

EARLY INTERVENTION PROVIDER CONTRACT

AGREEMENT, effective as of the date set forth on the signature page, is made between the City of New York, acting through the Commissioner ("Commissioner") of the Department of Health and Mental Hygiene ("Department") and the signatory provider ("Provider" or "Contractor") of Contract Services to infants and toddlers with developmental delays and disabilities.

WHEREAS, pursuant to Title II-A of Article 25 of the New York State Public Health Law, the Department is responsible for the implementation of the early intervention law in the City of New York, and the Commissioner is the early intervention official of the City of New York;

WHEREAS, the Department is authorized under such Law and Section 556(b)(7) of the City Charter to enter into contracts for the provision of Contract Services;

WHEREAS, the Department uses a fiscal agent for the payment of and reimbursement for the Contract Services under this Agreement;

WHEREAS, the Provider qualifies under State Department of Health procedures as a Provider of Contract Services as defined herein;

WHEREAS, under the Early Intervention Program, the Provider may be designated to provide Contract Services for a Referred or Eligible Child, and will be claiming reimbursement for said Contract Services from the Department's fiscal agent;

NOW THEREFORE, the Provider and the Department agree as follows:

ARTICLE I. DEFINITIONS

The following terms shall have the meaning defined below for the purposes of this Agreement.

"Act" means Title II-A of Article 25 of the New York State Public Health Law, the Early Intervention Program for Infants and Toddlers with Disabilities and Their Families, as amended.

"Agreement" means the basic contract provisions as set forth in this document, together with the Schedule A and Annexes A, B and C attached hereto and incorporated herein.

"Annex A" means the attachment to this Agreement so designated and shall include the Provider's general information and the site specific information as requested, and the Contract Services the Provider may furnish hereunder.

"Annex B" means the attachment to this Agreement so designated titled "Provider Agreement Between the New York State Department of Health and Service Providers in the New York State Early Intervention Program" and the accompanying "Statement of Reassignment."

"Annex C" means the attachment to this Agreement so designated and titled "Application for Approval of Agencies or Incorporated Groups of Individuals as Evaluators, Service Providers and Service Coordinators," and the accompanying "Letter of Approval from the New York State Department of Health."

"Annex D" means the attachment to this Agreement titled "Direct Deposit/Electronic Funds Transfer (EFT) Vendor Payment Enrollment Form."

"Applied Behavioral Analysis" means a methodology for treating autism and other related conditions as described in the State Department document "Clinical Practice Guideline: Report of the Recommendations. Autism/Pervasive Developmental Disorders, Assessment and Intervention for Young Children (Age 0-3 Years)."

"Assistive Technology Devices" means those devices as defined in the Regulations.

"City" means the City of New York.

"Claim" means a request for reimbursement, for Contract Services rendered, on a document, in a document format, or in an electronic format, approved by the Department or its designee.

"Commissioner" means the Commissioner of the Department.

"Contract Services" means, as applicable, the provision of Service Coordination, Screening and Evaluations, Early Intervention Services, and Assistive Technology Devices to Eligible and Referred Children.

"Days" means, unless otherwise specified, calendar days.

"Department" means the New York City Department of Health and Mental Hygiene.

"Early Intervention Services" means services under the Act other than Service Coordination, Screening and Evaluations, Assistive Technology Devices, Transportation, and Respite Services.

"Early Intervention Service Provider" means a provider of Early Intervention Services.

"Eligible Child" has the same definition as in Section 2541 of the Act.

"Evaluation" has the same definition as in Section 2541 of the Act.

"Evaluator" shall mean a team of two or more professionals approved pursuant to Section 2541 of the Act to conduct Screening and Evaluations of Referred Children with parental consent.

"Fiscal Agent" means the provider designated by the Department for the payment of and reimbursement for Contract Services.

"IFSP" means an individualized family service plan developed under Section 2545 or Section 2546 of the Act.

"Initial Service Coordinator" means the Service Coordinator appointed by the Department for the period up to and including the first IFSP meeting.

"Medical Assistance Program" means the program authorized by Title II of Article 5 of the New York State Social Services law.

"Ongoing Service Coordinator" means the Service Coordinator selected by the Parent at the IFSP meeting or thereafter and designated in the IFSP or amendments thereto.

"Parent" means the parent or other person authorized to give parental consent under the Act or Regulations on behalf of an Eligible or Referred Child.

"Procedures Manual" means the New York City Early Intervention Program Forms and Procedures Manual as promulgated by the Department and in effect on the effective date of this contract, or as subsequently amended subject to section 5.01 of this Agreement.

"Program Director" means the individual employed by the Provider who is responsible for directing and overseeing the provision of Contract Services to Referred and Eligible Children and the deployment and supervision of Provider's Qualified Personnel.

"Qualified Personnel" means those individuals who are approved to deliver services to the extent authorized by their

licensure, certification or registration as defined in the Regulations.

"Referred Child" means a child thought to be an Eligible Child under Section 2544 of the Act who has been referred to the Department as provided for by the Act.

"Regulations" means the regulations of the State Department related to Early Intervention, Subpart 69-4 of Part 69 of Subchapter H of Chapter II of Title 10 of the Official Compilation of Codes, Rules, and Regulations of the State of New York, also known as 10 NYCRR Subpart 69-4.

"Screening" means a procedure to determine what type of Evaluation, if any, of a Referred Child is warranted.

"Service Coordination" means the services provided by a Service Coordinator as defined in Section 2541 of the Act.

"Service Coordinator" means the Ongoing or Initial Service Coordinator.

"State" means the State of New York.

"State Department" means the New York State Department of Health.

ARTICLE II. TERM

Section 2.01 Term of Agreement. The term of this Agreement, including renewal options (if any), is set forth on the signature page, provided however, that the initial term shall not exceed three (3) years and the total renewal periods shall not extend beyond six (6) years after the commencement date.

ARTICLE III. AMENDMENTS, TERMINATION, ASSIGNMENT, SUBCONTRACTING

Section 3.01 Amendments.

a) This Agreement, including Annex A, may be amended in writing from time to time as agreed to in writing by the parties. No change in any of the terms of Annex A shall be effective without a duly executed amendment to this Agreement, except that the Department may, in writing to the Provider without amending Annex A, authorize the Provider to provide services in a borough or boroughs other than as specified in Annex A, and may revoke such authorization in writing without such an amendment upon no less than thirty days written notice to the Provider.

b) In the event that the Provider proposes any changes that require an amended State Application and Approval to be filed, the Provider shall promptly file such proposed amendment, and shall submit to the Department copies of such filings. No such approved change shall be effective for the purposes of this Agreement until an amended Annex A has been processed and approved by the Department.

Section 3.02 Termination.

a) Either party to this Agreement shall have the right to terminate this Agreement if deemed to be in the party's best interest. The party so terminating shall provide the other party with at least ninety (90) days prior written notice of such termination.

b) The Department shall have the right to terminate this Agreement, in whole or in part:

(i) under any right to terminate as specified in any section of this Agreement, and if no notice period is specified therein, then upon at least sixty (60) days written notice by the

Department ;

(ii) upon at least sixty (60) days written notice by the Department,

- 1) upon the failure of the Provider to comply with any material term or condition of this Agreement;
- 2) upon the failure of the Provider to implement a corrective action plan approved by the Department within the time frames of such plan, or absent such time frames, within thirty (30) days of approval of the plan by the Department;
- 3) if the Provider becomes bankrupt or insolvent or has been found administratively or in a court of proper jurisdiction to have falsified its records or reports, or misused its funds from whatever source;

(iii) Immediately,

- 1) for any act which constitutes an unacceptable practice under the Medical Assistance Program as enumerated in Title 18 of the New York Code of Rules and Regulations section 515.2(b)(1) through (b)(15);
- 2) where conditions at the location of the delivery of Contract Services, other than locations not owned, leased, or otherwise controlled by the Provider, constitute a threat to staff, Referred or Eligible Children, Parents, or the public health or safety;

(iv) upon at least sixty (60) days written notice by the Department, in part with respect to a particular Contract Service, when in the prior twelve (12) months the Provider has provided such Contract Service to less than twenty-five (25) Children, unless the Provider (1) during that time period has provided such Contract Service to Children who have developmental delays involving unique or rare characteristics or severe medical conditions, or (2) is serving an area of high unmet need for Contract Services.

c) Upon a termination pursuant to this section, the Provider shall, no later than thirty (30) days after notice of termination, unless requested by the Department for an earlier date, cooperate with the Department in developing measures, including a timetable, for the orderly transition of Contract Services and notice of closure to Parents, and subsequently implement such measures in cooperation with the Department. Failure of the Provider to so implement in good faith such measures shall result in liquidated damages by the Provider of \$1,000 for each Child receiving services from the Provider at the time of the notice of termination. The Department shall have the right to offset said liquidated damages from any outstanding payments owed to the Provider by the Department for Contract Services. For the purposes of ascertaining what Children are receiving services from the Provider, the assignment of the Provider to a Child through a currently effective IFSP, or, where the Child's initial IFSP meeting has not yet been held, the assignment of the Provider as Initial Service Coordinator or Evaluator, shall govern.

d) On the effective date of any termination of this Agreement, except as otherwise provided in this Agreement and except for the parties' obligations with regard to unpaid claims from the Provider, the basic obligations of the parties hereto shall cease.

Section 3.03 Subcontracting.

a) No subcontract, nor any amendment thereto, between the Provider and any other agency, entity or individual for the performance of any Contract Services (“subcontract”) shall be effective for the purposes of this Agreement unless it contains provisions specifying:

- (i) the incorporation by reference of this Agreement and any annexes thereto;
- (ii) that the work performed by the subcontractor must be in accordance with the terms of this Agreement;
- (iii) that nothing contained in such subcontract shall impair the rights of the Department or the Eligible and/or Referred Child;
- (iv) that nothing contained therein, or under this Agreement, shall create any contractual relation between the subcontractor and the Department;
- (v) that the subcontractor specifically agrees to be bound by the confidentiality provision set forth in this Agreement.
- (vi) that all original records, case files, and any other documentation of Contract Services by the subcontractors will be stored at premises owned, leased, or otherwise controlled by the Provider, and available as specified by this Agreement, including Annex A.
- (vii) that the subcontractor is approved by the State Department to deliver the Contract Services to be delivered through the subcontract, and that the "Letter of Approval" from the New York State Department of Health is appended thereto.

b) All subcontracts between the Provider and agencies or entities other than individuals shall be subject to the approval of the Department. Upon the Department’s request, the Provider shall submit two (2) copies of any such subcontract to the Department.

c) The Provider understands that it is fully responsible to the Department for the acts and omissions of any subcontractor and of persons either directly or indirectly employed by them as it is for the acts and omissions of persons directly employed by the Provider. In addition, the Provider understands it shall not in any way be relieved of any responsibility under this Agreement by any subcontract.

Section 3.04 Assignment. Unless otherwise provided for in this Agreement, no rights or obligations under this Agreement may be assigned by either party without the written consent of the other party.

ARTICLE IV. PROVIDER COVENANTS

Section 4.01 Insurance. As specified in the attached Schedule A, the Provider shall carry paid up insurance to protect the Department and the City against any and all claims, loss or damage, including claims for injuries to, or death of persons or damage to property, to the extent that such injuries, death or damages are attributable to the negligence or any other acts of the Provider, or its employees, subcontractors, agents or students. Such policy or policies of insurance shall be obtained from a company, or companies, duly licensed to do business in the State of New York and shall name the Department and the City as additional insureds, and shall provide that in the event of cancellation thereof the Department shall be notified at least sixty (60) days in advance thereof. Two (2) certificates of insurance shall be delivered to the Department for approval as to form prior to the execution of this Agreement. The liability of the Provider hereunder to the Department and the City is not solely dependent upon any question of negligence on its part, provided however, that in no event shall the Provider be liable to the Department or the City to the extent that injuries, death or damages are attributable to the negligence or any other act of the Department or the City or its employees or agents.

Section 4.02 Provider an Independent Entity. The Provider is an independent entity and is not, and shall not be

deemed to be, an agency, employee, servant or representative of the Department or the City for any purpose whatsoever.

Section 4.03 Provider Personnel Deemed Personnel of Provider. All personnel furnished by the Provider as required under this Agreement are personnel of the Provider and not of the Department or the City, and the Provider is responsible for their work, personal conduct while performing work, labor or services under this Agreement, as well as for their performance and compensation. Nothing included in this Agreement shall impose any liability or duty upon the Commissioner or the City to persons, firms or corporations employed or engaged by the Provider as coordinators, consultants, or in any other capacity, or as employees, servants, subcontractors or agents of the Provider, or make the Commissioner or the City liable to any person, corporations, associations or any government for any acts, omissions, liabilities, obligations and taxes of whatever nature, including but not limited to, Unemployment Insurance Benefits, Worker's Compensation, or Social Security coverage, of the Provider or its coordinators, consultants or employees, servants, subcontractors or agents.

Section 4.04 Indemnification. Each of the parties (the "indemnifying party") agrees to indemnify, defend, and hold harmless the other (the "indemnified party") and each of its respective officers, directors, employees, subcontractors, agents, and assigns from and against any and all claims, liabilities, settlements, judgments and costs, including a reasonable attorney's fee and other costs of defense, to the extent arising from or caused by the acts or omissions of the indemnifying party or any of its officers, directors, employees, subcontractors, agents or assigns within the scope and/or terms of the relationship created by the terms of this Agreement. This provision shall survive the termination of this Agreement.

Section 4.05 Limitation on Actions. No action shall lie or be maintained against the City by the Provider upon any claims arising under this Agreement unless such action shall be commenced within six months of the termination or conclusion of this Agreement, or within six months after the accrual of the cause of action, whichever first occurs.

Section 4.06 Conflict of Interest.

a) The Provider represents and warrants that neither it nor any of its directors, officers, members, partners or employees, subcontractors or agents has any interest nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance of the services hereunder. The Provider further represents and warrants that in the performance of this Agreement no person having such interest or possible interest shall be employed by it.

b) 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/her personal interest or the interest of any corporation, partnership, or association in which he/she is, directly or indirectly, interested; nor shall any such person have any interest, direct or indirect, in this Agreement or the proceeds thereof.

Section 4.07 No Inducement. As an inducement for the execution of this Agreement by the City, the Provider warrants and represents that (a) it has not been asked to pay, nor offered to pay, nor has paid, any illegal consideration, whether monetary or otherwise, in connection with the procurement of this Agreement; and (b) it has not employed any person to solicit or procure this Agreement, and has not made, and shall not make, any payment in any agreement for the payment of any commission, percentage, brokerage, contingent fee or any other compensation in connection with the procurement of this Agreement.

Section 4.08 Compliance with Law. Subject to the provisions of Section 5.01c), the Provider shall furnish the Contract Services in compliance with all applicable Federal, State, and City (including the Department) laws, rules and regulations as are in effect when Contract Services are rendered.

Section 4.09 No Third Party Benefit. The provisions of this Agreement are not intended to be for the benefit of any person (other than a party to this Agreement) to whom any debts, liabilities or obligations are or may be owed to, or who otherwise has or may have any claim against the parties to this Agreement.

Section 4.10 Disclosure of Bankruptcy or Reorganization. In the event that the Provider files for or is forced into

bankruptcy or reorganization under Chapter Seven or Chapter Eleven of the United States Bankruptcy Code, the Provider shall disclose such action to the Department within five (5) days of such action. In the event that the Provider files for reorganization under Chapter Eleven of the United States Bankruptcy Code, a copy of the Provider's reorganization plan shall be forwarded to the Department within five days of its submission to the court.

ARTICLE V. SCOPE OF SERVICES

Section 5.01 In General.

- a) The Provider shall provide the Contract Services specified in Annex A.
- b) All Contract Services shall be conducted in accordance with: the Act and the Regulations, including the provisions for confidentiality and Parental consent; delivery of the Contract Services by appropriately licensed or qualified professionals; generally accepted standards of professional quality; and the Procedures Manual, as amended, subject to paragraphs (c) and (d) below.
- c) Unless otherwise required by the State Department, the Act, the Regulations, or the requirements of the Medical Assistance Program, changes to the Procedures Manual and changes to the Fiscal Agent's forms and procedures shall have an effective date of at least thirty (30) days from the date of mailing of notification to the Provider of such change by the Department or the Fiscal Agent, unless a change could reasonably be expected to require computer reprogramming by the Provider, in which case such notification shall be mailed at least sixty (60) days prior to the effective date of the change.
- d) Absent agreement between the Provider and the Department, the Provider shall not be required to comply with any amendments to the Procedures Manual effective after July 1, 2008 that impose any financial obligations upon the Provider which are not otherwise required pursuant to applicable State law and regulations, or by the State Department, or pursuant to specific provisions of this Agreement. In order not to be required to comply with any such amendment, the Provider shall inform the Department prior to the effective date of such amendment of its intention not to comply, and the estimated financial obligation that complying with such amendment would incur.
- e) The Provider shall comply with the provisions of Annex B, the New York State Department of Health "Provider Agreement Between the New York State Department of Health and Service Providers in the New York State Early Intervention Program" and the accompanying "Statement of Reassignment."
- f) The Provider shall provide all services specified in Annex A and shall not restrict its services to certain areas within such boroughs for which it has contracted pursuant to Annex A. In the event there are Eligible Children for whom a provider has not been identified within one week after the time of an IFSP meeting, the Department reserves the right to require the Provider to provide Contract Services for such Children consistent with Annex A. The Department shall exercise its reasonable judgment in requiring such Contract Services.
- g) In the event that the Department finds that the Provider shows a pattern and practice of not providing a sufficient level of Contract Services to Eligible or Referred Children residing in particular zip codes that are within a borough for which it is otherwise authorized to serve, the Department may require such Provider to provide Contract Services to such Children on a priority basis in accordance with procedures established by the Department.
- h) Early Intervention Service Providers and Evaluators shall cooperate with the Eligible or Referred Child's Service Coordinator consistent with the Service Coordinator's need to monitor the delivery of Contract Services to such Child. Service Coordinators shall cooperate with the Eligible or Referred Child's Evaluators and Service Providers consistent with their needs to evaluate, deliver Contract

Services to such Child, including but not limited to the timely processing of six month and annual reviews of, and amendments to, IFSPs.

i) The Provider shall submit to the Department no less than annually, in the format and by a date requested by the Department, a description of the Provider's Contract Services at each site at which such Contract Services are offered. Such program description may include program models utilized at various sites, languages offered, services offered, special populations served, and other such descriptive information. The Department shall make said program description available to Service Coordinators for the purpose of assisting Parents in understanding program types and options, and selecting an evaluation site.

j) The Provider shall submit to the Department no less than annually, if applicable, the names, addresses, and professional titles of all members of its Board of Directors; and, if applicable, the names, addresses, and professional titles of any individual, partnership, joint venture or corporation which holds a ten percent (10%) or greater ownership interest in the Provider.

k) The Provider shall designate a high-level administrator of the Provider as a compliance officer who shall have overall responsibility for quality assurance and compliance with this Agreement, the Act, the Regulations, and the Procedures Manual, including but not limited to the timely delivery of Contract Services and the documentation of Contract Services. Said compliance officer shall initiate, or cause to be initiated, corrective action by the Provider upon a finding of the Provider or the Department that there are areas that need such corrective action.

l) The Provider shall comply with State Department requirements for orientation, pre-service and in-service training for all employees and subcontractors of the Provider. The Provider shall not use the services of a subcontractor subject to such training requirements without first confirming that the subcontractor has successfully completed such training. The Provider shall also provide training to all of its employees and subcontractors on any programmatic or administrative procedures of the Department in furtherance of Contract Services. The Provider shall ensure that employees and subcontractors of the Provider performing Contract Services have received training in the precepts and research concerning Families as Partners as provided by the Department..

Section 5.02 Copies of Federal, State or local evaluations/reports. On an annual basis, no later than February first of each year of this Agreement, the Provider shall provide to the Department a listing of all evaluations of and reports in final form on the Provider related to its Early Intervention Services program or programs co-located with its Early Intervention Services conducted by the State Departments of Health, Education or by any other federal, State or local agencies, including other counties of the State of New York, issued during the preceding calendar year. Copies of all reports and replies or responses thereto by the Provider shall be provided to the Department upon request.

Section 5.03 Confidentiality.

a) All information related to services provided under this Agreement shall be confidential pursuant to Title 34 of the Code of Federal Regulations (CFR) Part 99 (the Federal Education Rights and Privacy Act), 34 CFR sections 300.610 through 300.626, with the modifications specified in 34 CFR section 303.5(b); New York State Public Health Law Article 25 and Article 27F, and any regulations promulgated thereunder; and the provisions of section 369(4) of the New York State Social Services Law, and 42 U.S.C. section 1396a(a)(7).

b) The Provider shall preserve the confidentiality of all electronic and/or hard-copy data and information, both historical and current data, shared, received, collected, or obtained as a result of this Agreement. No disclosure, redisclosure or release of such data or information is to be made, permitted, or encouraged by the Provider, its officers or employees, subcontractors or agents, except as expressly

authorized by law. No such data or information is to be used for personal benefit. The Provider shall specifically instruct its employees, subcontractors and agents in regard to their obligation to keep such data and information in confidence and their liability upon breach of confidentiality to all the penalties prescribed by law.

c) In furtherance of this obligation, the Provider shall:

(i) Ensure that all records containing personally identifiable information are maintained in secure locations. The Provider must ensure that any records that are carried with any individual who travels to a variety of locations to deliver services are kept secure and confidential when off-site.

(ii) Ensure that when records contain information about multiple children, a Parent who requests access to his/her Child's record only receives the record(s) pertaining to that Child/family.

(iii) Maintain a record of any individual who accesses a Child's records, the purpose for which the record was accessed and a copy of authorization for consent, if necessary.

(iv) Assure that all employees and subcontractors, agents, consultants, and volunteers are informed about and are required to adhere to the Provider's confidentiality policies and procedures.

(v) Adhere to all legal requirements that protect early intervention records containing sensitive information (such as sexual or physical abuse, HIV status, treatment for mental illness, the Child's parentage, etc).

(vi) Ensure the confidentiality of all information maintained in an electronic format.

d) Provider Responsibilities Regarding AIDS and HIV-Related Information

(i) The Provider shall ensure the protection of health history information related to an individual who has been diagnosed as having AIDS or HIV-related illness or HIV infection or laboratory tests performed on an individual for HIV-related illness.

(ii) The Provider shall ensure that staff to whom confidential HIV-related information is disclosed as a necessity for providing services and in accordance with 18 NYCRR 403 and Section 2782 of Public Health Law are fully informed of the penalties and fines for redisclosure in violation of State law and regulation.

(iii) The Provider shall accompany any disclosure of confidential HIV-related information with a written statement as follows:

“This information has been disclosed to you from confidential records, which are protected by State law. State law prohibits you from making any further disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure in violation of State law may result in a fine or jail sentence or both. A general authorization for the release of medical or other information is NOT sufficient authorization for further disclosure.”

Section 5.04 Central Register of Child Abuse and Maltreatment.

a) The Provider shall contact the New York State Central Register of Child Abuse and Maltreatment whenever it believes that there is reasonable cause to suspect that a Referred or Eligible Child is or has been abused or maltreated. Employees, subcontractors and agents of the Provider in those professions required under Title 6 of the Social Services Law on Child Protective Services to report cases of suspected child abuse or neglect (mandated reporters), must call the mandated reporter's number of the New York State Central Register of Child Abuse and Maltreatment. The Provider shall have a written policy to ensure that it contacts the New York State Central Register of Child Abuse and Maltreatment when any employee, subcontractor or agent of the Provider who is not a mandated reporter believes that there is reasonable cause to suspect abuse, maltreatment or neglect, of a Referred or Eligible Child, based on their observations.

b) The Provider shall in accordance with applicable law complete New York State Central Register of Child Abuse and Maltreatment clearance on any person who is being actively considered for employment, whether as employee, agents or subcontractor, who may have regular and substantial contact with a Referred or Eligible Child. The Provider shall adhere to the procedures established by the New York State Office of Children and Family Services, including processing fees, in accessing the New York State Central Register of Child Abuse and Maltreatment, in accordance with applicable law.

c) If an individual screened through the New York State Central Register of Child Abuse and Maltreatment is the subject of an indicated report, then the Provider shall immediately remove the indicated subject from contact with Referred or Eligible Children. Failure of the Provider to immediately remove the indicated subject from contact with Referred or Eligible Children may result in immediate termination of this Agreement.

Section 5.05 Attendance at Training Sessions The Department shall require the Provider to attend up to four (4) training sessions in any calendar year provided by the Department, the Fiscal Agent, or the State Department related to the provision of Contract Services and/or Claims procedures for such Contract Services when notified of such training sessions by the Department and/or the State Department. The Department shall provide the Provider with notice of such required training in writing at least twenty-one (21) days in advance of the date of such training. The individual with chief responsibility for the coordination of billing by the Provider to the Department shall attend training by the Fiscal Agent. The Department will make all reasonable efforts to assure that non-fiscal program staff are not required to attend more than two (2) training sessions per year unless circumstances dictate otherwise.

Section 5.06 Facilities.

a) Other than for Contract Services provided in the natural environment, as defined in the Regulations, the Provider shall provide all Contract Services in a State Department-approved location, having a physical plant appropriately equipped and supplied to meet the needs of the Child, with a current Certificate of Occupancy permitting the actual use appropriate to State and City requirements, or similar requirements outside New York City, if applicable, and, if applicable, a New York City Department of Health and Mental Hygiene day care permit.

b) At all times that Contract Services are provided the Provider shall maintain and operate voice and facsimile telephone lines using New York City area codes or toll-free numbers.

Section 5.07 Maintenance of New York State Eligibility. The Provider shall maintain New York State eligibility to provide Contract Services to Referred or Eligible Children. Termination by the State Department or any other New York State Department of the Provider's eligibility to provide Contract Services shall be cause for termination of this Agreement forthwith. If provided for in the applicable State regulations, the termination of such eligibility shall not be considered to have occurred when an administrative appeal is made by the Provider with the applicable State department until the final determination of the appeal is made by the applicable State department.

Section 5.08 Maintenance of New York City Department of Health and Mental Hygiene Day Care Permit.

a) In the event that the Provider is required by applicable law to have a day care permit from the New York City Department of Health and Mental Hygiene at a particular site where Contract Services are being delivered, the failure to have a permit covering said site shall be cause for the termination forthwith of Contract Services at said site.

b) The Provider shall submit a copy of its day care permit or evidence that an application for renewal has been timely submitted to the Department, annually, on or by the first day of July.

Section 5.09 Program Director Qualifications. The Provider's Program Director shall possess the appropriate licensure, certification or registration to meet the criteria of Early Intervention Qualified Personnel, as defined under Public Health Law §2541(15) and 10 NYCRR §69-4.1(aj), and shall have at least three (3) years of full-time experience supervising work or working with children with developmental delays under five years of age.

Section 5.10 Qualified Personnel. The Provider's Program Director or another Qualified Personnel who reports directly to the Program Director shall have direct contact with and ensure the quality of services provided by all Qualified Personnel providing Contract Services on behalf of the Provider.

Section 5.11 Employees and Subcontractors of the Provider.

a) Where applicable, prior to the commencement of Contract Services under this Agreement by subcontractors and employees of the Provider, said subcontractors, including employees of said subcontractors providing Contract Services, and employees shall present to the Provider the original documents evidencing State certification and/or licensure required under the State regulations. The Provider, or the Provider's contracted personnel screening agent, shall initial and date a copy of the original document for placement in a personnel file of the employee or subcontractor. In the case of a subcontractor, the Provider shall also place in such personnel file an original of the contract between the Provider and the subcontractor as provided for in Section 3.03 of this Agreement, and, in accordance with Section 3.03, a copy of the State Department approval letter.

b) The Provider shall take reasonable measures to investigate the backgrounds of new employees, agents and subcontractors. Such investigation shall include a check of references and shall require that prospective employees, agents subcontractors disclose all criminal convictions or exclusion actions, including but not limited to actions taken pursuant to section 1320a-7 of Title 42 of the United States Code, which provides for the exclusion of certain individuals from participation in Medicare and State health care programs. To the extent consistent with Article 23-A of the New York State Correction Law, the Provider shall not hire or contract with an individual known to be convicted of a criminal offense related to health care or who is listed as debarred, excluded or otherwise ineligible for participation in federal health care programs, such as Medicaid.

Section 5.12 Publications of the Provider.

a) All brochures or other informational material, including promotional literature, of the Provider designed to inform the public about the Provider's Contract Services newly created or revised after the effective date of this Agreement shall contain the following statement: "Our [or This] Early Intervention Program is funded and regulated by the New York State Department of Health and, in New York City, by the New York City Department of Health and Mental Hygiene." If such informational material has, as part of the Provider's name, the phrase "Early Intervention Program," the phrase must be preceded by the specific name of the provider.

b) The Provider shall comply with the terms and conditions of the State Department's guidance document concerning early intervention provider marketing and promotion.

- c) Any violation of this section may be grounds for termination of this Agreement.

Section 5.13 No Financial or Material Inducement to Families. The Provider shall not provide any financial or material inducement to Parents to have their Children provided Contract Services by the Provider. Any violation of this section may be grounds for termination of this Agreement.

Section 5.14 Quality Impact. The Provider shall participate in the Quality Impact initiative of the Department as provided for in Article VI of this Agreement.

Section 5.15 Provision of Contract Services Applicable to Service Coordinators.

- a) Availability.

- (i) The Provider shall make staff available continuously throughout the course of the year to perform Service Coordination services, including attendance at IFSP meetings, conferences with the Committee on Preschool Special Education pursuant to New York Public Health Law section 2548, and other meetings or appointments.

- (ii) The Provider shall ensure that Service Coordination services are reasonably available in a manner that does not limit service access to daytime, weekday hours and does not limit access to a specific location. The Provider shall ensure that opportunities for Service Coordination are available to parents in non-traditional schedules and a variety of methods and locations. Service Coordinators shall be responsible for informing Parents of their contact information and as to the specific times and places of their accessibility.

- (iii) The Child's Service Coordinator shall be reasonably accessible to the Evaluator and Early Intervention Service Providers of the Eligible or Referred Child and to the Department.

- b) Except as otherwise provided herein, no individual shall act as a Service Coordinator without a Service Coordinator number being assigned to such individual by the Department. Prior to the assignment of a Service Coordinator number, the Provider shall submit in writing to the Department a resumé of the proposed Service Coordinator with information sufficient for the Department to make a determination as to whether the proposed Service Coordinator meets the required qualifications for a Service Coordinator specified in the Regulations. The Department shall, by mail, within thirty (30) days of receipt by the Department of such sufficient information, inform the Provider of the Department's determination and the reasons therefor. Only Service Coordinators meeting said qualifications shall be assigned a Service Coordinator number by the Department.

- c) Whenever a Service Coordinator discontinues working for the Provider, the Provider must immediately notify the Department in accordance with the Procedures Manual. In the event that a replacement of an Ongoing Service Coordinator is necessary, a Service Coordinator whose application for a Service Coordinator number is pending before the Department may act as an Ongoing Service Coordinator with the assistance of a Service Coordinator who has such a number as provided for in the Procedures Manual.

- d) Service Coordinators shall provide the full spectrum of Service Coordination activities enumerated in the Act, the Regulations, and the Procedures Manual, including the provision of information to Parents on their rights and obligations under the Act, the periodic monitoring of the delivery of Contract Services delivered to the Eligible Child to ascertain whether services are being provided in conformance with the IFSP, and, in the event that services are not being so provided, taking such action as is specified in the Procedures Manual.

e) Insurance Information.

(i) The Initial Service Coordinator shall obtain information about a Referred Child's health insurance coverage, including:

- 1) the Child's Medicaid Client Identification Number, if applicable, and enrollment status, including the period of Medicaid eligibility and re-certification dates;
- 2) the type of health insurance policy or health benefit plan, including whether the child is insured through Child Health Plus B;
- 3) the name of the insurer or plan administrator;
- 4) the policy or plan identification number ;
- 5) a photocopy of both sides of the insurance ID card, prior to or during the IFSP meeting;
- 6) the name of the child's primary care provider.

(ii) If a Parent refuses to provide the Initial Service Coordinator with the health insurance information required in this section, the Initial Service Coordinator shall document such refusal in writing on a form provided by the Department and shall submit the completed form to the Department.

(iii) The Department will not reimburse the Provider of Initial Service Coordination for Contract Services provided for a particular Referred Child until the health insurance information for such Child required in this section is provided to the Department or documentation of the Parent's refusal to provide such information is provided to the Department.

(iv) The Ongoing Service Coordinator shall update information on an Eligible Child's insurance information as part of the six-month review and annual evaluation of the IFSP.

f) For a particular Referred or Eligible Child, Service Coordination under this Agreement may only be performed by a Service Coordinator assigned to such Child pursuant to the Procedures Manual.

g) In the event that a Service Coordinator fails to provide to the appropriate Department employee documents related to amendments to an IFSP or any IFSP subsequent to an initial IFSP for an Eligible Child within a period of time as provided for in the Procedures Manual, an Early Intervention Service Provider of such Eligible Child may file such documents with said appropriate Department employee as provided for in the Procedures Manual.

h) If an Eligible Child's Service Coordinator is notified of that child's absence for more than three (3) consecutive scheduled sessions, the Service Coordinator shall attempt to contact the Eligible Child's Parent(s) to ascertain the reason for the absence.

i) In the event that and for so long as a Provider of Service Coordination is rated by the Department in the bottom twenty-five (25) percent of providers of Service Coordination pursuant to an evaluation tool of the Department, then in accordance with written procedures of the Provider, a clinical supervisor of the Provider shall conduct no less than bi-monthly a review of each Service Coordinator employed by

or contracted with the Provider. Such review shall include a review of the Service Coordinator's notes, the timeliness of the completion of tasks. The Provider shall also institute written procedures to ensure that any particular Service Coordinator completes his or her pending work prior to leaving the Provider.

Section 5.16 Provision of Contract Services Applicable to Screening and Evaluations.

a) The Evaluator shall promptly notify the Service Coordinator and the Department in accordance with the Procedures Manual of the results of any Screening, and whether or not the Parent has determined to have an Evaluation done.

b) Evaluators shall complete evaluations of Referred Children, and provide the Parent, the Service Coordinator, and the Department with a copy of the Evaluation in accordance with the Procedures Manual, within thirty (30) days of the referral of the Child to the Department.

c) The Evaluator must document the reason(s) for any delay beyond the thirty (30) day time frame of this section.

d) A member of the team performing the Child's Evaluation shall attend meetings for the purposes of developing and reviewing the initial IFSP of a Child. Exceptions to such attendance shall be in accordance with section 69-4.11(a)(2)(iii)(a) of the Regulations. Under said regulation, in the event that a telephone conference call is to be done, arrangements for such shall be made before the IFSP meeting with appropriate Department employees, and where a knowledgeable authorized representative not a member of the team is to attend, said representative shall be a Qualified Personnel under the Regulations and shall have reviewed the findings of the evaluation and have discussed it with the Qualified Personnel of the team who conducted the Evaluation. Failure of the Provider of an Evaluation to have an individual who is a Qualified Personnel at an initial IFSP meeting shall result in an assessment by the Department of liquidated damages of \$500 if such failure is through the fault of the Provider. Said amount may be offset from any payments for Contract Services by the Department.

e) In the event that the Department issues standards for evaluation tools, the Provider shall only use such evaluation tools as have been approved by the Department. Nothing herein shall authorize the Department to require that a particular tool be used for a particular Child.

Section 5.17 Provision of Contract Services Applicable to Early Intervention Services Including Applied Behavioral Analysis Services.

a) In the event that an Early Intervention Service Provider is to provide Contract Services pursuant to an IFSP, said Provider shall provide such Contract Services in conformity with the IFSP, including the provisions in the IFSP related to the frequency, duration, and location of such Contract Services.

b) When a Contract Service has been authorized on an Eligible Child's IFSP to be billed as a home/community, individual/collateral service, the Provider shall not perform such Contract Service at a premises owned by, leased to, licensed to or otherwise controlled by the Provider or any subcontractor of the Provider, or at a premises that is licensed or subject to licensure under the New York State Public Health Law or Mental Hygiene Law.

c) At the time that services are authorized, and annually thereafter, the Early Intervention Service Provider shall give the parents of each Eligible Child a calendar disclosing all days that the Service Provider will not be available to provide services due to vacations, religious, cultural or other holidays during the current calendar year. The Early Intervention Service Provider shall also provide the Department with such an annual calendar of closings for the upcoming year, by December 31st of the year preceding that covered by the calendar.

d) The Early Intervention Service Provider shall keep an accurate record of the attendance and absence of each Eligible Child for whom Contract Services are being provided under this Agreement. Such record shall be kept in the Eligible Child's case file.

e) If at any point during the duration of the IFSP of an Eligible Child the Early Intervention Service Provider is unable to provide the Eligible Child with the Contract Services specified in the IFSP, the Early Intervention Service Provider shall immediately notify the Parent and the Service Coordinator of such fact, in accordance with the Procedures Manual. Nothing in this paragraph shall be in derogation of Parental rights conferred by applicable laws and regulations.

f) Where the IFSP indicates that the Eligible Child's Parent will be reimbursed for transportation, the Early Intervention Service Provider will reimburse the Parent for the cost of such transportation within thirty (30) days of receiving complete claims for reimbursement from the Parent. The Early Intervention Service Provider shall claim reimbursement for these costs from the Department in accordance with the Procedures Manual and/or as specified by the Fiscal Agent.

g) If transportation is being provided for an Eligible Child to and/or from the Early Intervention Service Provider's site by a bus company under contract with the City of New York, the Provider shall designate a transportation coordinator, as specified in Annex A, who shall be responsible for the transmission of any required information to the New York City Department of Education regarding Eligible Children being transported to the Provider's site. The transportation coordinator shall also be responsible for the completion and submission of the Department's "Transportation Attendance Sheet" on a monthly basis, verifying the transportation of Eligible Children and their Parents or companions to the Provider's site on specific dates. If the Provider's existing attendance sheet for children does or can include the same information contained in the Department's Transportation Attendance Sheet regarding the transportation of Parents or companions, then the Provider's form may be used instead. The monthly Transportation Attendance Sheet or Provider's equivalent shall be submitted to the Early Intervention Program Finance Unit by the seventh (7th) business day of the following calendar month.

h) If transportation is being provided for an Eligible Child to and/or from the Early Intervention Service Provider's site by a bus company under contract with the City of New York, the Department shall notify the Early Intervention Service Provider in the event that a service disruption of the provider of transportation is anticipated. The Department will notify the Early Intervention Service Provider within six (6) working hours after it receives notification from the New York City Department of Education of any service disruption, and of the process to be used for continued transportation.

i) The Early Intervention Service Provider shall notify the Eligible Child's Service Coordinator in writing within two (2) days of an Eligible Child's absence from more than three (3) consecutive scheduled sessions for the delivery of Contract Services and shall indicate the reason for said absence, if known, in accordance with the Procedures Manual.

j) When an Eligible Child is voluntarily withdrawn from Contract Services with an Early Intervention Service Provider, for any reason, the Early Intervention Service Provider shall notify the Service Coordinator in accordance with the Procedures Manual.

k) Any Qualified Personnel who are subcontractors of the Provider providing Contract Services in the natural environment of the Eligible Child shall have no less than twenty-four (24) months of direct service employment working with developmentally delayed children under five years of age.

l) As requested by the Department, Qualified Personnel of the Early Intervention Service Provider who are providing Contract Services to a Child shall attend meetings for the purposes of reviewing and amending the ongoing IFSP of the Child. Nothing herein shall authorize the Department to require that a particular employee or subcontractor of the Early Intervention Service Provider attend an IFSP meeting.

Section 5.18 Provision of Contract Services Applicable to Assistive Technology Devices. The Assistive Technology Device Provider shall provide Assistive Technology Devices in accordance with the Regulations and the Procedures Manual.

Section 5.19 Attendance at Mediation and Impartial Hearings.

a) As provided by law, where a Parent has requested mediation or an impartial hearing with respect to any Child for whom the Provider has provided Contract Services, the Provider shall cooperate with the Department representatives assigned to conduct such mediation or impartial hearing. Such cooperation shall include but not be limited to the following: (1) consultation with the appropriate Department representatives; and (2) after such consultation, provision of a witness or witnesses with either direct knowledge of the Child or sufficient knowledge of the Child such that the witness or witnesses will effectively participate in the mediation or impartial hearing process.

b) In the event that proceedings initiated pursuant to subsection a of this section continue beyond the impartial hearing level, the Provider shall continue to cooperate with the Department representatives on the same terms as stated in subsection a until the final resolution of the matter.

Section 5.20 Provision of Applied Behavioral Analysis Services

a) Individuals providing Applied Behavioral Analysis must be under the supervision of an individual who is a Qualified Personnel and has had at least two (2) years of experience in the practice of Applied Behavioral Analysis.

b) In the event that the State Department initiates a mechanism for State Department approval to provide Applied Behavioral Analysis and sets a date beyond which the Provider may not provide Applied Behavioral Analysis without such approval, the Provider shall, no later than thirty (30) days after the issuance by the State Department of the mechanism for such approval, notify the Department of its intention to apply for such approval effective no later than such date set by the State Department. If the Provider elects to forego State Department approval and cease operating its Applied Behavioral Analysis services, the Provider shall cooperate fully with the Department in the reassignment of early intervention children to other appropriately authorized programs and services in accordance with Section 3.02c) above.

ARTICLE VI. QUALITY IMPACT PROGRAM

Section 6.01 Parental Perception of Care Survey. The Provider shall conduct Parental perceptions of care surveys in accordance with the instructions of the Department, and shall provide the results of such survey to the Department. Such survey will be designed to elicit from Parents/family caregivers the perceptions of such individuals concerning the services being provided through the Early Intervention Program. Such survey shall be conducted using a survey instrument approved by the Department.

Section 6.02 Implementation of Quality Improvement Projects for Service Coordination services

a) Definitions:

(i) Quality Impact Project means a process by which the Provider, through the regular collection, analysis, and reporting of data, targets an area of the operation of Service Coordination services for an improvement in a clinical or administrative outcome of the operation of the program.

(ii) Quality Impact Selection Sheet means a document, in a form approved by the

Department, that specifies the aim of the project, the indicators, the baseline and outcome measure plan for each goal, as detailed in a form approved by the Department.

(iii) Quality Impact Plan means a document, in a form approved by the Department, that specifies the baseline measurements of the project indicators, and the plan and timeframe of the first intervention.

(iv) Final Project Outcomes Report means a document in a form approved by Department that includes completed versions of all forms in the Quality Impact workbook designated for submission.

b) Commencing with the 2009 calendar year of this Agreement, by January fifteenth of each calendar year of this Agreement the Provider shall submit a Quality Impact Selection Sheet for a Quality Impact Project. Such Projects may be selected by the Provider from a list provided by the Department or the Provider may select its own Project subject to the approval of the Department. The Provider shall also submit a Quality Impact Plan to the Department by February fifteenth for approval by the Department each calendar year of this Agreement.

c) The Provider shall implement the Quality Impact Plan, shall submit updates concerning such implementation as instructed by the Department, and shall submit a Final Project Outcomes Report before December fifteenth of each calendar year of this Agreement.

ARTICLE VII. RECORDS, REPORTS, AUDITS

Section 7.01 Case Files.

- a) The Provider shall maintain a primary file for each Child. Said file shall contain:
- (i) a complete and current record of the Contract Services provided to the Child by the Provider;
 - (ii) any Parental consents for the provision of Service Coordination, Evaluations and Early Intervention Services and/or for the disclosure of information;
 - (iii) where appropriate, the IFSP of the Child and related documents, including IFSP amendments, or evidence that a copy of the IFSP has been requested of the Service Coordinator;
 - (iv) copies of any forms required by the Procedures Manual, including service authorizations;
 - (v) the name of each employee or subcontractor of the Provider delivering Contract Services to the Child;
 - (vi) physicians' prescriptions establishing the medical necessity of the provision of such Contract Services, when required, with an effective duration at least as long as the duration of the IFSP;
 - (vii) progress reports from each Qualified Personnel providing services to a Child pursuant to an IFSP, every three months from the first date that Contract Services are provided, which document the delivery of Early Intervention Services, how the outcomes on the Eligible Child's IFSP have been addressed and how the Eligible Child has been responding

to the Contract Services;

(viii) documentation of any circumstances resulting in the delay of the delivery of any Contract Services beyond what is provided for in the Child's IFSP;

(ix) written correspondence with or regarding the Child/family;

(x) notes recording any relevant discussions with Parents or other providers regarding the Child and family;

(xi) notes recording any discussions with the Department regarding the Child and family;

(xii) documentation of written notices, if any, sent to the Parent by the Provider, including type of notice and date when it was sent;

(xiii) Child/family reports, including evaluations with relevant medical reports, if available, and ongoing assessments related to the Contract Services provided; and

(xiv) session notes as provided for below.

b) Session Notes

(i) For each date where reimbursement for Contract Services is sought by the Provider, a session note must be recorded.

(ii) A session note shall contain the following:

1) the date of service;

2) the nature and extent of the service provided;

3) the profession, name, and signature of the individual delivering said Contract Services;

4) where the Contract Services are delivered at a site other than a facility of the Provider, the contemporaneous signature of the Child's Parent or caregiver or, if said site is a place where the Parent or caregiver is not present during the delivery of Contract Services, the name, title, and contemporaneous signature of an appropriate supervisory individual at such site; and

5) a brief description of the activities performed by the individual delivering the Contract Services and the Eligible Child's response.

c) Said file shall be available for review by representatives of the Department during working hours at the Provider's place of business, and, in the case of Early Intervention Service Providers and Evaluators, for review by the Service Coordinator.

Section 7.02 Books and Records. All the books, records, and case files of the Provider, including those with respect to the delivery of Contract Services, shall be kept separate or identifiable from those relating to other activities of the Provider, and shall be made available to the Department or its designee, including the Department's Inspector General. All books, records, and case files shall be maintained at the location or locations specified in Annex A. The Provider's obligation

under this section shall continue beyond the termination of this Agreement.

Section 7.03 Record Retention.

a) The Provider shall retain all books and records (including supporting documents) relating to its performance under this Agreement for six (6) years from the termination date of this Agreement, the date that the Contract Services were furnished, or the date the Contract Services were billed, whichever is later, unless permission is given to the Provider in writing by the Department to destroy them prior to the expiration of said six (6) year period. Upon the termination or expiration of this Agreement, or any subsequent agreement between the Department and the Provider, whichever is later, the Provider must notify the the Department in writing of the location where records will be stored for the required six (6) years, and if these books, records, or case files are moved to any other location, the Provider shall so notify the Department in writing within thirty (30) days of such move. The Provider shall also provide the Department with the current name, address, and telephone number of the Program Director or other appropriate person who will have knowledge of the location of the records and the authority to retrieve them, and must notify the Department any time there is a change in such contact information during the six (6) year period. City and State auditors, the Secretary of the United States Department of Health and Human Services, the United States Comptroller General, and any other persons authorized by the Department shall have full access to and the right to examine any of said materials during said period.

b) All provisions of this Agreement relating to record maintenance and retention shall survive the termination of this Agreement and shall bind the Provider until the expiration of the six (6) year period commencing with termination of this Agreement or if an audit is commenced by the Department or State Department, until the completion of the audit, whichever occurs later. If the Provider becomes aware of any litigation, claims, financial management review or audit that is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, financial management reviews or audit findings involved in the record have been resolved and final action taken. The Provider may transfer its records to electronic storage in accordance with current Medicaid standards.

Section 7.04 Audit, Inspection, and Visitation.

a) Subject to the provisions of Section 7.05, the Provider shall, during regular business hours, make available to the Department, the Department's Inspector General, and the Comptroller of the City of New York, or any persons retained by said entities, its plants and facilities for reasonable inspection and visitation, and all financial, statistical and case files, records, and memoranda, and other data relating thereto for audit and inspection. With respect to case files, only such case files related to Eligible and/or Referred Children shall be available for audit and inspection. The Provider's obligation under this section shall continue beyond the termination of this Agreement. The Department will meet with early intervention provider representatives to discuss any proposed changes in the procedures of the Department's routine fiscal audits.

b) If the Provider fails to comply with the provisions of subsection a of this section, the Department may: 1) withhold payments due the Provider under this Agreement or any other agreement with the Department; and/or 2) terminate this Agreement upon two (2) weeks written notice to the Provider.

c) The Department's programmatic and quality assurance monitoring of the Provider shall be, in so far as practicable, conducted in conjunction with the State Department to minimize duplicate monitoring. In carrying out programmatic and quality assurance monitoring of the Provider, the Department may act to terminate this Agreement in whole or in part or otherwise cite the Provider for non-compliance due to the Provider's failure to comply with standards not in this Agreement, the Procedures Manual, or the Regulations, provided that prior notice of such standards has been given in accordance with Section 5.01c) of this Agreement. In the event that the Department is unable to issue a report on a quality

assurance monitoring visit of the Provider within the ninety (90) days after an exit interview with the Provider, or the date that the Provider provides documents requested by the Department pursuant to the quality assurance monitoring visit, whichever is later, the Department will inform the Provider in writing of the anticipated date of the issuance of said report.

Section 7.05 Confidentiality and Privilege. All examinations, inspections, audits, and visitations under this Agreement shall, in the absence of an effective waiver by a Parent or except as otherwise provided by law, be conducted in accordance with generally accepted standards of confidentiality and privilege and shall be performed on a "no name" basis, on the Provider premises, and, at the direction of the Provider, in the presence of a Provider representative.

Section 7.06 Provider Audits. The Provider shall provide for periodic audits by an independent certified public accountant of not less than one audit per year. As part of the audit of the financial statements for the purpose of expressing its opinion, the auditor should include tests of the billing records for compliance with Federal and State Early Intervention law and regulations, the Department's procedures, and the applicable terms of this Agreement.

ARTICLE VIII. PAYMENTS FOR SERVICES

Section 8.01 General Payment Obligation. Upon the delivery of Contract Services on behalf of a Referred or Eligible Child pursuant to the Act and the Regulations, in accordance with the terms and provisions of all other sections of this Agreement, and upon a submission of a Claim for said services, the Department or its Fiscal Agent will reimburse the Provider for said services in accordance with this Article, unless otherwise specifically agreed to by the Provider and the Department, or unless otherwise specifically provided for in this Article. Unless otherwise specifically provided for in this Article or the Regulations, all reimbursements under this Agreement shall be on a fee-for-service basis for individual Referred and/or Eligible Children as set forth in the Act and Regulations, and at the applicable rates as set forth by the State Department.

Section 8.02 Timeliness of Claims. The Provider shall submit Claims for Contract Services within one hundred and twenty (120) days from the date that the service was provided.

Section 8.03 Payment Contingent Upon Receipt of Aid. If any State or Federal government department or agency should fail to approve aid in reimbursement to the Department for payments made hereunder by the Department to the Provider for expenditures made during the term of this Agreement because of any act, omission or negligence on the part of the Provider, then the Department may deduct and withhold from any payment due to the Provider an amount equal to the reimbursement denied, and the Department's obligation shall be reduced by any such amounts. In such an event, if there should be a balance due to the Department after it has made a final payment to the Provider, the Provider agrees promptly to reimburse the Department the amount of the balance due the Department in accordance with the Procedures Manual. The provisions of this section shall survive the expiration or termination of the Agreement.

Section 8.04 Rates and Claiming for Assistive Technology Devices. Rates and Claims for reimbursement of Assistive Technology Devices shall be made in accordance with the Procedures Manual.

Section 8.05 Payments Subject To Audit. Payments to the Provider under this Agreement shall be subject to audit by the Department or its designee. The parties' obligation under this section shall continue beyond the termination of this Agreement.

Section 8.06 Frequency of Payments. The Department will reimburse or deny no less than ninety (90) percent of Claims for Contract Services under this Agreement within ninety (90) days of the date that the Claim is submitted, or, if reimbursement is being deferred pursuant to Section 5.15e(iii), ninety (90) days from the date the insurance information required under that section is received by the Department. The ninety (90) percent figure will be calculated using all Claims and all Providers of Contract Services. For Claims pending beyond such ninety (90) day period, the Department and the Provider will participate in a process designed to resolve said Claims within an additional forty-five (45) days through either payment or denial. If the Department does not substantially meet the ninety (90) percent figure, the Department will meet, upon request, with early intervention provider representatives to discuss methods to meet such figure.

Section 8.07 No Duplication of Payments. Payments for Contract Services shall be deemed to be payment in full for said service and in no manner shall the Provider be reimbursed from the Medical Assistance Program, Parents, or from any private insurance for said service.

Section 8.08 Electronic Funds Transfer

a) In accordance with Section 6-107.1 of the New York City Administrative Code, the Provider agrees to accept payments under this Agreement from the City by electronic funds transfer in the event that payment is made directly by the City, rather than by the Fiscal Agent. 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 Provider shall designate one financial institution or other authorized payment agent and shall complete the Annex D “EFT Vendor Payment Enrollment Form” in order to provide the Commissioner of Finance with information necessary for the Provider 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 Provider shall constitute full satisfaction by the City for the amount of the payment under this Agreement to the extent payment is made from the City, rather than the Fiscal Agent. The account information supplied by the Provider to facilitate the electronic funds transfer shall remain confidential to the fullest extent provided by law.

b) The Commissioner may waive the application of the requirements herein to payments on contracts entered into pursuant to §315 of the City Charter. In addition, the Commissioner of the Department of Finance and the Comptroller may jointly issue standards pursuant to which the contracting agency may waive the requirements hereunder 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 interest of the City.

ARTICLE IX. MISCELLANEOUS

Section 9.01 Conflict of Laws. All disputes arising out of this Agreement shall be interpreted and decided in accordance with the laws of the State of New York.

Section 9.02 Nonliability. Except as specifically provided in this Agreement, neither the City nor the Provider shall be liable for the acts, omissions, liabilities, or obligations of the other party or of any person, firm or corporation.

Section 9.03 All Legal Provision Deemed Included. It is the intention and understanding of the parties hereto that each and every provision of law required to be inserted in this Agreement should be and is to be inserted herein and if, through mistake or otherwise, any such provision is not inserted herein, or is not inserted in correct form, then this Agreement shall forthwith, upon the application of either party, be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party hereunder.

Section 9.04 Severability. If this Agreement contains any unlawful provisions not an essential part of the general structure of the Agreement, and which shall appear not to have been a controlling or material inducement to the making thereof, the same shall be deemed to be of no effect and shall, upon the application of either party, be stricken from the Agreement without affecting the binding force of the Agreement as it shall remain after omitting such provision.

Section 9.05 No Claim Against Officers, Agents or Employees. No claim whatsoever shall be made by the Contractor against any officer, agent or employee of the City for, or on account of, anything done or omitted in connection with this contract.

Section 9.06 Waiver. Waiver by the Department 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 construed to be a modification of the terms of the Agreement unless and until the same shall be agreed to in writing by the Department or City as required and attached to the original Agreement.

Section 9.07 E.O. Equal Employment Opportunity. This contract is subject to the requirements of Executive Order No. 50 (1980) as revised ("E.O. 50") and the Rules and Regulations promulgated thereunder. No contract will be awarded unless and until these requirements have been complied with in their entirety. By signing this contract, the Contractor agrees that it:

1. will not engage in any unlawful discrimination against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status or sexual orientation 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. the Contractor agrees that when it subcontracts it will not engage in any unlawful discrimination in the selection of subcontractors on the basis of the owner's race, color, creed, national origin, sex, age, disability, marital status or sexual orientation;
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, creed, color, national origin, sex, age, disability, marital status or sexual orientation, or 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; and
5. will furnish all information and reports including an Employment Report before the award of the contract which are required by E. O. 50, the rules and regulations promulgated thereunder, and orders of the Director of the Bureau of Labor Services ("Bureau"), and will permit access to its books, records and accounts by the Bureau for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

The Contractor understands that in the event of its noncompliance with nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of the contract and noncompliance with the E. O. 50 and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of the Bureau, the Director may direct the imposition by the contracting agency held of any or all of the following sanctions:

- (i) disapproval of the Contractor;
- (ii) suspension or termination of the contract;
- (iii) declaring the Contractor in default; or
- (iv) in lieu of any of the foregoing sanctions, the Director may impose an employment program.

The Director of the Bureau may recommend to the contracting agency head that a Board of Responsibility be convened for purposes of declaring a Contractor who has repeatedly failed to comply with E.O. 50 and the rule and regulations promulgated thereunder to be nonresponsible. The Contractor agrees to include the provisions of the foregoing paragraphs in every subcontract or purchase order in excess of \$50,000 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 the Bureau of Labor Services as a means of enforcing such provisions, including sanctions for noncompliance. The Contractor further agrees that it will refrain from entering into any contract or contract modification 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.

Section 9.08 Investigations. 1. The parties to this Agreement agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York (State) or City of New York (City) governmental 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.

2. 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 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, the 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 of New York; or,

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 with the City; then,

3. 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. 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 5 below without the City incurring any penalty or damages for delay or otherwise.

4. The penalties which may attach after a final determination by the Commissioner or agency head may include but shall not exceed: (a) 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 (b) the cancellation or termination of any or 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.

5. The Commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in paragraphs (a) and (b) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs (c) and (d) below in addition to any other information which may be relevant and appropriate: (a) 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. (b) 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. (c) The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City. (d) 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 4 above, provided that the party or entity has given actual notice to the commissioner or agency head upon acquisition of the interest, or at the hearing called for in 3 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.

6. a) The term "license" or "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right; b) The term "person" as used herein 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; c) The term "entity" as used herein 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; d) The term "member" as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

7. In addition to and notwithstanding any other provision of this Agreement the 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 Contractor fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this Agreement by the Contractor, or affecting the performance of this Agreement.

Section 9.09 Notices. All notices under this Agreement shall be in writing and, unless other specified in this Agreement, shall be sent by mail, postage prepaid, to the Department of Health and Mental Hygiene, Early Intervention Program, Room 303, 93 Worth Street, New York, New York 10013, in the case of the Department, and to the person and address specified in Annex A, in the case of the Provider, or to such other person or address either party shall designate to the other by written notice.

Section 9.10 Headings. The article and section headings in this Agreement are inserted for convenience and reference only and shall not be used in any way to interpret this Agreement.

Section 9.11 Entire Agreement. This Agreement, the Schedule and the Annexes hereto, contain all the terms and conditions agreed upon by the Provider and the Department, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Provider or the Department or to vary any of the terms contained herein.

ARTICLE X.
AND VENUE

FORUM PROVISION, CHOICE OF LAW, CONSENT TO JURISDICTION

This Contract shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of the Provider, and shall be governed by and construed in accordance with the laws of the State of New York. The parties agree that any and all claims asserted by or against the City arising under this Contract or related thereto shall be heard and determined either in the courts of the United States located in New York City ("Federal Courts") or in the courts of the State of New York ("New York State Courts") located in the City and County of New York. To effect this Agreement and intent, the Provider agrees:

1. If the City initiates any action against the Provider in Federal Court or in New York State Court, service of process may be made on the Provider either in person, wherever such Provider may be found, or by registered mail addressed to the Provider at its address as set forth in this Contract, or to such other address as the Provider may provide to the City in writing; and

2. With respect to any action between the City and the Provider in New York State Court, the Provider hereby expressly waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of forum non conveniens; (ii) to remove to Federal Court; and (iii) to move for a change of venue to a New York State Court outside New York County;

3. With respect to any action between the City and the Provider in Federal Court located in New York City, the Provider expressly waives and relinquishes any right it might otherwise have to move to transfer the

action to a United States Court outside the City of New York;

4. If the Provider commences any action against the City in a court located other than in the City and State of New York, upon request of the City, the Provider shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, the Provider shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

If any provision(s) of this Article is held unenforceable for any reason, each and all other provision(s) shall nevertheless remain in full force and effect.

ARTICLE XI. EMERGENCY CONTRACEPTION

This Article is applicable if the Provider is a facility operating pursuant to Article 28 of the New York Public Health Law which provides emergency medical care. Pursuant to Section 6-125 of the New York City Administrative Code, the Provider agrees as follows:

A. The Provider agrees to inform rape victims presenting to its emergency department of the availability of emergency contraception and, if requested, to administer, if medically appropriate, such contraception in a timely manner. "Rape victim" means any female person who alleges or is alleged to have been raped and presents to a hospital. "Emergency contraception" shall mean one or more prescription drugs, used separately or in combination, to be administered to or self-administered by a patient in a dosage and manner intended to prevent pregnancy when used within a medically recommended amount of time following sexual intercourse and dispensed for that purpose in accordance with professional standards of practice, and which has been found safe and effective for such use by the United State Food and Drug Administration.

B. The Provider agrees to provide the New York City Department of Health and Mental Hygiene, on an annual basis, a report indicating the following information with respect to each reporting period: (i) the number of rape victims treated in such hospital's emergency department; (ii) the number of rape victims treated in such hospital's emergency department which were offered emergency contraception; (iii) the number of rape victims treated in such hospital's emergency department for whom the administration of emergency contraception was not medically indicated and a brief explanation of the contraindication; and (iv) the number of times emergency contraception was accepted or declined by a rape victim treated in such hospital's emergency department.

C. The Provider agrees to provide the New York City Department of Health and Mental Hygiene a copy of its protocol for treatment of victims of sexual assault, which hospitals are required to establish pursuant to section 405.19 of title 10 of the codes, rules and regulations of the State of New York.

ARTICLE XII. DISPUTE RESOLUTION

1. Except as provided in 1(a) and 1(b) below, all disputes between the City and the vendor that arise under, or by virtue of, this contract shall be finally resolved in accordance with the provisions of this section and Section 4-09 of the Rules of the Procurement Policy Board ("PPB Rules"). This procedure shall be the exclusive means of resolving any such disputes.

- (a) 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.
- (b) For construction and construction-related services this section shall apply only to disputes about the scope of work delineated by the contract, the interpretation of contract documents, the amount

to be paid for extra work or disputed work performed in connection with the contract, the conformity of the vendor's work to the contract, and the acceptability and quality of the vendor's work; such disputes arise when the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner makes a determination with which the vendor disagrees.

2. 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.

3. During such time as any dispute is being presented, heard, and considered pursuant to this section, the contract terms shall remain in full force and effect and the vendor shall continue to perform work in accordance with the contract and as directed by the Agency Chief Contracting Officer ("ACCO") or Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner. Failure of the vendor to continue the work as directed shall constitute a waiver by the vendor of any and all claims being presented pursuant to this section and a material breach of contract.

4. Presentation of Dispute to Agency Head.

(a) Notice of Dispute and Agency Response. The vendor 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 contract. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the vendor relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the vendor 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 Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner, 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 vendor to produce any requested material whose relevancy the vendor has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the vendor of its claim.

(b) Agency Head Inquiry. The Agency Head shall examine the material and may, in his or her discretion, convene an informal conference with the vendor and the ACCO and, in the case of construction or construction-related services, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner, 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 vendor with a contract related to the work of this contract and that vendor shall be bound by the decision of the Agency Head. Any vendor thus brought into the dispute resolution proceeding shall have the same rights and obligations under this section as the vendor initiating the dispute.

- (c) 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 vendor and ACCO and, in the case of construction or construction-related services, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner, together with a statement concerning how the decision may be appealed.
- (d) 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 vendor take such a petition, the City may seek, and the CDRB may render, a determination less favorable to the vendor and more favorable to the City than the decision of the Agency Head.

5. Presentation of Dispute to the Comptroller. Before any dispute may be brought by the vendor to the CDRB, the vendor must first present its claim to the Comptroller for his or her review, investigation, and possible adjustment.

- (a) Time, Form, and Content of Notice. Within thirty (30) days of receipt of a decision by the Agency Head, the vendor 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 vendor 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 vendor to the agency, including the Notice of Dispute. The vendor may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.
- (b) 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.
- (c) Comptroller Investigation. The Comptroller may investigate the claim in dispute and, in the course of such investigation, may exercise all powers provided in sections 7-201 and 7-203 of the New York City Administrative Code. 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 vendor. Willful failure of the vendor to produce within fifteen (15) days any material requested by the Comptroller shall constitute a waiver by the vendor of its claim. The Comptroller may also schedule an informal conference to be attended by the supplier, agency representatives, and any other personnel desired by the Comptroller.
- (d) 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 5(c) to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between the vendor and the Comptroller, to a maximum of ninety (90) days from the Comptroller's receipt of all the materials. The vendor 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 contract between the parties.

6. Contract Dispute Resolution Board. There shall be a Contract Dispute Resolution Board composed of:

- (a) the chief administrative law judge of the Office of Administrative Trials and Hearings (“OATH”) or his/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;
- (b) the City Chief Procurement Officer (“CCPO”) or his/her designee, or in the case of disputes involving construction, the Director of the Office of Construction or his/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
- (c) 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.

7. 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 vendor, within thirty (30) days thereafter, may petition the CDRB to review the Agency Head determination.

- (a) Form and Content of Petition by Vendor. The vendor 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 vendor 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 vendor 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 vendor to, the Comptroller’s Office. The vendor shall concurrently submit four complete sets of the Petition: one to the Corporation Counsel (Attn: Commercial and Real Estate Litigation Division), and three to the CDRB at OATH’s offices, with proof of service on the Corporation Counsel. In addition, the vendor 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.
- (b) Agency Response. Within thirty (30) days of receipt of the Petition by the Corporation Counsel, the agency shall respond to the statement of the vendor 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 vendor. 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.
- (c) Further Proceedings. The Board shall permit the vendor to present its case by submission of memoranda, briefs, and oral argument. The Board shall also permit the agency to present its case in response to the vendor 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 vendor 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.

- (d) 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 the contract. 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.
- (e) Notification of CDRB Decision. The CDRB shall send a copy of its decision to the vendor, the ACCO, the Corporation Counsel, the Comptroller, the CCPO, the Office of Construction, the PPB, and, in the case of construction or construction-related services, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner. A decision in favor of the vendor 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.
- (f) 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 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 Section 4-09 of the PPB Rules.

8. Any termination, cancellation, or alleged breach of the contract 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.

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