Agreement shall be subject to immediate inspection, review, and copying by the Department's Office of the Inspector General and/or the Comptroller without prior notice and at no additional cost to the City. The Contractor shall make such books, records and other documents available for inspection in the City of New York or shall reimburse the City for expenses associated with the out-of-City inspection.

B. The Department shall have the right to have representatives of the Department or of the City, State or federal government present to observe the services being performed.

C. The Contractor shall not be entitled to final payment until the Contractor has complied with any request for inspection or access given under this Section.

**Section 5.04 Audit**

A. This Agreement and all books, records, documents, and other evidence required to be maintained or retained pursuant to this Agreement, including all vouchers or invoices presented for payment and the books, records, and other documents upon which such vouchers or invoices are based (e.g., reports, cancelled checks, accounts, and all other similar material), are

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subject to audit by (i) the City, including the Comptroller, the Department, and the Department's Office of the Inspector General, (ii) the State, (iii) the federal government, and (iv) other persons duly authorized by the City. Such audits may include examination and review of the source and application of all funds whether from the City, the State, the federal government, private sources or otherwise.

B. Audits by the City, including the Comptroller, the Department, and the Department's Office of the Inspector General, are performed pursuant to the powers and responsibilities conferred by the Charter and the Admin. Code, as well as all orders, rules, and regulations promulgated pursuant to the Charter and Admin. Code.

C. The Contractor shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the Department and by the Comptroller in the exercise of his/her powers under Law.

D. The Contractor shall not be entitled to final payment until the Contractor has complied with the requirements of this Section.

**Section 5.05 No Removal of Records from Premises**

Where performance of this Agreement involves use by the Contractor of any City books, records, documents, or data (in hard copy, or electronic or other format now known or developed in the future) at City facilities or offices, the Contractor shall not remove any such data (in the format in which it originally existed, or in any other converted or derived format) from such facility or office without the prior written approval of the Department's designated official. Upon the request by the Department at any time during the Agreement or after the Agreement has expired or terminated, the Contractor shall return to the Department any City books, records, documents, or data that has been removed from City premises.

**Section 5.06 Electronic Records**

As used in this Appendix A, the terms books, records, documents, and other data refer to electronic versions as well as hard copy versions.

**Section 5.07 Investigations Clause**

A. The Contractor agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State or City agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

B. 1. If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency



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or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, or State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the Laws of the State, or;

2. If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then;

C. 1. The Commissioner or Agency Head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) Days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

2. If any non-governmental party to the hearing requests an adjournment, the Commissioner or Agency Head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to Paragraph E below without the City incurring any penalty or damages for delay or otherwise.

D. The penalties that may attach after a final determination by the Commissioner or Agency Head may include but shall not exceed:

1. The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

2. The cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

E. The Commissioner or Agency Head shall consider and address in reaching his or

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her determination and in assessing an appropriate penalty the factors in Paragraphs (1) and (2) below. He or she may also consider, if relevant and appropriate, the criteria established in Paragraphs (3) and (4) below, in addition to any other information that may be relevant and appropriate:

1. The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

2. The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

3. The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.

4. The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under Paragraph D above, provided that the party or entity has given actual notice to the Commissioner or Agency Head upon the acquisition of the interest, or at the hearing called for in Paragraph (C)(1) above gives notice and proves that such interest was previously acquired. Under either circumstance, the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

**F. Definitions**

1. The term "license" or "permit" as used in this Section shall be defined as a license, permit, franchise, or concession not granted as a matter of right.

2. The term "person" as used in this Section shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

3. The term "entity" as used in this Section shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City, or otherwise transacts business with the City.

4. The term "member" as used in this Section shall be defined as any person associated with another person or entity as a partner, director, officer, principal, or employee.

**G.** In addition to and notwithstanding any other provision of this Agreement, the

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Commissioner or Agency Head may in his or her sole discretion terminate this Agreement upon not less than three (3) Days written notice in the event the Contractor fails to promptly report in writing to the City Commissioner of Investigation any solicitation of money, goods, requests for future employment or other benefits or thing of value, by or on behalf of any employee of the City or other person or entity for any purpose that may be related to the procurement or obtaining of this Agreement by the Contractor, or affecting the performance of this Agreement.

**Section 5.08 Confidentiality**

A. The Contractor agrees to hold confidential, both during and after the completion or termination of this Agreement, all of the reports, information, or data, furnished to, or prepared, assembled or used by, the Contractor under this Agreement. The Contractor agrees that such reports, information, or data shall not be made available to any person or entity without the prior written approval of the Department. The Contractor agrees to maintain the confidentiality of such reports, information, or data by using a reasonable degree of care, and using at least the same degree of care that the Contractor uses to preserve the confidentiality of its own confidential information. In the event that the data contains social security numbers or other Personal Identifying Information, as such term is defined in Paragraph B of this Section, the Contractor shall utilize best practice methods (e.g., encryption of electronic records) to protect the confidentiality of such data. The obligation under this Section to hold reports, information or data confidential shall not apply where the City would be required to disclose such reports, information or data pursuant to the State Freedom of Information Law ("FOIL"), provided that the Contractor provides advance notice to the City, in writing or by e-mail, that it intends to disclose such reports, information or data and the City does not inform the contractor, in writing or by e-mail, that such reports, information, or data are not subject to disclosure under FOIL.

B. The Contractor shall provide notice to the Department within three (3) days of the discovery by the Contractor of any breach of security, as defined in Admin. Code § 10-501(b), of any data, encrypted or otherwise, in use by the Contractor that contains social security numbers or other personal identifying information as defined in Admin. Code § 10-501 ("Personal Identifying Information"), where such breach of security arises out of the acts or omissions of the Contractor or its employees, subcontractors, or agents. Upon the discovery of such security breach, the Contractor shall take reasonable steps to remediate the cause or causes of such breach, and shall provide notice to the Department of such steps. In the event of such breach of security, without limiting any other right of the City, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the costs of notifications and/or other actions mandated by any Law, or administrative or judicial order, to address the breach, and including any fines or disallowances imposed by the State or federal government as a result of the disclosure. The City shall also have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the costs of credit monitoring services for the victims of such a breach of security by a national credit reporting agency, and/or any other commercially reasonable preventive measure. The Department shall provide the Contractor with written notice and an opportunity to comment on such measures prior to implementation. Alternatively, at the City's discretion, or if monies remaining to be earned or paid under this Agreement are insufficient to cover the costs detailed



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above, the Contractor shall pay directly for the costs, detailed above, if any.

C. The Contractor shall restrict access to confidential information to persons who have a legitimate work related purpose to access such information. The Contractor agrees that it will instruct its officers, employees, and agents to maintain the confidentiality of any and all information required to be kept confidential by this Agreement.

D. The Contractor, and its officers, employees, and agents shall notify the Department, at any time either during or after completion or termination of this Agreement, of any intended statement to the press or any intended issuing of any material for publication in any media of communication (print, news, television, radio, Internet, etc.) regarding the services provided or the data collected pursuant to this Agreement at least twenty-four (24) hours prior to any statement to the press or at least five (5) business Days prior to the submission of the material for publication, or such shorter periods as are reasonable under the circumstances. The Contractor may not issue any statement or submit any material for publication that includes confidential information as prohibited by this Section 5.08.

E. At the request of the Department, the Contractor shall return to the Department any and all confidential information in the possession of the Contractor or its subcontractors. If the Contractor or its subcontractors are legally required to retain any confidential information, the Contractor shall notify the Department in writing and set forth the confidential information that it intends to retain and the reasons why it is legally required to retain such information. The Contractor shall confer with the Department, in good faith, regarding any issues that arise from the Contractor retaining such confidential information. If the Department does not request such information, or the Law does not require otherwise, such information shall be maintained in accordance with the requirements set forth in Section 5.02.

F. A breach of this Section shall constitute a material breach of this Agreement for which the Department may terminate this Agreement pursuant to Article 10. The Department reserves any and all other rights and remedies in the event of unauthorized disclosure.

## **ARTICLE 6 - COPYRIGHTS, PATENTS, INVENTIONS, and ANTITRUST**

### **Section 6.01 Copyrights**

A. Any reports, documents, data, photographs, deliverables, and/or other materials produced pursuant to this Agreement, and any and all drafts and/or other preliminary materials in any format related to such items produced pursuant to this Agreement, shall upon their creation become the exclusive property of the City.

B. Any reports, documents, data, photographs, deliverables, and/or other materials provided pursuant to this Agreement ("Copyrightable Materials") shall be considered "work-made-for-hire" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. § 101, and the City shall be the copyright owner thereof and of all aspects, elements and components thereof in which copyright protection might exist. To the extent that

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the Copyrightable Materials do not qualify as "work-made-for-hire," the Contractor hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the Copyrightable Materials to the City, free and clear of any liens, claims, or other encumbrances. The Contractor shall retain no copyright or intellectual property interest in the Copyrightable Materials. The Copyrightable Materials shall be used by the Contractor for no purpose other than in the performance of this Agreement without the prior written permission of the City. The Department may grant the Contractor a license to use the Copyrightable Materials on such terms as determined by the Department and set forth in the license.

C. The Contractor acknowledges that the City may, in its sole discretion, register copyright in the Copyrightable Materials with the United States Copyright Office or any other government agency authorized to grant copyright registrations. The Contractor shall fully cooperate in this effort, and agrees to provide any and all documentation necessary to accomplish this.

D. The Contractor represents and warrants that the Copyrightable Materials: (i) are wholly original material not published elsewhere (except for material that is in the public domain); (ii) do not violate any copyright Law; (iii) do not constitute defamation or invasion of the right of privacy or publicity; and (iv) are not an infringement, of any kind, of the rights of any third party. To the extent that the Copyrightable Materials incorporate any non-original material, the Contractor has obtained all necessary permissions and clearances, in writing, for the use of such non-original material under this Agreement, copies of which shall be provided to the City upon execution of this Agreement.

E. If the services under this Agreement are supported by a federal grant of funds, the federal and State government reserves a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for federal or State government purposes, the copyright in any Copyrightable Materials developed under this Agreement.

F. If the Contractor publishes a work dealing with any aspect of performance under this Agreement, or with the results of such performance, the City shall have a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use such work for City governmental purposes.

**Section 6.02 Patents and Inventions**

The Contractor shall promptly and fully report to the Department any discovery or invention arising out of or developed in the course of performance of this Agreement. If the services under this Agreement are supported by a federal grant of funds, the Contractor shall promptly and fully report to the federal government for the federal government to make a determination as to whether patent protection on such invention shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.

**Section 6.03 Pre-existing Rights**

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In no case shall Sections 6.01 and 6.02 apply to, or prevent the Contractor from asserting or protecting its rights in any discovery, invention, report, document, data, photograph, deliverable, or other material in connection with or produced pursuant to this Agreement that existed prior to or was developed or discovered independently from the activities directly related to this Agreement.

**Section 6.04 Antitrust**

The Contractor hereby assigns, sells, and transfers to the City all right, title and interest in and to any claims and causes of action arising under the antitrust laws of the State or of the United States relating to the particular goods or services procured by the City under this Agreement.

**ARTICLE 7 - INSURANCE**

**Section 7.01 Agreement to Insure**

The Contractor shall not commence performing services under this Agreement unless and until all insurance required by this Article is in effect, and shall ensure continuous insurance coverage in the manner, form, and limits required by this Article throughout the term of the Agreement.

**Section 7.02 Commercial General Liability Insurance**

A. The Contractor shall maintain Commercial General Liability Insurance covering the Contractor as Named Insured and the City as an Additional Insured in the amount of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall protect the City and the Contractor from claims for property damage and/or bodily injury, including death that may arise from any of the operations under this Agreement. Coverage under this insurance shall be at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 0001, shall contain no exclusions other than as required by law or as approved by the Department, and shall be "occurrence" based rather than "claims-made."

B. Such Commercial General Liability Insurance shall name the City, together with its officials and employees, as an Additional Insured with coverage at least as broad as the most recently issued ISO Form CG 20 10.

C. The Contractor shall ensure that each subcontractor adds the City, together with its officials and employees, as an Additional Insured under all Commercial General Liability Insurance policies obtained by a subcontractor covering work performed by such subcontractor under this Agreement with coverage at least as broad as the most recently issued ISO Form CG 20 26.

**Section 7.03 Professional Liability Insurance**

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A. At the Department's direction, if professional services are provided pursuant to this Agreement, the Contractor shall maintain and submit evidence of Professional Liability Insurance appropriate to the type(s) of such services to be provided under this Agreement in the amount of at least One Million Dollars (\$1,000,000) per claim. The policy or policies shall include an endorsement to cover the liability assumed by the Contractor under this Agreement arising out of the negligent performance of professional services or caused by an error, omission or negligent act of the Contractor or anyone employed by the Contractor.

B. All subcontractors of the Contractor providing professional services under this Agreement for which Professional Liability Insurance is reasonably commercially available shall also maintain such insurance in the amount of at least One Million Dollars (\$1,000,000) per claim, and the Contractor shall provide to the Department, at the time of the request for subcontractor approval, evidence of such Professional Liability Insurance on forms acceptable to the Department.

C. Claims-made policies will be accepted for Professional Liability Insurance. All such policies shall have an extended reporting period option or automatic coverage of not less than two (2) years. If available as an option, the Contractor shall purchase extended reporting period coverage effective on cancellation or termination of such insurance unless a new policy is secured with a retroactive date, including at least the last policy year.

**Section 7.04 Workers' Compensation, Disability Benefits, and Employer's Liability Insurance**

The Contractor shall maintain, and ensure that each subcontractor maintains, Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance in accordance with the Laws of the State on behalf of, or with regard to, all employees providing services under this Agreement.

**Section 7.05 Unemployment Insurance**

To the extent required by Law, the Contractor shall provide Unemployment Insurance for its employees.

**Section 7.06 Business Automobile Liability Insurance**

A. If vehicles are used in the provision of services under this Agreement, then the Contractor shall maintain Business Automobile Liability insurance in the amount of at least One Million Dollars (\$1,000,000) each accident combined single limit for liability arising out of ownership, maintenance or use of any owned, non-owned, or hired vehicles to be used in connection with this Agreement. Coverage shall be at least as broad as ISO Form CA0001, ed. 10/01.

B. If vehicles are used for transporting hazardous materials, the Business Automobile Liability Insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

#### **Section 7.07 General Requirements for Insurance Coverage and Policies**

A. All required insurance policies shall be maintained with companies that may lawfully issue the required policy and have an A.M. Best rating of at least A- / "VII" or a Standard and Poor's rating of at least A, unless prior written approval is obtained from the City Law Department.

B. All insurance policies shall be primary (and non-contributing) to any insurance or self-insurance maintained by the City.

C. The Contractor shall be solely responsible for the payment of all premiums for all required insurance policies and all deductibles or self-insured retentions to which such policies are subject, whether or not the City is an insured under the policy.

D. There shall be no self-insurance program with regard to any insurance required under this Article unless approved in writing by the Commissioner. Any such self-insurance program shall provide the City with all rights that would be provided by traditional insurance required under this Article, including but not limited to the defense obligations that insurers are required to undertake in liability policies.

E. The City's limits of coverage for all types of insurance required under this Article shall be the greater of (i) the minimum limits set forth in this Article or (ii) the limits provided to the Contractor as Named Insured under all primary, excess, and umbrella policies of that type of coverage.

F. All insurance policies required pursuant to Sections 7.02 and 7.03 shall contain an endorsement requiring that the issuing insurance company endeavor to provide the City with advance written notice in the event such policy is to expire or be cancelled or terminated for any reason, and to mail such notice to both the Commissioner, City of New York Administration for Children's Services, 150 William Street, New York, New York 10038, and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007. Such notice is to be sent at least (30) days before the expiration, cancellation or termination date, except in cases of non-payment, where at least ten (10) days written notice would be provided.

#### **Section 7.08 Proof of Insurance**

A. For Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance, the Contractor shall file one of the following within ten (10) Days of award of this Agreement. ACORD forms are not acceptable proof of workers' compensation coverage.

1. C-105.2 Certificate of Workers' Compensation Insurance;
2. U-26.3 -- State Insurance Fund Certificate of Workers' Compensation



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Insurance;

3. Request for WC/DB Exemption (Form CE-200);
4. Equivalent or successor forms used by the New York State Workers' Compensation Board; or
5. Other proof of insurance in a form acceptable to the City.

B. For each policy required under this Agreement, except for Workers' Compensation Insurance, Disability Benefits Insurance, Employer's Liability Insurance, and Unemployment Insurance, the Contractor shall file a Certificate of Insurance with the Department within ten (10) Days of award of this Agreement. All Certificates of Insurance shall be (a) in a form acceptable to the City and certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) accompanied by the endorsement in the Contractor's general liability policy by which the City has been made an additional insured pursuant to Section 7.02(B). All Certificate(s) of Insurance shall be accompanied by either a duly executed "Certification by Broker" in the form attached to this Appendix A or copies of all policies referenced in the Certificate of Insurance. If complete policies have not yet been issued, binders are acceptable, until such time as the complete policies have been issued, at which time such policies shall be submitted.

C. Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of policies required under this Article. Such Certificates of Insurance shall comply with the requirements of Section 7.08 (A) and Section 7.08(B), as applicable.

D. The Contractor shall provide the City with a copy of any policy required under this Article upon the demand for such policy by the Commissioner or the New York City Law Department.

E. Acceptance by the Commissioner of a certificate or a policy does not excuse the Contractor from maintaining policies consistent with all provisions of this Article (and ensuring that subcontractors maintain such policies) or from any liability arising from its failure to do so.

F. In the event the Contractor receives notice, from an insurance company or other person, that any insurance policy required under this Article shall expire or be cancelled or terminated for any reason, the Contractor shall immediately forward a copy of such notice to both the Commissioner, City of New York Administration for Children's Services, 150 William Street, New York, New York 10038, and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007.

**Section 7.09 Miscellaneous**

- A. Where notice of loss, damage, occurrence, accident, claim or suit is required

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under a policy maintained in accordance with this Article, the Contractor shall notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under this Agreement (including notice to Commercial General Liability Insurance carriers for events relating to the Contractor's own employees) no later than twenty (20) Days after such event. Such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Additional Insured as well as the Named Insured." Such notice shall also contain the following information: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged, or lost. The Contractor shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.

B. The Contractor's failure to maintain any of the insurance required by this Article shall constitute a material breach of this Agreement. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

C. Insurance coverage in the minimum amounts required in this Article shall not relieve the Contractor or its subcontractors of any liability under this Agreement, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or Law.

D. The Contractor waives all rights against the City, including its officials and employees for any damages or losses that are covered under any insurance required under this Article (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Contractor and/or its subcontractors in the performance of this Agreement.

E. In the event the Contractor requires any subcontractor to procure insurance with regard to any operations under this Agreement and requires such subcontractor to name the Contractor as an additional insured under such insurance, the Contractor shall ensure that such entity also name the City, including its officials and employees, as an additional insured with coverage at least as broad as ISO form CG 20 26.

## **ARTICLE 8 - PROTECTION OF PERSONS AND PROPERTY AND INDEMNIFICATION**

### **Section 8.01 Reasonable Precautions**

The Contractor shall take all reasonable precautions to protect all persons and the property of the City and of others from damage, loss or injury resulting from the Contractor's and/or its subcontractors' operations under this Agreement.

### **Section 8.02 Protection of City Property**

The Contractor assumes the risk of, and shall be responsible for, any loss or damage to City property, including property and equipment leased by the City, used in the performance of

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this Agreement, where such loss or damage is caused by any tortious act, or failure to comply with the provisions of this Agreement or of Law by the Contractor, its officers, employees, agents or subcontractors.

### **Section 8.03 Indemnification**

The Contractor shall defend, indemnify and hold the City, its officers and employees harmless from any and all claims (even if the allegations of the lawsuit are without merit) or judgments for damages on account of any injuries or death to any person or damage to any property and from costs and expenses to which the City, its officers and employees may be subjected or which it may suffer or incur allegedly arising out of or in connection with any operations of the Contractor and/or its subcontractors to the extent resulting from any negligent act of commission or omission, any intentional tortious act, or failure to comply with the provisions of this Agreement or of the Laws. Insofar as the facts or Law relating to any claim would preclude the City from being completely indemnified by the Contractor, the City shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

### **Section 8.04 Infringement Indemnification**

The Contractor shall defend, indemnify and hold the City harmless from any and all claims (even if the allegations of the lawsuit are without merit) or judgments for damages and from costs and expenses to which the City may be subject to or which it may suffer or incur allegedly arising out of or in connection with any infringement by the Contractor of any copyright, trade secrets, trademark or patent rights or any other property or personal right of any third party by the Contractor and/or its subcontractors in the performance of this Agreement. The Contractor shall defend, indemnify, and hold the City harmless regardless of whether or not the alleged infringement arises out of compliance with the Agreement's scope of services/scope of work. Insofar as the facts or Law relating to any claim would preclude the City from being completely indemnified by the Contractor, the City shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

### **Section 8.05 Indemnification Obligations Not Limited By Insurance Obligation**

The indemnification provisions set forth in this Article shall not be limited in any way by the Contractor's obligations to obtain and maintain insurance as provided in this Agreement.

### **Section 8.06 Actions By or Against Third Parties**

A. In the event any claim is made or any action brought in any way relating to Agreement, other than an action between the City and the Contractor, the Contractor shall diligently render to the City without additional compensation all assistance which the City may reasonably require of the Contractor.

B. The Contractor shall report to the Department in writing within five (5) business Days of the initiation by or against the Contractor of any legal action or proceeding in connection with or relating to this Agreement.



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**Section 8.07 Withholding of Payments**

A. In the event that any claim is made or any action is brought against the City for which the Contractor may be required to indemnify the City pursuant to this Agreement, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the said claim or action.

B. In the event that any City property is lost or damaged as set forth in Section 8.02, except for normal wear and tear, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover such loss or damage.

C. The City shall not, however, impose a setoff in the event that an insurance company that provided liability insurance pursuant to Article 7 above has accepted the City's tender of the claim or action without a reservation of rights.

D. The Department may, at its option, withhold for purposes of set-off any monies due to the Contractor under this Agreement up to the amount of any disallowances or questioned costs resulting from any audits of the Contractor or to the amount of any overpayment to the Contractor with regard to this Agreement.

E. The rights and remedies of the City provided for in this Section shall not be exclusive and are in addition to any other rights and remedies provided by Law or this Agreement.

**Section 8.08 No Third Party Rights**

The provisions of this Agreement shall not be deemed to create any right of action in favor of third parties against the Contractor or the City or their respective officers and employees.

**ARTICLE 9 - CONTRACT CHANGES**

**Section 9.01 Contract Changes**

Changes to this Agreement may be made only as duly authorized by the ACCO or his or her designee and in accordance with the PPB Rules. Any amendment or change to this Agreement shall not be valid unless made in writing and signed by authorized representatives of both parties. Contractors deviating from the requirements of this Agreement without a duly approved and executed change order document, or written contract modification or amendment, do so at their own risk.

**Section 9.02 Changes Through Fault of Contractor**

In the event that any change is required in the data, documents, deliverables, or other services to be provided under this Agreement because of negligence or error of the Contractor,

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no additional compensation shall be paid to the Contractor for making such change, and the Contractor is obligated to make such change without additional compensation.

**ARTICLE 10 - TERMINATION, DEFAULT, AND REDUCTIONS IN FUNDING****Section 10.01 Termination by the City Without Cause**

A. The City shall have the right to terminate this Agreement, in whole or in part, without cause, in accordance with the provisions of Section 10.05.

B. If the City terminates this Agreement pursuant to this Section, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date set by the City pursuant to Section 10.05. The City shall pay for services provided in accordance with this Agreement prior to the termination date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

**Section 10.02 Reductions in Federal, State and/or City Funding**

A. This Agreement is funded in whole or in part by funds secured from the federal, State and/or City governments. Should there be a reduction or discontinuance of such funds by action of the federal, State and/or City governments, the City shall have, in its sole discretion, the right to terminate this Agreement in whole or in part, or to reduce the funding and/or level of services of this Agreement caused by such action by the federal, State and/or City governments, including, in the case of the reduction option, but not limited to, the reduction or elimination of programs, services or service components; the reduction or elimination of contract-reimbursable staff or staff-hours, and corresponding reductions in the budget of this Agreement and in the total amount payable under this Agreement. Any reduction in funds pursuant to this Section shall be accompanied by an appropriate reduction in the services performed under this Agreement.

B. In the case of the reduction option referred to in Paragraph A, above, any such reduction shall be effective as of the date set forth in a written notice thereof to the Contractor, which shall be not less than thirty (30) Days from the date of such notice. Prior to sending such notice of reduction, the Department shall advise the Contractor that such option is being exercised and afford the Contractor an opportunity to make within seven (7) Days any suggestion(s) it may have as to which program(s), service(s), service component(s), staff or staff-hours might be reduced or eliminated, provided, however, that the Department shall not be bound to utilize any of the Contractor's suggestions and that the Department shall have sole discretion as to how to effectuate the reductions.

C. If the City reduces funding pursuant to this Section, the following provisions apply. The City shall pay for services provided in accordance with this Agreement prior to the reduction date. In addition, any obligation necessarily incurred by the Contractor on account of

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this Agreement prior to receipt of notice of reduction and falling due after the reduction date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

D. To the extent that the reduction in public funds is a result of the State determining that the Contractor may receive medical assistance funds pursuant to title eleven of article five of the Social Services Law to fund the services contained within the scope of a program under this Agreement, then the notice and effective date provisions of this section shall not apply, and the Department may reduce such public funds authorized under this Agreement by informing the Contractor of the amount of the reduction and revising attachments to this agreement as appropriate.

**Section 10.03 Contractor Default**

A. The City shall have the right to declare the Contractor in default:

1. Upon a breach by the Contractor of a material term or condition of this Agreement, including unsatisfactory performance of the services;

2. Upon insolvency or the commencement of any proceeding by or against the Contractor, either voluntarily or involuntarily, under the Bankruptcy Code or relating to the insolvency, receivership, liquidation, or composition of the Contractor for the benefit of creditors;

3. If the Contractor refuses or fails to proceed with the services under the Agreement when and as directed by the Commissioner;

4. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities are indicted or convicted after execution of the Agreement under any state or federal law of any of the following:

a. a criminal offense incident to obtaining or attempting to obtain or performing a public or private contract;

b. fraud, embezzlement, theft, bribery, forgery, falsification, or destruction of records, or receiving stolen property;

c. a criminal violation of any state or federal antitrust law;

d. violation of the Racketeer Influence 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;

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e. conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any statute described in subparagraph (d) above; or

f. an offense indicating a lack of business integrity that seriously and directly affects responsibility as a City vendor.

5. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities are subject to a judgment of civil liability under any state or federal antitrust law for acts or omissions in connection with the submission of bids or proposals for a public or private contract; or

6. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities makes or causes to be made any false, deceptive, or fraudulent material statement, or fail to make a required material statement in any bid, proposal, or application for City or other government work.

B. The right to declare the Contractor in default shall be exercised by sending the Contractor a written notice of the conditions of default, signed by the Commissioner, setting forth the ground or grounds upon which such default is declared ("Notice to Cure"). The Contractor shall have ten (10) Days from receipt of the Notice to Cure or any longer period that is set forth in the Notice to Cure to cure the default. The Commissioner may temporarily suspend services under the Agreement pending the outcome of the default proceedings pursuant to this Section.

C. If the conditions set forth in the Notice to Cure are not cured within the period set forth in the Notice to Cure, the Commissioner may declare the Contractor in default pursuant to this Section. Before the Commissioner may exercise his or her right to declare the Contractor in default, the Commissioner shall give the Contractor an opportunity to be heard upon not less than five (5) business days notice. The Commissioner may, in his or her discretion, provide for such opportunity to be in writing or in person. Such opportunity to be heard shall not occur prior to the end of the cure period but notice of such opportunity to be heard may be given prior to the end of the cure period and may be given contemporaneously with the Notice to Cure.

D. After the opportunity to be heard, the Commissioner may terminate the Agreement, in whole or in part, upon finding the Contractor in default pursuant to this Section, in accordance with the provisions of Section 10.05.

E. The Commissioner, after declaring the Contractor in default, may have the services under the Agreement completed by such means and in such manner, by contract with or without public letting, or otherwise, as he or she may deem advisable in accordance with applicable PPB Rules. After such completion, the Commissioner shall certify the expense incurred in such completion, which shall include the cost of re-letting. Should the expense of such completion, as certified by the Commissioner, exceed the total sum which would have been

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payable under the Agreement if it had been completed by the Contractor, any excess shall be promptly paid by the Contractor upon demand by the City. The excess expense of such completion, including any and all related and incidental costs, as so certified by the Commissioner, and any liquidated damages assessed against the Contractor, may be charged against and deducted out of monies earned by the Contractor.

**Section 10.04 Force Majeure**

A. For purposes of this Agreement, a force majeure event is an act or event beyond the control and without any fault or negligence of the Contractor ("Force Majeure Event"). Such events may include, but are not limited to, fire, flood, earthquake, storm or other natural disaster, civil commotion, war, terrorism, riot, and labor disputes not brought about by any act or omission of the Contractor.

B. In the event the Contractor cannot comply with the terms of the Agreement (including any failure by the Contractor to make progress in the performance of the services) because of a Force Majeure Event, then the Contractor may ask the Commissioner to excuse the nonperformance and/or terminate the Agreement. If the Commissioner, in his or her reasonable discretion, determines that the Contractor cannot comply with the terms of the Agreement because of a Force Majeure Event, then the Commissioner shall excuse the nonperformance and may terminate the Agreement. Such a termination shall be deemed to be without cause.

C. If the City terminates the Agreement pursuant to this Section, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date. The City shall pay for services provided in accordance with this Agreement prior to the termination date. Any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

**Section 10.05 Procedures for Termination**

A. The Department and/or the City shall give the Contractor written notice of any termination of this Agreement. Such notice shall specify the applicable provision(s) under which the Agreement is terminated and the effective date of the termination. Except as otherwise provided in this Agreement, the notice shall comply with the provisions of this Section. For termination without cause, the effective date of the termination shall not be less than ten (10) Days from the date the notice is personally delivered, or fifteen (15) Days from the date the notice is either sent by certified mail, return receipt requested, or sent by fax and deposited in a post office box regularly maintained by the United States Postal Service in a postage pre-paid envelope. In the case of termination for default, the effective date of the termination shall be as set forth above for a termination without cause or such earlier date as the Commissioner may determine. If the City terminates the Agreement in part, the Contractor shall continue the performance of the Agreement to the extent not terminated.



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B. Upon termination or expiration of this Agreement, the Contractor shall comply with the City close-out procedures, including but not limited to:

1. Accounting for and refunding to the Department, within forty-five (45) Days, any unexpended funds which have been advanced to the Contractor pursuant to this Agreement;
2. Furnishing within forty-five (45) Days an inventory to the Department of all equipment, appurtenances and property purchased through or provided under this Agreement and carrying out any Department or City directive concerning the disposition of such equipment, appurtenances and property;
3. Turning over to the Department or its designees all books, records, documents and material specifically relating to this Agreement that the Department has requested be turned over;
4. Submitting to the Department, within ninety (90) Days, a final statement and report relating to the Agreement. The report shall be made by a certified public accountant or a licensed public accountant; and
5. Providing reasonable assistance to the Department in the transition, if any, to a new contractor.

**Section 10.06 Miscellaneous Provisions**

A. The Commissioner, in addition to any other powers set forth in this Agreement or by operation of Law, may suspend, in whole or in part, any part of the services to be provided under this Agreement whenever in his or her judgment such suspension is required in the best interest of the City. If the Commissioner suspends this Agreement pursuant to this Section, the City shall not incur or pay any further obligation pursuant to this Agreement beyond the suspension date until such suspension is lifted. The City shall pay for services provided in accordance with this Agreement prior to the suspension date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of suspension and falling due during the suspension period shall be paid by the City in accordance with the terms of this Agreement.

B. Notwithstanding any other provisions of this Agreement, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of the Contractor's breach of the Agreement, and the City may withhold payments to the Contractor for the purpose of set-off in the amount of damages due to the City from the Contractor.

C. The rights and remedies of the City provided in this Article shall not be exclusive and are in addition to all other rights and remedies provided by Law or under this Agreement.

**ARTICLE 11 - PROMPT PAYMENT AND ELECTRONIC FUNDS TRANSFER**

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**Section 11.01 Prompt Payment**

A. The prompt payment provisions of PPB Rule § 4-06 are applicable to payments made under this Agreement. The provisions generally require the payment to the Contractor of interest on payments made after the required payment date, as set forth in the PPB Rules.

B. The Contractor shall submit a proper invoice to receive payment, except where the Agreement provides that the Contractor will be paid at predetermined intervals without having to submit an invoice for each scheduled payment.

C. Determination of interest due will be made in accordance with the PPB Rules and the applicable rate of interest shall be the rate in effect at the time of payment.

**Section 11.02 Electronic Funds Transfer**

A. In accordance with Admin. Code § 6-107.1, the Contractor agrees to accept payments under this Agreement from the City by electronic funds transfer. An electronic funds transfer is any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Prior to the first payment made under this Agreement, the Contractor shall designate one financial institution or other authorized payment agent and shall complete the "EFT Vendor Payment Enrollment Form" available from the Agency or at <http://www.nyc.gov/dof> in order to provide the commissioner of the Department of Finance with information necessary for the Contractor to receive electronic funds transfer payments through the designated financial institution or authorized payment agent. The crediting of the amount of a payment to the appropriate account on the books of a financial institution or other authorized payment agent designated by the Contractor shall constitute full satisfaction by the City for the amount of the payment under this Agreement. The account information supplied by the Contractor to facilitate the electronic funds transfer shall remain confidential to the fullest extent provided by Law.

B. The Agency Head may waive the application of the requirements of this Section to payments on contracts entered into pursuant to Charter § 315. In addition, the commissioner of the Department of Finance and the Comptroller may jointly issue standards pursuant to which the Agency may waive the requirements of this Section for payments in the following circumstances: (i) for individuals or classes of individuals for whom compliance imposes a hardship; (ii) for classifications or types of checks; or (iii) in other circumstances as may be necessary in the best interest of the City.

C. This Section is applicable to contracts valued at Twenty-Five Thousand Dollars (\$25,000) and above.

**ARTICLE 12 - CLAIMS****Section 12.01 Choice of Law**

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This Agreement shall be deemed to be executed in the City and State of New York, regardless of the domicile of the Contractor, and shall be governed by and construed in accordance with the Laws of the State of New York (notwithstanding New York choice of law or conflict of law principles) and the Laws of the United States, where applicable.

**Section 12.02 Jurisdiction and Venue**

The parties agree that any and all claims asserted by or against the City arising under or related to this Agreement shall solely be heard and determined either in the courts of the United States located in the City or in the courts of the State located in the City and County of New York. The parties shall consent to the dismissal and/or transfer of any claims asserted in any other venue or forum to the proper venue or forum. If the Contractor initiates any action in breach of this Section, the Contractor shall be responsible for and shall promptly reimburse the City for any attorneys' fees incurred by the City in removing the action to a proper court consistent with this Section.

**Section 12.03 Resolution of Disputes**

A. Except as provided in Subparagraphs (A)(1) and (A)(2) below, all disputes between the City and the Contractor that arise under, or by virtue of, this Agreement shall be finally resolved in accordance with the provisions of this Section and PPB Rule § 4-09. This procedure shall be the exclusive means of resolving any such disputes.

1. This Section shall not apply to disputes concerning matters dealt with in other sections of the PPB Rules or to disputes involving patents, copyrights, trademarks, or trade secrets (as interpreted by the courts of New York State) relating to proprietary rights in computer software, or to termination other than for cause.

2. For construction and construction-related services this Section shall apply only to disputes about the scope of work delineated by the Agreement, the interpretation of Agreement documents, the amount to be paid for extra work or disputed work performed in connection with the Agreement, the conformity of the Contractor's work to the Agreement, and the acceptability and quality of the Contractor's work; such disputes arise when the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head makes a determination with which the Contractor disagrees. For construction, this Section shall not apply to termination of the Agreement for cause or other than for cause.

B. All determinations required by this Section shall be clearly stated, with a reasoned explanation for the determination based on the information and evidence presented to the party making the determination. Failure to make such determination within the time required by this Section shall be deemed a non-determination without prejudice that will allow application to the next level.

C. During such time as any dispute is being presented, heard, and considered



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pursuant to this Section, the Agreement terms shall remain in full force and effect and, unless otherwise directed by the ACCO or Engineer, the Contractor shall continue to perform work in accordance with the Agreement and as directed by the ACCO or City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head. Failure of the Contractor to continue the work as directed shall constitute a waiver by the Contractor of any and all claims being presented pursuant to this Section and a material breach of contract.

**D. Presentation of Dispute to Agency Head.**

1. Notice of Dispute and Agency Response. The Contractor shall present its dispute in writing ("Notice of Dispute") to the Agency Head within the time specified herein, or, if no time is specified, within thirty (30) Days of receiving written notice of the determination or action that is the subject of the dispute. This notice requirement shall not be read to replace any other notice requirements contained in the Agreement. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the Contractor relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the Contractor in the dispute was arrived at. Within thirty (30) Days after receipt of the complete Notice of Dispute, the ACCO or, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, shall submit to the Agency Head all materials he or she deems pertinent to the dispute. Following initial submissions to the Agency Head, either party may demand of the other the production of any document or other material the demanding party believes may be relevant to the dispute. The requested party shall produce all relevant materials that are not otherwise protected by a legal privilege recognized by the courts of New York State. Any question of relevancy shall be determined by the Agency Head whose decision shall be final. Willful failure of the Contractor to produce any requested material whose relevancy the Contractor has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the Contractor of its claim.

2. Agency Head Inquiry. The Agency Head shall examine the material and may, in his or her discretion, convene an informal conference with the Contractor and the ACCO and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, to resolve the issue by mutual consent prior to reaching a determination. The Agency Head may seek such technical or other expertise as he or she shall deem appropriate, including the use of neutral mediators, and require any such additional material from either or both parties as he or she deems fit. The Agency Head's ability to render, and the effect of, a decision hereunder shall not be impaired by any negotiations in connection with the dispute presented, whether or not the Agency Head participated therein. The Agency Head may or, at the request of any party to the dispute, shall compel the participation of any other contractor with a contract related to the work of this Agreement and that contractor shall be bound by the decision of the Agency Head. Any contractor thus brought into the dispute resolution proceeding shall have the same rights and obligations under this Section as the Contractor initiating the dispute.

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3. **Agency Head Determination.** Within thirty (30) Days after the receipt of all materials and information, or such longer time as may be agreed to by the parties, the Agency Head shall make his or her determination and shall deliver or send a copy of such determination to the Contractor and ACCO and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, together with a statement concerning how the decision may be appealed.

4. **Finality of Agency Head Decision.** The Agency Head's decision shall be final and binding on all parties, unless presented to the Contract Dispute Resolution Board ("CDRB") pursuant to this Section. The City may not take a petition to the CDRB. However, should the Contractor take such a petition, the City may seek, and the CDRB may render, a determination less favorable to the Contractor and more favorable to the City than the decision of the Agency Head.

E. **Presentation of Dispute to the Comptroller.** Before any dispute may be brought by the Contractor to the CDRB, the Contractor must first present its claim to the Comptroller for his or her review, investigation, and possible adjustment.

1. **Time, Form, and Content of Notice.** Within thirty (30) Days of receipt of a decision by the Agency Head, the Contractor shall submit to the Comptroller and to the Agency Head a Notice of Claim regarding its dispute with the Agency. The Notice of Claim shall consist of (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed and the reason(s) the Contractor contends the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; and (iii) a copy of all materials submitted by the Contractor to the Agency, including the Notice of Dispute. The Contractor may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.

2. **Agency Response.** Within thirty (30) Days of receipt of the Notice of Claim, the Agency shall make available to the Comptroller a copy of all material submitted by the Agency to the Agency Head in connection with the dispute. The Agency may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.

3. **Comptroller Investigation.** The Comptroller may investigate the claim in dispute and, in the course of such investigation, may exercise all powers provided in Admin. Code §§ 7-201 and 7-203. In addition, the Comptroller may demand of either party, and such party shall provide, whatever additional material the Comptroller deems pertinent to the claim, including original business records of the Contractor. Willful failure of the Contractor to produce within fifteen (15) Days any material requested by the Comptroller shall constitute a waiver by the Contractor of its claim. The Comptroller may also schedule an informal conference to be attended by the Contractor, Agency representatives, and any other personnel desired by the Comptroller.

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4. Opportunity of Comptroller to Compromise or Adjust Claim. The Comptroller shall have forty-five (45) Days from his or her receipt of all materials referred to in Paragraph (E)(3) above to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between the Contractor and the Comptroller, to a maximum of ninety (90) Days from the Comptroller's receipt of all the materials. The Contractor may not present its petition to the CDRB until the period for investigation and compromise delineated in this Paragraph has expired. In compromising or adjusting any claim hereunder, the Comptroller may not revise or disregard the terms of the Agreement.

F. Contract Dispute Resolution Board. There shall be a Contract Dispute Resolution Board composed of:

1. the chief administrative law judge of the Office of Administrative Trials and Hearings ("OATH") or his or her designated OATH administrative law judge, who shall act as chairperson, and may adopt operational procedures and issue such orders consistent with this Section as may be necessary in the execution of the CDRB's functions, including, but not limited to, granting extensions of time to present or respond to submissions;

2. the City Chief Procurement Officer ("CCPO") or his or her designee; any designee shall have the requisite background to consider and resolve the merits of the dispute and shall not have participated personally and substantially in the particular matter that is the subject of the dispute or report to anyone who so participated; and

3. a person with appropriate expertise who is not an employee of the City. This person shall be selected by the presiding administrative law judge from a prequalified panel of individuals, established, and administered by OATH, with appropriate background to act as decision-makers in a dispute. Such individuals may not have a contract or dispute with the City or be an officer or employee of any company or organization that does, or regularly represent persons, companies, or organizations having disputes with the City.

G. Petition to CDRB. In the event the claim has not been settled or adjusted by the Comptroller within the period provided in this Section, the Contractor, within thirty (30) Days thereafter, may petition the CDRB to review the Agency Head determination.

1. Form and Content of Petition by the Contractor. The Contractor shall present its dispute to the CDRB in the form of a petition, which shall include (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed, and the reason(s) the Contractor contends that the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; (iii) copies of all materials submitted by the Contractor to the Agency; (iv) a copy of the decision of the Comptroller, if any, and (v) copies of all correspondence with, and material submitted by the Contractor to, the Comptroller's Office. The Contractor shall concurrently submit four complete sets of the petition: one to the Corporation Counsel (Attn: Commercial and Real

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Estate Litigation Division), and three to the CDRB at OATH's offices, with proof of service on the Corporation Counsel. In addition, the Contractor shall submit a copy of the statement of the substance of the dispute, cited in (i) above, to both the Agency Head and the Comptroller.

2. **Agency Response.** Within thirty (30) Days of receipt of the petition by the Corporation Counsel, the Agency shall respond to the statement of the Contractor and make available to the CDRB all material it submitted to the Agency Head and Comptroller. Three complete copies of the Agency response shall be submitted to the CDRB at OATH's offices and one to the Contractor. Extensions of time for submittal of the Agency response shall be given as necessary upon a showing of good cause or, upon the consent of the parties, for an initial period of up to thirty (30) Days.

3. **Further Proceedings.** The CDRB shall permit the Contractor to present its case by submission of memoranda, briefs, and oral argument. The CDRB shall also permit the Agency to present its case in response to the Contractor by submission of memoranda, briefs, and oral argument. If requested by the Corporation Counsel, the Comptroller shall provide reasonable assistance in the preparation of the Agency's case. Neither the Contractor nor the Agency may support its case with any documentation or other material that was not considered by the Comptroller, unless requested by the CDRB. The CDRB, in its discretion, may seek such technical or other expert advice as it shall deem appropriate and may seek, on its own or upon application of a party, any such additional material from any party as it deems fit. The CDRB, in its discretion, may combine more than one dispute between the parties for concurrent resolution.

4. **CDRB Determination.** Within forty-five (45) Days of the conclusion of all submissions and oral arguments, the CDRB shall render a decision resolving the dispute. In an unusually complex case, the CDRB may render its decision in a longer period of time, not to exceed ninety (90) Days, and shall so advise the parties at the commencement of this period. The CDRB's decision must be consistent with the terms of this Agreement. Decisions of the CDRB shall only resolve matters before the CDRB and shall not have precedential effect with respect to matters not before the CDRB.

5. **Notification of CDRB Decision.** The CDRB shall send a copy of its decision to the Contractor, the ACCO, the Corporation Counsel, the Comptroller, the CCPO, and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head. A decision in favor of the Contractor shall be subject to the prompt payment provisions of the PPB Rules. The required payment date shall be thirty (30) Days after the date the parties are formally notified of the CDRB's decision.

6. **Finality of CDRB Decision.** The CDRB's decision shall be final and binding on all parties. Any party may seek review of the CDRB's decision solely in the form of a challenge, filed within four months of the date of the CDRB's decision, in a court of competent jurisdiction of the State of New York, County of New York pursuant to Article 78 of the Civil Practice Law and Rules. Such review by the court shall be



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limited to the question of whether or not the CDRB's decision was made in violation of lawful procedure, was affected by an error of Law, or was arbitrary and capricious or an abuse of discretion. No evidence or information shall be introduced or relied upon in such proceeding that was not presented to the CDRB in accordance with PPB Rules § 4-09.

H. Any termination, cancellation, or alleged breach of the Agreement prior to or during the pendency of any proceedings pursuant to this Section shall not affect or impair the ability of the Agency Head or CDRB to make a binding and final decision pursuant to this Section.

**Section 12.04 Claims and Actions**

A. Any claim against the City or Department based on this Agreement or arising out of this Agreement that is not subject to dispute resolution under the PPB Rules or this Agreement shall not be made or asserted in any legal proceeding, unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims as provided in this Agreement.

B. No action shall be instituted or maintained on any such claims unless such action shall be commenced within six (6) months after the date of filing with the Comptroller of the certificate for the final payment under this Agreement, or within six (6) months of the termination or expiration of this Agreement, or within six (6) months after the accrual of the cause of action, whichever first occurs.

**Section 12.05 No Claim Against Officers, Agents or Employees**

No claim shall be made by the Contractor against any officer, agent, or employee of the City in their personal capacity for, or on account of, anything done or omitted in connection with this Agreement.

**Section 12.06 General Release**

The acceptance by the Contractor or its assignees of the final payment under this Agreement, whether by check, wire transfer, or other means, and whether pursuant to invoice, voucher, judgment of any court of competent jurisdiction or any other administrative means, shall constitute and operate as a release of the City from any and all claims of and liability to the Contractor, of which the Contractor was aware or should reasonably have been aware, arising out of the performance of this Agreement based on actions of the City prior to such acceptance of final payment, excepting any disputes that are the subject of pending dispute resolution procedures.

**Section 12.07 No Waiver**

Waiver by either the Department or the Contractor of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be

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construed to be a modification of the terms of the Agreement unless and until the same shall be agreed to in writing by the parties as set forth in Section 9.01.

**ARTICLE 13 - APPLICABLE LAWS**

**Section 13.01 PPB Rules**

This Agreement is subject to the PPB Rules. In the event of a conflict between the PPB Rules and a provision of this Agreement, the PPB Rules shall take precedence.

**Section 13.02 All Legal Provisions Deemed Included**

Each and every provision required by Law to be inserted in this Agreement is hereby deemed to be a part of this Agreement, whether actually inserted or not.

**Section 13.03 Severability / Unlawful Provisions Deemed Stricken**

If this Agreement contains any unlawful provision not an essential part of the Agreement and which shall not appear to have been a controlling or material inducement to the making of this Agreement, the unlawful provision shall be deemed of no effect and shall, upon notice by either party, be deemed stricken from the Agreement without affecting the binding force of the remainder.

**Section 13.04 Compliance With Laws**

The Contractor shall perform all services under this Agreement in accordance with all applicable Laws as are in effect at the time such services are performed.

**Section 13.05 Americans with Disabilities Act (ADA)**

A. This Agreement is subject to the provisions of Subtitle A of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 et seq. ("ADA") and regulations promulgated pursuant thereto, see 28 CFR Part 35. The Contractor shall not discriminate against an individual with a disability, as defined in the ADA, in providing services, programs, or activities pursuant to this Agreement. If directed to do so by the Department to ensure the Contractor's compliance with the ADA during the term of this Agreement, the Contractor shall prepare a plan ("Compliance Plan") which lists its program site(s) and describes in detail, how it intends to make the services, programs and activities set forth in the scope of services herein readily accessible and usable by individuals with disabilities at such site(s). In the event that the program site is not readily accessible and usable by individuals with disabilities, contractor shall also include in the Compliance Plan, a description of reasonable alternative means and methods that result in making the services, programs or activities provided under this Agreement, readily accessible to and usable by individuals with disabilities, including but not limited to people with visual, auditory or mobility disabilities. The Contractor shall submit the Compliance Plan to the ACCO for review within ten (10) Days after being directed to do so and shall abide by the Compliance Plan and implement any action detailed in the Compliance Plan to make the

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services, programs, or activities accessible and usable by the disabled.

B. The Contractor's failure to either submit a Compliance Plan as required herein or implement an approved Compliance Plan may be deemed a material breach of this Agreement and result in the City terminating this Agreement.

**Section 13.06 Voter Registration**

A. **Participating Agencies.** Pursuant to Charter § 1057-a, if this Agreement is with a participating City agency and the Contractor has regular contact with the public in the daily administration of its business, the Contractor must comply with the requirements of this Section. The participating City agencies are: the Administration for Children's Services; the City Clerk; the Civilian Complaint Review Board; the Commission on Human Rights; Community Boards; the Department of Small Business Services; the Department of Citywide Administrative Services; the Department of Consumer Affairs; the Department of Correction; the Department of Environmental Protection; the Department of Finance; the Department of Health and Mental Health; the Department of Homeless Services; the Department of Housing Preservation and Development; the Department of Parks and Recreation; the Department of Probation; the Taxi and Limousine Commission; the Department of Transportation; and the Department of Youth and Community Development.

B. **Distribution of Voter Registration Forms.** In accordance with Charter § 1057-a, the Contractor, if it has regular contact with the public in the daily administration of its business under this Agreement, hereby agrees as follows:

1. The Contractor shall provide and distribute voter registration forms to all persons together with written applications for services, renewal, or recertification for services and change of address relating to such services. Such voter registration forms shall be provided to the Contractor by the City. The Contractor should be prepared to provide forms written in Spanish or Chinese, and shall obtain a sufficient supply of such forms from the City.

2. The Contractor shall also include a voter registration form with any Contractor communication sent through the United States mail for the purpose of supplying clients with materials for application, renewal, or recertification for services and change of address relating to such services. If forms written in Spanish or Chinese are not provided in such mailing, the Contractor shall provide such forms upon the Department's request.

3. The Contractor shall, subject to approval by the Department, incorporate an opportunity to request a voter registration application into any application for services, renewal, or recertification for services and change of address relating to such services provided on computer terminals, the World Wide Web or the Internet. Any person indicating that they wish to be sent a voter registration form via computer terminals, the World Wide Web or the Internet shall be sent such a form by the Contractor or be directed, in a manner subject to approval by the Department, to a link on that system

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where such a form may be downloaded.

4. The Contractor shall, at the earliest practicable or next regularly scheduled printing of its own forms, subject to approval by the Department, physically incorporate the voter registration forms with its own application forms in a manner that permits the voter registration portion to be detached therefrom. Until such time when the Contractor amends its form, the Contractor should affix or include a postage-paid City Board of Elections voter registration form to or with its application, renewal, recertification, and change of address forms.

5. The Contractor shall prominently display in its public office, subject to approval by the Department, promotional materials designed and approved by the City or State Board of Elections.

6. For the purposes of Paragraph A of this Section, the word "Contractor" shall be deemed to include subcontractors having regular contact with the public in the daily administration of their business.

7. The provisions of Paragraph A of this Section shall not apply to services that must be provided to prevent actual or potential danger to life, health, or safety of any individual or of the public.

C. Assistance in Completing Voter Registration Forms. In accordance with Charter § 1057-a, the Contractor hereby agrees as follows:

1. In the event the Department provides assistance in completing distributed voter registration forms, the Contractor shall also provide such assistance, in the manner and to the extent specified by the Department.

2. In the event the Department receives and transmits completed registration forms from applicants who wish to have the forms transmitted to the City Board of Elections, the Contractor shall similarly provide such service, in the manner and to the extent specified by the Department.

3. If, in connection with the provision of services under this Agreement, the Contractor intends to provide assistance in completing distributed voter registration forms or to receive and transmit completed registration forms from applicants who wish to have the forms transmitted to the City Board of Elections, the Contractor shall do so only by prior arrangement with the Department.

4. The provision of Paragraph B services by the Contractor may be subject to Department protocols, including protocols regarding confidentiality.

D. Required Statements. In accordance with Charter § 1057-a, the Contractor hereby agrees as follows:



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1. The Contractor shall advise all persons seeking voter registration forms and information, in writing together with other written materials provided by the Contractor or by appropriate publicity, that the Contractor's or government services are not conditioned on being registered to vote.
2. No statement shall be made and no action shall be taken by the Contractor or an employee of the Contractor to discourage an applicant from registering to vote or to encourage or discourage an applicant from enrolling in any particular political party.
3. The Contractor shall communicate to applicants that the completion of voter registration forms is voluntary.
4. The Contractor and the Contractor's employees shall not:
  - a. seek to influence an applicant's political preference or party designation;
  - b. display any political preference or party allegiance;
  - c. make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or
  - d. make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.
- E. The Contractor, as defined above and in this Agreement, agrees that the covenants and representations in this Section are material conditions of this Agreement.
- F. The provisions of this Section do not apply where the services under this Agreement are supported by a federal or State grant of funds and the source of funds prohibits the use of federal or State funds for the purposes of this Section.

**Section 13.07 Participation in an International Boycott**

- A. The Contractor agrees that neither the Contractor nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the federal Export Administration Act of 1979, as amended, 50 U.S.C. Appendix. §§ 2401 et seq., or the regulations of the United States Department of Commerce promulgated thereunder.
- B. Upon the final determination by the Commerce Department or any other agency of the United States as to, or conviction of, the Contractor or a substantially-owned affiliated company thereof, of participation in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations promulgated thereunder, the Comptroller may, at his or her option, render forfeit and void this Agreement.

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C. The Contractor shall comply in all respects, with the provisions of Admin. Code § 6-114 and the rules issued by the Comptroller thereunder.

**Section 13.08 MacBride Principles**

A. In accordance with and to the extent required by Admin. Code § 6-115.1, the Contractor stipulates that the Contractor and any individual or legal entity in which the Contractor holds a ten percent (10%) or greater ownership interest and any individual or legal entity that holds a ten percent (10%) or greater ownership interest in the Contractor either (a) have no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles.

B. The Contractor agrees that the covenants and representations in Paragraph A above are material conditions to this Agreement.

C. This Section does not apply if the Contractor is a not-for-profit corporation.

**Section 13.09 Access to Public Health Insurance Coverage Information**

A. Participating Agencies. Pursuant to Charter § 1069, if this Agreement is with a participating City agency and the Contractor is one to whom this Section applies as provided in Paragraph B of this Section, the Contractor hereby agrees to fulfill the obligations in Paragraph C of this Section. The participating City agencies are: the Administration for Children's Services; the City Clerk; the Commission on Human Rights; the Department for the Aging; the Department of Corrections; the Department of Homeless Services; the Department of Housing Preservation and Development; the Department of Juvenile Justice; the Department of Health and Mental Hygiene; the Department of Probation; the Department of Social Services/Human Resources Administration; the Taxi and Limousine Commission; the Department of Youth and Community Development; the Office to Combat Domestic Violence; and the Office of Immigrant Affairs.

B. Applicability to Certain Contractors. This Section shall be applicable to a Contractor operating pursuant to an Agreement which (i) is in excess of \$250,000 and (ii) requires such Contractor to supply individuals with a written application for, or written renewal or recertification of services, or request for change of address form in the daily administration of its contractual obligation to such participating City agency. "Contractors" to whom this Section applies shall be deemed to include subcontractors if the subcontract requires the subcontractor to supply individuals with a written application for, or written renewal or recertification of services, or request for change of address form in the daily administration of the subcontractor's contractual obligation.

C. Distribution of Public Health Insurance Pamphlet. In accordance with Charter § 1069, when the participating City agency supplies the Contractor with the public health insurance program options pamphlet published by the Department of Health and Mental Hygiene

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pursuant to Section 17-183 of the Admin. Code (hereinafter "pamphlet"), the Contractor hereby agrees as follows:

1. The Contractor will distribute the pamphlet to all persons requesting a written application for services, renewal or recertification of services or request for a change of address relating to the provision of services.

2. The Contractor will include a pamphlet with any Contractor communication sent through the United States mail for the purpose of supplying an individual with a written application for services, renewal or recertification of services or with a request for a change of address form relating to the provision of services.

3. The Contractor will provide an opportunity for an individual requesting a written application for services, renewal or recertification for services or change of address form relating to the provision of services via the Internet to request a pamphlet, and will provide such pamphlet by United States mail or an Internet address where such pamphlet may be viewed or downloaded, to any person who indicates via the Internet that they wish to be sent a pamphlet.

4. The Contractor will ensure that its employees do not make any statement to an applicant for services or client or take any action the purpose or effect of which is to lead the applicant or client to believe that a decision to request public health insurance or a pamphlet has any bearing on their eligibility to receive or the availability of services or benefits.

5. The Contractor will comply with: (i) any procedures established by the participating City agency to implement Charter §1069; (ii) any determination of the commissioner or head of the participating City agency (which is concurred in by the commissioner of the Department of Health and Mental Hygiene) to exclude a program, in whole or in part, from the requirements of Charter § 1069; and (iii) any determination of the commissioner or head of the participating City agency (which is concurred in by the commissioner of the Department of Health and Mental Hygiene) as to which Workforce Investment Act of 1998 offices providing workforce development services shall be required to fulfill the obligations under Charter § 1069.

D. Non-applicability to Certain Services. The provisions of this Section shall not apply to services that must be provided to prevent actual or potential danger to the life, health or safety of any individual or to the public.

**ARTICLE 14 - MISCELLANEOUS PROVISIONS**

**Section 14.01 Conditions Precedent**

A. This Agreement shall be neither binding nor effective unless and until it is registered pursuant to Charter § 328.

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B. The requirements of this Section shall be in addition to, and not in lieu of, any approval or authorization otherwise required for this Agreement to be effective and for the expenditure of City funds.

**Section 14.02 Merger**

This written Agreement contains all the terms and conditions agreed upon by the parties, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties, or to vary any of the terms contained in this Agreement, other than a written change, amendment or modification duly executed by both parties pursuant to Article 9 of this Appendix A.

**Section 14.03 Headings**

Headings are inserted only as a matter of convenience and therefore are not a part of and do not affect the substance of this Agreement.

**Section 14.04 Notice**

A. The Contractor and the Department hereby designate the business addresses specified at the beginning of this Agreement as the places where all notices, directions, or communications from one such party to the other party shall be delivered, or to which they shall be mailed. Either party may change its notice address at any time by an instrument in writing executed and acknowledged by the party making such change and delivered to the other party in the manner as specified below.

B. Any notice, direction, or communication from either party to the other shall be in writing and shall be deemed to have been given when (i) delivered personally; (ii) sent by certified mail, return receipt requested; (iii) delivered by overnight or same day courier service in a properly addressed envelope with confirmation; or (iv) sent by fax or email and, unless receipt of the fax or e-mail is acknowledged by the recipient by fax or e-mail, deposited in a post office box regularly maintained by the United States Postal Service in a properly addressed, postage pre-paid envelope.

C. Nothing in this Section shall be deemed to serve as a waiver of any requirements for the service of notice or process in the institution of an action or proceeding as provided by Law, including the New York Civil Practice Law and Rules.

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**VENDOR NAME CHECK FEES**

Pursuant to PPB Rule § 2-08(f)(2), the Contractor will be charged a fee for the administration of the VENDEX system, including the Vendor Name Check process, if a Vendor Name Check review is required to be conducted by the Department of Investigation. The Contractor shall also be required to pay the applicable required fees for any of its subcontractors for which Vendor Name Check reviews are required. The fee(s) will be deducted from payments made to the contractor under the Agreement. If this Agreement has an estimated value of less than or equal to \$1,000,000, the fee is \$175 per Vendor Name Check. If the Agreement has an estimated value of greater than \$1,000,000, the fee is \$350 per Vendor Name Check.

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**PUBLIC ASSISTANCE HIRING COMMITMENT**

A. Except as otherwise provided by Paragraph G below, Contractor agrees as a condition of this Agreement, to hire at least one Public Assistance Recipient ("PA Recipient") for each \$250,000 in value of this Agreement, or to the extent that the Contractor enters into other contracts with the Department of the City, for each \$250,000 of the cumulative value of contracts of the Contractor during the term of this Agreement.

B. Such hiring shall be for full-time employment of at least a minimum of thirty-five (35) hours per week. The rate of pay shall be at least 20% above the federal minimum wage, and the duration of the employment shall be for at least one (1) year. In the event that a replacement of a PA Recipient is made by the Contractor during the one (1) year, such replacement shall not count as an additional employee toward Contractor's hiring requirement set forth herein.

C. Within thirty (30) days of the commencement date of this Agreement ("commencement date") or fifteen (15) days following notice from the Department that a request for an exemption from the provisions of this Rider has been denied, Contractor shall submit, on forms specified by the Department, information and specifications for the position(s) available.

D. The Contractor may at its option request the assistance of the Department in identifying potential employees. In such case, the Department will refer PA Recipients to the Contractor for employment interviews.

E. Contractor shall hire the number of employees agreed upon pursuant to this Rider within ninety (90) days of the commencement date or such longer period as may be specified, in writing, by the Department.

F. In the event Contractor fails to hire the required number of PA Recipients within the required time period, or fails to pay and retain such employees pursuant to the above requirements, Contractor shall pay to the Department or the Department may at its option, deduct from monies due or become due to Contractor, the amount of nineteen dollars and eighteen cents (\$19.18) per employee for each calendar day for which such PA Recipient(s) is/are not employed by Contractor as required by this Rider. Such amount is hereby fixed and agreed as liquidated damages.

G. Contractor may apply to the Department for exemption from all or part of the requirements of this Rider. Any application for an exemption must be made before the expiration of thirty (30) days after the commencement date of this Agreement, or any subsequent contract as discussed in Paragraph A herein, and shall be in the form specified by the Department. Exemption may be granted upon a showing that the operation of this Rider will constitute an extreme hardship, within the sole discretion of the Department; or to any Contractor not employing twenty (20) or more employees at a place of business within the City of New York.



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## AFFIRMATION

The undersigned proposer or bidder affirms and declares that said proposer or bidder is not in arrears to the City of New York upon debt, contract or taxes and is not a defaulter, as surety or otherwise, upon obligation to the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York, nor is there any proceeding pending relating to the responsibility or qualification of the proposer or bidder to receive public contract except \_\_\_\_\_.

Full name of Proposer or Bidder [below]

Community Counseling & Mediation

Address 1 Hoyt Street, 7th Floor

City Brooklyn State NY Zip Code 11201

## CHECK ONE BOX AND INCLUDE APPROPRIATE NUMBER:

☐ A - Individual or Sole Proprietorships

SOCIAL SECURITY NUMBER \_\_\_\_\_

☐ B - Partnership, Joint Venture or other unincorporated organization

EMPLOYER IDENTIFICATION NUMBER \_\_\_\_\_

☒ C - Corporation

EMPLOYER IDENTIFICATION NUMBER 11-2675243

By Ernest + Bush  
Signature

President and CEO  
Title

If a corporation place seal here

Must be signed by an officer or duly authorized representative.

\* Under the Federal Privacy Act, the furnishing of Social Security numbers by bidders or proposers on City contracts is voluntary. Failure to provide a Social Security number will not result in a bidder's/proposer's disqualification. Social Security numbers will be used to identify bidders, proposers or vendors to ensure their compliance with laws, to assist the City in enforcement of laws, as well as to provide the City a means of identifying businesses seeking City contracts.

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**CERTIFICATION BY BROKER**

[Pursuant to Article Seven of Appendix A, every Certificate of Insurance must be accompanied by either the following certification by the broker setting forth the following text and required information and signatures or complete copies of all policies referenced in the Certificate of Insurance. In the absence of completed policies, binders are acceptable.]

**CERTIFICATION BY BROKER**

The undersigned insurance broker represents to the City of New York that the attached Certificate of Insurance is accurate in all material respects, and that the described insurance is effective as of the date of this Certification.

M.T.M Global Insurance Brokerage Group, Inc.

[Name of broker (typewritten)]

25 Rockwood Place, Suite 210  
Englewood, NJ 07631

[Address of broker (typewritten)]



[Signature of authorized officer of broker]

Anne Marie Ferrigno

[Name of authorized officer (typewritten)]

Vice President

[Title of authorized officer (typewritten)]

201-720-7620

[Contact Phone Number for Broker (typewritten)]

aferrigno@mjmglobal.com

[Email Address of Broker (typewritten)]

Sworn to before me this

30<sup>th</sup> day of May, 2011

  
NOTARY PUBLIC

RICHARD G. KADRI  
Notary Public, State of New York  
No. 01KA#023452  
Qualified in Kings County  
Commission Expires April 19, 2014