

SERVICE CONTRACT
Between
REGIONAL CENTER OF THE EAST BAY
And
LA FAMILIA COUNSELING SERVICES

1. INTENT

The Regional Center of the East Bay is one of twenty-one regional centers in the State of California under contract with the Department of Developmental Services to provide intake, assessment service coordination, monitoring, resource development and advocacy to individuals with developmental disabilities who reside in Alameda and Contra Costa Counties. As of November 1, 2024, over 25,000 consumers and families are being served.

Alameda and Contra Costa Counties include many ethnic minority populations. Such individuals with developmental disabilities and their families may face additional barriers in understanding the disability and accessing the service system due to issues of language and cultural barriers, especially for those who are recent immigrants or refugees.

La Familia Counseling Services (LFCS) has provided a variety of valued community services to the Hispanic population in the East Bay for many years, including service coordination to persons with developmental disabilities and their families.

The Regional Center of the East Bay, hereafter referred to as RCEB, hereby retains La Familia Counseling Services, hereafter referred to as Delegate Agency, to provide service coordination on behalf of consumers and their families assigned by the RCEB and in accordance with the applicable provisions of the Lanterman Developmental Disabilities Services Act (Welfare and Institutions Code sections 4501-4905), California Code of Regulations Division 2 (Title 17), RCEB 2014-19 Performance Contract, RCEB's policies and procedures, the terms of this Contract, and the philosophy, goals and priorities established by the Board of Directors of the Regional Center of the East Bay.

In accordance with Trailer Bill Language Section 3: Section 4625.5 was added to the Code, requiring the governing board of each regional center to adopt and maintain a written policy requiring the board to review and approve any regional center contract of two hundred fifty thousand dollars(\$250,000) or more, before entering into the contract. No regional center contract of two hundred fifty thousand dollars (\$250,000) or more is valid unless approved by the governing board of the regional center in compliance with its written policy. Therefore, this contract shall not be valid without the consent of the RCEB Board of Directors in accordance with Fiscal Year 11-12 Trailer Bill Language SB74

2. TERM

The term of this Contract shall be from **November 1, 2024 through June 30, 2026**.

3. SCOPE OF SERVICES

DELEGATE AGENCY agrees to perform service coordination services as described in Addendum A attached hereto and incorporated by reference as though fully set forth herein.

4. COMPENSATION

DELEGATE AGENCY shall be compensated for service coordination services as described in Addendum B, attached hereto and incorporated by reference as though fully set forth herein.

5. CONDITIONS AND REQUIREMENTS (DELEGATE AGENCY)

- A. Services described in this contract shall be available to all assigned and eligible persons regardless of sex, race, political affiliation, religion, ethnic background, color, creed, national origin, age, and severity of developmental disability, marital status and sexual orientation.
- B. Services described in this Contract shall be performed by DELEGATE AGENCY staff as specified in Addendum A, hereto attached.
- C. Funds provided to DELEGATE AGENCY under this Contract shall be used exclusively for the performance of services as described in this Contract and shall not be used for any partisan political activity or to lobby for the sponsorship, support or defeat of any legislation.
- D. DELEGATE AGENCY shall cooperate fully with the RCEB, the Department of Developmental Services, the Department of Health Services, and federal or state monitors regarding the provision of services under this Contract.
- E. DELEGATE AGENCY shall insure compliance with applicable City, County, State and Federal laws, rules and regulations, including any and all wage and hour requirements for employees.

6. CONDITIONS AND REQUIREMENTS (RCEB)

- A. RCEB shall provide DELEGATE AGENCY with RCEB policies and procedures relevant to the work to be performed as described in this Contract.
- B. RCEB shall provide orientation and training materials to DELEGATE AGENCY.
- C. RCEB shall be solely responsible for the assignment of RCEB consumers to the DELEGATE AGENCY for services under this CONTRACT as described in Addendum A.
- D. RCEB will monitor DELEGATE AGENCY's performance under this contract and will submit prompt written notification to DELEGATE AGENCY regarding any contract non-compliance and/or performance issues that may occur. Notification shall include recommendations and/or requirements of action by DELEGATE AGENCY to improve performance or to achieve compliance.
- E. RCEB shall provide technical assistance in developing and implementing corrective actions to assure contract compliance.

- F. RCEB shall designate a Department Director as the principal contact between DELEGATE AGENCY and RCEB.

7. APPLICABLE LAWS AND REGULATIONS

DELEGATE AGENCY agrees that it shall comply with all California and Federal statutes, laws, and regulations applicable to DELEGATE AGENCY, and shall render services in accordance with the applicable provisions of California state laws, regulations, promulgated hereunder, and the terms of this Agreement. Any provisions of this Agreement that conflict with Federal statutes and regulations is hereby amended to conform to the provisions of those statutes and regulations. Such amendments to the Agreement shall be effective on the effective date of the statute or regulations necessitating it, and shall be binding on the parties even though such amendment may not have been reduced to writing and finally agreed upon and executed by the parties.

It is the intention of the parties that the laws of the State of California and any applicable Federal regulations shall govern the validity of this Contract, the construction of its terms and the interpretation of the rights and duties of the parties. It is additionally understood that the terms of this Agreement shall not be construed to excuse compliance with existing statutes or regulations.

Effective July 1, 2011, changes to State law through Trailer Bills AB104 and SB74 were promulgated for the Regional Center system. These changes impact the DELEGATE AGENCY

Effective July 1, 2011, DELEGATE AGENCY shall adhere to the following requirements:

- 1) No more than 15% of the funds received by a DELEGATE AGENCY with a negotiated rate from RCEB may be used for administrative costs.
- 2) Entities receiving payments from one or more regional centers shall contract with an independent accounting firm for an audit or review of its financial statements, if those payments:
 - a. Exceed \$250,000, but is less than \$500,000 obtain an annual independent audit or an annual independent review and submit it to RCEB.
 - b. Exceed \$500,000, obtain an annual independent audit and submit it to RCEB.

Effective 7/1/16, TBL Section 4, Section 4652.5 was amended. If the amount received from the regional center or regional centers during the DELEGATE AGENCY's fiscal year is more than or equal to \$500,000 but less than \$2,000,000, the DELEGATE AGENCY shall obtain an independent review report of its financial statement for the period. If the amount received from the regional center during the DELEGATE AGENCY's fiscal year is equal to or more than \$2,000,000, the DELEGATE AGENCY shall obtain an independent audit of its financial statements for the period. The DELEGATE AGENCY shall provide copies of the independent audit or independent review report and accompanying management letters, to the vendoring regional center within nine months of the end of the fiscal year for the DELEGATE AGENCY.

DELEGATE AGENCY is responsible to be in compliance with the requirements and timelines specified under the amended Section 4652.5.

- 3) TBL Section 4: Section 4626 was amended requiring the Department to give a very high priority to ensuring that regional center board members and employees act in the course of their duties solely in the best interest of regional center consumers and their families without regard to the interests of any other organization with which they are associated or persons to whom they are related. Board members, employees, and others acting on the regional center's behalf, as defined in Title 17, must be free from conflicts of interest that could adversely influence their judgment, objectivity, or loyalty to the regional center, its consumers, or its mission

8 INDEMNIFICATION

DELEGATE AGENCY shall agree to indemnify, defend and save harmless, the RCEB and the State of California, its officers, agents and employees from any and all claims and losses accruing or resulting to any person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this Contract, or who may be injured or damaged by DELEGATE AGENCY in the performance of this Contract.

9 TERMINATION

It is understood and agreed that the RCEB or DELEGATE AGENCY may terminate this Contract for the convenience of either and without cause at any time by giving ninety (90) days written notice of such termination, in which event DELEGATE AGENCY shall be entitled to compensation herein agreed to be paid as was earned to the effective date of termination. Such termination is not subject to W & I Code 4700 or 4731.

10 EQUIPMENT

The DELEGATE AGENCY may purchase office, furniture and/or computer equipment necessary to fulfill the obligations of this Contract. The purchase and use of such equipment by the DELEGATE AGENCY or any of its employees shall mean that DELEGATE AGENCY accepts full responsibility for and agrees to exonerate, indemnify, defend and save harmless RCEB from and against any and all claims for any damage or injury of any type arising from the use, misuse or failure of such equipment. DELEGATE AGENCY agrees that all furniture and equipment purchased with the funds supplied under the terms of this Contract shall be the property of the State of California.

DELEGATE AGENCY will use only software authorized by the Department of Developmental Services and the RCEB on computers purchased with funds from this Contract. DELEGATE AGENCY agrees to tag and maintain annual inventory of all equipment and return all equipment purchased by RCEB immediately upon the termination of this Contract.

11 INDEPENDENT CONTRACTOR OF RCEB

- A. DELEGATE AGENCY shall be deemed at all times to be an independent Contractor of RCEB and shall be wholly responsible for the manner in which DELEGATE AGENCY performs the services required by the terms of this Contract. DELEGATE AGENCY shall be liable for any act or acts of its own, of its agents or employees, and nothing contained herein shall be construed as creating the relationship of employer and employee between RCEB and DELEGATE AGENCY, its agents or employees.

- B. DELEGATE AGENCY agrees to be solely responsible for all matters relating to payment of its employees, including Social Security, Income Tax Withholding, and all other regulations governing such matters.

12. INSURANCE

DELEGATE AGENCY shall, at its own expense, obtain and maintain, during the full term of this Contract, a policy of comprehensive general liability insurance in an amount and form, which is adequate to meet any liability that may arise from the performance of this contract. DELEGATE AGENCY additionally agrees to obtain from the selected insurance carrier a written statement naming RCEB as additional insured on this policy and provide to RCEB within 15 days of execution of this Contract. Such statement shall be made immediately available to the

RCEB upon request. Failure to obtain or demonstrate adequate insurance shall be deemed as cause for immediate termination of this CONTRACT.

13 AUDIT – FINANCIAL

The DELEGATE AGENCY shall cause an independent financial audit to be completed annually and shall submit such audit to the RCEB no later than April 1 of each year the contract is in effect.

14 AUDIT – CONSUMER RECORDS

The DELEGATE AGENCY shall provide to the RCEB, upon request, consumer records for programmatic and quality review audits. Such audits may be announced with or without notice to the DELEGATE AGENCY.

15 REGIONAL CENTER OBLIGATION

Payments by RCEB for services rendered by DELEGATE AGENCY are subject to and dependent upon sufficient funds being appropriated by the State during each of the RCEB's fiscal years during the term of this contract. It is anticipated that RCEB will receive sufficient appropriations for the payments to be made in the current fiscal year. However, if the RCEB's contract with the State is not renewed, or if insufficient funds are allocated such that RCEB determines that it is in the best interest to discontinue or reduce this contract, then the contract shall be terminated or modified in accordance with Section 14 of this contract in the event of insufficient appropriations or within five working days in the event of non-renewal of RCEB's contract with the State.

If, during the term of this contract, the California State Budget Act includes provisions that allow a Cost of Living Adjustment for Regional Center Client Program Coordinator, the adjustment will be passed through to the DELEGATE AGENCY. Additionally, if Budget Act provisions appropriate a funding change, prior to June 30, 2008, to the Regional Center core staffing formula that provides a salary increase for the Client Program Coordinator position, an adjustment of cost will be passed through to the DELEGATE AGENCY.

16 DRUG-FREE WORKPLACE CERTIFICATION

DELEGATE AGENCY hereby certifies under penalty of perjury under the laws of the State of California that the DELEGATE AGENCY will comply with the requirements of the Drug-free Workplace Act of 1990 (Government Code, Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- A. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code, Section 8355(a)
- B. Establish a Drug-free Awareness Program as required by Government Code, Section 8355(b) to inform employees about all of the following:
 - 1. the dangers of drug abuse in the workplace;
 - 2. the person's or organization's policy of maintaining a drug-free workplace.
 - 3. any available drug counseling, rehabilitation, and employee assistance program
 - 4. penalties that may be imposed upon employees for drug abuse violations.
- C. Provide, as required by Government Code, Section 8355(c), that every employee who works on the contract:
 - 1. receives a copy of the company's drug-free policy statement; and agrees to abide by the terms of the company's statement as a condition of employment on the contract

17. 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 A.

18. ZERO TOLERANCE REQUIREMENT FOR CONSUMER ABUSE AND NEGLECT

DELEGATE AGENCY shall ensure that all of their respective employees are fully informed upon hire annually thereafter regarding RCEB's Zero Tolerance Policy, Mandatory Elder Abuse and Dependant Adult Civil Protection Act (California WIC section 15600-15675), and Child Abuse and Neglect Reporting Act (California Penal Code sections 11164-11174.3). DELEGATE AGENCY who fails to report consumer abuse or neglect may be subject to penalties defined in law (WIC, Section 15630(h)). In addition, upon becoming

aware of a reportable incident or allegation of abuse or neglect of a consumer, DELEGATE AGENCY shall take immediate action to protect the health and safety of the involved consumer and all other consumers. DELEGATE AGENCY shall ensure that their staff has knowledge of the signs of abuse and neglect, the process for reporting suspected abuse or neglect, and the consequences of failing to follow the law or adhere to RCEB's Zero Tolerance Policy. Failure to comply with the policy and the abuse/neglect reporting laws may also be cause for termination of this agreement

19. MODIFICATION OF CONTRACT

RCEB and DELEGATE AGENCY reserve the right to amend this Contract in writing at any time by mutual consent. Such modification shall be effective upon the execution of duly authorized amendment to this Contract. No oral changes or modifications shall be binding unless agreed to in writing by both parties hereto.

20. SUBCONTRACTING

DELEGATE AGENCY is prohibited from subcontracting any portion of the obligation identified or implied in this Contract.

21. ADMINISTRATIVE REMEDY FOR CONTRACT INTERPRETATION

Should any question arise as to the meaning and intent of this Contract, the matter shall, prior to any other action or any other legal remedy, be referred to the RCEB Director of Budget and Finance for clarification. If the meaning and intent remains unclear, the matter shall be referred to the RCEB Executive Director, who shall decide the true intent of the Contract.

22. SEVERABILITY

If any term or provision of this Contract shall be found to be illegal or unenforceable, the remainder of this Contract shall remain in full force and effect and such illegal or unenforceable term or provision shall be deemed stricken.

The undersigned agree to the terms and conditions of this Contract.

**Lisa Kleinbub, Executive Director
Regional Center of the East Bay**

**Aaron Ortiz, Executive Director
La Familia Counseling Services**

ADDENDUM A

SERVICE COORDINATION

1. GENERAL

- A. All services provided by the DELEGATE AGENCY to assigned consumers by the RCEB shall be in constant and continual conformity with applicable state and federal statutes and regulations, and the Department of Developmental Services' program requirements, including but not limited to W & I Code Sections 4646, 4648, 4659, 4685, 4700, and CCR Sections 50500 – 50538.
- B. All services provided by the DELEGATE AGENCY to assigned consumers by the RCEB shall be in constant and continual conformity with applicable RCEB's Board Purchase of Services Policies, service coordination procedures, requirements, and instructions.
- C. DELEGATE AGENCY shall maintain records in a confidential manner and comply with the provisions of Welfare and Institutions Code, Sections 4514-4518, including compliance with HIPAA Privacy Act.
- D. DELEGATE AGENCY will maintain a consumer record for each consumer in conformance with RCEB'S requirements and provide for safe storage of these files in a manner consistent with RCEB policy and federal and state regulations.
- E. DELEGATE AGENCY shall be knowledgeable, current and accountable for all programmatic obligations regarding all federally funded programs, including Early Start, Home and Community-Based Services Waiver, Family Cost Participation Program, Part D, and Nursing Home Reform.
- F. DELEGATE AGENCY shall maintain a 24 hour on call emergency response system for the RCEB.
- G. DELEGATE AGENCY shall complete any and all surveys, reports, requests for information, etc in a timely manner as requested by RCEB.

2. PERSONNEL – Qualifications, Training and Assignment

- A. The qualifications for a case manager position established by the DELEGATE AGENCY must be commensurate with those established by the RCEB for same positions. Any exceptions to such qualifications must be submitted to the RCEB for review prior to any assignment of consumers for service coordination. RCEB may request at any time a list of current qualifications for case management staff.

- B. The DELEGATE AGENCY shall annually submit to the RCEB, a personnel report, to include but not limited to, number of positions and salary schedule.
- C. DELEGATE AGENCY shall assign a bilingual/bicultural case manager to consumers/family member who speaks the same primary language. The use of a primary language translator in addition to an assigned Case Manager must be reported to the RCEB at least semi-annually.
- D. DELEGATE AGENCY shall maintain the Case Manager to consumer staffing ratio in accordance with the provisions of the Lanterman Act (W& I Code 4640.6). The staffing patterns shall demonstrate that direct service coordination is the highest priority. In no case shall a case manager for these consumers have an assigned caseload in excess of 79 consumers for more than 60 days.
- E. DELEGATE AGENCY shall assign one Case Manager to each individual consumer/family assigned by RCEB within SEVEN (7) days of assignment from RCEB.
- F. All vacant Case Manager positions shall be filled within forty-five (45) days. DELEGATE AGENCY shall have a plan to provide timely and responsive service coordination for consumers in the event of a vacant position. Any vacant position must be reported to the RCEB.
- G. RCEB shall conduct various trainings and meetings relative to service coordination and shall invite DELEGATE AGENCY to attend and participate. DELEGATE AGENCY staff shall attend all required supervision meetings or trainings. DELEGATE AGENCY shall be held responsible and accountable for any and all information presented in such meetings and trainings.

3. SERVICE COORDINATION ACTIVITY

- A. DELEGATE AGENCY shall conduct assessments of applicants when assigned by RCEB. Intake and assessment procedures of the RCEB shall be used and will include:
 1. DELEGATE AGENCY shall complete the eligibility process within SEVENTY-FIVE (75) days of application for services for those applicants who are thirty-four months of age and older.
 2. DELEGATE AGENCY shall develop an IPP (individual program plan) within sixty (60) days of determining eligibility for services. Status of all intake must be entered in SANDIS
 3. For applicants who are between the ages of birth to thirty-six months of age, DELEGATE AGENCY shall complete the eligibility process within thirty days of inquiry and complete an Individual Family Service Plan (IFSP) within forty-five (45) days of inquiry. This shall include coordinating intake and joint assessments with assigned staff of the RCEB. DELEGATE AGENCY must notify

RCEB and coordinate with RCEB intake staff when intake request is not directly referred by RCEB.

- B. DELEGATE AGENCY will assure that all consumer demographic, diagnostic and evaluation information is accurately recorded and updated in the Client Master Files (CMF) and Client Diagnostic & Evaluation Record (CDER). All changes in data must be entered as soon as possible but no later than 30 days of such change (e.g., address changes, special health care conditions and consumer status code)
- C. DELEGATE AGENCY shall utilize the consultation of RCEB clinical specialists, teams, etc. whenever necessary and appropriate.
- D. DELEGATE AGENCY shall complete any and all documentation necessary, to carry out the responsibilities of service coordination, including but not limited to, CDER, Individual Program Plans, quarterly reviews, annual reviews, purchase of service requests, special incident reports, HCBS waiver requirements, health reviews, and consumer notes. Such documentation shall be consistent with RCEB'S procedures, current, accurate, timely and recorded in a manner for any reader to fully understand the activities of service coordination. DELEGATE AGENCY will transfer RCEB consumer records back to RCEB within fifteen (15) working days upon the determination that consumer has moved out of area; is deceased; is not satisfied with service coordinator; is unable to be located; has requested inactivation or closure.
- E. DELEGATE AGENCY, upon the transfer of a RCEB consumer record, will return the record to RCEB in accordance with RCEB transfer policy. All documentation requirements will be current at the date of transfer and filed per RCEB standards.
- F. The RCEB may assign to the DELEGATE AGENCY, all or part of an objective(s) from the RCEB's 2009-14 Performance Contract for completion and submission.
- G. DELEGATE AGENCY shall maintain at least 90% compliance standard for IPP, and 100% compliance standard in currency of documentation.
- I. DELEGATE AGENCY shall maintain and meet compliance with MEDICAID WAIVER and 1915(i) State Plan Amendment Waiver regulations and documentation requirements

The undersigned agree to the terms and conditions of the Addendum A.

**Lisa Kleinbub, Executive Director
Regional Center of the East Bay**

**Aaron Ortiz, Executive Director
La Familia Counseling Services**

ADDENDUM B

COMPENSATION

1. RATE OF COMPENSATION

Effective **November 1, 2024 through June 30, 2025, the rate shall be \$124.86** per consumer per service month for active consumers.

Effective **July 1, 2025 through June 30, 2026, the rate shall be \$127.98** per consumer per service month for active consumers.

RCEB shall pay the DELEGATE AGENCY up to 716 active consumers per month. These 716 active cases will be divided among 11 Case Managers for a caseload ratio of 1:65.

2. BILLING FOR SERVICES

DELEGATE AGENCY shall submit a monthly billing for active cases receiving service coordination services and a list of active consumers to RCEB by the 10th of the month following the month services were provided.

3. PAYMENT OF COMPENSATION

Timely billing by DELEGATE AGENCY shall be paid on or before the 20th of the month following the months services were rendered.

The undersigned agree to the terms and conditions of the Addendum B.

**Lisa Kleinbub, Executive Director
Regional Center of the East Bay**

**Aaron Ortiz, Executive Director
La Familia Counseling Services**

BUSINESS ASSOCIATE AGREEMENT - CONTRACTOR

This Business Associate Agreement - Contractor (“**Agreement**”), effective as of November 1, 2024, is entered into by and between Regional Center of the East Bay, Inc., a California nonprofit corporation (“**RCEB**”) and La Familia Counseling Services (“**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:

La Familia Counseling Services
Attention: Aaron Ortiz
26081 Mocine Avenue
Hayward, CA 94544

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 public benefit corporation

La Familia Counseling Services

By: _____
Name: Lisa Kleinbub
Title: Executive Director

By: _____
Name: Aaron Ortiz
Title: Executive Director