Regional Center of the East Bay

REGIONAL CENTER OF THE EAST BAY

BOARD OF DIRECTORS MEETING
NOTICE/AGENDA

Date: Monday, September 23, 2019
Time: 7:00 – 8:30 p.m.

Location: 500 Davis Street
San Leandro

AGENDA

I. WELCOME AND INTRODUCTIONS — Hebert

II. CONSENT AGENDA ** — Hebert
- A. Agenda 9/23/19
- B. Minutes of 6/24/19

III. PUBLIC COMMENT
The Board welcomes comment from any person regarding RCEB's service and support to the East Bay community. We request that you complete a speaker card if you wish to address the board. We also request that you limit your statement to no more than 3 minutes. Thank you in advance for your interest.

IV. COMMITTEE REPORTS
- A. EXECUTIVE COMMITTEE/PRESIDENT'S REPORT — Hebert
  - Contract Approvals**
- B. BUDGET & FINANCE COMMITTEE — Iyemura
  - Monthly Status/PEP Report
- C. MEMBERSHIP DEVELOPMENT COMMITTEE — Hebert
  - Timing for Slate of Officers Nomination for 2020
- D. PROVIDER/VENDOR ADVISORY COMMITTEE — Sister Marygrace
- E. CONSUMER ADVISORY COMMITTEE — Battles
- F. DIVERSITY & EQUITY COMMITTEE — Grimaldi

V. EXECUTIVE DIRECTOR'S REPORT — Kleinbub

- Performance Contract information
- Budget Updates
- Self-Determination Status
- Community Resource Development

VI. PUBLIC COMMENT

VII. ARCA REPORT — Kleinbub

VIII. CLOSED SESSION – Personnel Issue

IX. ADJOURNMENT

***** ACTION ITEM***

Regional Center of the East Bay

REGIONAL CENTER OF THE EAST BAY

Board of Directors Meeting

Monday, June 24, 2019

1320 Willow Pass Road, Concord

RCEB BOARD MEMBERS PRESENT:

Kathy Hebert, President
Lilian Ansari, Vice President
Evangeline Iyemura, Treasurer
Gerald Tamayo, Budget & Finance Committee
Steven Whitgob, Budget & Finance Committee
Morena Grimaldi, Diversity & Equity Chair
Brian Blaisch
Teresita DeJesus
Caroline Ortiz
Chloe Page
Reneé Perls

BOARD MEMBERS, cont.

Sister Marygrace Puchac, PVAC
Carmen Quinones
Dinah Shapiro
Linda Stevens
Yesenia Fantham

ABSENT

Nyron Battles, Secretary
Frank Paré
Lisa Soloway

STAFF PRESENT:

Lisa Kleinbub, Executive Director
Lynn Nguyen, Director of Finance & Administration
~~Lucy Rivello, Director of Health and Behavioral Services~~
Ronke Sodipo, Director of Client Services
Melanie Gonzales, Associate Director Client Services
Chris Hanson, Associate Director of Adult Services
~~Evelyn Hoskins, Associate Director of Federal Programs~~
Jeff Nagafuji, Associate Director of SDC/CPP
Elvia Osorio-Rodriguez, Associate Director of Children Services
Priscilla Gomez, Manager of Transportation
Bret Hatcher, Case Manager
Julie Whiskeyman, Case Manager
Michi Toy, Executive Assistant

GUESTS:

Hope Beale/DDS
Jacqueline Brambila
April Hope
Sheraden Nicholau
Will Sanford
Geneva Ziaouré

CALL TO ORDER
Board President, Kathy Hebert called the regularly scheduled meeting of the Regional Center of the East Bay to order at 7:07 p.m.

WELCOME AND INTRODUCTIONS
Self-introductions were made and a quorum was present.

CONSENT AGENDA / MINUTES

M/S/C "The Board moves to approve the June 24, 2019 agenda as presented." [Perls/Shapiro] Unanimous

M/S/C "The Board moves to approve the May 20, 2019 minutes as presented." [Perls/Page] Unanimous

PUBLIC COMMENT
There were no public comments at this time.

COMMITTEE REPORTS

EXECUTIVE COMMITTEE: Kathy Hebert

OPERATIONS CONTRACT APPROVALS
Department of Developmental Services Contract# HD199015 **A-Series Preliminary**
This is a new contract between DDS and RCEB with $38M in OPS and $325M in POS Allocations for a total of $363M. The term is from 7/1/19 to 6/30/22. Ms. Hebert distributed DDS's "A" series contract approval document.

M/S/C "The board moves to approve the Department of Developmental Services A-Series Contract as presented." [Puchac/Shapiro] Unanimous
The motion was adopted.

Department of Developmental Services Contract# HD119015 **E-3 Contract Amendment**
This contract amendment is from a different contract number than the A-Series which we received earlier. This amendment adds $5M in OPS and $14M in POS Allocations for a total of $14M. This contract amendment was approved by the Executive Committee at their 6/12/19 meeting.

M/S/C "The board moves to ratify the Department of Developmental Services E-3 Contract Amendment as presented." [Shapiro/Iyemura] Unanimous
The motion was adopted.

DRAFT

La Familia Counseling Services [LFCS]

This is a renewal of the current ongoing contract for case management services between RCEB and La Familia Counseling Services for the term of 7/1/19 to 6/30/20. The rate of reimbursement is $92.99/client/month. The monthly contract amount is up to $66,119 for an annual estimated contract amount being $793,430.

M/S/C "The board moves to approve of the renewal contract between RCEB and LFCS as presented" [Shapiro/Perls] Unanimous

PURCHASE OF SERVICES CONTRACT APPROVALS

Community Placement Plan [CPP]

These three contracts represent the CPP service provider agreement for the contractors to operate one 4-bed SRF for individuals with forensic/mental health support needs. These service providers assume operations of the homes due to the bankruptcy/termination of service of Anka Behavioral Health, Inc.

Term: May 2019 – April 2024
Average Monthly Rate: $75,646.80
Annual Disbursement: $907,761.60

1. Omelagah, Inc.
2. Vista Home, LLC
3. GEN Care, LLC

M/S/C "The board moves to approve the contract for Omelagah, Inc., Vista Home, LLC and GEN Care, LLC to operate one 4-bed SRF home as presented." [Shapiro/Puchac] Vote: 15-yea, 1-abstain The motion was adopted.

Community Placement Plan [SDC/CPP]

ACRONYMS
CPP = Community Placement Plan
EBSH = Enhanced Behavioral Support Home
SRF = Specialized Residential Facility

These contracts represents CPP start-up funds for the contractor to develop nine properties [five4-bed SRF's, three EBSH's for those moving out of Sonoma Developmental Center, and one community crisis home]. The community crisis home will serve consumers living in the community who may be at risk of living in a locked facility.

DRAFT

SP West Properties, LLC (Scioto)
Terms: 6/30/16 – 6/30/19
Amendment Amount from $8M: Additional $551K for renovation
Total Revised Amount: $8.5M

M/S/C "The board moves to approve the contract for SP West Properties, LLC (Scioto) To develop nine homes as presented." [Perls/Ortiz] Unanimous The motion was adopted.

Supported Living Services

These 30 contracts represent agreements to operate a supported living services agency that is meant to provide the necessary support to allow clients to live in their own home in the community. Clients receiving services under these contracts have individualized rates based on need.

Term: July 1, 2019 – June 30, 2024

List of Agencies/Capacity/Average Monthly Rate:

1. Community Access/30/$7,353
2. Community Integrated Support Services/20/$8,412
3. Creative Living Solutions/20/$7,157
4. DABS, Inc/25/$9,961
5. East Bay Innovations/50/$7,834
6. Elicia's SLS Program/15/$11,252
7. Empowerment for Success/15/$8,340
8. Friends of Children with Special Needs/40/$5,918
9. Full Circle of Choices/30/$7,542
10. Gentle Hands/15/$8,003
11. Harmony Home/40/$7,030
12. Inclusive Community Resources/30/$12,013
13. Jaqui Foundation/20/$14,498
14. Las Trampas, Inc./41/$6,739
15. Living Options/20/$8,655
16. Novelles Developmental Services/16/$9,692
17. Omelagah, Inc./15/$19,507
18. One Step Closer/25/$13,403
19. PACT/15/$13,258
20. Pathway to Choices, Inc./24/$10,978
21. Positive Adult Transitions/20/$6,559
22. Rights of Passage, LLC./15/$12,483
23. Serra Center/35/$6,506
24. Sierra Environmental/20/$10,596
25. SOAR Community Services/15/$7,500
26. Thrive Support Services/40/$9,843
27. Toolworks/35/$9,911

DRAFT

28. Unity Social Services/30/$4,721
29. Debbie's Home Supported Living/15/$9,491
30. AES Professionals/15/$7,500

M/S/C "The board moves to approve the SLS agreements for the 30 Supported Living Services as detailed." [Shapiro/Perls] Vote: 15-yea, 1-abstain The motion was adopted.

Transportation

Ms. Herbert distributed the multiple transportation contract renewals to the board members.

875-Contracts – These five renewal contract agreements are between RCEB and the transportation companies directly for a five year term from July 1, 2019 to June 30, 2024.

Desoto Acccess Transportation, LLC
Consumers served: 115
Rate per consumer/day: $24.62
One way/consumer: $12.31
Annual Disbursement: $781,439.00

G&S Transporters
Consumers served: 40
Rate per consumer/day: $24.61
One way/consumer: $12.31
Annual Disbursement: $271,695.00

Sequoyah Transportation, LLC
Consumers served: 42
Rate per consumer/day: $24.62
One way/consumer: $12.31
Annual Disbursement: $285,396.00

Kidz First Transit, LLC
Consumers served: 45
Rate per consumer/day: $22.14
One way/consumer: $11.07
Annual Disbursement: $274,979.00

WT All Access
Consumers served: 200
Rate per consumer/day: $24.62
One way/consumer: $12.31
Per hour/aide: $18.00
Annual Disbursement: $1,670,064.00

M/S/C "The board moves to approve the #875 contract renewals for a 5-year term with the five transportation services as specified above."
[Shapiro/Puchac] Vote: 15-yea, 1-abstain The motion was adopted

DRAFT

880-Contract – This contract agreement designates the transportation service as an additional component to the day program. The five year term is from July 1, 2019 to June 30, 2024.

LIFE/FCSN
Consumers served: 120
Rate per consumer/day: $13.71
Annual Disbursement: $454,076.00

M/S/C "The board moves to approve of RCEB entering into the 5-year #880 transportation contract with LIFE/FCSN as specified above." [Shapiro/Page] Unanimous The motion was adopted

BUDGET AND FINANCE COMMITTEE
Budget and Finance Report for June 24, 2019 – Evangeline Iyemura

PURCHASE OF SERVICE (POS)
As submitted to the Board for approval, RCEB has received additional POS funding in the E-3 contract amendment for fiscal year 2018-19. The E-3 provided additional total POS funding of $14M, including bridge funding of $.7M, Home and Community-Based Services of $2.2M, and CPP funding of $2.5M.

Through May 2019, 90% of our fiscal year 2018-19 POS expenditures are in base. With the additional funding in E-3, for Non CPP Purchase of Services Expenditures, we are projecting a sufficiency ranging approximately from $.1M (best case) to $.9M (worst case). 15 out of the 21 Regional Centers, including RCEB, are reporting sufficiency in POS projections for Fiscal Year 2017-18.

For CPP Purchase of Services Expenditures, we continue to project a deficit of $2.9M and will continue to work with the DDS to request additional CPP allocation.

We will continue to monitor the status of our POS projections as Case Managers are working hard to ensure that all purchase of services are submitted before the fiscal year ends.

OPERATIONS
For Operation expenditures, we continue to report a projected balanced operations budget for the current fiscal year with 85% of expenditures in base. This is comparable to the 84% of expenditures for FY 2017-18 at this time last year.

FISCAL YEAR 2019-20 ALLOCATION
As submitted to the Board for approval, RCEB has received the preliminary "A" Contract and allocation for Fiscal Year 2019-20 of $37,950,417 OPS and $325,465,229 POS funding for a total of $363,415,646.

CASH FLOW STATUS

The Agency had adequate cash to fully fund our invoices for May Services that were paid out mid-June. We are ending the fiscal year with $8.5M cash on hand.

DDS has not advised us on when they will release Regional Centers' cash advances for Fiscal Year 2019-20. There will be 3 cash advances; the first and second cash advances for Fiscal Year 2019-20 are expected to be released by the third week of July. The 3rd cash advance is scheduled to be released by August 1st. If for any reason there is a delay in getting our cash advance, the Board is reminded that there will not be sufficient cash to pay for June POS services on July 15th. We would have to draw down approximately $8M from our $25M line of credit with Union Bank. The interest rate on the loan will be prime rate (which is currently at 5.5%).

We will inform the Executive Committee mid-month via email at the time the paperwork is submitted if we have to draw on the line. The Executive Director and Chief Financial Officer have the authority granted by the Board to sign the paperwork to drawn down the line of credit as needed.

VENDOR FISCAL AUDITS

Per DDS requirement, RCEB needs to complete 17 vendor fiscal audits by the end of fiscal 2018-19. RCEB has completed 25 vendor fiscal audits. There are no fiscal audits that have substantial findings.

MEMBERSHIP DEVELOPMENT COMMITTEE: Kathy Hebert

Ms. Herbert stated that the Membership Development Committee has been busy these past few months with new board member interviews and we are finally operating at almost maximum with 19 members. We are one consumer short, so we will be recruiting to fill that position in the months to come.

PROVIDER/VENDOR ADVISORY COMMITTEE [PVAC]: Sister Marygrace Puchac

The PVAC meeting was held on June 14th with a presentation by Bender Insurance Solutions on *The Illusion of Safety: Risk Management and Professional Liability Options for Employers*. Although we are very familiar with the topics that were brought up, it was good to have a perspective on the insurance side for the safety and protection for all. The abuse prevention PowerPoint that stressed awareness training, skill screening and background checks and focused on the several different types of "abuse" was very informative. It is important for agencies to ask their insurance companies for references on which company to use for the background checks. Another interesting topic that was covered was on monitoring and oversight.

The group also discussed the anticipated and hopeful 8% increase to service providers as a holdover to the rate reform once it is implemented. There was disappointment and confusion for those who fall within the 15 service codes who would not be receiving any increases.

CONSUMER ADVISORY COMMITTEE [CAC]:
There was no June CAC meeting.

DIVERSITY and EQUITY COMMITTEE: Morena Grimaldi
Ms. Grimaldi stated that the meeting this evening was well attended. Since the committee will not be meeting in the next couple of months since there will be no Board of Director's meeting, the committee decided to hold a Mission Statement workshop possibly next month and to also discuss the roles of the members in the committee.

Aug 3: Congreso Familiar Conference at Chabot College

EXECUTIVE DIRECTOR'S REPORT: Lisa Kleinbub, Executive Director
Self-Determination [SD]
Ms. Kleinbub updated everyone with the information that we currently have five people from the Self-Determination pilot program who are now enrolled in the waiver. This is important because as more people enroll in the waiver, DDS will be able to allocate funds for both staffing time at regional centers to work on Self-Determination as well as funds for our local advisory committees for activities such as trainings on Person Centered Planning. DDS will wait to allocate funds until there are about fifty percent of persons from the original pilot program enrolled in the waiver.

We continue giving orientation trainings to those selected for SD. We have a few more coming up within the next week and are narrowing down the number of people who still have to go through orientations. We also have participants who have opted out of the program, so we are waiting for DDS to provide details for another round of member selections.

Our SD Local Advisory Committee is looking for a replacement member, due to a member's move out of the area. Therefore, the committee is accepting applications for selection and the application is on our website: https://www.rceb.org/self-determination

Community Resource Development Plan [CRDP] Funding
We posted a survey to identify what types of services and supports consumers and their families want or need in their community. Based on this information as well as information shared in other public meetings, we submitted a request to DDS for start-up funding for new development. Similar to many other regional centers, we requested funding for multi-family housing, enhanced behavioral support homes, bilingual early intervention services and other services.

To see a list of what our regional center has requested, you can view them on our website: https://www.rceb.org/post/crdp-priorities-results-2019-community-resource-development-plan-survey

Governor's Budget

Ms. Kleinbub stated that the State Budget has not been enacted yet because the Governor has not signed off on it, but we are expecting a budget signing ceremony soon. One of the most important parts of this budget is that for many services, there will be an 8.2% payment increase. There are services that are not going to see that payment increase, such as ILS programs and ILS specialists, infant development services, specialized therapeutic services for infants and medically fragile consumers where specialized resources would be provided to them. Based on what was found in the rate study, some programs will get less than an 8.2% increase. An example would be in supported employment (individual) that will receive a 7.6% increase. DDS relied on the outcomes of the rate study that has not been finalized and looked at services in that rate study would have received an increase. They may also have looked at which services would have been Home and Community Based Services [HCEB] settings rule compliant. They were careful in not giving increases to services where based on the rate study they would have to later reduce. This rate increase is in the budget is in place from January 1, 2020 until December 31, 2021.

There is language in the budget stating that if the State is still in good fiscal health, then the rate increase could continue for one year. If the State is not in good shape, it would end at that point. There are a number of other rates in the budget including IHSS that have similar sunset provisions. In our community many services are getting bridge funding from May 1st 2019 through April 30th 2020. On January 1st, the base rate that people have will be increased by the percentage for the service. For example from this year's budget, if your base rate before the bridge funding is $100, some services will receive $108 as their rate increase. The bridge funding is then added to this. On May 1st that bridge funding will be withdrawn. There will be a lot of work for regional centers to change those rates in our payment system.

Basing these current increases on the rate study without consideration of the comments received has led to some services not getting increases. This includes services such as Independent Living Supports where the assumption was that the worker was an "aid" versus a teacher or an instructor. If there was consideration of these flaws in methodology, there may have been a difference in this year's budget increases.

High cost areas were seen as requiring different rates in the rate study given the high cost of living. This is not addressed in the 8.2% increases, and unless there is something that happens on May 1st 2020, we will lose the bridge funding as well. As this is supposed to help with the high cost of living in certain areas, the issue of geographic challenges will not be addressed at all after that time.

There is also trailer bill language to enact the budget detailing what is going to be added in terms of responsibilities for DDS, regional centers, and our providers. Some of the trailer bill language requires DDS to schedule meetings this summer to discuss system reform. This discussion is supposed to include all stake holders, including regional centers, state councils, family advocacy groups, Disability Rights California and legislative analysts to discuss how to have a stable and cost effective system that will meet people's needs going forward. Some of us think that we have done this several times before so it is disconcerting to have to do it again. There is concern in the

Department of Finance that while the growth in individuals served is 5%, the growth in purchase of services is 10%. This concern may stem from the wave of those with autism finishing school and needing more services.

DDS is also required to publish the comments that were made on the rate study by October 1st as well as their responses to those comments. We do expect to see what DDS is planning to do moving forward in the Governor's Budget in January 2020. There are also many regional center requirements to post information on our websites. Many of these postings already exist on our website, but new information to be posted includes the National Core Indicators [NCI] data, which are consumer surveys that take place every few years through the State councils. The data needs to be in machine readable form so that individuals may utilize the data. We will also be required to post Fair Hearings/specific areas/outcomes, as well as a summary of complaints that come in to the regional center and for them to be characterized and grouped. The Performance Contract process of public meetings will be changed as well as community related outcomes. There will be a requirement for all service staff to be fingerprinted. Most of the service providers already are fingerprinted, but this will include other categories where it is not currently required. There is some funding for regional center staffing for those activities (around $4.4M Statewide). In the regional center budget is a 1:25 case load ratio for those case managers who have clients in crisis and with intense needs, but only for 12-18 months per individual. This will allow for some enriched services for those individuals. There are also positions across the State for regional centers to work with county, social services, mental health, and child protective services to develop MOU's for our shared children.

In the healthcare portion of the budget, there will be coverage through MediCal for undocumented individuals up to the age of 26 as well as the restoration of eyeglass coverage for adults on MediCal.

Media

There was a recent KTVU News story about abuse/neglect and services provided in the system to some clients in several regional centers. We are not able to discuss the details due to confidentiality laws but we do want to inform our Board of what our procedure is when we are made aware of suspected abuse/neglect of a client. We take these situations very, very seriously and report to the police and APS/CPS. Regional centers are not investigators and are advised by those local and State services to not get involved as that can impede their investigation. Ms. Kleinbub reiterated the concern brought up by our board member in regards to what can be done for those clients who are not able to communicate and/or those who are vulnerable and very dependent on their caregivers and are afraid to report the abuse. It is incumbent on all of us to ask questions and be alert to sudden changes in any individual's behavior or appearance. We do need to make use of technology to assist in this area both for our clients and the care staff as we help more and more individuals to live on their own and try to reduce the risk as much as possible. Ms. Kleinbub added that every single regional center expressed concern over this subject at the ARCA meeting this month. Q/A followed among the board members.

PUBLIC COMMENT

Kathy Hebert for Sandi Soliday, Alameda County Developmental Disabilities Council [ACDDC]

Ms. Soliday's message began with thanking all those who contributed to the success of the 30th Joint Annual Awards Dinner, as it was a special evening.

June 28: This is the next HireAble (formerly East Bay Employment Task Force) at the Public Health Department office in San Leandro next door to RCEB in the Redwood Conference Room from 10 am - 12 pm.

July 3: This is the next East Bay Legislative Coalition meeting at the Public Health Office in Oakland from 10 am - 12 pm. All are welcome.

July 10: This is the next Alameda County Developmental Disabilities Council meeting from 9:30 am - 12 pm at the Public Health office in Oakland. This is the annual planning meeting, and we encourage all to attend to contribute to this process and work of the Council.

Oct 26: An Educational Opportunities for Students with Disabilities Conference titled *Vision for the Future* is scheduled from 8:30 am - 1:30 pm at Chabot College in Hayward. Registration forms should be available by the end of August.

Kathy Hebert for Vi Ibarra, Contra Costa County Developmental Disabilities Council [CCCDDC]

Ms. Ibarra's message also thanked everyone who attended the Joint Awards Dinner on June 6th with a great turn out and lots of fun. Ms. Ibarra wanted to recognize Alva Gardner the keynote speaker and to Will Sanford for emceeing the event. Employers and individuals from each county were recognized for their outstanding efforts and achievements in improving the lives of people in our communities. Over the summer, Ms. Ibarra will be working with the new executive team for planning for the upcoming year.

Sept 25: This will be the next regular board meeting will be at 10 am.

Sheraden Nicholau, State Council on Developmental Disabilities [SCDD], Bay Area Office

Ms. Nicholau elaborated on the May presentation regarding Safety Training and Risk Reduction as it relates to abuse prevention and developing a healthier response system when abuse is suspected, which includes reaching out to the local law enforcement, first responders, the courts, etc. with education on how to work with individuals with developmental disabilities. Ms. Nicholau thanked RCEB for their participation in the Alameda County Forensics roundtable and is working on a field guide to specifically address forensic needs.

July 26: This is the next Regional Advisory Committee Meeting at The Artist's Den in Concord
July 15: This is the next Self-Advocates Advisory Committee meeting in Sacramento
July 16: This is the next Council meeting

Ms. Nicholau also added that the local Self-Determination Advisory Committee is looking for another member and the flyer is posted on RCEB's website: https://www.rceb.org/self-determination. We are encouraging applicants to apply, especially self-advocates.

Between now and the end of September is a great time to communicate with your legislators. August is a good time to invite them to your events or visit/call them at any time.

ARCA REPORT: Lisa Kleinbub

Ms. Kleinbub announced that at last week's ARCA meeting, Kathy Hebert, RCEB's Board President was elected as President of ARCA's Board of Directors, so she will be very busy. Ms. Hebert added that Lisa Kleinbub was elected to be ARCA's Chairperson of the Finance Committee.

There were a number of regional center retirements. Laura Larsen, Executive Director of Far Northern Regional Center is retiring. She is not leaving the system completely, as she is joining the State Council of Developmental Disabilities in her area. Other retirees are George Stevens, Executive Director of North Los Angeles Regional Center and Pete Tiedemann the CFO of Alta Regional Center. ARCA extensively works on legislative advocacy with help from Rick Rollens, who is a political consultant and used to be a secretary of the California State Senate. Mr. Rollens has been instrumental in modifying trailer bill language. One of the main bills that ARCA is currently sponsoring is Senator Stone's SB412 involving the elimination of family cost participation from families of children paying a share of childcare and respite as well as Annual Family Program Fees. This passed through the Senate quickly and is now going through assembly appropriations.

MEETING ADJOURNED

The board meeting adjourned at 8:34 p.m.

There is no public Board meeting in July or August
The next Board Meeting will be at 7:00 PM on September 23, 2019 in **San Leandro**

DRAFT

Regional Center of the East Bay
Contracts for Board Review/Approval

9/13/19 Date submitted to RCEB Board for review

7/10/19 Date approved by RCEB Board Executive Committee (if applicable)

(9/23/19) Date approved by RCEB Board

Operations_____

Purchase of Service __X___

The following contracts have been reviewed by Lynn Nguyen, Director, Finance and Administration and Elisabeth Kleinbub, Executive Director, both of whom recommend approval by the RCEB Board of Directors.

Purpose of Contract	Consumers Served (if applicable)	Contractor Name	Term of Contract	Rate of Reimbursement	NOTES:
HCBS Compliance Agreement	This service will be available to any consumer requiring alternative communication supports for Person-Centered thinking.	Ability Now Bay Area (Multivendor concept – Ala Costa Centers, California Autism Foundation, Dungarvin CA, Futures Explored, Harambee Community Services, Las Trampas)	6/30/19 through 6/30/21	$415,000	This contract represents DDS approval of HCBS proposal from multi-vendors in an effort to meet HCBS rules and create a Communication and Training Modules online toolbox to reach nonverbal participants and those with alternative types of communication, through the Person-Centered process.

HCBS COMPLIANCE AGREEMENT

Vendor #: H04568; Service Code: 510
(Ability Now Bay Area)

This HCBS Compliance Agreement (this "**Agreement**"), dated for reference purposes as of June 30, 2018, is entered into by and between Regional Center of the East Bay, Inc., a California nonprofit public benefit corporation ("**RCEB**"), and Ability Now Bay Area, Inc., a California nonprofit organization ("**Contractor**"). RCEB and Contractor are sometimes collectively referred to herein as the "**Parties**". The Parties enter into this Agreement with reference to the following facts:

A. RCEB provides services to individuals with developmental disabilities (the "**People Receiving Services**"). RCEB operates under a contract with the State of California Department of Developmental Services ("**DDS**").

B. Contractor provides services and supports in home and community-based settings ("**Home and Community-Based Services**" or "**HCBS**") to certain of the People Receiving Services from RCEB.

C. Effective March 17,2014, the federal Centers for Medicare & Medicaid Services ("**CMS**") adopted new HCBS rules and regulations (collectively, the "**Final Rule**") for long-term services and supports provided by service providers to people with developmental disabilities in home and community-based settings, as recognized under the federal Medicaid Program. The Final Rule defines home and community-based settings, and requires homes and programs where HCBS are delivered to meet such new criteria to qualify for federal funding through the Medicaid Waiver Program.

D. Generally, HCBS settings must (i) be integrated in and facilitate an individual's full access to the greater community; (ii) optimize an individual's autonomy and independence in making life choices; (iii) be chosen by the individual from among residential and day options, including non-disability specific settings; (iv) ensure the right to the individual's privacy, dignity, respect and freedom from coercion and restraint; (v) provide each individual an option to choose a private unit in a residential setting; and (vi) facilitate an individual's choice of services and who provides them.

E. Contractor has submitted a proposal to RCEB to develop specified compliance training procedures, programs and/or activities, and/or to make other changes in its operations and programs, to meet the requirements of the Final Rule (collectively, the "**Project**"). Based on funding approval RCEB has received from DDS, RCEB desires to engage Contractor to implement the Project.

NOW THEREFORE, on the basis of the foregoing recitals and in consideration of the following mutual covenants, the Parties agree as follows:

1. TERM OF THE AGREEMENT. Subject to the provisions for earlier termination or rescission as provided herein, the term of this Agreement shall commence on June 30, 2019,

and terminate on June 30, 2021. However, Contractor must complete all components of the Project, and submit requests for reimbursement of such costs, by not later than **March 31, 2021.**

2. SCOPE OF WORK; PROJECT MILESTONES; BUDGET.

2.1 Scope of Work. Contractor's detailed scope of work for the performance of the Project is attached hereto as Exhibit "A" (the **"Scope of Work"**). The Scope of Work contains and describes the following:

2.1.1 The specific procedures, programs and/or activities, and/or other changes in its operations and programs, Contractor intends to implement to complete the Project;

2.1.2 The methodology Contractor will use to expend the funds it receives under this Agreement to implement the Project and to otherwise increase its compliance with the Final Rule; and

2.1.3 The methodology Contractor will use to obtain and incorporate input from the People Receiving Services in the development and implementation of the Project.

2.2 The Project Milestones. Contractor shall perform the various components of the Scope of Work by the applicable deadlines noted on Exhibit "B" attached hereto (the **"Project Milestones"**). The Project Milestones are objective indicators to measure Contractor's progress toward compliance with the Final Rule. RCEB's payment of the Compensation (defined in Section 4.1 below) is conditioned on Contractor's timely completion of the Scope of Work by the deadlines in the Project Milestones, as well as Contractor's compliance with the other provisions in this Agreement.

2.3 The Budget. Contractor's detailed budget for the Project is attached hereto as Exhibit "C" (the **"Budget"**). Contractor shall use its best efforts to ensure its actual cost to perform each aspect of the Scope of Work, as noted on the Project Milestones, does not exceed such line item in the Budget. RCEB's approval of the Budget does not guarantee payment of the Compensation. Any changes to the approved Budget that are requested by Contractor requires prior approval from RCEB. RCEB may request or require changes to the Budget at any time during this Agreement. For projects involving the purchase of items or services, the Budget must include justification (e.g., multiple quotes) of the cost-effectiveness of the items/services.

3. DOCUMENTATION; PERIODIC AND FINAL REPORTS

3.1 Progress Reports. During the term of this Agreement, Contractor shall submit quarterly written progress reports to RCEB's HCBS Specialist, commencing on the third month of this Agreement). Each report shall contain the following information: projected time lines for the completion of the Project, including progress related to the Project Milestones; progress status for each component of the Scope of Work; any difficulties encountered during the reporting period; remedial action taken; requests for any additional time which will be needed to accomplish a task as a result of unforeseen events; and a statement of activity anticipated during the subsequent reporting period.

3.2 Meetings. Contractor shall meet with RCEB regularly, as well as any other time on three business days' notice from RCEB, to review development of the Project, in addition to the progress reports noted in Section 3.1 above.

3.3 Final Report. Contractor shall submit a final report to RCEB by the earlier of (i) the end of the month following the month of completion of the Project, (ii) or April 30, 2021.

4. COMPENSATION

4.1 RCEB agrees to remit funds to Contractor in consideration for the Contractor's completion of the Project, payable in installments as Contractor satisfies each Project Milestone. The total amount of funds payable by RCEB to Contractor under this Agreement shall not exceed four hundred and fifteen thousand Dollars ($415,000) (the "**Compensation**"). Contractor acknowledges that the Compensation will not cover all of Contractor's expenses relating to the Project, and that any additional funds, if needed, must be provided by the Contractor in order for it to complete the Project. The Compensation is available for reimbursement to Contractor only through March 31, 2021; thereafter, RCEB must return all unused funds to the State of California.

4.2 RCEB's payment to Contractor of the Compensation shall be the sole compensation for all of Contractor's expenses incurred in the performance of the Project. The Compensation constitutes a one-time commitment by RCEB to assist Contractor with transitioning into compliance with the Final Rule. Thus, for example, RCEB will not provide any continuation funding to Contractor for hiring additional staff needed to comply with the Final Rule.

4.3 RCEB's payment to Contractor is conditioned on Contractor's compliance with the claim submission procedures in Section 5 below.

4.4 This is not a negotiated rate agreement. Rather, DDS has determined and set the approved maximum amount of the Compensation.

5. PAYMENT OF COMPENSATION; CONTRACTOR'S OBLIGATIONS

5.1 Payment of Compensation. Contractor may request and RCEB shall remit the Compensation to Contractor, up to the amount stated in Section 4.1 above, after RCEB's review and approval of Contractor's reports, receipts and other documentation supporting such expenditures, in the form and with content reasonably acceptable to RCEB. Further, RCEB's reimbursement of Project costs will only apply to actual expenditures that assist Contractor in transitioning into compliance with the Final Rule. RCEB will disburse all funds to Contractor in arrears; *provided, however*, on a case-by-case basis RCEB may elect in its sole discretion to remit certain payments of Compensation in advance. In such cases, Contractor shall promptly return such advance payments to RCEB if Contractor subsequently fails to timely provide all receipts and necessary documentation to support such payments.

5.2 Claim Submission Procedure. Each time Contractor satisfies a Project Milestone, Contractor may submit one or more claims based on such completed task; provided,

however, the aggregate amount of such claims shall not exceed the Compensation limit in Section 4.1 above. Each claim for Compensation must be consistent with the Budget, the Scope of Work and the applicable Project Milestone relating to such claim. Each claim must be electronically submitted to RCEB. In addition, each claim that falls within any of the following categories (if applicable, based on the Scope of Work) must comply with the terms and conditions in that category as a condition to RCEB's reimbursement for such expense:

5.2.1 Specialized Equipment, Supplies and Furnishings. If RCEB reimburses Contractor for equipment and program supplies (including computers and related equipment), or specialized/durable and other furnishings, Contractor's documentation for payment of such items must include (1) an itemized account of all items to be reimbursed, (2) proof of receipt of the approved items purchased (the receipts must clearly state the item purchased, and Contractor must handwrite the item on the receipt if unclear) and (3) multiple quotes or another objective justification for the cost-effectiveness of each purchase.

5.2.2 Remodeling of Residential Facility. If RCEB reimburses Contractor for the cost to remodel a residential facility, the facility modifications must be related to furthering compliance with the Final Rule. Further, prior to construction, Contractor must submit to RCEB, for its prior approval, a set of plans and at least two itemized bids for the proposed work. All bids shall be from contractors who are insured and bonded, and have a contractor's license that is active and in good standing with the Contractors State License Board. All modifications which require a building permit must be completed with a building permit. Documentation to be submitted by the Contractor to RCEB for payment of modifications must include: (1) approved plans (stamped by the governmental entity as approved, as applicable); (2) all necessary itemized bids, as approved by RCEB; (3) evidence of payment of permit fees; (4) invoices from architects, engineers, contractors, as applicable; (5) cancelled checks related to such invoices, evidencing payment by Contractor; (6) receipts for material purchased by Contractor not listed on an invoice; (7) invoices from subcontractors, if any, for work not covered in a contractor's invoice; (8) evidence of payment of inspections fees from the Fire Marshall, if any; (9) applicable executed mechanic's lien waivers and releases.

5.2.3 Vehicles. If RCEB reimburses Contractor for the cost to acquire, maintain and/or insure specialized vehicles for the transportation of People Receiving Services, Contractor's documentation must include: (1) itemized list of vehicles to be reimbursed; (2) copies of all receipts of approved items that have been purchased; and (3) multiple quotes or another objective justification for the cost-effectiveness of each purchase.

5.2.4 Specialized Training. If RCEB reimburses Contractor for specialized training needed to meet the needs of People Receiving Services, Contractor must obtain RCEB's approval prior to attending training sessions in order to be considered for reimbursement. Registration/admission fees and other costs Contractor incurs for attending such training (i.e. lodging, airfare, etc.) may be reimbursed by RCEB on a case-by-case basis, if RCEB approves such costs in advance. Documentation to be submitted by Contractor to RCEB must include: (1) trainer's flyer or other document describing the training; (2) proof of paid registration; and (3) receipts for any other costs associated with attending the training.

5.2.5 Employee Wages and Benefits. If RCEB reimburses Contractor for its employees' wages and benefits, including wages and benefits for Contractor's staff, Contractor must provide adequate documentation for such costs.

5.2.6 Office Space. If RCEB reimburses Contractor for its cost to rent office space, Contractor must provide the fully executed lease and other adequate documentation for such costs. To the extent Contractor requests reimbursement for the cost to remodel such office space, the provisions in Section 5.2.2 above ("Remodeling of Residential Facility") shall apply to such office space remodel.

5.2.7 Meetings; Travel Expenses. If RCEB reimburses Contractor for mileage to and from a State Developmental Center and/or other highly restrictive settings for the purpose of individual transition planning for People Receiving Services, RCEB must pre-approve such costs, including lodging, airfare, mileage, etc. RCEB shall only approve such costs when it is necessary to visit specific People Receiving Services and/or programs and when the expense for lodging and airfare is directly related to the development of the Project. Documentation to be submitted by the Contractor to RCEB must include: (1) itemized list of costs associated with each travel, including lodging, airfare, mileage, etc.; and (2) receipts of costs associated to such travel which have been approved by RCEB. RCEB will reimburse approved mileage at the current IRS reimbursement rate in effect at the time the mileage expense was incurred.

5.3 Consequence of Contractor's Failure to Satisfy Requirements. Contractor's failure to complete any of the Scope of Work by the applicable deadlines noted in the Project Milestones shall constitute Contractor's default under this Agreement. Notwithstanding the foregoing, if Contractor's failure to complete the Scope of Work is due solely to RCEB's refusal or failure to timely approve an item submitted by Contractor in good faith, then RCEB's refusal or failure to approve such submittal by the applicable milestone deadline shall, at RCEB's option, constitute the failure of a contingency under this Agreement. Upon the failure of a contingency, this Agreement shall be rescinded, and neither party shall have any further rights or obligations to the other, except for those obligations that are intended to survive such rescission (such as, for example, Contractor's obligation to return Compensation to RCEB as provided in Paragraph 11.3 below).

5.4 RCEB's Review of Documents and Disbursement of Funds. RCEB will endeavor to review all documents provided by Contractor within ten working days of receipt, including receipts for purchases. After RCEB approves Contractor's documentation for each applicable claim described above, RCEB shall send an authorization for payment to its accounting department. RCEB accounting department shall remit payment to Contractor within 30 days of receipt of all required documentation.

5.5 Expenditures in Accordance with Agreement. RCEB has no obligation to reimburse Contractor for any expenditure that exceeds the Budget line item for such expenditure, that is not described in the Scope of Work, or that is otherwise not in accordance with this Agreement.

6. MONITORING BY RCEB. RCEB reserves the right to monitor Contractor's progress under this Agreement. As part of such monitoring, RCEB may at any time (1) perform site inspections at any facility owned or leased by Contractor, (2) determine whether Contractor's performance complies with State law and applicable regulations, and (3) determine whether RCEB's expenditure of funds pursuant to this Agreement is within its program priorities, allowable expenditures and appropriate allocations.

7. CONTRACTOR'S RECORDS; INSPECTION AND AUDIT RIGHTS

7.1 Contractor agrees to maintain and make available to RCEB accurate books, invoices, receipts, and accounting records relative to its costs and expenses, to the extent and in such detail as will properly reflect all of Contractor's direct and indirect net costs of labor, materials, equipment, supplies and services, and other costs and expenses of whatever nature for which Contractor requests funds from RCEB under this Agreement. The books and records shall indicate the relationship of the applicable expense to the Scope of Work.

7.2 Contractor shall also maintain and make available to RCEB all books, records, documents, and other evidence pertaining to all income and services relating to and connected with the performance of this Agreement at all times during the Agreement. Contractor agrees to hold RCEB harmless from any administrative or legal actions occurring because of the failure of the Contractor to maintain personnel records and practices in accordance with the provisions of this Agreement and state or federal laws.

7.3 All of the books, records and other documents described in this Section 7 are hereinafter referred to as Contractor's "**Records.**" Contractor will permit RCEB and any authorized agency representative to audit, examine and make excerpts, reproductions and transcripts from the Records with respect to related to all matters covered by this Agreement. Contractor shall maintain its Records in an accessible location and condition for a period of not less than five years after the end of the term of this Agreement or until after RCEB resolves its final audit of the Contractor, whichever is later. However, Contractor's Records that relate to litigation or the settlement of claims arising out of the performance of this Agreement shall be retained by Contractor until disposition of such appeal, litigation, claim, or exception.

7.4 RCEB shall conduct all audits in accordance with the provisions of Section 50606 of Title 17 of the CCR. Contractor shall be bound by Section 50700, *et seq.*, of Title 17 of the CCR should Contractor elect to appeal any audit finding or recommendation.

7.5 Contractor shall accept financial liability for any and all audit findings and/or recommendations disclosed by any audit and promptly repay amounts owed; provided, however, during such period as Contractor may appeal such findings and/or recommendations so that collection is stayed pursuant to CCR Title 17, Section 50705, Contractor shall have the rights and obligations as set forth in such regulations.

7.6 Subject to RCEB's audit and inspection rights as described herein, Contractor shall maintain the confidentiality of records of People Receiving Services in accordance with the provisions of Welfare and Institutions Code §§ 4514, 5328, and 14100.2.

Contractor and all of its employees shall respect the confidentiality of all information they receive about the People Receiving Services.

7.7 All Parties shall at all times remain in compliance with the mandatory provisions of the HIPAA Privacy Rule (Standards for Privacy of Individually Identifiable Health Information at 45 Code of Federal Regulations Part 160 and Part 164, Subparts A & E).

7.8 Contractor's Reviews and Audits. This Section shall only apply if all payments Contractor cumulatively receives from RCEB and other regional centers during Contractor's fiscal year equals or exceeds Five Hundred Thousand Dollars ($500,000).

7.8.1 Contractor shall, at Contractor's cost, cause an independent Certified Public Accountant to (1) annually audit or review Contractor's financial statements and (2) provide a copy of each annual audit results (the "**Audit Report**") or review results (the "**Review Report**") to RCEB. If the cumulative payments Contractor receives from RCEB and all other regional centers is less than Two Million Dollars ($2 Million) in Contractor's fiscal year, Contractor may conduct a review and provide a Review Report to RCEB rather than an Audit Report; otherwise, Contractor shall conduct an audit and provide an Audit Report to RCEB.

7.8.2 If Contractor engages an independent Certified Public Accountant to review (but not audit) Contractor's financial statements, (1) the review shall, at minimum, comply with the provisions set forth in WIC Section 4652.5(e) and (2) the Review Report shall, at minimum, comply with the provisions set forth in WIC Section 4652.5(f).

7.8.3 Contractor shall commence the independent audit or review within 120 days after the end of Contractor's fiscal year. Contractor shall complete the audit or review within nine (9) months after the end of Contractor's fiscal year.

7.8.4 In accordance with WIC Section 4652.5(b), Contractor shall provide copies of the independent Audit Report or Review Report to RCEB within 30 days after completion of the audit or review. Contractor shall provide copies of the independent Audit Report or Review Report and accompanying management letters to RCEB no later than nine months after Contractor's fiscal year end date or calendar year end date, pursuant to WIC Section 4652.5(b).

7.8.5 If RCEB believes that any issues identified in the Audit Report or Review Report have an impact on services Contractor provides to People Receiving Services, RCEB will so notify Contractor and provide Contractor with 30 days to resolve such issues. Contractor's failure to resolve such issues to RCEB's reasonable satisfaction within such 30 day period shall constitute a material breach of this Agreement. As a result of such breach, RCEB may, among its other remedies, terminate this Agreement.

7.8.6 If RCEB does not find any issues in Contractor's prior year Audit Report or Review Report, Contractor my apply, in writing, to RCEB for a two-year exemption from the independent Audit Report or Review Report.

7.9 The State of California, and any federal agency having an interest in the subject of this Agreement, shall have the same rights as conferred upon RCEB by this Section 7.

8. VENDOR STATUS. Contractor must comply with all RCEB vendorization requirements and must obtain and preserve its vendor status at all times during the term of this Agreement.

9. OFFICIALS NOT TO BENEFIT. No member of or delegate to the U.S. Congress or the State Legislature shall be entitled to any share or part of this Agreement, or to any benefit that may arise there from, except as otherwise allowed by law.

10. NONDISCRIMINATION IN SERVICES, BENEFITS, FACILITIES AND PROGRAMS

10.1 During the performance of this Agreement, Contractor shall not deny the Agreement's benefit to any person on the basis of religion, color, ethnic group identification, sex, sexual orientation, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age (over 40), sex, or sexual orientation. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

10.2 Contractor shall at all times comply with the provisions of the California Fair Employment and Housing Act (Government Code, Section 12900 and following), the regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 and following), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code, entitled "Discrimination" (Government Code, Section 11135 and following) and the regulations and standards adopted thereunder.

10.3 Contractor shall permit access to its Records and other books, accounts, sources of information, and its offices, by RCEB, representatives of the Department of Fair Employment and Housing and other applicable state agencies, upon reasonable notice and at any time during the normal business hours, but in no case less than 24 hours' notice (unless otherwise permitted by law), to insure Contractor's compliance with the terms of this Section 10.

10.4 Contractor shall give written notice of its obligations, where applicable, under this Section 10 to labor organizations with which it has a collective bargaining or other agreement.

10.5 Contractor shall include the nondiscrimination and other provisions of this Section 10 in all subcontracts to perform work under this Agreement (to the extent such subcontracts are allowed under this Agreement).

10.6 By its signature on this Agreement, Contractor swears under penalty of perjury that either (i) it has never been out of compliance with an order of the Federal National Labor Relations Board; or (ii) no more than one final non-appealable finding of contempt of court by a federal court has been issued against Contractor within the two-year period immediately preceding the date of this Agreement because of Contractor's failure to comply with a federal court order that Contractor comply with an order of a Federal National Labor Relations Board. RCEB may rescind this Agreement if Contractor falsely swears to the truth of the above statement.

10.7 If Contractor does not comply with the discrimination provisions of this Agreement or with any similar federal rule, regulation, or order, RCEB shall have the right and option to cancel, terminate, or suspend this Agreement in whole or in part, in which event Contractor may be declared ineligible for further RCEB and State contracts, to the extent provided by law.

11. TERMINATION

11.1 Contractor's Default; Cure Notice; RCEB's Right to Terminate. RCEB shall have the right to suspend or terminate this Agreement for cause upon Contractor's breach of this Agreement. Contractor shall be deemed in breach of this Agreement if Contractor defaults in the performance of any of its obligations herein and fails to cure the default within 15 days after RCEB's delivery of notice to do so. Contractor's defaults include, but are not limited to, the following:

11.1.1 Contractor's failure or refusal to perform or do any act herein required.

11.1.2 Contractor's failure to perform any portion of the Scope of Work by any of the applicable deadlines noted on the Project Milestones.

11.1.3 Evidence of Contractor's or its agents', employees' or subcontractors' unsafe or hazardous practice in the provision of services or performance under this Agreement.

11.1.4 Contractor's loss of any license(s), accreditation(s), or certification(s) required for the lawful operation of its business or facilities.

11.1.5 Contractor's failure to maintain practices consistent with good management, such as, but not limited to: (a) failure to make payments of payroll tax and contribution payments; and (b) failure to adhere to established accounting and fiscal practices designed to meet its other regular financial obligations.

11.2 Contractor's Automatic Breach. Any misconduct by Contractor or its agents, employees or consultants that results in an imminent threat to the health and/or safety of People Receiving Services shall be deemed an automatic and material breach of this Agreement. Elements which may constitute imminent threat to the health and safety of People Receiving Services consist in part, but are not limited to: physical, emotional, or mental abuse, sexual misconduct, abandonment or neglect of People Receiving Services, theft of money or property of People Receiving Services, violation of the rights under the law of People Receiving Services, placing People Receiving Services in physical danger, or any other circumstance that may bring physical or emotional harm to the People Receiving Services. In this particular situation, (1) Contractor's default shall be noncurable, (2) RCEB shall not have any obligation to provide a 15-day cure notice (or any cure notice) and (3) Contractor shall be deemed in breach of this Agreement.

11.3 Contractor's Return of Compensation to RCEB. Contractor acknowledges that it is receiving Compensation to assist in timely completing the Project. As such, Contractor

further acknowledges that the Compensation is not deemed earned by Contractor until the full completion of all components of the Scope of Work. Thus, if this Agreement terminates or is rescinded before Contractor completes the Project for any reason whatsoever (other than as noted in Section 11.4 below, entitled, "Exceptions"), then Contractor shall immediately refund to RCEB 100 percent of the Compensation that Contractor has received through the date of such termination or rescission. If a refund of Compensation is due to RCEB, Contractor agrees that RCEB shall have the right and option to recover the Compensation by offsetting any Purchase of Service payments due to Contractor for services provided under any other agreement between the Parties. After the Contractor timely returns the applicable Compensation to RCEB, the Contractor shall be entitled to maintain ownership of all materials and supplies, modifications, and other assets purchased with funds from the Compensation, including but not limited to furnishings and equipment, office equipment and vehicles. If, and only if, Contractor timely refunds all of the Compensation to RCEB, RCEB shall waive its right to recover consequential damages and punitive damages arising out of Contractor's breach of this Agreement, whether arising out of contract or tort.

11.4 Exceptions. Notwithstanding the provisions in Section 11.3, the Contractor shall not be required to refund Compensation if Contractor ceases performing its obligations under this Agreement due to one of the following events:

11.4.1 RCEB is in material breach of this Agreement after notice and the expiration of all applicable cure periods; or

11.4.2 The failure of a Funding Contingency (as defined in Section 12 of this Agreement) during the term of this Agreement causes RCEB to cease remitting Compensation that is otherwise due to Contractor.

11.5 RCEB's Breach; Contractor's Remedies. RCEB shall be deemed in breach of this Agreement if RCEB defaults in the performance of any of its obligations herein and fails to cure the default within 30 days after Contractor's delivery of notice to do so; provided, however, if the default is nonmonetary, such time period shall be extended until RCEB cures the default, as long as RCEB commences such cure within such 30-day period and diligently pursue such cure until completion. In any event, Contractor hereby waives its right to recover consequential damages, lost profits and punitive damages arising out of RCEB's breach of this Agreement, whether based in contract or tort.

12. TERMINATION OR MODIFICATION RESULTING FROM FAILURE OF FUNDING CONTINGENCY

12.1 Notwithstanding anything in this Agreement to the contrary, the validity of this Agreement (including RCEB's obligation to remit payments to Contractor) is conditioned on RCEB's receipt of adequate funds from DDS to pay for the services described in this Agreement (the **"Funding Contingency"**). The Funding Contingency is a part of this Agreement because RCEB's annual funding agreement with DDS provide that such funding agreements are subject to the appropriation of funds by the Legislature, and that if such funds are not appropriated for any fiscal year into which such funding agreements extends, the funding agreements are of no force and effect. RCEB shall therefore have the right and option to

terminate this Agreement without liability, and such termination shall be deemed a failure of the Funding Contingency, if (1) DDS for any reason fails to deliver funds to RCEB for any period covered by this Agreement or (2) RCEB receives funds from DDS for a period covered by this Agreement but determines that such funds are inadequate to pay for all of the vendor services and other expenses which RCEB expects to incur in such fiscal year, and therefore elects to fund other services rather than the services identified in this Agreement or (3) RCEB receives funds from DDS for a period covered by this Agreement and initially allocates a portion of such funds for the services in this Agreement, but thereafter elects to reallocate some or all of such DDS funds to fund services other than the services in this Agreement. When insufficient funds exist for RCEB to pay for all potential services, RCEB shall have the right (under clauses (2) and (3) above) in its sole and arbitrary discretion to fund services other than the services identified in this Agreement, based on which services RCEB believes are in its best interests and the best interests of its clients as a whole. If there is a failure of the Funding Contingency, then (1) RCEB shall have no liability to pay any further funds whatsoever to Contractor or to furnish any other considerations under this Agreement and (2) neither party shall be obligated to further perform any provisions of this Agreement.

12.2 In addition to the above, if there are insufficient funds available from DDS to pay for all of Contractor's services and other expenses that RCEB expects to incur in any fiscal year, as determined by RCEB in its sole and arbitrary discretion, RCEB shall have the option at any time, on 30 days' notice to Contractor, to reduce or change the scope of services being provided under this Agreement. In such event, RCEB and Contractor will in good faith negotiate to attempt to agree on Contractor's new amount of Compensation under the modified Agreement. If the Parties are unable to agree on Contractor's new amount of Compensation for its modified services within such 30 day period, RCEB shall then either (1) terminate this Agreement, because of the failure of a Funding Contingency or (2) rescind its modification of Contractor's services, in which event this Agreement shall continue in full force and effect without such modification in services or compensation.

12.3 If this Agreement terminates as a result of the failure of a Funding Contingency, Contractor shall repay any unused or unexpended Compensation to RCEB.

13. COMPLIANCE WITH LAWS.

13.1 Knowledge of the Final Rule. Contractor represents and warrants that it has read and is familiar with the Final Rule, including but not limited to: (i) 42 Code of Federal Regulations ("**CFR**") Part 441, Subpart G (HCBS: Waiver Requirements); and (ii) 42 CFR Part 441, Subpart M (State Plan HCBS for the Elderly and Individuals with Disabilities), including 42 CFR §441.710 of Subpart M in particular (which describes the qualities of HCBS and non-HCBS settings). A summary of key provisions in Section 441.710 is located on the Internet at: http://www.aucd.org/docs/policy/HCBS/references/requirements-for-home-and-community-settings.pdf

13.2 Applicable Law. Contractor shall render all services in accordance with the applicable provisions of federal and California laws, including the Final Rule, Welfare and Institutions Code §§ 4500 *et seq.* and regulations promulgated thereunder including Title 17 of the CCR, commencing at § 50201 *et seq.* The terms of this Agreement shall not be construed to

excuse compliance with existing statutes or regulations. Contractor shall at all times comply with contract requirements and Service Provider Accountability Regulations, including 17 CCR §§ 50601 through 50612.

13.3 Amendments by Law. Any provision of this Agreement in conflict with statutes or regulations is hereby amended to conform to the provisions of these statutes and regulations. Such amendment of the Agreement shall be binding on the Parties even though such amendment may not have been reduced to writing and formally agreed upon and executed by the Parties. RCEB shall endeavor in good faith to notify Contractor upon its gaining notice of any amendment or new law which would affect this Agreement.

13.4 Severability. If any clause or provision of this Agreement is illegal, invalid or unenforceable, the balance of this Agreement shall remain in effect, and if any provision is inapplicable to any person or circumstance, it shall nevertheless remain applicable to all other persons and circumstance

14. RCEB'S ZERO TOLERANCE POLICY. RCEB has adopted a Zero Tolerance Policy for Consumer Abuse or Neglect (the **"Zero Tolerance Policy"**). The policy is posted on RCEB's website under "Board Policies" at: http://www.rceb.org/sites/main/files/file-attachments/zerotolerancepolicy.pdf. The Zero Tolerance Policy is incorporated herein by this reference. Contractor shall comply with the Zero Tolerance Policy at all times.

15. INDEPENDENT CONTRACTOR

15.1 Contractor and its agents and employees, in performance of this Agreement, shall act in an independent capacity in the performance of this Agreement and not as officers or employees or agents of RCEB or DDS.

15.2 Contractor shall be wholly responsible for the manner in which Contractor and its employees perform the services required of Contractor by the terms of this Agreement.

15.3 Contractor agrees to be solely responsible for all matters relating to payment of its employees, including compliance with Social Security withholdings and all other regulations governing such matters.

15.4 Contractor shall not be, or in any manner represent, imply or hold itself out to be an agent, partner or representative of RCEB. Contractor has no right or authority to assume or create in writing or otherwise any obligation of any kind, express or implied, for or on behalf of RCEB. The business to be operated by Contractor pursuant to this Agreement is separate and apart from the business operated by RCEB. The only relationship between Contractor and RCEB is that of independent contractors and neither shall be responsible for any obligations, liabilities, or expenses of the other, or any act or omission of the other, except as expressly set forth herein.

16. ASSIGNMENT AND SUBCONTRACTING

16.1 Contractor shall not subcontract with any other entity or individual to perform the services described in this Agreement. However, the following are allowed, and are

not considered subcontracts: licensed contractors who may make physical modifications to a facility, and technical assistance providers who may provide staff training or general business advice to the Contractor. Contractor shall not assign its interest in this Agreement, voluntarily or by operation of law, without the prior written approval of the Director of RCEB, which may be withheld in his or her sole and absolute discretion. The experience, skill, knowledge, good judgment, discretion, capability, and reputation of Contractor, its principals, officers, directors, owners, and employees were a substantial inducement for RCEB to enter into this Agreement. If Contractor is an entity, the assignment by Contractor of 25% or more of the voting interests in such entity shall constitute an assignment for which Contractor must obtain RCEB's consent.

16.2 RCEB shall not be responsible for any payments of any kind directly to any subcontractors under any circumstance and shall not have any liability for any actions of any subcontractors.

17. TIME OF THE ESSENCE. Contractor agrees to work diligently on the tasks and obligations described herein to completion. Thus, time is of the essence with respect to Contractor's performance of all of its obligations hereunder. Further, large gaps of time without progress seriously compromise the completion of the Project. Thus, to ensure progress, Contractor must submit regular updates and otherwise strictly meet each of the Project Milestone deadlines set forth in this Agreement.

18. COOPERATION. Contractor shall at all times fully cooperate with RCEB to effect the purposes of this Agreement. Thus, for example, Contractor will return as soon as possible all documents submitted by RCEB which may be required by state or federal laws or regulations, including but not limited to the IRS W-9 form.

19. INDEMNITY AND HOLD HARMLESS AGREEMENT.

19.1 Contractor's Indemnity.

19.1.1 Contractor agrees to indemnify, defend, and hold harmless RCEB, DDS the State of California and their respective officers, agent, and employees (collectively, the **"RCEB Indemnitees"**) from every claim or demand made by reason of:

(a) Any personal injury or property damage sustained by any person, or entity, caused by or resulting from any act, neglect, default, or omissions of Contractor or of any person, or entity performing any services in connection with this Agreement on behalf of Contractor; and

(b) Claims under workers' compensation laws or other employee benefit laws by Contractor's agents or employees; and

(c) Contractor's failure to fulfill its obligations under this Agreement in strict accordance with its terms, including Contractor's breach of any representations or covenants given in this Agreement; and

(d) A violation of any local, state, or federal law, regulation or code by Contractor or by any of Contractor's employees, agents, consultants, or subcontractors in connection with the conduct of their activities performed in connection with this Agreement.

19.1.2 Contractor at his own expense and risk, shall defend any action, legal proceeding, arbitration, or other mediation proceeding, that may be brought against the RCEB Indemnitees or any of them on any such claim or demand as set forth above. Contractor shall defend such matter by counsel reasonably satisfactory to RCEB. The RCEB Indemnitees need not have first paid any such claim in order to be so indemnified. Contractor shall also pay and satisfy any settlement, or any judgment which may be rendered against the RCEB Indemnitees or any of them arising from any injuries described in this Section 19.1 including, but not limited to, those claims and demands resulting from the negligence of the RCEB Indemnitees or any of them; provided, however, Contractor shall have no duty to indemnify any particular RCEB Indemnitee for those injuries caused to Contractor or a third party by the gross negligence of such RCEB Indemnitee.

19.2 RCEB's Indemnity.

19.2.1 RCEB agrees to indemnify, defend, and hold harmless Contractor and its respective officers and employees (collectively, the "**Contractor Indemnitees**") from every claim or demand made by reason of:

(a) Any personal injury or property damage sustained by any person, or entity, caused by or resulting from any gross negligence of RCEB or of any person, or entity performing any services in connection with this Agreement on behalf of RCEB; and

(b) RCEB's failure to fulfill its obligations under this Agreement in strict accordance with its terms, including RCEB's breach of any representations or covenants given in this Agreement; and

(c) A violation of any local, state, or federal law, regulation or code by RCEB or by any of RCEB's employees, agents, consultants, or subcontractors in connection with the conduct of their activities performed in connection with this Agreement.

19.2.2 RCEB at his own expense and risk, shall defend any action, legal proceeding, arbitration, or other mediation proceeding, that may be brought against the Contractor Indemnitees or any of them on any such claim or demand as set forth above. RCEB shall defend such matter by counsel reasonably satisfactory to Contractor. The Contractor Indemnitees need not have first paid any such claim in order to be so indemnified. RCEB shall also pay and satisfy any settlement, or any judgment which may be rendered against the Contractor Indemnitees or any of them arising from any injuries described in this Section 19.2; provided, however, RCEB shall only have a duty to indemnify any particular Contractor Indemnitee for those injuries caused to Contractor or a third party by the gross negligence of RCEB or its officers, agents, or employees.

19.3 Survival. The indemnities set forth in this Section 19 shall apply during the term of this Agreement and shall also survive the expiration, rescission, or termination of this Agreement, until such time as action against the RCEB Indemnitees and the Contractor

Indemnitees on account of any matter covered by each such indemnity is barred by the applicable statute of limitations.

20. INSURANCE

20.1 Contractor shall at all times during the term of the Agreement maintain policies of insurance issued by insurance companies qualified to conduct business in California and insuring against the perils of bodily injury, personal injury, malpractice, and property damage, including owned, non-owned, and hired auto coverage. Contractor shall maintain such insurance with a limit of liability of at least One Million Dollars ($1,000,000) per occurrence. Contractor also agrees to maintain Worker's Compensation with Employers' Liability insurance in a sum not less than One Million Dollars ($1,000,000) each occurrence. The company issuing Contractor's commercial general liability policy shall be rated at least A- and X at all times in the most recent edition of Best's Insurance Guide. At all times during the term of this Agreement, Contractor shall name RCEB as an additional insured on Contractor's liability insurance policy.

20.2 Upon the commencement of this Agreement, Contractor shall supply RCEB the following: certificates of insurance evidencing coverage in amounts and for the perils listed above (and also showing RCEB as an additional insured) that lists the address of any residential care facility for People Receiving Services, the policy number, the effective date, and the expiration date of each policy.

20.3 All insurance policies shall be endorsed to provide 30 days advance written notice of to RCEB of any cancellation, non-renewable or reduction in coverage, mailed to RCEB at its address for notice set forth in this Agreement.

21. COPYRIGHTS AND PATENTS. To the extent any services or work performed by the Contractor under this Agreement results in the invention or development of copyrightable materials, the State of California has the right to freely manufacture, reproduce, publish, use and/or distribute all inventions and copyrightable materials which were developed by or for the Contractor using funds provided by the State of California. To the extent applicable, Section 14 of Article I of the Regional Center Master Contract between RCEB and the State of California is incorporated herein by this reference.

22. APPLICANT/VENDOR DS1891 DISCLOSURE (17 CCR §54311). Contractor represents and warrants that it has completed and signed the State Department of Health and Human Service's Applicant/Vendor Disclosure Statement ("**DS1891 Form**") and submitted such form to RCEB. Contractor shall submit a new signed and dated DS1891 Form to RCEB within 30 days of any change in the information previously submitted pursuant to this paragraph or upon written request by RCEB for such information.

23. ARBITRATION; VENUE; CALIFORNIA LAW. Any controversy, claim, or dispute arising out of this Agreement, or modification thereof, or the relationship between the Parties hereto shall be governed by the laws of California and settled by binding arbitration in Alameda County, California, in accordance with the rules then obtaining of the American Arbitration Association for commercial arbitration. This Agreement is entered into in California

and shall be interpreted according to its laws. California shall be the exclusive jurisdiction for all legal or administrative proceedings hereunder. Code of Civil Procedure Section 1283.05, which allows for discovery in arbitration, is incorporated herein by this reference.

24. WAIVER. No waiver of a breach of any provision of this Agreement by RCEB shall constitute a waiver of any other breach of such provision. Failure of RCEB to enforce at any time, or from time to time, any provisions of this Agreement shall not be construed as a waiver thereof. No custom or practice which may develop between the Parties in the course of administering this Agreement will be construed to waive any party's right to insist upon the performance by the other party of any obligation in this Agreement. The remedies herein reserved shall be cumulative and additional to any other remedies in law or equity.

25. NOTICES. Any notices or payments required or permitted under this Agreement shall be in writing and shall be sufficiently given if either delivered in person or mailed by a nationally recognized overnight mail carrier or certified or registered mail, postage prepaid, to the Parties at such address set forth below, or to another address as each Party (by notice to the other, given in the manner described above), may designate from time to time. All notices shall also be concurrently emailed to the recipient. Any written document will be deemed delivered either (i) on the day of the delivery in person, (ii) the next business day if delivered by overnight carrier or (iii) two business days after the mailing of such document by certified or registered mail. All notices, requests and demands shall be delivered to the following addresses:

RCEB:

Name: Fruc Menchavez III
Title: HCBS Specialist
Regional Center of the East Bay
500 Davis Street, Suite 100
San Leandro, CA 94577
Phone: (510) 618-6146
Email: fmenchavez@rceb.org

Contractor:

Name: Leslie Visbal (*Lead on Group Proposal*)
Title: Executive Director
Agency: Ability Now Bay Area
Address:4500 Lincoln Avenue
Oakland, CA 94602
Phone: (510) 531-3323
Email: lwerosh@abilitynowba.org

26. JOINT AND SEVERAL LIABILITY. If Contractor consists of multiple individuals and/or entities, each such individual and entity shall be jointly and severally liable for all of Contractor's obligations under the Agreement including, but not limited to, Contractor's obligation to repay the Compensation upon the early termination or rescission of this Agreement.

27. ATTORNEYS' FEES. If any action or proceeding is commenced to enforce any provision or right under this Agreement, the unsuccessful party to such action or proceeding, as determined by the Arbitrator, or other tribunal in the event that Arbitration is waived or deemed waived by all Parties, shall pay the prevailing party all costs, expenses, and reasonable attorneys' fees incurred by such party and if such prevailing party shall recover judgment in any such action or proceeding, such costs, expenses, and attorneys' fees shall be included as part of such judgment.

28. AUTHORITY TO SIGN. All Parties executing this Agreement acknowledge and warrant that they possess the authority to enter into this Agreement on behalf of their respective companies/organizations.

29. CONTRACTOR AS ENTITY; FINANCIAL STATEMENT. Contractor shall provide a copy of its most recent financial statement to RCEB upon Contractor's execution of this Agreement.

30. ENTIRE AGREEMENT. This Agreement (including Exhibits "A", "B" and "C", which are incorporated herein by this reference) constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement. This Agreement supersedes all prior agreements, representations, and understandings of the Parties, either oral or written regarding the subject matter hereof. Although the parties may also enter into one or more separate service provider agreements under which Contractor will provide continuing care services to People Receiving Services, nothing herein shall be construed to obligate RCEB to enter into such agreements.

31. AMENDMENTS. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all Parties. The execution of any amendment or modification to this Agreement shall comply with the requirements of applicable statutes, regulations, and provisions of RCEB's contract with DDS.

32. INTERPRETATION. The section headings in no way define, limit, extend, or interpret the scope of this Agreement or any particular paragraph, and the masculine, feminine or neutral gender and the singular or plural number shall each be deemed to include the others whenever the context so indicates.

33. COUNTERPARTS; ELECTRONIC COPIES. This Agreement may be executed in counterparts, each which shall be deemed an original and all of which shall constitute a single instrument. Signed copies of this Agreement delivered by fax or in a PDF email file shall be deemed the same as originals.

Executed at San Leandro, California, as of the first the date set forth above.

RCEB:

Regional Center of the East Bay, a California nonprofit public benefit corporation

By:_____
Name:_____
Title:_____

CONTRACTOR:

Ability Now Bay Area, a California nonprofit organization

By: Leslie C.W. Visbal
Name: Leslie Visbal
Title: Executive Director

EXHIBIT A
Ability Now Bay Area Scope of Work
Project Manager: Leslie Visbal

Purpose:
Ability Now Bay Area, Ala Costa Centers, California Autism Foundation, Dungarvin California, Futures Explored, Harambee Community Services, and Las Trampas submitted a group collaborative HCBS proposal in an effort to meet HCBS rules and create a Communication and Training Modules Online Toolbox to reach nonverbal participants and those with different types of communication through the Person-Centered Planning process. Program and service providers all over the state could benefit from additional tools and technology that could better facilitate engagement around an individual's choices and preferences. Accessing what is important to an individual can often be challenging and thus provide barriers to independence, choice, and the accuracy of a person-centered plan. As a group of collaborating providers, we believe we can overcome these barriers with this proposal of communication tools.

Scope:
Our Communication & Training Modules Online Toolbox includes the creation of a toolbox for creating access to Person-Centered Thinking and choice for persons with different forms of communication. This toolbox will be utilized by organizations to train staff on how to engage non-verbal or limited communicators. The toolbox will include training topics on four to five modules related to topics such as AAC, functional communication training, reciprocal language, informed decision making, person centered choices, and/or AAC applications and assessment for users. An online platform will be created with a subscription base for widespread access and sustainability. This online platform will ensure that organizations around the state can access the toolbox for implementation in their organizations thus extending the resources to a much greater community.

The development of training materials, modules and technology (devices, website, etc) will be necessary to properly ensure that individuals can be reached in a variety of modalities (print, electronic, high/low tech) and that staff can be trained to effectively communicate and obtain personal choice and preferences through the person-centered planning process. An Administrative Coordinator or Project Manager will be hired to manage the Project. Professional consultants will be retained with speech and language, behavioral, IT, and person-centered thinking curriculum and/or Informed Decision Making Training expertise. The collaborative organizations and Administrative Coordinator/Project Manager will lead the coordination of these consultants and provide input from a service provider perspective. Initial technology devices and materials will be distributed amongst participating organizations and future technology costs will be covered by the user organization interested in using the developed software, applications, or modules. Marketing and outreach efforts will ensure that organizations across the State have access to the online toolbox. Many organizations will benefit from the development of additional tools and resources to facilitate more engaged and informed decision making. This will make significant progress in removing the barriers associated with the HCBS rules and better support informed decision making, person centered planning, and self-determination for all individuals.

As a group, we plan to incorporate input from the people that we serve during each phase through a variety of methods from participant surveys, parent surveys, parent and participant individual meetings, and participant group meetings. Individuals we serve will have an opportunity to provide feedback on product development and give input and suggestions during the development of training tools, as well as, participate in discussions with professional consultants, and outreach efforts.

Tangible Outcomes/Deliverables:
By March 2021, tangible outcomes will include a developed Communication and Training Modules Online Toolbox with outreach to organizations so they can access the tools and materials to use during their Person-Centered Planning processes with individuals. These resources provide valuable tools to engage individuals regarding their choices around their services and supports. These modules will assist in the Person-Centered Planning process which demonstrates compliance with the Final Rule. Our services as providers will improve and we will become more fully engaged in the Person-Centered Planning process organization-wide.

Plan for Sustainability:
The sustainability plan for the Communication & Training Modules Online Toolbox will be to provide the online platform with subscription based access at a minimal cost to organizations to access the information and maintain website maintenance costs. Participating organizations would be responsible for budgeting technology device costs as appropriate for their implementation of the trainings and engagement with participants through their PCT processes. Outreach and marketing to the community about the Online Toolbox would take place to engage more providers. The collaborating organizations could provide guidance to interested parties based on our experiences use of the tools. In an effort to meet HCBS rules, program and service providers all over the state could benefit from additional tools and technology that could better facilitate engagement around an individual's choice and preferences. This online platform would ensure that organizations around the state could access the toolbox for implementation in their organizations thus extending the resources for a much greater community.

EXHIBIT B

Ability Now Bay Area Project Milestones

Project Manager: Leslie Visbal

Estimated Project Completion Date: 03/31/2021

Description of Milestone	Projected Cost	Completion Date	Measure of Success
Hire an Administrative Coordinator or Project Manager	$60,000	June 30, 2019	A contract agreement with an Administrative Coordinator or Project Manager
Retain PCT, IDM, SLP, Behavioral, and/or AAC Specialists	$200,000	February 28, 2021	Contract agreements with Specialists
Online Toolbox Website Development *(Research platforms and obtain bids for work identifying the most cost-effective option.)*	$25,000	June 30, 2020	Contract agreement for services with online platform
Training Modules Content Development	$25,000	June 30, 2020	Contract agreement for services with content developer
Materials Development	$25,000	January 31, 2020	Contract agreements with specialists and content developers
Purchase Technology Devices *(Research platforms and obtain bids for work identifying the most cost-effective option.)*	$60,000	December 31, 2019	Purchased devices with loaded content
Market/Outreach the Toolbox	$20,000	February 28, 2021	Digital and print marketing for Toolbox

EXHIBIT C

Ability Now Bay Area Budget

Project Manager: Leslie Visbal

Line Item	Amount
Professional Consultants (SLP, Behavioral, ACC, PCT, IDM, etc)	$200,000
Materials Development	$25,000
Training Modules Content Development	$25,000
Online Toolbox Website Development	$25,000
Administrative Coordinator/Project Manager Salary	$60,000
Technology Device Costs (iPads (60), GoPros (18), Boardmaker Subscriptions (12 @ 2yrs), Laminators (18), Laminating Sheets (36 @ 200/pk), Velcro Dots (36 @ 1000/pk)	$60,000
Marketing/Outreach for Online Toolbox (Press releases and newspaper inserts – digital and print)	$20,000

PROVIDER GROUP COLLABORATIVE
COMMUNICATION AND TRAINING MODULE ONLINE TOOLBOX PROJECT BUDGET
June 30, 2019 - June 30, 2021

	2019-2020	2020-2021	Total
Professional Consultants (a)	$120,000	$80,000	$200,000
Materials Development	$25,000	$0	$25,000
Training Modules Content Development	$25,000	$0	$25,000
Online Toolbox Website Development	$25,000	$0	$25,000
Administrative Coordinator/Project Manager	$36,000	$24,000	$60,000
Technology Device Costs (b)	$60,000	$0	$60,000
Marketing/Outreach for Online Toolbox (c)	$10,000	$10,000	$20,000
TOTAL	$301,000	$114,000	$415,000

(a) PCT, IDM, SLP, Behaviorial, and/or AAC Specialists @ $2500 for 20 months
(b) iPads (60), GoPros (18), Boardmaker Subscriptions (12 @ 2 years),
Laminators (18), Laminating Sheets (36 @200/pk), Velcro dots (36 @ 1000/pk)
(c) Press releases and newspaper inserts to market the online toolbox

PROVIDER GROUP COLLABORATIVE
COMMUNICATION AND TRAINING MODULE ONLINE TOOLBOX PROJECT BUDGET
June 30, 2019 - June 30, 2020

	Jun-19	Jul-19	Aug-19	Sep-19	Oct-19	Nov-19	Dec-19	Jan-20	Feb-20	Mar-20	Apr-20	May-20	Jun-20	Total
Professional Consultants	$0	$10,000	$10,000	$10,000	$10,000	$10,000	$10,000	$10,000	$10,000	$10,000	$10,000	$10,000	$10,000	$120,000
Materials Development	$0	$0	$0	$0	$0	$0	$0	$25,000	$0	$0	$0	$0	$0	$25,000
Training Modules Content Development	$0	$0	$0	$2,500	$2,500	$2,500	$2,500	$2,500	$2,500	$2,500	$2,500	$2,500	$2,500	$25,000
Online Toolbox Website Development	$0	$0	$0	$2,500	$2,500	$2,500	$2,500	$2,500	$2,500	$2,500	$2,500	$2,500	$2,500	$25,000
Administrative Coordinator/Project Manager	$0	$3,000	$3,000	$3,000	$3,000	$3,000	$3,000	$3,000	$3,000	$3,000	$3,000	$3,000	$3,000	$36,000
Technology Device Costs	$0	$0	$0	$0	$0	$0	$60,000	$0	$0	$0	$0	$0	$0	$60,000
Outreach/Marketing for Online Toolbox	$0	$0	$0	$0	$0	$0	$0	$0	$10,000	$0	$0	$0	$0	$10,000
TOTALS	**$0**	**$13,000**	**$13,000**	**$18,000**	**$18,000**	**$18,000**	**$78,000**	**$43,000**	**$28,000**	**$18,000**	**$18,000**	**$18,000**	**$18,000**	**$301,000**

PROVIDER GROUP COLLABORATIVE
COMMUNICATION AND TRAINING MODULE ONLINE TOOLBOX PROJECT BUDGET
July 1, 2020 - June 30, 2021

	Jul-20	Aug-20	Sep-20	Oct-20	Nov-20	Dec-20	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Total
Professional Consultants	$10,000	$10,000	$10,000	$10,000	$10,000	$10,000	$10,000	$10,000	$0	$0	$0	$0	$80,000
Administrative Coordinator/Project Manager	$3,000	$3,000	$3,000	$3,000	$3,000	$3,000	$3,000	$3,000	$0	$0	$0	$0	$24,000
Outreach/Marketing for Online Toolbox	$0	$0	$0	$0	$0	$0	$0	$10,000	$0	$0	$0	$0	$10,000
TOTALS	**$13,000**	**$13,000**	**$13,000**	**$13,000**	**$13,000**	**$13,000**	**$13,000**	**$23,000**	**$0**	**$0**	**$0**	**$0**	**$114,000**

PROJECT GRAND TOTAL **$415,000**

Regional Center of the East Bay
Contracts for Board Review/Approval

9/13/19 Date submitted to RCEB Board for review

7/10/19 Date approved by RCEB Board Executive Committee (if applicable)

(9/23/19) Date approved by RCEB Board

Operations_____

Purchase of Service __X___

The following contracts have been reviewed by Lynn Nguyen, Director, Finance and Administration and Elisabeth Kleinbub, Executive Director, both of whom recommend approval by the RCEB Board of Directors.

Purpose of Contract	Consumers Served (if applicable)	Contractor Name	Term of Contract	Rate of Reimbursement	NOTES:
Community Placement Plan (CPP) Service Provider Agreement	One (1) 4-bed Specialized Residential Facility (total of 4 consumers)	National Mentor Health Care, LLC DBA CA Mentor	Effective May , 2019 through April 2024	Maximum monthly rate $75,646.80 per month ($18,911.70 x 4) $75,646.80 x 12= $907,761.60 annual disbursement	This contract represents the Community Placement Plan service provider agreement for Contractor to operate one (1), four (4)-bed Specialized Residential Facility (SRF) for individuals who are experiencing a crisis and need to be placed for a definite period of time as an alternative to hospitalization. The provider is assuming operations of the home due to Anka Behavioral Health's bankruptcy and termination of service.

SERVICE PROVIDER AGREEMENT

(27971 Fairview Avenue, Hayward, CA 94542)

This Service Provider Agreement (this "**Agreement**"), dated as of May 31, 2019, is entered into by and between REGIONAL CENTER OF THE EAST BAY, INC., a California nonprofit corporation ("**RCEB**") and NATIONAL MENTOR HEALTH CARE, LLC, a limited liability company (the "**Service Provider**") in accordance with the following facts:

RECITALS

A. This Agreement concerns the particular property commonly known as 27971 Fairview Avenue, Hayward, CA (the "**Residence**"). The Residence is owned by Fairview Homes, LLC, a California limited liability company whose sole member is Housing Consortium of the East Bay, a 501(c)3 non-profit organization (the "**NPO**").

B. RCEB has selected the Service Provider to lease the Residence from the NPO and operate the Residence under the terms of this Agreement. The Service Provider represents and warrants that it is qualified to provide the services described herein.

C. This Agreement describes (1) the scope of the services to be provided by the Service Provider to the individuals with developmental disabilities (the "**Consumers**") who will reside in the Residence, (2) the obligations of the Service Provider to RCEB and (3) the compensation to which the Service Provider will be entitled from RCEB in exchange for performing such services and satisfying such obligations.

NOW, THEREFORE, in consideration of the following mutual covenants, the parties agree as follows:

1. Operation of the Residence; the Program Plan. The Service Provider shall operate the Residence in accordance with the Service Provider's approved Program Plan (aka the Program Design) attached as Exhibit "A" hereto, and in a manner specifically designed to address the needs of all of the Consumers referred from RCEB. In particular, the Service Provider shall operate the Residence as a specialized residential facility. The primary purpose of developing this residence is to provide a supportive adult residential facility for individuals who are experiencing a crisis and need to be placed for a definite period of time as an alternative to hospitalization. The maximum length of stay shall not exceed eighteen (18) months, unless the Interdisciplinary Team (IDT) determines that the services are still needed to stabilize the individual. Consumers currently living in the community, in need of more intensive crisis support services, will be placed in the home. The Consumers who will live in this Residence will require enriched staffing. The Residence will provide active treatment to Consumers who may be dually diagnosed with an intellectual disability and a mental health diagnosis. The provider must be prepared to work collaboratively with RCEB, medical professionals, crisis supports and other necessary community resources. The home is to be licensed for four (4) individuals ages 18-59 with one bed available for a non-ambulatory consumer. The Program Plan is incorporated herein by this reference.

1.1 Occupancy Requirements. All beds in the Residence shall be for the exclusive use of Consumers referred by RCEB. No other individuals shall be placed within the Residence without the express written consent of RCEB. The Service Provider shall not deny admission into a Residence of any Consumer referred by RCEB; the Service Provider must accept all RCEB referrals. Subject to the foregoing, the Service Provider will review and screen admission packets of potential Consumers, coordinate with RCEB for the admission of each Consumer to the Residence and develop a service plan with and for each Consumer.

2. Term. This Agreement is effective on the date set forth on Exhibit "B" (the "**Commencement Date**"), which is expected to occur in May, 2019, and shall continue until the end of the term of the Lease (defined in Section 6 below), unless this Agreement is terminated earlier in accordance with the provisions in Section 22 below entitled, "Termination and Other Remedies". After the Commencement Date occurs, the parties shall sign and deliver to each other the Confirmation of Commencement Date attached hereto as Exhibit "B".

3. Payment. The Service Provider's rate of payment for the services provided herein is as follows:

3.1 Maximum Number of Consumers at Residence; Maximum Overall Payment Based on Occupancy. The maximum number of Consumers who may reside at the same time in the Residence is four (4) individuals. The maximum rate of payment that RCEB shall remit to the Service Provider shall be Eighteen Thousand, Nine Hundred and Eleven Dollars and Seventy One Cents ($18,911.70) per Consumer per month (the "**Established Rate**"). Therefore, the maximum contract amount payable by RCEB to the Service Provider under this Agreement shall be Seventy Five Thousand, Six Hundred and Forty Six Dollars and Eighty Cents ($75,646.80) per month (the "**Maximum Monthly Rate**"). The Maximum Monthly Rate has been calculated by multiplying the Established Rate per Consumer by the maximum number of Consumers who are allowed to reside at the Residence at the same time. The Maximum Monthly Rate includes the Consumer's Social Security Income portion.

3.2 Notice of Median Rates. The Service Provider acknowledges that RCEB informed the Service Provider of the applicable and correct median rates, as regulated under Welfare and Institutions Code §§4681.6(b), 4689.8(b) and 4691.9(b) (as applicable), as part of the negotiations in setting the Maximum Monthly Rate. This Maximum Monthly Rate is inclusive of all SSI/SSA benefits.

3.3 Other Rate Adjustments. RCEB reserves the right to update and revise the Established Rate and the Maximum Monthly Rate from time to time to more accurately reflect the Service Provider's costs for its provision of services at the Residence, based on a comparison of the Service Provider's expenses over time, subject to the other provisions in this Agreement.

3.4 Ancillary Services. Any ancillary services to be provided by the Service Provider to Consumers (that is, additional services not expressly included within the rate set forth in this Agreement) must be identified by the Interdisciplinary Team (typically consisting of representatives of RCEB, the Consumer [or his or her representative] and the Service Provider), and must be in accordance with each Consumer's Individual Program Plan (as defined in Welfare & Institutions Code section 4646 et seq.) (the "**IPP**"). RCEB's advance written authorization for

all ancillary services is a condition precedent to the Service Provider's entitlement to receive payment for such ancillary services.

3.5 Invoices and Payments. In consideration of the Service Provider's services herein, performed in a manner acceptable to RCEB, RCEB shall reimburse the Service Provider monthly, in arrears, upon submission of an invoice in a manner prescribed by RCEB. The Service Provider's monthly invoices to RCEB must specify the billing period, the total number of beds occupied and vacant each day (whether or not RCEB is paying an unoccupied bed rate), and, when required, any supporting documentation. The Service Provider shall deliver each invoice and supporting documentation to RCEB on a timely basis. RCEB shall remit all payments under this Agreement to the Service Provider in accordance with RCEB's billing cycle.

3.6 Electronic Billing. Service Provider shall use electronic billing under DDS's Regional Center e-Billing System Web application for all of Service Provider's invoices to RCEB under this Agreement, as set forth in Welfare and Institutions Code Section 4641.5(a)(1) through (2).

3.7 Sole Compensation. The consideration to be paid by RCEB to the Service Provider as provided herein shall be the sole compensation for the Service Provider's expenses incurred in the performance of its obligations hereof, unless otherwise expressly authorized in writing by RCEB.

3.8 Repayment of Funds. Should RCEB or the State of California (the "**State**"), according to applicable law, determine that any funds paid by RCEB hereunder were not expended by the Service Provider in accordance with the terms of this Agreement, the Service Provider shall repay such funds to RCEB within 30 days of demand.

4. [Deleted]

5. The Service Provider's General Duties.

5.1 Quality Assurance Evaluation. The Service Provider shall successfully complete a quality assurance evaluation conducted by RCEB a minimum of once every three years.

5.2 Consumer's Admission Agreement. The Service Provider shall comply with the terms and conditions specified in each Consumer's Admission Agreement.

5.3 Licensing. The Service Provider shall at all times (1) maintain, in full force and effect, the license issued by the Department of Social Services (or other applicable State agency) for the Residence, (2) notify RCEB of any change in status of its license, registration or certification and (3) submit copies to RCEB of all renewed licenses, certificates and credentials as they are renewed.

5.4 Vendor Disclosure Statement. Upon the execution of this Agreement, and at all other times upon RCEB's request, Service Provider shall complete, sign and deliver to RCEB a Vendor Disclosure Statement (DDS Form DS 1891), a copy of which can be obtained from

DDS's website. Service Provider shall also submit an updated signed and dated DS 1891 Form to RCEB within 30 days of any change in the information previously submitted pursuant to this section.

5.5 HCBS Provider Agreement. The Service Provider represents and warrants that it has signed the State Department of Health and Human Services' Home and Community Based-Services Provider Agreement and delivered such signed document to RCEB.

5.6 Drug-Free Workplace. The Service Provider shall maintain a drug-free workplace. The Service Provider and its employees shall not unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code section 812, including marijuana, heroin, cocaine, and amphetamines, at any Service Provider facility or the Residence. Violation of this provision shall constitute a material Breach of this Agreement.

5.7 RCEB's Zero Tolerance Policy. RCEB has adopted a Zero Tolerance Policy regarding Consumer abuse (the "**Zero Tolerance Policy**"). The Zero Tolerance Policy is posted on RCEB's website, in the section entitled Policies, Performance & Finances, at: http://www.rceb.org/docs/ZeroTolerancePolicy.pdf. The Zero Tolerance Policy is incorporated herein by this reference. The Service Provider shall comply with the Zero Tolerance Policy at all times.

5.8 Real Property Tax Exemption. If Service Provider is a nonprofit organization, Service Provider shall take all necessary actions within its control to insure the Residence's real property tax exemption is maintained, including but not limited to: (1) filing for an Organizational Clearance Certificate (Form BOE-277) with the State Board of Equalization within 90 days after this Agreement is executed (or providing proof to RCEB that Service Provider has already received its Organizational Clearance Certificate from the SBE); (2) timely renewing such Certificate so that it never lapses during Service Provider's lease of the Residence; and (3) filing with the applicable County Tax Assessor a request for property tax exemption via form BOE-267 (and Form BOE 267-H, if applicable) within 30 days after the Lease term commences, and annually renewing such exemption once it has been obtained. (Forms BOE-267 and 267-H are available at each County Assessor's office. Form BOE-277 is available at the following website: https://www.boe.ca.gov/proptaxes/pdf/boe277.pdf).

5.9 Other General Duties. The Service Provider shall, at all times during the term of this Agreement, (1) certify that all standards are met, as stated in the Program Plan, prior to being listed as an approved provider of service, (2) meet the minimum standards established by DDS for the Service Provider's classification or program, (3) notify RCEB of changes in circumstances of any of RCEB's Consumers and (4) notify the parents and/or guardians of Consumers regarding any significant changes in the care and treatment of such Consumers.

6. The Lease. The Service Provider shall lease the Residence from the NPO under a written lease, in form and content attached hereto as Exhibit "C" (the "**Lease**"). Service Provider agrees to execute the Lease within five business days after RCEB's request to do so.

6.1 Payments Under the Lease. The Lease will require the Service Provider to pay rent to the NPO in the amount of $12,524.16 per month (the "**Rent**"). During the term of this

Agreement, the Service Provider will receive funding from various sources as consideration for the performance of its obligations to Consumers of the Residence and under the Lease. Such funding shall include eligible Consumers' SSI/SSA room and board benefits, any State supplemental payments, the Maximum Monthly Rate, and funds the Service Provider may receive from other sources. From all of these sources of funds, the Service Provider shall pay the Rent and perform its other obligations under the Lease and under this Agreement. The Service Provider shall pay all obligations under the Lease in the manner and under the procedures set forth in the Lease, all of which terms are incorporated herein by this reference.

6.2 Lease Expenses. RCEB and the Service Provider have taken the Rent and all of the Service Provider's other Lease obligations into account (e.g., insurance premiums, utility costs and the cost to repair damages to the Residence caused by Consumers) in negotiating the Service Provider's rate of payment. Therefore, in consideration for the Service Provider's receipt of the Maximum Monthly Rate, RCEB shall have no obligation to pay any for any of the Service Provider's obligations under the Lease. In particular, the Service Provider shall timely pay all of the following under the Lease: (1) monthly rent of $10,124.91, as adjusted from time to time, (the "**Monthly Base Rent**"); (2) the expense of complying with any private encumbrances (such as assessments in a common interest development, for example); (3) the cost of simple maintenance around the Residence, such as changing light bulbs and smoke detector batteries and drain de-clogging; (4) the Landlord's property management fee, equal to 5% of the Base Monthly Rent; (5) Landlord's property maintenance fee of $775 per month; (6) a replacement reserve of $300 per month; (7) any real property taxes and assessments applicable to the property on which the Residence is located; and (8) various insurance premiums and costs (collectively, the "**Lease Expenses**"). RCEB may also elect to require the Service Provider to remit the Base Monthly Rent directly to any lender, on terms determined by RCEB.

6.3 Specific Obligations Under the Lease. All of the provisions of the Lease relating to the Service Provider are incorporated herein by this reference. Thus, for example and without limitation, the Service Provider shall not do any of the following without the express written consent of RCEB, which may be withheld in RCEB's sole discretion: (1) permit any lien or encumbrance of any nature to encumber the Residence, other than those liens and encumbrances of record as of the date the Service Provider signs the Lease; (2) record any easement or allow any other encumbrance to affect the Residence; (3) assign, sublease or otherwise transfer its leasehold interest in the Residence to any other party, in part or in full; or (4) modify, amend or terminate the Lease.

6.4 Assignment of the Lease. In no event shall the termination of this Agreement result in a termination of the Lease. Rather, if this Agreement terminates for any reason, with or without cause, or by Breach (as defined in Paragraph 20.1 below) by either Party, then (1) RCEB will identify a new service provider (the "**Designee**") as soon as practicable to accept assignment of the Lease from Service Provider, (2) the Service Provider shall assign its rights and obligations under the Lease to the Designee within five days of RCEB's request to do so, on a form provided by RCEB and (3) the provisions in Section 12.4 of the Lease (entitled, "Tenant's Failure to Perform; Special Assignment Rights Available to RCEB"), including Paragraphs 12.4.1 through 12.4.10 of the Lease, shall apply with respect to the Service Provider and the Designee. If this Agreement terminates for any reason other than Service Provider's Breach, (1) RCEB will immediately accept full responsibility for all of the Service Provider's obligations under the Lease,

and (2) upon such Lease assignment to the Designee, the Service Provider will have no further rights or obligations under the Lease.

7. Insurance.

7.1 Workers' Compensation Insurance. The Service Provider agrees to maintain, in full force and effect, a workers' compensation insurance policy at the maximum statutory rate at all times during the term of this Agreement.

7.2 Liability Insurance. The Service Provider agrees to purchase and maintain commercial and general liability insurance in the amount of not less than $1,000,000 per claim, on an occurrence basis, during the period of this Agreement; provided, however, RCEB reserves the right to increase the liability limit under such insurance policy not more than once during any two-year period during the term of this Agreement, based on advice by its insurance broker or other consulting professional. The commercial general liability insurance shall include endorsements for premises and operations liability and for broad form contractual liability. Insurers who are admitted to do business in the State of California and rated A- and X or higher in the most recent edition of Best Insurance Guide shall issue all insurance policies. All liability insurance policies shall be endorsed to name RCEB as an additional insured during the term of this Agreement. **The Service Provider shall provide to RCEB a true and correct copy of the Named Additional Insured Endorsement at the beginning of the term of this Agreement.** Each policy of insurance providing coverage required hereunder shall provide that it may not be cancelled or materially modified unless RCEB is provided at least 30 days prior written notice thereof. **The Service Provider shall also provide to RCEB a Certificate of Insurance annually, which certifies the existence of the insurance required under this Agreement.** To the extent these provisions are not the same as the provisions in the Lease regarding insurance, the Service Provider shall comply with those provisions that most broadly protect RCEB.

8. Indemnity. The Service Provider shall indemnify, defend, and hold harmless RCEB, and each of its representatives, officers, directors, agents, consultants and employees and their respective successors and assigns, including but not limited to the State of California and its agents and employees (collectively referred to as the "**RCEB Indemnified Parties**"), from any and all losses, costs, expenses, (including but not limited to reasonable attorney's fees), liabilities, claims, court costs, demands, debts, causes of action, fines, judgments and penalties which arise from or relate to (a) death or injury to people or damage to property in connection with the negligent or willful acts, errors or omissions of the Service Provider or its employees, agents, consultants or anyone employed by such Service Provider to act on its behalf, (b) claims under workers' compensation laws or other employee benefit laws by the Service Provider's agents or employees, (c) the Service Provider's failure to fulfill its obligations under this Agreement or the Lease, in strict accordance with its terms, including the Service Provider's breach of any representations or covenants given in this Agreement or (d) violation of any local, State, or federal law, regulation or code by the Service Provider or by any of the Service Provider's employees, agents, consultants or subcontractors in connection with the conduct of their activities performed in connection with this Agreement.

8.1 Assumption of Defense. The Service Provider will assume the defense, at its sole expense, and with legal counsel acceptable to RCEB, of any claims or litigation as to which

it has an indemnification obligation hereunder; RCEB shall cooperate with the Service Provider and its counsel in the defense of any such claims, provided, however, at RCEB's request, those costs or expenses associated with such cooperation shall be reimbursed by the Service Provider. If the Service Provider fails to assume the defense of any claim or litigation as to which it has or is determined to have had the obligation to indemnify, RCEB Indemnified Parties will have the right to assume their own defense, and the Service Provider will be obligated to reimburse RCEB Indemnified Parties for any and all reasonable expenses (including, but not limited to attorney's fees) incurred in defense of such claims or litigation, in addition to the Service Provider's other indemnity obligations hereunder. The Service Provider shall control the defense and settlement of any claim; provided, however, if the Service Provider fails to promptly assume the defense of any claim or litigation as to which it has or is determined to have had the obligation to indemnify, RCEB shall have such control.

8.2 Survival of Provisions. The indemnity set forth in this Section 8 shall apply during the term of this Agreement and shall also survive the expiration or termination of this Agreement, until such time as action against all of RCEB Indemnified Parties on account of any matter covered by such indemnity is barred by the applicable statute of limitations. To the extent these provisions are not the same as the provisions in the Lease regarding the Service Provider's indemnity obligations, the Service Provider shall comply with those provisions that most broadly protect RCEB.

9. Assignments Prohibited. The Service Provider is prohibited from transferring or assigning its rights and obligations under this Agreement to any third party. If the Service Provider is an entity, then any one time or cumulative transfer by the owners of the Service Provider of 50 percent or more of their Interest (defined below) in the Service Provider to any third party shall constitute such a prohibited assignment. For purposes of this paragraph, an individual's or entity's "**Interest**" in the Service Provider means such party's ownership interest or voting interest in the Service Provider, or such individual's right to receive net income from the Service Provider's operations.

10. Subcontracting. The Service Provider shall not subcontract any of its duties, burdens, or obligations under this Agreement without express prior written permission of RCEB, which may be withheld in its sole and absolute discretion. (For purposes of this Agreement, the terms "subcontract" and "subcontracting" also includes entering into partnerships, joint ventures and other arrangements involving the sharing, delegation or oversight of any of the Service Provider's rights or obligations under this Agreement.) If RCEB approves such subcontracting, (1) the subcontractor shall also comply with all of Service Provider's obligations under this Agreement, (2) RCEB shall not be responsible for any payments of any kind directly to any subcontractor under any circumstances, (3) RCEB shall not have any liability for any actions of any subcontractor and (4) the Service Provider shall not terminate or materially modify its agreement with such subcontractor unless the Service Provider first obtains the written consent of RCEB to do so, which consent shall not be unreasonably withheld.

11. Change in Key Management Personnel Requires RCEB's Consent. The Service Provider shall not change key management personnel without the prior consent of RCEB, which shall not be unreasonably withheld. For purposes of this Agreement, the key management

personnel of the Service Provider are (1) Claire Williamson, (2) Magdalena Pruitt (3) anyone else reasonably identified by RCEB as key management personnel.

12. Nondiscrimination in Services, Benefits and Facilities.

12.1 During the performance of this Agreement, the Service Provider shall not unlawfully deny the Agreement's benefits to any person on the basis of religion, color, ethnic-group identification, sex, sexual preference, sexual orientation, age, physical or mental disability, nor shall it discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age (over 40), sex or sexual orientation. The Service Provider shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

12.2 The Service Provider shall comply with the provision of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.), the regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.), the provision of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Government Code, Sections 11135-11139.5), and the regulations or standards adopted by the awarding State agency to implement such article.

12.3 The Service Provider shall permit access by representatives of the Department of Fair Employment and Housing and the awarding State agency, upon reasonable notice, at any time during normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, other sources of information and its facilities as such Department or agency shall require to ascertain compliance with this section.

12.4 The Service Provider shall give written notice of its obligations under this section to labor organizations with which it has a collective bargaining or other agreement.

13. Monitoring of the Service Provider. In accordance with the Welfare and Institutions Code, DDS and/or RCEB must monitor services purchased for RCEB's Consumers. Unless otherwise indicated, the Service Provider shall be notified of intended visits and their purpose at least 48 hours in advance of the visit. Unannounced visits shall be limited to situations where the circumstances clearly warrant such action; i.e., where there is reason to believe that the purpose of the visit would be thwarted if advance notice were given. In such event, RCEB and/or DDS may recover from the Service Provider funds paid for services when RCEB or DDS determines that services were not provided in accordance with RCEB's authorization or with applicable State laws or regulations. The Service Provider has the right to appeal actions taken by RCEB or DDS as a result of their monitoring findings, in accordance with applicable law and regulations.

14. Books and Records. During the term of this Agreement and for a minimum of five years thereafter, the Service Provider shall maintain records of services to Consumers to verify the provision of services and to document progress toward each Consumers' goals (or lack thereof), or changes in each Consumer or his or her behavior. (If a service is on an infrequent or irregular basis, records must be specific to the date, time, location, and service provided.)

15. DDS and RCEB Audits. The Service Provider shall make available any books and records, including corporate records, for audit, inspection or reproduction by authorized representatives of DDS, RCEB or any other appropriate State agency; such inspection of records shall be conducted with the minimum amount of disruption to the Service Provider's program. The Service Provider agrees to utilize and be bound by Title 17, California Code of Regulations, Sections 50600 et seq., should the Service Provider elect to appeal any audit adjustments. The Service Provider also agrees to accept liability for any audit adjustments disclosed by audit and make prompt payment of amounts owed, unless appealed and liquidation is stayed pursuant to Title 17, California Code of Regulations, Section 50605.

16. Service Provider Reviews and Audits: This Section 16 applies when all payments Service Provider cumulatively receives from RCEB and other regional centers during Service Provider's fiscal year (as determined on the Commencement Date of this Agreement) equals or exceeds $500,000.

16.1 Service Provider shall, at RCEB's request and at the Service Provider's cost, cause an independent Certified Public Accountant to annually (1) provide either an independent review report of the Service Provider's financial statements when the amount received from all regional centers during the Service Provider's fiscal year is more than or equal to $500,000, but less than $2,000,000, or provide an independent audit if the amount received from all regional centers during the Service Provider's fiscal year is equal to or more than $2,000,000; and (2) provide a copy of either the review results (the "**Review Report**") or the annual audit results (the "**Audit Report**") to RCEB.

16.2 If the Service Provider engages an independent Certified Public Accountant to review (but not audit) Service Provider's financial statements, (i) the review shall, at minimum, comply with the provisions set forth in Welfare and Institutions Code Section 4652.5(e) and (ii) the Review Report shall, at minimum, comply with the provisions set forth in Welfare and Institutions Code Section 4652.5(f).

16.3 Service Provider shall commence the independent audit or review within 60 days after the end of Service Provider's fiscal year. Service Provider shall complete the audit or review within 7 months after the end of the Service Provider's fiscal year.

16.4 In accordance with Welfare and Institutions Code Section 4652.5(b), Service Provider shall provide copies of the independent Audit Report or Review Report to RCEB within 30 days after completion of the audit or review.

16.5 If RCEB believes that any issues identified in the Audit Report or Review Report have an impact on services the Service Provider provides to RCEB's Consumers, RCEB will so notify the Service Provider and provide the Service Provider with 30 days to resolve such issues. Service Provider's failure to resolve such issues to RCEB's reasonable satisfaction within such 30-day period shall constitute a material breach of this Agreement. As a result of such uncured breach, RCEB may, among its other remedies, terminate this Agreement.

16.6 If RCEB does not find any issues in Service Provider's prior year Audit Report or Review Report, Service Provider my apply, in writing, to RCEB for a two-year exemption from the independent Audit Report or Review Report.

17. Cap on Service Provider's Administrative Costs. Service Provider agrees that it will not spend more than 15% of the funds it receives from RCEB under this Agreement on the Service Provider's administrative costs. For purposes of this paragraph, the Service Provider's administrative costs shall include all of the items listed under California Welfare and Institutions Code §4629.7(a)(1) through (15), as such provisions may be amended from time to time. Conversely, those costs the Service Provider incurs that are immediately associated with the services the Service Provider offers to RCEB's Consumers are considered direct service expenditures, and are not administrative costs. To insure the Service Provider complies with these requirements, the Service Provider shall provide RCEB with access to all books, documents, papers, computerized data, source documents, consumer records, and other records pertaining to the Service Provider's negotiated rates, upon RCEB's request.

18. Independent Contractor Status. No relationship of employer and employee is created by this Agreement. The parties do not intend to create a partnership or similar relationship by this Agreement. The Service Provider and its agents and employees shall, in the performance of this Agreement, act in independent capacities, as independent contractors, and not as officers, employees, agents or representatives of RCEB or the State of California. The Service Provider agrees to perform its services at all times in strict accordance with currently approved methods and practices, and the sole interest of RCEB is to ensure that the Service Provider's services shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the terms of this Agreement.

19. Applicable State Laws and Regulations. The Service Provider shall comply with all California and Federal statutes, laws, and regulations applicable to the Service Provider, and shall render services in accordance with the applicable provisions of California State laws, regulations promulgated thereunder, and the terms of this Agreement. Any provisions of this Agreement which conflict with State and Federal statutes and regulations are hereby amended to conform to the provisions of those statutes and regulations; such amendments shall be effective on the effective date of the statute(s) or regulation(s) necessitating it, and shall be binding on the parties even though such amendment may not have been reduced to writing as a part of this Agreement or an amendment hereto.

19.1 HIPAA Compliance. Under this Agreement, "**HIPAA**" means the federal Health Insurance Portability and Accountability Act (Pub. L. No. 104-191), the HIPAA regulations as set forth in 45 C.F.R. Parts 160 and 164 (aka the HIPAA Privacy Rule), and regulations on Standards for Privacy of Individually Identifiable Health Information. All parties shall at all times remain in compliance with the mandatory provisions of HIPAA, including but not limited to the HIPAA Privacy Rule. In performing its duties under this Agreement, Contractor may have access to "protected health information," including but not limited to "individually identifiable health information," and is therefore a "Business Associate" as those terms are defined in HIPAA. As such, concurrently with its execution of this Agreement, Contractor shall execute the "*Business Associate Agreement – Contractor*" attached to this Agreement and incorporated herein as Exhibit "D".

20. The Funding Contingency. Notwithstanding anything in this Agreement to the contrary, the validity of this Agreement (including RCEB's obligation to remit payments to the Service Provider) is conditioned on RCEB's receipt of adequate funds from DDS to pay for the services described in this Agreement (the "**Funding Contingency**"). The Funding Contingency is a part of this Agreement because RCEB's annual funding agreement with DDS provides that such funding agreement is subject to the appropriation of funds by the Legislature, and that if such funds are not appropriated for any fiscal year into which such funding agreement extends, the funding agreement is of no force and effect. RCEB shall therefore have the right and option to terminate this Agreement without liability, and such termination shall be deemed a failure of the Funding Contingency, if (1) DDS for any reason fails to deliver funds to RCEB for any period covered by this Agreement or (2) RCEB receives funds from DDS for a period covered by this Agreement but RCEB determines that such funds are inadequate to pay for all of the vendor services and other expenses which RCEB expects to incur in such fiscal year, and therefore elects to fund other services rather than the services identified in this Agreement or (3) RCEB receives funds from DDS for a period covered by this Agreement and initially allocates a portion of such funds for the services in this Agreement, but thereafter elects to reallocate some or all of such DDS funds to fund services other than the services in this Agreement. When insufficient funds exist for RCEB to pay for all potential services, RCEB shall have the right (under clauses (2) and (3) above) in its sole and arbitrary discretion to fund services other than the services identified in this Agreement, based on which services RCEB believes are in its best interests. If there is a failure of the Funding Contingency, then (1) RCEB shall have no liability to pay any funds whatsoever to the Service Provider (other than funds for services previously validly performed by the Service Provider and for which RCEB has received DDS funding) or to furnish any other consideration under this Agreement and (2) neither party shall be obligated to further perform any provisions of this Agreement (other than those obligations intended to survive termination of this Agreement).

In addition to the above, if there are insufficient funds available from DDS to pay for all of the vendor services and other expenses that RCEB expects to incur in any fiscal year, as determined by RCEB in its sole and arbitrary discretion, RCEB shall have the option at any time, on 30 days' notice to the Service Provider, to reduce or change the scope of services being provided under this Agreement. In such event, the parties will in good faith negotiate to attempt to agree on the Service Provider's new amount of compensation under the modified Agreement. If the parties are unable to agree on the Service Provider's new compensation for its modified services within such 30 day period, RCEB shall then either (1) terminate this Agreement, because of the failure of a Funding Contingency or (2) rescind its modification of the Service Provider's services, in which event this Agreement shall continue in full force and effect without such modification in services or compensation.

21. Default and Breach.

21.1 Notice of Default; Breach. If a party (the "**Complainant**") asserts that the other party to this Agreement has violated any of the provisions of this Agreement, the Complainant shall so inform the other party (the "**Party in Default**") in writing and shall state the nature of such default in detail (the "**Notice of Default**"). If the default is curable, the Complainant shall give the Party in Default 30 days from receipt of the Notice of Default to cure such default. The failure of the Party in Default to timely cure the default shall constitute a breach of this Agreement by the Party in Default (the "**Breach**"); provided, however, if the default is curable but

is not reasonably susceptible of cure within such 30-day period, the Party in Default shall not be considered in Breach as long as the Party in Default commences the cure within such 30-day period and thereafter diligently prosecutes such cure to completion.

21.2 Service Provider's Default Based on Significant Consumer Dissatisfaction. If RCEB concludes, in its reasonable judgment, that two or more of the Service Provider's Consumers are significantly dissatisfied with the services provided by the Service Provider, RCEB may inform the Service Provider in the Notice of Default that such default is non-curable. In such event, the Service Provider (1) will not have any cure rights and (2) shall be considered automatically in Breach of this Agreement on the 30th day after RCEB delivers the Notice of Default.

21.3 Service Provider's Default Based on Severe Misconduct. If the misconduct of the Service Provider or its agents, employees or representatives results in imminent danger to the health or safety of any Consumer, RCEB may inform the Service Provider in the Notice of Default that such default is non-curable. In such event, the Service Provider (1) will not have any cure rights and (2) shall be considered automatically in Breach of this Agreement on the second business day after RCEB delivers the Notice of Default. Circumstances which constitute imminent danger to the health or safety of a Consumer include, but are not limited to: physical, emotional, or mental abuse, sexual misconduct, Consumer abandonment or neglect, theft of a Consumer's money or property, violation of a Consumer's rights under the law, placement of a Consumer in physical danger, or any other circumstance that brings potential physical or emotional harm to a Consumer.

22. Termination and Other Remedies.

22.1 RCEB's Remedies After Notice of Default. If the Service Provider fails to perform under this Agreement, then RCEB may, upon its delivery of a Notice of Default, withhold all or part of the unremitted funds due under this Agreement (and under any other agreement between RCEB and the Service Provider) until satisfactory corrective measures are taken by the Service Provider.

22.2 RCEB's Remedies Upon Breach. Upon the Service Provider's Breach of this Agreement, RCEB may (1) transfer all or part of the tasks to be performed under this Agreement to another provider, either temporarily or permanently, and/or (2) perform the task itself and at the expense of the Service Provider and/or (3) terminate this Agreement for cause and without further notice.

22.3 Service Provider's Remedies. If RCEB defaults and then fails to timely cure its default under this Agreement, then the Service Provider may, upon a Breach by RCEB, terminate this Agreement and obtain recovery of its actual damages as its sole and exclusive remedy. The Service Provider hereby waives all right to seek or obtain consequential damages, indirect damages, lost profits and punitive damages from RCEB.

22.4 Termination Without Cause. Notwithstanding anything in this Agreement to the contrary, either Party to this Agreement may terminate this Agreement at any time without cause upon 180 calendar days prior written notice to the other Party. Notwithstanding the

foregoing, if a failure of the Funding Contingency (described in Section 20 above) occurs, RCEB may, at its option, terminate this Agreement without cause on 60 days written notice to the Service Provider.

22.5 Consequences of Termination. Upon the termination of this Agreement for any reason, with or without cause, the Service Provider shall, immediately on request of RCEB, do all of the following: (1) execute a Lease assignment agreement to convey all of its rights and obligations as a tenant under the Lease to the Designee (defined in Paragraph 6.4 above); and (2) execute all other documents and perform all other acts reasonably requested by RCEB to insure a smooth transition of all of the Service Provider's rights and responsibilities under the Lease to the Designee. If this Agreement terminates for a reason other than the Service Provider's Breach hereof, but the Service Provider then fails to immediately perform the acts described in this paragraph, the Service Provider shall be deemed in Breach of this Agreement as well.

22.6 Specific Performance. The parties acknowledge that a Breach of this Agreement by the Service Provider will result in significant damages to RCEB, which is impossible or extremely difficult to determine, and that monetary damages would be an inadequate remedy for such Breach. Further, the Service Provider's failure to sign the Lease or assign its interest in the Lease (if so instructed by RCEB) or otherwise cooperate to insure a smooth transition of all of the Service Provider's rights and responsibilities at the Residence to a new service provider, could jeopardize the health and safety of RCEB's Consumers. As such, the parties agree that RCEB has the right to specifically enforce the Service Provider's obligations under this Agreement. Thus, RCEB may obtain a temporary restraining order, preliminary injunctive relief and permanent injunctive relief to require the Service Provider to perform its obligations to RCEB, including but not limited to its obligation to assign its interest in the Lease to a new service provider, if applicable.

23. Cooperation with RCEB. This Agreement and the Lease reflect a new housing model for Consumers in California, and it is therefore not possible to precisely identify all matters that should be addressed by this Agreement. The Service Provider acknowledges that RCEB and/or DDS are continuing to develop policies, procedures and regulations in connection with the Service Provider's intended operation of the Residence. Therefore, the Service Provider agrees to fully cooperate with RCEB and DDS in connection with such ongoing development of this new concept, including revising its own procedures to meet any new policies, procedures and regulations that may be implemented by RCEB relating to the Residence and its operation. Further, the Service Provider agrees to enter into amendments to this Agreement at the request of RCEB from time to time, to further reflect and refine the Service Provider's rights and obligations relating to the Consumers under its care, as long as such amendments do not materially increase the Service Provider's obligations under this Agreement. The Service Provider shall also take all actions and execute all documents necessary or appropriate to perform its obligations under this Agreement.

24. Change in Scope of Services. During the term of this Agreement, RCEB may request changes in the scope of the Service Provider's services. Such changes shall not be valid unless accepted by the Service Provider and memorialized in a writing executed by all parties. The Service Provider's entitlement to any additional compensation for additional services is conditioned on the execution of such written agreement.

25. Address for Notices. Any notices required or permitted under this Agreement shall be in writing and shall be sufficiently given if either delivered in person or mailed by a nationally recognized overnight mail carrier or, certified or registered mail, postage prepaid, to the parties at such address as each of them, by notice to the other, may designate from time-to-time. Any written document will be deemed delivered either (1) on the day of the delivery in person, (2) the next business day if delivered by overnight carrier or (3) two business days after the mailing of such document by certified or registered mail.

25.1 Mail. All notices which are mailed shall be sent either by United States first class mail (registered or certified, return receipt requested), or by Federal Express or other express delivery service providing proof of receipt, addressed as follows:

To RCEB:

Regional Center of the East Bay
Attn. Steve Robinson
500 Davis Street, Suite 100
San Leandro, CA 94577
Phone: (510) 618-7718
Fax: (510) 618-7768
Email: srobinson@rceb.org

To the Service Provider:

National Mentor Health Care
Attn: Claire Williamson
9166 Anaheim Place, Suite 305
Rancho Cucamonga, CA 91730
Phone: (909) 483-2505
Email: Claire.Williamson@TheMEntorNetwork.com

or to such other address as either party may designate to each other in accordance with the provisions of this section.

26. Copyrights and Patents. To the extent any services or work performed by the Service Provider under this Agreement results in the invention or development of copyrightable materials, the State of California has the right to freely manufacture, reproduce, publish, use and/or distribute all inventions and copyrightable materials which were developed by or for the Service Provider using funds provided by the State of California. To the extent applicable, that Section of RCEB Master Contract between RCEB and the State of California that addresses copyrights and patents is incorporated herein by this reference.

27. Arbitration; Venue; California Law. Any controversy, claim or dispute arising out of this Agreement, or modification thereof, or the relationship between the parties hereto shall be governed by the laws of California and settled by binding arbitration in Alameda County, California, in accordance with the rules then obtaining of the American Arbitration Association for commercial arbitration. This Agreement is entered into in California and shall be interpreted according to its laws. California shall be the exclusive jurisdiction for all legal or administrative proceedings hereunder.

28. Attorneys' Fees. If any action or proceeding is commenced to enforce any provision or right under this Agreement, the unsuccessful party to such action or proceeding, as determined by the arbitrator (or other tribunal in the event that arbitration is waived or deemed waived by all parties) shall pay the prevailing party all costs, expenses, and reasonable attorneys' fees incurred by such party. Further, if such prevailing party shall recover judgment in any such action or proceeding, such costs, expenses and attorneys' fees shall be included as part of such judgment.

29. Authority to Sign. All individuals executing this Agreement acknowledge and warrant that they possess the authority to enter into this Agreement on behalf of their respective entities.

30. Amendments. No supplement, modification, understanding, verbal agreement, or amendment of this Agreement shall be binding unless executed in writing by RCEB and the Service Provider.

31. Severability. If any provision of this Agreement is held to be inoperative, unenforceable or otherwise invalid, the remaining provisions shall remain in full force and effect.

32. No Waiver. No waiver by either party of the other's Breach of any provision of this Agreement shall constitute a waiver in the future of the same or any other subsequent Breach by the other party. The failure of either party to enforce at any time, or from time to time, any provision of this Agreement shall not be construed as a waiver thereof. No custom or practice that may develop between the parties in the course of administering this Agreement shall be construed to waive any party's right to insist upon the strict performance by the other party of any obligation in this Agreement.

33. Time of the Essence. Time is the essence with respect to all of each party's obligations under this Agreement.

34. Interpretation. The section headings in no way define, limit, extend or interpret the scope of this Agreement or any particular paragraph, and the masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others whenever the context so indicates. The provisions hereof shall not be construed against the drafter, but rather as if both parties drafted this Agreement. The remedies herein reserved shall be cumulative and additional to any other remedies in law or equity.

35. Start-Up Agreement; Entire Agreement; Inconsistencies. RCEB and the Service Provider are parties to a Start-Up Development Agreement dated May 20, 2019 (the "**Start-Up Agreement**"), by which RCEB provided certain start-up funding to the Service Provider relating to the development of services for Consumers of the Residence. The Start-Up Agreement is a separate contract, which remains in effect in accordance with its terms. The Start-Up Agreement, this Agreement and the exhibits hereto constitute the entire agreement and understanding between the parties pertaining to the subject matter contained herein, and supersede all prior agreements, representations, and understandings of the parties, either oral or written. However, if any inconsistencies exist between the Start Up Agreement and this Agreement, the provisions of this Agreement shall prevail.

36. Cross Default Provisions. This Agreement relates to the Service Provider's operation of this particular Residence, and no other residence. The parties may enter into other service agreements, including but not limited to start-up contracts and service provider agreements, to allow the Service Provider to operate this and other residences (collectively, the "**Other Agreements**"). A breach by the Service Provider under any of the Start Up Agreement or any of the Other Agreements shall be deemed a Breach by the Service Provider under this Agreement. A

Breach by the Service Provider under this Agreement shall be deemed a breach by the Service Provider under the Start Up Agreement and all of the Other Agreements.

37. Counterparts; Delivery. This Agreement may be executed in counterparts, each which shall be deemed an original and all of which shall constitute one and the same instrument. Signed copies of this Agreement delivered by facsimile or electronically in PDF (or similar format) shall be deemed the same as originals.

Executed in San Leandro, California, as of the date first set forth above.

RCEB:

REGIONAL CENTER OF THE EAST BAY INC., a California nonprofit corporation

By:_____
Steve Robinson,
Director of Community Services

By:_____
Lynn Nguyen,
Director of Finance and Administration

SERVICE PROVIDER:

NATIONAL MENTOR HEALTH CARE, LLC, a limited liability company

By:_____
Claire Williamson
Executive Director

EXHIBITS:

A – Program Plan
B – Confirmation of Commencement Date
C – The Lease
D – Business Associate Agreement

EXHIBIT "A" TO SERVICE PROVIDER AGREEMENT

PROGRAM PLAN

-Attached-

[*Attach Program Plan Here*]

EXHIBIT "B" TO SERVICE PROVIDER AGREEMENT

CONFIRMATION OF COMMENCEMENT DATE

The undersigned are parties to a Service Provider Agreement dated as of June 1, 2019, for property located at 27971 Fairview Avenue, Hayward, CA 94542.

The undersigned agree that the "Commencement Date" of the Service Provider Agreement was _____, 2019.

Executed at San Leandro, California on _____ 2019.

"RCEB"	**"Service Provider"**
REGIONAL CENTER OF THE EAST BAY, INC., a California corporation	NATIONAL MENTOR HEALTH CARE, LLC, a limited liability company.
By: *EXHIBIT – DO NOT SIGN*	By: *EXHIBIT – DO NOT SIGN*
Name: _____	Name: _____
Title: _____	Title: _____

EXHIBIT "C" TO SERVICE PROVIDER AGREEMENT

THE LEASE

-Attached-

EXHIBIT "D" TO SERVICE PROVIDER AGREEMENT

BUSINESS ASSOCIATE AGREEMENT

-Attached-

BUSINESS ASSOCIATE AGREEMENT - CONTACTOR

This Business Associate Agreement - Contractor ("**Agreement**"), effective as of May 31, 2019 , is entered into by and between Regional Center of the East Bay, Inc., a California nonprofit corporation ("**RCEB**") and National Mentor Health Care, LLC ("**Contractor**"). Contractor and RCEB are each referred to herein as a "**Party**," and collectively, the "**Parties**." The Parties enter into this Agreement in accordance with the following facts:

A. RCEB arranges for the provision of services to individuals with developmental disabilities ("**Consumers**"). In providing its services, RCEB acts as a Business Associate of the California Department of Developmental Services ("**Covered Entity**"). As a necessary part of arranging services to Consumers served by Covered Entity, RCEB may have access to Protected Health Information ("**PHI**") as such term is defined in the Health Insurance Portability and Accountability Act of 1996, as amended ("**HIPAA**"), and its Privacy and Security Rules.

B. Contractor is, or desires to be, vendorized by RCEB to provide services to RCEB's Consumers. Once Contractor is vendorized, RCEB may elect to enter into one or more agreements with Contractor (each, a "**Service Provider Agreement**") to provide specific services to specific Consumers.

C. Under each Service Provider Agreement, it is anticipated that Contractor may receive and use PHI from and related to RCEB's Consumers.

D. The purpose of this Agreement is to comply with the requirements of HIPAA, its associated regulations (45 CFR Parts 160-164), and the Health Information Technology for Economic and Clinical Health Act (the "**HITECH Act**"), Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub.L. 111-5), as these laws may be amended, as well as any state law(s) or regulation(s) governing the privacy and security protections of confidential information created or received by Contractor pursuant to each Service Provider Agreement.

In consideration of the following mutual covenants, the Parties therefore agree as follows:

1. **DEFINITIONS**. Except as otherwise defined herein, any and all capitalized terms in this Agreement shall have the definitions set forth in HIPAA and its Privacy and Security Rules.

2. **OBLIGATIONS AND DUTIES OF CONTRACTOR**.

2.1 General. Contractor agrees not to use or disclose any Consumer's PHI other than as permitted or required by this Agreement or by applicable law.

2.2 Safeguard. In accordance with 45 CFR Part 164, Subpart C and 45 CFR §164.314(a)(2)(i)(A)&(B), Contractor agrees to use appropriate administrative, physical and technical safeguards to prevent the use or disclosure of any Consumer's PHI, including Electronic PHI other than as provided for by this Agreement.

2.3 Standard Transactions. Under HIPAA, the US Department of Health and Human Services has adopted certain standard transactions for the electronic exchange of health care data ("**Standard Transactions**"). If Contractor conducts any Standard Transactions on behalf of Covered Entity or RCEB, Contractor shall comply with the applicable requirements of 45 C.F.R. Parts 160-162. Contractor acknowledges that as of the effective date of this Agreement it may be civilly and/or criminally liable for failure to comply with the safeguards, policies, and procedure requirements, or any of the use and disclosure requirements, established by law.

2.4 Mitigation. Contractor agrees to mitigate, to the extent practicable and appropriate, any harmful effect that is known to Contractor of a use or disclosure of PHI by Contractor in violation of the requirements of this Agreement.

2.5 Agents; Subcontractors. Contractor agrees to ensure that its agents, including any subcontractor, to whom it provides PHI received from, or created or received by Contractor on behalf of Covered Entity or RCEB, agrees to the same restrictions and conditions applicable to Contractor with respect to such information.

2.6 Access to PHI by Covered Entity, RCEB or Consumer. Consumers have a right to access their PHI in a designated record set. A "**Designated Record Set**" is defined at 45 CFR 164.501 as a group of records maintained by or for a Covered Entity that comprises the (i) medical records and billing records about Consumers maintained by or for a Covered Entity, (ii) enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan, or (iii) other records that are used, in whole or in part, by or for the Covered Entity to make decisions about Consumers. The term "**record**" means any item, collection, or grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for a Covered Entity. If applicable, and upon request by Covered Entity or RCEB, Contractor agrees to provide access to Covered Entity, RCEB or to a Consumer as directed by Covered Entity or RCEB, the PHI in a Designated Record Set within fifteen (15) days in order to meet the requirements under 45 C.F.R. section 164.524. In addition, as of the effective date of this Agreement, with respect to information contained in an Electronic Health Record, Contractor will provide access to such records in electronic format.

2.7 Amendments to PHI. If applicable, Contractor agrees to make any amendment(s) to PHI in a Designated Record Set as directed or agreed to by Covered Entity or RCEB pursuant to 45 C.F.R. section 164.526, and as requested by the Covered Entity, RCEB or a Consumer, within fifteen (15) days of receipt of a request. Any denials, in whole or in part, of requested amendments shall be made by Contractor in accordance with 45 C.F.R. section 164.526.

2.8 Audit. Contractor agrees that the Secretary of the Department of Health and Human Services (the "**Secretary**") shall have the right to audit Contractor's internal records, books, policies, and practices relating to the use and disclosure of PHI received from, or created or received by Contractor on behalf of Covered Entity or RCEB, in a time and manner agreed to by the Parties, or as otherwise designated by the Secretary, for purposes of the Secretary determining compliance with the HIPAA Privacy Rule.

2.9 Documentation of Disclosed Information. Contractor agrees to document disclosures of PHI, and information related to such disclosures (collectively, "**Disclosed**

Information"), as would be required for Covered Entity or RCEB to respond to a request by Consumer for an accounting of disclosures of PHI in accordance with 45 C.F.R. section 164.528, as amended from time to time. Contractor hereby agrees to take reasonable steps to enable it to comply with the requirements of this section and to notify RCEB of any such requests. Contractor shall promptly notify RCEB of the existence of any Disclosed Information.

2.10 Disclosure Accounting; Retention. Contractor agrees to provide Disclosed Information to Covered Entity, RCEB or to Consumer at Covered Entity's or RCEB's request, within fifteen (15) days of such request, in order to permit Covered Entity to meet its obligations in accordance with 45 CFR section 164.528. Contractor shall maintain Disclosed Information for six (6) years following the date of the event or incident to which such information relates.

2.11 Privacy or Security Breach.

2.11.1 In accordance with applicable law, Contractor agrees to give written notice (an "**Incident Notice**") to Covered Entity and RCEB of any (a) use or disclosure of PHI that is not in compliance with the terms of this Agreement, of which it becomes aware ("**Breach**") and (b) attempted or actual Security Incident (collectively with a Breach, an "**Incident**"). An Incident Notice shall be made without unreasonable delay and, in no event, later than twenty four (24) hours after discovery of such Incident, except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security as described in 45 C.F.R. § 164.412. In addition, an Incident Notice shall include (to the extent possible) the following information:

(a) identification of each Consumer whose Unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during the Incident;

(b) the circumstances constituting and, to the extent relevant, surrounding the Incident (including, without limitation, the individual(s) causing the Incident and the person(s) receiving or accessing the PHI), the date of the Incident and date of discovery;

(c) the PHI affected or disclosed by the Incident on an individual Consumer-by-individual Consumer basis;

(d) the steps Contractor is taking to investigate and correct the Incident, mitigate harm or loss to affected Consumers, and protect against future similar Incidences,

(e) the actions which Consumers affected by the Incident should take to protect their interests; and

(f) a contact person for additional information.

2.11.2 Contractor shall cooperate with Covered Entity and RCEB in the investigation of the Incident, and in conducting any risk assessment necessary to determine whether notification of the Incident is required, and shall maintain, and provide at the direction of RCEB or Covered Entity, all reasonable and appropriate documents, files, records, or logs related

to the Incident. For purposes of discovery and reporting of an Incident, Contractor agrees that it shall not be the agent of RCEB.

2.11.3 To the extent that any Incident involves a Breach of Unsecured PHI, and upon the request of RCEB or Covered Entity, Contractor shall provide notice to impacted Consumers, the media and the Secretary in the time and manner required by 42 U.S.C. § 17932 and 45 C.F.R. §§ 164.404, 164.406 and 164.408. Prior to providing any such notice, Contractor shall provide RCEB and Covered Entity with a reasonable opportunity to review and comment on such notice. Contractor shall maintain complete records regarding the Incident, the determination of whether notice is required and the issuance of the notice (including the recipients and content of such notice), and upon request, shall make such records available to RCEB and Covered Entity. Contractor shall also provide to Consumers affected by the Incident, upon the request of the Covered Entity or RCEB, such remedies as may be reasonably necessary or appropriate to mitigate the deleterious effects of the Incident including, without limitation, provision of credit report monitoring for a reasonable period of time. Any such remedies provided by Contractor pursuant to this section shall be at the sole expense of Contractor.

2.11.4 Notwithstanding Section 2.11.3 above, if RCEB or Covered Entity elects to provide the notice referenced in Section 2.11.3, Contractor shall promptly provide to RCEB and Covered Entity, the information required by 42 U.S.C. § 17932 and 45 C.F.R. §§ 164.404, 164.406 and 164.408, to the extent not previously provided in an Incident Notice.

2.11.5 Any annual notification to the Secretary as required under 42 U.S.C. § 17932(e) and 45 C.F.R. § 164.408(c), shall be provided by Covered Entity or RCEB, unless Covered Entity or RCEB directs Contractor to provide such notice within fifteen (15) days after the close of the calendar year. Contractor shall provide RCEB and Covered Entity a copy of the annual notification before it is provided to the Secretary sufficiently in advance of the due date to permit Covered Entity or RCEB to revise the notification as may be appropriate.

2.12 Genetic Information. Contractor shall not undertake any activity that may be considered underwriting based on genetic information, as defined by the Genetic Information Nondiscrimination Act and prohibited under the HIPAA Privacy & Security Rules.

2.13 Compliance. Contractor shall comply with all other privacy and security requirements made applicable to it by HIPAA, the HITECH Act and the HITECH Rules as promulgated by the Secretary. In addition, Contractor shall comply at all times with the requirements imposed on Covered Entity, RCEB and Contractor by state health information privacy laws including, without limitation, the Confidentiality of Medical Information Act (Cal. Civ. Code §56 *et seq.*) and the Lanterman-Petris-Short Act (Cal. Welfare & Inst. Code §5000 *et seq.*)

3. PERMITTED USES AND DISCLOSURES BY CONTRACTOR.

3.1 Business Relationship Activities. Except as otherwise limited in this Agreement, Contractor may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity and RCEB as specified in the ongoing contractual relationships among the Parties and Covered Entity, provided that such use or disclosure would not violate the

HIPAA Privacy Rule or Security Rule if done by Covered Entity, nor violate the minimum necessary policies and procedures of the Covered Entity. For this purpose, the determination of what constitutes the "**minimum necessary**" amount of PHI shall be determined in accordance with 45 C.F.R. section 164.502(b), as amended by section 13405 of the HITECH Act. Without limitation of the foregoing, Contractor shall limit the use, disclosure, or request of PHI, to the extent practicable, to the Limited Data Set (as defined in 45 C.F.R. §164.514(e)(2)) or, if needed by Contractor, to the minimum necessary amount of PHI to satisfy the requirements of each applicable Service Provider Agreement.

3.2 Management and Administration of Contractor. Except as otherwise limited in this Agreement, Contractor may disclose PHI for the proper management and administration of Contractor, provided that disclosures are Required by Law, or Contractor obtains reasonable assurances from the person to whom the information is disclosed that such PHI will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person agrees to notify Contractor and RCEB within one (1) day of discovery of any Incident.

3.3 Data Aggregation. Except as otherwise limited by this Agreement, Contractor may disclose PHI to provide Data Aggregation services to Covered Entity or RCEB as permitted by 45 CFR 164.504(e)(2)(i)(B). Any aggregated data will be de-identified in compliance with 45 C.F.R. 164.502(d) before it is disclosed. Contractor agrees that it will not disclose any re-identification key or other mechanism to re-identify the data.

3.4 Remuneration. Contractor shall not directly or indirectly receive remuneration in exchange for any PHI unless informed by RCEB or Covered Entity that Covered Entity has first obtained a valid authorization from the applicable Consumer that specifically allows PHI to be further exchanged for remuneration by the entity receiving such PHI, or the receipt of such remuneration complies with an otherwise available exception under HIPAA or the HITECH Act.

3.5 Violations of Law. Contractor may use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 CFR 164.502(j)(1).

4. OBLIGATIONS AND DUTIES OF RCEB.

4.1 Notice of Privacy Practices. RCEB shall inform Contractor of any limitation(s) in Covered Entity's or RCEB's notice of privacy practices in accordance with 45 C.F.R. section 164.520, to the extent that such limitation(s), if any, may affect Contractor's use or disclosure of PHI. RCEB may satisfy this requirement by providing Contractor with the notices of privacy practices that Covered Entity and RCEB delivers in accordance with 45 C.F.R. section 164.520, as well as any changes to such notice.

4.2 Notice to Consumers of Permission. RCEB shall notify Contractor of any changes in, or revocation of, permission by a Consumer to use or disclose PHI which RCEB receives from Covered Entity, to the extent that such changes may affect Contractor's use or disclosure of PHI.

4.3 Notice of Other Restrictions. RCEB shall notify Contractor of any restriction to the use or disclosure of PHI which RCEB receives from Covered Entity to which Covered Entity has agreed in accordance with 45 C.F.R. section 164.522, to the extent that such restriction may affect Contractor's use or disclosure of PHI.

4.4 Impermissible Requests. RCEB shall not request Contractor to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Rule if done by RCEB or Covered Entity.

5. TERM AND TERMINATION.

5.1 General. This Agreement shall remain in effect for so long as RCEB and Contractor are parties to one or more Service Provider Agreements and shall terminate when all of the PHI provided to Contractor, or created or received by Contractor, is destroyed or returned to RCEB or Covered Entity. If it is infeasible to return or destroy PHI as set forth above, the terms of this Agreement shall be extended to such PHI in perpetuity, in accordance with the termination provisions set forth below.

5.2 Termination for Cause. RCEB may terminate this Agreement for cause upon discovery of a material breach by Contractor as follows:

5.2.1 RCEB shall provide an opportunity for Contractor to cure the breach within ten (10) days from the date RCEB provides Contractor notice of the breach, or such longer period as may be agreed to by the Parties. If Contractor does not cure the breach within the cure period, then RCEB may immediately terminate this Agreement and any related Service Provider Agreement(s) in place between the Parties; or

5.2.2 RCEB may immediately terminate this Agreement, and any related Service Provider Agreement(s) in place between the Parties, if Contractor has breached a material term of this Agreement and cure is not possible; or

5.2.3 If neither termination nor cure is feasible, RCEB shall report the violation to Covered Entity and the Secretary.

5.3 Return of PHI. Upon termination:

5.3.1 Except as provided in paragraph 5.3.2 of this section, upon termination of this Agreement for any reason, Contractor shall return or destroy all PHI received from Covered Entity or RCEB, or created or received by Contractor on behalf of Covered Entity or RCEB. This provision shall apply to PHI that is in the possession of subcontractors or agents of Contractor. Contractor shall retain no copies of the PHI.

5.3.2 If Contractor determines that returning or destroying the PHI is not feasible or practicable, Contractor shall provide to Covered Entity and RCEB notification of the conditions that make return or destruction impossible or impracticable. Upon such notification, Contractor shall extend the protections of this Agreement to any retained PHI received hereunder and limit any further uses and disclosures to those purposes that make the return or destruction of the information impossible or impracticable for so long as Contractor maintains such PHI.

6. **GENERAL PROVISIONS.**

6.1 Notice. All notices, requests, and other communications given under this Agreement, shall be in writing and deemed duly given: (a) when delivered personally to the recipient; (b) one (1) business day after being sent to the recipient by reputable overnight courier service (charges prepaid); or (c) five (5) business days after being sent by U.S. certified mail (charges prepaid). Except as otherwise provided herein, all notices, requests or communications under this Agreement shall be addressed to the intended recipient as set forth below:

To RCEB:

Regional Center of the East Bay
Attention: Genia Lindberg
500 Davis Street, Suite 100
San Leandro, CA 94577

To Contractor:

National Mentor Health Care
Attention: Claire Williamson
9466 Anaheim Place, Suite 200
Rancho Cucamonga, CA 91730

6.2 Regulatory References. A reference in this Agreement to any section in the HIPAA Privacy Rule or Security Rule, or the HITECH Act, means the section as presently in effect or as amended.

6.3 Amendment. The Parties agree to take reasonable action to amend this Agreement from time to time as is necessary for all Parties to comply with the requirements of HIPAA, the HITECH Act, and all related, applicable state and federal laws.

6.4 Survival. The respective rights and obligations of Contractor under Sections 5 and 6 of this Agreement shall survive termination of this Agreement.

6.5 Interpretation. Any ambiguity in this Agreement shall be resolved to permit compliance with the HIPAA Privacy Rule and Security Rule, and the HITECH Act. If there is an inconsistency between the provisions of this Agreement and mandatory provisions of these statutes, the applicable statutory language shall control. Where provisions of this Agreement are different than those mandated by the applicable statutes, but are nonetheless permitted under the law, the provisions of this Agreement shall prevail.

6.6 Rights. Except as expressly stated herein, or the Parties to this Agreement do not intend to create any rights in any third parties, unless such rights are otherwise irrevocably established under HIPAA, or any other applicable law.

6.7 Assignment. No Party may assign its rights and obligations under this Agreement without the prior written consent of the other Party, except both Parties may assign this Agreement to any successors in interest, provided the assignor promptly notifies the other Party of such assignment.

6.8 Independent Parties. Contractor and its agents and employees, in performance of this Agreement, shall act in an independent capacity in the performance of this Agreement and not as officers or employees or agents of RCEB or Covered Entity. Contractor shall be wholly responsible for the manner in which Contractor and its employees perform the

services required of Contractor by the terms of this Agreement. Contractor shall not be, or in any manner represent, imply or hold itself out to be an agent, partner or representative of RCEB. Contractor has no right or authority to assume or create in writing or otherwise any obligation of any kind, express or implied, for or on behalf of RCEB. The only relationship between Contractor and RCEB is that of independent contractors and neither shall be responsible for any obligations, liabilities, or expenses of the other, or any act or omission of the other, except as expressly set forth herein.

6.9 Indemnity. Contractor agrees to indemnify, defend and hold harmless RCEB and Covered Entity, and their respective employees, directors, officers, agents, subcontractors, or other members of their workforce (collectively, "**Indemnitees**") against all claims, demands, losses, damages or liability of any type or kind whatsoever, arising from or in connection with any breach of this Agreement or of any warranty hereunder or from any negligence or wrongful acts or omissions, including failure to perform its obligations under the Privacy Rule, the Standard Transactions and Code Sets Regulations, the Security Rule, HITECH or other state or federal health information privacy laws by Contractor. Accordingly, on demand, (i) Contractor at his own expense and risk, shall defend any suit, claim, action, legal proceeding, arbitration, or other mediation proceeding (each, an "**Action**"), that may be brought against the Indemnitees or any of them on any such claim or demand as set forth above (the Indemnitees need not have first paid any such claim in order to be so indemnified) and (ii) Contractor shall reimburse Indemnitees for any and all losses, liabilities, lost profits, fines, penalties, costs or expenses (including reasonable attorneys' fees) that may for any reason be imposed upon Indemnitees as a result of any Action, with counsel reasonably satisfactory to RCEB. This Section shall survive the expiration or termination of this Agreement for any reason.

6.10 Interpretation; Venue; Jurisdiction. This Agreement shall be construed to comply with the requirements of the HIPAA Rules, and any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules. All other aspects of this Agreement shall be governed under the laws of the State of California. All actions between the Parties shall be venued in the state or district courts of the County of Alameda.

6.11 Waiver. No change, waiver, or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, nor shall such action prohibit enforcement of any obligation on any other occasion.

6.12 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions shall remain in full force and effect. In addition, if either Party believes in good faith that any provision of this Agreement fails to comply with the then-current requirements of the HIPAA Privacy Rule or Security Rule, or the HITECH Act, such Party shall notify the other in writing. For a period of up to thirty (30) days, the Parties shall engage in good faith discussions about such concern and, if necessary, amend the terms of this Agreement so that it complies with the law. If the Parties are unable to agree upon the need for amendment, or the amendment itself, then either Party has the right to terminate this Agreement upon 30 days' written notice to the other Party.

6.13 Counterparts; Electronic Copies. This Agreement may be executed in counterparts, each which shall be deemed an original and all of which shall constitute a single instrument. Signed copies of this Agreement delivered by fax or in a PDF email file shall be deemed the same as originals.

Executed at San Leandro, California, as of the date first set forth above.

RCEB:	**CONTRACTOR**:
Regional Center of the East Bay, Inc., a California nonprofit corporation	National Mentor Health Care, LLC, a limited liability company
By:_____ Name:_____ Title:_____	By:_____ Name:_____ Title:_____