

MODEL SUBCONTRACT
AGREEMENT FOR PURCHASE OF BRIDGE(S) TO HEALTH (B2H)
HOME AND COMMUNITY BASED SERVICES WAIVERS SERVICES

This AGREEMENT made this ___ day of _____, 20___, by and between _____, a Health Care Integration Agency under the Bridges To Health (B2H) Waiver program, hereinafter called the HCIA, located at _____, New York _____, and _____ hereinafter the Agency, located at _____, a Waiver services provider for the B2H Waiver program.

WHEREAS, the New York State Office of Children and Family Services (OCFS) and New York State Department of Health (DOH) have implemented the B2H Waiver program for children in foster care who are residents of New York State under the age of twenty-one years, and have determined at this time to allow children in foster care who meet applicable requirements to enroll in the B2H program, and

WHEREAS, OCFS duly issued a Request for Applications (RFA) to become health care integration agencies (HCIAs) to which the HCIA intends to apply and such RFA requires the HCIA to submit as part of its application executed agreements with B2H Waiver service providers such as the Agency, or the HCIA has submitted such an application that has been accepted by OCFS, and

WHEREAS, the HCIA has evaluated the Agency, in accordance with all applicable requirements for a B2H Waiver services provider, including but not limited to those requirements set forth in the B2H Program Manual, the RFA, and the Provider Agreement between the HCIA and OCFS and has determined prior to entering into this Agreement that the Agency possesses the requisite capacity, skills, competencies and qualifications to support children enrolled in a Waiver program effectively and has satisfied all applicable requirements, and

WHEREAS, the HCIA if determined qualified by OCFS will enter into a Provider Agreement For The Bridges To Health (B2H) Home and Community Based Services Waivers (Provider Agreement) with OCFS to act as a health care integration agency for the B2H Waiver program for all of the B2H Waivers and in the B2H Region(s) within the State of New York designated in the application of the HCIA in response to the RFA, or the HCIA has been determined qualified by OCFS as a health care integration agency for the B2H program for all of the B2H Waivers and in the B2H Region(s) within the State of New York designated in the application of the HCIA in response to the RFA and the HCIA has executed the Provider Agreement with OCFS, and

WHEREAS, pursuant to the Provider Agreement the HCIA shall recommend the Agency to OCFS and DOH as a provider of services under the B2H services network established by the HCIA and

WHEREAS, the Agency, under the terms of its corporate authority has the power to provide the services required to be performed pursuant to this Agreement, and

NOW THEREFORE, in consideration of the mutual promises herein contained the HCIA and the Agency mutually agree as follows:

SECTION I - TERM OF AGREEMENT AND RENEWAL

This Agreement shall commence upon execution by the parties. The commencement of this Agreement is contingent on a determination by OCFS that the HCIA is qualified as a health care integration agency, a determination by OCFS and DOH that the Agency is qualified as a provider of services under the B2H network established by the HCIA, and the enrollment of the Agency in the eMedNY system by DOH. This Agreement shall continue for the duration of the federal approval of any one of the B2H Waivers unless terminated pursuant to the termination provisions of this Agreement.

SECTION II - SCOPE OF SERVICES

1. It is mutually agreed that the HCIA and the Agency each provides B2H services in accordance with the standards and procedures prescribed by OCFS in the B2H Program Manual and other directives, which shall apply and be considered a part hereof; and that the Agency provides services in accordance with the Schedule A, which is attached hereto and incorporated herein.
2. The parties also agree that the OCFS may amend the B2H Program Manual from time to time as needed and the B2H Program Manual as amended shall apply and be considered a part hereof.
3. The applications as approved by the federal Center for Medicare and Medicaid Services (CMS) for Waivers for Home and Community Based Services for children in foster care and upon discharge from foster care until the age of 21 in the B2H program under section 1915(c) of the Social Security Act (Waiver applications), the appendices thereto and all written modifications and the Request for Applications shall apply and are hereby incorporated into this agreement.
4. In the event that the aforesaid Waivers are amended, the Parties agree that said amendment shall apply to this agreement.
5. The Agency warrants that it and its staff have all the necessary licenses, approvals and certifications currently required by the laws of any applicable municipality or local, state or federal government. The Agency further agrees to keep such required licenses, approvals and certificates in full force and effect during the term of this Agreement, or any extension thereof, and to secure any new licenses, approvals or certificates within the required time frames. The Agency shall promptly notify the HCIA of any enforcement action taken with respect to such license, approval or certificate and any action the Agency is taking with respect thereto. The HCIA agrees to thereafter notify OCFS of such enforcement action and Agency remediation.
6. The Agency does not discriminate against employees, applicants for employment, or applicants for or recipients of services because of race, creed, color, national origin, gender, age, disability, marital status or sexual orientation.

SECTION III - STANDARDS OF OPERATION

1. The HCIA and the Agency must maintain and update documentation of services and of all other information as required by the B2H Program Manual and other directives of OCFS. The HCIA agrees to record B2H documentation in the OCFS CONNECTIONS computer system in the form and manner as required by OCFS in the B2H Program Manual and other directives of OCFS and to make all required entries in a timely and accurate manner.
2. The HCIA, in accordance with 18 NYCRR 441.22(p), must notify OCFS and the local health department if a foster child is discovered to have an elevated blood lead level. The Agency also must provide such notice to the HCIA.
3. The HCIA and the Agency each agree to comply with the requirements of 18 NYCRR 431.7(a) to formulate and implement a written management plan to protect health history information related to an individual who has been diagnosed as having Acquired Immune Deficiency Syndrome (AIDS) or a Human Immunodeficiency Virus (HIV)-related illness or an HIV infection or laboratory tests performed on an individual for HIV-related illness.

The HCIA and the Agency each agree to require that staff, to whom confidential HIV-related information is disclosed as a necessity for providing services and in accordance with 18 NYCRR 431.7 and section 2782 of the Public Health Law, are fully informed of the penalties and fines for redisclosure in violation of New York State law and regulation.

The HCIA and the Agency each requires that any disclosure of confidential HIV-related information must be accompanied by a written statement which includes the following or substantially similar language:

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

4. As set forth in Focus VII of Appendix H of the Waiver applications, the HCIA trains the Agency’s staff in the effective and efficient use of Waiver services and clarifies policies. The Agency agrees to send its employees to training provided by the HCIA. Certificates of attendance and pre- and post-training testing shall be part of the training of Agency staff provided by the HCIA. The B2H Program Manual sets forth training requirements needed for compliance with the B2H Waiver philosophy and goals. The HCIA and the Agency each agree to send its employees to any mandated training for the B2H Waivers provided by OCFS.
5. As set forth in Appendix G-2 of the Waiver applications, the HCIA and the Agency are not authorized at any time to use restraints or restrictive interventions of any kind during the provision of B2H services. Use of such restraints or interventions constitutes a B2H serious reportable incident.
6. The HCIA and the Agency each complies with all applicable federal and State requirements for affirmative action, including but not limited to those requirements set forth in the RFA.
7. OCFS publishes the B2H Program Manual and such forms and instructions as are necessary to implement the Waivers. OCFS oversees the performance of each local department of social services (LDSS) participating in the Waivers and all participating HCIAS. In so doing, OCFS gathers, evaluates and monitors program and fiscal data and other reports submitted by the HCIA, LDSS and the Agency to determine the effectiveness of the Waiver programs and areas that may need change or improvement. OCFS develops and monitors the processes necessary to oversee the proper fiscal performance of the Waivers in accordance with the applications filed with the federal agency, CMS, and State requirements. The HCIA and the Agency each cooperates with all OCFS, LDSS and federal oversight activities.
8. As set forth in Focus VI of Appendix H of the Waiver applications, the HCIA and the Agency each maintains documentation of Waiver participant outcomes. Such documentation shall be in the form of standardized outcomes and measurements as prescribed by OCFS. The HCIA and the Agency each agree to participate at the request of a LDSS, OCFS, DOH or CMS in any and all program evaluation and monitoring activities. This shall include but not be limited to reports, monitoring visits, satisfaction surveys, and child specific outcomes activities.
9. The HCIA and the Agency each agree to be available to attend Fair Hearings as may be required by OCFS, DOH, the New York State Office of Temporary and Disability Assistance, or the LDSS.
10. OCFS may facilitate any unresolved disputes presented by the Waiver participants and/or medical consenters with the HCIA or the Agency. The HCIA and the Agency each cooperates with OCFS in such facilitation efforts.
11. The HCIA and the Agency each cooperates with OCFS reviews of the records of the HCIA or the Agency and other documentation to determine if the HCIA and the Agency meet qualifications and are in compliance with program requirements and to implement corrective action as directed by OCFS. Failure to comply may result in termination by OCFS of the Provider Agreement between the HCIA and OCFS or termination by the HCIA of this Agreement with the Agency.

SECTION IV- ADDITIONAL RESPONSIBILITIES OF THE HCIA

1. The HCIA fulfills all responsibilities of a health care integration agency as such responsibilities are defined in the Provider Agreement between the HCIA and OCFS, the B2H Waiver applications, the B2H Program Manual and the RFA, including but not limited to providing all necessary health care integration services and planning, establishing a network of B2H service providers, conducting activities to enroll any potential Waiver participant referred to the HCIA in a Waiver, and conducting administrative activities and quality management functions.
2. The HCIA shall take actions required by the B2H Program Manual and applicable procedures and directives of OCFS to identify and document the Agency as a B2H Waiver services provider for a particular participant in a B2H Waiver for whom the HCIA is providing B2H health care integration services. The HCIA shall share case information with the Agency as necessary for the Agency to provide B2H services to children enrolled in a Waiver program consistent with the B2H Program Manual and procedures and directives of OCFS.
3. The HCIA is responsible for monitoring the services and quality of care provided by the Agency. The requirements for monitoring the Agency are set forth in the three B2H Waiver Applications, B2H Program Manual and the Provider Agreement between the HCIA and OCFS.
4. The HCIA shall require, in accordance with the B2H Program Manual and other OCFS directives and guidelines, that appropriate employees of the Agency have self-disclosed any criminal record that they may have, that their backgrounds have been checked against the State Sex Offender Registry and that it is appropriate that they are engaged directly in the care and supervision of children.
5. As set forth in Focus II of Appendix H of the Waiver applications, the HCIA is responsible for the review of all Individualized Health Plans (IHPs) and other supporting documentation as specified in the B2H Program Manual for completeness, focusing on issues of health and welfare, the inclusion of the Waiver participant's goals, and the need for the Waiver and each service requested. In doing the review, the HCIA shall review the IHPs to verify that the frequency of health care integration matches the Waiver participant's needs. The HCIA shall monitor the Waiver participant's well-being, health status, and the effectiveness of the Waiver in enabling the individual to achieve his/her personal goals. This shall include a review to determine if the Waiver participant's feedback is included in the HCI's reports or the child's record.
6. As set forth in Focus II of Appendix H of the Waiver Applications, on an annual basis and at any time when the B2H services set forth in the IHP are revised, the health care integrator of the HCIA convenes a meeting to review the IHP and revise as necessary. The meeting must include the child and/or medical consentor and anyone he/she chooses and may include any party designated by the HCI, including but not limited to the caregiver of the child, Waiver service providers and the case planner, if applicable. Any changes to the amount, frequency, duration or addition of Waiver services must be approved by LDSS/DJJOY. Additional contacts required are detailed in the B2H Program Manual.
7. The parties agree that the HCIA shall provide a copy of this Agreement to OCFS.

SECTION V – ADDITIONAL RESPONSIBILITIES OF THE AGENCY

1. The Agency maintains its standing as an enrolled provider on the eMedNY system. It complies with the disclosure requirements set forth at 42 C.F.R. §455.105(b). The Agency agrees to comply with the rules, regulations and official directives of the Department of Health pertaining to Medicaid Providers including but not limited to Part 504 of 18 NYCRR.
2. The Agency must immediately notify the HCIA whenever a child enrolled in a Waiver program, or while in the course of providing services, has died or has suffered an injury, accident or illness which requires emergency medical treatment at a hospital on either an inpatient or outpatient basis.

3. The Agency agrees to observe Section 378-a of the Social Services Law for its employees as set forth in the B2H Program Manual and other directives of OCFS. Further, the Agency agrees to obtain from each employee who will be engaged directly in the care and supervision of one or more children enrolled in the Waiver, a sworn statement indicating whether, to the best of their knowledge, the employee has ever been convicted of a misdemeanor or a felony crime in any jurisdiction. The Agency also agrees to perform a background check of such employees against the State Sexual Offender Register. The Agency will determine whether it is appropriate that the employee is engaged directly in the care and supervision of children and whether to employ such person, consistent with guidelines issued by OCFS. The Agency shall bear the cost associated with these checks.

4. The Agency agrees to comply with the provisions governing the reporting of suspected cases of child abuse or maltreatment, as set forth in sections 413-416 and 418 of the Social Services Law, and the requirements for State Central Register data base checks as set forth in section 424-a of the Social Services Law, in accordance with the Program Manual and other OCFS directives and guidelines.

5. The Agency agrees to notify the HCIA of any material change in the disclosures set forth in its proposal including but not limited to its financial ability to perform under this agreement, any criminal conviction of a member of the Board of Directors, any disqualification of a member of the Board of Directors or disqualification or involuntary termination of the Agency from any government program.

6. The Agency complies with all applicable federal and State requirements for assistance to potential or active children in a Waiver program and medical consenters with limited proficiency in English, including but not limited to those requirements set forth in the federally-approved B2H applications and the RFA.

7. As set forth in Focus IV of Appendix H of the Waiver applications, the Agency establishes a process and policy for the report of serious incidents to OCFS in accordance with the Waiver applications and the B2H Program Manual as part of its systematic safeguards to protect children enrolled in a Waiver program from critical incidents and other life-endangering situations.

8. As set forth in Focus V of Appendix H of the Waiver applications, the Agency establishes a process whereby a child duly enrolled in a Waiver and for whom the Agency is providing a B2H service, and/or the child's family or medical consentor, may file grievances in accordance with Appendices of the Waiver applications, federal and State rules and procedures, and the B2H Program Manual.

9. As set forth in Focus IV of Appendix H of the Waiver applications, the Agency agrees to establish safeguards to protect and support Waiver participants. In addition, the Agency agrees to create and maintain disaster plans and to share these plans with the child enrolled in a Waiver program and/or medical consentor.

10. The Agency shall cooperate with OCFS informational activities related to the B2H Waivers, including but not limited to the following:

- The Agency shall cooperate with the B2H Quality Advisory Board.
- The Agency shall provide information requested by OCFS when assessing the satisfaction of the delivered services to children enrolled in a Waiver program and/or medical consentors and addressing trends that may require modifications of particular policies and procedures.
- The Agency shall cooperate with OCFS in the Quarterly Regional Forum(s) of Waiver children enrolled in a Waiver program, consentors, families, advocates, HCIAs and providers to gather information regarding how the Waiver is functioning in any region where the Agency is operating under the B2H Waivers.
- The Agency shall assist in making known to children enrolled in a Waiver program and medical consentors the OCFS toll-free telephone consultation line for use by children enrolled in a Waiver program, medical consentors and others to obtain general information.
- The Agency shall cooperate with OCFS in OCFS efforts to facilitate an unresolved dispute with the Agency presented by B2H children enrolled in a Waiver program or medical consentors.

- The Agency shall assist OCFS in a review of IHPs by making records necessary for the review available at the time and places specified by OCFS.

11. The Agency cooperates with activities of the HCIA in fulfilling the responsibilities of a B2H health care integration agency as such responsibilities are defined in the Provider Agreement between the HCIA and OCFS, the B2H Waiver applications, the B2H Program Manual and the RFA, including but not limited to providing all necessary health care integration services and planning, establishing a network of B2H service providers, conducting activities to enroll any potential children referred to the HCIA in the Waiver, reviewing all IHPs, participating in any meeting to review the IHP when designated as a participant by the HCIA , monitoring the well-being and health status of children enrolled in a Waiver program and the effectiveness of the Waiver, and conducting administrative activities and quality management functions.

SECTION VII – REIMBURSEMENT

1. The Agency agrees that reimbursement under this Agreement is limited to and shall be made only for providing B2H services to a child who has been duly enrolled in a Waiver in accordance with rates established by OCFS. Such rates shall be posted on the OCFS Website.
2. All claims by and payments to the Agency shall be made through the eMedNY system. Payment to the Agency is made only for approved B2H services provided to children enrolled in a Waiver program. The Agency agrees that payment for its B2H services is contingent upon the Agency submitting an appropriate claim form to the person designated by the DOH certifying the satisfactory completion of the Agency's performance and setting forth the payment to be made.

SECTION VIII – GENERAL RESPONSIBILITIES FOR PARTIES

1. The Agency must maintain sufficient staff, facilities and equipment, in full compliance with all applicable requirements of OCFS in order to provide the services, at the capacity, if any, as set forth in Schedule A of this Agreement in compliance with the requirements of the B2H Waiver applications and the B2H Program Manual. The Agency agrees to accept all referrals from the HCIA for B2H Waiver services within the geographical location, within the capacity for services stated in Schedule A, and to provide services that meet the needs of the child in locations that maximize the use of community-based settings, such as the child's home or school. The Agency is responsible for informing the HCIA when its capacity has been reached. The HCIA agrees not to refer additional children enrolled in a Waiver program to the Agency until allowable according to the capacity for services of the Agency as stated in Schedule A.
2. The Agency agrees to provide the B2H services described in Schedule A of this Agreement at the location(s) listed in Schedule A of this Agreement, when appropriate (such as physical plant location of the Day Habilitation provider), and agrees to provide the HCIA with written notification of the location(s) of any additional support services that are provided outside of the aforementioned address(s) in conjunction with an applicable IHP.

SECTION IX - BOOKS, RECORDS AND REPORTS

1. All B2H records are foster care records, so long as the child enrolled in a Waiver program is placed in foster care, including trial discharge status. All case specific foster care information contained in the Agency's files must be held confidential by the HCIA and the Agency pursuant to the applicable provisions of the State law and any regulations promulgated there-under, including, but not limited to, sections 372 and 422 of the Social Services Law, section 2782 of the Public Health Law, and 18 NYCRR Parts 357, 423, 428, 431 and 466, as well as all applicable federal laws and regulations, including but not limited to, the Civil Rights Act of 1964. Such foster care information must not be disclosed except as authorized by law and unauthorized disclosure may result in criminal and/or civil penalties (see section 422 (12) of the Social Services Law).

2. The HCIA and the Agency agree to safeguard the confidentiality of information relating to individuals and their families who may receive services in the course of this project. The HCIA and the Agency shall maintain the confidentiality of all such information with regard to services provided under this Agreement in conformity with the provisions of applicable State and Federal laws and regulations.
3. The records of individual recipients of services maintained by the Agency must be made available to the HCIA and OCFS upon request, in a form, the manner and time as required by the HCIA or OCFS.
4. The Agency agrees to maintain financial books, records, and necessary supporting documents as required by OCFS or DOH. The Agency must use accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of the services provided under this Agreement. The Agency agrees to collect statistical data of a fiscal nature on a regular basis and to make fiscal and statistical reports at the times prescribed by and on forms supplied by OCFS or DOH.
5. Such financial and statistical records are subject to inspection, review, excerpts, transcription or audit by authorized county, State and/or federal personnel.
6. The Agency agrees to retain all books, papers, records and other documents relevant to this Agreement (hereinafter, collectively, "the Records"), in accordance with the requirements detailed in the B2H applications and the B2H Program Manual, but at a minimum for thirty (30) years after the date of discharge from foster care of a child who received B2H services, during which time authorized State and/or federal auditors will be provided with full access to and the right to examine the same. In addition, the Office of the State Comptroller, New York Attorney General's Office, or any of their duly authorized representatives, as well as the agency or agencies involved in the Waivers, including but not limited to OCFS and DOH, shall have access to the Records during normal business hours at an office of the Agency within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying.

SECTION X - ACCOUNTABILITY

1. The Agency agrees that program and/or facility review pertaining to the delivery of B2H services under this Agreement may be conducted at any reasonable time by qualified personnel from those State and federal agencies with the required legal powers and statutory authority to conduct such activities. Such reviews may include, but not be limited to, meetings with recipients of services, review of the B2H case records including, but not limited to, all information in the case records, review of service policy and procedural issues, review of staffing and job descriptions, and meetings with staff directly or indirectly involved in the provision of B2H services.
2. This agreement shall not be modified or changed in any manner without the prior written consent of OCFS.
3. The Agency must not make any subcontract for or assignment of the performance of this Agreement, other than a subcontract to provide B2H services for adaptive and assistive equipment or accessibility modifications.
4. The Agency covenants and agrees that neither it nor any of its directors, officers, members, or employees has any interest, nor will they acquire any interest, directly or indirectly, which would substantially or adversely conflict in any manner or degree with the Agency's performance of this Agreement.

SECTION XI – COMPLIANCE WITH LAW

1. The Agency represents and agrees to comply with all applicable federal laws, including, but not limited to, the requirements of the Civil Rights Act of 1964 as amended, the Age Discrimination Employment Act of 1967 as amended, the Federal Rehabilitation Act of 1973 as amended, the Howard M. Metzenbaum

Multiethnic Placement Act of 1994 (P.L. 103-382) as amended by the Small Business Job Protection Act of 1996 (P.L. 104-188), the Indian Child Welfare Act of 1978 (P.L. 95-608) and Executive Order No. 11246 entitled "Equal Employment Opportunity" as amended by Executive Order No. 11375 and as supplemented in HCIA of Labor Relations, 41 CFR Part 60. The Agency also agrees to observe all applicable federal regulations contained in 28 CFR Part 41; 45 CFR Parts 74, 84, 93; 1355 and 1356.

2. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the HCIA and the Agency will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. The HCIA and the Agency agree that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Agreement. The HCIA and the Agency are subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 of the Labor Law as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

3. The HCIA, and where appropriate, the Agency, shall comply with State and Federal laws requiring the production and submission of audit reports. The New York State Office of Attorney General requires that not-for-profit organizations file a FORM CHAR500 on an annual basis, and attach to that document, an independent audit report if the facility's total support and revenue exceed \$250,000. The independent audit report, which is to be prepared by a Certified Public Accountant, must include financial statements prepared in accordance with Generally Accepted Accounting Principles, and contain the following documents:

- A Statement of Financial Position
- A Statement of Activities
- A Statement of Functional Expenses
- A Statement of Cash Flow

SECTION XII – TERMINATION OF AGREEMENT

1. The Agreement may be terminated by the mutual written agreement of the contracting parties.

2. The Agreement may be terminated by the HCIA upon thirty (30) days prior written notice to the Agency, for cause, upon the failure of the Agency to comply with the terms and conditions of this Agreement, including the attachments hereto. The HCIA will give the Agency written notice specifying the Agency's failure.

3. In addition to the termination provisions set forth above, the HCIA has the right to terminate this Agreement immediately, upon written notice of termination to the Agency, if the Agency has failed, at any time, to comply with any applicable federal, State or local health, safety or fire code regulations; or in the event that any license, approval or certification of the Agency, required by federal, state or local government is revoked, not renewed, or otherwise not in full force or effect, or in the event that the Agency fails to secure a new such license, approval or certification during the term of this Agreement, if required; or if the health, safety, or well-being of a child enrolled in a Waiver program is at risk, or if a child enrolled in a Waiver program is injured due to the fault of the Agency; or if the B2H Waiver applications are denied by CMS or the B2H Waiver program is terminated by OCFS.

4. Notice of termination will be given in writing specifying the reasons for termination and the effective date of termination. Such written notice will be delivered via registered or certified mail with return receipt requested or will be delivered by hand with receipt provided by the Agency. The date of such notice shall be deemed to be the date the notice is received by the Agency established by the receipt returned, if delivered by registered or certified mail, or by the receipt granted by the Agency, if the notice is delivered by hand. The Agency agrees not to incur any new obligations or to claim any expenses incurred after the

effective date of the termination. In any event, the effective date of termination will not be later than the Agreement expiration date.

5. Upon termination or upon expiration of the term of this Agreement, the HCIA will arrange for the transfer to another B2H Waiver services Agency of the responsibility for all children covered by this Agreement then serviced by the Agency.

6. The Agency must comply with all B2H close-out procedures, including but not limited to: accounting for and refunding to the DOH through the eMedNY system within (6) months any overpayments which have been paid to the Agency pursuant to this Agreement; not incurring or paying any further obligation under this Agreement beyond the termination date; transmitting to the HCIA or its designee, on written request, copies of all books, records, papers, documents and materials pertaining to the financial details of any services provided under the terms of this Agreement; and transmitting to the HCIA or its designee, on written request, copies of all case-specific information and documentation concerning children in the care of the Agency.

SECTION XIII – INDEMNIFICATION AND INSURANCE

1. The HCIA and the Agency agree that the Agency is an independent contractor and is not an employee of the HCIA or the State of New York. The Agency agrees to indemnify the HCIA and the State of New York for any loss the HCIA, or the State of New York, may suffer if such losses result from the claims of any person or organization (excepting only the HCIA) injured by the negligent acts or omissions of the Agency, its officers and/or its employees or subcontractor(s). Furthermore, the Agency agrees to indemnify, defend, and save harmless the State of New York, the HCIA, and their officers, agents, and employees from any and all claims and losses accruing or resulting to any and all contractors, and any other persons, firm, or corporations furnishing or supplying work, services, materials or supplies in connection with the performance of this Agreement, and from all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the Agency in the performance of this Agreement, and against any liability, including costs and expenses, for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, or use or disposition of any data furnished under this Agreement, or based on any libelous or other unlawful matter contained in such data or written materials in any form produced pursuant to this Agreement.

2. The Agency further agrees to procure and maintain in force, for the duration of this Agreement, insurance in types and in the amounts as determined by the HCIA. Such coverage must be identified and entered upon a Standard Insurance Certificate or its acceptable substitute and be signed by the Agency's insurance company, agent or broker.

SECTION XIV - GOVERNING LAW

1. This Agreement shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

SECTION XVI – RESPONSIBLE VENDOR.

1. By signing this Agreement, the Agency certifies that within the past three years the Agency has engaged in no actions that would establish a basis for a finding by the HCIA that the Agency is a non-responsible vendor or, if the Agency has engaged in any such action or actions, that all such actions have been disclosed to the HCIA prior to entering into this Agreement. The Agency must update the OCFS Vendor Responsibility Questionnaire whenever the information contained in the original questionnaire submitted with the Agency's application changes. The actions that would potentially establish a basis for a finding by the HCIA that the Agency is a non-responsible vendor include, but are not limited to:

- The Agency has had a license or contract suspended, revoked or terminated by a governmental agency.

- The Agency has had a claim, lien, fine, or penalty imposed or secured against the Agency by a governmental agency.
- Agency has initiated a bankruptcy proceeding or such a proceeding has been initiated against the Agency.
- The Agency has been issued a citation, notice, or violation order by a governmental agency finding the Agency to be in violation of any local, state or federal laws.
- The Agency has been advised by a governmental agency that a determination to issue a citation, notice or violation order finding the Agency to be in violation of any local, state or federal laws is pending before a governmental agency.
- The Agency has not paid all due and owed local, state and federal taxes to the proper authorities.
- The Agency has engaged in any other actions of a similarly serious nature.

Where the Agency has disclosed any of the above to the HCIA, the HCIA may require as a condition precedent to entering into the Agreement that the Agency agree to such additional conditions as will be necessary to satisfy the HCIA that the vendor is and will remain a responsible vendor. By signing this Agreement, the Agency agrees to comply with any such additional conditions that have been made a part of this Agreement. By signing this Agreement, the Agency also agrees that during the term of the Agreement, the Agency will promptly notify the HCIA if the Agency engages in any actions that would establish a basis for a finding by the HCIA that the Agency is a non-responsible vendor, as described above. Should the Agency fail to notify the HCIA of any change in the vendor responsibility information or should the HCIA otherwise determine that the Agency has ceased to be a responsible vendor for the purposes of this Agreement the HCIA may terminate this Agreement upon thirty (30) days written notice to the Agency. Upon determination that the Agency is no longer a responsible vendor the HCIA may, in its discretion and as an alternative to termination pursuant to this paragraph, notify the Agency of the determination that the Agency has ceased to be a responsible vendor and set forth the corrective action that will be required of the Agency to maintain the Agreement. Should the Agency fail to comply with the required corrective action within thirty (30) days of the date of notification, or such longer period as may be specified therein, the HCIA may, upon written notice similarly served, immediately terminate this Agreement,

SECTION XVII - PUBLICATIONS AND COPYRIGHTS

1. The results of any activity supported under this Agreement may not be published by the Agency without prior written approval of OCFS, which results (1) shall acknowledge the support of OCFS and the State of New York and, if funded with federal funds, the applicable federal funding agency, and (2) shall state that the opinions, results, findings and/or interpretations of data contained therein are the responsibility of the Agency and do not necessarily represent the opinions, interpretation or policy of the Office or the State of New York.

2. OCFS and the State of New York expressly reserve the right to a royalty-free, non-exclusive and irrevocable license to reproduce, publish, distribute or otherwise use, in perpetuity, any and all copyrighted or copyrightable material resulting from this Agreement or activity supported by this Agreement. All publications by the Agency covered by this Agreement shall expressly acknowledge OCFS's right to such license.

3. All of the license rights so reserved to OCFS and the State of New York under this paragraph are equally reserved to the United States Department of Health and Human Services and subject to the provisions on copyrights contained in 45 CFR 92 if the Agreement is federally funded.

4. The Agency agrees that at the completion of any scientific or statistical study, report or analysis prepared pursuant to this Agreement, it will provide to OCFS at no additional cost a copy of any and all data supporting the scientific or statistical study, report or analysis, together with the name(s) and business address(es) of the principal(s) producing the scientific or statistical study, report or analysis. The Agency agrees and acknowledges the right of OCFS, subject to applicable confidentiality restrictions, to release the name(s) and business address(es) of the principal(s) producing the scientific or statistical study, report or analysis, together with a copy of the scientific or statistical study, report or analysis and all data supporting the scientific or statistical study, report or analysis.

Section XVIII

The documents referenced in this Model Subcontract are available on the OCFS website at www.ocfs.state.ny.us/main/b2h and include the following:

- Federally Approved Waiver Applications:
 - B2H for children with Serious Emotional Disturbances (SED)
 - B2H for children with Developmental Disabilities (DD)
 - B2H for children with Medical Fragility (Med F)
- B2H Program Manual
- Provider Agreement
- Request for Applications

IN WITNESS HEREOF:

The parties hereto have executed this agreement as of the day and year first above written.

(Name of HCIA)

by: _____
(print name) (signature)

date: _____

STATE OF NEW YORK)
COUNTY OF _____)

On this _____ day of _____ 20__,

personally came _____ before me, to me known, who being duly sworn, did depose and say that (s)he/they resides in; _____; that he/she/they is (are) the _____ of the (name of corporation) _____, the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by authority of the board of directors of said corporation.

Notary Signature _____

Qualified in _____ County

Regis. # _____

My Commission expires _____

(Name of Agency)

by: _____ Executive Director _____
(print name) (signature)

date: _____

STATE OF NEW YORK)
COUNTY OF _____)

On this _____ day of _____ 20__,

personally came _____ before me, to me known, who being duly sworn, did depose and say that (s)he/they resides in; _____; that he/she/they is (are) the _____ of the (name of corporation) _____, the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by authority of the board of directors of said corporation.

Notary Signature _____

Qualified in _____ County

Regis. # _____

My Commission expires _____