



THE CITY OF PHILADELPHIA

PROFESSIONAL SERVICES CONTRACT

GENERAL PROVISIONS

FOR

DEPARTMENT OF HUMAN SERVICES

IMPROVING OUTCOMES FOR CHILDREN

COMMUNITY UMBRELLA AGENCY

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GENERAL PROVISIONS

ARTICLE I: DEFINITIONS

- 1.1 **ADA.** “ADA” shall have the meaning set forth in Section 15.5 (Americans with Disabilities Act) below.
- 1.2 **Additional Services and Materials.** “Additional Services and Materials” shall have the meaning set forth in Section 3.3 (Additional Services and Materials; Change in Scope of Services) below.
- 1.3 **Additional Term, Additional Terms.** “Additional Term” and “Additional Terms” shall have the meanings set forth in Section 2.2 (Additional Terms) below.
- 1.4 **Aftercare.** “Aftercare” means services designed to support the reunification, stability, or attainment of another permanency goal for children and youth. Aftercare services are meant to be creative in their design and implementation and are provided post placement for up to one year or after In-Home Services for 6 months. Aftercare plans must focus on preventing children and youth from re-entering the formal child welfare system and include funds necessary for concrete goods, services, and other costs over the course of the year. Aftercare will be required for all levels of placement within the IOC Framework.
- 1.5 **Agency.** “Agency” shall have the meaning set forth in Section 7.8 (Audits Pursuant to Section 6-400 of the Home Rule Charter) below.
- 1.6 **Aggregate Actual Cost.** “Aggregate Actual Cost” means the sum of all Total Actual Costs incurred by Provider in provision of the Services.
- 1.7 **Appropriated Fiscal Year.** “Appropriated Fiscal Year” shall have the meaning set forth in Section 6.4 (Crossing Fiscal Years) below.
- 1.8 **Amendment.** “Amendment” means (a) a written modification or change to any Contract Document signed by both Parties, and (b) a Modification Notice (see Section 6.9 Maximum Daily Rate, Days of Care or Units of Service (or combination thereof) below).
- 1.9 **Applicable Law.** “Applicable Law” means all applicable present and future federal, state or local laws, ordinances, executive orders, rules, regulations and all court orders, injunctions, decrees and other official interpretations thereof of any federal, state or local court, administrative agency or governmental body, including the City, the Commonwealth and the United States of America. Applicable Law includes, without limitation, the Charter (as defined below), the Code (as defined below), and the specific laws set forth in Article XV (Additional Covenants of

Provider Relating to Certain Applicable Laws) below hereof, each as amended from time to time.

- 1.10 **Applicant.** “Applicant” means a Person who has filed an application to be awarded a Non-Competitively Bid Contract.
- 1.11 **Case Rate.** A single, unitary payment for a specified set of duties relating to a single child, youth, or family covering a defined length of time.
- 1.12 **CBES.** “CBES” means Community Based Emergency Shelter, an emergency placement facility for delinquent or alleged delinquent children and youth.
- 1.13 **Certification of Restrictions on Lobbying.** “Certification of Restrictions on Lobbying,” if required in the Provider Agreement, means a certificate in the form attached to the Provider Agreement.
- 1.14 **Charter.** The “Charter” means the Philadelphia Home Rule Charter, as it may be amended from time to time.
- 1.15 **City.** The “City” means The City of Philadelphia, a corporation and body politic existing under the laws of the Commonwealth of Pennsylvania, and includes its various executive and administrative departments, agencies, boards and commissions, including the Department, and its legislature, City Council (defined below). The City is a City of the First Class under the laws of the Commonwealth of Pennsylvania.
- 1.16 **City Agency.** “City Agency” has the meaning as set forth in Subsection 17-1401(5) of The Philadelphia Code, as it may be amended from time to time.
- 1.17 **City Council.** “City Council” means the Council of The City of Philadelphia, as described in Article II of the Charter. City Council is the legislature of the City.
- 1.18 **City-Related Agency.** “City-Related Agency” has the meaning set forth in Subsection 17-1401(9) of The Philadelphia Code, as it may be amended from time to time.
- 1.19 **Code.** The “Code” unless otherwise specified shall mean the Philadelphia Code, as it may be amended from time to time.
- 1.20 **Commissioner.** “Commissioner” means the Commissioner of the Department of Human Services of the City.
- 1.21 **Commonwealth.** “Commonwealth” means the Commonwealth of Pennsylvania.
- 1.22 **Community Behavioral Health.** “Community Behavioral Health” or “CBH” means Community Behavioral Health, a Pennsylvania nonprofit corporation incorporated for the purpose of helping to ensure that Philadelphians with mental health and substance abuse needs receive the most appropriate and effective treatment in the least restrictive and most cost effective setting.
- 1.23 **Consultant.** “Consultant” means any Person used by Provider to assist in obtaining a Non-Competitively Bid Contract through direct or indirect communication by such Person with any City Agency or any City officer or employee, if the communication is undertaken by such Person in exchange for, or with the

understanding of receiving, payment from Provider or any other Person; provided, however, that “Consultant” shall not include a full-time employee of Provider.

- 1.24 **Contract.** The “Contract” means the agreement of the Parties evidenced by the Contract Documents. References to this “Contract” shall mean this Contract as the same may be in effect at the time such reference becomes operative.
- 1.25 **Contract Cost Principles.** The “Contract Cost Principles” means the “City of Philadelphia Contract Cost Principles and Guidelines,” as it may be amended from time to time, which specifies the Department’s guidelines for the qualitative and quantitative evaluation of contract services and materials, the determination of allowable costs, and the standards to determine the allowability of individual cost items, (Copies are available from the Department upon request).
- 1.26 **Contract Documents.** The “Contract Documents” means these General Provisions, the Provider Agreement, the Limited License Agreement for the Cross Agency Response for Effective Services (CARES) (where applicable) and any and all other documents or exhibits incorporated by reference in either the General Provisions or the Provider Agreement, and any and all Amendments to any of these documents.
- 1.27 **Contributions.** “Contributions” shall have the meaning set forth in the Pennsylvania Election Code, 25 P.S. Section 3241.
- 1.28 **Community Umbrella Agency.** “Community Umbrella Agency” or “CUA” means an agency located in a defined geographic area that provides a continuum of services to children and youth at risk of abuse, neglect, or delinquency, as further described in the Scope of Services.
- 1.29 **CRU.** “CRU” means Central Referral Unit.
- 1.30 **CYD.** “CYD” means Children and Youth Division of the Department.
- 1.31 **CYD Policy Manual.** “CYD Policy Manual” (formerly the Operations Manual) means the document and its revisions which contains all the policies of the Children and Youth Division of the Department.
- 1.32 **Department.** The “Department” or “DHS” means the Department of Human Services of the City.
- 1.33 **Departmental and Administrative Policy Directives.** “Departmental and Administrative Policy Directives” means those protocols, memos, guidelines and policy or procedural directives regarding programs and operations of the various divisions of the Department that are issued to Providers by the Commissioner or the Commissioner’s designee which may include, but is not limited to, Deputy Commissioners, Policy and Planning, and Provider Relations and Evaluations of Programs (PREP).
- 1.34 **Discharge Plan.** “Discharge Plan” means the document submitted by Provider to the Department upon discharge of a child from Provider’s agency. The Discharge Plan outlines the Services Provider has provided to the child and the child’s family,

the effectiveness of those Services, and any additional services recommended by Provider.

- 1.35 **Discharge Summary.** “Discharge Summary” means a description of the Services provided to a child and the child’s family by Provider, and a statement of the reasons for the child’s discharge.
- 1.36 **PA DHS.** “PA DHS” means the Commonwealth Department of Human Services.
- 1.37 **EPSDT.** “EPSDT” means Early and Periodic Screening, Diagnosis and Treatment, a Pennsylvania Medical Assistance program initiative providing medical services to children and youth aged 0-21 years.
- 1.38 **Event of Default.** “Event of Default” means those events defined and identified in Section 12.1 (Events of Default) of these General Provisions.
- 1.39 **Event of Insolvency.** “Event of Insolvency” means (a) the filing of a voluntary petition by Provider under the Federal Bankruptcy Code or any similar state or federal law; or (b) the filing of an involuntary petition against Provider under the Federal Bankruptcy Code or any similar state or federal law which remains undismissed for a period of forty-five (45) days; or (c) Provider’s making of an assignment for the benefit of creditors; or (d) the appointment of a receiver for Provider or for the property or assets of Provider, if such appointment is not vacated within forty-five (45) days thereafter; or (e) any other proceeding under any bankruptcy or insolvency law or liquidation law, voluntary or otherwise; or (f) Provider’s inability to pay its obligations as they mature; or (g) Provider is insolvency as otherwise defined under any Applicable Law.
- 1.40 **Family Court.** “Family Court” means that judicial division of the Court of Common Pleas for Philadelphia County with original jurisdiction over all matters pertaining to dependent and delinquent children and youth.
- 1.41 **Family Team Conferencing (Team Decision Making).** “Family Team Conferencing” means the practice that encourages and allows for full participation and engagement of children, youth and families, their extended family or other supports, community members, providers of services, case management staff and other professionals at specific decision making points throughout the movement of the case through the formal child protection and child welfare system. This practice model uses family-centered, strength-based, principles to bring together people who are responsible for and interested in the care, safety, well-being, and permanency of children and youth, and provides the venue to discuss issues and concerns.

It helps to make the system more accountable to and understandable by families and the broader community. The goal is to develop a specific, individualized plan (Single Case Plan) that has support from the team. It also ensures that all relevant parties (family, extended family, providers, etc.) know and support the components of the plan.

The teaming will be facilitated by a DHS Practice Specialist who will be Master’s level and trained in facilitation skills as well as the fundamentals of engagement, assessment, planning, and intervention. The DHS Practice Specialist will play a critical role in matters of safety, policy, regulation and applicable law.

- 1.42 **Financial Assistance.** “Financial Assistance” has the meaning set forth in Section 17-1401(16) of The Philadelphia Code, as it may be amended from time to time.
- 1.43 **Fiscal Year.** “Fiscal Year” means the fiscal year of the City, which commences on July 1 of each calendar year and expires on June 30 of the next succeeding calendar year.
- 1.44 **Form Authorizations.** “Form Authorizations” means the “CRU Fax Cover Transmittal Sheet for Referral and Service Authorization” and “DHS After-Hours Fax Cover Transmittal Sheet for Referral and Service Authorization.” The authorization forms will provide the Provider with the required documentation of proof or authorization to provide services to a child prior to accepting the child for service. Once the Fax Sheet has been received, Provider cannot make further requests for this form or for a Form 85-29 printout.

- 1.45 **FSP.** “FSP” means Family Service Plan. See Single Case Plan.
- 1.46 **Functional Expenditure Report.** “Functional Expenditure Report” means a report required by Subrecipient Audit Guide detailing spending across budget categories.
- 1.47 **General Provisions.** “General Provisions” means these “The City of Philadelphia Professional Services Contract General Provisions for Department of Human Services Improving Outcomes for Children Community Umbrella Agency,” which contains the standard provisions required by the City in its professional services contracts for the Department of Human Services Improving Outcomes for Children initiative, and any exhibits identified in these General Provisions.
- 1.48 **HealthChoices.** “HealthChoices” means the program operating under a waiver from the Centers for Medicare and Medicaid Services (formerly Health Care Financing Administration) pursuant to Section 1915(b) of the Social Security Act, 42 U.S.C. 1396n, to provide mandatory managed health care to Medical Assistance recipients in Bucks, Chester, Delaware, Montgomery and Philadelphia Counties.
- 1.49 **Improving Outcomes for Children.** “Improving Outcomes for Children” or “IOC” means the City’s multi-year reform plan to create a single case management system with distinct and well-defined roles for both DHS and Provider agencies.
- 1.50 **In-Home Services.** Services for a child that lives with a parent, guardian, or other custodian and not in the legal custody of DHS or another agency authorized by law to receive and provide care for the child.
- 1.51 **Independent Audit Report.** “Independent Audit Report” means a report prepared by a Certified Public Accountant who, pursuant to AICPA Professional Standards, is not (a) a member of the board of Provider, (b) an officer or employee of Provider,

or (c) a partner, director, officer or employee of a partnership, corporation or association who is a member of the board of Provider, or a director, officer or employee of Provider.

- 1.52 **Initial Term.** “Initial Term” shall have the meaning set forth in Section 2.1 (Initial Term) below.
- 1.53 **Intent to Adopt.** “Intent to Adopt” means that report which is required by the Adoption Act (23 Pa. C.S. § 2531), to be filed with the Court of Common Pleas by the person or persons intending to adopt a child or youth, confirming said person or persons' intent to adopt.
- 1.54 **Interpretation; Number, Gender.** The words “herein” “hereof” and “hereunder” and other words of similar import refer to this Contract as a whole, including the all of the Contract Documents, and not to any particular article, section, subsection or clause contained in the Contract Documents. Whenever the context requires, words used in the singular shall be construed to include the plural and vice versa, and pronouns of any gender shall be deemed to include the masculine, feminine and neutral genders.
- 1.55 **ISP.** “ISP” means the Individual Service Plan. See Single Case Plan.
- 1.56 **JPO.** “JPO” means the Juvenile Probation Officer.
- 1.57 **Materials.** “Materials” means any and all reports, records, documents, documentation, information, supplies, plans, original drawings, specifications, computations, sketches, renderings, arrangements, videos, pamphlets, advertisements, statistics, and other data, computer tapes, computer software, and other tangible work product or materials prepared or developed by Provider in connection with the Services, or for Provider by a Subcontractor in connection with the Services, and supplied to the City by Provider or its Subcontractor pursuant to this Contract.
- 1.58 **Medical Assistance.** “Medical Assistance” or “MA” means that program authorized under Article IV(f) of the Public Welfare Code, which is administered in accordance with Title XIX of the Social Security Act (42 U.S.C. §1396), and the regulations from time to time promulgated thereunder, to provide for specific medically necessary medical services and items furnished to eligible recipients by approved providers enrolled in the program.
- 1.59 **Mental Health Procedures Act.** “Mental Health Procedures Act” means the law, codified at 50 P.S. §§7101-7503, as it may be amended from time to time, which governs the procedures for voluntary and involuntary mental health treatment in the Commonwealth of Pennsylvania.
- 1.60 **Modification Notice.** “Modification Notice” means written notice from the City to Provider that informs Provider of the City's intent to modify the maximum daily rate, number of days of care or units of Services under this Contract. The Modification Notice operates as an amendment to this Contract.
- 1.61 **Non-Competitively Bid Contract.** “Non-Competitively Bid Contract” means a contract for the purchase of goods or services to which the City or a City Agency is

a party that is not subject to the lowest responsible bidder requirements of Section 8-200 of the Charter, including but not limited to, a Professional Services Contract, and any renewal of such a contract (other than a renewal term pursuant to an option to renew contained in an executed contract).

- 1.62 **Out-of-Home Placement.** “Out-of-Home Placement” means those Services that involve placement of a child or youth outside of the child or youth’s home, including, without limitation, placement in a resource home, a group home, or a residential treatment facility.
- 1.63 **Party; Parties.** A “Party” means either the City or Provider; the “Parties” means the City and Provider.
- 1.64 **PBC.** “PBC” or “Performance Based Contract” means a contract model that incentivizes performance and ties Provider’s payment and contract renewal to performance outcomes.
- 1.65 **Person.** “Person” means any individual, sole proprietorship, association, company, firm, partnership, limited partnership, joint venture, corporation, limited liability company or other form of entity or association recognized by law.
- 1.66 **Placement Amendment.** “Placement Amendment” means that document which is a part of the FSP, and which identifies those Services that are required for a child who is placed outside of his or her home.
- 1.67 **Policy Transmittals and Guides.** “Policy Transmittals and Guides” means those notifications to Providers of changes in Departmental protocols, memos, guidelines, policies or procedures in the Children and Youth Division that are issued on an interim or emergency basis and which are incorporated into the CYD Policy.
- 1.68 **Professional Services Contract.** “Professional Services Contract” has the meaning set forth in Section 17-1401(15) of The Philadelphia Code, as it may be amended from time to time.
- 1.69 **Provider.** “Provider” means the Person providing Services and Materials to the City as defined in the heading of the Provider Agreement.
- 1.70 **Provider Agreement.** The “Provider Agreement” means the instrument, part of the Contract Documents, which sets forth the terms, covenants and conditions specific to Provider's engagement.
- 1.71 **Provisional.** “Provisional” means conditional, pending confirmation or validation.
- 1.72 **Referring Agency.** “Referring Agency” means the Department.
- 1.73 **Responsible Official.** The “Responsible Official” means the director, commissioner or other head of the Department.
- 1.74 **Scope of Services.** “Scope of Services” means the document(s) incorporated by reference and/or the document(s) attached as an exhibit (or as exhibits) to the Provider Agreement, which set(s) forth the Services to be rendered and Materials to be provided under this Contract, the time frames within which the Services are to be

rendered and the Materials are to be provided, and other certain requirements Provider must satisfy in rendering the Services and providing the Materials.

- 1.75 **Services.** “Services” means the work to be performed under this Contract as specified in the Provider Agreement.
- 1.76 **Shared Case Responsibility.** “Shared Case Responsibility” means children and youth who are arrested as juveniles who themselves or their families have child protection, child welfare, or dependency issues as well. The youth or family can be:
- (a) Active with DHS for child protection or child welfare services at the time of the arrest;
 - (b) Reported to the DHS Hotline by the JPOs when they suspect from their initial assessment that there are child protection, child welfare, or child dependency issues with the youth or family and the report is accepted for investigation; and/or
 - (c) Reported to the DHS Hotline by the JPOs at any time during their involvement with the youth when they suspect that there are child protection, child welfare, or dependency issues with the youth or family and the report is accepted for investigation.

All children and youth for whom there is shared case responsibility require joint assessment and planning among JPOs, DHS Investigation Workers, when applicable, and CUA case managers along with other interested parties. Using their specific assessment tools, these parties, identify family strengths and challenges, safety threats, educational, medical, and behavioral health needs, community safety issues, etc. This is directed towards developing an appropriate plan, securing needed services, identifying resources, articulating outcomes to be achieved and making recommendations to the Court. Planning for youth and families involved with both systems must be done in a consistent, collaborative, and thoughtful manner.

- 1.77 **Single Case Plan.** “Single Case Plan” means a coordinated plan that is developed in collaboration with the family and involves parents, children, youth, relatives, other kin, providers and all stakeholders. It is thorough, comprehensive and avoids overlapping or conflicting assessments, time limits, and requirements. As a Single Case Plan assists with avoiding conflicting goals, objectives, and timelines, it is more likely that the family will achieve positive outcomes.

This plan is developed, modified, or revised during the Family Team Conference process. It is to be strength-based and focused on the children, youth, and family. It must also incorporate the recommendations of treatment providers when applicable. outcomes.

The Single Case Plan must address all of the elements and timelines required by all applicable laws, policies, regulations, bulletins, and special transmittals. It is intended to encompass the following:

- (a) Family Service Plan;
- (b) Child Permanency Plan;
- (c) Placement Planning;

- (d) Concurrent Planning
- (e) Visitation Plans;
- (f) Transition Planning for Older Youth;
- (g) Individual Service Plan;
- (h) Discharge Planning;
- (i) After-Care Plans;
- (j) Fostering Connections to Success and Increasing Adoptions Act of 2008;
- (k) Shared Case Responsibility;
- (l) Restrictive Procedure Plan.

- 1.78 **Subcontract.** “Subcontract” means a contract made between Provider and a Subcontractor providing for the completion of some part or parts of the Services or Materials by a Subcontractor.
- 1.79 **Subcontractor.** “Subcontractor” means a Person performing under a contract with Provider some part of the Services or Materials.
- 1.80 **Subrecipient Audit Guide.** “Subrecipient Audit Guide” means the document entitled City of Philadelphia Subrecipient Audit Guide, which specifies the City’s audit requirements, as amended from time to time, (Copies are available in the Office of the Director of Finance of the City).
- 1.81 **Suspension Notice.** “Suspension Notice” means a written notice from the City to Provider pursuant to Section 14.2 (Termination or Suspension) below suspending Provider’s performance under this Contract.
- 1.82 **Suspension Period.** “Suspension Period” means the period designated by the City in a Suspension Notice during which the City has suspended Provider’s performance under this Contract.
- 1.83 **SWAN.** “SWAN” means the State Wide Adoption Network, a state wide adoption system which is administered by the Pennsylvania Council of Childrens’ Services under contract with PA DHS.
- 1.84 **Term.** “Term” has the meaning set forth in Section 2.1 (Initial Term) of the Provider Agreement.
- 1.85 **Termination Notice.** “Termination Notice” means a written notice from the City to Provider terminating this Contract.
- 1.86 **Transition.** “Transition” means the planned progression and transfer of Services and Materials from Provider’s Contract to either another provider or another contract with the same Provider.
- 1.87 **Transition Notice.** “Transition Notice” means a written notice from the City to Provider evidencing the City’s intent to transition the Services and Materials to be provided under this Contract to another.

- 1.88 **Total Actual Cost.** “Total Actual Cost” means the sum of all allowable expenses incurred by Provider in the provision of a particular Service under the Contract.
- 1.89 **Vacancy.** “Vacancy” means the existence of an available bed in a placement program, or an available service unit or slot in a non-placement program.

ARTICLE II: TERM

- 2.1 **Initial Term.** The initial term (“Initial Term”) of this Contract is set forth in the Provider Agreement. In no event shall the Initial Term exceed one (1) year.
- 2.2 **Additional Terms.** The City may, at its sole option, amend this Contract to add on an annual basis up to three (3) successive one (1) year terms (“Additional Terms”), unless any shorter term (or terms) is specified in the Provider Agreement. Unless otherwise stated in the Provider Agreement, the same terms and conditions applicable in the Initial Term shall be applicable in the Additional Term(s). The City shall give Provider thirty (30) days written notice of its intent to amend this Contract to add an Additional Term prior to each annual Additional Term. Each Additional Term shall be subject to appropriation of funds by City Council for such Additional Term. There shall be no liability or penalty to the City for electing not to amend the term of this Contract to add Additional Terms. Each Additional Term of this Contract shall be deemed to constitute a separate contract, whose term shall not exceed one (1) year.

ARTICLE III: PROVIDER’S DUTIES AND COVENANTS

- 3.1 **Performance Requirements.** Provider shall provide all Services and Materials in accordance with this Contract and applicable professional standards. All payments to Provider are contingent upon satisfactory performance of the terms and conditions set forth in this Contract, as determined by the Commissioner in his or her sole discretion.
- 3.2 **Compliance with Applicable Law.** Provider shall comply with the requirements of all Applicable Law with respect to Provider’s activities, Services, Materials and facilities used in connection with any aspect of this Contract, whether or not such Applicable Law is specifically identified by name in this Contract. Provider shall inform the Commissioner, in writing, of any notices of violations of any Applicable Law within forty-eight (48) hours of Provider’s receipt thereof, and shall correct any violations within the time prescribed by law, or immediately in the case of any emergency. In the case of out-of-state placements, the regulations of the licensing state and municipality, if any, shall apply except when such regulations are in conflict with PA DHSPA DHS or City policies governing the maintenance and care

of children and youth in its custody, in which case the more stringent standard shall apply.

- (a) **Adoption and Safe Families Act (“ASFA”) and Applicable Law Compliance.** In compliance with the requirements of ASFA and corresponding Commonwealth of Pennsylvania law, Provider agrees to do the following:
- (1) Assure and document the safety of each child and youth for every face to face contact.
 - (2) If unsafe conditions exist, notify the Department of Human Services, immediately, and document the steps taken to remedy the unsafe conditions.
 - (3) Provide timely outreach and services to families in accordance with the Single Case Plan.
 - (4) Utilize a concurrent planning process while other possible permanent alternatives, including a primary goal of reunification, are being explored.
 - (5) Document reasonable efforts exercised by Provider to accomplish the Single Case Plan goals and objectives.
 - (6) Document and notify the Department when the parent(s) fail(s) to maintain substantial and continuing contact with their children.
 - (7) Document and notify the Department, when there exists, or Provider believes there exists, compelling reasons not to file a petition to terminate parental rights of a child or youth who has been in placement fifteen (15) of the previous twenty-two (22) months.
 - (8) Document and notify the Department, when there exists, or Provider believes there exists, aggravated circumstances (as defined by the the Juvenile Act, 42 Pa.C.S.A. 6301 et seq.).
- (b) **Compliance with Title VI of the Civil Rights Act of 1964.** The Department, as a recipient of federal funding from the federal Department of Health and Human Services, is bound by Title VI of the 1964 Civil Rights Act and its implementing regulations to take reasonable steps to provide meaningful access to its programs and activities by its language minority populations. In keeping with this mandate, the Mayor of Philadelphia has issued Executive Order “Access to Federally Funded City Programs and Activities for Individuals with Limited English Proficiency” dated September 29, 2001 requiring that reasonable steps be taken to ensure that all citizens of the City of Philadelphia have access to programs and activities without regard to English proficiency.

Provider agrees to cooperate fully with the Department in its efforts to achieve full compliance with this mandate. Provider will assess the level of services provided to clients with limited English proficiency, report those findings to the Department within the timeframe and in the format requested; and, to take any additional actions that may be requested by the Department from time to time to ensure compliance with Title VI.

(c) **Compliance with the Prison Rape Elimination Act of 2003 (PREA)
PL 108-79, 42 U.S.C. Chapter 147 §§15601—15609.**

Provider agrees that if it is providing services to delinquent children, children held pursuant to a delinquent petition, or services relating to the confinement of children in any way then the Provider shall be obligated to comply with the Prison Rape Elimination Act of 2003 and all related standards as they may be amended from time to time.

(d) **Fostering Connections To Success and Increasing Adoption Act of 2008.**

Provider shall collect and provide appropriate documentation at a minimum of every six (6) months that all youth turning eighteen (18) years old are notified of the right to remain in care or re-enter care until 21 if they continue to meet the definition of “child” under the Juvenile Act and the court grants their request.

3.3 **Additional Services and Materials; Change in Scope of Services.** Except as set forth in Section 6.8 (Monitoring of Fund Utilization) below, at any time during the Term of this Contract, the City may, by written change order or request delivered by notice to Provider, make changes to the Scope of Services under this Contract, and the Parties will, if appropriate, negotiate an adjustment in compensation if necessary, subject to appropriation of funds by City Council. Provider shall not commence to perform or provide, and the City shall not pay for, any services or materials not included in this Contract (the “Additional Services and Materials”) unless and until Provider receives written pre-authorization (by change order or other request) from the Commissioner that specifies the Additional Services and Materials to be provided. In no event shall the rates charged by Provider for said Additional Services and Materials exceed the lowest of (a) Provider’s then current standard rates for such Services or Materials, (b) such rates as the City and Provider may have negotiated for this Contract, as set forth in the Provider Agreement, or (c) the lowest rate or rates that Provider may then be charging to other purchasers of like Services and Materials. If Provider requests changes to the Scope of Services, Provider must demonstrate to the satisfaction of the City, in its sole discretion, that the changes are necessary and not due to the acts or omissions of Provider. The City shall pay Provider additional compensation above the limit set forth in the Provider Agreement only if and when an Amendment to this Contract is duly executed by the Parties. The City shall have no responsibility or liability whatsoever

for any fee, or for costs incurred by Provider for any services, materials or other costs or expenses, other than the Services and Materials and any duly approved Additional Services and Materials.

3.4 **Responsibility.**

- (a) Notwithstanding the acceptance and approval by the City of any Services performed or Materials provided, Provider shall continue to be responsible for the professional quality, technical accuracy and the coordination of all Materials and Services provided by Provider under this Contract. Provider shall, without additional compensation, promptly and diligently correct any errors, defects, deficiencies or omissions in Provider's Materials and Services.

(1) Plan of Correction. This section applies to Providers who have been or who may be requested to submit a Plan of Correction (POC) to DHS regarding performance concerns. Provider acknowledges that DHS, by requesting a POC, does not resolve or waive the issues raised by DHS under any other notices and other communications and that under the Contract (and as it may be amended from time to time) Provider remains under the duty to explain and rectify any matters that have been or may be raised by DHS or its designee.

Provider agrees that the final accepted POC (and if applicable, any DHS addendum to POC) is incorporated by reference to the contract. By signing contract, Provider agrees to be bound by the additional terms and conditions of the POC submitted by Provider and any addendum submitted by DHS. Failure to submit or comply with the terms of the POC shall constitute an Event of Default as prescribed in Section 12.1(a) and (c), permitting DHS to exercise the remedies available in Section 13.1, including but not limited to, termination of the Contract.

By entering into a contract with Provider while requesting a POC, DHS reserves and does not waive its rights to enact Section 3.1 Performance Requirements, to rely on Section 3.4(b) Responsibility and/or or to invoke Article XIV: Transition, Termination and Suspension of the General Provisions for any of the reasons provided nor does it waive any remedies available under Article XIII: Remedies.

- (b) Furthermore, by entering into a contract with DHS and/or continued performance under this contract while submitting a POC, Provider maintains its obligation to comply with all of the provisions of Article III: Provider's Duties and Covenants of the General Provisions. The City's review, approval or acceptance of, or payment for, any of the Materials and Services required under this Contract shall not constitute any representation, warranty or guaranty by the City as to the substance or quality of the matter reviewed, approved or accepted and shall not be

construed to operate as a waiver or estoppel of any of the City's rights or privileges under this Contract or of any cause of action arising out of the performance of this Contract. No Person shall have any right to rely in any way on the City's review, approval or acceptance of Provider's Services or Materials. Provider shall be and remain liable in accordance with this Contract and Applicable Law for all damages to the City caused by Provider or the Services or Materials provided by Provider. Review, approval or acceptance by the City or the Commissioner under this Contract shall not constitute or be construed to constitute approval otherwise required by any City department, board, commission, or other regulatory agency in the exercise of such department's, board's, commission's or agency's independent regulatory authority or police powers under Applicable Law.

- (c) Without limiting Provider's responsibility as set forth above, if any act or omission of Provider or error or deficiency or omission in the Services or Materials provided by Provider requires any change in the Scope of Services or any portion thereof, Provider shall promptly complete such change at no additional cost to the City.

3.5 **Subcontracts.**

- (a) Provider shall not delegate or enter into any Subcontract for the performance of any of its obligations under this Contract, in whole or in part, without on each occasion first obtaining the written consent of the Commissioner or designee. Provider shall not delegate Direct Case Management responsibilities as described in the CUA Guidelines. Direct Case Management is the process by which the assigned CUA Case Manager (CM) assesses the strengths and needs of a family and makes the necessary referrals to secure appropriate support services and other resources. The focus of direct case management is to ensure that all children and youth involved with the formal child protection and child welfare system are in a safe, nurturing, and permanent living situation. The Case Manager is directly responsible for assessing safety and risk, and service planning.
- (b) Provider shall submit a completed subcontractor approval request form for each proposed subcontractor in order to obtain the necessary forementioned written consent of the Commissioner. New approval requests are to be completed for each contract term as approval is only valid for a maximum of one year.
- (c) Provider shall submit copies of all the proposed Subcontract(s) to be entered into by Provider with the proposed subcontractor, along with Provider's subcontractor approval request. All such Subcontracts must specify that:
 - (1) work performed by Subcontractor shall be in conformity with the terms of this Contract;
 - (2) nothing contained in such Subcontract shall be construed to impair the rights of the City under this Contract;

- (3) the City's consent to or approval of any Subcontract shall not create any obligation of the City to any Subcontractor;
- (4) nothing contained in such Subcontract, or under this Contract, shall create any obligation of the City to any Subcontractor;
- (5) the City shall be expressly designated a third party beneficiary of the Subcontract;
- (6) upon request by the City (at the City's sole option) and upon receipt of written notice from the City stating that this Contract between the City and Provider has been terminated, Subcontractor agrees that it will continue to perform its obligations under the Subcontract for the benefit of the City in conformity with the terms and conditions of this Contract, provided the City pays Subcontractor for the Services rendered and Materials provided by Subcontractor from and after the date of the termination of this Contract between the City and Provider at the same rate or in the same amount as set forth in the Subcontract for those Services and Materials provided by Subcontractor after such date of termination;
- (7) Under each Subcontract, the Subcontractor shall be bound by the same terms, covenants and conditions as Provider under this Contract; including, without limitation, confidentiality, inspection of records, reporting of programs and costs, maintenance and preservation of records, and audit by government representatives, under this Contract. Regarding insurance, the Subcontractor shall be bound by the same minimum insurance requirements as Provider listed in Article X: Insurance, with the exception of the Umbrella Liability Insurance, which shall not be required.
- (8) Under each Subcontract, the Subcontractor shall be subject to quality assurance, fiscal and performance reviews which include site evaluations and inspection of records, that will be directed at compliance of state and federal law and regulations, including but not limited to Title IV-E of the Social Security Act, Temporary Assistance for Needy Families (TANF), the Public Welfare Code (including Act 148), the Child Protective Services Law, and compliance of the requirements under this Contract;
- (9) Subcontractor shall, effective on the date of the Subcontract, presently, fully and unconditionally assign, transfer and set over to the City all of Subcontractor's right, title and interest in and to any sales and/or use tax which may be refunded as a result of a claim for refund for any materials purchased in connection with the Subcontract or this Contract, and Subcontractor shall covenant and agree that, (i) other than as directed by the City, it will not file a claim for refund for any sales or use tax which is the subject of this assignment; and (ii) the City, in its own name or in the name of

Subcontractor, may file a claim for a refund of any sales or use tax covered by this assignment;

- (10) Subcontractor shall not be indebted to the City. To satisfy this requirement, Provider shall include the requirement of subsection 4.1(f), “No Indebtedness to the City,” below, with appropriate adjustments for the identity of the parties, in all Subcontracts that are entered into for work to be performed pursuant to this Contract;
 - (11) Subcontractor shall comply with Chapter 17-400 of the Code (to satisfy this requirement, Provider shall include Subsection 15.2(a), Chapter 17-400 of the Code, below, with appropriate adjustments for the identity of the parties, in all Subcontracts that are entered into for work to be performed pursuant to this Contract);
 - (12) Subcontractor shall comply with Section 17-104 of the Code. To satisfy this requirement, Provider shall include the requirements of Subsection 15.6(b) (Section 17-104 of the Code) below, with appropriate adjustments for the identity of the parties, in all Subcontracts that are entered into for work to be performed pursuant to this Contract; and
 - (13) Subcontractor is not and shall not become suspended or debarred by the Commonwealth, any other state or the federal government throughout the term of the Subcontract.
 - (14) Subcontractor shall comply with Chapter 17-1300 of the Code to the extent it is applicable to a Subcontractor that is also a Service Contractor (as defined in Chapter 17-1300) providing Services under the Subcontract, and to subcontractors at any tier that are also Service Contractors providing Services under this Contract. To satisfy these requirements, Provider shall notify its Subcontractors of these provisions; shall incorporate this paragraph and Section 15.10 below, with appropriate adjustments for the identity of the parties, in each Subcontract; and shall require its Subcontractors to include such terms in any lower-tier subcontract that is, or may become, covered by Chapter 17-1300.
- (d) No permitted Subcontract shall relieve Provider of any obligation under this Contract. Provider shall be as fully responsible for the acts and omissions of its Subcontractors and Persons either directly or indirectly employed or retained by them as it is for the acts and omissions of Provider and Persons directly or indirectly employed or retained by Provider.
- (e) Any purported Subcontract made in violation of this Section or of any other Section in this Contract shall be null and voidable.
- (f) City-Related Agencies.
- (1) If Provider is a City-Related Agency, Provider shall abide by the provisions of Chapter 17-1400 of the Code in awarding any contract(s) pursuant to this Contract as though such contracts were

directly subject to the provisions of Chapter 17-1400, except that the exception set forth at Section 17-1406(8) shall apply to Provider as if Provider were listed in that subsection.

- (2) Unless approved by the City to the contrary, any approvals required by Chapter 17-1400 of the Code to be performed by the City Solicitor shall be performed on behalf of a City-Related Agency by its General Counsel; any approvals required to be performed by the Director of Finance shall be performed on behalf of a City-Related Agency by its Chief Financial Officer; and any approvals required to be performed by the Mayor shall be performed on behalf of a City-Related Agency by its Executive Director.
- (g) Provider shall submit to the Commissioner or her designee final copies of all executed Subcontracts entered into by Provider.

3.6 **Conflict of Interest; Related Party Transactions.**

- (a) Provider shall adhere to Department policy and to 55 Pa. Code §3680.63, as it may be amended from time to time, regarding conflicts of interest and related party transactions. Without limitation of the foregoing, related party transactions shall also include any transactions involving any direct or indirect financial interest of Provider's board members, executive personnel, or their immediate families.
- (b) Provider shall furnish the Department with copies of all documents submitted to PA DHSPA DHS for the purpose of securing a prior written determination pursuant to §3680.63, including a copy of the written determination.
- (c) Provider shall disclose all related party transactions in its annual fiscal report to the City.
- (d) Provider shall upon request provide additional information in regards to fair market value and/or competitive cost.

3.7 **Relationship with the City or Family Court.**

- (a) Neither Provider's personnel nor any Subcontractor personnel shall be employees of the City, employees of the Family Court, or any other governmental officer or employee whose salary is paid out of the City Treasury. Provider shall notify the City of any Provider personnel or any Subcontractor personnel who have any employment or other contractual relationship or agency relationship with the City or with the Family Court.
- (b) Pursuant to Section 20-607(c) of the Code, as it may be amended from time to time, neither Provider's personnel nor any Subcontractor personnel, nor any parent, spouse, life partner, child, brother, sister or like relative-in-law, nor any person, firm, partnership, corporation, business association, trustee or straw party owned or operated by any of them, shall be financially interested in any award, contract, lease, case, claim, decision, decree or

judgment made by any such personnel while in the service of the City until at least two (2) years after the expiration of such person's service or employment with the City.

- (c) Provider must maintain documentation in its personnel files that provides verification that it has informed all of its personnel and subcontractors of their obligation to report to Provider whether they are currently or subsequently become employed by DHS.

3.8 **Time Frame for Submissions.** Provider shall perform any and all Services and shall submit any and all Materials required by this Contract within the time frames set forth in the Scope of Services attached as an exhibit to the Provider Agreement or as mutually agreed upon in writing by the City and Provider. Absent any such written time frames, Provider shall perform its obligations under this Contract diligently and promptly and in any and all events before the scheduled expiration of the Term.

3.9 **Prompt Payment by Provider.** Provider agrees to promptly pay all Persons which have furnished labor or supplies in connection with the Services, the Materials or this Contract, including, without limitation, Subcontractors and suppliers. Provider shall provide, upon request of the City, reasonable evidence that these Persons have been fully and timely paid.

3.10 **Sales and Use Tax.** The City is not subject to federal, state or local sales or use taxes or federal excise tax. Provider hereby assigns to the City all of its right, title and interest in any sales or use tax which may be refunded as a result of any materials, including any Materials, purchased or any services, including any Services, rendered in connection with this Contract and unless directed otherwise by the City, Provider shall not file a claim for any sales or use tax refund subject to this assignment. Provider authorizes the City, in its own name or the name of Provider, to file a claim for a refund of any sales or use tax subject to this assignment.

3.11 **Adherence to Departmental Policy.** Provider shall be bound by all current Departmental and Administrative Policy Directives, Policy Transmittals and Guides, the CYD Policy Manual, applicable Performance and Service Standards, applicable Practice Guidelines, and any applicable PA DHSPA DHS and/or Office of Children, Youth, and Families transmittals and bulletins as these documents may be amended from time to time. The Department may provide access to these documents on the Provider Extranet website or by making copies of these documents available to the Provider upon request.

3.12 **Adoption License.**

- (a) If Provider's Services include foster family care, Provider agrees as follows:
 - (1) Provider shall, at Provider's option, (a) apply for and obtain, within sixty (60) days from the effective date of this Contract, a valid,

current adoption license from the PA DHSPA DHS; or, (b) immediately upon the effective date of this Contract, become affiliated with a child welfare agency that possesses a valid, current adoption license.

(2) Provider shall become affiliated with SWAN immediately upon the effective date of the Contract.

(b) Provider shall cooperate with the City in the City's efforts to facilitate the adoption of children and youth in foster care, and Provider shall refer all children and youth in out-of-home placement to SWAN for appropriate services based on the Single Case Plan goal and concurrent goal. If there is no known adoption resource, SWAN shall register such children with the appropriate adoption exchanges.

3.13 **Routine Transportation Costs.** With the exception of those costs associated with a runaway, the specific provisions for which are set forth at Section 3.29 (Absence of a Child/Youth), Provider shall be responsible for all routine transportation costs incurred by Provider in fulfilling the terms of this Contract.

3.14 **Family Visit Food Costs.** Provider shall be responsible for the costs of food for children and youth while visiting family.

3.15 **Payments for Placement Services.** Provider shall use payments under this Contract to purchase only those Services that are reimbursable under Applicable Law and in accordance with DHS policy, which may include but are not limited to, Title IV-E of the Social Security Act, Act 148, and the Contract Cost Principles, unless Provider has received prior written approval from the Commissioner or the Commissioner's designee to purchase non-reimbursable Services. This requirement applies equally whether the Services are purchased directly by Provider or indirectly through Provider's Subcontractor, or Provider's referral to another agency.

3.16 **EPSDT; Managed Care.** Provider shall comply with the City's EPSDT initiative. Compliance shall include, without limitation, Provider's securing of all licenses and permits necessary for Provider to participate in the Medical Assistance program, HealthChoices or managed care organizations (where appropriate); Provider's timely submission of all forms and reports required by the Commonwealth Office of Medical Assistance, HealthChoices or managed care organizations; and Provider's timely pursuit of any and all appeals of the Commonwealth's denial or discontinuance of EPSDT funding to Provider, or denial, discontinuance or reduction of medical services by HealthChoices or managed care organizations.

Provider shall comply with the City's initiative to integrate behavioral health services with other health and social services provided to children, youth, and their families. Compliance shall include, without limitation, the following:

- (a) Provider shall use **1-888-545-2600**, the central contact number of Community Behavioral Health (CBH), for the purpose of securing mental health and substance abuse services for children, youth, and their caregivers;
- (b) Provider shall document fully in the case file the results of each referral to CBH;
- (c) Upon request by DHS and/or CBH and with proper authorization, Provider shall release to CBH any documents and/or reports regarding behavioral health services provided to children, youth, and families; and
- (d) Provider must maintain centrally located documentation regarding whether a child/youth has received a full EPDST screening within sixty (60) days of entering placement, unless the child/youth has had a screening and the results are available, and whether the subsequent treatment indicated has been initiated/scheduled within ninety (90) days upon entering placement. Youth transferring from one foster care agency to another and youth transferring from a facility licensed under Chapter 3800 regulations to a foster care agency may be exceptions.

3.17 **Service Requirements.**

- (a) Provider shall provide Services to the children and youth and their families in accordance with the Single Case Plan.
- (b) Provider shall complete and submit a Scope of Services based on the Department's approved form which shall be consistent with Department's Performance and Service Standards and Applicable Law.
- (c) Provider's Scope of Services shall be current, shall satisfy the City's requirements as to form and content, and shall be attached as an exhibit to the Provider Agreement.

3.18 **Dependent Placement Referrals.** Provider shall accept youth with deferred or dual adjudications in its dependent facility. To the extent permitted by law, including applicable state regulations, Provider shall accept dependent youth in its delinquent facilities if such youth are otherwise eligible for admission into Provider's facility. Delinquent Providers agree that their Scope of Services shall not exclude dependent children and youth from their program unless they are required by law to do so.

3.19 **Rejection of Referral.** Provider shall not reject a child, youth, or family for Services based upon the location or condition of the family's residence, their environmental or social condition, or for any other reason.

3.20 **Vacation, Holiday Placement.** Provider shall ensure that each child and youth in an Out-of-Home Placement has uninterrupted Services and placement in the event Provider's office closes for vacation or holidays.

- 3.21 **Adequate Clothing.** It shall be Provider's responsibility to purchase a seasonally adequate and complete wardrobe for each child or youth in placement in its program and for any child or youth who is being discharged from its program.
- 3.22 **Return of Medical Assistance Card.** At the time of discharge or within seventy-two (72) hours of an unplanned discharge, Provider shall return the Medical Assistance card of any child or youth who has been removed or discharged from Provider's placement to the City; otherwise, Provider shall be liable for any charges incurred after discharge. Provider agrees that, upon its return of the child or youth's Medical Assistance card to the City, Provider will cooperate fully with the Department for the purpose of re-enrolling the child with a primary care physician.
- 3.23 **Service Reports.**

- (a) **Notice of Child/Youth's Location.** Providers shall promptly notify the City of the exact placement location and address of each child and youth placed in accordance with the terms of the Contract. Children and youth shall not be moved from one location to another even within a Provider's own system without PRIOR written notice to the Teaming Director and applicable approval of court, except in emergency situations that place the child or youth in imminent risk of harm.

Applicable approval of the court in the preceding paragraph refers to the Dependent Juvenile Court procedural rules effective July 15, 2011 as follows. In non-emergency placement situations, the City must notify the Court before a child or youth is moved. Provider must notify the Court Representative in the Law Department so the appropriate motion can be filed and heard before the child or youth is moved. In emergency situations, the child or youth can be moved, but the City must notify the Court within twenty-four (24) hours of that move. Provider must notify the Court Representative in the Law Department or the Hotline afterhours immediately when an emergency removal occurs so that the appropriate motion can be filed.

- (b) **Copies of Single Case Plan, Other Reports.** Provider shall promptly provide the City with copies of the Single Case Plan, periodic reviews of Single Case Plans, and in-home and day care services reports. Provider's Single Case Plan for children and youth, as well as quarterly reports on each child, youth and the family shall be consistent with the Single Case Plan and Applicable Law. In addition, Provider shall promptly submit all requisite reports to Family Court and to Community Behavioral Health or its successor or assigns.
- (c) **In Home Services and Resource Home Care Outcomes Requirements.** All providers are required to implement and utilize all forms and procedures in home services and Resource Home Services. Provider shall

comply with all current, newly enacted and subsequent outcome requirements enacted during the term of the Contract, including any and all amendments thereto.

- (d) **Compliance with Temporary Assistance for Needy Families (“TANF”) Reporting Requirements.** Provider shall comply with all requirements needed to document and claim under TANF the eligible services delivered by the Provider. Compliance shall include, without limitation, submitting the following:
- (1) Once a month, the list of clients receiving services that month on the form prescribed by the City;
 - (2) Once a month, the standard summary invoice on the form prescribed by the City;
 - (3) Once a year, a properly completed Means Test Worksheet (MTW) for each child and youth receiving services. A MTW must be completed when a child or youth first comes into service, so each month the Provider must provide a properly completed MTW for every child who came into care that month. That MTW is valid for twelve (12) months from the date the MTW was completed. If the client continues to receive services beyond twelve (12) months, a new MTW must be completed.
- (e) **HCSIS Reports, Reporting Other Incidents and Mandated Reporting to Childline.** Provider shall notify DHS Commissioner’s Office, immediately orally and subsequently in writing of any fatality. Incidents, as required by state regulations, including by not limited to 55 Pa. Code 3680.21, must be reported as required. Provider staff shall immediately notify DHS Hotline and ChildLine when there is a reasonable cause to suspect that a child or youth has been abused or neglected.
- (f) **Documentation of arrests of Children/Youth.** Providers must maintain centrally located documentation regarding all arrests by law enforcement of children and youth being served by the Provider. The Provider must maintain the following information: the date of the report, the DHS division (CYD or JJS) that placed the child/youth with the Provider agency or program and/or any applicable shared case responsibilities; the name, age and race of the child/youth; the date and time the arrest occurred; and reason for the arrest by the law enforcement agency.
- (g) **Documentation of Restraints of Children/Youth.** Providers must maintain centrally located documentation regarding all restraints of children/youth served. Provider must maintain the following information: the date of the report; the DHS division (CYD or JJS) that placed the child/youth with the Provider agency or program and/or any applicable

shared case responsibility; the name, age and race of the child/youth; reason for restraint; date and time the restraint occurred; type of restraint used; name of employee(s) who performed the restraint; duration of the restraint; name of employee(s) who observed the child/youth; and the result of restraint (i.e., injuries incurred, hospitalization, etc.). Provider shall abide by all applicable law and directives in regards to restraints of pregnant females.

- (h) **Documentation of Truancy.** Provider must maintain centrally located documentation regarding whether a child/youth has been truant (three (3) unexcused absences within the school year) during the time the child/youth was placed with Provider.
- (i) **Documentation of Aftercare Plan.** Provider must maintain centrally located documentation regarding Aftercare Plan in accordance with any Community Umbrella Agency Practice Guidelines and/or applicable Performance and Service Standards.

Failure to comply with these requirements constitutes an Event of Default pursuant to Section 12.1(a). If Provider fails to comply with the requirements under Section 3.28, the City may exercise any of the remedies available pursuant to Section 13.1 including withholdinf of payment.

3.24 **Transitional and Discharge Planning.** Provider shall comply with the outlined Procedural Guide for discharge (effective August 1, 2005) and complete the “Discharge of Service Form.” Provider shall also comply with Policy and Procedural Guide regarding “Transitional Planning for Older Youth 16 through 21 Years Old (dated October 21, 2009) and all applicable laws, regulations, and directives regarding transition and discharge planning and development.

- (a) **Discharge Upon Agreement of the Parties.**
 - (1) Provider shall submit to the City a Discharge Summary within ten (10) business days following child/youth’s discharge from Provider’s care, along with important documents including, without limitation, birth certificate, Social Security card, court order, and copies of any other documents requested by the City that relate to the child/youth.
 - (2) Provider shall administer and distribute money acquired or received by the child/youth in accordance with Applicable Law and the Discharge Plan. Provider acknowledges that such funds are the property of the child/youth.
- (b) **Discharge Upon Request of Provider.** In cases where the child’s discharge from Provider’s care is requested by Provider, and is not made pursuant to a mutually agreed upon service plan or court-ordered removal,

Provider shall submit to Commissioner a written explanation detailing the basis for the requested discharge. If the request is approved by the Commissioner or Commissioner's designee, Provider shall give the City thirty (30) days formal written notice of its intent to discharge; if the child is a special needs child (as that term is defined by the Department and Applicable Law), Provider shall give the City ninety (90) days formal written notice. If a discharge on an emergency basis proves necessary, the City may, in its sole discretion, permit a shorter notice period. Provider may not unilaterally discharge a child or case.

(c) **Delinquent Children and Youth.**

(1) When a delinquent child or youth is recommended for discharge, Provider shall submit to the Probation Department of the Court of Common Pleas, the Juvenile Justice Services Administrator of the Department, and the District Attorney, a complete summary of all information pertaining to the child's adjustment and progress, and any recommendations of Provider, one (1) month prior to the anticipated discharge date.

(2) If a delinquent child or youth or an alleged delinquent child or youth is placed in a CBES or, in the case of a delinquent child or youth, in a delinquent facility, and while residing at such facility is arrested on new charges; and if at the time of the arrest the youth was not a runaway youth; then Provider shall accept and transport the youth back to the facility pending court disposition of the new charges. Provider may obtain an exception to this provision if Provider's facility has exhausted its capacity, or if the youth is committable pursuant to the Mental Health Procedures Act, is eligible for detention at the Philadelphia Juvenile Justice Services Center Philadelphia Juvenile Justice Services Center pursuant to the Santiago Consent Decree, or is eligible for admission to an acute care facility for medical purposes. If Provider determines that the youth, because of the new charges, is not suitable for its program, Provider may, after accepting the youth back to its facility, request that the referring agency of the City grant an exception to this provision by following the procedures outlined in Section 5.2 (b)(3).

(d) **Documentation of discharges of children/youth.** Providers must maintain centrally located documentation regarding each child/youth that is discharged from Provider's agency. Provider must maintain the following information: the date of the discharge from the Provider's agency or program; the DHS division (CYD or JJS) that placed the child/youth and/or any applicable shared case responsibility; the name, age and race of the child/youth; and the reason that the child/youth was discharged (including successful progress of original presenting problem; AWOL; negative discharge; etc.), and any Aftercare plan. Provider must

maintain centrally located documentation regarding whether the child/youth is attending school and/or is employed full time (37.5 hours per week) for the time period of six (6) and twelve (12) months after discharge from placement.

3.25 **Absence of Child/Youth.**

(a) When a child/youth voluntarily absents himself or herself from the supervision of Provider or Provider's designee for a period of twenty-four (24) hours, the child/youth is to be considered a runaway and Provider shall:

(1) Notify all appropriate parties, including the Department, police, and, if appropriate, the Philadelphia Juvenile Probation Department (if appropriate), as soon as Provider determines that the child is determined to be a runaway, but in no event later than twenty-four (24) hours after departure. Provider shall give written notice not later than the next working day. Provider shall also give oral and written notice, in the manner set forth above, as soon as the child/youth is found or returned to Provider's physical custody. Provider shall notify the Philadelphia Juvenile Probation Department of any runaway at the following numbers:

Weekends, Evenings and Holidays
(215) 686-4818 or 4999 Intake Unit

When the child is alleged or adjudicated delinquent, Provider shall notify the District Attorney at (215) 686-4000.

(2) Reserve the child/youth's placement for a maximum of seventy-two (72) hours from the time of knowledge of the child/youth's departure, unless the City notifies Provider to the contrary. Upon such notice, the City shall be obligated to compensate Provider for maintaining availability of the placement. If the child/youth is located within the seventy-two (72) hour period, Provider shall accept the child back into placement in accordance with the exception and appeal procedure described at Section 5.2 (b)(3)

(b) Upon mutual agreement of Provider and the Commissioner's designee, the seventy-two (72) hour period may be extended.

(c) When a child or youth who is still in the care of Provider is found within the county of placement or a contiguous county, Provider shall be responsible for transportation costs for returning the child/youth. In all other situations, the City shall be responsible for the cost of transportation. If Provider makes arrangements for the use of public transportation in returning a

child/youth who has run away, the City shall be responsible for transportation costs only when it has given prior approval. With the exception of delinquent children or youth, this subsection (c) shall apply only to children and youth placed in the legal custody of the Department.

- 3.26 **Provider's Publications.** Provider shall identify the Department as a funding source in all literature, documents reports or pamphlets which Provider publishes, develops or produces in connection with this Contract.
- 3.27 **Clearances.** Provider shall obtain Clearances as required by law and by DHS policy. Herein, "Clearances" shall mean: (i.) a report of Federal criminal history record information dated no more than sixty (60) days prior to the individual's start date and obtained by submitting a full set of fingerprints in a manner described by PA DHS to the Federal Bureau of Investigation (FBI), (ii.) a Pennsylvania Criminal History Record Report dated no more than sixty (60) days prior to the individual's start date, (iii.) a certification from PA DHS dated no more than sixty (60) days prior to the individual's start date certifying whether the applicant is named in the PA DHS maintained central register as the perpetrator in a founded report of child abuse, the perpetrator in an indicated report of child abuse, the perpetrator in a founded report for a school employee or the perpetrator in an indicated report for a school employee, (iv.) criminal history and child abuse record clearances from any other current or previous state of residence within the past five (5) year period and dated no more than sixty (60) days prior to the individual's start date, and (v.) any other record or certification requested by the Department.
- (a) Clearances shall be obtained prior to the approval and/or hiring of any applicant. Provider shall obtain Clearances for all applicants for employment including without limitation: employees, agents, independent contractors, volunteers having contact with children, all prospective foster parent applicants, all prospective adoptive parent applicants, all prospective PLC custodians, all prospective foster home Household Members, all prospective adoptive parent Household Members, and all prospective PLC custodian Household Members. A "Household Member" shall herein be defined as: any individual 18 years of age or older spending thirty (30) days or more in a home during a calendar year.
 - (b) This section shall be applicable to all staff including without limitation executive, administrative, and operational staff.
 - (c) Provider shall obtain the required Clearances for all current employees, agents, independent contractors, volunteers having contact with children, foster parents, adoptive and prospective adoptive parents, PLC custodians and prospective PLC custodians, and all of their respective Household members for whom this information has not already been obtained.

- (d) Providers have a continuing obligation to obtain updated Clearances every sixty (60) months. However, it is strongly recommended that all Clearances be obtained annually.
- (e) The PA DHS is utilizing Cogent Systems to process FBI record checks. Provider shall be responsible for entering into an agency agreement with Cogent Systems so that Provider may pay for the fees for all prospective foster and adoptive parent applicants and their respective Household Members applying through the Provider or establish an agency policy to require that applicants pay the fees themselves. These records must be included, when applicable, in the documentation forwarded to the DHS Licensure Unit when foster homes are certified or recertified.
- (f) According to the Child Protective Services Law (“CPSL”), 23 Pa. C.S. § 6301 et seq.), an individual may not be considered for employment or participation in a program, activity, or service, including but not limited to employment as either a foster parent or an adoptive parent, if that individual has been convicted of any of the following offenses or if the individual has been convicted of the attempt, solicitation, or conspiracy to commit any of the following offenses:
- Criminal Homicide
 - Aggravated Assault
 - Stalking
 - Kidnapping
 - Unlawful Restraint
 - Rape
 - Statutory Sexual Assault
 - Involuntary Deviate Sexual Intercourse
 - Sexual Assault
 - Aggravated Indecent Assault
 - Indecent Assault
 - Indecent Exposure
 - Incest
 - Concealing Death of a Child
 - Endangering the Welfare of Children
 - Dealing in Infant Children
 - Felony Prostitution and Related Offenses
 - Obscene and Other Sexual Materials and Performances
 - Corruption of Minors
 - Sexual Abuse of Children
 - Felony Offense Under the Controlled Drug, Device and Cosmetic Act, committed within the five (5) year period immediately preceding individual’s application

- (g) Other than the last criminal offense listed – Felony Drug Offense – there is no time limitation on the enumerated criminal convictions. For example, an aggravated assault from thirty-five (35) years ago shall have the same effect as an aggravated assault conviction this year: namely, the individual shall be precluded from employment or participation in a program, activity, or service.
- (h) Provider shall not approve an applicant as a foster parent, prospective adoptive parent, or PLC custodian if they or any Household Member are named as the perpetrator in a founded report of Child Abuse or a report equivalent to a founded report of Child Abuse in another state.
- (i) Provider shall not approve an applicant as a foster parent, prospective adoptive parent, or PLC custodian if they or any Household Member are named as the perpetrator in an indicated report, or a report equivalent to an indicated report in another state, within the previous 5 years. A perpetrator and those with a Household Member named as a perpetrator in an indicated report or the equivalent of an indicated report from another state more than five years ago may be approved as a foster parent, prospective adoptive parent, or PLC custodian, but only with the written approval of the Commissioner or his/her designee at the director level or higher.
- (j) Provider shall not approve an employee, agent, independent contractor, or volunteer having contact with children for service if they are named as the perpetrator in a founded report of Child Abuse or a report equivalent to a founded report of Child Abuse in another state, within the previous 5 years. A perpetrator named in a founded report, or the equivalent of a founded report from another state, more than 5 years ago may only be approved as an employee, agent, independent contractor, or volunteer having contact with children for service upon the written approval of the Provider's Executive Director, President, or similar Chief Executive Officer. Such written approval shall be determined on a case by case basis and record of such written approval shall be maintained in accordance with section 7.4 of these General Provisions.
- (k) Provider shall not approve an employee, agent, independent contractor, or volunteer having contact with children for service if they are named as the perpetrator in an indicated report, or a report equivalent to an indicated report in another state, within the previous 5 years. A perpetrator named in an indicated report, or the equivalent of an indicated report from another state, more than 5 years ago may only be approved as an employee, agent, independent contractor, or volunteer having contact with children for service upon the written approval of the Provider's Executive

Director, President, or similar Chief Executive Officer. Such written approval shall be determined on a case by case basis and record of such written approval shall be maintained in accordance with section 7.4 of these General Provisions.

- (l) Provider shall immediately require any of its employees, agents, independent contractors, volunteers having contact with children, foster parents, prospective adoptive parents, or Household members of either a foster home or prospective adoptive home to submit new Clearances to Provider in the manner required in this section for a new applicant should Provider have or ever develop a reasonable belief that such Clearances would disqualify the individual or home they reside in from approval under this section or Applicable Law. Costs for these clearances shall be borne by the Provider.
- (m) Provider shall require all employees, agents, independent contractors, all adoptive, foster and kinship parents, and all of Provider's volunteers having contact with children to notify Provider in writing if they are arrested for or convicted of an offense that would constitute grounds for denying employment or participation in a program, activity or service, or if they are named as a perpetrator in a founded or indicated report. Such written notice shall be provided not later than 72 hours after the arrest, conviction or notification that the person has been listed as a perpetrator.
- (n) Provider shall immediately notify the Department of any disqualifying Clearance.
- (o) Waiver: Waiver of any of the provisions of this section shall only be valid with the express written approval of the Commissioner or his/her designee at the director level or higher and only to the extent permitted by Applicable Law.

3.28 **Child Death Review.** Provider shall conduct an internal review when a child/youth placed with Provider, whether or not placed by the City, dies as the result of suspected child abuse or neglect. The review shall include cases that are currently active and also those that were known to Provider within the past sixteen (16) months. Provider shall conduct said review simultaneously with the Child Protective Service (CPS) investigation. Provider's review shall assess compliance with statutory, regulatory, and county requirements; and compliance with Provider's policies and procedures, including examination of supervisory and training requirements, for the purpose of determining whether the appropriate level of service was provided to the child/youth, the child/youth's family and/or foster family. A written report detailing the findings and conclusions of the death review

shall be submitted to DHS within thirty (30) days following receipt of the report of suspected abuse if applicable. In addition, Provider shall participate in Act 33 meetings.

- 3.29 **Resource Home Agreements.** Provider shall ensure that resource parents do not maintain other children and youth committed to the Department of Human Services who are placed with other Philadelphia County resource home care agencies and shall include this prohibition in all its resource home agreements.
- 3.30 **Group Home Provision.** Provider must obtain the prior written approval of the City of Philadelphia, through the Commissioner or the Commissioner's designee, prior to acquiring, whether through purchase or lease, a group home or institution situated in the City of Philadelphia for the purpose of providing services to Philadelphia County dependent or delinquent children or youth. Provider further agrees that it must obtain written approval of the Commissioner or the Commissioner's designee before making any change in the type of dependent or delinquent children or youth for whom services will be provided on these properties.
- 3.31 **Adoption and Permanent Legal Custodianship.** Provider shall complete and/or ensure the completion of a family profile according to the Department, City and State specifications for caretakers the City identifies as appropriate for adoption and permanent legal custodianship. The fee payable for the work to complete the family profile will be determined by the revised Statewide Adoption Network ("SWAN") state bulletin by reference.

ARTICLE IV: PROVIDER'S REPRESENTATIONS AND COVENANTS

- 4.1 **Provider's Representations and Covenants.** Provider makes the following representations, warranties and covenants upon which the City has relied as a material consideration for the execution and delivery by the City of this Contract. The representations, warranties, and covenants stated below shall continue throughout the Term of this Contract. In the event said representations, warranties, and covenants are or become untrue or inaccurate, Provider shall promptly give notice thereof to the City, specifying the manner in which said representation, warranty, or covenant is untrue or inaccurate.
- (a) **Good Standing.** If Provider is not an individual, Provider is a business corporation, limited liability company, partnership, limited partnership or other business entity duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization. Provider is duly licensed, qualified and in good standing in the Commonwealth of Pennsylvania and in all jurisdictions in which it conducts business activities relating in any way to the performance of the Services and delivery of the Materials under this Contract, including, but not limited to, the jurisdiction in which Provider is organized. If Provider is a not-for-profit corporation or otherwise an entity determined to be tax exempt pursuant to Section 501(c)

of the Internal Revenue Code by the Internal Revenue Service, then Provider has procured, and shall maintain in full force and effect, all consents and approvals necessary in connection with such tax-exempt and non-profit status.

- (b) **Authority to Act.** Provider has full legal power and authority to execute and deliver this Contract, and provide the Services and Materials as set forth herein. Provider has duly authorized by all necessary actions the execution and delivery of this Contract on behalf of Provider by the individual or individuals signing the Provider Agreement. This Contract is the legal, valid and binding obligation of Provider, enforceable against Provider in accordance with the terms set forth herein. The execution and delivery of this Contract by Provider will not result in a default under or a breach or violation of (1) Provider's certificate or articles of incorporation or bylaws, partnership agreement, limited liability company operating agreement or other pertinent organizational documents, as applicable; (2) any Applicable Law or any judgment, decree order, license, permit or other instrument or obligation to which Provider is now a party or by which Provider may be bound or affected; and (3) Provider's tax exempt status, if applicable. No consent, approval or authorization is required of any regulatory authority or governmental agency, or of any shareholder, partner, member, manager or other party related to Provider.
- (c) **Legal Obligation.** This Contract has been duly authorized, executed and delivered by Provider, by and through individuals duly authorized to execute this Contract on behalf of Provider, and constitutes the legal, valid and binding obligation of Provider, enforceable against Provider in accordance with its terms.
- (d) **No Litigation Preventing Performance.** There is no litigation, claim, consent order, settlement agreement, arbitration, agency proceeding, investigation, challenge or other proceeding pending or threatened against Provider, its properties or business or any individuals acting on Provider's behalf, including, without limitation, Subcontractors, in which any Person seeks to enjoin or prohibit Provider from entering into or performing its obligations under this Contract.
- (e) **Requisite Licensure and Qualifications.** Provider and all of the Persons acting on Provider's behalf, including, without limitation, Subcontractors and their subcontractors at any tier, in connection with the Services and Materials provided under this Contract, possess and, at all times during the Term of this Contract, shall possess all approvals, licenses, board certifications or eligibilities, training, certifications, qualifications and other credentials, including, without limitation, all licenses required for eligibility to receive Medical Assistance or other third party reimbursements, required in accordance with Applicable Law and the terms of this Contract, to perform the Services and provide the Materials. Provider shall provide the

City with copies of all approvals, licenses, credentials and certifications required under this Section upon request by the City.

Provider and all foster family homes, whether relative or non-relative, shall have current, full Certificates of Approval and/or licensure throughout the Term of this Contract. Temporary or provisional approval and/or licenses do not satisfy this requirement.

Provider shall notify the Commissioner or Commissioner's designee, orally, electronically, and in writing, of any violations of the requirements of this section within twenty-four (24) hours of Provider's receipt of notice or other knowledge thereof, including changes which place Provider, subcontractors, or a foster home in a provisional license status, or any other approval and/or license violation. Electronic notices of violation of this section shall be sent via email to DHSLicensure@phila.gov. **DHS will not reimburse foster care agencies for services provided to homes without documentation of full licenses.**

- (f) **No Adverse Interests.** Except as disclosed in writing and approved in advance by the Responsible Official, neither Provider nor any of its directors, officers, members, partners or employees, has any interest, or will acquire any interest, directly or indirectly, that would or may conflict in any manner or degree with the performance or rendering of the Services and Materials.
- (g) **No Indebtedness to the City.** Provider and any and all entities controlling Provider, under common control with Provider or controlled by Provider are not currently indebted to the City, and will not at any time during the Term of this Contract (including any Additional Term(s)) be indebted to the City, for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), water bills, sewer bills, liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established. Provider shall remain current during the Term of this Contract under all such agreements and payment plans, and shall inform the Responsible Official in writing of Provider's receipt of any notices of delinquent payments under any such agreement or payment plan within five (5) days after receipt. In addition to any other rights or remedies available to the City at law or in equity, Provider acknowledges that any breach or failure to conform to this representation, warranty and covenant may, at the option of the City, result in the withholding of payments otherwise due to Provider under this Contract or any other agreement with the City under which the City may then owe payment of any kind, and, if such breach or failure is not resolved to the City's satisfaction within a reasonable time frame specified by the City in writing, may result in the offset of any such indebtedness

against said payments or the termination of this Contract for default (in which case Provider shall be liable for all excess costs and other damages resulting from the termination), or both. In addition, Provider understands that false certification, representation or warranty by it is subject to prosecution under Title 18 Pa.C.S.A. § 4904.

- (h) **Commercial Activity License.** If Provider is a "business" as defined in Section 19-2601 of the Code, Provider has and shall maintain during the Term of this Contract, a valid, current Commercial Activity License, issued by the City's Department of Licenses and Inspections, to do business in the City.
- (i) **Subcontractor Licensure; No Indebtedness to the City.** Each Subcontractor, if any, holds and shall maintain during the term of the Subcontract, a valid, current Commercial Activity License to do business in the City, if required by Applicable Law. To the best of Provider's knowledge, information and belief, the representations made in any Subcontract that Subcontractor is not indebted to the City are true and correct.
- (j) **Non-Suspension; Debarment.** Provider and all of the individuals acting on Provider's behalf including, without limitation, Subcontractors, are not under suspension or debarment from doing business with the Commonwealth of Pennsylvania, any other state, or the federal government, or any department, agency or political subdivision of any of the foregoing. If Provider cannot so warrant, then Provider shall submit to the Responsible Official a full, complete written explanation as to why Provider cannot so warrant. Provider shall reimburse the City for the reasonable cost of investigation incurred by the City or the Commonwealth of Pennsylvania Office of Inspector General for investigation of Provider's compliance with the terms of this or any other contract between Provider and the City which results in the suspension or debarment of Provider. Such costs shall include, but are not limited to, salaries of investigators, including overtime, travel and lodging expenses, expert witness and documentary fees and attorney fees and expenses. Provider shall not be responsible for costs of investigations which do not result in Provider's suspension or debarment.
- (k) **Prohibiting Religious Activities.** Provider shall not provide religious instruction, conduct religious worship or services, or in any way proselytize any individual in connection with the Services provided, either directly or indirectly, under this Contract.

Provider shall inform all individuals to whom Services are provided, whether directly or indirectly, of the following: "The Philadelphia Department of Human Services' selection of a faith-based provider of social services is not an endorsement of the Provider's religious character, practices or beliefs. No Provider of social services may discriminate against

you on the basis of religion, a religious belief or your refusal to actively participate in a religious practice.”

The above representations, warranties and covenants shall continue throughout the Term of this Contract. In the event said representations, warranties and covenants are or become untrue or inaccurate, Provider shall promptly give notice thereof to the City, specifying the manner in which said representation, warranty or covenant is untrue or inaccurate.

- (1) **Non-Lobbying Certification.** No federally appropriated funds have been paid, by or on behalf of Provider, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement.

If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Contract, Provider shall complete and submit Standard Form LLL, “Disclosure of Lobbying Activities,” in accordance with its instructions.

If this Contract or any Subcontract is funded with federal funds, Provider shall require that this language be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and Subcontractors shall certify and disclose accordingly.

Provider understands that this is a material representation of fact upon which reliance was placed when this Contract was entered into. Submission of this certification is a prerequisite for making or entering into this Contract imposed under Section 1352, Title 31, U.S. Code, and Provider agrees that the execution of this Contract shall constitute the requisite submission.

The above representations, warranties and covenants shall continue throughout the Term of this Contract. In the event said representations, warranties and covenants are or become untrue or inaccurate, Provider shall promptly give notice thereof to the City, specifying the manner in which said representation, warranty or covenant is untrue or inaccurate.

- 4.2 **Notice of Change.** If there is a material change in the foregoing representations made by Provider for itself or on behalf of any of its Subcontractors, or a

circumstance occurs adversely affecting Provider's business integrity, Provider shall promptly notify Responsible Official of such changed circumstances.

ARTICLE V: SERVICE REQUIREMENTS

5.1 **Scope of Services.** Services provided include the Services described in the Provider Agreement and all the obligations under this Contract. The Services encompass the following general categories:

- (a) Services to dependent, delinquent, and non-adjudicated children and youth and their families; and
- (b) Other professional services, including consulting and training services.

5.2 **Pre-placement and Referral Process.**

- (a) **Eligibility for Services.** With the exception of children and youth adjudicated delinquent, the City will be responsible for the determination of eligibility for public care and Services, and for the assumption of legal custody, if required, for all children and youth provided Services under the Contract.
- (b) **Referral Process.**
 - (1) With the exception of children and youth adjudicated delinquent, the City shall, prior to Provider's acceptance of a child/youth, furnish Provider with a social summary, including a family summary and a medical history. To the extent such information is available to the City, the City shall also provide related school information, a signed psychological evaluation, and a signed psychiatric evaluation.
 - (2) When Provider receives a referral from the City for placement, with the exception of state approved residential treatment facility placements, the City will cooperate with Provider in arranging a pre-placement visit or conference. The participants may include but are not limited to, the child/youth, parent or guardian, and County caseworker or probation officer. Provider will not be obligated to pay transportation costs for participants who attend the visit or conference.
 - (3) Provider may reject a child/youth and family only if it has exhausted its capacity under this Contract. If Provider determines that a child/youth or family is not acceptable for reasons other than exhaustion of capacity, it must notify the Commissioner in writing within twenty-four (24) hours of the rejection detailing the basis of the intended rejection and request an exception to this provision.

The Commissioner or Commissioner's designee's decision to grant or reject the request shall be final.

- (c) **Residential Treatment Facility Placement.** In the event that a child requires services that can only be provided in a residential treatment facility (RTF), Providers are to obtain approval from Community Behavioral Health (CBH) PRIOR to the RTF placement.
- (d) **Emergency Shelter Placement.** In the case of Out-of-Home Placement in an emergency shelter, Provider will accept all referrals as stated in the Performance Standards. Provider may only reject a referral if:
- Provider has exhausted its capacity under the Contract;
 - The youth is committable pursuant to the Mental Health Procedures Act 50 P.S. § 7101 et seq.;
 - The youth is eligible for detention at the Philadelphia Juvenile Justice Services Center pursuant to the Santiago Consent Decree; or
 - The youth is eligible for admission to an acute care facility for medical purposes.

If Provider determines that a child/youth placed in an emergency shelter is not suitable for its program for reasons other than those identified in this Section 5.2, Provider may, after accepting the child/youth into emergency shelter, request an exception to this provision by following the procedures outlined in Section 5.2(b)(3). Emergency shelter services must be accessible to the City for the placement of children and youth twenty-four (24) hours per day, seven (7) days per week.

- (e) **Acceptance for Placement.** Except in emergency situations, when the City receives official notice of acceptance by Provider for Out-of-Home Placement of a referred child/youth, the City shall send to Provider all available and pertinent information and documentation within five (5) business days after receipt of notice, or as soon as possible thereafter.
- (f) **Emergency Out-of-Home Placement.** In the event of an emergency Out-of-Home Placement, the City shall make every effort to supply Provider with all available records, reports, summaries, and any other pertinent information as soon as possible after the date of acceptance.
- (g) **Collaborative Planning.** The City shall consult with Provider in planning for the child/youth and family. The City, with the participation of Provider and all other necessary participants, shall develop a Single Case Plan. Provider, with the participation of the City and all other necessary participants, shall develop the Single Case Plan, which shall be consistent with the Single Case Plan and Applicable Law.

- (h) **Clothing.** The City shall ensure that each child/youth entering Out-of-Home Placement with Provider shall have at least minimally adequate clothing. If the City determines that the child/youth's clothing is inadequate, it may authorize Provider to purchase the necessary clothing as outlined in the CYD Policy Manual and Policy Transmittals and Guides.
- (i) **Life skills training for children and youth in placement.** Provider shall comply with the Department's Performance Standards regarding the provision of life skill services for all youth in placement who have attained the age of twelve (12) years or above, regardless of their permanency goals. Concurrent with the ongoing reasonable efforts toward permanency, Provider will address the child/youth's need to acquire the life skills needed for adult self-sufficiency. The Single Case Plan must identify self-sufficiency goals and specific courses of action that the child/youth will take to prepare for the pursuit of these goals. Provider's case manager will provide direct social work and other services to help the youth prepare for self-sufficiency as an adult, including:
- Provision of life skills training ;
 - High school retention and support;
 - Career clarification and decision-making;
 - Preparation for post-secondary education or vocational training;
 - Planning for acquisition of permanent housing upon discharge; and
 - Support in identifying and coping with feelings of separation and loss that will be encountered upon emancipation.

Provider shall identify and facilitate access to the resources needed for youth to acquire the skills necessary for self-sufficiency, including resources to support educational and employment goals and the acquisition of housing upon discharge.

Failure to comply with these requirements constitutes an Event of Default pursuant to Section 12.1(a). If Provider fails to comply with the requirements under Section 5.2, the City may exercise any of the remedies available pursuant to Section 13.1 including withholding of payment.

5.3 **Medical and Dental Costs.**

- (a) **Responsibility for Payment.** The maximum fee(s) set forth in the Provider Agreement and Article VI of these General Provisions do not include payment of medical expenses. The City shall provide the necessary means of payment for medical expenses for the child/youth only in the absence of a third party payor. The City shall apply for public benefits on behalf of the children and youth, including Public Assistance, Medical Assistance, Social Security or SSI, and the City shall furnish Provider with Medical Assistance card(s) or such information as is necessary to secure third party payments.

(b) **Medical Assistance.** For delinquent children or youth placed in the legal custody of the City, the City shall provide financial coverage for medical expenses through the MA program. The City shall not provide financial reimbursement for medical expenses which are not covered by the MA eligibility guidelines, or for services provided by vendors who are not MA-approved. Reimbursement shall be paid directly to the MA-approved vendor, not to Provider.

(c) **Limits of the City's Responsibility.**

The City shall not be responsible for the following medical expenses:

- (1) those expenses incurred prior to the effective date of this Contract;
- (2) those expenses that are in excess of the applicable MA rate, unless Provider obtained prior written approval from the City;
- (3) those expenses for services not covered by the applicable MA category for which the child or youth is eligible, unless Provider has obtained prior written approval from the City;
- (4) those expenses for which the vendor refuses to bill MA; and
- (5) those expenses for services for which prior authorization from a managed care organization, including CBH, is required and has not been obtained, and for which Provider is seeking payment from the City. Provider shall be responsible for obtaining treatment authorization prior to securing the services; failure to do so shall result in Provider bearing sole liability for payment for such services.

(d) **Elective Services.** The City shall not assume responsibility for elective services (including medical or dental) unless Provider obtains prior written approval from the City.

5.4 **Change in Laws.** If, during the Contract Term, there are changes in PA DHS regulations regarding MA reimbursement, the City and Provider agree to negotiate an Amendment, to set forth revisions to Section 5.3 (Medical and Dental Costs) hereof, to conform to such changes. The City and Provider further agree that the remaining provisions of this Contract shall remain in full force and effect and binding on the Parties.

5.5 **Right of Review and Rejection.** The City reserves the right to inquire into the background and qualifications of Persons retained by Provider to provide Services, and to reject the use of any persons, families, or households which, in the City's sole judgment, are determined not to be in the best interests of the child/youth or families for whom the Services are required.

ARTICLE VI: COMPENSATION

- 6.1 **Requisite Documents.** Prior to the City's payment for placement Services furnished by Provider to delinquent or alleged delinquent children and youth, Provider must possess the following completed and current documents:
- (1) Form Authorizations;
 - (2) Single Case Plan;
 - (3) Placement Amendment, if any;
 - (4) CY-61 (Application for Initial Determination for Title IV-E Placement Maintenance and Medicaid); and
 - (5) Court Order
- 6.2 **Certification of Available Funds.** Provider acknowledges that payments under this Contract shall not exceed the amount certified by or on behalf of the City's Director of Finance as available for this Contract. A copy of the form signed by the Office of the Director of Finance showing the amount of currently available funds will be attached to the fully executed Contract returned to Provider. During the Initial Term and any Additional Term(s) of this Contract, the City reserves the right to fund any remaining balance of this Contract amount in varying amounts from time to time as funds become available, not to exceed in total the maximum amount stated in this Contract. Provider agrees that the City shall not be obligated to fund this Contract except out of funds certified by or on behalf of the City's Director of Finance as currently available, even if those funds are less than the maximum amount stated in this Contract. If sufficient funds are not certified as available at any time, the City may exercise its options described in Section 6.3 (Unavailability of Funds) below.
- 6.3 **Unavailability of Funds.** If funding for this Contract from any source is not obtained and continued at an aggregate level sufficient to allow for payment for the Services performed and Materials delivered under this Contract, the City may exercise one of the following options without liability or penalty to the City:
- (a) Terminate this Contract effective upon a date specified in a Termination Notice; or
 - (b) Continue this Contract by reducing, through written notice to Provider, the amount of this Contract and Services and Materials, consistent with the nature, amount and circumstances of available funding.

The City's exercise of either option under this Section shall not affect any obligations or liabilities of either Party accruing prior to such termination or reduction of Services or Materials. Provider shall be compensated in accordance with the terms of this Contract for Services and Materials satisfactorily performed and delivered prior to such termination or modification of this Contract under this Section.

- 6.4 **Crossing Fiscal Years.** If any portion of the compensation set forth in this Contract is to be paid in any City fiscal year following the fiscal year in which the Initial Term or any Additional Term of this Contract commences (in either case, “Appropriated Fiscal Year”), Provider understands and agrees that the portion of the compensation under this Contract payable with City funds for any period following the Appropriated Fiscal Year is subject to the discretion of City Council as to future appropriations. If, for any reason, funds for any such portion of the compensation are not appropriated by City Council in any Fiscal Year following the Appropriated Fiscal Year, this Contract and the City’s liability under this Contract shall automatically terminate at the end of the then current Appropriated Fiscal Year; provided, however, that Provider shall be compensated in accordance with the terms of this Contract for Services and Materials satisfactorily performed and delivered prior to the end of the then current Appropriated Fiscal Year.
- 6.5 **Allowability of Cost Items.** All payments by the City to Provider under this Contract shall be subject to the limitations on the allowability of cost items imposed by Title IV-E, Pennsylvania Child Welfare Demonstration Project, and the Contract Cost Principles.
- 6.6 **Advances.** The City may, in the City’s discretion, offer CUA a one twelfth (1/12) advance payment, based on the maximum amount of this Contract, if the CUA meets all of the following criteria:
- Contract and/or encumbrance is \$1,000,000 or over;
 - Agency is not-for-profit;
 - Agency has submitted audited financial statements by required date, if applicable;
 - Audit review does not indicate possible financial difficulties;
 - Provider performance reviews have been satisfactory, if applicable; and
 - A significant decrease in payments and/or placements, as determined by DHS, is not expected.

The advance to CUA shall be repaid by CUA to the City by reducing a proportionate amount of the advance from subsequent monthly payments by the City to CUA. The entire advance amount must be repaid no later than the April 30th invoice unless otherwise approved by the DHS Commissioner, not to exceed the end of the fiscal year for which the advance is provided.

- 6.7 **Income From Contract Funds.** Provider shall provide a written report to the City accounting for all income derived either directly or indirectly by Provider from the use of funds paid to Provider under this Contract or with respect to any activities of Provider in connection with this Contract, including, but not limited to, sale, publication, registration fees, interest, program service fees, and service charges on fees. If required by the City, at the City’s sole discretion, Provider shall use all such income to set off against and reduce payments to Provider otherwise due under this Contract.

- 6.8 **Monitoring of Fund Utilization.** Provider and the City shall monitor utilization of funds encumbered under this Contract. Provider shall furnish the City with current utilization reports on a monthly basis. The City shall have sole discretion in determining overutilization. If it is determined that there is overutilization the City will, proceed under Section 3.3 (Additional Services and Materials; Change in Scope of Services) above, to authorize an Amendment to this Contract to compensate Provider for such overutilization.
- 6.9 **Maximum Daily Rate, Days of Care or Units of Service (or combination thereof).** The City shall not compensate Provider for any increases in the maximum daily rate, number of days of care or units of service set forth in the Provider Agreement without the prior written approval of the Commissioner. By execution of this Contract, Provider agrees that the City may modify, upon issuance of a Modification Notice to Provider, the maximum daily rate, number of days of care or units of service that the City agrees to purchase under this Contract. In the event the maximum daily rate, number of days of care or units of service are increased, the date of such increase shall be the date stated in the Modification Notice. Any decrease in the maximum daily rate, number of days of care or units of services shall be made upon issuance of a Modification Notice not less than thirty (30) days prior to the effective date of such decrease.
- 6.10 **Total Actual Cost.** The maximum fee(s) set forth Section 4.1 in the Provider Agreement represents the maximum daily rate multiplied by the anticipated units of Services. The City shall pay Provider only for Provider's Total Actual Cost for Services set forth in the Provider Agreement, not to exceed the maximum amount set forth in Section 4.1 of the Provider Agreement. Total Actual Cost shall be limited to those expenditures permitted by Applicable Law, the City's Functional Expenditure Report, and the Contract Cost Principles, as each may be amended from time to time. Actual cost shall be measured as of the end of the current fiscal year (unless a different date is approved in writing by the Commissioner or Commissioner's designee), and shall be documented on the Independent Functional Expenditure Report prepared and certified by a Certified Public Accountant. The Functional Expenditure Report shall be submitted to the City not more than one hundred twenty (120) days after the expiration or earlier termination date of this Contract.
- 6.11 **Excess Compensation.**
- (a) If, as documented on the Independent Functional Expenditure Report prepared and certified by a Certified Public Accountant, compensation exceeds Provider's Total Actual Cost for Services, the City shall recover such excess compensation over Total Actual Cost by deduction from subsequent Provider billings to the Department or by accepting a refund from the Provider. The City may recover excess compensation at any time after it is documented. Total recovery of excess compensation by deductions from subsequent Provider billings shall be accomplished over a nine (9) month maximum duration, unless a longer period is authorized in

writing by the Commissioner or Commissioner's designee. Any extension of the recovery period, requested by the Provider or otherwise, beyond nine (9) months shall not create a bar to recovery by the City. If Provider ceases to contract with the City before the City has recovered all or any portion of the excess compensation, Provider shall promptly pay such excess amount to the City. The amounts of any deductions from Provider billings to the City in recovery of prior excess compensation over Total Actual Cost shall not be a part of actual costs for Department funded programs for the fiscal period during which it was deducted.

- (b) Section 6.11(a) notwithstanding, A CUA compensated by Case Rate may maintain Excess Compensation from the CUA Contract to satisfy the Operating Reserve requirements of the Case Rate Financial Standards or as Reinvestment Funds as defined in the Case Rate Financial Standards, unless the CUA Contract terminates without renewal. Any Excess Compensation held by Provider in either Operating Reserve or as Reinvestment Funds as defined in the Case Rate Financial Standards upon termination of the CUA Contract shall be treated according to section 6.11(a). This section is not applicable to CUA Contracts not subject to the Case Rate Financial Standards, as referenced in the Provider Agreement.

- 6.12 **Unpaid Amounts.** Provider must notify Department in writing at the address set forth in the Provider Agreement of any payments it claims are due to it under this Contract and which remain unpaid by the City, not more than sixty (60) days after the expiration of the then current Term of this Contract. Failure to adhere to the time limitation set forth in this Section will result in Provider's forfeiture of any unpaid balances or, in the sole discretion of the City, the requirement that Provider pay any and all additional administrative costs incurred by the City to process the invoices.
- 6.13 **Invoices.** To meet the City's requirements of a complete and accurate invoice a Provider must have a validly conformed contract with the City for the time period in which the Provider's duties were performed and a Provider must be in compliance with all of the terms of that contract, including, but not limited to, the Scope of Services, DHS Provider Standards, and all applicable Article VII audit requirements. A Provider shall submit their invoices to the City on a monthly basis. The City must receive invoices not more than ten (10) business days following expiration of the month for which the invoice is submitted.
- 6.14 **Golden Parachute Agreements.** Provider shall not utilize funds under this Contract to fund in whole or in part the payment of Golden Parachute agreements or any similar agreements negotiated with its employees or agents.
- 6.15 **Indirect Rate Requests.** The budget-based, cost reimbursement contract Provider may request an indirect rate for indirect expenses. In order to be eligible for indirect rate approval, Provider must ensure that the request conforms to the requirements outlined in the Contract Cost Principles.

- (a) For cost reimbursement contracts over \$500,000.00, Provider must submit a detailed justification including line item indirect expense cost calculations, regardless of the percentage of the indirect rate that is being requested.
- (b) For cost reimbursement contracts under \$500,000.00 with a request of an indirect rate of greater than 10% of the total budget, Provider must submit a detailed justification including line item indirect expense cost calculations.
- (c) For cost reimbursement contracts under \$500,000.00 with a request of an indirect rate of equal to or less than 10% of the total budget, Provider is not required to submit a detailed justification including line item indirect expense cost calculations, unless specifically requested by DHS.
- (d) The value of any applicable subcontracts shall not be part of Provider's indirect percentage calculations.
- (e) All indirect rate approvals are at the sole discretion of DHS.
- (f) DHS may require a detailed justification including line item indirect expense cost calculations for all indirect rate requests at any time; all provisions to the contrary notwithstanding.

6.16 **Timely Payment From Pennsylvania State Funds.** Complete and accurate invoices submitted to the City, for which the City receives State reimbursement and for which the State funds have already been appropriated by the State for reimbursement to the City, shall be paid within thirty (30) days of receipt of the invoice.

ARTICLE VII: AUDITS; INSPECTION RIGHTS; RECORDS

- 7.1 **City Audit.** From time to time during the Initial Term and any Additional Term(s) of this Contract, and for a period of five (5) years after the expiration or termination of this Contract, the City may audit any and all aspects of Provider's performance under this Contract, including but not limited to its billings and invoices. Audits may be conducted by representatives, agents or contractors of the City, including the Department, or other authorized City representatives including, without limitation, the City Controller. If requested by the City, Provider shall submit to the City all vouchers or invoices presented for payment pursuant to this Contract, all cancelled checks, work papers, books, records and accounts upon which the vouchers or invoices are based, and any and all documentation and justification in support of expenditures or fees incurred pursuant to this Contract. All books, invoices, vouchers, records, reports, cancelled checks and other materials shall be subject to periodic review or audit by the City.
- 7.2 **Inspection.** All Services and Materials shall be subject to inspection and review by City, federal and state representatives, as may be applicable, or their designees, at the offices of Provider in the City, or in another location with the City's consent. Provider shall cooperate with all City, state and federal inspections and reviews conducted in accordance with the provisions of this Contract. Such inspection and

review of Provider's Services and Materials, including, without limitation, programs and facilities, shall be in the sole discretion of the inspecting or reviewing entity. Such inspection or review may include, without limitation, meetings with consumers, review of staffing ratios and job descriptions, and meetings with any of Provider's staff members who are either directly or indirectly involved in providing Services or Materials.

7.3 **Availability of Records.** Provider shall make available to the City at reasonable times during the Term of this Contract and for the period set forth in Section 7.4 (Retention of Records) below, all records pertaining to this Contract for the purpose of inspection, audit or reproduction by any authorized representative (including any agent or contractor and the City Controller) of the City, the Commonwealth Secretary of PA DHS or Auditor General, and any other federal and/or state auditors, as may be applicable.

7.4 **Retention of Records.** Provider shall retain all records, books of account and documentation pertaining to this Contract for a period of five (5) years following expiration or termination of this Contract; if, however, any litigation, claim or audit is commenced prior to expiration of said five (5) year period, then the records shall be retained until all litigation, claims or audit findings have been completely terminated or resolved, without right of further appeal, or if Applicable Law requires a longer period, then the records shall be retained for such longer period. Adoption records must be maintained in accordance with applicable law.

7.5 **Independent Audit.**

(a) *Combined City contracts that total less than \$300,000 in a fiscal year.* If requested by the City, Provider shall submit to the City an Independent Audit Report that is acceptable to the City and prepared and certified by a Certified Public Accountant (CPA) acceptable to the City. The Independent Audit Report shall be prepared in accordance with the following audit requirements:

(1) Provider shall submit a separate audit for each individual entity that contracts with the City. An individual entity includes each entity with a distinct taxpayer identification number or social security number, or employer identification number. It is intended that this requirement be followed in addition to any other requirements of: the law, other regulatory bodies, or other financial statement presentations.

(2) The basic financial statements to be filed will include: the Statement of Financial Position, the Statement of Activities, the Statement of Cash Flows and the Statement of Functional Revenue and Expenses by Contract number and Program name.

- (3) Provider shall ensure that a final audit of the financial transactions relating to each City contract shall be performed in compliance with all requirements of the Subrecipient Audit Guide, which is incorporated in this Contract by reference. This audit shall verify that all invoiced costs are actual, authorized and eligible for reimbursement in accordance with each City contract's requirements.
 - (4) Provider agrees to make full and prompt refund to the City of amounts of money which result from audit exceptions due to Provider's performance hereunder, or result from non-compliance with Applicable Law and this contract, including, without limitation, the Contract Cost Principles.
 - (5) The City reserves the right to disallow fees paid by Provider for audit services under this contract if the final audit report is not submitted in the manner and within time frame prescribed in this Section or if subsequent review of audit work papers discloses deficiencies in required performance.
 - (6) Provider shall submit all audit documentation, as described above, pertaining to this Contract no later than one hundred twenty (120) days after the end of the Term of this Contract, unless a different time is approved, in writing, in accordance with City's audit policies promulgated by the Deputy Mayor's Office for Health and Opportunity, which are incorporated in this contract by reference. Provider's failure to submit the audit documentation in the time required shall be a basis for withholding processing of invoices for payment, and other remedies the City has at its discretion in accordance with this contract and the City's audit policies.
- (b) *Combined City contracts that total \$300,000 or more in a fiscal year.* Provider shall submit to the City an Independent Audit Report that is acceptable to the City and prepared and certified by a Certified Public Accountant (CPA) acceptable to the City. The Independent Audit Report shall be prepared in accordance with the following audit requirements:
- (1) Provider shall submit a separate audit for each individual entity that contracts with the City. An individual entity includes each entity with a distinct taxpayer identification number or social security number, or employer identification number. It is intended that this requirement be followed in addition to any other requirements of: the

law, other regulatory bodies, or other financial statement presentations.

- (2) The basic financial statements to be filed will include: the Statement of Financial Position, the Statement of Activities, the Statement of Cash Flows and the Statement of Functional Revenue and Expenses by Contract number and Program name.
- (3) Provider shall ensure that an audit of the financial transactions relating to each City contract shall be performed.
 - a) As applicable, the audit shall be in compliance with all requirements of the Subrecipient Audit Guide, which is incorporated in this contract by reference. This includes Department specific required disclosures and schedules. This audit shall verify that all invoiced costs are actual, authorized and eligible for reimbursement in accordance with this contract's requirements.
 - 1) When the combined total of all City contracts with the Provider is greater than \$300,000 but the combination of all federal and state funds received by the Provider, from all sources, is less than \$500,000, the Provider must provide a financial audit in accordance with generally accepted auditing standards. Specifically, the report shall contain a Balance Sheet, Statement Of Activities And Changes In Net Assets, and A Statement Of Cash Flows.
 - 2) When the combined total of all funds received by the Provider from the federal and state governments, from all sources, are equal to or greater than \$500,000, the Provider must provide a financial audit in accordance with generally accepted government auditing standards (Yellow Book Audit), regardless of the combined total of all City contracts. Specifically, the report shall contain a Balance Sheet, Statement Of Activities And Changes In Net Assets, and A Statement Of Cash Flows. In addition, there must be an opinion given on Internal Control Over Financial Reporting.

- 3) When the combined total of all funds received by the Provider from the federal government, from all sources, is equal to or greater than \$750,000, the Provider must provide a Single Audit in accordance with the United States Code of Federal Regulations Title 2 (2 CFR).
- b) Providers shall adhere to all other auditing requirements imposed by state and/or federal legislation and regulation, including but not limited to audit submission timelines, on funding source(s) that provider receives through this contract, if the funding source(s) are comprised of state and/or federal funds.
- (4) Provider agrees to make full and prompt refund to the City of amounts of money which result from audit exceptions due to Provider's performance hereunder, or result from non-compliance with Applicable Law and this contract, including, without limitation, the Contract Cost Principles.
- (5) The City reserves the right to disallow fees paid by Provider for audit services under this contract if the final audit report is not submitted in the manner and time frame prescribed in this Section or if subsequent review of audit work papers discloses deficiencies in required performance.
- (6) Provider shall submit all audit documentation, as described above, pertaining to this Contract no later than one hundred twenty (120) days after the end of the Term of this Contract, unless a different time is approved, in writing, in accordance with City audit policies promulgated by the Deputy Mayor's Office for Health and Opportunity or designee, which are included in this contract by reference. Provider's failure to submit the audit documentation in the time required shall be a basis for withholding processing of invoices for payment, and other remedies the City has at its discretion in accordance with this contract and the City's audit policies.

7.6 **Compliance Audit Reports.** If this Contract is funded in whole or in part with Commonwealth or federal funds, Provider must prepare and submit compliance audit reports to the Department as required under Applicable Law and any contracts pertinent to the Department's receipt of such funds.

7.7 **Program Records; Reporting Costs.**

- (a) **Reports Concerning Provider's Costs.** In addition to the financial and compliance audits, Provider shall (1) identify that part of its per diem rate or unit cost that is attributable to Services rendered; and (2) identify any unallowable costs, as defined by Applicable Law, this Contract, and the Contract Cost Principles.
- (1) Providers of Title IV-E eligible services, regardless of their physical location, are required to provide complete, timely and accurate Title IV-E submissions.
- a) Providers must secure approved Title IV-E rates for all eligible services as a condition of receiving full funding for Title IV-E services from DHS. If, after a reasonable timeframe (as determined by DHS), Provider has failed to secure approved Title IV-E rates, DHS may retroactively decrease payable per diems to the prior year's city portion of such per diems. If no prior year Title IV-E per diem rate was established, DHS reserves the right to establish a temporary city share rate until the Provider's Title IV-E package has been approved.
- b) Title IV-E rate packages must include rates for all Out-of-Home Placement services provided to DHS. If DHS's contracted rates are greater than the projected per diem included in the Title IV-E rate packages, DHS's contracted rates shall be reduced to the Title IV-E rates.
- (b) **Purchase Category.** In reporting financial, program or Service information, Provider shall reflect costs by purchase category for each Service rendered under this Contract.
- (c) **Unallowable Costs; Third Party Funds.**
- (1) In the calculation of unallowable costs under Title IV-E, this Contract, or the City of Philadelphia Contract Cost Principles and Guidelines, contributed Services are to be used to offset unallowable costs before computing the unreimbursed amount which Provider will report to the City.
- (2) Unless otherwise required by the Department to obtain maximum reimbursement from any third party source, Provider agrees that third party funds received from a government funding source (which may be used to pay for costs incurred in providing a child welfare Service provided under this Contract) or third party donor restricted

funds (which may be held for a specific child welfare Service provided under this Contract), shall be credited in the following manner:

- a) first against unallowable costs; then,
- b) against the difference between the Actual Allowable Costs incurred by Provider and the per diem cost paid by the City for the Service; then,
- c) to reduce the payments otherwise required to be made by the City under this Contract, by applying the remaining funds to such costs on a percentage basis, calculated by dividing the cost for each Service under this Contract by the total cost of all Services provided under this Contract.

7.8 **Audits Pursuant to Section 6-400 of the Home Rule Charter.** Any Provider that is an Agency, as defined in Section 6-400 of the Charter, shall permit the City Controller to audit its affairs as authorized in Section 6-400 during the Initial Term or any Additional Term. Under Section 6-400, an Agency is any entity that receives funds from the City, and either a) is created by, or whose board of directors is in whole or part appointed by, one or more City officials or bodies; or b) is organized pursuant to legal authority granted to it by City ordinance.

ARTICLE VIII: ASSIGNMENT

8.1 **Assignment By Provider.** Provider shall not assign this Contract, or any part of this Contract, or delegate performance of this Contract (other than to its own work forces), without obtaining the prior written consent of the Commissioner or designee. The decision whether to consent to an assignment, the timing of consent (if any), and conditions to such consent, if any, shall each be at the City's sole discretion. Any consent to the assignment of any monies to be paid under this Contract shall not relieve Provider from the faithful performance of any of its obligations under this Contract or change any of the Terms and Conditions of this Contract. Any purported assignment in violation of this provision shall be void and of no effect. The City's consent to an assignment shall not release the assignor from any liability accrued or thereafter accruing under this Contract. Any assignment or purported assignment shall be in writing and shall contain an express assumption by the assignee of all liability accrued or thereafter accruing under this Contract. Consent by the City to any assignment shall not be deemed a course of conduct, dealing or performance with respect to any other assignment or proposed assignment. For purposes of this Section 8.1 (Assignment by Provider), an assignment includes the acquisition of the Provider, or a controlling interest therein, through a sale of stock, assets, or otherwise; a corporate or other merger; and the appointment of a receiver or bankruptcy trustee; and the transfer of this Contract or of control of Provider in any bankruptcy or other insolvency proceeding.

- 8.2 **Applicability in Case of Bankruptcy or Insolvency.** A receiver or trustee of or for Provider in any federal or state bankruptcy, insolvency or other proceeding concerning Provider shall comply with the requirements set forth in Section 8.1 (Assignment by Provider) above.
- 8.3 **Personal Services.** Provider acknowledges that the Services and Materials are the personal services of Provider and the City shall have no obligation to accept performance by a third party without the Commissioner's or designee's prior and express written consent.

ARTICLE IX: INDEPENDENT CONTRACTOR; INDEMNIFICATION; LITIGATION COOPERATION

- 9.1 **Independent Contractor.** Provider is an independent contractor and shall not in any way or for any purpose be deemed or intended to be an employee or agent of the City. Neither Provider nor its agents, employees or Subcontractors shall in any way represent that they are acting as employees, officials or agents of the City.
- 9.2 **Indemnification.** Provider shall indemnify, defend and hold harmless the City, its officers, employees and agents, from and against any and all losses, costs (including, but not limited to, litigation and settlement costs and counsel fees and expenses), claims, suits, actions, damages, liability and expenses, occasioned wholly or in part by Provider's act or omission or negligence or fault or the act or omission or negligence or fault of Provider's agents, Subcontractors, independent contractors, suppliers, employees or servants in connection with this Contract, including, but not limited to, those in connection with loss of life, bodily injury, personal injury, damage to property, contamination or adverse effects on the environment, intentional acts, failure to pay any Subcontractors and suppliers, any breach of this Contract, and any infringement or violation of any proprietary right (including, but not limited to, patent, copyright, trademark, service mark and trade secret).
- 9.3 **Litigation Cooperation.** If, at any time, the City becomes involved in a dispute or receives notice of a claim or is involved in litigation concerning the Services and Materials provided under this Contract, the resolution of which requires the Services or cooperation of Provider, and Provider is not otherwise obligated to indemnify and defend the City pursuant to the provisions of Section 9.2 (Indemnification) above, Provider agrees to provide such Services and to cooperate with the City in resolving such claim or litigation as Additional Services and Materials under Section 3.3 (Additional Services and Materials; Change in Scope of Services) above and require any subcontractors to abide to this Section 9.3.
- 9.4 **Notice of Claims.** If Provider receives notice of a legal claim against it in connection with this Contract, Provider shall submit appropriate written notice of such claim to its insurance carrier within the time frame required for submission of claims by the applicable insurance policy and, within ten (10) business days of receipt of notice of the claim, to the Commissioner.

ARTICLE X: INSURANCE

10.1 **Insurance.** Unless otherwise approved by the City’s Risk Manager in writing, Provider shall, at its sole cost and expense, procure and maintain, or cause to be procured and maintained, in full force and effect, the types and minimum limits of insurance specified below, covering Provider’s performance of the Services and the delivery of the Materials. Provider shall procure, or cause to be procured, all insurance from reputable insurers admitted to do business on a direct basis in the Commonwealth of Pennsylvania or otherwise acceptable to the City. All insurance herein, except Professional Liability insurance, shall be written on an “occurrence” basis and not a “claims-made” basis. In no event shall Provider perform any Services or other work until Provider has delivered or caused to be delivered to the Responsible Official and the City’s Risk Management Division the required evidence of insurance coverages. All insurance coverages shall provide for at least thirty (30) days prior written notice to be given to the City in the event coverage is materially changed, cancelled, or non-renewed. The City, its officers, employees, and agents, shall be named as additional insureds on the General Liability Insurance policy. Coverage shall also include sexual abuse/molestation coverage. As outlined in Section 10.3, Provider shall also deliver or cause to be delivered to the City an endorsement stating that the coverage afforded the City and its officers, employees and agents, as additional insureds, will be primary to any other coverage available to them and that no act or omission of the City, its officers, employees or agents shall invalidate the coverage.

(a) **Workers' Compensation and Employers' Liability.**

- (1) Workers' Compensation: Statutory Limits
- (2) Employers' Liability: \$100,000 Each Accident - Bodily Injury by Accident; \$100,000 Each Employee - Bodily Injury by Disease; and \$500,000 Policy Limit - Bodily Injury by Disease.
- (3) Other states insurance including Pennsylvania.

(b) **General Liability Insurance.**

Limits of Liability:

- (1) For all Out-of-Home service categories, including, but not limited to, day treatment and day care centers: Two million dollars (\$2,000,000.00) per occurrence;
- (2) For all in-home service categories: One million dollars (\$1,000,000.00) per occurrence;

Coverage:

- (1) Premises operations;
- (2) Blanket contractual liability;
- (3) Personal injury liability;
- (4) Products and completed operations;
- (5) Independent contractors;

- (6) Employees and volunteers as additional insureds;
- (7) Cross liability;
- (8) Broad form property damage (including completed operations); and
- (9) Sexual abuse/molestation.

(c) **Automobile Liability Insurance.**

- (1) Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.
- (2) Coverage: Owned, non-owned, and hired vehicles.

(d) **Professional Liability Insurance.**

- (1) Health Care Providers subject to the Medical Care Availability and Reduction of Error (MCARE) Act, as amended:
 - a) Hospital and Nursing Homes including officers and employees: \$1,000,000 each occurrence, \$4,000,000 annual aggregate.
 - b) Individuals and Professional Corporations: \$1,000,000 each occurrence; \$3,000,000 annual aggregate.
- (2) All Health Care and Human Services Providers not subject to the MCARE Act, as amended: \$1,000,000 each occurrence; \$3,000,000 annual aggregate.
- (3) Professional Liability Insurance may be written on a claims-made basis provided that coverage for occurrences happening during the performance of the Services required under this Agreement shall be maintained in full force and effect under the policy or “tail” coverage for a period of at least two (2) years after completion of the Services.

(e) **Umbrella Liability Insurance.**

Limit of Liability: \$10,000,000 per occurrence when combined with insurance required under 10.1(a), (b), (c) of Article X: INSURANCE of the IOC CUA General Provisions.

- 10.2 **Self-Insurance.** Provider may not self-insure any of the coverages required under this Contract without the prior written approval of the Commissioner and the City’s Risk Manager. In the event that Provider wants to self-insure any of the coverages listed above, it shall submit to the Commissioner and the City’s Risk Manager, prior to Provider’s commencement of Services or delivery of any Materials hereunder, a certified copy of Provider’s most recent audited financial statement, and such other evidence of its qualifications to act as self-insurer (e.g. state approval) as may be requested by the Commissioner or the City’s Risk Manager. In the event the City grants such approval, Provider understands and agrees that the City, its officers, employees and agents shall be entitled to receive the same coverages and benefits under Provider’s self-insurance program that they would have received had the

insurance requirements set forth above been satisfied by a reputable insurer admitted and duly authorized to do business in the Commonwealth of Pennsylvania or otherwise acceptable to the City. If at the time of commencement of the Term of this Contract, Provider self-insures its professional liability or workers' compensation and employers' liability coverage, Provider may, in lieu of the foregoing, furnish to the City a current copy of the state certification form for self-insurance or a current copy of the State Insurance Commissioner's letter of approval, whichever is appropriate. The insurance (including self-insurance) requirements set forth herein are not intended and shall not be construed to modify, limit or reduce the indemnifications made in this Contract by Provider to the City, or to limit Provider's liability under this Contract to the limits of the policies of insurance (or self-insurance) required to be maintained by Provider hereunder.

- 10.3 **Evidence of Insurance Coverage.** Certificates of insurance evidencing the required coverages must specifically reference the City contract number for which they are being submitted, indicate that the City of Philadelphia, its officers, employees and agents are named as additional insureds and that coverage is included for sexual abuse/molestation. The original certificates of insurance and a copy of Provider's current sexual abuse/molestation endorsement must be submitted to the City's Risk Manager at the following address:

The City of Philadelphia
Office of the Director of Finance
Division of Risk Management
1515 Arch Street, 14th Floor
Philadelphia, PA 19102-1579
(Fax No.: 215-683-1705).

A copy of the certificates of insurance shall be submitted to the Commissioner at the address of the Department set forth in the Notice Section of the Provider Agreement. Both submissions must be made at least ten (10) days before work is begun and at least ten (10) days before each Additional Term. The City, in its sole discretion, may waive the ten (10) day requirement for advance documentation of coverage in situations where such waiver will benefit the City, but under no circumstances shall Provider actually begin work (or continue work, in the case of an Additional Term) without providing the required evidence of insurance. The actual endorsement adding the City as an additional insured must specifically reference the City contract number and be submitted to the City's Risk Manager at the above address. The City reserves the right to require Provider to furnish certified copies of the original policies of all insurance required under this Contract at any time upon ten (10) days written notice to Provider.

- 10.4 **Fidelity Bond.** Provider shall, at its sole cost and expense, obtain and maintain during the Initial Term and any Additional Term(s) of this Contract, a fidelity bond in an amount equal to five hundred thousand dollars (\$500,000) covering Provider's employees who have financial responsibilities related to the receipt and

disbursement of funds under this Contract. In lieu of a fidelity bond, Provider may obtain coverage for crime insurance with limits of a five hundred thousand dollars (\$500,000) as specified in the Provider Agreement. The fidelity bond or crime insurance, whichever is obtained by Provider, shall name the City as a loss payee. Evidence of the existence of the fidelity bond or crime insurance shall be submitted to the City prior to the commencement of Services in conformity with the requirements of Section 10.3 (Evidence of Insurance Coverage) above

ARTICLE XI: OWNERSHIP OF MATERIALS; PROPRIETARY INFORMATION; CONFIDENTIALITY

11.1 Ownership of Materials.

- (a) Subject to Applicable Law, all Materials shall be the sole and absolute property of the City and the City shall have title thereto and unrestricted use thereof. To the extent that any Materials relating to this Contract developed by or for Provider embody a copyrightable work, including, but not limited to, a “compilation” as that term is used in 17 U.S.C. §101, as amended from time to time, the City and Provider agree that such copyrightable work(s) shall be considered as one or more “works made for hire” by Provider for the City, as that term is used in 17 U.S.C. §§101 and 201(b), as amended from time to time. To the extent that any Materials relating to this Contract developed by or for Provider embody one or more copyrightable works but are neither a “compilation” nor any other form of “work made for hire,” Provider hereby assigns, and agrees to execute instruments evidencing such assignment, all copyrights in all of such works to the City. Provider shall cause all Materials developed or produced by Provider and any Subcontractor in connection with this Contract which embody a copyrightable work to bear the following designation: “© ____ The City of Philadelphia” [complete then current year in blank line].
- (b) Without limitation of the foregoing, and in order to ensure continuity of care, medical records may be retained in the custody and control of Provider. The City shall be allowed unlimited access to all medical records, and if copies are required they shall be made at Provider’s expense.
- (c) Provider shall make available to the City, upon the City’s request, a copy of any Materials prepared by or for Provider in performance of this Contract, at no cost to the City.
- (d) All computer programs, tapes and software developed under this Contract shall be compatible with specifications set by the Department.
- (e) Provider hereby grants, and shall require its Subcontractors to grant, to the City a royalty-free, nonexclusive and irrevocable right to publish, translate, reproduce, deliver, perform and authorize others to do so, all studies, media, curricula, reports and other Materials not owned by the City under this

Contract but which relate to the performance of the Services, Materials or this Contract; provided, however, that Provider shall not be required to grant such right to the City with respect to any Materials for which Provider would be liable to pay compensation to third parties because of such grant.

- (f) If federal or Commonwealth funds are used for the development of new software or for modifications of software, the Provider hereby grants to the Commonwealth of Pennsylvania and the federal government a royalty-free, nonexclusive and irrevocable license. Said license shall include the rights to reproduce, publish, or otherwise use, and to authorize others to use for State and Federal Government purposes, including software or modifications thereof and associated documentation designed, developed or installed with federal financial participation. Said license shall apply except when in the case that the software purchase is of proprietary operating/vendor software packages (e.g., ADABAS or TOTAL) which are provided at established catalog or market prices and sold or leased to the general public.

11.2 **Non-Disclosure.** During the Initial Term and any Additional Term(s) of this Contract and thereafter, except with the prior written consent of the Commissioner, Provider shall not:

- (a) Issue, publish or divulge any Services or Materials developed or used in the performance of this Contract in any public statement, thesis, writing, lecture or other verbal or written communication; or
- (b) Disclose, or use to its advantage or gain, confidential information of any nature acquired from the City or acquired as a result of Provider's activities in connection with this Contract.

ARTICLE XII: EVENTS OF DEFAULT

12.1 **Events of Default.** Each of the following shall be an Event of Default by Provider under this Contract:

- (a) Failure by Provider to comply with any provision of this Contract;
- (b) Occurrence of an Event of Insolvency with respect to Provider;
- (c) Falseness or inaccuracy of any warranty or representation of Provider contained in this Contract or in any other document submitted to the City by Provider;
- (d) Misappropriation by Provider of any funds provided under this Contract or failure by Provider to notify the City upon discovery of any misappropriation;

- (e) A violation of law which results in a guilty plea, a plea of nolo contendere, or conviction of a criminal offense by Provider, or any of its directors, employees, or agents (1) directly or indirectly relating to this Contract or the Services or Materials provided under this Contract, whether or not such offense is ultimately adjudged to have occurred; or (2) which adversely affects the performance of this Contract; or (3) in any factual circumstances bearing any substantial similarity to any of the Services under this Contract;
- (f) Indictment or other issuance of formal criminal charges against Provider, its directors, employees or agents for any criminal offense or any other violation of Applicable Law directly relating to this Contract or Services or Materials, in any factual circumstances bearing any substantial similarity to any of the Services under this Contract or which otherwise adversely affects Provider's performance of this Contract in accordance with its terms, whether or not such offense or violation is ultimately adjudged to have occurred;
- (g) Debarment or suspension of Provider or any agent, employee or Subcontractor of Provider under federal, state or local law, rule or regulation; and/or
- (h) Any act, omission, or misrepresentation which renders Provider ineligible for a City contract or renders the contract voidable under Philadelphia Code Chapter §17-1400.

12.2 **Notice and Cure.** The City agrees that the City will not exercise any right or remedy provided for in Section 13.1 (The City's Remedies) below because of any Event of Default unless the City has first given written notice of the Event of Default to Provider, and Provider, within a period of ten (10) days thereafter, or such additional cure period as the City may authorize, shall have failed to correct the Event of Default; provided, however, that no such notice from the City shall be required nor shall the City permit any period for cure if:

- (a) Provider has temporarily or permanently ceased providing Services and/or Materials;
- (b) The Event of Default creates an emergency which requires, as determined by the City in the City's sole discretion, immediate exercise of the City's rights or remedies;
- (c) The City has previously notified Provider in the preceding twelve (12) month period of any Event of Default under this Contract;
- (d) An Event of Default occurs as described in 12.1(b), (c), (d), or (f) above; or
- (e) Provider has failed to obtain or maintain the insurance or any bond required under this Contract.

Nothing contained in this Section shall limit the City's rights under Article XIII (Remedies) below.

ARTICLE XIII: REMEDIES

13.1 The City's Remedies.

- (a) In the event Provider has committed or permitted an Event of Default and has been notified thereof in accordance with Section 12.2 (Notice and Cure) above, then the City may, but shall not be obligated to, without further notice to or demand on Provider and without waiving or releasing Provider from any of its obligations under this Contract:
 - (1) perform (or cause a third party to perform) this Contract, in whole or in part, including, without limitation, obtaining or paying for any required insurance or performing other acts capable of performance by the City. Provider shall be liable to the City for all sums paid by the City and all expenses incurred by the City (or a third party) pursuant to this Section 13.1, together with interest at a rate equal to the Prime Rate as set by First Union National Bank or its successors, plus five (5) percent, provided, however, such interest rate and expense shall not exceed the highest legal rate permitted in the Commonwealth of Pennsylvania thereon from the date the City or its agent incurs such costs. The City shall not in any event be liable for inconvenience, expense or any other damage (including, but not limited to, consequential damages or lost profits) incurred by Provider by reason of the City's performance or paying such costs or expenses, and the obligations of Provider under this Contract shall not be altered or affected in any manner by the City's exercise of its rights under this Section 13.1 (The City's Remedies);
 - (2) withhold payment of, or offset against, any funds payable to or for the benefit of Provider;
 - (3) collect, foreclose or realize upon any bond, collateral, security or insurance provided by or on behalf of Provider;
 - (4) exercise any other right the City has or may have at law, in equity, or under this Contract.
- (b) In the event Provider has committed or permitted an Event of Default and has been notified thereof in accordance with Section 12.2 (Notice and Cure) above, then the City may, but shall not be obligated to, without waiving or releasing Provider from any of its obligations under this Contract, terminate or suspend this Contract in whole or in part, as set forth more fully in Article XIV (Transition, Termination, and Suspension) below. In the event of

partial termination or suspension, Provider shall continue the performance of this Contract to the extent not terminated or suspended.

- (c) The Services and Materials purchased from Provider are unique, personal in nature and not otherwise readily available. Accordingly, Provider acknowledges that, in addition to all other remedies to which the City is entitled, the City shall have the right, to the fullest extent permitted under Applicable Law, to enforce the terms of this Contract without limitation, by a decree of specific performance or by injunction restraining a violation, or attempted or threatened violation, of any provision of this Contract.

- 13.2 **Concurrent Pursuit of Remedies; No Waiver.** The City may exercise any or all of the remedies set forth in this Article XIII (Remedies), each of which may be pursued separately or in conjunction with such other remedies as the City in its sole discretion shall determine. No extension or indulgence granted by the City to Provider shall operate as a waiver of any of the City's rights in connection with this Contract. The rights and remedies of the City as described in this Article XIII (Remedies) and as described elsewhere in this Contract shall not be exclusive and are in addition to any other rights or remedies available to the City under this Contract at law or in equity.

ARTICLE XIV: TRANSITION, TERMINATION AND SUSPENSION

- 14.1 **Transition.** As provided for in Section 2.1, this Contract shall not exceed the term period of one (1) year. However, the City shall have the right at any point, in either whole or in part, to transition the Services and Materials covered under this Contract to another contract. At least sixty (60) days notice of the need to transition the Services and Materials covered under this Contract will be provided with a transition start date and transition end date.
- 14.2 **Termination or Suspension.** In addition to its rights under Articles VI (Compensation) and XIII (Remedies) above, the City shall have the right, in either whole or in part, to terminate this Contract or suspend Provider's performance under this Contract at any time during the Initial Term or any Additional Term(s) of this Contract, for any reason, including, without limitation, the convenience of the City. If this Contract is terminated, the City shall issue a written Termination Notice, which shall set forth the effective date of the termination. If this Contract is suspended, the City shall issue a written Suspension Notice, which shall set forth the effective date of the suspension.
- 14.3 **Provider Responsibilities Upon Transition, Termination or Suspension.**
- (a) Upon the City's transmission of a Transition Notice, Termination Notice or a Suspension Notice under any provision of this Contract, Provider and its agents, employees and Subcontractors, shall

- (1) take immediate action in an orderly manner to discontinue Services and Materials, and demobilize work forces to minimize the incurrence of costs; and
 - (2) upon request by the City by notice to Provider, collect, assemble and transmit to the City all Materials in such state of completion as may exist as of the effective date of the transition, termination or suspension. All such Materials shall be clearly labeled and indexed to the satisfaction of the Commissioner and delivered to the Commissioner by Provider on or before the date for delivery of the Materials set forth in the Transition Notice, Termination Notice or Suspension Notice or, if no such date is set forth in the Termination Notice or Suspension Notice, then before the effective date of termination set forth in the Transition Notice, Termination Notice or Suspension Notice. Provider waives and releases any and all right to any retaining or charging liens or similar right or remedy in favor of Provider.
- (b) The City's transition, termination or suspension of this Contract shall not affect any obligations or liabilities of either Party accruing prior to the effective date of such termination or suspension.
 - (c) There shall be no liability, cost or penalty to the City (including, but not limited to, consequential damages or lost profits) for transition, termination or suspension of this Contract.

14.4 Payment of Provider upon Transition, Termination or Suspension.

- (a) Upon termination or suspension of this Contract by the City for an Event of Default, Provider shall be entitled to payment of such an amount, to be determined by the City and subject to audit, as shall compensate it for the work satisfactorily performed prior to the termination date; provided, however, that:
 - (1) no allowance shall be included for termination expenses or for anticipated profits, unabsorbed or under absorbed overhead, or unperformed Services and Materials not satisfactorily delivered; and
 - (2) the City shall deduct from any amount due and payable to Provider prior to the termination date, but withheld or not paid, the total amount of fees, costs or additional expenses incurred by the City in order to satisfactorily complete the Services and Materials required to be performed by Provider under this Contract, including the expense of engaging another provider for this purpose, and such other damages, costs, losses and expenses of the City as may be incurred or result from such termination for an Event of Default.

(3) Payments already made by the City for days of service that are compensated by the Case Rate, which have not yet been reached before the Contract is terminated or suspended for an Event of Default, shall be reimbursed by the Provider to the City at the Case Rate per diem rate established in the Case Rate Financial Standards. This section is not applicable to CUA Contracts not subject to the Case Rate Financial Standards, as referenced in the Provider Agreement.

(b) In the event of transition, termination or suspension of this Contract by the City for the City's convenience, Provider shall be paid such an amount as shall compensate Provider for the portion of the Services satisfactorily performed and Materials satisfactorily delivered prior to the date of transition, termination or suspension. The City shall not pay Provider any amount for Provider's transition, termination or suspension expenses or anticipated profits, unabsorbed or underabsorbed overhead, or unperformed Services and Materials not satisfactorily delivered.

14.5 **Special Suspension Rules.** Suspension of Provider's performance under this Contract after an Event of Default shall not constitute a waiver or release of any liability of Provider for such Event of Default or any of the City's damages or other remedies arising out of such Event of Default; nor shall such suspension be deemed an election of remedies in derogation of any other remedy. Provider acknowledges that the City shall have the right, at its sole discretion, to suspend Provider's performance in the event City Council or the Commonwealth of Pennsylvania does not appropriate funds for the performance of this Contract. In the event that the City issues a Suspension Notice to Provider, such suspension shall continue from the effective date specified in the Suspension Notice until a date specified in the Suspension Notice which shall be not more than one hundred eighty (180) days after the effective date or the date of judgment in any pending trial, whichever is later (the "Suspension Period"). On or prior to the expiration of the Suspension Period, the City shall either terminate this Contract by giving a Termination Notice pursuant to Section 14.2 (Termination or Suspension) above, or by notice to Provider, instruct Provider to resume the delivery of Services and Materials pursuant to this Contract upon the expiration of the Suspension Period. After issuing a Suspension Notice, the City shall pay any invoices submitted by Provider for Services rendered prior to the commencement of the Suspension Period or otherwise payable by the City to Provider under this Contract, subject to all of the City's rights and remedies against Provider, including but not limited to, its rights of set off and its right to review and accept Services and Materials prior to payment therefor.

**ARTICLE XV: ADDITIONAL REPRESENTATIONS AND COVENANTS
OF PROVIDER RELATING TO CERTAIN APPLICABLE
LAWS**

In addition to the representations, warranties and covenants made by Provider in Article IV, Provider further represents, warrants and covenants that, to the extent of their applicability to Provider, Provider is in compliance with the laws, ordinances, regulations and executive orders described below. By executing this Contract, Provider thereby certifies to such compliance. Provider further certifies that the representations, warranties, and covenants provided pursuant to this Article shall continue to remain true throughout the Term of this Contract or any other period of time required by such laws. In the event said representations, warranties, and covenants are or become untrue or inaccurate, Provider shall promptly give notice thereof to the City, specifying the manner in which said representation, warranty, or covenant is untrue or inaccurate. The provisions of this Article are not intended to limit the applicability of the other provisions of this Contract, including, without limitation, Provider's agreement to comply with all Applicable Law.

15.1 **Non-Discrimination; Fair Practices.** This Contract is entered into under the terms of the Charter, the Fair Practices Ordinance (Chapter 9-1100 of the Code) and the Mayor's Executive Order No. 04-86 (the "Executive Order"), as they may be amended from time to time, and in performing this Contract, Provider shall not discriminate or permit discrimination against any individual because of race, color, religion or national origin. Nor shall Provider discriminate or permit discrimination against individuals in employment, housing and real property practices, and/or public accommodation practices whether by direct or indirect practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial, differentiation or preference in the treatment of a person on the basis of actual or perceived race, ethnicity, color, sex, sexual orientation, gender identity, religion, national origin, ancestry, age, disability, marital status, source of income, familial status, genetic information or domestic or sexual violence victim status, Human Immunodeficiency Virus (HIV) infection, or engage in any other act or practice made unlawful under the Charter, Chapter 9-1100, the Executive Order, or under the nondiscrimination laws of the United States or the Commonwealth of Pennsylvania. In the event of any breach of this Section 15.1 (Non-Discrimination; Fair Practices), the City may, in addition to any other rights or remedies available under this Contract, at law or in equity, suspend or terminate this Contract forthwith.

15.2 **Chapter 17-400 of the Philadelphia Code: Exclusionary Private Organizations.**

(a) In accordance with Chapter 17-400 of the Code, Provider agrees that its payment or reimbursement of membership fees or other expenses associated with participation by its employees in an exclusionary private organization,

insofar as such participation confers an employment advantage or constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, privileges or conditions of employment on the basis of race, color, sex, sexual orientation, religion, national origin or ancestry, constitutes, without limiting the applicability of Articles XII (Events of Default) and XII (Remedies) above, a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available at law or in equity.

- (b) Provider agrees to cooperate with the Commission on Human Relations of the City in any manner which the Commission deems reasonable and necessary for the Commission to carry out its responsibilities under Chapter 17-400 of the Code. Provider's failure to so cooperate shall constitute, without limiting the applicability of Articles XI (Events of Default) and XII (Remedies) above, a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available at law or in equity.

15.3 **Executive Order 03-12: Minority, Woman and Disabled Business Enterprise Participation.** In accordance with Executive Order 03-12 (the "Antidiscrimination Policy"), the City, acting through its Office of Economic Opportunity ("OEO"), has established an antidiscrimination policy that relates to the solicitation and participation of Minority Business Enterprises ("MBE"), Woman Business Enterprises ("WBE"), and Disabled Business Enterprises ("DSBE") (collectively, "M/W/DSBE") in City contracts. The purpose of this Antidiscrimination Policy is to ensure that all businesses desiring to do business with the City have an equal opportunity to compete by creating access to the City's procurement process and meaningfully increasing opportunities for the participation by M/W/DSBEs in City contracts at all tiers of contracting, as prime contractors, subcontractors and joint venture partners. In furtherance of this policy, the City will, from time to time, establish participation ranges for City Contracts and City Related Special Projects. Provider agrees to comply with the requirements of the Antidiscrimination Policy, by exercising its Best and Good Faith Efforts to include M/W/DSBEs in its contract, and where participation ranges are established by OEO, Provider agrees, without limitation, to submit documentation responsive to each of the participation ranges established for the Contract.

- (a) **General Requirements.** In furtherance of the purposes of the Antidiscrimination Policy, Provider agrees to the following:

- (1) Provider, if it has achieved participation commitments with M/W/DSBEs, represents that it has entered into legally binding agreement(s) ("M/W/DSBE Subcontract(s)") with M/W/DSBEs as participants under this Contract for the services and in the dollar amount(s) and percentage(s) as specified in the M/W/DSBE

Participation Exhibit to this Contract (the “Contract Commitment(s)”)

- (2) Provider shall secure the prior written approval of the OEO, before making any changes or modifications to any Contract Commitments made by Provider herein, including, without limitation, substitutions for its MBEs, WBEs and/or DSBEs, changes or reductions in the services provided by its M/W/DSBE Subcontractors, or changes or reductions in the dollar and/or percentage amounts paid to its M/W/DSBE participants.
- (3) Unless otherwise specified in a M/W/DSBE Subcontract between the Provider and its M/W/DSBE participant, as described in (a) (1) above, Provider shall, within five (5) business days after receipt of a payment from the City for work performed under the Contract, deliver to its M/W/DSBE participant the proportionate share of such payment for services performed by its M/W/DSBE participant. In connection with payment of its M/W/DSBE participants, Provider agrees to fully comply with the City’s payment reporting process which may include the use of electronic payment verification systems.
- (4) Provider shall, in the event of an increase in units of work and/or compensation under the Contract, increase its Contract Commitment(s) with its M/W/DSBE Subcontractors proportionately, which increase shall be reflected in the M/W/DBSE Subcontract(s) described in (a) (1) above. OEO may from time to time request documentation from Provider evidencing compliance with this provision.
- (5) Provider shall submit, within the time frames prescribed by the City, any and all documentation the City may request, including, but not limited to, copies of M/W/DSBE Subcontracts, participation summary reports, M/W/DSBE participant invoices, telephone logs and correspondence with M/W/DSBE participants, cancelled checks and certification of payments. Provider shall maintain all documentation related to this Section for a period of five (5) years from the date of Provider’s receipt of final payment under the Contract.
- (6) Provider agrees that the City may, in its sole discretion, conduct periodic reviews to monitor Provider’s compliance with the terms of this Antidiscrimination Policy.
- (7) Provider agrees that in the event the City determines that Provider has failed to comply with any of the requirements of this Antidiscrimination Policy, including substantial compliance with any Contract Commitment, the City may, in addition to any other rights and remedies it may have under the Contract which includes termination of the Contract, exercise one or more of the following remedies which shall be deemed cumulative and concurrent:

- a) Debar Provider from proposing on and/or participating in any future contracts for a maximum period of three (3) years.
 - b) Withhold payment(s) or any part thereof until corrective action is taken. If corrective action is not taken to the satisfaction of OEO, the City may, without institution of a lawsuit deduct money in an amount equal to the M/W/DSBE shortfall, which amount shall be collected and considered not as a penalty, but as liquidated damages for the Provider's failure to comply with the contract
- (8) No privity of contract exists between the City and any M/W/DSBE participant identified herein and the City does not intend to give or confer upon any such M/W/DSBE participants(s) any legal rights or remedies in connection with the subcontracted services pursuant to the Antidiscrimination Policy or by reason of this Contract except such rights or remedies that the M/W/DSBE participant may seek as a private cause of action under any legally binding contract to which it may be a party. The remedies enumerated above are for the sole benefit of the City and City's failure to enforce any provision or the City's indulgence of any non-compliance with any provision hereunder, shall not operate as a waiver of any of the City's rights in connection with this Contract nor shall it give rise to actions by any third parties including identified M/W/DSBE participants.

(b) **Special Requirements Applicable to Non-Profit Providers.** In the event the Provider is a non-profit, the Contract may not be subject to M/W/DSBE participation ranges, but Provider shall demonstrate its compliance with the Antidiscrimination Policy by providing annually to OEO the following information:

- (1) a statement identifying the race, gender, disability status and ethnic composition of its workforce and board of directors;
- (2) a list of the non-profit's five highest dollar value M/W/DSBE suppliers of products and services; and
- (3) the non-profit's written "equal opportunity statement," an assurance of the non-profit's efforts to maintain a diverse workforce and board of directors and operate a fair and effective supplier diversity program.

(c) **Criminal Liability for Fraudulent or False Statements.** Provider hereby verifies that all information submitted to the City in connection with the Antidiscrimination Policy is true and correct and is notified that the submission of false information is subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities, which may include payment of a fine of at least \$1,000 and a term of imprisonment of not more than two years. Provider also acknowledges that under 18 Pa.C.S. §4107.2(a)(4), it is a felony in the third degree, punishable by a term of imprisonment of not more than seven years in addition to the payment of

any fines or restitution, if, under this Contract, Provider fraudulently obtains public moneys reserved for or allocated or available to minority business enterprises or women's business enterprises.

15.4 **Federal Laws.** Provider shall comply with the provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. Sections 2000d - 2000d.7), Section 504 of the Federal Rehabilitation Act of 1973 (29 U.S.C. Section 794), the Age Discrimination Act of 1975, (42 U.S.C. Sections 6101 - 6107), Title IX of the Education Amendments of 1972 (20 U.S.C. Section 1681), and 45 C.F.R. Part 92, as they may be amended from time to time, which together prohibit discrimination on the basis of race, color, national origin, sex, handicap, age and religion.

15.5 **Americans With Disabilities Act.** Provider understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this Contract or from providing Services or Materials under this Contract. By executing and delivering this Contract, Provider covenants to comply with all provisions of the Americans With Disabilities Act (the "ADA"), 42 U.S.C. §§12101 - 12213, and all regulations promulgated thereunder, as the ADA and regulations may be amended from time to time, which are applicable (a) to Provider; (b) to the benefits, Services, Materials, activities, facilities and programs provided in connection with this Contract; (c) to the City, or the Commonwealth of Pennsylvania; (d) to the benefits, services, activities, facilities and programs of the City or of the Commonwealth; and (e) if any funds under this Contract are provided by the federal government, which are applicable to the federal government and its funds, benefits, services, activities, facilities and programs applicable to this Contract. Without limiting the applicability of the preceding sentence, Provider shall comply with the "General Prohibitions Against Discrimination," 28 C.F.R. Part 35.130, and all other regulations promulgated under Title II of the ADA, as they may be amended from time to time, which are applicable to the benefits, services, facilities, programs and activities provided by the City through contracts with outside contractors.

15.6 **Northern Ireland.**

(a) In accordance with Section 17-104 of the Code, Provider (including any parent company, subsidiary, exclusive distributor or company affiliated with Provider) (1) confirms that it does not have, and agrees that it will not have at any time during the Term of this Contract (including any extensions of the Term), any investments, licenses, franchises, management agreements or operations in Northern Ireland and (2) agrees that no product to be provided to the City under this Contract will originate in Northern Ireland, unless Provider has implemented the fair employment principles embodied in the MacBride Principles.

(b) In the performance of this Contract, Provider agrees that it will not use any suppliers, Subcontractors or subconsultants at any tier (1) who have (or whose parent, subsidiary, exclusive distributor or company affiliate have) any investments, licenses, franchises, management agreements or operations

in Northern Ireland or (2) who will provide products originating in Northern Ireland unless said supplier, subconsultant or Subcontractor has implemented the fair employment principles embodied in the MacBride Principles.

- (c) Provider agrees to cooperate with the City's Director of Finance in any manner which the said Director deems reasonable and necessary to carry out the Director's responsibilities under Section 17-104 of the Code. Provider expressly understands and agrees that any false certification or representation in connection with this Section 15.6 (Section 17-104 of the Code) and any failure to comply with the provisions of this Section 15.6 (the Section 17-104 of the Code) shall constitute a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available at law (including, but not limited to, Section 17-104 of the Code) or in equity. In addition, Provider understands that false certification or representation is subject to prosecution under Title 18 Pa. C.S. Section 4904.

15.7 **Limited English Proficiency.** Provider understands and agrees that no individual who is limited in his or her English language proficiency shall be denied access to Services provided under this Contract on the basis of that limitation. As a condition of accepting and executing this Contract, Provider shall comply with all provisions of Title VI of the Civil Rights Act of 1964, Executive Order No. 12250 of the President of the United States, publication of the Mayor of the City of Philadelphia's Executive Order entitled, "Access to Federally Funded City Programs and Activities for Individuals with Limited English Proficiency" dated September 29, 2001, and all regulations promulgated thereunder, as the Act and regulations may be amended from time to time, which are applicable (a) to Provider, (b) to the benefits, services, activities and programs provided in connection with this Contract, (c) to the City, or the Commonwealth of Pennsylvania, and (d) to the benefits, services, activities and programs of the City or of the Commonwealth, and if any funds under this Contract are provided by the federal government, which are applicable to the federal government and its benefits, services, activities and programs. Without limiting the applicability of the preceding sentence, Provider shall comply with 45 C.F.R. 80 et. seq. and all other regulations promulgated under Title VI of the Civil Rights Act of 1964, as they may be amended from time to time, which are applicable to the benefits, services, programs and activities provided by the City through contracts with outside contractors.

15.8 **Business, Corporate and Slavery Era Insurance Disclosure.** In accordance with Section 17-104 of the Code, the Provider, after execution of this Contract, will complete an affidavit certifying and representing that the Provider (including any parent company, subsidiary, exclusive distributor or company affiliated with Provider) has searched any and all records of the Provider or any predecessor company regarding records of investments or profits from slavery or slaveholder

insurance policies during the slavery era. The names of any slaves or slaveholders described in those records must be disclosed in the affidavit.

The Provider expressly understands and agrees that any false certification or representation in connection with this Section and/or any failure to comply with the provisions of this Section shall constitute a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available in law (including, but not limited to, Section 17-104 of the Code) or equity and the Contract will be deemed voidable. In addition, it is understood that false certification or representation is subject to prosecution under Title 18 Pa. C.S. Section 4904.

15.9 **Protected Health Information**

- (a) The City of Philadelphia is a “Covered Entity” as defined in the regulations issued pursuant to the federal Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). The City’s business activities include both (1) functions which make the City a Covered Entity, and, therefore, subject to HIPAA, and (2) functions that are not subject to HIPAA. In accordance with 45 CFR §164.105(a)(2)(iii)(D), the City has designated certain departments and units of the City as health care components that must comply with HIPAA (“Covered Components”). The Covered Components of the City as of August 1, 2013 include: Ambulatory Health Services, a unit of the Philadelphia Department of Public Health (“PDPH”); the Office of Behavioral Health and Intellectual Disability Services; the Philadelphia Nursing Home (a unit of PDPH); the Benefits Administration Unit of the Office of Human Resources; Emergency Medical Services (a unit of the Philadelphia Fire Department); and the Philadelphia Public Health Laboratory (a unit of PDPH). This list is subject to change, and any department or unit of the City that the City in the future determines to be a Covered Component under HIPAA shall be deemed to be a Covered Component for purposes of this Section 15.9.

- (b) To the extent (1) this Contract is entered into by the City for or on behalf of a Covered Component and/or requires the performance of services that will be delivered to or used by a Covered Component (whether or not the City department or unit through which the City entered the Contract is a Covered Component), and (2) Provider is a “Business Associate” of the City, as defined in 45 CFR §160.103, Provider shall comply with the City’s Terms and Conditions Relating to Protected Health Information (“City PHI Terms”) posted on the City’s website (at <https://secure.phila.gov/eContract/> under the “About” link). The City PHI Terms are hereby incorporated in this Section 15.9 as if fully set forth herein. (A printed version of the City

PHI Terms, in the City's sole discretion, also may be attached to this Contract.)

15.10 **Chapter 17-1300 of The Philadelphia Code: Philadelphia 21st Century**

Minimum Wage and Benefits Standard

- (a) Provider is a "Service Contractor" in that by virtue of entering into this Contract, Provider has entered into a "Service Contract," as those terms are defined in Section 17-1300 of the Code. Any Subcontract between Provider and a Subcontractor to perform work related to this Contract is a "Service Contract" and such Subcontractors are also "Service Contractors" for purposes of Chapter 17-1300 as are any subcontract and subcontractor at any tier providing Services under this Contract. (Chapter 17-1300 is accessible at <http://www.amlegal.com/library/pa/philadelphia.shtml>.) If such Service Contractor (Provider or any subcontractor at any tier) is also an "Employer," as that term is defined in Section 17-1302 of the Code (more than 5 employees), and further described in Section 17-1303 of the Code, then absent a waiver, during the Initial Term and any Additional Term, in addition to any applicable state and federal requirements, Provider shall provide, and shall enter into Subcontracts and otherwise cause any subcontractors at any tier that are also Service Contractors to provide their respective covered Employees (persons who perform work for a covered Employer that arises directly out of a Service Contract), with at least the minimum wage standard and minimum benefits standard, and required notice thereof, stated in federal and state law and in Chapter 17-1300 of the Code. A summary of the current requirements is as follows:

Minimum Wage

- (1) for the period through December 31, 2014, provide their covered Employees with an hourly wage, excluding benefits, that is no less than \$10.88/hour;
- (2) as of January 1, 2015, provide their covered Employees with an hourly wage, excluding benefits, that is no less than \$12/hour;
- (3) as of January 1, 2016, for wages to be provided on and after January 1 of each year during which the Initial Term and any Additional Term is in effect, provide their covered employees with an hourly wage, excluding benefits, that is no less than the result of

multiplying \$12 by the then current CPI Multiplier as annually adjusted, as described in Section 15.10(a)(4).

- (4) For purposes of determining the minimum hourly wage required under 15.10(a)(3) above, the CPI Multiplier is calculated annually by the City's Director of Finance by dividing the most recently published Consumer Price Index for all Urban Consumers (CPI-U) as of each January 1 by the CPI-U most recently published as of January 1, 2015. The then current minimum hourly wage applicable to City contractors and subcontractors will be posted on the City's website.

Minimum Benefits

- (5) To the extent an Employer provides health benefits to any of its employees, then absent a waiver, during the Initial Term and any Additional Term, in addition to any applicable state and federal requirements, such Employer shall provide each full-time, non-temporary, non-seasonal covered Employee with health benefits at least as valuable as the least valuable health benefits that are provided to any other full-time employees of the Employer; and
- (6) provide to each full-time, non-temporary, non-seasonal covered Employee at least the minimum number of earned sick leave days required by Code Section 17-1305(2).

Change in Law

- (7) Generally. Notwithstanding the above requirements, to the extent a change in law would require an increase in wages or benefits under Chapter 17-1300 (for example, an increase in the federal minimum wage to \$9.00/hour, which would increase the required City minimum wage to \$13.50 due to the Chapter's requirement of \$150% of the federal minimum wage), such new requirement will take effect only at the start of an Additional Term, if any, commencing on or after the date of the new legal requirement.
- (b) If covered, absent a waiver, Provider shall promptly provide to the City all documents and information as the City may require verifying its compliance, and that of all Service Contractors providing Services under the Contract, with the requirements of Chapter 17-1300. Each covered Service Contractor shall notify each affected Employee what wages and benefits are required to be paid pursuant to Chapter 17-1300.

- (c) Absent a waiver, a Provider subject to Chapter 17-1300 shall comply with all of its requirements as they exist on the date when the Provider entered into this Contract with the City or into an amendment thereto. Provider shall take such steps as are necessary to notify its Subcontractors of these requirements, and to cause such Subcontractors to notify lower-tier subcontractors that are Service Contractors of these requirements, including, without limitation, by incorporating this Section 15.10, with appropriate adjustments for the identity of the parties, in its Subcontracts with such Subcontractors. A Provider or subcontractor at any tier subject to Chapter 17-1300 that fails to comply with these provisions may, after notice and hearing before the Director of Finance or such other officer or agency designated by the Mayor, be suspended from receiving financial assistance from the City or from bidding on and/or participating in future City contracts, whether as a prime contractor or a subcontractor, for up to three (3) years. City Council may also initiate a similar suspension or debarment process. Such suspension or debarment shall be in addition to any of the other sanctions or remedies set forth in Chapter 17-1300 or this Contract.
- (d) Without limiting the applicability of Articles XI (Events of Default) and XII (Remedies) above, Provider's failure to comply, or the failure of subcontractors at any tier to comply, with the requirements of Chapter 17-1300 shall constitute a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available at law or in equity.
- (e) Provider's covered Employees shall be deemed third-party beneficiaries of Provider's representation, warranty, and covenant to the City under this Section 15.10 only, and the covered Employees of a subcontractor at any tier that is also a covered Employer performing Services directly or indirectly under a subcontract at any tier shall be deemed third-party beneficiaries of their Employer's representation, warranty and covenant to Provider or such subcontractors at any tier, as the case may be, under this Section.
- (f) The Office of Labor Standards may grant a partial or total waiver of Chapter 17-1300 based on specific stipulated reasons elaborated in Section 17-1304 of the Code. An overview offering guidance on the applicability of, and requirements placed on City contractors and subcontractors by Chapter 17-1300 of the Code is available on the City's website at <https://secure.phila.gov/eContract/> under the "About" link; see "Minimum Wage and Equal Benefits Ordinances Impacting Some City Contractors."

15.11 **Chapter 17-1400 of the Philadelphia Code: Contributions and Other**

Mandatory Disclosures.

- (a) Provider confirms on behalf of itself and its Subcontractor(s) that no contribution(s) have been made, and agrees that none shall be made during the Term of this Contract, and any Additional Term, by Provider, any Subcontractor, or any party from which a contribution can be attributed to the Provider or Subcontractor, that would render the Provider or Subcontractor, as applicable, ineligible to apply for or enter into a Non-Competitively Bid Contract under the provisions of Code Sections 17-1404(1) and 17-1405; and that disclosures made as part of its application to receive a Non-Competitively Bid Contract contain no material misstatements or omissions. Breach of this covenant shall constitute an event of default and render the Contract voidable at the City's option, and, as to contributions attributable to Provider, shall make the Provider liable for liquidated damages to the City in the amount of ten percent (10%) of the maximum payments to the Provider allowed under the Contract, regardless whether actually paid. The City may exercise any or all of the remedies set forth in this Section 15.11 (Contributions and Other Mandatory Disclosures), each of which may be pursued separately or in conjunction with such other remedies as the City in its sole discretion shall determine. No extension or indulgence granted by the City to Provider shall operate as a waiver of any of the City's rights in connection with this Contract. The rights and remedies of the City as described in this Section 15.11 and as described elsewhere in this Contract shall not be exclusive and are in addition to any other rights or remedies available to the City under this Contract at law or in equity.
- (b) Provider shall, during the term of the Contract, and any Additional Term, and for one year thereafter, disclose any contribution of money or in-kind assistance the Provider, or any Subcontractor or Consultant utilized by Provider in connection with this Contract, has made, or any individual or entity has made if such contributions can be attributed to Provider, or such Subcontractor or Consultant pursuant to the attribution rules of Section 17-1405, during such time period to a candidate for nomination or election to any public office in the Commonwealth of Pennsylvania or to an individual who holds such office, or to any political committee or state party in the Commonwealth of Pennsylvania, or to any group, committee or association organized in support of any such candidate, office holder, political committee or state party, and the date and amount of such contribution.
- (1) It shall not be a violation of Section 15.11(b) if Provider fails to disclose a contribution made by a Consultant because the Provider was unable to obtain such information from the Consultant, provided the Provider demonstrates that it used

reasonable efforts to attempt to obtain such information, including, at a minimum:

- (a) Entering into a written agreement with the Consultant for such Consultant's services, before the filing of the application for the Contract, and before the Consultant communicated with a City department or office, official or employee on behalf of the Provider;
 - (b) Including in such agreement a provision requiring the Consultant to provide the Provider in a timely manner with all information required to be disclosed under the provisions of Chapter 17-1400 of the Code, and providing, in effect, that the agreement will be terminated by the Provider if the Consultant fails to provide all required information on a timely basis and that no further payments, including payments owed for services performed prior to the date of termination, will be made to the Consultant by or on behalf of the Provider as of the date of such termination;
 - (c) Communicating regularly with the Consultant concerning the Consultant's obligations to provide timely information to permit the Provider to comply with the provisions of Chapter 17-1400; and
 - (d) Invoking the termination provisions of the written agreement in a full and timely manner.
- (c) The Provider shall, during the Term of the Contract, and any Additional Term, and for one year thereafter, disclose the name and title of each City officer or employee who, during such time period, asked the Provider, any officer, director or management employee of the Provider, or any Person representing the Provider, to give money, services, or any other thing of value (other than a Contribution as defined in Section 17-1401) to any Person, and any payment of money, provision of services, or any other thing of value (other than a Contribution as defined in Section 17-1401) given to any Person in response to any such request. The Provider shall also disclose the date of any such request, the amount requested, and the date and amount of any payment made in response to such request.
- (d) The Provider shall, during the Term, and any Additional Term, of the Contract, disclose the name and title of each City officer or employee who directly or indirectly advised the Provider, any officer, director or management employee of the Provider, or any Person representing the Provider that a particular Person could be used by the Provider to satisfy any

goals established in the Contract for the participation of minority, women, disabled or disadvantaged business enterprises. The Provider shall also disclose the date the advice was provided, and the name of such particular Person.

- (e) The disclosures required by Sections 15.11(b), (c) and (d) shall be made utilizing the online disclosure update process through Provider's eContract Philly account which can be accessed on the City's website at www.phila.gov/contracts by clicking on eContract Philly. Such disclosures shall be made within five (5) business days of the action or event requiring Provider to update its disclosures. In the case of updates to political contributions made by Provider required by Section 15.11(b), the attribution rules of Section 17-1405 shall apply to determine what contributions must be disclosed under this provision as contributions of the Provider or of a Consultant. Provider is advised that any individual who submits an update on eContract Philly must be an authorized signatory of the Provider, authorized to make the required updated disclosures.
- (f) Reports generated automatically by the online process for the updated disclosures required by Sections 15.11(b), (c) and (d) will be automatically forwarded to the President and Chief Clerk of Council, and to the Mayor, Director of Finance, Procurement Department, and the Department of Records.

15.12 **Executive Order 03-11: Gifts.**

- (a) Pursuant to Executive Order 03-11, no official or employee in the Executive and Administrative Branch of the City shall solicit or accept, directly or indirectly, anything of value, including any gift, gratuity, favor, entertainment, invitation, food, drink or loan from any of the following sources:
 - (1) A person seeking to obtain business from, or who has financial relations with the City
 - (2) A person whose operations or activities are regulated or inspected by any City agency;
 - (3) A person engaged, either as principal or attorney, in proceedings before any City agency or in court proceedings in which the City is an adverse party;

- (4) A person seeking legislative or administrative action by the City; or
 - (5) A person whose interests may be substantially affected by the performance or nonperformance of the official's or employee's official duties.
- (b) Provider understands and agrees that if it offers anything of value to a City official or employee under circumstances where the receipt of such item would violate the provisions of this Executive Order, Provider shall be subject to sanctions with respect to future City contracts. Such sanctions may range from disqualification from participation in a particular contract to debarment, depending on the nature of the violation.

15.13 **Chapter 17-1900 of the Philadelphia Code: Equal Benefits Ordinance.**

- (a) Unless Provider is a government agency, this is a "Service Contract" as that term is defined in Section 17-1901(4) of the Code. If the Service Contract is in an amount in excess of \$250,000, then pursuant to Chapter 17-1900 of the Code, Provider shall, for any of its employees who reside in the City, or any of its employees who are non-residents subject to City wage tax under Section 19-1502(1)(b) of the Code, extend the same employment benefits the Provider extends to spouses of its employees to life partners of such employees. Provider certifies that (i) it is in compliance with the requirements of Chapter 17-1900, (ii) its employees have been notified of the employment benefits available to life partners pursuant to Chapter 17-1900, and (iii) such employment benefits are currently, or will be made available within the time required by Section 17-1902(2), or that the Provider does not provide employment benefits to the spouses of married employees.
- (b) Provider acknowledges and agrees that the following terms are included in this Contract:
- (1) Provider shall notify its employees of the employment benefits available to life partners pursuant to Chapter 17-1900 of the Code.
 - (2) Noncompliance by the Provider with the requirements of Chapter 17-1900 of the Code shall be a material breach of this Contract.
 - (3) Discrimination or retaliation by the Provider against any employee on account of having claimed a violation of Chapter 17-1900 shall be a material breach of this Contract.

- (4) In addition to any other rights and remedies available to the City pursuant to this Contract at law or in equity, a material breach of this Contract related to Chapter 17-1900 may result in the suspension or debarment of Provider from participating in City contracts for up to three (3) years.
- (c) An overview offering guidance on the applicability of, and requirements placed on City contractors by Chapter 17-1900 of the Code is available on the City's website (at <https://secure.phila.gov/eContract/> under the "About" link) (see "Minimum Wage and Equal Benefits Ordinances Impacting Some City Contractors").

ARTICLE XVI: MISCELLANEOUS

- 16.1 **Governing Law.** This Contract shall be deemed to have been made in Philadelphia, Pennsylvania. This Contract and all disputes arising under this Contract shall be governed, interpreted, construed and determined in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to principles of Pennsylvania law concerning conflicts of laws.
- 16.2 **Amendments; Waiver.** Except as provided in Section 6.9 (Maximum Daily Rate, Days of Care or Units of Service) above, this Contract may not be amended, supplemented, altered, modified or waived, in whole or in part, except by a written Amendment signed by the Parties. Except to the extent that the Parties may have otherwise agreed in writing in an Amendment, no waiver, whether express or implied, by either Party of any provision of this Contract shall be deemed: (a) to be a waiver by that Party of any other provision in this Contract; (b) to be a waiver by that Party of any breach by the other Party of its obligations under this Contract; or (c) a course of conduct, dealing or performance with respect to any other matter arising hereunder. Any forbearance by a Party in seeking a remedy for any noncompliance or breach by the other Party shall not be deemed to be a waiver of rights and remedies with respect to such noncompliance or breach.
- 16.3 **Integration.** The Contract Documents forming this Contract, including the Provider Agreement and the General Provisions and the exhibits incorporated by reference therein, contain all the terms and conditions agreed upon by the Parties, constitute the entire agreement among the Parties pertaining to the subject matter hereof, and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties (except to the extent specifically set forth herein). No other prior or contemporaneous agreements, covenants, representations or warranties, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any Party or to vary any of the terms contained in this Contract.
- 16.4 **No Joint Venture.** The Parties do not intend to create, and nothing contained in this Contract shall be construed as creating, a joint venture arrangement or

partnership between the City and Provider with respect to the Services or the Materials.

- 16.5 **No Third Party Beneficiaries.** Nothing in this Contract, express or implied, is intended or shall be construed to confer upon or give to any Person, other than the Parties, any rights, remedies, or other benefits, including but not limited to third-party beneficiary rights, under or by reason of this Contract. This Contract shall not provide any third party with any remedy, claim, liability, reimbursement, cause of action or other right other than any such remedy, claim, etc. existing without reference to the term of or the existence of this Contract.
- 16.6 **Counterparts.** This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.
- 16.7 **Severability and Partial Invalidity.** The provisions of this Contract shall be severable. If any provision of this Contract or the application thereof for any reason or in any circumstance shall to any extent be held to be invalid or unenforceable, the remaining provisions of this Contract and the application of such provision to Persons, or circumstances, other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.
- 16.8 **Survival.** Any and all provisions set forth in this Contract which, by its or their nature, would reasonably be expected to be performed after the termination of this Contract or are expressly stated as surviving or intended to survive, shall survive and be enforceable after such termination. Any and all liabilities, actual or contingent, which have arisen in connection with this Contract shall survive the expiration or earlier termination of this Contract, including without limitation: Provider's representations, warranties and covenants set forth in Article IV (Provider's Representations and Covenants) above; Provider's obligation to indemnify, defend and hold harmless the City, its officers, employees and agents as set forth in Section (Indemnification) above; and the Parties' rights and obligations set forth in Article XI (Ownership of Materials; Proprietary Information; Confidentiality) above.
- 16.9 **Determination of Disputes.** Any dispute arising between the City and Provider under or with respect to either Party's covenants, obligations, powers, rights or duties under this Contract shall be submitted to and decided by the Commissioner or his or her designee. The Commissioner or his or her designee shall render and reduce to writing his or her decision, and furnish a copy to Provider by notice under this Contract. In connection with any dispute under this Contract, the Commissioner shall offer Provider an opportunity to offer evidence in support of its position concerning the subject matter of the dispute. This Section shall not be construed to limit the benefit to the City of Articles XII (Events of Default) or XIII (Remedies) above.

- 16.10 **Interpretation; Order of Precedence.** In the event of a conflict or inconsistency between the terms of these General Provisions and the terms of the Provider Agreement, the terms of these General Provisions shall control, except to the extent (if any) that the Provider Agreement contains an express change, by specific reference, to the General Provisions.
- 16.11 **Headings.** The titles, captions or headings of Articles, Sections and Exhibits or schedules in this Contract are inserted for convenience of reference only; do not in any way define, limit, describe or amplify the provisions of this Contract or the scope or intent of the provisions, and are not a part of this Contract.
- 16.12 **Statutory and other Citations.** All statutory or other citations of law referenced in the Contract shall refer to the statute referenced, as it may be amended or superseded from time to time.
- 16.13 **Days.** Any references to a number of days in this Contract shall mean calendar days unless this Contract specifies business days.
- 16.14 **Forum Selection Clause; Consent to Jurisdiction.** The Parties irrevocably consent and agree that any lawsuit, action, claim, or legal proceeding involving, directly or indirectly, any matter arising out of or related to this Contract, or the relationship created or evidenced thereby, shall be brought exclusively in the United States District Court for the Eastern District of Pennsylvania or the Court of Common Pleas of Philadelphia County. It is the express intent of the Parties that jurisdiction over any lawsuit, action, claim, or legal proceeding shall lie exclusively in either of these two (2) forums. The Parties further irrevocably consent and agree not to raise any objection to any lawsuit, action, claim, or legal proceeding which is brought in either of these two (2) forums on grounds of venue or *forum non conveniens*, and the Parties expressly consent to the jurisdiction and venue of these two (2) forums. The Parties further agree that service of original process in any such lawsuit, action, claim, or legal proceeding may be duly effected by mailing a copy thereof, by certified mail, postage prepaid to the addresses specified in Section 5.1 Notice of the Provider Agreement.
- 16.15 **Waiver of Jury Trial.** Provider hereby waives trial by jury in any legal proceeding in which the City is a party and which involves, directly or indirectly, any matter (whether sounding in tort, contract or otherwise) in any way arising out of or related to this Contract or the relationship created or evidenced hereby. This provision is a material consideration upon which the City relied in entering into this Contract.
- 16.16 **Notices.** All notices, demands, requests, waivers, consents, approvals or other communications which are required or may be given under this Contract shall be in writing and shall be deemed to have been duly made (a) on the date received or refused if delivered by hand with receipt given or refused; (b) on the next business day if delivered by a nationally recognized overnight courier service (*e.g.*, Federal Express or United Parcel Service); (c) on the date confirmed for receipt by facsimile if delivered by facsimile; (d) on the date of receipt or refusal of delivery if sent by

certified or registered United States mail, return receipt requested; or (e) on the date confirmed for receipt by electronic mail if delivered by electronic mail. In each case notices shall be sent to the addresses set forth in Section 5.1 of the Provider Agreement, or to such other address as either Party may specify to the other by a notice complying with the terms of this Section 16.16.

16.17 **E-signatures**. DHS is increasing its administrative efficiency through the use of electronic signature technology.

- (a) **Technology Changes**. As updates become necessary, the Department will continue to notify providers of technology requirement changes through the use of the Department Extranet and/or any other established means of communication identified by the Department.
- (b) **Electronic Submissions**. Submission of electronic invoices and documents shall be considered binding and have the full and same effect as a signed paper submission. By submitting an invoice or document electronically Provider certifies that the information in that invoice or document is true and correct to the best of Provider's knowledge, information, and belief, and that the submission constitutes Provider's signature and certification as if it were physically written.
- (c) **Breach**. Failure to comply with any DHS e-signature technology requirements (including, but not limited to the use of www.phila.gov/contracts and eContract Philly) may result in a financial penalty and/or a finding that an Event of Default has occurred.