

**Agreement
between
CSEA/VOICE
and
the State of New York
OCFS**

MEMORANDUM OF AGREEMENT entered into this day of , 2009 by and between the Civil Service Employees Association, Local 1000, AFSCME, AFL-CIO (the “Union” or “CSEA”) and the State of New York (the “State”) through the New York State Office of Children and Family Services (OCFS), the New York State Division of the Budget (DOB), the New York State Department of Health (DOH).

IN WITNESS THEREOF NOW, THEREFORE, it is mutually agreed as follows:

1) Purpose And Intent Of The Agreement

As signatories to this document, the Civil Service Employees Association, (CSEA), and the New York State Office of Children and Family Services (OCFS) agree to work in partnership to build a child care system that respects Providers; empowers working families; and promotes the safe, healthy development of children. Both parties will work toward developing a system that promotes the safety, quality, accessibility and affordability of child care.

2) Definitions

The following definitions shall apply for the purposes of this agreement:

- a. “Union” shall mean Voice of Organized Independent Childcare Educators/Civil Service Employees Association.
- b. “Unions” shall mean all unions representing providers pursuant to New York State Employment Relations Board Certification under Executive Order #12 issued by former Governor Eliot Spitzer on May 8, 2007 as continued by Executive Order #9 issued by Governor David A. Paterson on June 18, 2008 (hereinafter referred to collectively as “Executive Order 12”).
- c. “OCFS” or the “Agency” shall mean the New York State Office of Children and Family Services.
- d. “DOB” shall mean the New York State Division of the Budget.
- e. “DOH” shall mean the New York State Department of Health.
- f. “Covered Child Care Providers” shall mean all operators of a licensed group family day care home as defined in Social Services Law section 390(1)(d) or of a registered family day care home as defined in Social Services Law section 390(1)(e) located outside New York City.

3) Union Recognition

- a. OCFS hereby recognizes the Union as the exclusive unit representative under Executive Order #12 for Covered Child Care Providers as certified by the State of New York State Employment Relations Board (SERB) case # SE-60114 in matters pertaining to the stability, funding and operation of child care programs; expansion of quality child care; and terms and conditions as Covered Child Care Providers including, but not limited to, subsidies, benefits, payment for services, licensing/registration, policies and regulations, rule making, and conditions of operation.

b. Representation Unit(s)

All licensed and registered group family and family child care providers outside the five boroughs of New York City as defined in Executive Order # 12 section 2, group (c) as signed on May 8, 2007, hereafter referred to as the VOICE/CSEA representation unit.

c. Union Rights

OCFS affirms it shall not engage in discussions for the purposes of entering into, or enter into, a written agreement with any other union or representative on behalf of the Covered Child Care Providers relating to matters pertaining to any terms or conditions of the VOICE/CSEA representative unit covered in this Agreement; provided, however, that nothing herein shall preclude OCFS from entering into discussions and/or an agreement relating to an enforcement matter against a particular Covered Child Care Provider, or any lawsuit or potential lawsuit brought on behalf of one or more Covered Child Care Providers, recipients of child care subsidies, or families that use family or group family child care providers. Nothing herein shall preclude OCFS from determining which matters covered by this Agreement will be discussed in joint meetings with the union(s) representing other representative units covered by Executive Order #12.

d. Union Representation on OCFS Advisory Committees and Task Forces

The Union may have at least two representatives on any and all OCFS Advisory Committees and Task Forces in place at the time of the signing of this Agreement, and which are created during the life of this Agreement, that discuss and determine maintenance and/or changes to, issues covered by this Agreement including, but not limited to: policy statements, regulations, standards for licensure/registration, training, and funding related to Covered Child Care Providers.

e. Union Activity/Non-Discrimination/State Neutrality

- i. OCFS agrees that Covered Child Care Providers shall not be discriminated against, intimidated, restrained, or coerced on account of the exercise of any rights granted by this Agreement, Executive Order # 12, or on account of membership or non-membership in, or lawful activities on behalf of, the Union. Child care referrals will not be withheld or avoided on account of membership or non-membership in, or lawful activities on behalf of, the Union.
- ii. OCFS will direct all questions concerning union membership, benefits or representation to the Union.

f. Union Representatives

The Union shall notify OCFS of the names of its official representatives and changes in such representatives.

g. Lists Related to Covered Child Care Providers

- i. OCFS shall provide the Union with the following child day care statistics using point in time data for the Rest of State (outside of New York City) on the 15th day of each January, April, July and October during the term of this Agreement unless the 15th is a non-business day, in which case the information will be provided on the next business day: licensed and registered capacity by modality (family day care homes, group family day care homes, day care centers and school-age child care programs); and, for subsidies provided under the New York State Block Grant, the number of subsidized children, the number of enrolled legally-exempt child care providers, and the number of subsidized children by case type (temporary assistance or low income).
- ii. OCFS shall provide the Union with complete lists containing information on Covered Child Care Providers. The list(s) shall be provided in electronic form and shall be

forwarded to the Union by the 15th calendar day of each January, May and September during the term of this Agreement unless the 15th is a non-business day, in which case the list(s) shall be provided on the next business day. The list(s) shall contain the following information for each Covered Child Care Provider: first, middle and last name, Provider modality, registration or license number, date first registered or licensed, street address, city, state, zip code, county, e-mail address and phone number(s), to the extent such information is available on OCFS' database.

h. Bulletin Boards

OCFS shall supply a bulletin board for Union use for information related to Covered Child Care Providers and child care services at each Regional OCFS office and each Child Care Resource and Referral Agency. This provision does not provide Union representatives with access rights to locations or premises beyond access granted to other members of the general public.

i. Paperwork Changes/Notices

- i. OCFS will supply the Union with a copy of all manuals, regulations, administrative rules, new forms, and policy statements that are applicable to the Covered Child Care Providers through the first available method in the following order: a link to where the document is available on the OCFS website, an electronic copy of the document, or a hard copy of the document. OCFS will provide reasonable advance notice to the Union of any proposed change to its policy statements and regulations except for a change that needs to be implemented on an emergency basis to protect the health, safety, or welfare of children cared for in child day care programs, and shall meet with the Union, at the Union's request, to discuss the proposed changes. OCFS and the Union will endeavor to work out an agreement on any proposed policy or regulatory change.
- ii. Once annually, on or about January 15th, OCFS shall send a current copy of all changes in OCFS regulations and policy statements pertaining to Covered Child Care Providers that occurred over the previous twelve (12) month period, to the Union.

j. Dissemination Of Union Information

OCFS will provide the Union, on a monthly basis, with the names and addresses of those individuals who have become initially registered or licensed as Covered Child Care Providers during the previous month so that the Union may transmit to said individuals information prepared by the Union concerning Union representation and Union membership.

k. Union Orientation/New Members

OCFS will allow union representatives to meet with new Covered Child Care Providers as part of any overall initial orientation or training to the extent such meetings do not interfere with, or increase the costs of providing, the orientation or training.

l. Union Dues/Fair Share Payments

- i. The Union represents all Covered Child Care Providers and intends to collect union dues from all Covered Child Care Providers who choose to be members of the Union.
- ii. The State agrees to establish procedures for the deduction and transfer to the Union of union dues from the subsidy payments of those Covered Child Care Providers who individually authorize the dues deduction in writing from payments made directly by a social services district, other than the City of New York, to those Covered Child Care Providers on behalf of families who receive subsidies under the Social Services Law to pay for all or a portion of their child care costs. The Union will be responsible for obtaining written authorization from Union members for the union dues to be deducted and transferred to the Union from such Covered Child Care Providers.

- iii. The Union will assume all the design, development, and on-going maintenance costs for all changes to the State's existing payment system(s) and any other associated administrative costs necessary for union dues to be deducted and transferred to the Union for those Covered Child Care Providers who have submitted written authorizations for dues deductions. Such deductions will not commence until the necessary technical changes have been implemented. Once the necessary technical changes have been implemented, the Union will be responsible for providing the State with information about those members who have authorized the deduction of union dues in a format determined by the State as necessary to electronically input the information into the payment system(s) to enable the system(s) to deduct and transfer the union dues to the Union.
- iv. The Union will establish the amount of the union dues in a consistent manner for all providers.
- v. The Union will be responsible for collecting union dues directly from those Covered Child Care Providers who choose to be Union members who do not receive subsidy payments directly from a social services district on behalf of families receiving government child care subsidies. The Union agrees to provide periodic, on-going assurances to the State that it has implemented a process to collect union dues from such Covered Child Care Providers.
- vi. OCFS agrees to seek legislation authorizing, consistent with the federal and State constitutions, the deduction and transfer to the Union of a fair share payment from those Covered Child Care Providers who do not choose to be members of the Union or to authorize the deduction of union dues but who receive subsidy payments directly from a social services district, other than the City of New York, on behalf of families receiving child care subsidies under the Social Services Law. Upon enactment of that legislation and implementation of the necessary technological changes to the State's payment system(s), the fair share payments will begin to be deducted. The Union will assume all the design, development and on-going maintenance costs for any additional changes to the State's existing payment system(s) and any other associated administrative costs necessary for the fair share payments to be deducted and transferred to the Union from payments due to the applicable Covered Child Care Providers. Once the necessary technical changes have been implemented, the Union will be responsible for providing the State with information about those Covered Child Care Providers who are responsible for making fair share payments to the Union in a format determined by the State as necessary to electronically input the information into the payment system(s) to enable the system(s) to deduct and transfer the fair share payments to the Union.
- vii. OCFS and the Union agree to form a committee to work out the details necessary to implement the deduction of union dues and any fair share payments as described in this Section. The State and the Union have an interest in the adequate availability of child care services for those families participating in the child care subsidy program. The State and the Union intend to implement this provision in a manner that does not limit parental access to or choice from among the categories of care or types of providers or exclude a significant number of providers in any category of care or of any type and will establish procedures to monitor and, if necessary, adjust the manner of implementation.
- viii. The Union shall cooperate with each social services district and/or OCFS, as applicable, in resolving complaints and/or concerns of Covered Child Care Providers regarding the deduction of union dues and any fair share payments.
- ix. The Union shall indemnify and hold the State and its social services districts harmless against any and all claims, damages, suits, and other forms of liability which may arise out of any action taken or not taken by the State or a social services district for the purposes of complying with the provisions of this Section.

4) State Rights

a. Nothing in the Agreement shall interfere with the ability that child care providers, or any other organization that represents such providers, otherwise may have to meet or correspond with, or otherwise appear before, OCFS or other state agencies in regard to any matter of relevance, including any matter under discussion as set forth in this Agreement.

b. The State, OCFS, and social services districts retain and may exercise all rights, powers, duties, authority, and responsibilities conferred upon and vested in them by the laws and constitutions of the State of New York and of the United States of America.

c. Except as specifically abridged, limited, or modified by the terms of this Agreement, all such rights, powers, authority, prerogatives of the State and social services districts, and responsibility to promulgate and enforce rules and regulations governing the conduct and the activities of Covered Child Care Providers are retained by the State and social services districts.

d. No action may be taken under this Agreement that would derogate from the status, function or authority of OCFS in its capacity as the Lead Agency for the Child Care and Development Fund and the State Plan for such Fund filed by the Commissioner of OCFS with the United States Department of Health and Human Services.

e. Nothing in this Agreement shall render the State or any social services district an employer of any Covered Child Care Provider for any purpose, including but not limited to, vicarious liability in tort and statutory retirement, health insurance, unemployment compensation, worker's compensation, disability, or any other public employee benefits. Covered Child Care Providers shall remain as independent contractors of the families receiving child care services and/or of a social services district for those Covered Child Care Providers that have chosen to enter into a contract with such a district.

f. The parties recognize and agree that the provision, funding and regulation of child care services is subject to federal and State laws and regulations.

g. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this Agreement to the Union or to anyone else beyond funds appropriated and made available for this Agreement. To the extent that any provision of this Agreement requires the appropriation of funds during a particular State fiscal year to be effective, the State will propose an appropriation for such purpose in the Executive budget for that State fiscal year and will act diligently, in conjunction with the Union, to obtain legislative approval of such appropriation.

5) Parental Rights

a. The parties reaffirm that parents, guardians, and/or caretakers have the sole and undisputed right to hire child care providers of their choice, supervise the care provided to their children, and remove child care providers from their service for any reason subject to any terms agreed to between the parent, guardian or caretaker and the child care provider; provided, however, that parents, guardians or caretakers receiving child care subsidies are subject to the limitations in federal and State law and regulations regarding eligible child care providers and covered child care services, and that a social services district may disapprove a provider chosen by a recipient in a preventive or protective case if the district has reason to believe that it would be contrary to the health, safety or welfare of the child to receive child care services from that provider.

b. Union representatives, Covered Child Care Providers, and OCFS shall maintain strict standards of confidentiality regarding parents, guardians, caretakers, and children and shall not disclose personal information pertaining to any parents, guardians, caretakers, or children obtained from any source unless the disclosure of such information is compelled by a legal process or otherwise permissible by law.

6) Guiding Principles

OCFS agrees with the guiding principles set forth in Addendum A to the Agreement and will encourage OCFS employees, social services districts, and entities with which it contracts for licensing and registration activities to implement the guiding principles in their interactions with Covered Child Care Providers.

7) Regulations

- a. The parties agree to form a committee with representatives from the State and the Union(s) to review those current child care regulations that both OCFS and the Union(s) mutually agree should be discussed in a forum separate from other relevant stakeholders including the different classes and types of violations, to recommend changes to OCFS, and to draft proposed regulations and regulatory changes needed to implement the terms of this Agreement. The committee has already completed a review of the regulations relating to the licensing of group family day care homes and the registration of family day care homes.
- b. The Union(s) recognize that OCFS must comply with the applicable provisions of the State Administrative Procedures Act before any new regulation or regulatory change may be adopted.

8) Licensing And Registering

a. License and Registration Periods

OCFS agrees to seek legislation to amend section 390 of the Social Services Law to provide that the initial license or registration period for a group family and family day care home shall be two (2) years and each subsequent license or registration renewal period shall be every four (4) years thereafter as long as the provider remains substantially in compliance with the applicable laws and regulations during that period.

b. Staffing Ratios

- i. For the purpose of computing of numbers of children in care in a licensed group family day care home or registered family day care home, the following shall apply:
 1. "Infant" shall mean any child under 24 months of age regardless of child care modality.
 2. "Toddler" shall mean any child between the ages of 24 months and 3 years.
 3. "Preschooler" shall mean any child who is 3 years of age and any child who is 4 years of age or older who is not yet enrolled in school.
- ii. OCFS shall seek legislation to change subdivision (d) of section 390 of Social Service Law to reflect the following:
 1. A group family day care home, with the licensed provider and a recognized assistant present, may care for a maximum of twelve (12) children plus four (4) school age children. Among the twelve children mentioned above, there can be a maximum of two (2) children under the age of two (2) years for every caregiver present.
 2. A group family day care provider, an assistant in a group family day care home, a family day care provider, or an approved substitute, as individuals, may care for a maximum of six (6) children plus two (2) school age children. Among

the six (6) children mentioned above, there can be a maximum of two (2) children under the age of two years.

iii. OCFS retains the ability to limit the maximum number of children cared for in a particular group family day care home or family day care home and/or cared for by a particular individual, including the maximum number of school age children and/or children under the age of two years, based on the needs of the children in care, the capabilities of the individual, and/or the size and configuration of the space available to provide child care services.

c. Paperwork

- i. To the extent feasible within existing resources, all relevant paperwork/documents shall be available in Spanish as well as English.
- ii. The parties agree to discuss the feasibility of making pertinent forms issued by OCFS pertaining to day care operations universal across the state.
- iii. OCFS will provide the Union with a copy of any substantive changes in forms developed by OCFS before the change is scheduled to take effect unless there is a need to implement the change on an emergency basis to protect the health, safety or welfare of children in care.
- iv. OCFS will provide access to all new forms on the OCFS website immediately upon implementation.

d. Inspections

- i. Any inspection relating to an application for an initial license or registration or the renewal of a license or registration shall be announced and scheduled in advance at a time that is convenient to the applicant or Covered Child Care Provider, to the extent possible. OCFS may make unannounced visits in response to a complaint; to verify that a previously identified violation has been corrected or remains corrected; and when otherwise necessary to verify the health, safety, or welfare of the children who may be in care. A Covered Child Care Provider will be advised immediately by the licensor/registrar/fire inspector (hereinafter referred to as “inspector”) of the type of visit.
- ii. All inspectors will leave a factual, written On-Site Inspection Report and conduct an exit interview with the Covered Child Care Provider during an inspection explaining any observed violations and any possible violations the inspector will consider and determine once leaving the premises. A Covered Child Care Provider shall have the right to formally dispute, in writing on the Provider Feedback Form, anything that may be included on the On-Site Inspection Report.
- iii. Records of non-serious violations that are immediately fixed or complied with shall be noted on the written On-Site Inspection Report.
- iv. All inspectors shall offer copies of written information setting forth the name, work address, and work telephone number of the inspector, the inspector’s supervisor, and the applicable OCFS Regional Office Manager.
- v. All inspectors shall send to a Covered Child Care Provider, upon request, any new forms that have been issued within the last 12 months.
- vi. Any disagreement between a Covered Child Care Provider and an inspector related to a serious violation cited as a result of an inspection may be the subject of the inspection/licensing dispute resolution process and/or an enforcement actions described in subdivisions a and b of Section 9 of this Agreement.

e. OCFS Website

OCFS agrees to make the following changes to the OCFS website as resources permit, with priority given to those items that can be accomplished quickly:

- i. Links to mapping of child care addresses, homes, or facilities shall continue to appear on the OCFS website. However, upon written request by a Covered Child Care Provider, OCFS shall remove from the OCFS website the map of the Covered Child Care Provider's home/facility location.
- ii. Upon written request by a Covered Child Care Provider, OCFS shall remove from the OCFS website, including the profile page, the Covered Child Care Provider's street address and phone number.
- iii. For a Covered Child Care Provider who voluntarily participates in the Quality Rating Improvement System, once it is implemented, OCFS shall add those Provider's credentials that have been verified as part of participation in the System to the information offered on the website. A Covered Child Care Provider shall have the option to list the Provider's website address on the OCFS website.
- iv. Written explanations of any "serious violation" that may be listed on the website shall include a description of the violation in layperson's terms.
- v. OCFS shall remove the question "*Has there been a serious violation in the last 2 years?*" from the front page. All violations shall be described on the "profile page".
- vi. The website shall be available in Spanish as well as English.

9) Dispute Resolution Processes

The parties agree that the first two years of this Agreement shall act as a 'pilot period' for the dispute resolution processes described below. The parties also agree to meet at the end of the "pilot period" for the purpose of discussing any proposed modifications to the dispute resolution processes.

a. Inspection/Licensing Dispute Resolution

- i. For the purposes of this process, a dispute shall mean a disagreement between a Covered Child Care Provider and an inspector regarding a serious violation cited as the result of an inspection or visit that is not resolved through discussions with the inspector at the time of the inspection or visit.
- ii. A Covered Child Care Provider may be assisted by a union representative at each step in the dispute resolution process
- iii. OCFS reserves the right to have its counsel attend all meetings with a Covered Child Care Provider during the dispute resolution process regardless of whether the Covered Child Care Provider is assisted by a union representative.
- iv. The dispute resolution process may be implemented in accordance with the following steps, which must be followed in the order set forth below.
- v. The dispute resolution process shall immediately cease once OCFS commences an enforcement action against the Covered Child Care Provider by mailing or personally delivering either: a Statement of Charges for the imposition of a fine; or a letter setting forth OCFS' determination to deny the issuance of an initial license or registration, or to deny the renewal of or limit, revoke, or suspend an existing license or registration.

Step One

If a Covered Child Care Provider feels he or she has been incorrectly cited for a serious violation that is not resolved by talking with his or her inspector at the time of the inspection or visit, the Covered Child Care Provider should complete the Provider Feedback Form, a separate form from the On-Site Inspection Report Form. If the Covered Child Care Provider fails to ask for a

review of the cited serious violation(s) at the time of the inspection or disagrees with a serious violation listed in the inspection letter, the Covered Child Care Provider may commence the dispute resolution process by contacting the inspector or his/her supervisor in writing no later than two weeks from the date of the receipt of the inspection letter to request a review of the serious violation(s). The dispute document shall include a written statement of the facts supporting the Covered Child Care Provider's claim or claims along with the times, dates, and locations of each claim and the remedy sought. In addition, if a Covered Child Care Provider receives an inspection letter that includes a citation for a serious violation that he or she did not expect and/or with which he or she does not agree, the Covered Child Care Provider may first speak with the inspector. If the dispute is unresolved, the Covered Child Care Provider may ask to speak with the inspector's supervisor. To the extent possible, the inspector's supervisor will issue a written decision to the Covered Child Care Provider within ten (10) business days from the request for a review.

Step Two

If after speaking with the inspector and/or his or her supervisor, the Covered Child Care Provider believes the matter is not resolved, the Covered Child Care Provider may request to meet with the applicable OCFS Division of Child Care Services Regional Office Manager or his or her designee by submitting a written request to the Regional Office Manager no later than ten (10) business days after the date of the Covered Provider/inspector discussion under Step One. To the extent possible, the Regional Office Manager or his or her designee and the Covered Child Care Provider shall meet, either in person or by telephone, within ten (10) business days from the day the request was submitted to the Regional Manager. The meeting shall be scheduled at a convenient time for all parties, whenever possible, provided, however, that nothing herein shall require OCFS to schedule a meeting at a time that will require OCFS to pay overtime or holiday pay to any OCFS staff who is participating in the meeting. To the extent possible, the Regional Office Manager will issue a written decision within ten (10) business days of the meeting. (In New York City, the Covered Child Care Provider would first speak to the NYCDOHMH Borough Manager. If the matter is not resolved, the provider would contact the NYC DOHMH central office designee. If the matter is not resolved, the next step would be to contact the OCFS DCCS NYC Regional Manager).

Step Three

If after receiving the written decision of the Regional Office Manager, the Covered Child Care Provider still believes that the matter is not resolved, the Covered Child Care Provider may request, in writing, within ten (10) business days from receipt of the written decision in Step Two, to speak with the designee of the OCFS' Deputy Commissioner for the Division of Child Care Services. To the extent possible, the designee of the Deputy Commissioner and the Covered Child Care Provider shall meet, either in person or by telephone, within twenty (20) business days of receiving the meeting request. The meeting shall be scheduled at a convenient time for all parties, whenever possible, provided, however, that nothing herein shall require OCFS to schedule a meeting at a time that will require OCFS to pay overtime or holiday pay to any OCFS staff who is participating in the meeting. To the extent possible, the designee of the Deputy Commissioner shall issue a written decision within fifteen (15) business days from the meeting. This decision is final.

b. Enforcement Actions

- i. Regardless of whether a Covered Child Care Provider chooses to avail him or herself of any part of the dispute resolution process set forth in subdivision a of this Section, a Covered Child Care Provider against whom an enforcement action has been commenced

may assert, as part of his or her defense to such action, that one or more of the regulations upon which the enforcement action is based was incorrectly or inappropriately cited.

ii. Where OCFS has commenced an enforcement action as described in subdivision a of this Section, a Covered Child Care Provider may elect to use a Union employee or designee as the Provider's official representative for the enforcement action; provided, however, that a Covered Child Care Provider may have only one such named official representative at a time. If the person named as Covered Child Care Provider's official representative is not an attorney, the Covered Child Care Provider must send a letter to OCFS' Division of Legal Affairs stating that the Provider has selected the named Union employee or designee to be the Provider's official representative in the enforcement action and that the named Union employee or designee should be copied on all correspondence regarding the action, including but not limited to Notices of Hearings and adjournment requests. OCFS will not communicate with such a Union employee or designee about the Covered Child Care Provider's enforcement action until OCFS has received such a letter from the Covered Child Care Provider.

iii. A Union employee or designee who has not been named, in writing, by a Covered Child Care Provider as the Provider's official representative in an enforcement action in the manner specified in paragraph ii. of this subdivision, may, with the permission of the presiding administrative law judge, attend an administrative hearing relative to that enforcement action as an observer. Such an observer shall not be permitted to testify or to participate in the defense of the Covered Child Care Provider and must be excluded from those portions of the administrative hearing that discuss confidential information.

c. Payment Dispute Resolution

i. If a Covered Child Care Provider is unable to resolve a dispute with a social services district regarding the misapplication of, or non-compliance with, regulatory requirements regarding the direct payment by the social services district to a Covered Child Care Provider for the provision of child care services to a child receiving subsidized child care services, other than a dispute regarding the eligibility of the child to receive a child care subsidy, and the difference in the amount of payment in dispute is greater than \$300 and after: (i) submitting all of the information required by the social services district, (ii) exhausting all procedures available at the district other than bringing a lawsuit against the district, and (iii) the review and concurrence by the Union that the dispute is one that fits within the criteria in this subdivision for bringing a dispute forward to OCFS' Deputy Commissioner for the Division of Child Care Services, the Covered Child Care Provider may submit to OCFS' Division of Child Care Services, in writing, documentation of the payment issue in dispute and the steps taken to resolve the dispute with the social services district. OCFS will review the written information and, if OCFS determines that it is appropriate, OCFS will contact the applicable social services district to discuss the Covered Child Care Provider's dispute in an attempt to resolve the matter. However, the parties recognize that the final resolution of the matter is between the Covered Child Care Provider and the social services district.

ii. If after exercising the payment dispute resolution procedures set forth in subparagraph i. of this paragraph, the Union still believes that a social services district has misinterpreted or misapplied any federal or State law or regulation relating to the payment of multiple Covered Child Care Providers in the district other than a dispute regarding the eligibility of children to receive child care subsidies and the Union has been unable to resolve the matter with the district after exhausting all procedures available at the district other than bringing a lawsuit against the district, the Union may submit to OCFS' Division of Child Care Services, in writing, documentation of the payment issue in dispute and the steps taken to resolve the dispute with the social services district.

OCFS will review the written information and, if OCFS determines that it is appropriate, OCFS will contact the applicable social services district to discuss the dispute in an attempt to resolve the matter. If OCFS is unable to resolve the matter through discussions with the applicable social services district and OCFS determines that the matter is sufficiently problematic that further action on the part of OCFS is warranted, OCFS will exercise its powers under sections 20 and 34 of the Social Services Law to attempt to compel the district to comply with the applicable law or regulation. Nothing in this section shall be deemed to take away any of the rights Covered Child Care Providers have available under the law.

d. Resolution of Systemic Issues Related to the Implementation of this Agreement

i. State and Provider Cooperation Committee

1. The State and the Union agree to develop and maintain a State and Provider Cooperation Committee (Committee) for the purpose of resolving concerns regarding allegations of a significant or recurring misinterpretation or misapplication of any of the terms of this Agreement by one of the parties that has a widespread systemic impact affecting multiple Covered Child Care Providers in a non-adversarial, consensus-based, collaborative process. This subdivision does not apply to any alleged failures to implement the Agreement that are individual or isolated.
2. The State and the Union will have an equal number of representatives at each Committee meeting. The State and the Union will each appoint a co-chair for the Committee. Each party is responsible for paying its own expenses for preparing for and attending Committee meetings.

ii. Resolving Systemic Issues

1. If either party feels the other party has significantly or on a recurring basis misinterpreted or misapplied any term of this Agreement in a manner that has a widespread systemic impact affecting multiple Covered Child Care Providers, the co-chair for that party shall provide written notice to the co-chair for the other party of the alleged misinterpretation or misapplication including: a statement of the issue and the relevant facts; the specific provision(s) of the Agreement alleged to be at issue; and the specific resolution sought. Within fifteen (15) business days of such notification the co-chairs will confer informally by telephone, email or other informal means to attempt to resolve the issue.
2. When the informal process does not resolve the systemic issue, a co-chair may request, in writing, that the matter be brought to the full Committee for further discussion and attempted resolution. A meeting of the full Committee will take place within twenty (20) business days of the written request for a meeting unless another time is mutually agreed upon by the parties.
3. The initiating co-chair will schedule the meeting and, at least ten (10) business days prior to the meeting, provide written notification to the Committee members of the issue including: a statement of the issue and the relevant facts; the specific provision(s) of the Agreement alleged to be at issue; and the specific resolution sought.
4. The Committee will use a collaborative non-adversarial consensus-based process to attempt to resolve the systemic issue.
5. If the Committee is unable to resolve the systemic issue to the satisfaction of the initiating party, that party may request that there be a meeting with an equal number of representatives of the State and the Union and a Neutral mutually selected by the State and the Union, who is willing to participate at no cost to

either party, to seek a voluntary resolution of the dispute. The Neutral may recommend a proposed resolution for consideration by the parties. The proposed resolution will not be binding on either party.

6. If after meeting with the Neutral the issue is unable to be voluntarily resolved to the satisfaction of the initiating party, that party may commence a legal action against the other party in an appropriate court of law.

10) Child Care Market Rates

a. For the purposes of computing the applicable biennial local child care market rates for subsidized child care services provided by Covered Child Care Providers, the following definitions shall apply:

- i. "Infant" shall mean any child under 18 months of age regardless of child care modality.
- ii. "Toddler" shall mean any child who is at least 18 months but under 3 years of age.
- iii. "Preschool" shall mean any child who is at least 3 years but under 6 years of age.
- iv. "School-age" shall mean any child who is at least 6 years but under 13 years of age.

b. In accordance with the emergency regulations filed by OCFS with the Department of State, for the period from October 1, 2009 through September 30, 2011, the market rates for licensed group family day care home and registered family day care home providers will be based on the 75th percentile of the actual cost of care as reflected in the responses to the market rate survey conducted by OCFS in the Spring of 2009. The standard market rate for legally-exempt family and in-home child care providers will be based on a 65% differential applied to the applicable market rates established for registered family day care home providers.

c. The Union and OCFS will jointly review the instrument and methodology for conducting the next biennial market rate survey. OCFS will discuss and consider any changes to either or both recommended by the Union.

d. The Union and OCFS will work together to seek additional federal funding to expand the state's child care program.

11) Payments and Billing

The State agrees to pursue the development and implementation of a single, automated statewide child care time and attendance payment system for all social services districts other than the City of New York. The State agrees to include the Union in discussions regarding the design of the system.

12) Quality Grants

a. In order to help licensed group family day care home and registered family day care home providers increase the quality of the environment in which they provide their services, a quality grant program is established.

b. OCFS agrees to contract with the Union to provide one and a half million dollars (\$1,500,000) for these grants in each of the first two years of this Agreement.

c. In addition to the above, the State agrees to provide an additional amount of two million two hundred thirty-five thousand dollars (\$2,235,000) to the Union for such grants in both the 2010-11 and the 2011-12 State fiscal years.

- d. In addition to the above, the State agrees to provide an additional amount of three million seven hundred thirty-five thousand dollars (\$3,735,000) to the Union for such grants in the 2012-13 State fiscal year.
- e. The funds will be distributed equally among all Covered Child Care Providers who are licensed group family day care home or registered family day care home providers outside of the City of New York irrespective of their membership in the Union. The Union agrees that any excess funds for either State fiscal year beyond the amounts necessary to provide a quality program grant of five hundred dollars (\$500) annually to each applicable licensed or registered provider will be placed into the CSEA Taft Hartley fund to be used toward the costs of purchasing FHP Buy-in coverage for Covered Child Care Providers.
- f. The Union and OCFS will develop rules for the disbursement of these grants.

13) Professional Development

- a. The parties recognize the provision of high quality child care services is tied to professional development through educational and training opportunities.
- b. The parties agree to establish a professional development committee with representatives from the State and the Union(s) to review existing educational, training and professional development opportunities and make recommendations to OCFS for implementing program changes to: better develop the skills and abilities of, and enhance the career development for Covered Child Care Providers; improve the availability of professional development opportunities; determine ways to make information about available professional development opportunities more widely known to Covered Child Care Providers; improve the quality of care provided to children and families; and implement the terms of this Agreement.
- c. The State and the Union are committed to the enhancement of the quality of child care services provided by child care providers and to aiding the providers to increase their training and certifications.
- d. The Union will establish a professional development fund for child care providers.
- e. The State agrees to contract with the Union to provide the fund with an initial total grant of one-half million dollars (\$500,000) which will be used to provide professional development to the licensed group family day care home, registered family day care home and legally-exempt providers irrespective of their membership in the Union or the representative unit and to such other providers as the Union and OCFS agree, to meet existing training requirements and to enhance their development.
- f. The Union will reach an agreement with OCFS on the methods by which these funds are expended. Training activities may include but need not be limited to: the management of a training voucher program and the design, development and presentation of video training sessions, web-based training, classroom training, and innovative training approaches that use non-traditional methods and allow for the participation of providers during non-working hours.
- g. OCFS and the State are committed, as existing training funds currently obligated for family and group family day care home and legally-exempt provider training activities become available, to amend the contract entered into under subdivision c of this Section to provide additional funds to the Union for the union professional development fund. The Union and

OCFS will develop requirements and protocols for the disbursement of these funds to provide training and professional development to all applicable child care providers.

- h. When feasible as resources permit, trainings will be offered in Spanish, when necessary.
- i. When feasible as resources permit, OCFS will make efforts to allow the training(s) in other languages, when necessary.

14) Quality Rating Improvement System

OCFS will work jointly with the Union(s), the Governor's Children's Cabinet, the Early Childhood Advisory Council, and other relevant stakeholders to develop, pilot and implement a Quality Rating Improvement System for child care providers to the extent that the funding is made available specifically for such purposes.

15) Substitute Pool

OCFS agrees to establish a committee with representatives from the Unions to discuss the feasibility of establishing mechanisms to enable an assistant, substitute, or volunteer who is already cleared to work with one family or group family day care provider to also be used as a substitute for one or more other family or group family day care home providers.

16) Health Insurance

It is the goal of this Agreement that all Covered Child Care Providers will have health insurance and that this goal will be advanced from year to year, with the goal of having all Covered Child Care Providers covered by the end of State fiscal year 2013–14 consistent with State fiscal resources available and fiscal constraints existing at that time and the provisions of this Section.

- a. Pursuant to legislation enacted in 2009, the Union, through its Taft Hartley Plan, will purchase health insurance coverage for Covered Child Care Providers through the Family Health Plus (FHPlus) Employer Buy-in established under Social Services Law §369-ff (1).
- b. During the 2009 calendar year the Union will enter into a contract with a health plan participating in the FHPlus Buy-in and will initially seek to enroll into the selected FHPlus Buy-in plan those providers who are already enrolled in FHPlus. DOH will work with the Union to facilitate transferring providers from their FHPlus plan to the plan under contract with the Union.
- c. In 2010 the Union will begin to enroll uninsured income-eligible providers who would otherwise qualify for FHPlus into coverage through the Buy-in.
- d. The State will provide to the Union a total of two million seven hundred sixty-five thousand dollars (\$2,765,000) during State fiscal year 2010-11 to contribute to the Union's cost of purchasing coverage under the FHPlus Buy-in for providers in the VOICE/CSEA representation unit and the Child Care Providers Together/Civil Service Employees Association (CCPT/CSEA) representation unit who do not otherwise qualify for coverage under FHPlus. The selection of providers eligible for coverage under the Buy-in shall not result in adverse selection.
- e. The State will provide to the Union a total of six million seven hundred sixty-five thousand dollars (\$6,765,000) during State fiscal year 2011-12 to contribute to the Union's cost of purchasing coverage under the FHPlus Buy-in for providers for providers in the VOICE/CSEA representation unit and CCPT/CSEA representation unit who do not otherwise qualify for coverage under FHPlus. The selection of providers eligible for coverage under the Buy-in shall not result in adverse selection.

f. The State will provide to the Union a total of five million two hundred sixty-five thousand dollars (\$5,265,000) during State fiscal year 2012-13 to contribute to the Union's cost of purchasing coverage under the FHPlus Buy-in for providers for providers in the VOICE/CSEA representation unit and CCPT/CSEA representation unit who do not qualify for coverage under FHPlus. The selection of providers eligible for coverage under the By-in shall not result in adverse selection.

g. During the 2012-13 State fiscal year, the State and the Union will conduct an assessment of the extent to which over-income providers (i.e. providers ineligible for FHPlus coverage) have been covered by the funding already provided and the amount necessary to complete the coverage of all providers who desire coverage.

h. In State fiscal year 2013-14, the goal will be for the State to provide sufficient funding to allow for the Union's cost of purchasing coverage under the FHPlus Buy-in for all providers who do not otherwise qualify for coverage under FHPlus and who are still without health insurance coverage and desire such coverage, based upon the results of the assessment conducted pursuant to Section 4, paragraph g of this Agreement. The selection of providers eligible for coverage under the Buy-in shall not result in adverse selection.

i. To the extent authorized by Social Services Law 369-ff(1)(c), the State shall subsidize the full cost of coverage for those providers determined to be eligible for FHPlus or Medicaid to the extent of available funds.

17) Other Insurance Coverage

OCFS agrees to discuss with the New York State Insurance Department potential ways to increase the ability of Covered Child Care Providers to access Homeowners and Liability Insurance.

18) No Strike or Work Action

As per Section 11, subsection (a) of the Executive Order #12, for the life of this Agreement, Covered Child Care Providers and the Union will not collectively engage in any strike or work action to secure any right or privilege from the state or any of its agencies or political subdivisions. OCFS shall not collectively prevent Covered Child Care Providers from the regular performance of their child care businesses due to union activity.

19). Severability

Should any part of this agreement or any provision contained herein be determined to be contrary to law; be determined by the Federal government to jeopardize the receipt by the State of any federal child care funds; and/or, in cases where it may be necessary, not approved by State or Federal government, such invalidation of such part or provision shall not invalidate the remaining portions of the agreement and the remaining portions of the agreement shall remain in force and effect. In such event, the parties shall meet promptly to discuss substitute provisions for those rendered or declared unlawful, invalid or unenforceable.

20) Full Understanding

The parties agree that this Agreement sets forth the full and entire understanding of the parties regarding the matters set forth herein. This Agreement may only be modified in writing by the mutual agreement of the parties. Nothing herein shall preclude the parties from mutually clarifying in writing the intent of any provision of this Agreement.

21) Term Of The Agreement

The term of this Agreement shall be from October 1, 2009 through September 30, 2013 except where a different time period is specifically indicated herein.

ADDENDUM A

NEW YORK STATE

GUIDING PRINCIPLES FOR

COVERED FAMILY/GROUP FAMILY CHILD CARE PROVIDERS

Each Covered Family and Group Family Child Care Providers:

1. Is to be treated as a professional with courtesy, dignity, consideration and respect.
2. Is to be given the same consideration and treatment as all other Providers regardless of race, color, religion, gender, sexual orientation, national origin, political affiliation, disability, marital status, age, or union affiliation.
3. May file a complaint with the appropriate agency when the Provider believes he/she have been discriminated against because of race, color, religion, gender, sexual orientation, national origin, political affiliation, disability, marital status, age, or union affiliation.
4. Is to receive timely and accurate payments for providing child care services to children receiving subsidies in accordance with federal and State law.
5. Is to have the information in his/her Provider file kept confidential except as otherwise permitted by state and federal law.
6. May review the information that is in his/her Provider file except as otherwise provided for by state and federal law, regulation, or policy.
7. May have the Provider's street address; phone number; and/or link to mapping of the child care address, home or facility removed from the OCFS website upon submitting a written request to OCFS once OCFS has made the necessary changes to the OCFS website.
8. Has the option of having the Provider's website address listed on the OCFS website so that interested individuals may contact the Provider to determine the Provider's credentials and curriculum once OCFS has made the necessary changes to the OCFS website. For a Covered Child Care Provider who voluntarily participates in the Quality Rating Improvement System, once it is implemented, OCFS shall add those Provider's credentials that have been verified as part of participation in the System to the information offered on the website once OCFS has made the necessary changes to the OCFS website.
9. May require any representatives of OCFS or of any agency acting as a licensor or registrar for OCFS to show identification and leave written information setting forth the name, work address, and work telephone number of the representative and the representative's immediate supervisor.
10. Will have any inspection relating to an application for an initial license or registration or the renewal of a license or registration, announced and scheduled in advance. OCFS may make unannounced visits in response to a complaint; to verify that a previously identified violation has been corrected or remains corrected; and when otherwise necessary to verify the health, safety, or welfare of the children who may be in care.
11. Is to be advised immediately by the agency of the type of visit.
12. Is to be treated professionally and receive an objective impartial assessment during all visits.

13. Will receive a factual, written exit interview during an inspection explaining any observed violations and any possible violation the licensor/registrar/fire inspector will consider and determine once leaving the premises.
14. The right to receive a timely, accurate final report including a clear explanation of why the existing condition constitutes non-compliance and the Provider's explanation of lack of non-compliance.
15. Will be given any available technical assistance if the Provider receives a compliance visit that identifies a violation.
16. May correct a minor compliance violation in a timely manner and not have the violation appear on OCFS' website unless the non-compliance persists or reoccurs provided any necessary changes have been made to the Child Care Facility System is enable information about the violation to be retained in the System without it appearing on the OCFS website.
17. May have any dispute regarding any serious violation reviewed fairly and speedily in accordance with the dispute resolution processes agreed to by OCFS and the Union including the ability to have union representation during the course of the dispute resolution process.

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