

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK, IAS Part 23

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BRAD H., <i>et al.</i> ,	:	
	:	
Plaintiffs,	:	
	:	
-against-	:	Index No. 117882/99
	:	Braun, J.
	:	
THE CITY OF NEW YORK, <i>et al.</i> ,	:	
	:	
Defendants.	:	
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**STIPULATION OF SETTLEMENT**

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**STIPULATION OF SETTLEMENT**

This Stipulation of Settlement (the “Settlement Agreement” or “Agreement”) is entered into by counsel for Brad H., Robert K., Michael R., Susan T. and Kevin W., themselves and on behalf of the Class certified in this action on August 8, 2000 (as further described below) (collectively, the “Class” or “Class Members,” and each individually a “Class Member”) and the City of New York, its agencies and instrumentalities (the “City”); Hon. Michael R. Bloomberg, Mayor of the City of New York; the New York City Health and Hospitals Corporation (“HHC”); Dr. Benjamin Chu, M.D., President of HHC; the New York City Department of Health and Mental Hygiene (“DHMH”); Dr. Thomas R. Frieden, M.D., Commissioner of the DHMH; the New York City Department of Correction (“DOC”); Martin F. Horn, Commissioner of DOC; the New York City Human Resources Administration (“HRA”); Verna Eggleston, Commissioner of HRA; Prison Health Services, Inc. (“PHS”); and Gerald F. Boyle, Chief Executive and President of PHS.

**WHEREAS**, Plaintiffs commenced this action alleging that Defendants had violated, and continued to violate, New York Mental Hygiene Law § 29.15, 14 N.Y.C.R.R. 587 *et seq.* and Article I, Sections 5 and 6 of the Constitution of the State of New York, by failing to provide adequate discharge planning to inmates receiving mental health treatment in correctional facilities maintained and operated by the DOC;

**WHEREAS**, by preliminary injunction entered July 9, 2000, the Court directed Defendants to provide discharge planning to the plaintiff class in accordance with New York Mental Hygiene Law § 29.15 and 14 N.Y.C.R.R. 587 *et seq.*;

**WHEREAS**, by Order dated August 8, 2000, the Court certified the Class, consisting of:

all inmates (a) who are currently incarcerated or who will be incarcerated in a correctional facility operated by the New York City Department of Correction (“City Jail”), (b) whose period of confinement in City Jails lasts 24 hours or longer, and (c) who, during their confinement in City Jails, have received, are receiving, or will receive treatment for a mental illness; provided, however, that inmates who are seen by mental health staff on no more than two occasions during their confinement in any City Jails and are assessed on the latter of those occasions as having no need for further treatment in any City Jail or upon their release from any City Jail shall be excluded from the class;

**WHEREAS**, counsel for the Class have reviewed thousands of pages of documents produced by Defendants, have deposed senior employees and officials of Defendants, and have retained and consulted with experts concerning the merits of the claims and defenses asserted in this action and the terms of this Agreement; and

**WHEREAS**, the Parties now desire to resolve the remaining issues raised in this action without further proceedings and without admitting any fault or liability;

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED**, by and between the undersigned, as follows:

**I. DEFINITIONS**

1. As used in this Agreement and the exhibits annexed hereto (which are an integral part of this Agreement and are incorporated in their entirety by reference), the following terms shall have the following meanings, unless otherwise provided in this Agreement or its exhibits:

- a. “1995 Application” shall mean the application used by HRA to determine the eligibility of individuals with serious Mental Illness for Supportive Housing in New York City. The term “1995 Application” also shall mean any forms, however named or titled, that HRA or other agencies use at any time in the future to determine the eligibility of individuals with serious Mental Illness for Supportive Housing in New York City.
- b. “ACT” shall mean assertive community treatment team.
- c. “Action” shall mean the lawsuit captioned *Brad H., et al. v. City of New York, et al.*, Index No. 117882/99, filed in the Supreme Court of the State of New York, County of New York.
- d. “Agreement” or “Settlement Agreement” shall mean this Stipulation of Settlement and all attached exhibits, including any subsequent amendments to the Agreement and/or the exhibits thereto.
- e. “Benefits Unit” shall mean the group of employees of one or more Defendants who process applications for Public Assistance Benefits, Medicaid and/or Food Stamps on behalf of Class Members, as more fully described in Correctional Health Services’ Policies and Procedures Manual.

- f. “Case Management Services” shall mean services provided to Class Members by or through ICM, SCM, ACT and/or LINK workers and their agents.
- g. “CHS” shall mean the Correctional Health Services division of HHC.
- h. “CHS Pharmacy” shall mean CHS’s main pharmacy office on Rikers Island, currently located at the George Motchan Detention Center.
- i. “City” shall mean the City of New York.
- j. “City Jail” or “Jail” shall mean any correctional facility operated by one or more Defendants.
- k. “Class” or “Class Members” shall mean the Class certified by the Court by Order dated August 8, 2000.
- l. “Class Counsel” shall mean Debevoise & Plimpton, New York Lawyers for the Public Interest, Inc., and Douglas Lasdon, Raymond H. Brescia and Heather Barr, currently of the Urban Justice Center, who are the law firms and attorneys appointed to represent the Class pursuant to a stipulation and order.
- m. “Class Notice” shall mean the legal notice providing Class Members with information about the terms of the proposed Settlement described herein and their rights in connection therewith.
- n. “Comment Box” shall mean a sealed box with a slit in the top through which Class Members may insert Comment Sheets.
- o. “Comment Sheet” shall mean the form on which any Class Member may record comments on and/or objections to the proposed Settlement set forth in this Settlement Agreement.
- p. “Community Referral Unit” shall mean the group of employees of Defendant Agencies, whose Discharge Planning responsibilities include identifying and securing appropriate community placements for Class Members and coordinating with SPAN Office Staff, Case Management Services, LINK, and community

health agencies on behalf of Class Members, as more fully described in Correctional Health Services' Policies and Procedures Manual.

- q. "Complaint" shall mean the complaint filed by Plaintiffs in this Action on August 24, 1999.
- r. "Compliance Monitors" shall mean the individuals appointed by the Court pursuant to § IV of this Agreement to monitor the provision of Discharge Planning in City Jails and Defendants' compliance with the terms and provisions of this Agreement, as set forth more fully herein.
- s. "Comprehensive Treatment and Discharge Plan" or "CTDP" shall mean each individualized treatment and Discharge Plan created by Defendants pursuant to § II of this Agreement.
- t. "Court" shall mean the Supreme Court of the State of New York, County of New York.
- u. "CRU Database" shall mean the database utilized by the Correctional Referral Unit of DHS.
- v. "Defendants" shall mean The City of New York and its agencies and instrumentalities; Hon. Michael R. Bloomberg, Mayor of the City of New York; HHC; Dr. Benjamin Chu, M.D., President of HHC; DHMH; Dr. Thomas R. Frieden, M.D., Commissioner of DHMH; DOC; Martin F. Horn, Commissioner of DOC; HRA; Verna Eggleston, Commissioner of HRA; PHS; Gerald F. Boyle, Chief Executive and President of PHS.
- w. "Defendant Agencies" shall mean all City agencies and entities involved in providing Discharge Planning services as contemplated by this Settlement Agreement, including but not limited to HRA, DHS, HHC, DOC, PHS, DHMH and agencies contracting with the City to provide SPAN, LINK, or transportation services.
- x. "Defendants' Counsel" shall mean the New York City Law Department, the Office of the Corporation Counsel.



- y. “DHMH” shall mean the City Department of Health and Mental Hygiene.
- z. “DHS” shall mean the City Department of Homeless Services.
- aa. “DHS Assessment” shall mean the assessment performed by DHS to determine the shelter in which to place any individual seeking shelter in the City’s Shelter System.
- bb. “Discharge Plan” shall mean the plan describing the manner in which an individual will be able to receive a clinically appropriate level of continuing mental health treatment – as well as assistance in applying for other necessary treatment, services and benefits – immediately upon his or her release from or transfer out of a City Jail, as further described in § II of this Agreement.
- cc. “Discharge Planning” shall mean the process of formulating and implementing the Discharge Plan.
- dd. “Discharge Planning Facilities” shall mean all locations where CHS, its medical vendor, SPAN Office Staff and agents or contractors of CHS or any SPAN Office (i) assess individuals for their need or eligibility for services or benefits related to their Discharge Plans or (ii) perform any task to create and/or implement Discharge Plans and/or any task otherwise related to Discharge Planning.
- ee. “Discharge Planning MIS” shall mean a unified, computerized Discharge Planning information system, containing at least the data fields set out in Exhibit A hereto.
- ff. “Discharge Planning Staff” shall mean all personnel who have been trained to evaluate each individual’s need for Discharge Planning and/or to develop or implement an appropriate and adequate Discharge Plan for each such individual as further described in § II of this Agreement.
- gg. “Discharge Summary” shall mean a document that summarizes a Class Member’s mental health treatment

needs and Discharge Plan, including but not limited to diagnoses, current medications, and where the Class Member should go in the community to receive treatment and services.

- hh. “DOC” shall mean the City Department of Correction.
- ii. “EBT card” or “Electronic Benefit Transfer card” shall mean a card issued by a vendor of the State of New York to a recipient of Public Assistance Benefits administered by HRA to provide that individual with electronic access to such benefits.
- jj. “Emergency Benefits” shall mean Immediate Needs Grants and Expedited Food Stamps.
- kk. “EVR” shall mean the Eligibility Verification Review conducted by HRA to verify an individual’s eligibility for Public Assistance Benefits.
- ll. “Expedited Food Stamps” shall mean Food Stamp benefits issued as a result of the expedited processing of a Food Stamp application, pursuant to federal and state statutes and regulations and on the same terms available to other Food Stamp applicants in New York City.
- mm. “Execution Date” shall mean the last date on which this Agreement is executed by all of Class Counsel and Defendants’ Counsel.
- nn. “Fairness Hearing” shall mean the hearing at or after which the Court will make a final decision whether to approve this Agreement and the proposed Settlement set forth therein as fair, reasonable and adequate.
- oo. “Final Order and Judgment” shall mean the order in which the Court approves the proposed Settlement and the terms of this Agreement, and the judgment entered pursuant to that Order, which the parties shall seek substantially in the form attached as Exhibit B hereto and as further described in § VIII of this Agreement.
- pp. “Food Stamps” shall mean benefits available from HRA pursuant to the Food Stamp Act, 7 U.S.C. §§ 2011 *et seq.*, U.S. Department of Agriculture regulations at 7 C.F.R. Part 271 *et seq.*, and New York

State Office of Temporary and Disability Assistance regulations, including 18 NYCRR Part 387.

- qq. “General Population” shall mean all units in City Jails in which inmates are housed other than Segregated Mental Health Units.
- rr. “Hearing Order” shall mean the order in which the Court authorizes and directs the provision of notice to the Class concerning of the terms of this Agreement, the proposed Settlement and Class Members’ rights in connection therewith, and in which the Court schedules a date for the Fairness Hearing, substantially in the form attached as Exhibit C hereto and as further described in § VIII of this Agreement.
- ss. “HHC” shall mean the City Health and Hospitals Corporation.
- tt. “HRA” shall mean the City Human Resources Administration.
- uu. “HS Systems” shall mean the contractor of that name and/or any other entity designated to assess the ability of applicants for Public Assistance Benefits to participate in work and work-related activities as further described in the New York Social Services Law § 331 and the New York State Department of Labor regulations.
- vv. “I/A Shelters” shall mean DHS intake facilities and/or assessment shelters.
- ww. “ICM” or “Intensive Case Management” services shall mean an intensive level of case management services for individuals with serious and persistent Mental Illnesses. ICM workers, or people who provide ICM services directly to clients, meet with clients at least once per week to assist clients in gaining access to needed services, including but not limited to public benefits; medication; psychiatric, substance abuse and medical treatment; housing; and rehabilitative, educational and vocational services. Eligibility for ICM services is governed by regulations of the New York State Office of Mental Health.

- xx. “IIS” shall mean the DOC Inmate Information System.
- yy. “Immediate Needs Grant” shall mean a pre-investigation emergency grant issued by HRA, pursuant to New York Social Services Law § 133 and the Regulations and Administrative Directives of the New York State Office of Temporary and Disability Assistance, prior to HRA’s completion of a full eligibility determination for cash assistance.
- zz. “Implementation Date” shall mean the date, defined in § III of this Agreement, by which Defendants shall have in place all systems to provide Discharge Planning as contemplated by this Agreement.
- aaa. “Jail Treatment Locations” shall mean all Segregated Mental Health Units and other areas in which inmates, including but not limited to inmates housed in General Population, receive mental health treatment.
- bbb. “Job Center” shall mean any location at which HRA accepts or processes applications or assesses eligibility for Public Assistance Benefits and Food Stamps.
- ccc. “LINK” shall mean Case Management Services contracted for by Defendants in which LINK workers meet with clients during their transition from a City Jail to the community to assist them in gaining access to needed services, including but not limited to Public Assistance Benefits; Medicaid; Food Stamps; medication; psychiatric, substance abuse and medical treatment; housing; and rehabilitative, educational and vocational services.
- ddd. “Medication Grant Program” or “MGP” shall mean a program administered by the State of New York that will provide all eligible individuals with a means to pay for medication and medication monitoring until determination of the individual’s eligibility for Medicaid benefits, as further described in 1999 N.Y. Laws 408 § 15.
- eee. “Mental Health Centers” or “MHCs” shall mean housing areas within City Jails that provide the highest level of mental health care within City Jails. MHCs are

currently located at the Anna M. Kross Center (“AMKC”) and the Rose M. Singer Center (“RMSC”).

- fff. “Mental Health Program Shelter” shall mean a Program Shelter that is designed to house homeless individuals who have Mental Illness.
- ggg. “Mental Health Records” shall mean any and all documents, in any form (including documents maintained only on electronic or other non-paper media), that contain information regarding a Class Member’s mental health treatment history including, but not limited to, documents containing information regarding visits to physicians and Discharge Planning Staff for mental health treatment, and documents reflecting the prescription of medication to a Class Member for the treatment of Mental Illness.
- hhh. “Mental Illness” shall mean an affliction with a mental disease or mental condition, which is manifested by a disorder or disturbance in behavior, feeling, thinking, or judgment to such an extent that the person afflicted requires care, treatment and rehabilitation.
- iii. “Mental Observation Units” or “MOUs” shall mean segregated housing units within the City Jails in which inmates are housed and receive mental health evaluation, observation and/or treatment.
- jjj. “MHAUII” or “Mental Health Assessment Units for Infracted Inmates” shall mean the specialized units in City Jails operated by DOC for the confinement of inmates who are being punished for disciplinary infractions and who need mental health supervision, observation or treatment or are being assessed for such supervision, observation or treatment.
- kkk. “Notice Materials” shall mean the Class Notice, the Summary Notice (in English and Spanish) and the Comment Sheet.
- lll. “Parties” shall mean Plaintiffs (in their individual and representative capacities) and Defendants.
- mmm. “PHS” shall mean Prison Health Services, Inc.

- nnn. “Plaintiffs” shall mean Brad H., Robert K., Michael R., Susan T. and Kevin W., by and through Plaintiffs’ Counsel.
- ooo. “Plaintiffs’ Counsel” shall mean Debevoise & Plimpton, New York Lawyers for the Public Interest, Inc., and Douglas Lasdon, Raymond H. Brescia and Heather Barr, currently of the Urban Justice Center.
- ppp. “Program Shelter” shall mean a shelter in the DHS Shelter System in which individuals with the need for similar services are housed. Such shelters provide mental health programs, substance abuse treatment programs, and employment programs.
- qqq. “Public Assistance Benefits” shall mean Temporary Assistance to Needy Families and Safety Net Assistance benefits that are issued by HRA to an eligible individual or family. Public Assistance Benefits shall not include either Food Stamps or Medicaid benefits.
- rrr. “Release Date” shall mean the date on which an individual was, or is expected to be, released from incarceration in a City Jail.
- sss. “Safety Net Assistance” or “SNA” shall mean benefits as defined in New York Social Services Law § 157 and the regulations and administrative directives of the New York State Office of Temporary and Disability Assistance.
- ttt. “SCIMS” shall mean the Shelter Care Information Management System utilized by DHS.
- uuu. “SCM” or “Supportive Case Management” services shall mean Case Management Services for persons with serious and persistent Mental Illnesses. SCM workers, or people who provide SCM services directly to clients, meet with clients at least every two weeks to assist clients in gaining access to needed services, including but not limited to Public Assistance Benefits; Medicaid; Food Stamps; medication; psychiatric, substance abuse and medical treatment; housing; and rehabilitative, educational and vocational services.

- vvv. “Segregated Mental Health Units” shall mean all housing units in the City Jails that use need for mental health care or assessment as a criterion for admission to the Unit, including but not limited to MOUs, the MHAUIs, and the MHCs.
- www. “Seriously and Persistently Mentally Ill” or “SPMI” shall mean meeting the Criteria for Severe and Persistent Mental Illness Among Adults promulgated by the New York State Office of Mental Health (“OMH Criteria for Severe and Persistent Mental Illness”).
- xxx. “Settlement” shall mean the settlement of this Action as described in this Settlement Agreement.
- yyy. “Shelter System” shall mean the system of homeless shelters, including but not limited to I/A Shelters and Program Shelters, operated directly by DHS or by entities that contract with DHS.
- zzz. “Significant Others” shall mean relatives, close friends, associates and/or individuals concerned with the welfare of an individual incarcerated in a City Jail.
- aaaa. “Social Security Benefits” shall mean all benefits that may be obtained through application to the Social Security Administration of the U.S. Department of Agriculture.
- bbbb. “SSD” or “Social Security Disability” shall mean disability insurance benefits paid to eligible individuals pursuant to the Social Security Act, 42 U.S.C. §§ 401, *et seq.*
- cccc. “SSI” or “Supplemental Security Income” benefits shall mean benefits paid to eligible individuals pursuant to the Social Security Act, 42 U.S.C. §§ 1381 *et seq.*
- dddd. “SPAN Offices” shall mean the offices described in § II.G of this Agreement.
- eeee. “SPAN Office Staff” shall mean all personnel employed at SPAN Offices.
- ffff. “SPOA Agency” or “Single Point of Access Agency” shall mean the agency or agencies, but not DHS

Shelters or I/A Shelters, that are or will be designated to administer the centralized intake and referral to Supportive Housing, ICM, SCM and/or ACT services in New York City.

- gggg. “Summary Notice” shall mean a summary of the information contained in the Class Notice, to be made available in English and Spanish.
- hhhh. “Supportive Housing” shall mean the full range of different models of housing and residential treatment in New York City that are designed to meet the needs of individuals with Mental Illness who require both housing and supportive services (including, but not limited to, community residences, residential care centers for adults, MICA community residences, supported housing, and apartment treatment programs).
- iiii. “Temporary Assistance to Needy Families” or “TANF” shall mean benefits as provided for in New York Social Services Law Article 5, Title 10, and the Regulations and Administrative Directives of the New York State Office of Temporary and Disability Assistance.
- jjjj. “Veterans Administration Benefits” shall mean benefits provided by the U.S. Department of Veterans’ Affairs.
- kkkk. “WMS” or “Welfare Management System” shall mean the computerized information system maintained by the State of New York and employed by HRA to track the application for and receipt of all benefits obtained by individuals through application to HRA, and/or any other information system designed by the State of New York to replace or supplement such system.

2. Defined terms used in this Agreement but not defined above shall have the meaning ascribed to them in this Agreement and the Exhibits annexed hereto.

3. The defined terms used herein are used solely for purposes of this Agreement and are not intended and should not be construed to reflect the Parties’ understanding of these terms for any other purpose.



## **II. SETTLEMENT RELIEF**

### **A. General Provisions**

4. Defendants shall provide Discharge Planning in accordance with the terms of this Agreement.

5. Discharge Planning shall include (a) an individualized assessment of a person's need for (i) clinically appropriate forms of continuing mental health treatment and supportive services including but not limited to, where clinically appropriate, medication, substance abuse treatment, and case management services, (ii) public benefits, including but not limited to Medicaid, Public Assistance Benefits and Food Stamps, (iii) appropriate housing or appropriate shelter if housing cannot be located prior to the individual's release from incarceration in a City Jail, and (iv) transportation to appropriate housing or shelter; and (b) assisting each individual with obtaining the services and resources set forth in (a), in accordance with each individual's need for those services and resources and in accordance with the terms of this Settlement Agreement.

6. The Parties acknowledge that the extent of Discharge Planning to be provided to each individual may vary according to (a) the nature and severity of an individual's Mental Illness, (b) the needs of the individual, including the resources the individual has in place in the community and the individual's ability to function independently after release from incarceration, (c) the individual's length of incarceration, (d) whether the individual's Release Date is known or becomes known to Defendants, (e) the individual's availability during his or her incarceration, and (f)

the extent of the individual's cooperation with Discharge Planning efforts, including timely availing himself or herself of services provided at SPAN Offices.

7. The Parties acknowledge that the issue of whether and how to continue an individual's mental health care upon release from a City Jail to the community does not arise with respect to Class Members released from City Jails directly to the custody of New York State. Defendants agree to continue their current practices with respect to such Class Members, including but not limited to transmitting relevant Mental Health Records to New York State prison officials at the time each such Class Member is transferred to State custody.

8. Any Class Member who chooses not to accept all Discharge Planning services to which he or she is entitled pursuant to this Agreement shall retain his or her right to any services that he or she does accept. Defendants shall advise all Class Members of their right to accept some but not all Discharge Planning services.

9. Except as otherwise provided herein, Defendants shall use their best efforts to perform all obligations required pursuant to this Agreement within the applicable time frames set forth in this Agreement.

**B. Contact with the Community**

10. Defendants shall create a mechanism to allow Significant Others and other members of the community who have clinical information or other information relevant to the mental health treatment of or Discharge Planning efforts for an individual incarcerated in a City Jail to relay that information to Discharge Planning Staff or mental health staff in City Jails. This mechanism shall, at a minimum, include a system that enables those wishing to communicate information regarding a

particular individual to Defendants to do so by telephone. When appropriate, a member of the Discharge Planning Staff shall return such telephone calls and shall involve in Discharge Planning efforts Significant Others who so contact Defendants if the individual consents and the Significant Other so desires.

11. Defendants shall create a mechanism to allow any individual who contacts the Community Referral Unit to leave an individual message for any member of the Community Referral Unit at any time. Defendants shall also ensure that each such message is promptly relayed to other Discharge Planning Staff as appropriate.

12. The mechanisms described in ¶¶ 10 - 11 above shall be in place and fully operational no later than the Implementation Date.

13. Defendants (a) shall publicize the mechanisms described in ¶¶ 10 - 11 above (including the telephone numbers established to permit the communications described in ¶¶ 10 - 11 above) as part of the community education efforts described in § VII below and (b) shall provide the telephone numbers established to permit the communications described in ¶¶ 10 - 11 above to (i) Class Counsel and (ii), upon request, to other individuals in the community. Defendants shall also promptly notify Class Counsel of any changes to such telephone numbers.

**C. Determination of Class Membership  
And Creation of a Discharge Plan**

14. Defendants shall assess each individual incarcerated in a City Jail for his or her need for medical treatment (the “Medical Assessment”), including but not limited to an assessment of whether the individual should be referred for a mental health assessment. The Medical Assessment, as currently set forth in the New York

City Board of Correction's Minimum Standards, shall occur within the first twenty-four hours of each inmate's incarceration. Defendants may conduct subsequent Medical Assessments, including an assessment of whether the individual should be referred for a mental health assessment, periodically during each inmate's incarceration.

15. Each individual referred for a mental health assessment as a result of a Medical Assessment shall be assessed by Defendants for his or her need for mental health treatment (the "Initial Assessment") within three days after the Medical Assessment.

16. For all individuals who are housed in any of the Segregated Mental Health Units, and who are assessed at their Initial Assessment as needing follow up by mental health staff for further assessment and/or treatment, a mental health clinician shall complete a Comprehensive Treatment and Discharge Plan ("CTDP"), which shall include the individual's Discharge Plan, within seven days of the date on which the Initial Assessment occurs (the "Initial Assessment Date").

17. For all individuals who are housed in General Population, and who are assessed at their Initial Assessment as needing follow up by mental health staff for further assessment and/or treatment, a mental health clinician shall complete a CTDP, which shall include the individual's Discharge Plan, within fifteen days of the Initial Assessment Date.

18. Each individual for whom a CTDP is to be completed in accordance with ¶¶ 16 - 17 above shall be designated a Class Member as of the date of completion of his or her CTDP; provided, however, that any individual who is

determined to be in need of psychotropic medication for treatment of a Mental Illness prior to the completion of his or her CTDP shall be designated a Class Member as of the date of such determination.

19. Any individual who is assessed at his or her Initial Assessment as needing follow up by mental health staff for further assessment and/or treatment but who is released from incarceration before he or she is designated a Class Member pursuant to ¶ 18 above (a) shall be deemed a Class Member as of his or her Release Date, (b) shall be entitled to utilize the SPAN Offices and receive any other services to which he or she is entitled as a Class Member, (c) shall receive a Discharge Summary (to the extent the information required by the Discharge Summary is available), and (d) shall receive all information describing the SPAN Offices and his or her rights as a Class Member, as provided in ¶ 21 and ¶ 37 below.

20. DOC shall note in its IIS that an individual has been designated or deemed a Class Member pursuant to ¶¶ 18 - 19 above within 24 hours of the time at which the individual is designated or deemed a Class Member.

21. Defendants shall distribute to each individual who is designated or deemed a Class Member written materials that contain information about Class Members' right to Discharge Planning services as provided in this Agreement. Such materials shall be distributed to each individual at the time he or she is designated or deemed a Class Member and, if the individual is released directly from a City Jail, upon his or her release from incarceration.

22. Class Counsel and Defendants' Counsel shall together develop the form of written materials to be provided to individuals pursuant to the immediately

preceding ¶ 21, and shall submit those written materials to the Court for its approval no later than 15 days prior to the Fairness Hearing.

23. Defendants shall provide each Class Member with a Discharge Summary upon the Class Member's release from a City Jail or upon the Class Member's first visit to a SPAN Office.

**D. Designation of a Class Member as Seriously and Persistently Mentally Ill**

24. At the time of the Initial Assessment, Defendants shall assess whether an individual assessed as needing further assessment and/or mental health treatment is likely to be classified as Seriously and Persistently Mentally Ill and shall immediately designate each individual determined likely to be classified as Seriously and Persistently Mentally Ill as such in the individual's Mental Health Record.

25. By the Implementation Date, Defendants shall begin using a questionnaire to assess during the Initial Assessment whether an individual is likely to be classified as SPMI, as required by ¶ 24 above. The draft of such questionnaire shall be provided to Class Counsel for comment before it is first used, and Class Counsel shall be provided with at least seven days to comment on the draft questionnaire before it is first used.

26. At the time an individual is determined to be a Class Member, Defendants shall assess whether the Class Member is Seriously and Persistently Mentally Ill and shall immediately designate the Class Member as Seriously and Persistently Mentally Ill in the Class Member's Mental Health Record and the

Discharge Planning MIS if the assessment indicates that such designation is appropriate.

27. Any Class Member or individual prescribed an anti-psychotic or mood stabilizing medication to treat a psychiatric condition during his or her incarceration shall be presumptively classified as SPMI or likely to be SPMI for purposes of this Agreement as of the date of such prescription and shall be entitled to the additional services provided in this Agreement for such Class Members. The Compliance Monitors shall compile a list of such medications and update the list as appropriate at least annually. If a mental health clinician determines that any such Class Member or individual does not meet the OMH Criteria for Severe and Persistent Mental Illness despite the prescription of such medication, then the Class Member or individual shall not be classified as SPMI or likely SPMI, and the reason for that determination shall be specifically documented in the Class Member's or individual's Mental Health Record.

28. After an individual is designated or deemed a Class Member, Defendants shall periodically reassess whether the Class Member is Seriously and Persistently Mentally Ill during subsequent interactions between a mental health clinician and the Class Member, and Defendants shall immediately designate the Class Member as Seriously and Persistently Mentally Ill in the Class Member's Mental Health Record and the Discharge Planning MIS if any reassessment indicates that such designation is appropriate.

29. If at any point during a Class Member's incarceration, a mental health clinician determines that a Class Member is Seriously and Persistently Mentally Ill,

Defendants shall provide the Class Member with all services to which a Class Member determined to be SPMI is entitled pursuant to this Settlement Agreement.

30. An individual who is determined during the Initial Assessment to be likely to be classified as Seriously and Persistently Mentally Ill and who is released from incarceration before he or she is designated a Class Member, shall be entitled to transportation pursuant to the terms of § II.H.6 below and, following his or her release, to all the post-release Discharge Planning services available to a Class Member who is Seriously and Persistently Mentally Ill under this Settlement Agreement.

31. If a Class Member is designated as Seriously and Persistently Mentally Ill or as likely to be classified as Seriously and Persistently Mentally Ill and is subsequently re-designated as not Seriously and Persistently Mentally Ill, a mental health clinician shall document in the Class Member's Mental Health Record the basis for such re-designation.

**E. Release of Class Members from DOC Custody**

32. Beginning on the Implementation Date, Defendants shall ensure that all Class Members released from incarceration are so released during daylight hours, and in any event no earlier than 8:00 a.m.; provided, however, that this provision shall not apply (a) to Class Members released from incarceration on bail or pursuant to other court orders requiring that they be released immediately or (b) to Class Members released from DOC custody directly from a courthouse.



33. A Class Member who would otherwise have been released from DOC custody directly from a courthouse shall not be returned to a City Jail because of his or her status as a Class Member.

**F. Determination of Class Members' Release Dates**

34. For a period beginning on the Implementation Date and ending six months after that date, Defendants shall use reasonable efforts to ascertain the Release Date of each Class Member housed at the Rose M. Singer Center or the Anna M. Kross Center whose Release Date is unknown to Defendants. Such efforts shall include but not be limited to attempting to contact the Class Member's defense attorney, if appropriate, and consulting the IIS.

35. At the end of the six-month period described in ¶ 34 above, the Compliance Monitors, in consultation with the Parties, shall assess (a) whether the information obtained by Defendants through the efforts described in ¶ 34 above is generally beneficial in Discharge Planning and (b) if so, whether Defendants should be required to continue such efforts and expand such efforts to other City Jail facilities. The Compliance Monitors, in consultation with the Parties, shall also determine whether Defendants used reasonable efforts to ascertain Class Members' Release Dates. If the Compliance Monitors find that Defendants did not use reasonable efforts, the six-month trial period described in ¶ 34 above shall continue for another six months. The Compliance Monitors' determination with respect to all issues described in this ¶ 35 shall be binding on the Parties.

**G. SPAN Offices**

36. Except as otherwise provided in this Agreement, all Class Members who are released from incarceration without a completed or fully implemented Discharge Plan shall be entitled to receive all of the Discharge Planning services set forth in § II of this Agreement from any of the SPAN Offices, which are to be located within one-half mile of the criminal courts in each of the five boroughs, provided that the Class Member presents himself or herself at a SPAN Office within thirty days of his or her Release Date. The SPAN Offices shall be open from 10:00 a.m. to 7:00 p.m. in all boroughs except Manhattan and from 10:00 a.m. to 8:00 p.m. in Manhattan for six months following the Implementation Date. If the Compliance Monitors, in consultation with the Parties, determine at the end of that period that an insufficient number of Class Members utilize the SPAN offices between 5:00 p.m. and their close, then the times at which the SPAN Offices close may be modified by Defendants with the consent of the Compliance Monitors.

37. Defendants shall inform Class Members in writing of the location of all SPAN Offices and their hours of operation, the services provided at SPAN Offices and the restrictions on the availability of such services. Defendants shall provide a writing containing this information to each Class Member at the time the Class Member is first designated or deemed to be a Class Member and at the time of the Class Member's release from incarceration, if the Class Member is released from a City Jail. In addition, Defendants shall make this writing available to Class Members released from Court, at or prior to the time at which each such Class Member is released from DOC custody.

38. Class Counsel and Defendants' Counsel shall together develop the form of writing to be provided to Class Members pursuant to the immediately preceding ¶ 37, and shall submit that writing to the Court for its approval no later than 15 days prior to the Fairness Hearing.

39. The Discharge Planning Staff and/or mental health staff in City Jails shall, in face-to-face meetings with Class Members and individuals for whom CTDPs are being prepared, encourage all such Class Members and individuals to utilize the SPAN Offices. Such face-to-face meetings shall occur (a) periodically during the incarceration of each such Class Member and individual and (b) as close to the Release Date of each such Class Member and individual as is practicable. In addition, SPAN Office Staff shall periodically visit City Jails to conduct group meetings with up to eight Class Members and/or individuals for whom CTDPs are being prepared and encourage them to utilize the SPAN Offices. Nothing in this ¶ 39 shall limit SPAN Office Staff from conducting group meetings with more than eight Class Members if DOC approves such meetings.

40. SPAN Office Staff shall visit courthouses while criminal courts are in session to encourage Class Members who are determined likely to be released from DOC custody directly from courthouses (such determinations being provided to SPAN Office Staff by Defendants) to visit SPAN Offices and utilize services provided by SPAN Offices.

**H. Elements of Discharge Planning**

41. Defendants shall use their best efforts to complete each assessment and provide all Discharge Planning services described in this § II during each Class

Member's incarceration in a City Jail. If such assessments and provision of Discharge Planning services are not completed during a Class Member's incarceration, SPAN Office Staff shall use their best efforts to complete each assessment and provide all services described in § II of this Agreement to each Class Member, provided that the Class Member presents himself or herself at a SPAN Office within thirty days after his or her Release Date.

**1. Continuing Mental Health Treatment and Services**

42. As part of Discharge Planning, Defendants shall in consultation with mental health staff in City Jails and prior to each Class Member's Release Date, (a) assess each Class Member's need for clinically appropriate forms of continuing mental health treatment and services following his or her Release Date, including medication, case management services, substance abuse treatment, and psychiatric rehabilitation services, following his or her Release Date and (b) provide to each Class Member appropriate appointments or referrals to receive such treatment and services.

a. ***Identification of Clinically Appropriate Mental Health Care Programs***

43. Discharge Planning Staff or SPAN Office Staff, as applicable, shall identify a clinically appropriate mental health care program or programs for each Class Member who is determined to need continuing mental health treatment or services following his or her Release Date.

44. In determining whether a mental health care program is appropriate for any particular Class Member, Discharge Planning Staff or SPAN Office Staff, as

applicable, shall take into consideration (a) the Class Member's preferences; (b) the geographic location of the Class Member's expected permanent or temporary housing, if known, or, if such location is unknown, the Class Member's pre-incarceration address (unless the Class Member requests otherwise); (c) the Class Member's mental health treatment needs; (d) the Class Member's need for integrated treatment for mental illness and drug or alcohol dependence; (e) the Class Member's prior treatment history in the community provided to Defendants by the Class Member or other sources; and (f) the mental health care program's capacity and willingness to accept the Class Member.

b. *Appointments or Referrals for  
Incarcerated Class Members*

45. For each Class Member whose Release Date is known or becomes known to Discharge Planning Staff in advance of the Class Member's release from incarceration, the Discharge Planning Staff shall, as soon as possible after the date on which the Class Member's Release Date becomes known or the date on which the individual is designated a Class Member, whichever is later, (a) make an appointment for the Class Member with the mental health care program or programs identified in accordance with the criteria set forth in ¶ 44 above on the first date available following the Class Member's Release Date, (b) orally advise the Class Member of the time, date and place of the appointment, and (c) provide the Class Member with an appointment card or other writing that includes the time, date and place of the appointment.

46. For each Class Member whose Release Date is not known or does not become known to Discharge Planning Staff in advance of the Class Member's release from incarceration, the Discharge Planning Staff shall, as soon as possible after the Class Member's CTDP is completed, (a) refer the Class Member to the mental health care program or programs identified in accordance with the criteria set forth in ¶ 44 above by (i) forwarding referral information for the Class Member to such program or programs and (ii) obtaining to the extent possible an agreement from such program or programs to accept the Class Member; and (b) advise the Class Member, prior to the Class Member's Release Date, both orally and in writing, of the identity and location of such mental health care program or programs and the steps required of the Class Member to obtain services from such program or programs. If the Class Member's Release Date later becomes known to Discharge Planning Staff, the Discharge Planning Staff shall make an appointment for the Class Member in accordance with ¶ 45 above.

c. *Appointments for Released Class Members*

47. For each Class Member who presents himself or herself at a SPAN Office within thirty days of his or her Release Date, the SPAN Office Staff shall, during the Class Member's first visit to a SPAN Office, (a) make an appointment or appointments for the Class Member on the next available date with the mental health care program or programs identified in accordance with the criteria set forth in ¶ 44 above, (b) orally advise the Class Member of the time, date and place of the appointment or appointments, and (c) provide the Class Member with an appointment

card or other writing that includes the time, date and place of the appointment or appointments.

48. SPAN Office Staff shall continue to attempt to place a Class Member in a mental health treatment program or programs identified in accordance with the criteria set forth in ¶ 44 above for up to thirty days after the Class Member presents himself or herself to a SPAN Office, provided the Class Member initially presents himself or herself to a SPAN Office within thirty days of his or her Release Date.

d. ***Follow-up for Seriously and Persistently Mentally Ill Class Members***

49. Defendants shall contact the community mental health care program or programs to which each Class Member designated as Seriously and Persistently Mentally Ill was referred or with which each such Class Member had an appointment to determine whether the Class Member appeared at the program or programs. Defendants shall perform such follow-up within three days of the scheduled appointment or the Class Member's Release Date, as applicable; provided, however, that if the Class Member has been accepted as a client of a LINK program, the LINK program shall perform such follow up within five days. If Defendants determine that the Class Member did not appear, Defendants shall use their best efforts for up to 30 days following the Class Member's Release Date to contact the Class Member and schedule another appointment.

**2. Access to Medication and Prescriptions**

50. As part of Discharge Planning, Defendants shall, in consultation with mental health staff in the City Jails and prior to each Class Member's Release Date,

(a) assess each Class Member's need for continued psychotropic medication for treatment of a Mental Illness ("psychotropic medication") following his or her Release Date and (b) provide each Class Member assessed as needing continued psychotropic medication following his or her Release Date with a supply of medication(s) and/or prescription(s) as provided in this § II.H.2.

51. Unless and until Defendants record the following information in an electronic database accessible to the Compliance Monitors, Defendants shall record in each Class Member's Mental Health Record (a) the date on which the medication(s) and/or prescription(s) provided pursuant to the following ¶ 52 and ¶ 54 were provided to the Class Member; (b) the types of medication(s) and quantities thereof provided to the Class Member; and (c) the types of medication(s) and quantities thereof covered by prescription(s) provided to the Class Member.

a. ***Class Members Released Directly From City Jails***

52. Where clinically appropriate and except as provided in ¶ 56 below, Defendants shall provide to each Class Member who is released from a City Jail and is in need of continuing psychiatric medication (a) a 7-day supply of all psychotropic medications that he or she had been receiving immediately prior to his or her Release Date, and (b) a 21-day prescription for all such medications. Such supply of medication(s) and prescription(s) shall be provided at the time the Class Member leaves the City Jail facility from which he or she is being released. If Defendants do not provide a Class Member with the medication(s) and/or prescription(s) as described herein, or if Defendants provide a Class Member with medication(s) and/or prescription(s) for periods shorter than the time periods set forth in this ¶ 52,



Defendants shall document the clinical reason for denying that Class Member such medication(s) and/or prescription(s), or for limiting the supply thereof.

53. For each Class Member who has been released from a City Jail and who presents himself or herself to a SPAN Office within thirty days of his or her Release Date, SPAN Office Staff shall, if the Class Member so desires, assist the Class Member in locating a pharmacy specified by the Class Member or reasonably located near the SPAN Office or the Class Member's post-incarceration address, so that the Class Member may fill the prescription provided pursuant to ¶ 52 above.

b. ***Class Members Released Directly From Court***

54. For each Class Member who is released from DOC custody directly from a courthouse and who presents himself or herself at a SPAN Office on his or her Release Date, SPAN Office Staff shall take the following steps to ensure that the Class Member has access to a supply of continuing psychotropic medications, if clinically appropriate:

- (i) On the date on which the Class Member presents himself or herself at the SPAN Office, the SPAN Office Staff shall make an appointment for the Class Member with a community clinic or mental health treatment center that will, among other things, conduct a psychiatric evaluation of the Class Member, assess the Class Member's need for continuing psychotropic medication, and prescribe such medication if clinically appropriate. Such appointment shall be scheduled to occur within seven days of the date on which the Class Member presents himself or herself at the SPAN Office, and the community clinic or mental health treatment center with which the appointment is made shall be located in the same borough as the SPAN Office, unless the Class Member requests another borough. Prior to the date of that appointment, the SPAN Office Staff shall obtain relevant clinical information concerning the Class Member from CHS and transmit that information to the clinic or mental health treatment center.

- (ii) On the date on which the Class Member presents himself or herself at the SPAN Office, the SPAN Office Staff shall also contact the CHS Pharmacy, which shall, unless not clinically appropriate, call into a pharmacy selected by the Class Member or located reasonably near to the SPAN Office a prescription for a two- to seven-day supply of all psychotropic medications the Class Member had been receiving immediately prior to his or her Release Date. The prescription provided pursuant to this subparagraph 54 (ii) shall be sufficient to provide the Class Member with a supply of psychotropic medications that will last until the appointment made pursuant to subparagraph 54 (i) occurs. If the CHS Pharmacy determines that providing the prescription contemplated by this subparagraph 54 (ii) would not be clinically appropriate, the CHS Pharmacy shall document in detail the reasons for such determination.
- (iii) Defendants shall ensure that every Class Member on whose behalf a prescription is provided pursuant to subparagraph 54 (ii) has the means to pay for the medication to be dispensed under that prescription on the same day the Class Member presents himself or herself at the SPAN Office.

55. For each Class Member who is released from DOC custody directly from a courthouse and who presents himself or herself at a SPAN Office after his or her Release Date, SPAN Office Staff shall (a) refer the Class Member to a community clinic or mental health treatment center that (i) is in the same borough as the SPAN Office, unless the Class Member requests another borough, and (ii) agrees to see the Class Member promptly to assess his or her need for a prescription for psychotropic medications; and (b) facilitate the transmission of all relevant clinical information regarding the Class Member from Defendants to such community clinic or mental health treatment center. SPAN Office Staff shall also, where practicable, escort each such Class Member to the community clinic or mental health treatment center or arrange transportation, which may be provided by the healthcare provider, from the SPAN Office to the community clinic or mental health treatment center.

c. ***Class Members Accepted Into Residential Treatment Programs***

56. For a Class Member who is accepted into a residential treatment program prior to his or her Release Date, Defendants will provide to the program, on the Class Member's Release Date, the supply of medication(s) that such treatment program requires the Class Member to have at the time of intake to the treatment program and an active MGP card, as described in § II.H.3.d below. Such provision of medication to the residential treatment program shall be instead of, and not in addition to, the medication provided to Class Members released directly from City Jails pursuant to ¶ 52 above.

**3. Access to Medicaid and Medication Grant Program Benefits**

57. As part of Discharge Planning, Defendants shall use their best efforts to ensure that each Class Member who is in need of and appears potentially eligible for Medicaid benefits shall have either (a) reactivated or newly activated Medicaid benefits on or before his or her Release Date or (b) a submitted and pending Medicaid application and access to Medication Grant Program benefits on or before his or her Release Date.

a. ***Reactivation of Medicaid Benefits***

58. Defendants shall reactivate the Medicaid benefits of any Class Member who has had an active Medicaid case in the one year prior to the Class Member's known or projected Release Date.

59. For each Class Member who is incarcerated on the date on which his or her CTDP is completed, the process of determining his or her eligibility for the

reactivation of Medicaid benefits (the “Pre-Screening Process”) shall be initiated no later than on the date on which the Class Member’s CTDP is completed, and shall be completed no later than 3 business days after it is initiated.

60. For each Class Member who is released from DOC custody prior to completion of the CTDP and who appears at a SPAN Office within 30 days after his or her Release Date, SPAN Office Staff shall initiate the Pre-Screening Process during the Class Member’s initial visit to a SPAN Office, which Pre-Screening Process shall be completed within 3 business days thereafter.

61. For each Class Member determined as a result of the Pre-Screening Process to be eligible for the reactivation of Medicaid benefits, such benefits shall be reactivated as of the later of (a) his or her Release Date or (b) the date on which the Pre-Screening Process is completed.

62. Defendants shall explore options for providing access to WMS at the Benefits Unit and at each SPAN Office to facilitate and shorten the Pre-Screening Process and shall provide such access within six months of the Implementation Date unless the Compliance Monitors determine that doing so is not feasible.

b. ***Completion and Submission of Medicaid Applications***

63. Discharge Planning Staff or SPAN Office Staff, as applicable, shall assist each Class Member who is assessed as potentially eligible for Medicaid benefits and who does not qualify for reactivation of Medicaid benefits, as described in ¶ 58 above, in securing necessary documentation for and in completing and submitting an application for Medicaid to HRA for processing in accordance with HRA regulations.

64. For each incarcerated Class Member described in ¶ 63 above, Discharge Planning Staff shall (a) complete a Medicaid application within three business days of the completion of the Pre-Screening Process and (b) submit such application to HRA within two business days of the completion of such application.

65. For each Class Member described in ¶ 63 above who is released from DOC custody before a Medicaid application has been completed and submitted to HRA on his or her behalf, SPAN Office Staff shall assist in securing necessary documentation for, and shall complete and submit a Medicaid application to HRA during the Class Member's initial visit to a SPAN Office.

c. ***Mailing of Temporary and Permanent Medicaid Cards***

66. For each incarcerated Class Member whose Medicaid benefits are to be reactivated upon release from incarceration in a City Jail or who has submitted a Medicaid application during his or her incarceration, HRA shall (a) deliver the Class Member's temporary Medicaid card to DOC for placement with the Class Member's personal property to be returned to the Class Member on his or her Release Date; and (b) cause the Class Member's permanent Medicaid card, which is mailed by a contractor of the State of New York, to be mailed (i) to such address as the Class Member may provide or (ii) in the absence of any post-release mailing address provided by the Class Member, to the SPAN Office located in the borough selected by the Class Member.

67. For each released Class Member whose Medicaid benefits are reactivated or whose Medicaid application is approved after his or her Release Date

or who submits a Medicaid application after his or her Release Date, Defendants shall mail his or her temporary Medicaid card and cause his or her permanent Medicaid card to be mailed (a) to such address as the Class Member may provide or (b) in the absence of any post-release mailing address provided by the Class Member, to the SPAN Office located in the borough selected by the Class Member.

68. In all instances described in ¶¶ 66 - 67 above in which a Class Member's permanent and/or temporary Medicaid card will be mailed, Defendants shall inform the Class Member in writing where the card(s) will be mailed.

d. ***Enrollment in the MGP Program***

69. Discharge Planning Staff or SPAN Office Staff, as applicable, shall enroll in the Medication Grant Program each Class Member who appears eligible for Medicaid and whose Medicaid benefits have not been activated or reactivated as of the Class Member's Release Date as provided above. Defendants shall provide to each Class Member enrolled in the Medication Grant Program an active MGP card at the time of his or her enrollment. If the MGP card cannot be activated at the time of enrollment because of the unavailability of the New York State vendor that administers MGP, Defendants (a) shall provide an MGP card to the Class Member on the day he or she is enrolled in MGP, (b) shall cause the MGP card to be activated on the next business day with no further action required on the part of the Class Member, and (c) shall ensure that the Class Member has a means to pay for any psychotropic medications that the Class Member requires prior to and until the activation of the MGP card.

70. For each Class Member described in ¶ 69 above who is released from incarceration from a City Jail, or from court with prior notice, and for whom the Pre-Screening Process was completed more than three business days prior to his or her Release Date, Discharge Planning Staff (a) shall enroll the Class Member in the Medication Grant Program on or before his or her Release Date; (b) shall provide an MGP card to the Class Member on or before his or her Release Date; and (c) shall complete and submit a Medicaid application on behalf of the Class Member in accordance with § II.H.3.b above.

71. For each Class Member described in ¶ 69 above who is released from incarceration from a City Jail before the Pre-Screening Process has been completed, less than three business days after completion of his or her Pre-Screening Process, or directly from court without prior notice, SPAN Office Staff (a) shall enroll the Class Member in the Medication Grant Program during his or her initial visit to a SPAN Office; (b) shall provide an MGP card to the Class Member during his or her initial visit to a SPAN Office; and (c) shall complete a Medicaid application on behalf of the Class Member in accordance with § II.H.3.b above during his or her initial visit to a SPAN Office, and cause that Medicaid application to be submitted to HRA on behalf of the Class Member within two business days.

72. Upon a Class Member's enrollment in the Medication Grant Program, Discharge Planning Staff or SPAN Office Staff, as applicable, shall provide the Class Member with literature, to be approved by Class Counsel, explaining how to use the MGP card and providing (a) a list of the five largest pharmacy chains in the New

York City area that will accept MGP cards and (b) the addresses of each outlet of such chains located in the borough in which the SPAN Office is located.

73. Plaintiffs acknowledge (a) that a Class Member's eligibility for the Medication Grant Program is dependent on the Class Member's being found eligible for reactivation of his or her Medicaid benefits pursuant to ¶¶ 58 - 62 above or submitting a Medicaid application prior to or within seven days of his or her Release Date, and (b) that such eligibility remains in effect until such time as HRA activates or reactivates the Class Member's Medicaid benefits.

74. The Parties acknowledge that the Medication Grant Program is administered by the State of New York and is subject to repeal or modification. In the event the State of New York repeals or modifies the Medication Grant Program during the period this Agreement is in effect, Defendants will implement a system to provide Class Members with equivalent benefits that are consistent with the terms of this Agreement. The Parties agree to work in good faith to design and implement such a system if necessary.

#### **4. Public Assistance Benefits**

75. As part of Discharge Planning, Defendants, prior to each Class Member's Release Date, (a) shall assess the ability of each Class Member determined to be Seriously and Persistently Mentally Ill to pay for essentials such as food, clothing and housing following his or her release from incarceration and (b) shall use their best efforts to secure necessary documentation for and complete and submit relevant application(s) for Public Assistance Benefits on behalf of each such Class



Member so that such benefits will be available on the Class Member's first visit to an HRA Job Center after his or her Release Date.

76. The obligations set forth in this § II.H.4 shall apply only to Class Members determined or deemed to be Seriously and Persistently Mentally Ill or likely Seriously and Persistently Mentally Ill, and use of the term "Class Members" in this § II.H.4 shall refer only to Class Members determined or deemed to be Seriously and Persistently Mentally Ill or likely Seriously and Persistently Mentally Ill.

77. Appropriate employees of Job Centers operated by HRA shall receive training regarding the public benefits needs of the Class and an explanation of HRA's obligations to Class Members pursuant to this Settlement Agreement. Such training shall include, but not be limited to, an instruction (a) to assess each Class Member's need and eligibility for Emergency Benefits, including but not limited to Food Stamps, when any such Class Member visits a Job Center; (b) to provide whatever Emergency Benefits the Class Member needs and is entitled to; and (c) to document the reasons for the denial of Emergency Benefits if Emergency Benefits are not provided.

a. ***Access to Safety Net Assistance and  
Temporary Assistance to Needy Families***

78. Defendants shall assist each Class Member who appears potentially eligible for Safety Net Assistance or Temporary Assistance to Needy Families to secure necessary documentation for a SNA or TANF application and (a) shall assist the Class Member such that the SNA or TANF application shall be completed within three business days of the completion of each such Class Member's CTDP and (b)

shall submit to HRA such application within two business days of its completion. An SNA or TANF application to be submitted on behalf of a Class Member shall include a written request to be completed by the Class Member that his or her application be pending as described in ¶¶ 79 - 80 below. HRA shall register such application on the same day it receives the application.

79. If a Class Member remains incarcerated 45 days after HRA has registered his or her SNA application or 30 days after HRA has registered his or her TANF application, HRA shall defer any determination with respect to such application for an additional 45 days for a SNA application or an additional 60 days for a TANF application or until the Class Member appears at a Job Center, whichever date is earlier (the “Pending Period”).

80. If, at the end of the Pending Period, the Class Member remains incarcerated in a City Jail, Defendants shall assist the Class Member in promptly completing and submitting another SNA or TANF application. Defendants shall begin another Pending Period and shall continue this process until the Class Member is no longer incarcerated in a City Jail.

81. If a Class Member is released (a) after his or her application for SNA or TANF was registered by HRA and (b) before the conclusion of the Pending Period, the Class Member shall be required to make one visit each to a Job Center and the New York State vendor who supplies EBT cards to activate his or her SNA or TANF benefits. The visits described in this ¶ 81 shall be the only visits required to activate a Class Member's SNA or TANF benefits after his or her Release Date, and, if the Class Member is determined to be eligible for SNA or TANF benefits, such benefits shall be immediately available upon completion of the visits described in this ¶ 81; provided, however, that if additional documentation is necessary to complete the Class Member's SNA or TANF application, additional visits to a Job Center may be required.

82. If an application for SNA or TANF has not been submitted on behalf of a Class Member before his or her Release Date, HRA Staff, upon the Class Member's first visit to a Job Center following his or her Release Date, or SPAN Office Staff, upon the Class Member's first visit to a SPAN Office following his or her Release Date, shall assist each such Class Member to secure necessary documentation for a SNA or TANF application and shall complete and arrange to have submitted to HRA a SNA or TANF application for the Class Member.

83. For each Class Member who applies for SNA or TANF prior to or within 30 days after his or her Release Date, HRA (a) shall delay any requirement to participate in an EVR interview for six months and (b) shall direct the Class Member to undergo an evaluation at HS Systems. Defendants shall ensure that the entire

mental health evaluation at HS Systems, including evaluation by a psychiatrist sufficient to determine the impact of the Class Member's psychiatric condition on his or her ability to participate in work and work-related activities as further described in the New York Social Services Law § 331 and New York State Department of Labor regulations ("work-related activities"), occurs on the Class Member's first visit to HS Systems. Class Members exempted from or limited in their participation in work-related activities as a result of this evaluation shall not be required to attend any additional appointments at HS Systems during the time that such exemption or limitation is in effect. Class Members found at this examination to be partially or completely able to participate in work-related activities but who also wish to be evaluated for medical conditions or physical disabilities that potentially limit their ability to participate in work-related activities may be required to return to HS Systems for assessment of such medical conditions or disabilities.

b. *Access to Emergency Benefits*

84. Discharge Planning Staff or SPAN Office Staff, as applicable, shall, upon completion of each Class Member's CTDP, assist the Class Member in securing any Emergency Benefits to which he or she may be entitled by (a) asking the Class Member the questions listed in the form attached to this Agreement as Exhibit D; (b) documenting the answers to the questions contained in Exhibit D in the Class Member's Mental Health Records; (c) asking the Class Member to review and sign the completed form; and (d) transmitting the completed form to HRA.

85. HRA staff, upon the Class Member's first visit to a Job Center following his or her Release Date, shall (a) obtain from Discharge Planning Staff or

SPAN Office Staff the completed form described in ¶ 84 above, if the form is not already in HRA's records; (b) assess the Class Member's need and eligibility for Emergency Benefits, including but not limited to Food Stamps, using the information provided in such form; (c) provide whatever Emergency Benefits the Class Member needs and is entitled to; and (d) if Emergency Benefits are not provided, document the reasons for the denial of Emergency Benefits.

86. Defendants have represented that, as of the Execution Date, it is not feasible to submit Food Stamps applications on behalf of individuals who are incarcerated. Defendants shall explore the feasibility of establishing a system that would permit Class Members to submit Food Stamps applications before their Release Date and that would permit the processing of those applications while they are incarcerated. Defendants shall use best efforts to secure necessary approvals from federal and State officials to implement such a system and shall confer with the Compliance Monitors at least every six months regarding their efforts to implement such a system.

c. ***Access to Social Security Benefits  
and Veterans Administration Benefits***

87. Defendants shall explore the feasibility of a system for the assessment of Class Members' eligibility for SSI, SSD, other Social Security Benefits and Veterans Administration Benefits, and the completion and submission of applications for such benefits on behalf of Class Members before their Release Date, and Defendants shall implement a system to assist Class Members in obtaining such

benefits, if such a system is feasible. Defendants shall confer with the Compliance Monitors at least every six months regarding their efforts to implement such a system.

## **5. Housing**

88. As part of Discharge Planning, Defendants, prior to each Class Member's Release Date, shall assess each Class Member's need for appropriate housing following his or her release from incarceration and shall use their best efforts to ensure that each Class Member is placed in appropriate housing arrangements following his or her release from incarceration.

### **a. *Placement in Supportive Housing***

89. If Defendants determine that a Class Member will be in need of Supportive Housing following his or her release from incarceration, Discharge Planning Staff or SPAN Office Staff, as appropriate, shall complete an HRA 1995 Application on behalf of the Class Member and, upon approval of the HRA 1995 Application, shall cause the approved application and all other necessary documents to be submitted to appropriate housing providers and/or the SPOA Agency. Discharge Planning Staff or SPAN Office Staff, as appropriate, shall use best efforts to complete and submit the HRA 1995 Application and ensure that best efforts are used in attempting to obtain an appropriate housing placement for the Class Member prior to the Class Member's Release Date.

90. If a Class Member is determined to be in need of Supportive Housing but is released from incarceration in a City Jail before (a) the completion of his or her HRA 1995 Application; (b) HRA's approval of the Class Member's HRA 1995 Application; (c) the submission of the Class Member's approved HRA 1995

Application to housing providers and/or the SPOA Agency; or (d) acceptance of the Class Member by an appropriate housing provider, Discharge Planning Staff shall ensure that the individual who has primary responsibility for ongoing coordination of the Class Member's care following his or her Release Date receives all materials created or collected on behalf of the Class Member during his or her incarceration that can assist in the completion and submission of the HRA 1995 Application and/or that are necessary to secure appropriate housing for the Class Member.

91. For purposes of the immediately preceding ¶ 90, the individual who has "primary responsibility for ongoing coordination of the Class Member's care" is, depending on the Class Member's circumstances, (a) a staff member at the community-based mental health care program to which the Class Member has been referred, (b) the Class Member's ICM, SCM, ACT or LINK worker, (c) SPAN Office Staff, provided the Class Member presents himself or herself to a DHS shelter or SPAN Office within thirty days after being released from incarceration at a City Jail, and/or (d) appropriate staff at a Program Shelter where the Class Member resides while awaiting a housing placement. Defendants shall use best efforts to promptly determine the identity of this individual and record the name of this individual in the Class Member's Mental Health Record. In the event that it is not feasible, despite Defendants' best efforts, to identify any such individual, Defendants shall record in the Class Member's Mental Health Record the name of the entity (identified from among the entities listed in this ¶ 91 of this Agreement) having "primary responsibility for ongoing coordination of the Class Member's care."

92. For a Class Member whose HRA 1995 Application has been submitted to a housing provider and/or to the SPOA Agency but who has not obtained a placement in a Supportive Housing program by his or her Release Date, Defendants shall promptly provide to housing providers and/or to the SPOA Agency any information in Defendants' possession requested to assist in the placement of the Class Member in appropriate housing.

b. ***Placement in DHS Shelters***

93. Plaintiffs acknowledge that homeless Class Members may be referred to the Shelter System administered by DHS for their temporary emergency shelter needs in situations where it has not been possible, despite Defendants' best efforts, to obtain a placement in Supportive Housing prior to the Class Member's Release Date.

94. In determining where to place a Class Member requiring shelter, DHS shall receive from Discharge Planning Staff and utilize all relevant and available information concerning the Class Member obtained during the Class Member's incarceration. Such information shall be utilized in an effort to shorten or, wherever possible, eliminate the period of DHS Assessment generally required of individuals seeking placement in a DHS Shelter.

95. Discharge Planning Staff shall use their best efforts to provide DHS with the information described in ¶ 94 above prior to the Class Member's Release Date. In circumstances where a Class Member who needs shelter is released from incarceration prior to this information being conveyed to DHS, Discharge Planning Staff or SPAN Office Staff, as applicable, shall provide such information to DHS promptly upon learning of the Class Member's release. In addition, DHS staff shall



use their best efforts to identify Class Members who appear at a DHS Shelter and contact Discharge Planning Staff to obtain information regarding those Class Members, if DHS does not already have the information described in ¶ 94 above for the particular Class Members in question.

96. DHS shall use best efforts to place a sentenced Class Member directly in a designated Program Shelter or Mental Health Program Shelter on his or her Release Date, provided that (a) DHS has determined that further assessment is not necessary after review of the information obtained by Defendants during the Class Member's incarceration, (b) a bed at such a shelter is available on the Class Member's Release Date, and (c) the Class Member arrives at the DHS Shelter on his or her Release Date prior to the facility's curfew hour, presently 10:00 p.m. Designated DHS staff shall monitor placement of Class Members not placed directly into a Program Shelter or Mental Health Program Shelter and will use best efforts to facilitate the placement of such Class Members in such shelters. Class Members who are determined to be Seriously and Persistently Mentally Ill shall be presumptively eligible for placement in a Program Shelter or Mental Health Program Shelter.

97. Plaintiffs understand that any Class Member who had not previously been enrolled in the DHS Shelter System will be required to first appear at a DHS I/A Shelter for adults prior to being placed directly in a designated Program Shelter or Mental Health Program Shelter in accordance with this § II.H.5.b. For Class Members who are determined to be Seriously and Persistently Mentally Ill and who have not previously been enrolled in the DHS Shelter System, Defendants shall

provide transportation to an I/A Shelter and then to a Program Shelter in accordance with § II.H.6 below.

98. The obligations set forth in this § II.H.5.b shall not apply to any Class Member who seeks shelter from DHS more than thirty days after his or her Release Date.

99. Nothing herein is intended to limit a Class Member's rights pursuant to the consent judgment in *Callahan v. Carey*, Index No. 42582/79 (Sup. Ct. N.Y. Co. Aug. 26, 1981) (Wallach, J.), or to limit a Class Member's entitlement to any Public Benefits and/or Emergency Benefits for which he or she may qualify under Social Services Law § 133 and the regulations and administrative directives of the New York Office of Temporary Disability Assistance.

c. ***Follow-up for Seriously and Persistently Mentally Ill Class Members***

100. Defendants shall use best efforts to contact each Class Member who has been determined to be SPMI within three days of his or her release from a City Jail to determine whether the Class Member's housing is clinically adequate and appropriate for his or her needs, and, if needed, shall offer to provide further assistance in securing appropriate housing.

**6. Transportation**

101. Defendants shall provide each Class Member released from incarceration in a City Jail, except Class Members released from incarceration on bail or pursuant to other court orders requiring that they be released immediately, and who Defendants have determined to be Seriously and Persistently Mentally Ill or likely

Seriously and Persistently Mentally Ill, with transportation from the City Jail (a) to the Class Member's residence in the community or (b) to a temporary emergency shelter or I/A Shelter and then to the DHS Shelter in which the Class Member is placed.

102. Defendants shall provide each Class Member who is released from court and who Defendants have determined to be Seriously and Persistently Mentally Ill or likely Seriously and Persistently Mentally Ill with transportation from the SPAN Office (a) to the Class Member's residence in the community, or (b) to a temporary emergency shelter or I/A Shelter and then to the DHS Shelter in which the Class Member is placed.

103. The obligations set forth in this § II.H.6 shall apply only if the Class Member wishes to accept the transportation services offered.

**I. Class Members Who Appear at a SPAN Office More than Thirty Days After Their Release Date**

104. For each Class Member who presents himself or herself at a SPAN Office more than thirty days after his or her Release Date, SPAN Office Staff shall make reasonable efforts to make an appointment with community agencies or organizations for further assistance as appropriate.

**III. SETTLEMENT IMPLEMENTATION**

105. Defendants shall complete the implementation of all aspects of this Settlement Agreement no later than the Implementation Date, which shall be the date 60 days after the date on which the Court enters a Final Order and Judgment, as provided in § VIII below.

106. If any of the systems to provide Discharge Planning as contemplated by this Agreement is not in place by the Implementation Date, Defendants shall, by that date, provide Class Counsel with a written report describing all services and/or systems that are not yet available, the reason they are not yet available, and the date on which they are expected to become available. The report provided by Defendants in accordance with this ¶ 106, if any, shall not constitute compliance with the terms of the Settlement Agreement, nor shall the receipt or non-receipt of such report preclude Plaintiffs and Class Counsel from taking any steps necessary to enforce the provisions of this Agreement.

107. Defendants shall, no later than the Implementation Date, adopt all manuals, policy and procedure documents, directives, training materials, and other similar documents required to implement this Settlement Agreement. Defendants shall provide Class Counsel with an opportunity to review and comment on such documents in accordance with ¶ 128 hereof. To the extent that Defendants have adopted any such documents before the Execution Date, Defendants shall provide copies of such documents to Class Counsel within five days of the Execution Date and shall provide Class Counsel with an opportunity to review and comment on such documents in accordance with ¶ 128 hereof.

#### **IV. MONITORING**

##### **A. Selection and Appointment of Compliance Monitors**

108. Subject to the provisions of this Section IV, Class Counsel and Defendants' Counsel shall each designate one of two Compliance Monitors. Class Counsel and Defendants' Counsel shall then jointly move the Court for an Order

appointing those Compliance Monitors and providing them with the authority, consistent with the terms of this Agreement, to monitor the provision of Discharge Planning in City Jails and Defendants' compliance with the terms of this Agreement. In the event of (a) the death, resignation, or unforeseen permanent or temporary unavailability of either Compliance Monitor, or (b) the Court's refusal to appoint either Compliance Monitor, the Counsel who designated that Compliance Monitor may designate a replacement, who shall also then be appointed by the Court in accordance with the procedures set forth in this Section IV.

109. Each Compliance Monitor shall be either (a) a licensed and board certified physician who has been so licensed and certified for at least five years immediately preceding the date of his or her appointment and has at least five years' experience providing, evaluating, or consulting with respect to mental health care for people with serious mental illness or (b) a social worker who has a Masters degree in social work, has at least three years of mental health discharge planning experience and has at least two years of managerial or supervisory experience.

110. Except with the consent of Class Counsel, no person who presently has, or has within the past five years had, a business relationship with any Defendant or with any medical or mental health care provider under contract with any Defendant may act as a Compliance Monitor.

111. Except with the consent of Defendants' Counsel, no person who presently has, or has within the past five years had, a business relationship with Debevoise & Plimpton, the Urban Justice Center or New York Lawyers for the Public Interest, Inc. may act as a Compliance Monitor.

112. The Parties shall endeavor in good faith to agree on the identity of the Compliance Monitors and to designate Compliance Monitors who are mutually acceptable to one another. If, however, any Party objects to the Compliance Monitor designated by another Party and the non-objecting Party refuses to designate an alternate Compliance Monitor, the objecting Party may apply to the Court to prevent the appointment of the Compliance Monitor based on any of the grounds set forth in ¶114 below.

113. Class Counsel and Defendants' Counsel shall move the Court for an Order appointing the Compliance Monitors so that they can begin the performance of their duties pursuant to this Settlement Agreement no later than the Implementation Date.

114. Any Party may apply to the Court for the removal of either Compliance Monitor at any time. Such removal shall require a showing by persuasive evidence of (a) corruption, nonfeasance or bias by the Compliance Monitor; (b) failure to meet the qualifications set forth in ¶¶ 109 - 111 above; or (c) a failure to perform his or her duties pursuant to this Agreement. If the Court finds that the Compliance Monitor should be removed, the Party who designated that Compliance Monitor shall designate a replacement in accordance with the requirements of ¶¶ 109 - 111 above, who shall then be appointed by the Court in accordance with the procedures set forth in this § IV.

**B. Costs of Monitoring**

115. Defendants shall pay the Compliance Monitors and any staff or employees deemed reasonably necessary by the Compliance Monitors at rates to be

agreed upon by the Compliance Monitors and the Parties. Such rates shall take into consideration each Compliance Monitor's usual and customary rate and the City's usual and customary contracting practices. Defendants shall also reimburse the Compliance Monitors for any costs and expenses reasonably incurred in the performance of their duties pursuant to this Settlement Agreement.

116. The Parties and each Compliance Monitor shall endeavor in good faith to resolve any dispute regarding the hourly rate to be paid each Compliance Monitor or the reasonableness of any fees, costs or expenses incurred by either Compliance Monitor. Failing such resolution, the Parties shall refer the dispute to the Court for resolution.

117. Defendants shall provide the Compliance Monitors with any equipment that the Compliance Monitors deem reasonably necessary to perform their duties. Each Compliance Monitor shall return such equipment to Defendants at the conclusion of his or her duties pursuant to this Agreement.

**C. Scope and Method of Monitoring**

118. The Compliance Monitors and any staff or employees working at their direction shall have reasonable access to people, places and things relevant to the provision of Discharge Planning pursuant to this Agreement, as set forth in greater detail below. The principal means of monitoring shall be access to documents and records, including those stored electronically; access to Class Members; and observation of training sessions; provided, however, the Compliance Monitors shall also have access to facilities and staff described below as the Compliance Monitors

deem reasonably necessary to determine whether Defendants are complying with the terms of this Settlement Agreement.

119. Either Party may contest any action taken or proposed by the Compliance Monitors pursuant to § IV of this Agreement as being beyond the scope of their authority under this Agreement, or as being unreasonable. Such challenges shall be raised by the contesting Party promptly after such action is taken or proposed, and the Parties shall confer in good faith to resolve such disputes. Failing such resolution, the contesting Party may seek an order from the Court enjoining, prohibiting or limiting such action, and the contesting Party shall bear the burden of production and persuasion on its motion.

**1. Access to Records**

120. The Compliance Monitors shall have access to all documents and information, including records stored electronically, maintained by Defendants and/or their agents or contractors that are reasonably necessary, in the judgment of the Compliance Monitors, to determine whether Defendants are complying with the terms of this Settlement Agreement. The documents and information to which the Compliance Monitors shall have access pursuant to this § IV.C.1 shall include, but are not limited to, (a) all records generated by Defendants and their contractors in the course of providing Discharge Planning for Class Members, and (b) Class Members' Mental Health Records and medical records related to mental health treatment in the possession of Defendants and their contractors.

121. Defendants shall, if feasible, provide records requested by the Compliance Monitors pursuant to ¶ 120 above to the Compliance Monitors within



five business days of each such request; provided, however, that Defendants shall respond to any request by the Compliance Monitors for records regarding the provision of Discharge Planning to any individual Class Member within 48 hours.

122. The Compliance Monitors shall also be entitled to request and receive samples of the Mental Health Records and medical records related to mental health treatment of Class Members having certain characteristics or receiving certain services; provided, however, that the Compliance Monitors shall request only those record samples that they deem reasonably necessary to monitor Defendants' compliance with this Agreement. Defendants may object to any request for a particular sample in accordance with this ¶ 122 on the grounds that the compilation of the sample would be unduly burdensome. The Parties shall endeavor in good faith to resolve any such objections. Failing such resolution, the Parties reserve the right to seek a ruling from the Court as to such objections.

## **2. Access to Computer Systems**

123. Defendants shall provide the Compliance Monitors and such other staff or employees as the Compliance Monitors may designate (a) with read-only access to the Discharge Planning MIS and DHS CRU database, and (b) to such information pertaining to Class Members derived from the IIS, SCIMS, WMS and other HRA computer systems as may be necessary to monitor Defendants' compliance with this Agreement.

124. The Compliance Monitors shall develop a form of report to be run from the Discharge Planning MIS and the DHS CRU database and provided by Defendants to the Compliance Monitors on a monthly basis sufficient to assist the

Compliance Monitors in monitoring Defendants' compliance with their obligations under this Agreement. Defendants further agree promptly to provide the Compliance Monitors with any other reports requested by the Compliance Monitors that can be generated by the Discharge Planning MIS and DHS CRU database, and, if necessary to monitor Defendants' compliance with this Agreement, other computer systems enumerated in ¶ 123 above, if Defendants can do so without any modification of the software or hardware used to operate such systems.

125. The Discharge Planning MIS will contain the data fields listed in Exhibit A. Defendants agree to complete and update, as necessary, those fields for each Class Member in a timely manner, so that the Discharge Planning MIS accurately reflects current information for each Class Member.

126. The Parties acknowledge that it may be appropriate for the configuration of the Discharge Planning MIS to change during the course of implementation of this Settlement Agreement. The Compliance Monitors may therefore request that Defendants add, delete or modify data fields or other aspects of the Discharge Planning MIS. Defendants shall, if feasible, implement such requests or provide the Compliance Monitors with an explanation of why such requests are not implemented.

### **3. Access to Manuals**

127. Until the monitoring period is terminated pursuant to § XIV, Defendants shall provide the Compliance Monitors with at least 14 days to review and comment on (a) all new manuals, policy and procedure documents, directives, training materials, and other similar documents, regardless of name, that concern the

provision of Discharge Planning to Class Members; and (b) all draft revisions to and proposed revocations of any existing manuals, policy and procedure documents, directives, training materials, and other similar documents, regardless of name, that concern the provision of Discharge Planning to Class Members, before such documents, revisions or revocations are finalized and regardless of whether those documents are generated by Defendants or a contractor to Defendants. Defendants shall provide the Compliance Monitors with finalized versions of all such documents, revisions, and revocations within seven days after each of them is finalized. All such materials in existence on the date on which the Compliance Monitors are appointed by the Court shall be provided to the Compliance Monitors by Defendants within seven days of the date of the Order appointing the Compliance Monitors.

128. Until appointment of the Compliance Monitors as provided in § IV.A above, Defendants shall provide the materials described in ¶ 127 above to Class Counsel for their review and comment at least 14 days before such materials are finalized.

129. Defendants shall not be required to accept any recommendation of the Compliance Monitors or Class Counsel pursuant to ¶ 107 and ¶¶ 127 - 128 above; provided, however, that Defendants shall notify the Compliance Monitors and Class Counsel if Defendants reject any such recommendation within seven days after such recommendation was received by Defendants.

#### **4. Access to Class Members**

130. The Compliance Monitors may, with Class Members' consent, conduct interviews with incarcerated Class Members or groups of Class Members in

the same degree of auditory privacy afforded inmates when meeting with their attorneys and in a manner consistent with reasonable DOC security concerns and the reasonable operational concerns of CHS and its medical care vendor. Defendants shall allow such interviews to take place in all facilities where Discharge Planning occurs in City Jails or where Class Members receive Discharge Planning, including the Jail Treatment Locations.

#### **5. Access to Training**

131. Defendants shall provide the Compliance Monitors with reasonable advance notice of training sessions for Defendants' employees and all other individuals involved in providing the Discharge Planning contemplated by this Agreement. The Compliance Monitors may observe all such sessions and provide comments and recommendations.

#### **6. Access to Areas where Discharge Planning is Performed**

132. Defendants shall ensure that the Compliance Monitors have physical access to all Jail Treatment Locations and all Discharge Planning Facilities, including the Community Referral Unit, Benefits Unit, and SPAN Offices. Such access shall be arranged through Defendants' Counsel on reasonable advance notice and, unless otherwise arranged, shall occur between 9:00 a.m. and 5:00 p.m.

133. The Compliance Monitors shall be allowed to conduct interviews with Class Members during visits to the areas and offices described in ¶ 132 above, subject to Class Members' consent and the facilities' space availability and normal operations.

134. Subject to ¶ 118, the Compliance Monitors' access to any location in a City Jail may be limited only due to Defendants' reasonable security or operational concerns.

#### **7. Access to Staff**

135. The Compliance Monitors may conduct interviews with employees of CHS and its medical care vendor and SPAN Office Staff and any other employees who are otherwise providing services or benefits to Class Members in Discharge Planning Facilities. The Compliance Monitors may also conduct interviews with employees of other Defendant Agencies, including but not limited to DOC, DHMH, HRA, any Job Center operated by HRA, DHS, HS Systems, LINK, the transportation vendor engaged to provide services pursuant to this Agreement, and employees of sub-contractors of these entities, provided the Compliance Monitors articulate a reason why such interviews are reasonably necessary to determine whether Defendants are complying with the terms of this Settlement Agreement. Defendants and Defendants' Counsel hereby specifically authorize the Compliance Monitors to conduct such interviews.

136. The Compliance Monitors shall arrange interviews described in ¶ 135 above through Defendants' Counsel and shall provide reasonable advance notice of all interviews. Defendants' Counsel will promptly arrange and facilitate all such interviews, at the location of the employee's choosing.

137. Defendants shall use best efforts, consistent with the City's employment obligations, to ensure that the persons and entities identified in ¶ 135 above cooperate with the Compliance Monitors and respond directly and promptly to

all oral or written inquiries and/or requests related to the monitoring of Defendants' compliance with this Settlement Agreement.

138. The Compliance Monitors agree to maintain the confidentiality of the identity of each person interviewed pursuant to this § IV.C.7 unless (a) the person interviewed consents to having his or her identity revealed or (b) revealing the identity of the person interviewed to Class Counsel, Defendants' Counsel and/or the Court is necessary to enforce the terms of this Settlement Agreement. Any person's identity revealed to the Court pursuant to subparagraph 138 (b) above shall be revealed only in a document filed with the Court under seal.

139. The Compliance Monitors shall be allowed to request to meet with Defendants, representatives of Defendants' contractors, Defendants' counsel and/or Class Counsel to discuss any aspect of this Agreement. Defendants' Counsel shall promptly arrange and facilitate any such meetings.

**D. Development of Performance Goals**

140. Within six months after the Implementation Date, the Compliance Monitors, based on their experience in the implementation of the Settlement Agreement, shall establish performance goals designed to measure Defendants' compliance with this Settlement Agreement. These performance goals shall, in the judgment of the Compliance Monitors, reflect any practical limitations on providing Discharge Planning and implementing Discharge Plans in the City Jails.

141. Each of these performance goals shall be expressed in terms of a percentage of eligible Class Members or individuals for whom each goal shall be achieved. For example, if the Compliance Monitors set a performance goal providing

that 90% of Class Members shall be prescreened for Medicaid eligibility prior to their release from incarceration, then, by the date on which that goal becomes effective, Defendants must be prescreening 90% of Class Members for Medicaid eligibility before they are released from incarceration.

142. The performance goals shall be established and shall measure performance in the following categories:

- a. Timely assessment of Class Members for inclusion in the Class;
- b. Appropriate assessment of whether Class Members are Seriously and Persistently Mentally Ill;
- c. Appropriate assessment of whether individuals assessed at the Initial Assessment as needing further mental health assessment and/or treatment are likely Seriously and Persistently Mentally Ill;
- d. Completion of clinically appropriate Comprehensive Treatment and Discharge Plans for Class Members;
- e. Completion and processing of Medicaid prescreening for Class Members;
- f. Enrollment of eligible Class Members in MGP and submission of Medicaid applications;
- g. Activation and re-activation of Class Members' Medicaid benefits;
- h. Provision of medications and/or prescriptions to Class Members;
- i. Making appropriate community referrals and/or appointments for Class Members;
- j. Submission and processing of SNA and TANF applications for potentially eligible Class Members who are deemed to be SPMI;

- k. Provision of transportation to Class Members who are deemed to be SPMI or likely SPMI;
- l. Follow-up with Class Members who are deemed to be SPMI in the areas of housing placement and community referrals or appointments; and
- m. Arranging appropriate housing placements for eligible Class Members.

143. The Parties acknowledge that a range of accepted clinical standards and practices may inform a clinician's judgment concerning what constitutes appropriate mental health treatment. The Compliance Monitors shall assess Defendants' compliance with the performance goals set pursuant to subparagraphs 142 (b), (c), (d), (i) and (m) above in light of this range of accepted clinical standards and practices.

144. The Compliance Monitors may establish performance goals in such other areas as necessary to effectuate the terms of this Agreement.

145. If Defendants fail to meet the performance goals established by the Compliance Monitors within six months after they are established by the Compliance Monitors, Class Counsel shall have the right to apply to the Court for an order requiring Defendants to comply with the performance goals.

146. The performance goals are to be re-evaluated annually until the end of the monitoring period by the Compliance Monitors in light of their experience concerning the implementation of the Settlement Agreement. The first re-evaluation of the performance goals shall occur one year after the date on which such goals are first established.



147. The Compliance Monitors shall be the final arbiters of the performance goals set pursuant to this § IV.D; provided, however, that the Compliance Monitors shall consult with the Parties in setting such performance goals.

**E. Reporting By Compliance Monitors**

148. The Compliance Monitors shall make such recommendations to the Parties through counsel as may be appropriate to ensure compliance with the Settlement Agreement and may perform such additional consultative tasks or make such other recommendations as Class Counsel and Defendants' Counsel jointly may request.

149. The Compliance Monitors shall submit written reports to the Court and to the Parties every 90 days during the first year after the Implementation Date and thereafter every 120 days. The reports:

- a. shall assess the current state of compliance with the Settlement Agreement and performance goals set in accordance with § IV.D above, including whether progress has been made and whether compliance has been maintained for a substantial period of time;
- b. shall analyze and review the cases of Class Members who did not receive clinically appropriate Discharge Planning in accordance with this Settlement Agreement (selection of any individual cases for review in a report pursuant to this subparagraph 149(b) shall be at the sole discretion of the Compliance Monitors);
- c. shall analyze and discuss any impediments to meeting the performance goals set in accordance with § IV.D of this Agreement and make recommendations for overcoming those impediments;
- d. may make recommendations for changes in policies and procedures or any other matter relating to Discharge Planning as contemplated by this Agreement; and

- e. may report on any other matters that affect the rights of Class Members, or any of them, pursuant to this Settlement Agreement.

150. The Compliance Monitors may periodically review the medical and/or Mental Health Records of non-Class Members to determine whether inmates are timely, adequately and accurately assessed for membership in the Class and report their conclusions to Defendants' Counsel and Class Counsel. Such review may be conducted by sampling of records or any other reasonable and adequate method, and appropriate precautions shall be taken to maintain the confidentiality of names of non-Class Members whose records are reviewed.

151. Nothing in the preceding ¶¶ 148 - 150 shall prevent either Compliance Monitor from presenting interim reports, either written or oral, to address any issues identified by the Compliance Monitor or in response to a reasonable request for an update from either Class Counsel or Defendants' Counsel. If the Compliance Monitors identify a significant deficiency in Defendants' compliance with the Agreement, the Compliance Monitors shall inform Class Counsel and Defendants' Counsel as soon as practicable after the discovery of any such deficiency.

**F. Monitoring by Class Counsel**

152. Monitoring by Class Counsel as described in § IV of this Agreement shall begin no later than the Implementation Date and shall continue until the monitoring provisions of this Agreement are terminated.

153. Class Counsel and Defendants' Counsel shall meet at least every 90 days during the first year after the Implementation Date, beginning with a meeting that shall occur within ten days of the issuance of the Compliance Monitors' first

report to the Court and the Parties pursuant to ¶ 149 above, and every 120 days thereafter, to discuss issues arising under this Settlement Agreement. At the request of Class Counsel, Defendants' Counsel also shall, if feasible, arrange for the attendance at such meetings by any officials of Defendants or representatives of any contractor employed by Defendants to carry out any of their obligations under this Agreement.

154. To facilitate monitoring of Defendants' compliance with the terms of the Settlement Agreement:

- a. Class Counsel shall be permitted to confer confidentially with any Class Member or group of up to three Class Members incarcerated in City Jails in a manner consistent with reasonable DOC security and operational concerns. DOC shall take steps to facilitate communication between Class Counsel and incarcerated Class Members, including but not limited to scheduling in-person meetings at City Jails. To facilitate in-person meetings, Defendants shall provide Class Counsel with a list of all Class Members, sorted by facility in which the Class Member is housed, every other week during which the monitoring provisions of this § IV.F are in force. On forty-eight hours' notice, DOC shall produce Class Members designated by Class Counsel for meetings at the DOC facility in which the Class Member is housed. DOC shall ensure that, consistent with reasonable DOC security and operational concerns, Class Counsel shall have the opportunity to meet with a minimum of 20 Class Members, subject to the Class Members' consent and availability, during any monitoring visit scheduled pursuant to this subparagraph 154(a).
- b. Class Counsel shall have access to all documents and information provided to the Compliance Monitors pursuant to this Agreement.

155. Nothing in this § IV.F shall limit Class Counsel's access to any materials or information obtainable through discovery in a Court proceeding brought to enforce the terms of this Agreement or through a Freedom of Information Law request.

156. Defendants shall pay the reasonable attorneys' fees and expenses of Class Counsel incurred in monitoring Defendants' compliance with this Agreement; provided, however, that such fees and expenses shall not exceed \$200,000 in the first year after the Implementation Date, \$150,000 in the second year thereafter, and \$75,000 in the third year thereafter. In the fourth and fifth years after the Implementation Date, Class Counsel shall be entitled to such reasonable fees and expenses as are incurred in performing tasks contemplated by this Agreement or performed at the request of the Compliance Monitors. Class Counsel shall document their requests for payment of fees and expenses in monitoring Defendants' compliance, and shall use reasonable hourly rates in computing the total fees for which they seek payment. Any disputes as to the amount of attorneys' fees and expenses to be paid to Class Counsel pursuant to this ¶ 156 shall be referred to the Court for resolution.

**G. Confidentiality**

157. Subject to ¶ 158 below, Defendants agree not to redact or assert any need or obligation to redact material related to individual Class Members or in any way prevent or attempt to prevent the Compliance Monitors or Class Counsel from identifying or gaining access to material identifying individual Class Members.

158. Class Counsel and Defendants' Counsel agree to confer in good faith to resolve any disputes that may arise regarding whether any federal, state, or City law or court order limits and/or prohibits the disclosure of confidential information related to any individual inmate. Failing such resolution, Defendants may apply to the Court for an order to prevent the disclosure of such information.

159. The Compliance Monitors and their staff and Class Counsel shall maintain the confidentiality of all information regarding Class Members as required by applicable statutes, regulations, and professional standards of conduct. The Compliance Monitors (and any staff to be granted access to information concerning individual Class Members) shall sign appropriate undertakings, substantially in the form of Exhibit E, before being granted access to such information. Nothing in this ¶ 159 or the undertaking shall prevent the Compliance Monitors from sharing with Class Counsel any information they obtain pursuant to this Agreement.

## **V. ENFORCEMENT**

### **A. Compliance**

160. Defendants and their contractors shall be in substantial compliance with the terms of this Settlement Agreement at all times after the Implementation Date.

161. Subject to ¶ 145 above, Class Counsel reserve their right to apply to the Court at any time for an order enforcing the provisions of this Agreement.

162. Defendants acknowledge that individuals assessed at the Initial Assessment as needing further mental health assessment and/or treatment have enforceable rights pursuant to this Agreement, and Defendants agree not to object to

an enforcement proceeding brought to enforce such rights by such individuals based on lack of standing.

**B. Cure**

163. Except in emergency situations, Class Counsel shall, before applying to the Court for an order enforcing any provision of this Settlement Agreement, provide Defendants' Counsel with notice of their intention to do so, and shall provide Defendants' Counsel with a reasonable opportunity to address or remedy the matter of concern. The reasonableness of the notice shall be a matter for Class Counsel's discretion but shall be no less than 20 days; Class Counsel shall take into account the nature of the matter of concern and the extent to which it affects the provision of Discharge Planning to the Class or an individual Class Member in calculating what amount of time is reasonable.

164. In emergency situations, Class Counsel shall contact Defendants' Counsel and advise Defendants' Counsel of the nature of the situation and proposed steps to be taken that could alleviate the perceived risk or deficiency. Following this contact, Class Counsel may then initiate whatever legal proceedings they believe to be necessary to alleviate the emergency situation.

165. In the event that Class Counsel apply to the Court for the enforcement of this Settlement Agreement, Class Counsel and Defendants agree to redact any submission to the Court to exclude the names of Class Members and any identifying information relating to Class Members unless such identifying information is necessary to adjudication of the dispute. If such identifying information is necessary

to adjudication of the dispute, a Party (a) may disclose such information to the Court and (b) shall file such information under seal.

**C. Cost of Enforcement**

166. Defendants will be liable for Class Counsel's reasonable attorneys' fees and expenses, including but not limited to the reasonable expenses of employing experts, that are properly incurred in enforcing the terms and provisions of this Agreement through the Court if Class Counsel are successful or if Plaintiffs and Defendants settle the dispute that forms the basis of the proceeding to enforce the Agreement.

167. Disputes between the Parties about the amount of attorneys' fees and expenses to be reimbursed in accordance with this § V.C shall be resolved by the Court.

**D. Protection of Individual Class Members Pending Settlement Approval**

168. Between the Execution Date and the Implementation Date, Class Counsel may provide Defendants with the names of individual Class Members who (a) are incarcerated or were released within the preceding 30 days; (b) have requested Discharge Planning services; and (c) have not received such services. Defendants shall ensure that such Class Members receive services to which they would be entitled pursuant to the preliminary injunction order entered by the Court on July 9, 2000, as is necessary to prevent irreparable harm. Should Defendants fail to provide any such Class Member with such services between the Execution Date and the Implementation Date, Class Counsel may move on such notice as the Court may

direct for all appropriate relief with respect to such Class Member, independent of whether the Final Order and Judgment is entered by the Court. Upon the Execution of this Settlement Agreement, the Parties shall submit to the Court a separate proposed Order embodying the terms of this provision substantially in the form of Exhibit F for the Court's immediate approval.

## **VI. CONTRACTORS**

169. Defendants acknowledge that the obligations of all agencies, contractors and assignees set forth in this Settlement Agreement are ultimately the obligations of the Defendants. Defendants shall not assert that they are not responsible for noncompliance with any term or provision of this Settlement Agreement by reason of the fact that an agency, contractor or assignee has been charged with performance of any such term or provision of this Agreement.

170. In the event that Defendants enter into or renew a contract with any individual or entity to perform any of Defendants' obligations set forth in this Settlement Agreement, Defendants shall ensure that such contract(s) incorporates the terms and provisions of the Settlement Agreement that relate to the services that the contractor will provide.

## **VII. EDUCATION OF THE COMMUNITY**

171. Defendants, in consultation with Class Counsel, (a) shall conduct informational sessions designed to educate members of the New York City mental health care community and the criminal justice system about the Settlement and the contributions that they can make to the successful implementation of the Discharge Planning systems described in this Agreement, (b) shall develop written materials



designed to educate members of the New York City mental health care and criminal justice community concerning the Settlement and Discharge Planning systems described in this Agreement, and (c) shall distribute such written materials to members of the New York City mental health care community and the criminal justice system at the informational sessions contemplated by § VII of this Agreement, and through other appropriate means to be determined (which shall include, but are not limited to, distribution through organizations such as the Legal Aid Society and through a direct mail campaign).

172. The members of the New York City mental health care community and criminal justice system who shall be targeted by the educational efforts contemplated by the immediately preceding ¶ 171 include, but are not limited to, defense attorneys (for example, 18B and Legal Aid/Defenders Services), judges, prosecutors, probation officers, corrections officers, court officers, peer advocacy organizations, community mental health workers, and family support groups.

173. The community education efforts contemplated by this § VII shall be commenced within 30 days after the entry of the Final Order and Judgment and completed within 180 days after the entry of the Final Order and Judgment.

174. Defendants shall bear all costs incurred in implementing the community education efforts contemplated by this § VII, including but not limited to the costs of printing and distributing any written material.

### **VIII. ORDER OF NOTICE, HEARING AND APPROVAL**

175. No later than 10 days after the Execution Date, the Parties will submit this Agreement, including all Exhibits attached hereto, to the Court and seek from the

Court a Hearing Order that is substantially in the form attached as Exhibit C hereto. The Hearing Order proposed by the Parties shall schedule the Fairness Hearing on the date that is 70 days after the Court's entry of the Hearing Order.

176. The Parties agree that prior to submission of the Agreement to the Court and application for the Hearing Order as contemplated by ¶ 175, above, they will together negotiate and draft the form of the Class Notice, Summary Notice and Comment Sheet, which documents shall be attached as exhibits to the proposed Hearing Order.

177. The Notice Materials shall conform to all applicable requirements of Article 9 of the New York Civil Practice Law and Rules ("CPLR"), the Constitution of the State of New York (including but not limited to its Due Process Clause), the Rules of Court and any other applicable law, and shall otherwise be in the manner and form agreed upon by the Parties and approved by the Court.

178. Subject to the requirements of the Hearing Order and no later than 60 days before the Fairness Hearing, Defendants will post copies of the Class Notice, the Summary Notice (in English and Spanish) and the Comment Sheet in each SPAN Office and in the following areas of each City Jail: each mental health and medical clinic, each punitive segregation area, each intake area, and each law library. Defendants will maintain supplies of the Class Notice, the Summary Notice and the Comment Sheet and will provide copies of those materials to individual Class Members and Significant Others upon request. The Settlement Agreement shall also be available in each City Jail law library. Defendants shall also ensure that copies of the Notice Materials are available in each mental health and medical clinic, punitive

segregation area, intake area, law library, and SPAN Office and that social workers working with Class Members, correctional officers working in units for the treatment of the mentally ill, and SPAN Office Staff are aware of the Notice Materials and have access to copies of the Notice Materials for distribution to Class Members.

179. Defendants shall publish the Summary Notice on the date that is 50 days before the Fairness Hearing in the following publications: *El Diario*, *Amsterdam News*, the *Daily News* and the *New York Law Journal*.

180. The Parties shall seek from the Court the entry of a Final Order and Judgment upon the conclusion of the Fairness Hearing, which Final Order and Judgment shall be substantially in the form attached hereto as Exhibit B. Among other things, the Final Order and Judgment sought by the Parties shall approve the proposed Settlement set forth in this Agreement as fair, reasonable and adequate; shall award attorneys' fees and expenses to Class Counsel; and shall include a provision dismissing the Action without prejudice and withdrawing all pending motions, subject to the Court's continuing jurisdiction to interpret and enforce this Agreement and the Final Order and Judgment.

181. Defendants will pay all costs of printing, publishing, and distributing the Notice Materials to Class Members, Significant Others, and any others to whom notice must be provided in accordance with the Hearing Order.

#### **IX. OBJECTIONS TO AND COMMENTS ON THE SETTLEMENT**

182. Any Class Member who wishes to object to the fairness, reasonableness or adequacy of this Agreement or the proposed Settlement described herein must submit a comment or objection no later than 25 days before the Fairness

Hearing by (a) placing his or her written comment or objection in a Comment Box (located in the areas described in the Settlement Agreement) no later than 25 days before the Fairness Hearing, (b) mailing his or her written objection or comment, postmarked no later than 25 days before the Fairness Hearing, to the Managing Attorney, Debevoise & Plimpton, 919 Third Avenue, New York, New York 10022, or (c) leaving a recorded message containing his or her comment or objection and information that identifies him or her as a Class Member by calling the toll-free number designated for that purpose (which number shall be contained in the Class Notice and the Summary Notice) no later than 25 days before the Fairness Hearing.

183. In response to any written or oral comments or objections or request from a Class Member, Class Counsel may meet with any incarcerated Class Member. Defendants' Counsel may also attend such meetings, unless the Class Member objects (in which case, Defendants' Counsel shall not attend), and shall promptly arrange and facilitate such meetings before the expiration of the period allowed for submission of comments on and objections to the Settlement Agreement.

184. Defendants shall provide sealed Comment Boxes for the collection of Comment Sheets in each law library and SPAN Office. Defendants shall, 20 days before the Fairness Hearing, or at such other time as the Court shall direct, deliver the Comment Boxes, unopened, to Debevoise & Plimpton.

185. Class Counsel and Defendants' Counsel shall jointly review the Comment Sheets prior to the Fairness Hearing. The Parties agree that the identities of all Class Members who submit written comments or objections in connection with the proposed Settlement shall remain strictly confidential, and that any such written

comments or objections filed with the Court shall be redacted so as to mask the identity of the Class Members who submitted such comments or objections, unless the Class Member consents to his or her identity being made public.

#### **X. ATTORNEYS' FEES AND EXPENSES**

186. Defendants recognize that the Court may award attorneys' fees and expenses to Class Counsel based on the reasonable value of legal services rendered, pursuant to Article 9 of the CPLR. Defendants agree that it would be an appropriate exercise of the Court's discretion to award such fees and expenses in this action. The Parties agree to negotiate in good faith in an attempt to agree on the amount of reasonable attorneys' fees and expenses to be awarded to Class Counsel. In the event the Parties are unable to reach such agreement, Plaintiffs reserve the right to make an application to the Court for an award of attorneys' fees and expenses in accordance with the CPLR and any other applicable law or Rule of Court.

187. Defendants will bear all administrative expenses and costs incurred in connection with the implementation of this Settlement Agreement and the proposed Settlement described herein, including but not limited to the costs of printing, publishing and posting the Notice Materials, any costs associated with collecting and delivering the Comment Boxes, and the costs, including reasonable attorneys' fees and expenses of Class Counsel, of monitoring and enforcement, as provided in §§ IV.F and V of this Agreement.

#### **XI. TERMINATION OF THIS AGREEMENT**

188. This Agreement may be terminated at the sole option and discretion of Defendants or Plaintiffs if the Court, or any appellate court(s), rejects, modifies or

denies approval of any portion of this Agreement or the proposed Settlement that the terminating Party in its (or their) sole judgment and discretion reasonably determine(s) is material. The terminating Party must exercise this option to withdraw from and terminate this Agreement no later than 20 days after receiving notice of the event prompting the termination.

189. Notwithstanding the immediately preceding ¶ 188, neither Plaintiffs nor Defendants may terminate this Agreement solely because of the amount of attorneys' fees and expenses awarded by the Court or any appellate court(s).

190. If an option to withdraw from and terminate this Agreement arises under ¶ 188, (a) neither Defendants nor Plaintiffs will be required for any reason or under any circumstance to exercise that option, and (b) any exercise of that option shall be made in good faith.

191. If this Agreement is terminated pursuant to ¶ 188, then:

- a. this Agreement shall be null and void and shall have no force or effect, and no Party to this Agreement shall be bound by any of its terms, except for the terms of this § XI;
- b. this Agreement, all of its provisions, and all negotiations, statements and proceedings relating to it shall be without prejudice to the rights of Defendants, Plaintiffs or any other Class Member, all of whom shall be restored to their respective positions in this Action existing immediately before the Execution Date;
- c. all motions withdrawn pursuant to the Hearing Order or the Final Order and Judgment shall be immediately restored to the Court's calendar;
- d. neither this Agreement, nor the fact of its having been made, shall be admissible or entered into evidence for any purpose whatsoever; and

- e. any order or judgment entered after the Execution Date will be deemed vacated and will be without any force or effect.

## **XII. MODIFICATION OF THIS AGREEMENT**

192. The terms and provisions of this Agreement may be amended, modified or expanded only by written agreement signed by the Parties and approved by the Court; provided, however, that after entry of the Final Order and Judgment the Parties may by written agreement, signed by Class Counsel and Defendants' Counsel, effect such amendments, modifications or expansions of this Agreement and its implementing documents (including all exhibits) without notice to or approval by the Court if such changes are consistent with the Court's Final Order and Judgment and do not limit the rights of Class Members under the Settlement Agreement.

## **XIII. TERMINATION OF PROSPECTIVE RELIEF**

193. The provisions of this Agreement shall terminate at the end of five years after monitoring by the Compliance Monitors begins pursuant to § IV of this Agreement. Plaintiffs may apply to the Court by motion on notice for a finding that Defendants have not complied with the terms of this Settlement Agreement over the preceding two years, and, if such finding is made by the Court, for an Order continuing the provisions of this Agreement for an additional two-year interval or intervals to the extent necessary to correct any current and ongoing violation of this Settlement Agreement.

194. At the end of each such additional two-year interval, Plaintiffs may apply to the Court by motion on notice for a finding that Defendants have not complied with the terms of the Settlement Agreement over the preceding two years,

and, if such finding is made by the Court, for an Order continuing the provisions of the Settlement Agreement to the extent necessary to correct any current and ongoing violation of this Settlement Agreement.

#### **XIV. GENERAL MATTERS AND RESERVATIONS**

195. Thomas C. Crane represents that he is authorized to enter into this Agreement on behalf of all Defendants and any attorneys who have represented or who now represent Defendants in the Action.

196. Whenever this Agreement requires or contemplates that one Party shall or may give notice to the other, notice shall be provided by fax and/or next-day (excluding Sunday) express delivery service and/or same-day hand delivery as follows:

If to Class Counsel:

Christopher K. Tahbaz, Esq.  
Debevoise & Plimpton  
919 Third Avenue  
New York, New York 10022  
fax: 212 909-6836

and to

Heather Barr, Esq.  
Urban Justice Center  
666 Broadway, 10th Floor  
New York, New York 10012  
fax: 212 533-4598

and to

John A. Gresham, Esq.  
New York Lawyers for the Public  
Interest, Inc.  
151 West 30th Street, 11th Floor  
New York, New York 10001  
fax: 212 244-4570



If to Defendants' Counsel: Thomas C. Crane, Esq.  
The New York City Law Department and  
Corporation Counsel  
100 Church Street  
New York, New York 10007  
fax: 212 788-0928

197. The Parties expressly acknowledge that no other agreements, arrangements or understandings not expressed in this Agreement or the exhibits hereto exist among or between them and that this Agreement and the exhibits hereto contain all the terms and conditions agreed upon by the Parties.

198. All time periods in this Agreement expressed in terms of days are to be measured in calendar days (without excluding weekend days or holidays), unless otherwise specifically noted.

199. This Agreement and any ancillary agreements shall be governed by and interpreted according to the law of the State of New York, excluding its conflict of laws provisions.

200. The Court shall maintain continuing jurisdiction over this proceeding for the term of this Agreement, and any disputes concerning this Agreement shall be resolved by the Court upon motion of either party, or upon such notice as the Court may direct.

201. The Parties reserve the right, subject to the Court's approval, to make any reasonable extensions of time that may be necessary to carry out any of the provisions of this Agreement.

202. This Agreement, any action taken to carry out this Agreement, any negotiations or proceedings related to this Agreement, and the carrying out and

entering into the terms of the Settlement Agreement shall not be construed as, or deemed to be evidence of, an admission or concession with regard to any fault, wrongdoing, or liability whatsoever.

203. The Parties agree that this Agreement was drafted by counsel for the Parties at arm's length, and that no parol or other evidence may be offered to explain, construe, contradict or clarify its terms, the intent of the Parties or their counsel, or the circumstances under which the Agreement was made or executed.

204. The Parties, their successors and assigns, and their attorneys undertake to implement the terms of this Agreement in good faith, and to use good faith in resolving any disputes that may arise in the implementation of the terms of this Agreement.

205. The Parties, their successors and assigns, and their attorneys agree to cooperate fully with one another in seeking Court approval of this Agreement and to use their best efforts to effect the prompt consummation of this Agreement and the proposed Settlement.

206. This Agreement may be signed in counterparts, each of which shall constitute a duplicate original.

Dated: New York, New York  
January 8, 2003

DEBEVOISE & PLIMPTON

By: \_\_\_\_\_

Christopher K. Tahbaz  
Patricia G. Corley  
Emily O'Neill Slater

919 Third Avenue  
New York, New York 10022  
(212) 909-6000

DOUGLAS LASDON  
RAYMOND H. BRESCIA  
HEATHER BARR

By: \_\_\_\_\_

Heather Barr

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PUBLIC INTEREST, INC.

By: \_\_\_\_\_

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(212) 244-4664

Counsel for the Plaintiffs and the Class

MICHAEL A. CARDOZO  
CORPORATION COUNSEL OF  
THE CITY OF NEW YORK

By: \_\_\_\_\_

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