

## CONTRACT

THIS CONTRACT, is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2012 by and between Cuyahoga County, Ohio (the "COUNTY" or "DCFS") and Outcome Referrals, Inc. , a Delaware for profit corporation (hereinafter "Outcome Referrals" or "Vendor") with a mailing address at 293 Boston Post Road West, Suite 330 Marlborough, MA 01752. ) (The COUNTY and Vendor may be referred to herein individually as a "Party" and collectively as the "Parties").

WITNESSETH:

WHEREAS, The COUNTY and its Division of Children and Family Services ("DCFS", desires information measuring the outcomes of children and youth in foster care; and

WHEREAS, Building on 20 years of research and accumulated data, Outcome Referrals has a systematic, reliable and scalable approach to helping assess the outcomes of children, juveniles, and adults in various clinical or placement settings; and

WHEREAS, The system, Child Welfare Services ("Child Welfare Services"), is described on Exhibit A and is centered around Outcome Referrals' 15-year-proven assessment tool (the Treatment Outcome Package or "TOP") and its proprietary database of more than one million patients to provide a variety of outcomes management services, benchmarking tools, and analytics. A longer-term aim for DCFS is the collection of enough data to properly match new cases with the type of care setting that most successfully matches the child to the setting, with the goal of improving outcomes for the DCFS population.

WHEREAS, the COUNTY desires to purchase these services from Vendor, and Vendor is willing to provide such goods and services to the COUNTY all upon the terms and conditions set forth herein.

WHEREAS, in consideration of the mutual promises and covenants hereinafter set forth, the Parties agree to the following:

**1. Scope of Services.** During the Term, Outcome Referrals shall provide child welfare assessment, referral and related services to DCFS for children in the County's child welfare programs, all as set forth in Exhibit A.

**2. Definitions.**

**2.1. Manager** means the DCFS or Outcome Referrals employee designated by the respective Party to serve as the individual responsible for the implementation and the ongoing performance of the services delivered under this Agreement.

**2.2. Agreement** means this Contract and its exhibits, which are hereby attached and incorporated into this Agreement, and any subsequent amendments and revisions made in accordance with the terms of this Agreement.

**2.3. Annual Fixed Access Fee** has the meaning set forth in Exhibit C.

- 2.4. *Business Day(s)*** means Monday through Friday, excluding New Year's Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and any other legal holidays in Ohio.
- 2.5. *Case*** means any individual (typically a child or juvenile) who is eligible to receive Child Welfare Services from or through DCFS
- 2.6. *Child Welfare Services*** has the meaning set forth in the Introduction or "Whereas" Clauses.
- 2.7. *Commencement Date*** means October 1, 2012, unless otherwise agreed to by the Parties in writing.
- 2.8. *Customization and Consulting Services***. Any modifications, extensions, or revisions of the TOP or the Child Welfare Services.
- 2.9. *Developed Property*** has the meaning set forth in Section 5.9.2.
- 2.10. *Effective Date*** means October 1, 2012.
- 2.11. *Executive*** means a senior management member of a Party with the power and authority to bind such Party.
- 2.12. *Fees*** means those payments due Outcome Referrals from DCFS, pursuant to this Agreement, as set forth in Exhibit C.
- 2.13. *Go-Live Date*** mean the first date the Child Welfare Services are available for use by DCFS and its Providers.
- 2.14. *HIPAA*** means the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations at 42 CFR, as amended from time to time.
- 2.15. *Implementation Fees*** means the fees for professional services and other costs related to the installation, setup, and configuration of the Child Welfare Services.
- 2.16. *Implementation Period*** means the time between the Effective Date and the date on which the implementation of the Child Welfare Services is to be completed.
- 2.17. *Initial Term*** has the meaning set forth in Section 10.1.
- 2.18. *Intellectual Property*** means all patents, patent applications, trademarks, trademark applications, service marks, service mark applications, trade names, copyrights, trade secrets, domain names, mask works, information and proprietary rights and processes, similar or other intellectual property rights, subject matter of any of the foregoing, tangible embodiments of any of the foregoing, licenses in to and under any of the foregoing, and any and all such cases that are owned or used by a Party in the conduct of its business as now conducted and as presently proposed to be conducted, including, without limitation, in the case of Outcome Referrals, any of the foregoing related to the Child Welfare Services, the TOP, and any databases related thereto.

- 2.19.** *Joint Implementation Plan* has the meaning set forth in Exhibit A.
- 2.20.** *MAC* has the meaning set forth in Section 5.3.
- 2.21.** *Master Reports Requirements* means a document drafted by Outcome Referrals and mutually approved by the Parties that sets forth all of the report and data requirements defined in Exhibit B.
- 2.22.** *Maximum Contract Amount* has the meaning set forth in Section 8.2.\
- 2.23.** *Outcome Referrals Technology* has the meaning set forth in Section 5.9.1.
- 2.24.** *Privacy Rule* has the meaning set forth in Section 6.2.1.
- 2.25.** *Protected Health Information* has the meaning set forth in Section 6.2.
- 2.26.** *Provider* means an individual or institutional custodian of a child screened into the child welfare system, including residential treatment facilities, foster parents, and kin relations, who agrees to participate in the Child Welfare Services, including the delivery of data and reports on the Provider's behalf to DCFS, and who utilizes the related tools as provided by Outcome Referrals and DCFS.
- 2.27.** *Referral* means the referral of a Case to a Provider the TOP and the Child Welfare Services.
- 2.28.** *Security Rule* has the meaning set forth in Section 6.2.1.
- 2.29.** *Services Fees* has the meaning set forth in Exhibit C.
- 2.30.** *Term* means the Initial Term.
- 2.31.** *Treatment Outcomes Package (TOP) Instrument* is Outcome Referrals' proprietary instrument that assesses an individual's symptoms and functioning across multiple domains and provides a means to measure the effectiveness of behavioral health interventions. TOP Instrument includes but is not limited to: TOP Adult Clinical Scales (TOP Adult); TOP Adolescent Clinical Scales (TOP Adolescent); TOP Child Clinical Scales (TOP Child); Case Mix Questions; and Consumer Registration Form.
- 2.32.** *Written Consent* means emails or signed letters or other documents from the Account Manager of a Party authorizing, requesting, or directing the other Party's behavior. However, County officials have limited authority under Ohio law. Any issues involving modification of the terms of this Contract, including but not limited to, the term of the Contract and the maximum dollar amount of the Contract; requires a formal modification or amendment approved by the County's policies and procedures.
- 2.33.** *Year* means the twelve (12) month period that begins on the Commencement Date and each twelve (12) month period thereafter.

### **3. Obligations of Outcome Referrals.**

**3.1. General.** Outcome Referrals shall implement and provide the Child Welfare Services to DCFS, including certain reporting and related services, as set forth in Exhibits A and B.

**3.2. Role of Outcome Referrals.** The Parties acknowledge that Outcome Referrals is not making any clinical decisions to or for any Providers, and DCFS is not contracting with Outcome Referrals to do so. Outcome Referrals may update, adjust or modify the TOP from time to time as it deems appropriate, including in response to user feedback and research data. Outcome Referrals shall also provide and maintain a data management system to collect, manage and report TOP data to DCFS, and its Providers.

**3.3. Cost of Providing Services.** Outcome Referrals shall be responsible for all costs incurred by Outcome Referrals for performing the Child Welfare Services except for the following:

**3.3.1. Travel Expenses.** DCFS will use its best efforts to reimburse Outcome Referrals within thirty (30) days of receipt of a detailed invoice for all reasonable travel-related expenses incurred when attending meetings, trainings or other events as requested by DCFS or as identified in this Agreement.

**3.3.2. Training Expenses.** DCFS will arrange, at its sole cost, live trainings or conferences. Costs could include DCFS personnel or Providers that are not specifically identified in this Agreement.

**3.3.3. Customization and Consulting Services.** Unless explicitly agreed to in writing by the Parties, any modifications, extensions, or revisions of the TOP or the Child Welfare Services are not in the scope of this Agreement. Outcome Referrals shall collaborate with DCFS, the Annie E. Casey Foundation, and DCFS-designated Providers to customize the TOP or the Child Welfare Services to meet the needs of DCFS. These services are billable to DCFS per Exhibit C, Schedule of Fees.

**3.4. Maintenance of Systems Integrity.** Outcome Referrals shall implement systems and procedures, including back-up and disaster recovery, to ensure the availability of the Child Welfare Services, unless prevented from doing so by Force Majeure events.

#### **4. Obligations of DCFS.**

**4.1. Support of the Child Welfare Services.** DCFS shall support Outcome Referrals' activities to implement, manage and modify the TOP and otherwise comply with its obligations under this Agreement. This includes using its best efforts to cause its employees and other entities to perform the specific actions specified in this Agreement, in the Exhibits hereto, and as determined as part of the Joint Implementation Plan.

#### **5. Obligations of Outcome Referrals and DCFS.**

**5.1. DCFS and Outcome Referrals Collaboration.** Outcome Referrals and DCFS shall collaborate to implement and manage the administration of this Agreement and those activities set forth in Exhibit A.

- 5.2. Reporting and Data Exchange.** Outcome Referrals and DCFS shall conform to the reporting and data exchange provisions set forth in Exhibit B.
- 5.3. Management Advisory Structure.** Outcome Referrals and DCFS shall establish and maintain a management advisory structure to provide strategic and tactical direction for the development and provision of the Child Welfare Services for DCFS and its Providers. Such Management Advisory Committee ("MAC") shall consist of selected Executives of DCFS and Outcome Referrals. In addition the Account Managers shall serve as liaisons between the Parties and shall be available during normal business hours to respond to inquiries and to assist in the administration of this Agreement.
- 5.4. Communications.** Outcome Referrals and DCFS must mutually provide Written Consent for all messages sent to Providers to announce and/or promote the Child Welfare Services, including such messages on the Parties' websites, letters, articles, phone scripts and other forms of communications.
- 5.5. Press Release.** The Parties agree that upon execution of this Agreement each Party may issue a mutually agreed upon joint press release announcing the execution of this Agreement and the provision of the Child Welfare Services to DCFS and its Providers. On or prior to the Commencement Date, as part of the Joint Implementation Plan, the Parties shall prepare and issue direct communications to Providers regarding this Contract and the commencement of the Child Welfare Services. Each Party may also reasonably cooperate in issuing from time to time, at the requests of the other Party, additional press releases or announcements regarding the Child Welfare Services, or any improvements, modifications or successes of the Child Welfare Services,. Outcome Referrals may identify DCFS as its customer.
- 5.6. Communication Linkages.** Outcome Referrals and DCFS shall collaborate to develop telephonic and web-based or other system linkages, as mutually agreed to, between DCFS and Outcome Referrals to enable both Parties to more effectively perform their respective obligations under this Agreement.
- 5.7. Confidential Information.**
- 5.7.1.** Outcome Referrals is aware that Cuyahoga County, Ohio is subject to public records law of the State of Ohio, which includes Ohio Revised Code section 149.43. The public records laws of the State of Ohio supersede any section of this Contract. Outcome Referrals agrees that it will use due care not to provide DCFS with what it determines is proprietary information or information it deems confidential. Outcome Referrals is aware that this Contract, *in toto*, and all information which involves the expenditure of public funds are public records.

For purposes of this Agreement, Confidential Information shall include: information proprietary to either Party or treated or designated as confidential by either Party, such information to include, but not be limited to: (i) for Outcome Referrals, all databases, scoring algorithms and software applications and any other information provided to DCFS that Outcome Referrals reasonably identifies as confidential information and is of value to Outcome Referrals; and (ii) for DCFS, its information, including Case names, addresses, eligibility data,

claims and other medical information, and DCFS operations and program procedures provided to Outcome Referrals. Federal and state law as well as administrative rules, including, but not limited to, Ohio Revised Code 5101.131, 5153.17 & 2151.421 make all information from DCFS confidential.

Each Party agrees to take all necessary steps to keep confidential, safeguard and, except as permitted by this Section 5.7.1, avoid disclosure of such Confidential Information to any third parties without Written Consent of the disclosing or owning Party, and to protect the integrity of the Confidential Information. Except as permitted by this Section 5.7.1, and Section 5.8, the Parties shall only use the other's Confidential Information in connection with their performance under this Agreement or for internal quality assurance purposes and use only the minimum amount necessary to accomplish such performance and purposes. Upon termination or expiration of this Agreement, each Party shall return to the other Party all written or electronic Confidential Information, including copies, received hereunder, except as otherwise specifically provided herein. The Party receiving Confidential Information agrees to use the same standard of care in maintaining the confidentiality of the Confidential Information as it uses to avoid disclosure of its most sensitive confidential information. For purposes of this Section, Confidential Information shall not include any information that: (i) is now or subsequently enters the public domain through means other than direct or indirect disclosure by the Party receiving such Confidential Information in violation of the terms of this Agreement; or (ii) is already in possession of the Party receiving such Confidential Information free of any obligation of confidence to the Party disclosing such Confidential Information. Nothing in this Section shall preclude a Party from disclosing Confidential Information to the extent that the disclosure thereof is required by law or court order. In the event that a Party is required to disclose Confidential Information in response to a legal process, the Party against whom disclosure is sought shall immediately notify the other Party and cooperate with the other Party in connection with obtaining a protective order. However, Outcome Referrals, at its sole cost and discretion, may seek to protect its interests in information which it claims should not be provided by DCFS in response to a request for public records. Outcome Referrals agrees that DCFS may, in response to a public records request, seek judicial intervention on its own and provide documents or information which Outcome Referrals claims are confidential to a court, for its in camera inspection, and decision as to whether such documents or information are public records subject to disclosure.

- 5.7.2.** If DCFS receives a public records request for information previously identified as confidential by Outcome Referrals, then DCFS shall advise the requestor that the records requested are considered to contain trade secret or other information which may not be considered a public record under Ohio law, and shall promptly notify Outcome Referral of the request. Thereafter, Outcome Referral shall have sole responsibility for initiating or defending such legal action as it deems necessary to prevent public disclosure of such records or information Outcome Referral deems appropriate, and Outcome Referral shall pay all costs and expenses associated therewith, including any legal fees or expenses incurred by the County.

DCFS shall, to the extent legally permissible without being required to initiate legal action, maintain the confidentiality of such records or information until the matter is resolved by legal action, provided that Outcome Referral agrees to indemnify, defend and hold harmless DCFS from any claims, losses, liabilities, costs and expenses incurred by DCFS as a result thereof

**5.7.3.** Outcome Referrals acknowledges, in accordance with R.C. 149.431, that certain financial records related to the performance of services under this Contract may be considered to be public records under Ohio law and agrees to treat them accordingly.

**5.8. *Ownership of Data.*** Any and all instances of data provided to DCFS under the terms of this Agreement shall also become the property of DCFS. Notwithstanding anything in this Agreement to the contrary, Outcome Referrals shall have the right to retain and use de-identified copies of all Case data provided to Outcome Referrals by DCFS or its Providers.

**5.9. *Ownership of Intellectual Property.***

**5.9.1.** Outcome Referrals has created, acquired or otherwise has rights in, and may, in connection with the performance of the Child Welfare Services hereunder, employ, provide, modify, create, acquire or otherwise obtain rights in, various concepts, ideas, methods, methodologies, procedures, processes, know-how, and techniques; models (including, without limitation, function, process, system and data models); templates; the generalized features of the structure, sequence and organization of software, user interfaces and screen designs; general purpose consulting and software tools, utilities and routines; and logic, coherence and methods of operation of systems) (collectively, the "Outcome Referrals Technology").

**5.9.2.** The Parties acknowledge and agree that any items developed in connection with the performance of the Child Welfare Services hereunder (the "Developed Property") shall be owned by Outcome Referrals, and DCFS hereby assigns and transfers to Outcome Referrals all of DCFS' right, title and interest (including without limitation Intellectual Property rights) in and to such Developed Property.

**5.9.3.** To the extent that Outcome Referrals utilizes any of its property (including, without limitation, the Outcome Referrals Technology, its Intellectual Property, or any hardware or software of Outcome Referrals) in connection with the performance of services hereunder, such property shall remain the property of Outcome Referrals, and DCFS shall acquire no right or interest in such property. In addition, and notwithstanding anything in this Agreement to the contrary, the Parties acknowledge and agree that (a) Outcome Referrals shall own all right, title, and interest, including, without limitation, all Intellectual Property rights, in and to the Outcome Referrals Technology and (b) Outcome Referrals may employ, modify, disclose, and otherwise utilize the Outcome Referrals Technology.

## **6. HIPAA.**

**6.1. *Business Associate Relationship.*** The Parties acknowledge that Outcome Referrals shall be considered a Business Associate as that term is defined by HIPAA regulations,

and that this Section 6 shall serve as the Business Associate Agreement. The Parties shall enter into any additional Business Associate Agreement to the extent required by law.

**6.2. Protected Health Information.** Confidential Information under this Agreement includes protected health information ("Protected Health Information"), which shall have the same meaning as the term Protected Health Information is defined in 45 C.F.R. 160.501, but limited to that information received by Outcome Referrals on behalf of DCFS, and which includes but is not limited to any information that: (i) is created or received by a health plan, employer, or health care clearinghouse; and (ii) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (iii) identifies the individual or there is a reasonable basis to believe the information can be used to identify the individual.

**6.2.1. Limits on Use and Disclosure of Protected Health Information.** Outcome Referrals hereby agrees that it shall not use or disclose Protected Health Information for any purpose other than as expressly permitted, or as necessary to carry out the obligations under this Agreement, or as required by law, and only if such use or disclosure of Protected Health Information would not violate the Standards for Privacy of Individually Identifiable Health Information set forth at 45 C.F.R. Parts 160 and 164, Subparts A and E (the "Privacy Rule") and the Security Standards for the Protection of Electronic Health Information set forth at 45 C.F.R. Parts 160, 162, and 164 ("Security Rule"), each promulgated pursuant to HIPAA, 42 U.S.C. § 1320d-1320d-8, if done by DCFS. A reference to the Privacy Rule or the Security Rule means the section as in effect or as amended, and for which compliance is required by Outcome Referrals.

**6.2.2. Stated Purposes for which Outcome Referrals May Use or Disclose Protected Health Information.** The Parties hereby agree that Outcome Referrals shall be permitted to use and/or disclose Protected Health Information of DCFS only for the purposes of performing services as stated in this Agreement if such use or disclosure of Protected Health Information would not violate the Privacy Rule or Security Rule if done by DCFS. A reference to the Privacy Rule means the section as in effect or as amended, and for which compliance is required.

**6.2.3. Purposes for which Outcome Referrals May Use or Disclose Protected Health Information.** Except as otherwise limited in this Agreement, Outcome Referrals may use Protected Health Information for the proper management and administration of Outcome Referrals and to carry out legal responsibilities of Outcome Referrals. Except as otherwise limited in this Agreement, Outcome Referrals may disclose Protected Health Information for the proper management and administration of Outcome Referrals, or to carry out the legal responsibilities of Outcome Referrals provided, however, that: (i) the disclosure is required by law; or (ii) Outcome Referrals obtains reasonable assurances from the person to whom the information is disclosed that it shall remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, the person shall use appropriate safeguards to prevent use or disclosure of the information, and the person immediately notifies Outcome

Referrals of any instance of which it is aware in which the confidentiality of the Protected Health Information has been breached. Outcome Referrals may also use and disclose Protected Health Information: (i) to de-identify it in accordance with 45 CFR 164.514(b)(2), which de-identified information may be used and disclosed; (ii) pursuant to an authorization that meets the requirements of 45 CFR 164.508; (iii) to report violations of law to state and federal authorities, consistent with 45 CFR 164.502(j)(1); and (iv) as otherwise authorized in writing by DCFS.

**6.2.4. Use of Protected Health Information for Data Aggregation.** Notwithstanding the provisions of Sections 6.2.1 through 6.2.3 of this Agreement, Outcome Referrals is expressly authorized to use and disclose Protected Health Information to provide DCFS with data aggregation services, as permitted by 45 C.F.R. 164.504 (e) (2) (i) (B) and as that term is defined by 45 C.F.R. 164.501, as amended.

**6.2.5. Information Safeguards.** Outcome Referrals shall implement, maintain and use administrative, physical and technical safeguards that are intended to reasonably and appropriately protect the confidentiality, integrity and availability of Protected Health Information, including protecting its privacy against any intentional or unintentional use or disclosure, in violation of the Privacy Rule, 45 C.F.R. Part 164, Subpart E, and limiting its incidental use or disclosure occurring in connection with a use or disclosure otherwise permitted by this Agreement. Such safeguards shall include, but not be limited to: ensuring that only those employees and agents of Outcome Referrals that have a business need to know Protected Health Information be provided with access to it, and that, to the extent required by, and in compliance with 45 CFR 164.502(b) and 514(d), access be only to the minimum amount necessary to accomplish the intended purpose of the access; that all employees and agents of Outcome Referrals handling Protected Health Information be educated on how to maintain its confidentiality; and, that all Protected Health Information be stored and transmitted in a secure environment and in a manner to prevent its inadvertent disclosure.

**6.2.6. Reports of Improper Use or Disclosure.** Outcome Referrals hereby agrees that it shall immediately report to DCFS any use or disclosure of Protected Health Information not provided for by this Agreement of which Outcome Referrals becomes aware.

**6.2.7. Subcontractors and Agents.** Outcome Referrals hereby agrees that it shall require that any of its agents or subcontractors to whom Outcome Referrals is permitted by this Agreement or in writing by DCFS to disclose DCFS Protected Health Information, agrees to the same restrictions and conditions that apply through this Agreement to Outcome Referrals with respect to DCFS Protected Health Information, including implementation, maintenance and use of reasonable and appropriate administrative, physical and technical safeguards.

**6.2.8. Documenting of Disclosures.** Outcome Referrals agrees to document such disclosures of Protected Health Information made by it that are subject to an accounting under 45 CFR 164.528 and information related to such disclosures as would be required for DCFS to respond to a request by an individual for an

accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. 164.528.

**6.2.9. Mitigation Procedures.** Outcome Referrals agrees to have procedures in place for mitigating, to the maximum extent practicable, any harmful effects that are known to Outcome Referrals of a use or disclosure of Protected Health Information in a manner in violation of the requirements of this Agreement or applicable law, including but not limited to the Privacy Rule and the Security Rule.

**6.2.10.** Notwithstanding anything to the contrary in this Section, Outcome Referrals agrees to negotiate in good faith and amend this Agreement to the extent required to comply with any changes in law, including but not limited to, the Privacy Rules issued pursuant to HIPAA, 45 C.F.R. Parts 160 and 164.

**6.2.11.** DCFS shall take all actions required to preserve and protect the confidentiality of all Protected Health Information, including in conjunction with transmitting or otherwise providing such information to Outcome Referrals.

**6.2.12. Survival.** The provisions of this Section 6.2 shall survive the expiration or termination of this Agreement for any reason, and for as long as Outcome Referrals maintains any Protected Health Information.

### **6.3. *Electronic Protected Health Information.***

**6.3.1. Information Security.** Outcome Referrals shall implement, maintain and use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of DCFS' Electronic Protected Health Information, as defined in 45 C.F.R § 160.103, that Outcome Referrals creates, receives, maintains or transmits on DCFS' behalf.

**6.3.2. Security Incidents.** Outcome Referrals shall report to DCFS any Security Incident, as defined in 45 C.F.R. § 164.304, of which Outcome Referrals becomes aware.

**6.3.3. Subcontractors and Agents.** Outcome Referrals shall require any of its agents or subcontractors, to which Outcome Referrals is permitted by this Agreement or in writing by DCFS to disclose DCFS' Protected Health Information, to agree to the same restrictions and conditions that apply to Outcome Referrals with respect to DCFS' Electronic Protected Health Information, including implementation, maintenance and use of reasonable and appropriate administrative, physical and technical safeguards.

**6.3.4. Survival of Security Rule Provisions.** Notwithstanding anything to the contrary in the Agreement, the provisions relating to Electronic Protected Health Information and all rights and obligations as described in this Section shall not terminate until all the Electronic Protected Health Information provided by DCFS to Outcome Referrals, or created or received by Outcome Referrals on behalf of DCFS, is destroyed or returned to DCFS. If it is infeasible to return or destroy Electronic Protected Health Information, said protections shall be extended to such

information in accordance with the terms of this Agreement.

## **7. Oversight.**

**7.1. *Joint Implementation Plan.*** Outcome Referrals and DCFS shall meet, as agreed to by both Parties, in person or telephonically, during the Implementation Period, and at least weekly starting on or around the Commencement Date. The Parties shall continue to meet, in person or telephonically, through the MAC, at such time or times as the Parties may agree for purposes of reviewing and coordinating the implementation and performance of the Child Welfare Services and addressing as needed any operational and policy considerations that may arise.

**7.2. *Quarterly and Annual Review.*** The Parties shall conduct a review of the status and results of the Child Welfare Services and the Joint Implementation Plan and related activities under this Agreement on a quarterly and on an annual basis with attendance by members of the MAC. During the quarterly reviews, the parties shall review the Score Card reports as identified in Exhibit B and begin planning for any remedial actions as necessary to attain program objectives.

**7.3. *Corrective Action.*** As needed, the Parties shall undertake mutually agreed upon changes, corrective action plans and other actions to enable the Parties to perform their respective obligations under this Agreement in order to achieve the intended results of the Child Welfare Services. The Parties shall work together to establish time frames for completion of corrective action items. In the event the Parties cannot agree upon time frames or the Parties do not meet the corrective action plan within the agreed upon time period, the MAC shall meet within ten (10) Business Days to resolve the issues.

## **8. Fees.**

**8.1. *Annual Fixed Access Fees.*** In consideration of the Child Welfare Services rendered by Outcome Referrals under this Agreement, effective as of the Commencement Date, but subject to the provisions of this Agreement, the County shall pay Outcome Referrals the Annual Fixed Access Fees as and when specified in Exhibit C.

**8.2. *Maximum Contract Amount.*** The Maximum Dollar Amount of this Contract may not exceed \$450,000.

**8.3. *Implementation Fees.*** The County shall pay Outcome Referrals Implementation Fees as and when provided in Exhibit C, and shall be entitled to a credit for the amount thereof, which credit will be applied towards the monthly installments of the Annual Fixed Access Fee due for the first year of the Term of this Contract, as and when specified in Exhibit C-1.

**8.4. *Customization, Consulting Services Fees and Out-of-Pocket Travel Expenses.*** The County shall pay Outcome Referrals Consulting and Customization Services Fees and reimburse Outcome Referrals for out of pocket travel expenses as and when specified in Exhibit C.

**8.5. *Fees Due upon Termination.*** All Fees and reimbursement amounts due Outcome

Referrals upon expiration or termination of this Agreement shall be calculated as promptly as possible following the end of the Term, in accordance with the reporting procedures set out in Exhibit B. The County shall promptly pay such Fees and reimbursement amounts due Outcome Referrals within thirty (30) days of receipt of the final invoice.

**8.6. *Audit Procedures.*** Outcome Referrals shall utilize the data provided by DCFS or its Providers to compute the number of Cases administered, and shall keep complete and accurate records of the Case data. Such data shall be made available during normal business hours for inspection and audit by DCFS or other entity which may audit DCFS, who shall be entitled to take copies of or extracts from the same, for up to 3 years after the termination of this Agreement, unless Outcome Referrals is notified of an ongoing audit

**8.7. *Maintenance of System which records information:*** Outcome Referrals shall maintain the system used to record information provided to Outcome Referrals. When notified of an issue with the system used to record information, Outcome Referrals will take appropriate action to make the system available for use as contemplated by this Contract. If Outcome Referrals cannot bring the system used to record information back into service within a reasonable period of time, DCFS may give notice of termination.

## **9. Limitation of Liability and Indemnification.**

### **9.1. *Limitation of Liability.***

**9.1.1.** Each Party's maximum liability for damages caused by its failure(s) to perform its obligations, , under this Agreement, is limited to the maximum dollar amount of the Contract..

**9.1.2.** The limitations in this Section 9.1 are not intended to preclude a Party from seeking injunctive relief, specific performance or other equitable relief from a court of competent jurisdiction in the event of a violation by the other Party of Section 5.7 (Confidentiality).

**9.1.3.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE OR SPECIAL DAMAGES FOR ANY CAUSE OF ACTION, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, BUSINESS ADVANTAGE, SAVINGS OR REVENUES OF ANY KIND, LOSS OF BUSINESS OPPORTUNITY OR INCREASED COST OF OPERATIONS. **BUSINESS INTERRUPTIONS OR OTHERWISE, WITH THIS CONTRACT, WHETHER BASED IN TORT OR BREACH OF CONTRACT. IN ADDITION, EACH PARTY WILL BEAR ITS OWN ATTORNEYS' FEES IN THE EVENT OF THE COMMENCEMENT OF, OR PARTICIPATION IN, ANY LEGAL ACTION.**

**9.1.4.** Omitted.

**9.1.5.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, OUTCOME REFERRALS MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OR ANY REPRESENTATION OR WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE.

**9.1.6.** Omitted.

**9.2. Outcome Referrals' Liability Insurance.** Outcome Referrals agrees to maintain in force the following minimum insurance coverage. Such coverage shall be maintained during the Term and for a period of no less than three (3) years following expiration or termination of the Agreement or the date that the last service was performed under the Agreement, whichever is longer.

|                             |                             |
|-----------------------------|-----------------------------|
| <u>Coverage:</u>            | Professional Liability      |
| <u>Limits of Liability:</u> | \$3,000,000 Aggregate Limit |
|                             | \$1,000,000 Each Claim      |

Outcome Referrals shall provide the County with certificates evidencing such insurance coverage naming the County as an additional insured.

**9.3. DCFS' Liability Insurance.** Cuyahoga County, Ohio is self-insured as permitted by Ohio law.

**9.4. Indemnification.** Outcome Referrals agrees to indemnify and save harmless the County against all liability, claims, demands, losses, damages and costs arising from any act or omission by, or negligence of Outcome Referrals, its officers, agents, or employees of either while engaged in the performance of this Contract.

**9.5. Mutual Defense of Claims.** Outcome Referrals and DCFS, consistent with the advice of counsel and the requirements of applicable insurance policies and carriers, agree to coordinate the defense of all claims in which both Parties are either a named defendant or have a substantial possibility of being named.

**10. Term and Termination.** This Agreement may be terminated as follows:

**10.1. Initial Term.** This Agreement shall continue in effect for an initial term of two (2) years, beginning October 1, 2012, unless sooner terminated in accordance with the provisions of this Agreement.

**10.2. Termination.** Either Outcome Referrals or DCFS may terminate this Agreement by providing the other with a minimum of thirty (30) days' prior written notice.

**10.3. Immediate Termination by Either Party.** This Agreement may be terminated immediately if a Party: (i) makes a general assignment for the benefit of creditors; (ii) suffers or permits the appointment of a trustee or receiver for its business or assets, and, if involuntary, is not discharged or dismissed within sixty (60) days; or (iii) becomes subject to any voluntary proceeding under the Federal Bankruptcy Code or any statute of any state relating to insolvency or the protection of rights of creditors or any involuntary proceeding which is not dismissed or terminated within sixty (60) days.

**10.4. Continued Reporting/Payment Obligations.** Upon termination, Outcome Referrals shall deliver to DCFS all reports remaining due for all periods through the effective date of termination. Any Fees due Outcome Referrals must be invoiced by the last day of the month subsequent to the effective date of termination.

**10.5. Survival of Terms.** The Parties' rights and obligations under Sections 5.7.1, 5.7.2, 5.8, 5.9, 6, 8.5, 8.6, 9, 11 and 12.6 shall survive the expiration or termination of this Agreement for any reason.

## **11. Dispute Resolution.**

**11.1.** Any dispute arising out of this Agreement shall be subject to the dispute resolution process described in this section.

**11.2.** In the event of a dispute or disagreement between the Parties, the Parties shall in good faith attempt to resolve such matter first through interaction between the Party's respective Account Managers; next, by bringing such matter before the MAC; and then, if the dispute is still not resolved, by convening a face to face meeting of senior officers of each Party. The parties shall convene such meeting of senior officers within thirty (30) days of a written request by either Party, at such times and places as may be mutually and reasonably acceptable to the Parties. If the matter has not been resolved within sixty (60) days of the notice of a dispute, or, if the designated officers fail to meet within thirty (30) days of the submission of notice of a dispute, either Party may initiate a suit in any of the courts specified in Section 12.18.

## **12. General Provisions.**

**12.1. Authority.** Each Party represents and warrants to the other Party that (i) it has the corporate or other power and authority to execute and perform its obligations under this Agreement, (ii) this Agreement has been duly executed by such Party and is a valid and binding obligation of such Party, enforceable in accordance with its terms, and (iii) this Agreement does not violate or constitute a default under any other agreements or obligations of such Party.

**12.2. Independent Relationship.** Notwithstanding any other provisions hereof, in the performance of their obligations of this Agreement, each Party is at all times acting and performing as an independent contractor with respect to the other Party. It is further expressly agreed that no work, act, commission or omission of either Party (or any of its

agents, servants or employees) pursuant to the terms and conditions of this Agreement, shall be construed to make or render such Party (or any of its agents, servants or employees) an agent, servant, representative, or employee of, or joint venturer with, such other Party.

- 12.3. *Assignment of this Agreement.* Neither Party may assign this Agreement to a third party without the express Written Consent of the other Party, and any such attempted assignment shall be void; provided, however, that Written Consent shall not be required for an assignment by either Party to (i) a subsidiary, affiliate, parent or other entity which controls, is controlled by, or is under common control with such Party; (b) a successor entity to such Party resulting from a merger, consolidation, non-bankruptcy reorganization, or government action; or (c) a purchaser of all or any significant portion of such Party's assets. A change in ownership or control shall not constitute an assignment.
- 12.4. ***Required Documentation:*** The County requires that Outcome Referrals provide documentation per state law and County policy. The documentation includes: Principle Owner Form, IRS Form W-9: Request for Taxpayer ID and Certification, Declaration Regarding Material Assistance/Nonassistance To A Terrorist Organization; Signature Authorization (requires notarization); Worker's Compensation Certificate; and Certificate of Insurance
- 12.5. *Compliance with Changes in Applicable Laws and Regulations.* The Parties agree to amend the Agreement as necessary to comply with changes to applicable laws and regulations.
- 12.6. *Amendment.* This Agreement may be amended at any time during the term of the Agreement by mutual Written Consent executed by duly authorized representatives of the Parties. All Amendments to the Contract require approval by the County, after satisfying all governmental requirements.
- 12.7. *Applicable Law.* The validity of this Agreement and of any of its terms and provisions, as well as the rights and duties of the Parties hereunder, shall be interpreted and enforced pursuant to and in accordance with the laws of the State of Ohio, without regard to conflict of law rules.
- 12.8. *Binding Effect.* This Agreement shall be binding upon and inure to the benefit of the Parties, their successors, and their permitted assigns, unless otherwise set forth herein or agreed to by the Parties in writing.
- 12.9. *Severability.* In the event any provision of this Agreement is rendered invalid or unenforceable by a federal or state legislative action or judicial decision, the remainder of the provisions of this Agreement shall remain in full force and effect, unless material to overall intent, in which case either Party may submit the matter to the dispute resolution process set forth in this Agreement.
- 12.10. *Entire Agreement.* This Agreement, which shall be deemed to include all attachments, amendments, exhibits, addenda and schedules, contains the entire agreement between the Parties. Any other prior agreements, promises, proposals,

negotiations or representations, either oral or written, relating to the subject matter of this Agreement and not expressly set forth in this Agreement, are of no force or effect. To the extent Outcome Referrals desires to provide, and DCFS desires to engage Outcome Referrals to provide, services beyond the scope of this Agreement, the terms and conditions of such additional services shall be governed by either an amendment to this Agreement or a new written agreement.

**12.11. Headings.** The headings of sections contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

**12.12. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together comprise one and the same instrument.

**12.13. Notices.** Any notice required to be given pursuant to the terms and provisions of this Agreement shall be in writing, postage prepaid, and shall be sent (by federal express or other overnight mail delivery for which evidence of delivery is obtained by the sender), to the address or addresses set forth below unless the sender has been otherwise instructed in writing or unless otherwise provided by law. The notice shall be deemed to be effective on the date indicated on the return receipt or, if no date is so indicated, then on the date of the notice.

To Outcome Referrals: Outcome Referrals, Inc.  
293 Boston Post Road West, Suite  
330 Marlborough, MA 01752  
Attn: Armen Meguerditchian, COO

To DCFS: Cuyahoga County Division of Children and Family  
Services  
3955 Euclid Avenue  
Cleveland OH 44115

**12.14. Waiver.** No waiver or breach of any covenant or condition shall be construed to be a waiver of any subsequent breach of the same or any other provision.

**12.15. Intent.** The Parties represent, covenant and agree that the financial provisions contained in this Agreement have been negotiated and determined through good faith, arm's length bargaining to be the fair market value of the Child Welfare Services to be provided under this Agreement. No amount paid or charged is intended to be, nor shall it be construed to be, an inducement for referrals by, to, or between the Parties to this Agreement.

**12.16. Force Majeure.** Each Party agrees that, anything in the Agreement to the contrary notwithstanding, each Party shall be excused, discharged and released from performance to the extent such performance is limited, delayed or prevented in whole or in part due to acts of God, war, invasion, acts of foreign enemy, hostilities (whether

war be declared or not), embargo or ban, third party strikes directly affecting the obligations of the affected Party, or by any law, regulation, order, or other action by any authority. The foregoing shall not be considered to be a waiver of either Party's obligations under the Agreement, and as soon as such occurrence or occurrences cease, the Party affected thereby shall promptly fulfill its obligations under the Agreement. Such events, however, shall not excuse payment of any amounts due under this Agreement.

**12.17. *Independent Contractor.*** Outcome Referrals agrees that it is an independent contractor for all purposes including, but not exclusively limited to, the application of the Fair Labor Standards Act, the Federal Insurance Contribution Act, applicable provisions of the Internal Revenue Code, applicable provisions of Ohio Tax law, Workers Compensation Law and Unemployment Compensation Law. Outcome Referrals is solely and only responsible for its federal, state or local tax obligations. In addition, Outcome Referrals is solely and only responsible for its financial obligations to maintain workers compensation and unemployment compensation.

**12.18. *Choice of Forum.*** The parties agree that any lawsuit between the parties must be commenced either in federal court, limited to the United States District Court, Northern District of Ohio, or Ohio state court, limited to the Cuyahoga County Court of Common Pleas.

**12.19. *Assurances:***

Outcome Referrals certifies that it is an equal opportunity employer and shall remain in compliance with state and federal civil rights and nondiscrimination laws and regulation including, but not limited to Title VI and Title VII of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, the American with Disabilities Act, the Age Discrimination Act of 1975, as amended, the Inter-Ethnic Act, Multi-Ethnic Placement Act (MEPA), the Adoption and Safe Families Act and any laws of the United States or State of Ohio which are applicable. All services and programs will be provided on a nondiscriminatory basis as required by federal, state and local civil rights laws, and the policies and procedures of ODJFS and the county.

This includes any and all federal and state regulations and rules, including but not limited to compliance with rules adopted during the time period of this contract. If the federal or state governments promulgate rules, amendments, of any kind or type, the parties agree that they will act, and the contract must be construed, as requiring acts in compliance with all laws and regulations. During the performance of this Contract, Outcome Referrals will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, national origin, ancestry, age, handicap, political belief or place of birth. Outcome Referrals will take affirmative action to ensure that all employees are treated during employment without regard to race, color, religion, sex, national origin, ancestry, age handicap, political belief or place of birth. Such action shall include, but is not limited to, employment upgrading, demotion or transfer, recruitment, advertising, layoff, termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

Outcome Referrals agrees not to establish or knowingly permit any such practice(s) of discrimination or segregation in reference to anything relating to this Contract, or in reference to any network members or subcontractors of Outcome Referrals. Outcome Referrals agrees to cooperate with federal, state, and/or local governmental officials assigned to investigate allegations of violations of law. This may include the United States Department of Health and Human Services and the ODJFS Bureau of Civil Rights.

Outcome Referrals agrees to comply with applicable laws, regulations, directives or codes, issued by the United States government or agency, as well as the State of Ohio or state agency, as required per Ohio Administrative Code 5101:2-47-23.1(B)(8), which states, in pertinent part:

Outcome Referrals shall not permit funds to be paid or committed to be paid to any corporation, firm, association or business in which any of the members of the governing body of the agency, the executive personnel or their immediate families have any direct or indirect financial interest, or in which any of these persons serve as an officer or employee, unless the services or goods involved are provided at a competitive cost or under terms favorable to Outcome Referrals.

### **13. ETHICS POLICY**

Outcome Referrals agrees to follow all ethics policies of Cuyahoga County, Ohio, which are set forth in County Ordinances and state law ethics policies. A violation of the County ethic's policies establishes independent grounds for immediate termination of this Contract.

### **14. ELECTRONIC SIGNATURE**

BY ENTERING INTO THIS CONTRACT, OUTCOME REFERRALS AGREES ON BEHALF OF THE CONTRACTING OR SUBMITTING BUSINESS ENTITY, SUBCONTRACTORS, SUBGRANTEES, AGENTS OR ASSIGNS, TO CONDUCT THIS TRANSACTION BY ELECTRONIC MEANS BY AGREEING THAT ALL DOCUMENTS REQUIRING COUNTY SIGNATURES MAY BE EXECUTED BY ELECTRONIC MEANS, AND THAT THE ELECTRONIC SIGNATURES AFFIXED BY THE COUNTY TO SAID DOCUMENTS SHALL HAVE THE SAME LEGAL EFFECT AS IF THAT SIGNATURE WAS MANUALLY AFFIXED TO A PAPER VERSION OF THE DOCUMENT. OUTCOME REFERRALS ALSO AGREES ON BEHALF OF THE\_AFOREMENTIONED ENTITIES AND PERSONS, TO BE BOUND BY THE PROVISIONS OF CHAPTERS 304 AND 1306 OF THE OHIO REVISED CODE AS THEY PERTAIN TO ELECTRONIC TRANSACTIONS, AND TO COMPLY WITH THE ELECTRONIC SIGNATURE POLICY OF CUYAHOGA COUNTY.

The Parties have executed this Contract by their duly authorized representatives, whose signatures appear below:

Outcome Referrals, Inc.

By:

Mike Kinkad  
Signature

Mike Kinkad  
Chief Executive Officer

Date of signature: 8.29.12

Cuyahoga County, Ohio

Edward Fitzgerald, County Executive

By:

Ed Fitzgerald/ap  
Signature

Name: Edward Fitzgerald  
Title: Cuyahoga County Executive

Date of signature: \_\_\_\_\_