

New York State Department of Health  
Bureau of Early Intervention

**Early Intervention Provider Agreement (effective 2018)**

This Provider Agreement is entered into by and between the New York State Department of Health (hereinafter referred to as the "Department"), and

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<NYS Provider ID/State ID> \_\_\_\_\_ (hereinafter referred to as the "Provider"). Provider acknowledges that this agreement is made by and between the Department and Provider, as Provider is currently organized and constituted or presented. The Department reserves the right to terminate this agreement should the Provider reorganize or otherwise substantially change the character of its corporate or other business structure or presentation.

**Purpose of Agreement**

The purpose of this Agreement is to set forth the terms and conditions for participation in the Early Intervention Program (EIP) and to establish the obligations, expectations and relationship between the Department, municipalities within the State and the Provider.

Providers intending to receive service authorizations for early intervention services directly from a Municipality and payment from the Municipality for such services rendered must complete and comply with the attached **Appendix 1- Payee Provider Agreement/Service Authorizations and Payment**. Appendix 1 sets forth the terms and conditions for such authorizations and payment.

**Definitions**

When used herein, the following terms shall have the following meanings:

- "Applied behavior analysis" or "ABA" means the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior.
- "Early Intervention Official" or "EIO" shall mean an appropriate municipal official designated by the chief executive officer of a municipality and an appropriate designee of such official.
- "Early Intervention Program" or "EIP" means the program established pursuant to Title II-A of Article 25 of the Public Health Law.
- "Family/Caregiver Support Group" is the provision of early intervention services to a group of parents, caregivers (foster parents, day care staff, etc.) and/or siblings of eligible children for the purposes of enhancing their capacity to care for and/or enhance the development of the eligible child and providing support, education, and guidance to such individuals relative to the child's unique developmental needs.
- "Group Developmental Intervention Visit" shall mean the provision of early intervention services by appropriate qualified personnel to eligible children in a group which may also include children without disabilities, at an approved Provider's site or in a community-based setting.
- "Home and Community Based Individual/Collateral Visits" shall mean the provision by appropriate qualified personnel of services to an eligible child and/or parent or other designated caregiver at the child's home or any other natural environment in which children under three years of age are typically found (including day care centers other than those located at the same premises as the Provider, and family day care homes).
- "Municipality" shall mean a county outside of the City of New York or in the case of a county located within the City of New York. For purposes of this agreement, "Municipality" shall further mean the Municipality in which the Provider renders evaluations, service coordination or early intervention services to children residing in such Municipality.
- "Office/Facility-Based Individual/Collateral Visits" shall mean the provision by appropriate qualified personnel of services to an eligible child and/or parent or other designated caregiver at an approved Provider's site (including day care centers located at the same premises as the Provider).

- “Parent-Child Group” is a group comprised of parents or caregivers, children, and a minimum of one appropriate qualified Provider of early intervention services at an early intervention Provider’s site or a community-based site (e.g., day care center, family day care, or other community settings).
- “Provider” shall mean an agency or individual approved in accordance with 10 NYCRR § 69-4.5 to deliver service coordination, evaluations and screenings and/or services in the EIP.
  - “Agency Provider” shall mean an entity which employs qualified personnel as defined in 10 NYCRR §69-4.1(ak), and may contract with individual providers or other agency providers which are approved by the Department, for the provision of early intervention program evaluations and screenings, service coordination, and/or early intervention services.
  - “Individual Provider” shall mean a person who holds a state-approved or recognized certificate, license or registration in one of the disciplines set forth in 10 NYCRR § 69-4.1(ak) and who either receive service authorizations for early intervention services from a Municipality and/or are under contract with an agency provider.
- “Services” shall mean those early intervention services as defined in 10 NYCRR 69-4.1(l) that the Provider identified in the Provider’s application to the Department as being able to provide, either directly or for Agency Providers through employees and/or contracts with Individual Providers or other Agency Providers.
- “Service authorization” shall mean approval by a municipality relating to specific services contained in a child’s Individualize Family Service Plan (IFSP) and includes the following details: the provider of record; the type of service; whether it is a facility based or home and community based service; whether it is a basic or extended service; how many times per week the service can be provided; the rendering provider; and the diagnosis for the child.
- “Service Coordination Services” shall mean assistance provided by a service coordinator to enable an eligible child and the child’s family to receive the rights, procedural safeguards and services that are authorized to be provided under the EIP.
- “State” shall mean the State of New York.

**Now, therefore, the Department and Provider agree as follows:**

**I. Appendix**

The Provider cannot receive service authorizations from a Municipality and claim for early intervention services rendered unless requested by the provider and approved by the Department in this agreement. The following appendix, when checked, shall be incorporated and made a part of this agreement as if fully set forth herein:

Appendix 1- Payee Provider Agreement/Service Authorizations and Payment

**II. Role of Department, Municipalities and Providers in the Early Intervention Program**

Pursuant to Public Health Law (PHL) § 2550, the Department is the lead agency responsible for the administration of the Early Intervention Program in this State. Each individual Municipality and the city of New York is responsible for the local administration of the program, which includes but is not limited to, accepting referrals of children potentially eligible for program services, assigning initial service coordinators, participating in IFSP meetings, ensuring that early intervention (EI) services contained in an IFSP are appropriately delivered, and reimbursing providers for services not covered by Medicaid or commercial insurance according to rates set by the Department pursuant to regulations. PHL authorizes the Department to contract with a fiscal agent that will handle provider claiming and payment. The Provider hereby understands and agrees that the claims submitted shall be accurate and complete, and shall reflect the actual service rendered. The Provider further understands and agrees that, pursuant to PHL § 2557(3) and (3-a), PHL § 2552(1) and 10 NYCRR § 69-4.12, both the Department and the Municipality are authorized to monitor and audit evaluators, service coordinators and Providers of services within the Municipality. Provider understands and agrees that certain provisions within this Agreement that require notice to the Municipality or includes the Municipality with respect to obligations or requirements, are designed to acknowledge the Municipality’s role in the local administration of the Early Intervention Program and in the oversight of Providers in the delivery and payment for evaluations and services provided to children within such Municipality.

### III. Provider Responsibilities

- A. Provider shall comply with all applicable provisions of law, rule and regulation when participating in the Early Intervention Program, including but not limited to PHL §2550 et seq, 10 NYCRR SubPart 69-4, Part C of the Individuals with Disabilities Education Act and its regulations at 34 CFR Part 303, and the Family Educational Rights and Privacy Act (FERPA) and its regulations at 34 CFR Part 99.
- B. Agency Provider understands and hereby agrees that it is responsible for and shall ensure that its employees and Individual Providers under contract with such Agency Provider comply with the provisions of applicable law and regulations, and with the terms of this Agreement when delivering evaluations or services on behalf of the Agency Provider.
- C. Provider hereby agrees that Provider can and shall deliver services in the areas of the State identified by the Provider to the Department as part of this agreement but the Provider is not prohibited from providing services in additional areas of the State. Provider shall only conduct evaluations and deliver the services for which Provider is approved by the Department to deliver.
- D. Provider understands and hereby agrees that nothing in this Agreement or Appendix 1 of this Agreement shall be deemed to require or otherwise hold the Department responsible for making payment to the Provider for evaluations or services rendered under the EIP. Provider understands and agrees that reimbursement for evaluations and services is governed by PHL §2557 and §2559. In accordance with those sections, Providers who receive direct service authorizations from a Municipality shall, in the first instance and where applicable, seek reimbursement under a health insurance policy, plan or contract, including under the medical assistance program or the child health insurance program, prior to seeking reimbursement from a Municipality for services rendered to a child who has health insurer or health maintenance organization coverage. Payments will be made by insurers and the Medicaid Program directly to the Provider and remittance advices will be submitted by the third-party payers to the Department's state fiscal agent (SFA) with claims adjudication information. The SFA will inform the Provider of denied claims and will work with the Provider to address any denials resulting from inaccurate or incomplete information required for payment (for example, missing diagnostic or procedural codes.) Pursuant to PHL §2557, approved costs, other than those reimbursable under a health insurance policy, plan or contract, including under the medical assistance program or the child health insurance program, for evaluations and services shall be a charge upon the Municipality wherein an eligible child resides. Provider shall not seek or be entitled to reimbursement directly from the Department for evaluations or services rendered to eligible children under the EIP.
- E. Provider understands and hereby agrees that the Provider cannot be involved in any activity relating to the provision of evaluations or services rendered under the EIP if the Provider is excluded from Medicaid or Medicare.
- F. Agency Provider understands and hereby agrees that the Agency Provider must verify that a person is not excluded from Medicaid or Medicare at the time of hire or upon entering into contract and at least verify every thirty (30) days that current employees and contractors used by the Agency Provider have not been excluded.
- G. Provider understands and hereby agrees that nothing in this Agreement shall be construed as guaranteeing to Provider a specific number of evaluation assignments or service authorizations. Provider understands and agrees that the Provider may not be assigned any evaluations or provided with any service authorizations in the EIP, and/or that service authorizations may be modified at any time in accordance with PHL, for reasons including but not limited to the eligible child has progressed under the EIP and the IFSP team determines that a service should be reduced or is no longer needed. Provider further understands that payment for evaluations and services under the EIP is subject to funds being appropriated and made available therefor.
- H. Provider understands and hereby agrees that all sites are under the control of the Provider and will be maintained in compliance with all applicable laws and regulations and implement a policy for addressing health, safety and sanitation issues that conforms with standards established by the Department and where applicable, in conformance with the American with Disabilities Act. Provider further understands that all sites under the control of the Provider must be approved by the Department prior to rendering EIP services at each site.

**IV. Personnel**

- A. Provider hereby affirms that Provider can deliver services on a twelve-month basis and provides flexibility in hours of service delivery, which includes but is not limited to, rendering services outside of standard business and/or operating hours. This includes but is not limited to service delivery on weekend and evening hours in accordance with eligible children's IFSPs.
- B. Provider shall maintain a statement from a health care provider which documents that the Provider, and employees and Individual Providers under contract with an Agency Provider, has no diagnosed disorder or condition that would preclude him/her from providing services. Such statement shall be obtained prior to the provision of services and updated on an annual basis thereafter.
- C. Provider shall maintain proof from a health care provider that the Provider, and/or employees and Individual Providers under contract with an Agency Provider, meet the following requirements, prior to provision of services:
- measles, mumps, and rubella titer and/or vaccine; and annual Mantoux/PPD or chest X-ray with the exception of EI Providers who are also licensed day care providers by the NYC Bureau of Day Care. NYC Bureau of Day Care Providers must demonstrate that upon commencement of work, a record of testing performed for tuberculosis infection, and further testing at any time, if required by the NYC Bureau of Day Care.
  - have the following recommended vaccines or has documented refusal, prior to the provision of EI Provider services: Hepatitis B vaccine, Tetanus immunization within the past 10 years, Diphtheria, Pertussis, Varicella, and Influenza.
- D. In accordance with Social Services Law (SSL) §424-a and §495, Agency Provider shall conduct a Staff Exclusion List (SEL) check of potential hires through the New York State Justice Center for the Protection of People with Special Needs (Justice Center) prior to conducting a Statewide Central Register (SCR) of Child Abuse and Maltreatment check. The Agency Provider is responsible for initiating this process with the state's Justice Center.
- E. Providers shall, in accordance with Social Services Law (SSL) § 424-a, ensure that Statewide Central Register Database Check Form LDSS-3370 is completed and submitted to the SCR for: (i) any person who is being actively considered for employment, and who will have the potential for regular and substantial contact with children who receive early intervention services; and (ii) any prospective Individual Provider providing goods and services who will have the potential for regular and substantial contact with children who receive services. Agency Provider shall complete the SCR database check and must receive an acceptable response from the SCR prior to authorizing or allowing any person or Individual Provider to have any unsupervised contact with a child receiving early intervention services. If any person about whom the Agency Provider has made an inquiry is found to be the subject of an indicated report of child abuse or maltreatment, such Agency Provider must, in accordance with SSL § 424-a, determine, on the basis of information it has available and in accordance with guidelines developed and disseminated by the NYS Office of Children and Family Services for child care services, whether to hire, retain or use the person as an employee, volunteer or contractor or to permit the person providing goods or services to have access to children being served by the Agency Provider. Whenever such person is hired, retained, used or given access to children in the EIP, such Agency Provider must maintain a written record, as part of the application file or employment or other personnel record of such person, of the specific reason(s) why such person was determined to be appropriate and acceptable as an employee, volunteer, contractor or provider of goods or services with access to children being served the Agency Provider.
- F. If Agency Provider denies employment or determines not to retain or utilize such person, Agency Provider shall comply with the requirements contained in SSL § 424-a.
- G. Provider shall review and become familiar with the Department's guidance and written policies and procedures for the provision of EI services, including but not limited to guidance regarding referral, eligibility, evaluations, provision of services, record keeping and claiming. Agency Providers shall ensure that its employees and Individual Providers under contract with such Agency Providers are familiar with such guidance, policies and procedures.
- H. Agency Providers shall only utilize qualified personnel as defined in 10 NYCRR §69-4.1 as appropriate for the provision of authorized services, and shall ensure that such qualified personnel maintain current

registration, certification or licensure in the area for which they are providing services on behalf of the agency.

- I. Individual Providers shall demonstrate proficiency in early childhood development and only render services within the scope of practice for which they are licensed and currently registered, or certified, as applicable, and within the areas in which the Individual Provider has been trained and educated, and with which he or she is familiar and competent.
- J. Agency Providers shall assign a speech language pathologist to provide services to a child when a speech service is authorized in a child's IFSP; the Agency Provider shall not assign a certified teacher when speech services are authorized in the child's IFSP and requested by the service coordinator.
- K. Provider, employees and independent contractors (including Service Coordinators) utilized by a Provider Agency to deliver services shall demonstrate continued professional development related to their professional field of practice, including but not limited to family-centered services, child outcomes, quality improvement and on state and municipal policies and procedures of the early intervention program, including participation in Department-sponsored training. Provider shall participate in a minimum of ten clock (10) hours of professional development activities per year. Such professional development activities are not restricted to Department sponsored training and may include other professional activities necessary for licensure and activities identified by the Provider to increase the Provider's professional skills and knowledge. Activities may include but are not limited to formal continuing education courses/workshops, formal academic study, independent study, mentoring, and in-service training programs. Activities may also include Department sponsored training, Municipal sponsored training, webcasts, and webinars which may be provided particularly during periods of introduction of a new policy and procedure. Provider will maintain documentation of professional development activities and make such documentation available upon request to the Department and/or Municipality.
- L. Agency Providers will, before utilizing a student/intern, a physical therapy assistant or an occupational therapy assistant for the provision of EI provider services, notify the Municipality, service coordinator and parent that the Agency Provider intends to have a student/intern, a physical therapy assistant or an occupational therapy assistant provide services under the supervision of a licensed practitioner; provide the Municipality, service coordinator and parent a written plan for how the supervising practitioner will assume professional responsibility for the services provided under his or her direction and how the need for continued services will be monitored; and have agreement from the Municipality, service coordinator and parent prior to the provision of services by a student/intern, a physical therapy assistant or an occupational therapy assistant.
- M. Agency Providers shall maintain, using the Department's electronic database, a contemporaneous list of their employees and Individual Providers under contract with such Agency Provider which reflects the current staff available to provide EI services.
- N. Provider shall be familiar with and comply with all applicable Medicaid rules and regulations. Provider shall not engage in any act which constitutes an unacceptable practice under the Medical Assistance Program as enumerated in Title 18 of the New York Code of Rules and Regulations Section 515.2(a) and (b) (1) through (b) (15), (17) and (18). Agency Providers shall not utilize employees or Individual Providers or vendors, who have been excluded from participation in the Medical Assistance Program. Agency Providers shall ensure that they do not employ, or are affiliated with, any individual or agency, which has been excluded from either the Medicare or the Medicaid program. Providers shall routinely but no less than every thirty (30) days review federal and state databases to determine if employees, prospective employees, and contractors (Individuals and other Agency Providers), have been excluded or terminated from participation in the Medical Assistance Program.
- O. Provider shall provide their own equipment and supplies including toys necessary to conduct their business. Provider understands that it is not the responsibility of the Department or Municipalities to supply such equipment, supplies or toys. Provider shall comply with applicable health and safety standards, including those related to use of toys, equipment and supplies.
- P. Provider shall obtain access to the Department's electronic database for at least one person for the purpose of managing EI information necessary to conduct business utilizing the electronic database.

**V. Services**

- A. Provider shall use informed clinical opinion, observation and ongoing assessment in collaboration with the family/caregiver and additional team members to prioritize identified family/caregiver areas of concern. Provider shall be an active participant in the development of integrated family & child focused goals and outcomes for the IFSP. As a licensed and/or certified professional focused on their field of practice, Provider shall encourage families and caregivers to collaboratively identify priorities as they relate to a child's participation in everyday activities; observe families/caregivers and their children to engage in activities when clinically appropriate; collaboratively document child and family strengths, accomplishments, interests and needs which will assist a family to be an informed advocate for their child/children and active member of the IFSP team; and inform an IFSP team, if the provider is unable to attend an IFSP meeting.
- B. Provider shall render services in conformance with the child's and family's IFSP, including but not limited to functional outcomes, the duration specified, location and frequency of such service.
- C. Provider understands and agrees that the use of aversive intervention in any form is strictly prohibited when providing EIP services. Aversive intervention is defined in 10 NYCRR § 69-4.9 to mean an intervention that is intended to induce extreme or excessive and/or non-therapeutic pain or discomfort to a child for the purpose of modifying or changing a child's behavior, limiting a child's free range of movement, or eliminating or reducing maladaptive behaviors, including but not limited to the following: contingent application of noxious, painful, intrusive stimuli or activities; any form of noxious, painful, or intrusive spray (including water or other mists), inhalant, or tastes; contingent food programs that include the denial or delay of the provision of meals or intentionally altering staple food or drink to make it distasteful; movement limitation used as punishment, including but not limited to helmets and mechanical restraint devices; physical restraints; blindfolds; and white noise helmets and electric shock.
- D. Provider shall work collaboratively with the family to identify strategies/activities and the necessary services and supports to achieve IFSP outcomes including but not limited to developing and enhancing the family's capacity to support their child's learning and development between visits; building on the interests and strengths of the child and family; and determining the intensity, and method for each service to be reasonable and not burdensome to the family.
- E. Provider shall use a child developmental approach in intervention strategies, incorporating evidence-based child development practices with necessary adaptations to foster and promote age appropriate development.
- F. Provider shall use an individualized approach, including consideration and respect for cultural and religious, lifestyle, ethnic, and other individual and family characteristics.
- G. Provider shall be an active participant in the development and implementation of a transition plan for a child transitioning from the EIP.

**VI. Documentation and Recordkeeping**

- A. When required by the Department, Provider shall utilize a standardized reporting format when reporting on services delivered in the EIP.
- B. Provider shall maintain documentation necessary to support claiming to third party payors (Medicaid and commercial insurers), the Municipality and State. In instances where corrections are made to documentation required to support claiming, the rendering provider shall leave his or her original writing intact, strike through the mistake with a single line, make a legible correction and clearly write his or her initials and date correction was made next to the correction. Provider shall not use white-out in an EI record.
- C. Provider shall maintain contemporaneous session notes, utilizing a Department standardized form when required by the Department, following each child and family contact, which shall include the information required in 10 NYCRR 69-4.26(c) including: the recipient's name, date of service, type of service provided, time the Provider began delivering therapy to child and end time, brief description of the recipient's progress made during the session as related to the outcome contained in the IFSP, name, title, and signature of the person rendering the service, date the session note was created, and signature of the

parent or caregiver which documents that the service was received by the child on the date and during the period of time as recorded by the Provider.

- D. Provider understands and hereby agrees that all 'make-up' sessions must be consistent with Department regulations and guidance, occur in conformance with the IFSP and session notes created for 'make-up' sessions must accurately state that the session is in place of a previously scheduled session, and reflect the date/time that the 'make-up' session occurred. Provider further understands and hereby agrees that Provider risks non-payment for inaccurate claims.
- E. Original session notes must be maintained in accordance with the requirements of 10 NYCRR § 69-4.26. In situations where an Individual Provider is rendering services to a child and family under an authorization to such Provider by a Municipality or when the Individual Provider is rendering services as a contractor to an Agency Provider, the Individual Provider shall maintain the original session notes. A Municipality or Agency Provider may request or require submission of copies of such Individual Provider's session notes. Original EI records generated by qualified personnel who are employees of a Municipality or Agency Provider shall be retained by the respective Municipality or Agency Provider.
- F. Provider shall make periodic progress notes summarizing the effectiveness of the service and the progress being made toward outcomes included in the child's and family's IFSP. Progress notes shall be made at a minimum frequency of twice during the IFSP yearly cycle - for six-month IFSP reviews and for the annual IFSP review. The Department may direct that the progress notes be made in a certain format or manner. Progress notes shall be included in the child's record and shall be available upon request by the service coordinator, Municipality, or Department.
- G. Provider shall maintain records that document the performance of services required to be completed by Provider on behalf of eligible children and their families, including but not limited to: parental consents for provision of evaluations and services; reports, session notes, progress notes, and other documentation related to evaluations or service delivery; a copy of the IFSP; service authorizations; physicians orders and/or prescriptions for services provided and other documents as may be required in regulation.
- H. Provider shall maintain accurate and complete records that support claiming for actual services rendered. Provider shall only submit claims for payment that accurately reflect the service provided by qualified personnel authorized to provide the service on the date such service is provided and which shall be consistent with the child's IFSP.
- I. Provider shall maintain complete records and data that support information necessary for the Department to report annually through the Part C Annual Performance Report (Part C- APR). Information/data will include but is not limited to timely IFSP, timely services, and transition steps and services. The Department may direct that information be made in a certain format or manner.
- J. Provider shall retain EI records pertaining to a child and family for a minimum of six years from the date that care, services, or supplies were provided to the child and family. Individual Providers who are licensed, registered, or certified under state education law must retain child and family records for the period of time set forth in the laws and regulation that apply to their profession.

**VII. Notifications**

- A. Provider shall make reasonable efforts to notify the child's parent/family/caregiver prior to the date and/or within one hour prior to the time on which a EI provider service is to be delivered, of any temporary inability to deliver such service due to circumstances such as illness, emergencies, hazardous weather, or other circumstances which impede the provider's ability to deliver the service. If circumstances prevent such notification prior to a visit, notification should be provided as soon as possible following the missed visit. Provider shall also make reasonable efforts to notify the child's parent/family/caregiver if the Provider will be more than fifteen (15) minutes late for a scheduled session, due to uncontrollable circumstances.
- B. Provider shall make reasonable efforts to notify the Department and municipality (s) within five (5) business days of any prolonged closure or unavailability to provide EI services to children located in a specific municipality
- C. Provider shall notify the child's parent and service coordinator at least five (5) business days prior to any scheduled absences due to vacation, professional activities, or other circumstances, including the dates for

which the Provider will be unable to deliver services to the child and family in conformance with the IFSP and the date on which services will be resumed by such Provider. Missed visits may be rescheduled and delivered to the child and family by such Provider, as clinically appropriate, agreed upon by the parent and in conformance with the child's and family's IFSP.

- D. Provider shall notify the child's service coordinator and early intervention official (EIO) of the intent to permanently terminate the delivery of early intervention program services to a child and the child's family, for any reason, at least thirty (30) calendar days prior to the date on which the Provider intends to cease providing services.
- E. Provider shall notify the child's service coordinator within twenty-four (24) hours of the child's absence from more than three (3) consecutive scheduled sessions for the delivery of services, indicating the reason for said absence, if known.
- F. Provider shall notify the service coordinator and the Municipality within two (2) business days, when a parent voluntarily withdraws their child from early intervention services with a Provider, for any reason.
- G. Provider shall notify the Department, in writing, within five (5) calendar days, in the event Provider becomes a party to any litigation, investigation or transaction that may reasonably be considered to have a material impact on Provider's ability to perform under this Agreement.
- H. Individual Providers shall notify the Department within two (2) business days if their license is suspended, revoked, limited or annulled, regardless of whether the suspension or limitation is stayed.
- I. Provider shall notify the Department immediately upon becoming aware that the, Medicare or Medicaid certification of Provider, or any employee or Individual Provider under contract with the Agency Provider is restricted, suspended or temporarily and/or permanently revoked by any regulatory authority.

#### **VIII. Mandated Reporting**

- A. Providers shall report or cause to be reported suspected cases of child abuse and/or maltreatment to the SCR whenever they believe that there is reasonable cause to suspect that a child, made known to them in their official capacity as a Provider under the EIP, is or has been abused or maltreated.
- B. Provider shall develop and maintain policies and procedures regarding the reporting of suspected child abuse and/or maltreatment. Agency Providers shall ensure that its employees and Individual Providers under contract with such Agency Provider are aware of the Agency Provider's policies and procedures in this regard.

#### **IX. Confidentiality**

- A. Provider shall preserve the confidentiality of all electronic and/or hard-copy data and information, both historical and current data, that is shared, received, collected, or obtained in relation to services provided in the EIP, in accordance with applicable law and regulations, including but not limited to FERPA and 10 NYCRR § 69-4.17.
- B. Provider shall keep child records secure, whether records are stored in a business location, an Individual Provider's home or at a secure location outside the Provider's home. Provider shall have a written policy on confidentiality and meet all confidentiality requirements of the EIP, including physical security.
- C. Provider shall prevent the disclosure, redisclosure or release of such data or information, except as expressly authorized by law. Provider shall not use such data or information for personal benefit.
- D. Provider agrees to develop and maintain specific procedures ensuring the protection of health history information related to an individual who has been diagnosed as having AIDS or HIV-related illness or HIV infection or laboratory tests performed on an individual for HIV-related illness.
- E. Agency Provider agrees to comply with the confidentiality and disclosure requirements set forth in and in Part 403 of New York State Social Service Law and Section 2782 of Public Health Law, and ensure that staff, to whom confidential HIV-related information is disclosed as a necessity for providing services, are fully informed of the penalties and fines for redisclosure in violation of State law and regulations.

- F. The Provider fully agrees that any disclosure of confidential HIV-related information shall be accompanied by a written statement as follows:

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

**X. Marketing**

- A. Provider shall comply with the provisions of 10 NYCRR § 69-4.5(e).
- B. Provider shall not represent themselves as, or claim to be, an officer or employee of the State or Municipality by reason of this Agreement.
- C. Provider shall ensure that marketing and advertising materials adhere to the Department's Marketing Standards for Early Intervention Service Providers and adequately inform parents or guardians of children less than three years of age who are suspected of having a disability or are at risk of disability about the EIP.

**XI. Auditing, Monitoring, Due Process**

- A. Provider shall cooperate with any announced or unannounced fiscal audit, programmatic monitoring and/or quality improvement monitoring by the Department, Municipality or its respective designee. Provider shall maintain and make available to the Department and Municipality upon request, complete financial records and clinical documentation related to the provision of services to permit a full fiscal audit by appropriate State and municipal authorities.
- B. Provider shall make available such records or documents that are requested on the date and time of the visit, and shall provide access to the facility for facility based Providers.
- C. Provider shall render diligently to the Department and the Municipality any and all cooperation, without additional compensation, that may be required as part of an investigation, mediation, or hearing.
- D. Provider shall demonstrate full and faithful cooperation with any investigation, audit or inquiry conducted by the Department, Municipality or State or Federal governmental agency or authority that is empowered directly or by designation to compel attendance of witnesses and to examine witnesses under oath, or conducted by a governmental agency that is a party in interest to the transaction, that is subject of the investigation, audit or inquiry.
- E. Provider shall render diligently to the Municipality and Department any and all cooperation, without additional compensation, that may be required to defend the Municipality and/or Department against any claims, demand, or action that pertain to Provider that may be brought against the Municipality and/or the Department in connection with services rendered by or on behalf of Provider to children under the Early Intervention Program and/or the terms and provisions of this Agreement.
- F. Provider shall implement to the satisfaction of the Department, corrective actions deemed necessary by the Department or its designee to bring the Provider into compliance with applicable State and Federal statutes and regulations governing the EIP. Provider shall further implement, to the satisfaction of the Municipality, any corrective actions as may be required by Municipality after an audit or monitoring of the Provider by the Municipality in accordance with PHL § 2557(3-a), PHL § 2552(1) and 10 NYCRR § 69-4.12.
- G. Provider understands and hereby agrees that payment by the Municipality may be withheld or suspended if upon audit or monitoring by the Department or Municipality it is found that the Provider, and/or employees or Individual Providers under contract with an Agency Provider, did not provide the services claimed for, the services were not provided in conformance with a child's IFSP, the rendering provider was not qualified by licensure, certification or registration to deliver the services, and/or the services were not provided in conformance with law or regulation or this Agreement.

## **XII. EI Model Specific Responsibilities**

### **A. Service Coordination**

- A1. Provider, and employees and Individual Providers under contract with an Agency Provider, who deliver service coordination services, shall, in accordance with 10 NYCRR §§ 69-4.4 and 69-4.5(xi) demonstrate continued professional development on state and local policies and procedures of the EIP, including participation in Department-sponsored training. Provider shall maintain documentation of continuing education/training and make such documentation available upon request to the Department and Municipality.
- A2. Provider shall ensure that they, their employees and independent contractors utilized by the Provider Agency demonstrate participation in on-going training including but not limited to introductory service coordination, advanced service coordination, evaluation, and IFSP training sponsored or approved by the Department of Health, when Provider is approved for service coordination services.
- A3. Provider, and employees and Individual Providers utilized by an Agency Provider who deliver service coordination services on behalf of the Agency Provider shall complete introductory service coordination training sponsored or approved by the Department of Health prior to rendering service coordination services and participate in a minimum of one (1) professional development activity totaling a minimum of 1 1/2 clock hours directly related to service coordination per calendar year. Such activity is not limited to Department sponsored training but can include other professional development activities which focus on enhancing skills necessary for service coordinators to increase their competency to provide service coordination activities.
- A4. Provider shall render all service coordination activities as set forth in applicable law and regulations and as specified in the child's IFSP.
- A5. Provider of initial and/or ongoing service coordination services shall document all activities (billable and non-billable) related to the performance of their duties which includes the following information: recipient's name; date of service; a description of the specific service coordination activity performed; name, date of contact, and purpose of contact for providers or others contacted on behalf of the child and family as necessary to implement the IFSP; start and end time for each contact; and name, title and signature of the service coordinator, as applicable. The Department may require that the Provider document such activities using a standard form or format.
- A6. Provider shall provide Service Coordination as authorized by the Municipality when authorized for initial service coordination, and when authorized for on-going service coordination for a child/family, up to the limit of units of service coordination prescribed in the IFSP and indicated on the service authorization. Provider shall provide additional units of service only if authorized in accordance with a fully executed amendment to the IFSP, which shall include signatures of the Parent (s) and EIO/designee and IFSP team members.
- A7. Provider shall prepare and submit reports and/or data regarding Service Coordination activities as requested by the Department or Municipality in a manner and format as may be requested by the Department or Municipality.
- A8. Provider shall be reasonably accessible to the child's evaluator, other Providers of EI services, the Department and the Municipality during standard business hours.
- A9. The Provider shall be reasonably available to the parent in a manner that does not limit service access to daytime and/or weekday hours and does not limit access to a specific location. The Provider shall ensure that accessibility for service coordination are available to families in non-traditional schedules and through a variety of methods and locations. Provider shall be responsible for informing families of changes to their contact number, email address, and the specific times and places of their accessibility.
- A10. Provider shall communicate with the family about the purpose of Early Intervention, provide all information to the family in the family's dominant language or other mode of communication unless clearly not feasible to do so, and shall ensure that the family has received or has access to the

current version of Early Intervention Steps: A Parent's Basic Guide to the Early Intervention Program, the parent's handbook that provides information about the program upon referral to the EIP.

- A11. Provider shall describe the rationale for services in natural environments. Provider shall describe each step of the IFSP process, including its purpose, and what service delivery might look like.
- A12. Provider shall collaboratively balance listening to the family with sharing information and shall use open-ended questions that encourage the family to share their thoughts and concerns. Provider shall discover family preferences for sharing and receiving information as well as the family's teaching and learning strategies they prefer to use with their child.
- A13. Provider shall review with the EI family the EIP procedural safeguards/due process rights upon initial contact with the family and whenever the family may disagree with an eligibility decision or with the early intervention official/designee decision regarding services for their child/family.
- A14. Provider shall assist families to obtain the services and/or assistance they need.
- A15. Provider shall inform the family that services must be at no cost to families, use of Medicaid and/or third party insurance for payment of services is required under the EIP, that any deductible or co-payments is not the responsibility of the family; the use of third party insurance for payment of early intervention services will not be applied against lifetime or annual limits specified in their insurance policy, if such policy is subject to New York State law and regulation; and that the Municipality/Department/service coordinator will not obtain payment from their insurer, if such policy is not subject to New York State law and regulation and if the insurer is therefore not prohibited from and will apply payment for early intervention services to the annual and lifetime limits specified in their insurance policy. Provider shall collect, from the family, information on any insurance policy, plan or contract under which an eligible child has coverage.
- A16. Provider shall review all options for evaluation and screening with the family from the list of approved evaluators including location, types of evaluations performed, and settings for evaluations (e.g., home vs. at the evaluation agency). Upon selection of an evaluator by the family, the Provider shall ascertain from the family any needs the family may have in accessing the evaluation. Provider shall at the family's request, assist the family in arranging of the evaluation after the family selects from the list of approved evaluators.
- A17. Provider shall contact the family to ensure that the family has received information concerning alternative approved evaluators and ascertain from the family any needs the family may have in accessing the evaluation, if the family has accessed an approved evaluator prior to contact by the initial service coordinator.
- A18. Provider, upon receipt of the results of the evaluation, may with parental consent and the approval of the early intervention official, require additional diagnostic information regarding the condition of the child, provided that such information is not unnecessarily duplicative or invasive to the child according to guidelines of the Department of Health. One such example is that such information may assist the IFSP team to determine the appropriate type, location, frequency or duration of the EI provider service.
- A19. Provider shall prior to obtaining written parental consent for additional diagnostic information, provide the family with a written explanation which shall include: diagnostic information requested; reasons for obtaining the information, and use of the information; location of diagnostic testing; source of payment and that no costs shall be incurred by the parent; a statement that the information shall not be used to refute eligibility; and a statement that the meeting to formulate the Individualized Family Service Plan shall be held within the 45 day time limit.
- A20. The Provider shall, with parent consent, notify the Office for People with Developmental Disabilities' regional developmental disabilities services office of the potential eligibility of a child for programs or services available under that Office, if the Provider, in consultation with the evaluator, identifies the child as potentially eligible for programs or services offered by or under such office.

- A21. Provider shall, upon the determination of a child as ineligible for EIP services, inform the family of the right to due process procedures as set forth in 10 NYCRR § 69-4.17 and shall inform the family of other services which the family may choose to access and for which the child may be eligible and offer assistance with appropriate referrals.
- A22. Provider shall collect from the family a written referral from a primary care provider as documentation, for eligible children, of the medical necessity of EIP services in order to support private insurance claiming.
- A23. Provider shall assist the family in preparing for the meeting to develop the IFSP, including facilitating their understanding of the child's multidisciplinary evaluation and identifying their resources, priorities, and concerns related to their child's development.
- A24. Provider shall inform the family of the opportunity to select an ongoing service coordinator, who may be different from the initial service coordinator, at the Individualized Family Service Plan meeting or at any other time after the formulation of the IFSP.
- A25. Provider shall ensure that the IFSP, including any amendments thereto, is implemented in a timely manner within thirty (30) days of parent consent to the IFSP, or if the projected date for the initiation of a service is greater than thirty (30) days of parent consent to the IFSP, not later than thirty (30) calendar days after the projected date for initiation of the service.
- A26. Provider shall in consultation with the service Provider and the family/caregiver continuously seek the appropriate services and situations necessary to benefit the development of the child for the duration of the child's EIP eligibility, including providing appropriate referrals for families to access social and mental health services.
- A27. When notified by a Provider or by otherwise becoming aware of a child's absence from more than three (3) scheduled sessions for the delivery of services, Provider shall contact the child's parent/family to ascertain the reason for any absences and immediately notify the EIO regarding the absences, reason for such absences and whether there is a need to modify an existing IFSP.
- A28. Provider shall early in the relationship with the family, have conversations about what they want for their child's future once they transition from the EIP.
- A29. Provider shall identify transition issues and discuss steps to prepare the family for choices/options at different transition points and to prepare the child for participating in the new setting when transition occurs. Provider shall ensure that the family understands the timeframe for transition from the EIP and when transition planning should occur.
- A30. Provider shall, together with the IFSP team, develop a transition plan as part of the IFSP process which includes the outcomes and activities to prepare the child and family for success after early intervention.
- A31. When applicable, Provider shall notify the local Committee on Preschool Special Education (CPSE) of a child's potential transition to CPSE services utilizing Department-standardized forms, procedures, and timelines in accordance with applicable law and regulations.
- A32. Provider understands and agrees that, in accordance with PHL § 2552, a Municipality may request that the parent/family select a new service coordinator or require that the service coordinator select a new Provider of services if the Municipality finds that the service coordinator or Provider, as applicable, has not been performing his or her responsibilities as required or that services have not been provided in accordance with the child's IFSP.

**B. Evaluations & Screenings**

- B1. Provider shall only provide evaluation and screening services as authorized in accordance with their licensure, registration or certification. Agency Providers shall only use qualified personnel who are licensed, certified or registered in the area for which they are providing evaluation services for the provision of core/multidisciplinary evaluations and/or supplemental evaluations

- B2. Provider shall provide evaluations in accordance with a service authorization issued by the Municipality or service coordinator. If the parent selects an approved Provider to conduct the evaluation prior to the designation of an initial service coordinator, the Provider shall immediately notify the EIO of such selection and shall begin the evaluation no sooner than four (4) business days of the EIO's receipt of written notice from the Provider. The Provider shall obtain parental consent to conduct the evaluation prior to the initiation of the evaluation.
- B3. Provider shall when conducting a multidisciplinary evaluation include qualified personnel who have sufficient expertise in child development, and include at least one qualified personnel in the area of the child's suspected delay or disability. The primary area of concern must be included as part of the core evaluation. No evaluation may be performed by telephone, in whole or in part.
- B4. Provider shall when conducting a family assessment include qualified personnel who are trained in the use of professionally accepted methods and procedures to assist the family in identifying their concerns, priorities, and resources related to the development of their child.
- B5. Provider shall ensure that they and, if applicable, their employees who provide Evaluation & Screening services complete continuing professional and clinical education relevant to early intervention services, and in-service training sponsored by the Department regarding evaluation and eligibility, within six (6) months of becoming an employee of the Agency Provider or within six (6) months of the start date of the Agreement, whichever is later. Provider or employees of an Agency Provider who render evaluations and screenings shall also participate in a minimum of one (1) professional development activity totaling a minimum of 1 1/2 clock hours per year related to the provision of evaluation & assessments to children under the age of 5 years old. Such activity is not limited to Department sponsored training but can include other professional development activities which focus on enhancing skills necessary for evaluators to increase their competency to provide evaluation activities. Provider shall have the training and competency to administer a particular evaluation tool prior to conducting an EI evaluation utilizing such tool. Agency Providers shall ensure that its employees who conduct evaluations have the training and competency to administer a particular evaluation tool prior to conduct an unsupervised evaluation.
- B6. Provider shall ensure that they and, if applicable, all employees and Individual Providers under contract to provide evaluations for an Agency Provider, have access to the Department's guidance regarding evaluations and eligibility criteria for the early intervention program, prior to conducting an evaluation or screening and that it is implemented appropriately.
- B7. Provider shall have availability and competency to screen, evaluate, and assess infant and toddler development using appropriate methods and procedures, both formal and informal.
- B8. Provider shall utilize evaluation and assessment procedures that are responsive to the cultural, ethnic, religious and linguistic background of the family. Tests and other evaluation materials and procedures shall be administered in the dominant language or other mode of communication of the child, unless it is clearly not feasible to do so. If such an evaluation is not possible, Provider should not accept the evaluation assignment or must document the attempts to locate a bilingual evaluator and notify the service coordinator of their inability to provide the evaluation in the dominant language or other mode of communication of the child and receive further direction from the service coordinator before proceeding with the evaluation. The service coordinator may, after discussion with and consent by the parent, request that the evaluation be reassigned to another Provider or Provider Agency.
- B9. Agency providers shall only use qualified personnel who are licensed, certified or registered in the area for which they are providing evaluation services for the provision of core/multidisciplinary evaluations and/or supplemental evaluations.
- B10. Provider shall adhere to recognized standards of practice for their respective disciplines when conducting evaluations and utilizing and scoring standardized assessment instruments.
- B11. Provider shall, when conducting a multidisciplinary evaluation include the core components of a developmental assessment of all domains (physical development, cognitive development,

communication development, social or emotional development, and adaptive development); a review of pertinent records, parent interview, and, at the option of the family, a family assessment.

- B12. Provider shall use the most recent edition of a standardized test instrument as soon as practicable (e.g., when the standardized instrument has become widely available, including the availability of training, if required by test developers) when conducting evaluations for the purpose of determining a child's initial or ongoing eligibility for the EIP. Standardized test instruments must be administered, scored and interpreted according to the tool's manual.
- B13. Provider understands that no single procedure or instrument may be used as the sole criterion or indicator of eligibility. Provider shall utilize information from a variety of appropriate sources, including but not limited to standardized instruments and procedures, when appropriate or possible; observations of the child; parent interviews; informed clinical opinion; and any other sources of information about the child's developmental status available to the team conducting the child's evaluation.
- B14. Provider shall consider the parent's input regarding the preferred natural environment/setting for the evaluation and should conduct an evaluation in a setting conducive to ensuring accurate results. After the evaluation, the family should be asked whether they believe their child's response was optimal, and the family's response shall be included in the evaluation summary and report.
- B15. Provider shall immediately notify the Parent, the Service Coordinator and EIO/M, prior to initiation of the Evaluation if the Provider reasonably believes that the Provider cannot provide an evaluation within a sufficient time frame so that it can be accomplished within forty-five (45) days necessary to schedule an IFSP (due to workload or scheduling issues).
- B16. Provider shall provide the family a single point of contact and phone number for the evaluation process.
- B17. Provider shall describe to the family each step of the evaluation process, including its purpose, and what the evaluation might look like, including process, rules and procedures that Providers must follow.
- B18. Provider shall discuss how information gathered from the family is used in planning and conducting the evaluation. Provider shall help the family decide how they want to participate in their child's evaluation. The child's parent shall have the opportunity to be present and participate in the performance of evaluation and assessments, unless the parent's circumstances prevent the parent's presence.
- B19. Provider shall provide evaluation results in layman's terms/user friendly language in a manner which is understandable to family and caregivers. Provider shall discuss screening, evaluation, and assessment information with families in understandable language and in the context of the child's strengths. Provider shall ensure that parents are afforded the opportunity to discuss the evaluation results with evaluators, including any concerns they have with the evaluation process.
- B20. Provider shall ensure that when conducting a multidisciplinary evaluation, the Evaluator prepares an evaluation report and written summary and submits the summary, and upon request the report, to the following individuals within sufficient time to ensure completion of the IFSP within forty-five (45) days of a child's referral to the EIP: the child's parent(s); the EIO; and the initial service coordinator. Provider shall ensure that the multidisciplinary report is coordinated by qualified personnel who conducted the child's evaluation.
- B21. Provider shall ensure that Provider creates one integrated multidisciplinary report according to a state-standardized form and that the evaluation report and summary include the names, titles, and qualifications of the persons performing the evaluation and assessment; a description of the assessment process; the child's responses to the procedures and instruments used as part of the evaluation process, the family's belief about whether the responses were optimal; the developmental status of the child in each of the five developmental domains, including the unique strengths and needs in each area; documentation of how clinical opinion was used by the persons performing the evaluation and assessing the child's developmental status and potential eligibility for

the EIP; and measures and/or scores that were used, if any; and an explanation of these measures or scores. The evaluation report shall also include diagnostic information and the International Classification of Disease (ICD) codes related to the child's eligibility, where appropriate.

- B22. Provider shall ensure that when a diagnosis is made during the evaluation, one or more persons who conducted the evaluation are qualified under the NYS Education Law to render the diagnosis. A diagnosis shall not be rendered by an evaluation team member unless they are qualified by their profession to render such diagnosis.
- B23. Provider shall fully document the basis for Provider's eligibility determination and provide such information and documentation that may be requested by the Municipality or the Department within the timeframes specified.
- B24. Provider shall ensure that if the results of the multidisciplinary evaluation indicate the child is not eligible for the EIP, the team's evaluation report will clearly document reasons why the child is not eligible. If a child is not eligible for the EIP but has a developmental delay and the evaluation team believes the child should receive services or supports outside of the EIP, the evaluation team should inform the family of options for services and community resources that will promote the child's development
- B25. Provider shall submit any additional documentation or explanation requested by the Municipality, service coordinator or Department regarding any evaluation, within five (5) business days of the request.
- B26. Provider understands and agrees that all evaluations must be completed in accordance with applicable law and regulations in order to receive payment for the same.
- B27. Provider shall participate in IFSP meetings in accordance with the requirements of 10 NYCRR § 69-4.11.
- B28. Provider understands and agrees that if the EIO determines that the Provider has not complied with PHL and/or regulations pertaining to an evaluation, the EIO may require that the Provider immediately submit additional documentation to support the eligibility determination and no later than five (5) business days, or if the documentation provided continues to be inconsistent with PHL or regulations, the EIO can require that the parent select another Provider to conduct a multidisciplinary evaluation to determine whether the child meets eligibility for EIP services.

C. Home/Community-Based and Office/Facility-Based Individual/Collateral Visits

- C1. Provider shall provide home/community-based individual/collateral services in accordance with a service authorization issued by the Municipality or service coordinator.
- C2. Provider shall assist families in learning ways that the family can report more effectively on their observations and understanding (assessment) of their child's skills, behaviors and interests. Provider shall document a family's observations and assessments into the child's session notes. Family observations and assessments should be encouraged but not required.
- C3. Provider shall apply knowledge of current research and evidenced based practices to the development and implementation of strategies, therapy and interventions with the child and family.
- C4. Provider shall work collaboratively with family/caregivers to seek opportunities to adapt learning experiences and therapeutic strategies to reflect individual characteristics of the child and family, and to identify and implement, as appropriate, strategies that enhance and promote the child's participation in natural learning opportunities across both child and family routines and community settings.
- C5. Provider and family/caregivers shall collaboratively identify toys, materials, interactions and locations that are available, of interest to, and motivating for the child and family.

- C6. Provider and family/caregivers shall collaboratively identify and incorporate family identified resources, concerns and priorities which shall result in individualized strategies promoting the outcomes identified by the family, therapeutic outcomes and outcomes identified in an IFSP. Provider shall be aware of and acknowledge new family concerns or interests.
- C7. Provider shall assist the family in learning how to communicate with their child.
- D. Group Developmental Intervention
  - D1. Provider shall provide group developmental intervention services in accordance with a service authorization issued by the Municipality or service coordinator.
  - D2. Provider shall only utilize qualified personnel as defined by 10 NYCRR § 69-4.1(ak) when assigning a substitute in situations where the usual group leader is absent.
  - D3. Provider shall provide EI services in a safe, developmentally appropriate environment which has adequate space for the group-size, a physical environment and facilities conducive to learning and reflective of the different stages of development of each child. Providers should incorporate, when possible, Universal Design for Learning principles into the creation of learning environments that support all children, including children with disabilities, when designing a learning environment. Provider agrees that it shall only provide Group developmental services in a location that has been included in Provider's application to the Department.
  - D4. Provider shall support a child's positive behavior through well-organized classrooms, consistent schedules, well-designed learning areas, established routines, and sensitive and appropriate guidance strategies.
  - D5. Provider shall engage in ongoing adaptations of the environment to meet the needs of individual children, including varying teaching strategies which can influence a child's ability to participate.
  - D6. Provider shall have clear curricular goals and learning outcomes and where appropriate individualized learning objectives for children and modification of instructional materials as indicated on the child's IFSP.
  - D7. Provider shall promote supportive interventions within the classroom which minimize the need for a child to be pulled out of the group for an individualized intervention.
  - D8. Provider shall foster a collaborative partnership with all persons involved with the child including the child's family, caregivers and other Providers and will create an individualized learning experience reflective of the individual child's social and cultural experience, child's interests, abilities, and developmental progress. Provider shall inform the child's family on a regular basis about their child's progress and experience in the group developmental setting.
- E. Parent-Child Groups and Family/Caregiver Support Groups
  - E1. Provider shall provide parent-child groups and family/caregiver support group services in accordance with a service authorization issued by the Municipality or service coordinator.
  - E2. Provider shall assist parents to understand their child's needs and identify community resources to meet family and child needs and to understand the emotional impact of having a child with disabilities.
  - E3. Provider shall assist the family to learn multiple strategies for communicating with their child.
  - E4. Provider shall assist the family to be confident in their parental skills and in their ability to care for a child with disabilities.
  - E5. Provider shall assist the family to communicate with the team who works with his/her child and family and to develop skills as an advocate for the child.
  - E6. Provider shall assist the family to do things with and for their child that will help enhance their child's development.

- E7. Provider shall assist the family to learn how to communicate with their child.
- E8. Provider shall assist the family to learn how to understand and manage their child's behavior.
- E9. Provider shall assist the family to develop skills to cope with stressful situations.
- E10. Provider shall assist the family to enhance their own ability to modify family routines, such as mealtimes or bedtime, bathing and dressing to accommodate the family needs as well as the developmental and emotional needs of their child and to improve the family's quality of life.

F. Providers Using Applied Behavior Analysis (ABA) in the Delivery of ABA Early Intervention Provider Services

- F1. Provider understands and hereby agrees that "Applied behavior analysis" or "ABA" means the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior.
- F2. Agency Provider understands and hereby agrees to only utilize qualified personnel as defined in 10 NYCRR §69-4.1 as appropriate for the provision of early childhood ABA services and such employees and Individual Provider have been trained, educated, and are familiar with and competent in the delivery of such services.
- F3. Provider understands and hereby agrees that Provider shall maintain and implement written policies and procedures for the delivery of ABA services which are in conformance with nationally recognized, evidence-based practices for the delivery of such services. Such written policies and procedures shall be: reviewed at least annually by the Provider and updated as necessary to maintain conformance with evidence-based practices for delivery of ABA services; and made available for review for monitoring purposes and upon request by the Department and/or its agent and the Municipality.
- F4. Provider shall be responsible for developing individual child ABA plans in collaboration with the child's family and Agency Provider, as appropriate, qualified personnel; directing the implementation of individual child ABA plans and the ongoing monitoring, systematic measurement, data collection, and documentation of child progress; modifying individual child ABA services as necessary to promote progress towards goals, generalization of learning; and, where applicable, transitioning of the child from receiving services in home- and facility-based settings to receiving services and participating in other community settings.
- F5. Provider shall provide assistance, training, and support as needed by parents/caregivers to assist them in follow-through activities specified in the child's ABA plan to enhance child development, behavior, and functioning.

**XIII. Additional Provider Responsibilities**

- A. Provider understands and agrees that nothing herein shall be deemed to create an "employee" and "employer" relationship between the Department and the Provider, or between the Municipality and the Provider. The relationship of the Provider to the Department or Municipality shall be that of an Independent Contractor for whom no federal or state income tax will be deducted by the Municipality in payment for services provided, and for whom no retirement benefits, workers' compensation protection, survivor benefit insurance, group life insurance, vacation and sick leave, liability protection, and similar benefits available to the State or Municipal employees will accrue.
- B. Provider shall be responsible for the services for which Provider is approved to deliver and, with respect to Agency Providers, shall only utilize employees and/or Individual Providers and/or another Agency Provider when approved by the Department as an Agency Provider. Agency Provider understands and agrees that when utilizing Individual Providers or another Agency Provider to deliver authorized services, the Agency Provider may only utilize Individuals and Agencies approved by the Department and shall remain responsible for the services for which it is authorized to deliver that were rendered by the Individual Provider and/or the other Agency Provider, including but not limited to all claims for payment related to such services, and in ensuring that the Individual Provider and/or the other Agency Provider complied with all applicable rules and regulations in relation to such services.

- C. Agency Provider shall be responsible for the acts and omissions of Individual Providers and/or other Provider Agencies utilized by the Provider Agency for the provision of services as it is for the acts and omissions of persons directly employed by it.
- D. Provider shall maintain continued compliance with all applicable provisions of the Federal and State Labor Standards.
- E. Provider shall maintain continued compliance with all applicable provisions of the Federal Internal Revenue Code, 20 NYCRR-Taxation and Finance, and all rules promulgated there under, including withholding provisions and timely deposits of employee taxes and unemployment insurance taxes, as applicable.
- F. Provider shall operate and provide services in compliance with the provisions of the Civil Rights Act of 1964, as amended; with 44 CFR Part 7, entitled "Nondiscrimination in Federally Administered Programs"; and with 45 CFR Parts 84 and 85, entitled "Non-Discrimination on the Basis of Handicap in Program Activities Receiving or Benefiting from Federal Financial Assistance".
- G. Provider shall operate, hire, subcontract and provide services without regard to race, creed, color, national origin, sex, age, disability, sexual orientation, genetic predisposition or carrier status or marital status.
- H. Provider shall not have religious worship, instruction, or proselytizing as part of or in connection with the provision of early intervention Provider services, nor shall any of the funds provided under this Agreement be used for such purposes.
- I. Provider shall operate, hire and subcontract in compliance with the provisions of Article 15 of the New York State Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions.
- J. Agency Provider shall, in the event that the Agency Provider files for bankruptcy or reorganization under Chapter seven or Chapter Eleven of the United States Bankruptcy Code, disclose such action to the Department within (7) seven days of filing. This Agreement shall not be assigned by the Provider or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of and attempts to do so are null and void.
- K. Indemnification:
  - i. Provider shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services to be rendered by the Provider or its employees or Individual Providers under contract, pursuant to this AGREEMENT. The Provider shall indemnify and hold harmless the Department and its officers and employees and Municipalities and its officers and employees from claims, suits, actions, damages and costs of every nature arising out of the provision of services pursuant to this AGREEMENT and under the EIP.
  - ii. The Provider is an independent contractor and may neither hold itself out nor claim to be an officer, employee or subdivision of the Department or Municipality nor make any claims, demand or application to or for any right based upon any different status.

This provision shall survive the termination of this Agreement. This Agreement shall be deemed terminated immediately upon the Provider's failure to comply.

#### **XIV. Terms and Termination**

This Agreement shall be effective for a five (5) year term, unless terminated pursuant to the terms hereof. Provider shall not provide services, nor hold itself out as authorized to provide such services on and after the date upon which this Agreement shall be deemed terminated.

If the Provider wishes to continue participating the EIP after the expiration of this Agreement, Provider shall notify the Department at least ninety (90) days prior to the expiration date and request that the Department enter into a new agreement with the Provider.

Amendments to this agreement may be made by the Department and shall be sent to the Provider via mail or electronically utilizing the Provider's email address. The Provider shall notify the Department within thirty (30)

calendar days of the date the Provider receives the proposed Amendment of whether it accepts the terms contained in the proposed Amendment. The Department reserves the right to terminate this Agreement if a proposed Amendment is not accepted. Oral modifications to this Agreement are prohibited.

**1. Termination for Convenience by the Department:**

This Agreement may be cancelled at any time by the Department giving to the Provider not less than ninety (90) days written notice that on or after a date therein specified this Agreement shall be deemed terminated and cancelled. Provider shall not render services in the EIP on and after the date specified in such notice and shall not claim for any services rendered after such termination date.

**2. Termination for Convenience by Provider:**

This Agreement may be cancelled at any time by the Provider, giving to the Department not less than ninety (90) days written notice that on or after a date therein specified this Agreement shall be deemed terminated and cancelled. In the event the Provider terminates the Agreement in accordance with this paragraph, Provider shall, together with any notice of termination, provide each child's Service Coordinator and the corresponding Municipality of residency of the children served with a Plan and Timetable for the orderly transition of services, and a copy of any proposed notification to parents, transporters, employees and Individual Providers utilized by an Agency Provider who deliver services. The plan and timetable for orderly transition of services must be developed in conjunction with affected municipalities and in accordance with municipal procedures. Notification to parents, transporters, employees and Individual Providers utilized by an Agency Provider shall be disseminated by the Provider upon approval by the Municipality and the Department of the proposed Plan and Timetable. The notice of termination and transition plan shall be submitted to the service coordinator(s), affected Municipalities and the Department not less than ninety (90) calendar days prior to the intended termination date of the Agreement. Provider also understands and agrees that the Provider will supply, to the best of the Provider's ability, any outstanding child/family information necessary for the Department's Part C Annual Performance Report, prior to terminating this agreement.

**3. Termination for Cause:**

The Department or the Provider may terminate this agreement, prior to the end of term by giving thirty (30) calendar days written notice to the other party of its intention and reason for termination. The non-terminating party may be given an opportunity to cure the reason for termination within the 30-day period. If the non-terminating party does not cure the reason for termination to the satisfaction of the terminating party, this Agreement shall terminate at the end of such 30-day period. Cause for termination may include but shall not be limited to: (a) failure to comply with the terms and conditions of this Agreement; (b) § 69-4.12 and (c) any violation of applicable laws or regulations, including an unacceptable practice under the Medical Assistance Program as enumerated in Title 18 NYCRR §515.2. Provider shall immediately provide each child's individual Service Coordinator and the corresponding Municipality of residency of the children served, with a Plan and Timetable for the orderly transition of Services, and a copy of any proposed notification to Parents, transporters, employees and independent contractors utilized by a provider agency who deliver EI provider services. The plan and timeline for orderly transition of services must be developed in conjunction with municipalities and in accordance with municipal procedures. Notification to parents, transporters, employees and independent contractors utilized by a Provider Agency shall be disseminated by the Provider Agency upon approval by the affected Municipalities and the Department of the proposed Plan and Timetable. Provider also understands and agrees that the Provider will supply, to the best of the Provider's ability, any outstanding child/family information necessary for the Department's Part C Annual Performance Report for services furnished, prior to terminating this agreement.

**4. Immediate Termination by the Department:**

The Department shall have the right to terminate this Agreement, in whole or with respect to any identifiable part of the Program, effective immediately in cases of imminent danger to the health and safety of Eligible Children, Parents and/or staff, or upon the filing of a petition in bankruptcy or insolvency, by or against the Provider. Such termination shall be immediate and complete, without termination costs or further obligations by the Department or Municipality to the Provider.

**5. Compliance Involving Health & Safety Issues:**

If the Department finds that the health or safety of a child, the child's parents or staff of the Agency Provider or Municipality is in imminent risk of danger or there exists any condition or practice or a continuing pattern of conditions or practices which poses imminent danger to the health or safety of such child, parents or staff of the Agency Provider or Municipality, in addition to any other remedies available to it, the Department may:

- (a) terminate this Agreement,
- (b) terminate one or more of the service models the Provider is authorized to deliver in the EIP,

- (c) terminate one or more service delivery methods/settings;
- (d) direct that the Municipality prohibit or limit the assignment of children to the Provider;
- (e) direct that the Municipality remove or cause to be removed some or all of the children the Provider currently serves;
- (f) direct that the Municipality suspend or limit or cause to be suspended or limited payment for services to the Provider.

**6. Compliance proceedings involving approval of an individual or agency:**

In accordance with 10 NYCRR § 69-4.24, the Department may, in addition to any other remedies available to it, revoke, suspend, limit this agreement and approval.

**7. Notices:**

All notices shall be sent by mail or email to the Provider listed within the electronic data system (currently NYEIS or any successor data system as required by the Department) as the Program Director or in the case or to an Individual Provider. The Provider is responsible for notifying the Department of any change in contact information including mailing and email addresses. All notices of termination will contain the specific date on which the Provider must cease providing Early Intervention Services.

All notices from the Provider must be sent to the Department at the following address:

New York State Department of Health  
Bureau of Early Intervention  
Provider Approval & Due Process Unit  
ESP, Corning Tower, Room 287  
Albany, New York 12237-0660

**8. Severability:**

It is expressly agreed that if any term or provision of this Agreement, or the application thereof to any person or circumstance, shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby; and every other term and provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law.

## Appendix 1 - Payee Provider Agreement/Service Authorizations and Payment

***THIS Appendix IS NOT CONSIDERED TO BE FULLY EXECUTED WITHOUT AN APPROVAL DATE FROM THE New York State Department of Health. The Provider cannot receive service authorizations from a Municipality and claim for early intervention services rendered until this Appendix is fully executed by the Department. In the event this Appendix is executed subsequent to the execution of the Agreement, the effective dates for this Appendix shall be as set forth herein.***

- I. **For a Provider to receive service authorizations from a Municipality for EIP services and direct payment for the services rendered from the Municipality, the Provider shall utilize the Department's electronic data system and, when indicated by the Department, establish a relationship with the Department's fiscal agent for claiming payment for service coordination, evaluations and EI Provider services.** Provider shall comply with all requirements for claiming as required in applicable law and regulation, and as necessary for the fiscal agent to perform its duties, including but not limited to, the terms and conditions set forth in this Appendix.
  - a) Provider shall be responsible for monitoring the quality of the Provider's services, compliance with this Agreement, Individuals with Disabilities Education Act (IDEA), PHL, early intervention regulations and fiscal responsibilities.
  - b) Provider shall report incidents of noncompliance, fraud or abuse to appropriate payors and ensure that the appropriate State and municipal agencies are notified, as required.
  - c) Provider shall not claim or collect payment directly from the family for EI services nor require the family to pay additional costs.
  - d) Provider shall promptly notify the Department and/or its state fiscal agent and the Municipality of any duplicate or erroneous payment received from the Municipality or from any third-party payor and shall cooperate with the Department and/or its state fiscal agent and the Municipality to rectify the situation.
  - e) Provider understands that there is a specific Medicaid institutional enrollment for early intervention providers. Provider shall enroll in the Medical Assistance Program as a billing Provider for EIP services.
  - f) Provider shall certify, recertify and revalidate with Medicaid as necessary to maintain early intervention approval and maintain the Appendix 1. Agency Providers must maintain an active Medicaid status as an early intervention provider to be able to provide early intervention services.
  - g) Provider shall, for children who have coverage under an insurance policy, plan or health benefit package, including the Medicaid Assistance Program or other governmental payor, seek payment from such insurer or health plan prior to seeking payment from the Municipality, in accordance with PHL § 2559. Provider shall utilize the Department's data system and/or fiscal agent as directed by the Department in seeking payment from such insurer or health plan.
  - h) Provider shall further take the appropriate steps to secure insurer or health plan payment for services, including responding to claim denials by correcting any errors identified in claims, providing requested documentation such as that needed to support medical necessity, and the submission of Subrogation notice to each child's insurance company.
  - i) The Department and/or its fiscal agent(s) is responsible for management of all submitted Provider claims. Provider shall use uniform and consistent procedures as directed by the Department for submission of claims. Provider shall use the Department's electronic data system (or any successor data system as required by the Department) for submission of claims associated with EI children.
  - j) The Department and/or its fiscal agent(s) will assist Provider in claims submission and adjudication to third party payors, and shall manage payments owed to Provider for services not reimbursed by third party payors.
  - k) Provider shall maintain progress and session notes detailing the nature and extent of services provided and shall make them available to the Department and/or Municipality upon request for programmatic monitoring and fiscal audit purposes.

- l) Provider shall have policies and procedures in place to verify that any service authorizations issued by the Municipality are in conformity with the IFSP and to notify the service coordinator and Municipality immediately regarding any discrepancy. Provider shall further develop and implement policies and procedures to verify that services are delivered to a child in conformity with the child's IFSP.
- m) Provider shall keep an accurate record of attendance for each child for whom services are being provided such record shall be maintained in the child's record or file and may be requested at any time by the Department or Municipality.
- n) Provider shall make available and accessible to the Department and Municipality, all records and information necessary to assure the appropriateness of payments made to the Provider and to assure the Provider's compliance with all applicable statutes and regulations.
- o) Provider understands and agrees that payment will not be made for services provided by individuals who are not qualified personnel as defined in 10 NYCRR §69-4.1(ak), or for services rendered by qualified personnel who are not acting within the scope of practice authorized by his or her license, registration or certification for the provision of services authorized in a child's IFSP.
- p) Provider shall fully familiarize itself with Department's policy and guidance regarding claiming and documentation for services rendered.
- q) Agency Provider seeking to cease EIP services understands and agrees that if such Agency Provider provides services to more than fifty (50) children per year, the Agency Provider must contact the Department and/or the municipality(s) to ensure that prior to agency closure, the Agency Provider shall submit child specific information necessary for the completion of the Department's Annual Performance Report (APR).
- r) Provider shall submit all claims for early intervention services in a timely manner as required by the Department and understands that the Provider risks non-payment for late claims.
- s) Provider shall submit to the Department no less than annually in a manner and format and by the date requested by the Department, a description of the Provider's services at each site at which EI Provider services are offered. Such program description may include program models utilized at various sites, languages offered, services offered, special populations served, and other such description information. The Department shall make such program descriptions available to Service Coordinators for the purpose of assisting parents in understanding program types and options, and in selecting an evaluation site.
- t) Pursuant to PHL § 2557, when directed by the Department, Provider shall utilize the Department's fiscal agent for early intervention claims as determined by the Department. Provider shall provide such information and documentation as required by the Department and necessary for the fiscal agency to carry out its duties.
- u) Provider shall sign up for electronic funds transfer, as directed by the Department, for payment by the fiscal agent for claims not covered by third party payers.
- v) Provider shall sign up with third-party clearinghouses, at the direction of the Department, to enable the secure exchange of claim adjudication information among the fiscal agent, Provider and applicable third-party payers.

**II. Additional Requirements: Provider shall not commence performing Services under this Agreement plus Appendix 1 unless and until all required insurance is in effect, and shall ensure continuous insurance coverage in the manner, form, and limits required by the Agreement.**

- (1) Provider shall procure, pay the entire premium for and maintain throughout the term of this Agreement insurance in amounts and types specified herein. Unless otherwise specified by the Department and agreed to by the Provider, in writing, such insurance will be as follows:
  - i. **Commercial General Liability** insurance including contractual coverage, in an amount no less than \$1,000,000/per occurrence must be carried by the Agency Provider.
  - ii. **Commercial General Liability** insurance for Individual Providers who carry Professional Liability Insurance is not required unless the Individual Provider (1) employs others, besides themselves, and these employees have contact with children or parents, or (2) owns, rents or otherwise has control of the space where children and/or parents are provided with early intervention services by the provider.
  - iii. **Automobile Liability** insurance is required only if children who are being treated under this agreement are being transported in the subject vehicle in an amount not less than \$1,000,000 combined single limit for bodily injury and property damage occurrence. If the Provider does not transport children, the Provider is not required to carry Automobile Insurance other than that is required by New York State Law and regulations.
  - iv. **Professional Liability** insurance in an amount not less than \$1,000,000 per incident/occurrence. It is not necessary to have municipalities or the State listed as additionally insured on an individual's professional liability policy.
  - v. In the case of Agency Providers, **Worker's Compensation and Employer's Liability** insurance in compliance with all applicable New York State laws and Regulations and **Disability Benefits** insurance, if required by law. Provider shall maintain and make available upon request to the Department, the documentation required by the New York State Workers' Compensation Board of coverage or exemption from coverage pursuant to Sections 57 and 220 of the NYS Workers' Compensation Law. In accordance with Article 5-A Section 108 of NYS General Municipal Law, this Agreement shall be void and of no effect unless the Provider shall provide, upon request and maintain coverage during the term of this Agreement for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.
- (2) To have all policies providing such coverage issued by insurance companies with an A.M. Best rating of A- or better.
- (3) To furnish to the State certificates of insurance or, on request, original policies, evidencing compliance with the aforesaid insurance requirements.
- (4) To have, in the case of commercial liability insurance, said certificates or other evidence of insurance name the State of New York and Municipality as an additional insured.
- (5) To have all such certificates or other evidence of insurance provide for the State of New York and Municipality to be a certificate holder and to be notified in writing thirty (30) days prior to any cancellation, non-renewal or material change.
- (6) To have such certificates, policies or other evidence of insurance and notices mailed to the Department and Municipality at the address contained in this Agreement or at any such other address of which the Department and Municipality shall have given the Provider notice in writing.

**III. Additional Requirements: Upon request of the Department, Individual Providers, Agency program director and Principals of an Agency Provider who are/will be providing direct services to EIP children shall provide the Department with all necessary information and documentation to allow for a database check from the Justice Center and the SCR, and shall upon request further submit any required fee under Section 424-a of New York State Social Services Law to perform such SCR clearance.**

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New York State Department of Health  
Bureau of Early Intervention  
**Early Intervention Provider Agreement**

Signatory must be legally authorized to enter into an Agreement on behalf of the Provider.  
Please answer Yes or No to the following questions.

I have read and understand my obligations as stated in this 2018 Agreement: Yes

I request the **additional terms** outlined in Appendix 1 (check one): No Yes

**In Witness Whereof**, the parties hereto have executed\* this Agreement as of the latest date written below.

**Provider**

<u>Agency Provider Name</u> or <u>Individual Provider Name</u> (If you have or are requesting a business name associated with your Individual Approval, record name as <LAST NAME>, <FIRST NAME> FOR <BUSINESS NAME>.)
NYS NYEIS Provider ID (If one has previously been assigned, otherwise leave blank)

**Agency Provider's Authorizing Officer** (This pertains to Agency Providers **only**.)

First Name	M.I.	Last Name
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**Address**

Street Address			Apartment/Floor
City	State	Zip Code (9 digit)	County (if in NY)
E-mail Address		NPI Number	

**Service Catchment Area(s):** Your agreement is statewide, however circle only counties/municipalities for which you are currently available to provide services. If future circumstances change, you may notify us of additional counties.

- |             |            |              |                           |
|-------------|------------|--------------|---------------------------|
| Albany      | Fulton     | Orange       | Tioga                     |
| Allegany    | Genesee    | Orleans      | Tompkins                  |
| Broome      | Greene     | Oswego       | Ulster                    |
| Cattaraugus | Hamilton   | Otsego       | Warren                    |
| Cayuga      | Herkimer   | Putnam       | Washington                |
| Chautauqua  | Jefferson  | Rensselaer   | Wayne                     |
| Chemung     | Lewis      | Rockland     | Westchester               |
| Chenango    | Livingston | St. Lawrence | Wyoming                   |
| Clinton     | Madison    | Saratoga     | Yates                     |
| Columbia    | Monroe     | Schenectady  |                           |
| Cortland    | Montgomery | Schoharie    | <u>New York City Area</u> |
| Delaware    | Nassau     | Schuyler     | Bronx                     |
| Dutchess    | Niagara    | Seneca       | Kings                     |
| Erie        | Oneida     | Steuben      | New York                  |
| Essex       | Onondaga   | Suffolk      | Queens                    |
| Franklin    | Ontario    | Sullivan     | Richmond                  |

Applicant Authorized Signature (Original Signature)	
Title/Profession	Telephone

**For internal Department use only- Approved By New York State Department of Health**

First Name	Last Name
Authorized Signature	Approval Date
Dates of Agreement Effective:	A1 Yes <span style="margin-left: 100px;">No</span>

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