



*Cultivating Connection - Empathetic Stewardship - Seizing Opportunities - Intentional Adaptability*

## REGIONAL CENTER OF THE EAST BAY

### BOARD OF DIRECTORS MEETING

### NOTICE/AGENDA

Date: Monday, April 28, 2025

Location: Virtual call-in

Time: 7:00 – 8:30 p.m.

Please click the link to join the webinar

<https://us06web.zoom.us/j/81483119402?pwd=RUZoVaWRYBDaCGxuyYYkLAGxxiAHy.1>

Dial by your location: +1 669 900 6833

Webinar ID: 814 8311 9402

Passcode: 227039

**Board Agenda, Minutes, and Packet Located on our Website: Click Here → [Link](#)**

For ADA or other language accommodations, please email [writetous@rceb.org](mailto:writetous@rceb.org) by the end of Wednesday the week *before* the meeting. We will have simultaneous Spanish interpretation at this meeting.

Board meetings are the 4<sup>th</sup> Monday of every month [no board meeting in July/August/December].

#### Public Meeting – RCEB NCI Data Report

*Presentation TBA and posted on our website*

The Board of Directors of Regional Center of the East Bay will hold a public meeting as required by Welfare and Institutions Code 4571(h)(1) on Monday, April 28, 2025 at 7 PM. Regional centers must annually present data collected from NCI surveys at a public meeting of its governing board in order to assess the comparative performance of the regional center and identify needed improvements in services for consumers, including, but not limited to, case management services. There will be an opportunity for public comment after the presentation. Our regular board meeting will follow after the public meeting concludes.

I. CALL TO ORDER Paré (3 mins)

II. MISSION, VISION, AND CORE VALUES Paré (3 mins)

#### THE MISSION THAT GUIDES US:

Driven by the belief that everyone deserves to lead a life of their choosing, RCEB partners with individuals with intellectual and developmental disabilities, their families, and the community, to create opportunities for independence and fulfillment.

#### THE VISION THAT INSPIRES US:

We envision a future where individuals with intellectual and developmental disabilities live and work, doing what they love, without limitations!

III. CONSENT AGENDA Paré (2 mins)

A. Agenda 04/28/25 \*\*

B. Minutes 03/24/25 \*\*

#### IV. PUBLIC COMMENT

*The Board welcomes comments from any person regarding RCEB's service and support to the East Bay community. This Board meeting is conducted virtually via Webinar. If you would like to make a comment, click the "Raise Your Hand" button to request to speak when Public Comment is being taken on the Agenda item. You will then be unmuted when it is your turn to make your comment for up to 3 minutes. After the allotted time, you will then be re-muted. Thank you in advance for your interest.*

#### V. COMMITTEE REPORTS

##### A. EXECUTIVE DIRECTOR'S REPORT

Nanyonjo (10 mins)

- ▶ State Updates
- ▶ Mason Tillman Report and Updates
- ▶ Strategic Plan
- ▶ Standardized Information Packet Update

##### B. BUDGET & FINANCE COMMITTEE

Nguyen (10 mins)

- ▶ Monthly Status Report
- ▶ OPEB Premium\*\*

##### C. EXECUTIVE COMMITTEE/PRESIDENT'S REPORT

Paré (30 mins)

- ▶ Contract Approvals \*\* (If Applicable)
  - ▶ DDS; A-2 & D-4

##### D. BOARD MEMBERSHIP UPDATE

Key-Lee (5 mins)

##### E. CONSUMER ADVISORY COMMITTEE

Battles (5 mins)

##### F. SUPPORTS & SERVICES COMMITTEE

Paré (10 mins)

##### G. PROVIDER/VENDOR ADVISORY COMMITTEE

Hogue (10 mins)

#### VI. PUBLIC COMMENT – Same format as point IV

#### VII. ARCA REPORT

Paré (5 mins)

#### VIII. ADJOURNMENT

#### **\*\* ACTION ITEM**

*Closed session: (Topic)  
(If Applicable)*



**Regional Center of the East Bay**

*Cultivating Connection - Empathetic Stewardship - Seizing Opportunities - Intentional Adaptability*

## Board of Directors Meeting

Monday, March 24, 2025

Virtual Meeting

### RCEB BOARD MEMBERS PRESENT:

- |   |                                    |
|---|------------------------------------|
| 1. April Key-Lee, Membership Committee                      | 7. Renee Perls, Secretary          |
| 2. Brian Blaisch  | 8. Lisa Soloway                    |
| 3. Frank Paré, President/Supports & Services Co-Chair       | <b>ABSENT:</b>                     |
| 4. Rose Coleman   | 9. Nyron Battles, CAC Chair        |
| 5. Sadia Mumtaz, Vice-President/Diversity & Equity Co-Chair | 10. Dan Hogue, PVAC Representative |
| 6. Teresita DeJesus   |                                    |

### STAFF PRESENT:

- |   |  |
|---|--|
| 1. Ashley Harmon, Executive Assistant                                     | 10. Lynn Nguyen, Director of Finance & Administration                  |
| 2. Ben Braun, Associate Director of Early Start and Young Children        | 11. Mariana Varela, Manager of Diversity, Equity, Access and Inclusion |
| 3. Caylin Patterson, Director Of Human Resources & Support Services       | 12. Michelle Velasco, Case Management Supervisor                       |
| 4. Cristie Raynor, Case Management Supervisor                             | 13. Michael Minton, Manager of Risk Management and Quality Assurance   |
| 5. Daniel Bermeo, Case Management Supervisor                              | 14. Priscilla Gomez, Community Services Supervisor                     |
| 6. Dr. Rebecca Nanyonjo, Executive Director                               | 15. Ronke Sodipo, Director, Client Services                            |
| 7. Elvia Osorio-Rodriguez, Associate Director of Client Services/Children | 16. Steve Robinson, Director Community Services                        |
| 8. Genia Lindberg, Admin. Services Manager                                | 17. Shirley Obioma, Case Management Supervisor                         |
| 9. Jeffrey Nagafuji, Manager of Specialized Services and Supports         | 18. Vanessa Ibanez, Case Manager                                       |

### GUESTS PRESENT:

- |                              |                           |                              |
|------------------------------|---------------------------|------------------------------|
| 1. Ann Pringle               | 16. Guillermina Mazariego | 31. Noelia D                 |
| 2. Ara                       | 17. Iphone (2)            | 32. Omar Rascon              |
| 3. Assata Olugbala           | 18. Iphone (71)           | 33. Rae                      |
| 4. Ben Chen, ACPHD           | 19. iPhone                | 34. Sanasadat Shooshtari     |
| 5. Bernard Ashcraft          | 20. Jenica Hadley         | 35. Sharon Web               |
| 6. Chris Aguire/DDS          | 21. Jaynette              | 36. Sheraden Nicholau/SCDDC  |
| 7. Danielle Motley           | 22. Kanaka Kannan         | 37. Sister Avanel Johnson    |
| 8. David Glasser             | 23. Kantor                | 38. Sol Solorzano            |
| 9. Denise Bradley            | 24. Lisa Lee              | 39. Sonia M.                 |
| 10. Divine Fijian HomeCare   | 25. Marcia                | 40. Specially Abled          |
| 11. Dominique, FUFÉ          | 26. Maria Ramirez, FUFÉ   | 41. Tandra DeBose, YAP Advo. |
| 12. Dr. Tracey Edwards Moore | 27. Maureen Fitzgerald    | 42. Vi Ibarra/CCDDC          |
| 13. Eden Dela Cruz           | 28. Megan                 | 43. Wendell James            |
| 14. Eleanor Ramsey           | 29. Mila                  |                              |
| 15. Francesca Percelle       | 30. Mikayla               |                              |

## **CALL TO ORDER**

Frank Paré called the regularly scheduled business meeting of the Regional Center of the East Bay to order at 7:04 pm. Our Mission, Vision, and Core Values were introduced. A quorum was established shortly into the meeting and the agenda and minutes were approved then.

## **PUBLIC COMMENT**

*Regional Center of the East Bay uses Robert's Rules of Order to guide our meetings. Robert's Rules of Order is the most used manual of parliamentary procedure in the United States. Robert's Rules of Order is designed to provide structure and guidance while facilitating the orderly operation of a meeting.*

*According to Robert's Rules of Order, our board members are not allowed to comment, debate or respond to the public during our public meetings. There are other meetings such as our Diversity & Equity or Supports & Services meetings that begin at 5:30pm before the board meetings.*

*Sanasadat Shooshtari, shared her aim of finding ways to support individuals with developmental and intellectual disabilities. Expressed her personal reliance on regional center services, acknowledging some areas where improvement could be made, such as response times. However, she emphasized that without the support from RCEB, she would not be as independent or able to live on her own. She offered her help outside the meeting, promising to assist others in reaching their fullest potential through the services that RCEB provides. Sana concluded by reinforcing the importance of everyone having a voice and recognizing the value of support in achieving potential, aligning with the mission and vision of RCEB.*

*Public Comment, Young Ha, Communicated that her son, who has autism, had been an RCEB client since he was 1 year and 4 months old. She mentioned that she is an ambassador for DBU, an organization advocating for the rights of the disability community, including self-advocates like her son and family members like herself. She expressed gratitude for the warm welcome at the meeting, stating that it was the first time she felt truly welcomed. She admitted that her family was sometimes hesitant to share due to the difficulty of expressing themselves in English. She raised a concern about changes in service codes and categories related to her son's day program, which she had learned about from the program's vendor. She was unsure about the new codes, categories, and the involved agencies, and she asked for clarification on these changes so that she could better negotiate services for her son. She concluded by thanking the participants for their attention.*

*David Glasser had one quick question regarding the events in Washington, asking if there was a place on the agenda where someone could provide an update on how these changes were affecting the regional center.*

*Francesca Percelle, requested the Mason Tillman report be released.*

## **COMMITTEE REPORTS**

### **EXECUTIVE DIRECTOR'S REPORT** – Rebecca Nanyonjo, DrPH, Executive Director

Dr. Nanyonjo explained the current uncertainty regarding federal funding, particularly following a significant reduction of \$200 to \$300 billion recently passed by Congress. The State of California was also facing budget shortfalls, with a \$9.5 billion deficit in Medi-Cal funding. This could result in cuts to local programs that rely on federal and state funding, including regional centers. She outlined that 40% of California's residents depend on Medi-Cal services, and that regional centers rely on Medi-Cal. Although the full impact of these cuts was unclear, she anticipated significant shortfalls. The state's revised budget would be released in May, and a final budget would be adopted by June 30, 2025. She also discussed the State Department of Developmental Services' focus on protecting entitlement programs and prioritizing support for young children, though further details on potential budget cuts were still pending. Another key issue discussed was the state's Master Plan which has been under development for 2-3 years. The 10-year plan, which includes regional centers, was set to be released to the public on March 28, 2025. She also shared her plans for community meetings in the coming weeks to introduce herself and gather input from local residents. She emphasized that these meetings would be scheduled to maximize participation, with various attendance options, including Zoom. Dr. Nanyonjo highlighted the upcoming release of

the National Core Indicators (NCI) data, which would be presented at the April board meeting. She also mentioned the ongoing strategic plan, which will guide the organization's direction.

Dr. Nanyonjo discussed the Mason Tillman Report and introduced two key member during the meeting. She expressed her intention to share the report, which would soon be posted on the website. She also mentioned the significant interest the report had generated. Dr. Tracey Edwards Moore and Mr. Omar Rascon, who had been working with the regional center and were involved in addressing concerns raised in the Mason Tillman report. These individuals were brought into the discussion due to their expertise in leadership, equity, and organizational management. Dr. Nanyonjo emphasized the importance of external perspectives in addressing the community's concerns, particularly related to fairness, justice, and communication.

Dr. Moore shared her background in leadership development and her certification in Justice, Equity, Diversity, and Inclusion (JEDI). She mentioned that her involvement in the project began under the previous Executive Director, and she highlighted the shift in focus under Dr. Nanyonjo's leadership, with continued efforts to act on the findings of the report. Mr. Rascon introduced himself as someone with a background in public health and healthcare administration, currently pursuing a doctorate in organizational leadership with a focus on equity and social change. The discussion was aimed at addressing issues identified in the report and ensuring future actions were in alignment with the community's needs.

The board engaged in questions and clarity regarding when the report would be posted, the concerns with connecting with Dr. Ramsey regarding the report and findings/recommendations, and the involvement of Camp Jedi. Dr. Nanyonjo addressed all concerns and reviewed parts of the "Final Draft Mason Tillman Report" including reviewing the goals moving forward. Dr. Tracey Edwards Moore also discussed the feedback received during the last PVAC Meeting around the report.

With quorum established we then moved back to Agenda/Minutes

#### **CONSENT AGENDA / MINUTES**

M/S/C "The Board moves to approve the March 24, 2025 Agenda as presented"  
[Sadia/Renee] Unanimous - The motion was adopted. (1 abstention which was later corrected due to a misunderstanding of the current motion.

M/S/C "The Board moves to approve the February 24, 2025 Minutes as presented".  
(Sadia/Rose] 7-yes, 1-abstain - The motion was adopted.

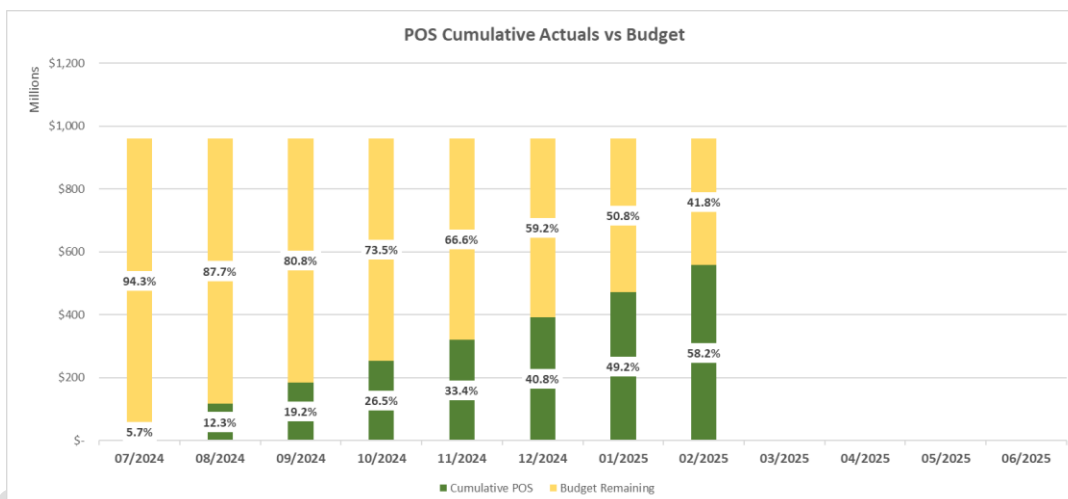
#### **BUDGET AND FINANCE COMMITTEE** – Lynn Nguyen, Director of Finance & Administration

##### **PURCHASE OF SERVICE**

In March, RCEB received the allocation intent letter from DDS for the A-2 amendment. This provides additional POS allocation of \$54M and HCBS funding of \$845k. We have included these additional amounts for this month's reporting. The actual amendment contract will be sent out from DDS for Board's approval in the following month. We have only been tracking actual POS expenditures against the total budget, due to the changes in authorizations for the implementation of the rate reform effective January 1<sup>st</sup>, 2025. We also have been working on sending out new rate acknowledgment forms to vendors as quickly as possible due to these changes in service codes and sub codes for the rate reform. Despite of these changes, a preliminary PEP will be done for April since DDS has reinstated the requirement for the Regional Centers to submit the Purchase of Services Expenditures Projection (PEP) reports again for April 2025. The staff will present the PEP report to the Board at next month meeting. Through February 2025, for non-CPP POS expenditures, we have expended \$558M, or 58% of the total budget of \$959M for Fiscal year 24-25. This is comparable to the 61% of the total budget of \$759M for the last fiscal year at this time. For CPP POS Expenditures, in the A-2 intent letter, RCEB received additional \$1.7M for CPP/CRPD start-up costs for several projects, with the largest project of \$1.5M for a multifamily project where 25% (or 14 units) are set aside for DD individuals. This additional funding is included in the budget for this report. Through February 2025, we have spent \$372k to date for placement

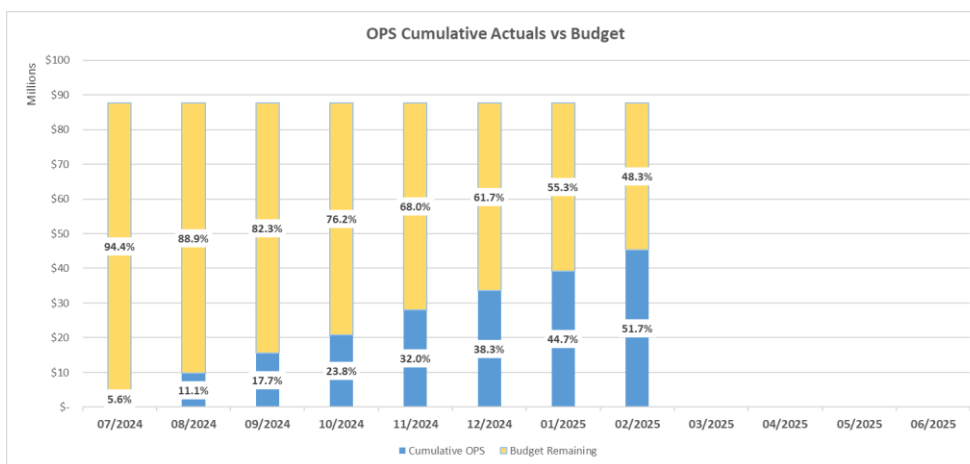
costs, with only \$100k funding allocation. We will need to review and request for additional allocation for placement.

The graph POS cumulative Actuals versus Budget shows POS expenditures trending month-over month compared to the overall budget for FY 24-25.



## OPERATIONS

The A-2 amendment received in March also included the remaining OPS funding for CPP/CRDP for \$1.2M and \$250k for Assistance with Health and Safety Waiver due to the rate reform. We have included these additional amounts for this month's reporting. With the A-2 allocation, through February 2025, we have expended \$45M, or 52% of a total of operations budget of \$88M, which is more compared to the 46% of a total budget of \$78M for previous fiscal year at this time. RCEB will continue to utilize Operations funding to recruit, hire and retain staff while experiencing increasing costs in legal, temporary help, and consulting expenses. We are pleased to report an increase in headcount of 16 since January for a total employee count of 596 as of March 1<sup>st</sup>, 2025. The additional hire of Case Managers helps improve our caseload ratios as reported below. The graph OPS cumulative Actuals versus Budget below shows OPS expenditures trending month-over-month compared to the overall budget for FY24-25.



See attached file. The additional graphs are provided for informational and comparison purposes:

- Operations actual versus budget as compared to February 28, 2024.
- Operations 8 months YTD for the last 5 fiscal years.
- Purchase of Services 8 months YTD for the last 5 fiscal years.

### Caseload Ratios for Case Management

Each year on March 1<sup>st</sup> as required by our DDS contract, RCEB needs to report our caseload ratios to DDS.

These caseload ratios are calculated for each type of caseloads, namely Medicaid Waiver, Age Zero to Five, DC movers in last 12 months, Complex, Low/No POS, and All Others.

Below is March 1<sup>st</sup>, 2025 ratios compared to March 1<sup>st</sup>, 2024, as compared to the required caseload ratios.

	Medicaid Waiver	Age 0-5	From DC	All others	Complex	Low/No Pos
<b>Required ratios</b>	<b>62</b>	<b>40</b>	<b>45</b>	<b>66</b>	<b>25</b>	<b>40</b>
<b>Caseload ratio 3/1/2025</b>	<b>80.1</b>	<b>59.7</b>	<b>31.1</b>	<b>82.4</b>	<b>34.2</b>	<b>39.7</b>
<b>Caseload ratio 3/1/2024</b>	<b>97.1</b>	<b>78.3</b>	<b>44.2</b>	<b>103.3</b>	<b>39.8</b>	<b>39.8</b>
<b>2025 vs 2024</b>	<b>(16.9)</b>	<b>(18.6)</b>	<b>(13.1)</b>	<b>(20.9)</b>	<b>(5.6)</b>	<b>(0.1)</b>

RCEB reported 26,463 cases in March 2025, compared to 25,246 in March 2024, for an increase of 1,217 cases. While RCEB has not met the required ratios in some areas, the March 2025 caseload ratios show overall a significant improvement year over year in all areas, due to the increase of 83 full-time equivalent for a total of 358 Case Managers. The board engaged in questions and comments with Ms. Nguyen regarding the Budget and Finance Report. Ms. Nguyen addressed concerns and will continue to update information shared with the board. The importance of attending the Budget and Finance Subcommittee meeting was expressed. Ms. Sodipo was also asked to join the conversation to clarify caseloads and increased rates. The board and Ms. Nguyen revisited the Helping Hands reporting frequency of twice a year, and the procedure aimed for presentation (Draft) before our next Helping Hands report in June 2025.

### EXECUTIVE COMMITTEE REPORT/PRESIDENT'S REPORT: Frank Paré, President CONTRACT APPROVAL

*[Note: The contracts were submitted to the board of directors prior to the board meeting for their review and opportunity to ask questions and provide comments.]*

### R&D TRANSPORTATION SERVICES, INC:

July 1, 2025-June 30, 2028

- 6,000 # of Daily Trips -- 3,000 # of Clients
- Ambulatory: \$3.54 per trip -- Non-Ambulatory: \$3.62 per trip
- Annual Total: Up to \$5,370,624.00 - Contract Total: Up to \$16,111,872.00

M/S/C "The Board moves to approve of this contract with R&D Transportation Services, INC. as specified" - Discussion occurred with the board and RCEB's transportation department to provide clarity on the contract before voting – Especially highlighting that the rates as established by DDS.  
[Rose/Lisa] 7-yes - Unanimous - The motion was adopted

### CONFLICT OF INTEREST (COI) POLICY:

Dr. Nanyonjo provided an overview of the Policy that was previous shared in the board packet. These changes are additions to the current policy required by DDS.

M/S/C "The Board moves to approve the Conflict of Interest Policy as presented"  
[Brian/Teresita] 7-yes - Unanimous - The motion was adopted.

### RESOLUTION FOR EXCEPTION TO THE 180-DAY WAIT PERIOD:

Dr. Nanyonjo provided an overview of the Resolution for Exception to bring Lisa Kleinbub in for consultation and support. Caylin Patterson, our HR Director also joined the conversation to further discuss and answer any board questions/concerns.

M/S/C "The Board moves to approve the Resolution for Exception as presented"  
[Renee/Lisa] 7-yes - Unanimous - The motion was adopted.

\*Quorum was interrupted during the beginning of this section and incorrect voting occurred – once quorum was reestablished votes were retaken live in the public meeting and the official motions and votes were carried and documented.

**MEMBERSHIP DEVELOPMENT COMMITTEE:** April Key-Lee

Ms. Key-Lee provided an update on the membership status of the Regional Center of the East Bay Board. She mentioned having spoken with and connected with at least four candidates, and possibly a fifth, all of whom were present at the meeting. She explained that candidates are required to attend public meetings to understand how the board operates and the overall governance of the Regional Center of the East Bay. The board consists of individuals representing the developmentally disabled community in Alameda and Contra Costa counties, with at least half being clients of the center, parents, or legal guardians. Ms. Key-Lee also highlighted that next year; there will be open positions on the board. Specifically seeking new members from Contra Costa County, as well as Spanish-speaking or Latinx individuals. She encouraged anyone interested, including parents, family members, or clients of the regional center, to review the informational page for potential candidates. She also emphasized that the board members are volunteers who dedicate their time to the role and reminded everyone of the fiduciary responsibilities of the board. Please check our website and read about the board and e-mail your interest: [Board of Directors - Regional Center of the East Bay](#)

**CONSUMER ADVISORY COMMITTEE [CAC]:** Rose Coleman

In lieu of Mr. Battles reporting Ms. Coleman explained that CAC did not take place this month due to quorum. Next CAC Meeting will be in person in April.

**DIVERSITY AND EQUITY SUB COMMITTEE:** Frank Paré, President

Mr. Paré requested that Dr. Nanyonjo report on the meeting discussion with Ms. Mumtaz being absent for this section of the board meeting. She mentioned that similar updates were given about the currency of the State, and introductions were made by Camp Jedi. The group requested that all subcommittees align with the strategic plan. A key discussion focused on strengthening partnerships. They also discussed improving the organization and structure of subcommittees for future progress. She informed the group of upcoming listening sessions taking place with Camp Jedi which aim to address issues highlighted in the Mason Tillman Report and explore ways to move forward productively. Mr. Paré briefly added that a parent had raised concerns at the committee about ongoing challenges in receiving services. He noted that he had previously spoken with the parent and expressed a desire for resolution. Dr. Nanyonjo confirmed that they had collected contact information from those who raised concerns and were working on following up to ensure a timely response, addressing potential communication issues. (Communication occurred with the families and the board of directors were updated on the status).

**PROVIDER/VENDOR ADVISORY COMMITTEE [PVAC]:** Dan Hogue

Mr. Hogue was not present during the board meeting; Mr. Paré requested that Dr. Nanyonjo provide an overview. The focus was on legislative efforts in the East Bay region. A significant portion of the conversation revolved around what would constitute effective advocacy in light of rapid changes. The group discussed the Mason Tillman report, which generated valuable feedback on recommendations and considerations for the organization's future actions. Additionally, upcoming events were shared. Dr. Nanyonjo noted that the meeting also covered typical concerns raised during PVAC gatherings, but she acknowledged the summary was brief due to the absence of her notes. Board members engaged in further questions/conversation regarding the state budget and financial impact to the system

**PUBLIC COMMENT:**

*Sheraden Nicholau/SCDDC a member of the State Council, addressed the group, emphasizing the significant impact Medicaid cuts would have on Californians. She explained that 43% of the state's population, over 17 million people, rely on programs funded by Medicaid dollars, including services like regional center services, IHSS, WIC, Covered California, the Affordable Care Act, CalFresh, and foster youth programs. She noted that these cuts would severely affect these individuals from day one. She shared that ongoing efforts were being made to train various groups—community, professional, self-advocacy, and family advocacy groups—on Medicaid and*



effective advocacy techniques. She highlighted the importance of the next two weeks, describing them as critical opportunities for people to contact their Congressional representatives and U.S. Senators about the significance of Medicaid funding in California. She also encouraged individuals to spread the message to others across the country. In addition, she offered training sessions on Medicaid advocacy and how to effectively tell one's story to legislators. Sheraden also mentioned upcoming events, including a session on limited conservatorships and supported decision-making on March 27th, and statewide self-determination orientation trainings in multiple languages. Lastly, she announced the next regional advisory committee meeting on April 30th, focusing on health equity work in emergency departments. The meeting would be hybrid, with both in-person and Zoom options.

Vi Ibarra/CCCDDC, representing the Developmental Disabilities Council in Contra Costa County, provided a report on the Transition Conference and Resource Fair that took place on March 15th at DVC in Pleasant Hill. The event had 296 registered attendees, including people from Contra Costa and Alameda County, with the majority being regional center clients and their families. There were 68 vendors at the Resource Fair and 16 presentations throughout the day. Vi expressed gratitude to the Regional Center of the East Bay for providing Spanish translation services and translating the presentation slides, enhancing accessibility for Spanish-speaking attendees. Additionally, the Regional Center and the State Council funded American Sign Language translation for the event. Vi shared information about upcoming events, including a Town Hall hosted by West Ed on inclusive access to diplomas for students with disabilities, scheduled for March 25th. She also mentioned presentations on the HCBS final rule offered by Tool Works and Finding Golden Solutions on April 10th and May 21st. Furthermore, she highlighted the upcoming Creativity Expo in Concord on April 24th, showcasing talent from local programs. Lastly, Vi announced the next Council meeting on March 26th, which would feature a presentation from the Regional Center of the East Bay on the new person-centered IPP form.

1. March 25, 2025 1:00 p.m – 2:30 p.m

Zoom Registration for the “Inclusive Access to a Diploma: Reimagining Proficiency for Students with Disabilities” Town Hall: [https://scoe.zoom.us/meeting/register/1Edgf80Qr6PE\\_g9FzjiNg](https://scoe.zoom.us/meeting/register/1Edgf80Qr6PE_g9FzjiNg)

2. HCBS Final Rule, and Why it is Important to Clients and Family Members, flyer with more information here: <https://drive.google.com/file/d/12YomohKJkn6UGh-2tF1NaGCi5CZadfyp/view?usp=sharing>

3. TOPS Creativity Expo! Thursday, April 24, 2025, Flyer with more information: <https://drive.google.com/file/d/1NcBjEwTeLzzFapHLeOg8-NDNGQTYvJ2E/view?usp=sharing>

Ara, the speaker thanked the audience for the opportunity to share their comments. They emphasized the importance of an essential tool for effective participation and encouraged others to write their comments or ask about accessibility and the rights of people with disabilities. The speaker highlighted the need for communication avenues that foster inclusion and participation for everyone. They also expressed their own commitment as a Latina mother and participant in the Hispanic community. The speaker acknowledged the significant barriers Latino families face, particularly in terms of language and cultural access. They respectfully requested that Latino and Hispanic representatives be included in oversight plans and the implementation of policy changes not only the African American community. The speaker concluded by stating that true inclusion is achieved only when all voices are represented, ensuring that their families, too, deserve to be heard and involved.

Ben Chen, a representative from the Alameda County Developmental Disabilities Council, shared updates from their organization and community. In February, the Council held a board meeting with a presentation on legislative advocacy, focusing on tracking federal policy changes and the state budget. They emphasized the importance of action alerts, urging people to contact legislators about the impact of Medicaid cuts. March was a break month for the Council, as usual. Additionally, Erin Patch from Ability Now Bay Area joined the Council, and they continued recruiting board members from the developmental disabilities community. Ben also expressed gratitude for the support received for their transition conference, which included translation and interpretation services, making it more accessible to a wider audience. The Council and the Contra Costa County Developmental Disability Council were also planning their annual Joint Council Awards event, which would be held in Alameda County in early June, with more details to come. Ben shared that the Alameda County Behavioral Health Department had released a community input survey under the Behavioral Health

Services Act, highlighting the inclusion of the disability community as a required stakeholder group. He encouraged broad distribution of the survey to ensure the needs of the IDD community were represented. Lastly, Ben mentioned several community events, which would be shared via email, and reminded everyone that they could email him to subscribe to the Council's newsletter for more information on events.

Alameda County Behavioral Health Services Act Survey

Alameda County Behavioral Health Services Act Survey: <https://www.surveymonkey.com/r/MWNFLYY>

Audio format: <https://acmhsa.org/wp-content/uploads/2025/02/Audio-Version-BHSA-Community-Input-Survey-Integrated-Plan-FY2629.docx>

(Spanish) Congreso Familiar Pittsburg 2025 | Saturday, April 5, 8AM – 2PM | Pittsburg High School | [Register Here](#)

Congreso Familiar is a conference focused on education and empowerment for Latino families with children or family with disabilities served by RCEB. Events in Spanish from La Familia: 1. Virtual: Monthly Orientation | Regional Center Services and Generic Resources |

Tuesday, April 15th, 2025 (Zoom), 10:00 am – 12:00 pm | [Zoom Link](#) 2. Family Trust for Children with Disabilities (Estate Planning and Asset Protection) | Thursday, April 17th, 2025 (Zoom), 10:00 am – 12:00 pm |

[Registration Link](#) 3. ABA Therapy: Process, Access, and Context for Parents and Caregivers | Tuesday, April 29th, 2025 (Zoom), 10:00 am – 12:00 pm | [Registration Link](#)

Next Alameda County DD Council Board meeting will be a hybrid meeting on April 9, at the Alameda County Public Health Department, 1100 San Leandro Blvd, San Leandro, CA 94577.

We will have a presentation on Social Recreation. If you plan to attend in person, please RSVP on our google form. RSVP:

[https://docs.google.com/forms/d/e/1FAIpQLSdBR\\_pE\\_lXxUSDAdia9IOs5Ftp\\_BI1RCNJR52Nm7APcBDsnnw/view\\_form?usp=header](https://docs.google.com/forms/d/e/1FAIpQLSdBR_pE_lXxUSDAdia9IOs5Ftp_BI1RCNJR52Nm7APcBDsnnw/view_form?usp=header)

Assata Olugbala, expressed her concerns around the Mason Tillman report and not being formally presented and her impression of the Action Item related to the Resolution Regarding Lisa.

Sharon Web, expressed dissatisfaction with the decision to waive the waiting period for Lisa to return and criticized the handling of the Mason Tillman report. Requested transparency to the board and the public.

David Glasser, mentioned that the Tillman report had highlighted some important issues. He noted that, beyond the problems raised, the report had revealed a lack of data that should be collected in the future. He suggested that as part of the ongoing process, they could start identifying the types of data that should be gathered to ensure the information is available if the Board needs to revisit the issues. Glasser also agreed with previous speakers, expressing concern that the authors of the report did not come in to present or defend their findings, calling it a problematic situation.

Speaker (referred to as iPhone 2), recalled an event involving a preliminary report from the Tillman report. The speaker remembered Frank had stepped out of a board meeting when the report was discussed, and they emphasized their ability to document events despite having a learning disability. The speaker mentioned taking snapshots of key moments and keeping notes that only they could read. They referred to a meeting that occurred when Nancy Barsman visited from Sacramento and met with case managers. Lisa led the board meeting, and the preliminary report, which was color-coded, was shared with the regional center. The Tillman report, which included interviews with black vendors, was also noted. The speaker recalled the details of the meeting and confirmed that everything was documented. Mr. Paré thanked Zach for his comments.

Dr. Eleanor Ramsey, explained the draft report and comments made. She mentioned that RCEB requested she present to a body of the regional center with only three days notice and emphasized it was not possible to deliver such an extensive report on short notice but expressed willingness to present it to the board or any other group, provided enough time was given to prepare. She stressed that the presentation would need proper preparation and could not be done impromptu. She also clarified the collection of data for the Mason Tillman Report. Dr. Ramsey emphasized the importance of hearing from those involved in the organization and hoped that the upcoming presentation would be informative and well-received. She requested that any questions or issues be submitted in writing for them to address thoroughly. Frank thanked her for the update.

**ASSOCIATION OF REGIONAL CENTER AGENCIES (ARCA):** Frank Paré, President  
Mr. Paré was traveling and did not attend the last ARCA meeting.

**MEETING ADJOURNED**

The board meeting adjourned at 9:51 p.m.

**CLOSED SESSION – Legal – Cancelled due to time.**

**Next Virtual Meetings on April 28, 2025**

The next Supports and Services Committee Meeting will be at 5:30 PM

The next Board Meeting will be at 7:00 PM

**Acronym List**

**ARFPSHN** Adult Residential Facility for Persons with Specialized Health Care Needs

**BAHC** Bay Area Housing Corporation

**CCH** Community Crisis Home

**CPP** Community Placement Plan

**CRDP** Community Resource Development Plan

**DDS** Department of Development Services

**EBSH** Enhanced Behavioral Support Home

**FHA** Family Home Agency

**HCBS** Home and Community Based Services

**ILS** Individual Living Services

**ILS** Individual Living Services

**OPS** Operations

**PEP** Purchase of Service Expenditure Projection

**POS** Purchase of Service

**SLS** Supported Living Services

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

04/08/2025      Date submitted to RCEB Board for review

04/09/2025      Date approved by RCEB Board Executive Committee (if applicable)

04/28/2025      Date approved by RCEB Board

Operations ☒ X

Purchase of Service ☐ X

The following contracts have been reviewed by Lynn Nguyen, Director, Finance and Administration and Rebecca Nanyonjo, 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:
State of California Department of Developmental Services Contract with RCEB “D-4” Contract Allocation	N/A	Department of Developmental Services and Regional Center of the East Bay	7/1/2022– 6/30/2025	<ul style="list-style-type: none"> <li>• <b>\$627,000</b> RC Performance Measures</li> <li>• <b>\$(567,062)</b> Deallocation of the tuition reimbursement program</li> <li>• <b>\$255,916</b> Other</li> </ul> <p><b>Total OPS \$315,854</b></p> <p><b>Total CPP/CRDP POS \$586,845</b></p> <p>This amendment brings the total “D” contract allocations for F/Y 22-23 to <b>\$803,150,206.</b></p>	This contract represents the D-4 contract amendment of the “D” series contract between DDS and RCEB for fiscal year <b>2022-23.</b>



PETE CERVINKA  
DIRECTOR

State of California—Health and Human Services Agency  
**Department of Developmental Services**  
1215 O Street, Sacramento, CA 95814  
[www.dds.ca.gov](http://www.dds.ca.gov)



GAVIN NEWSOM  
GOVERNOR

**EXHIBIT I**  
**COVER LETTER AND CONTRACT AMENDMENT INSTRUCTIONS**

**Attn: Regional Center Director**  
**Contracting Agency President**  
**Regional Center Administrator**

Contract Number: RC Contract, Series D, Amendment 4

Dear Contractor:

Attached are the STD 213A Standard Agreement and exhibits for your D-4 amendment.

Please return a signed copy of your STD 213A to [jacob.thomas@dds.ca.gov](mailto:jacob.thomas@dds.ca.gov) as soon as possible, via email, and cc [rccontracts@dds.ca.gov](mailto:rccontracts@dds.ca.gov). Please do not return the contract exhibits—only the STD 213A is needed.

Should you have questions or concerns, please send them to [rccontracts@dds.ca.gov](mailto:rccontracts@dds.ca.gov).

Sincerely,

*Jacob Thomas*

Jacob Thomas  
Contract Analyst

Enclosures

## Explanation of Items for FY 2022-23 D-4 Amendment

### **Operations (Ops)**

#### **Policy Items:**

#### **Regional Centers Performance Measures:**

\$4,125,000 allocation is related to the Phase 1 CIE payments. The payment correspondence can be found here: [Updated RCPM - Phase I Recognition and Incentive Payment Methodology](#)

\$7,602,000 allocation is related to FY 2024-25 RCPM incentive payments. This incentive payment is related to the Self-Determination Program. Please reference the letter sent on June 17, 2024: ["Regional Center Performance Measures \(RCPM\) for Fiscal Year 2023-24 and 2024-25."](#)

**Specialized Home Monitoring:** Allocation based on agreements with specific regional centers.

**Promoting Workforce Stability (Tuition Reimbursement Program):** A net \$3.6 million deallocation has been made to align with actions taken as part of the FY 2024 Budget Section 4300-495 (3). The remaining contract balance for this initiative maintains the necessary resource levels needed to support the regional centers Total Participants/Total Applicants confirmed. Note that an additional deallocation will also occur in the E series.

#### **CPP: For both Ops and Purchase of Services (POS):**

**Community Placement Plan (CPP) and Community Resource Development Plan (CRDP): DC Closure / Ongoing Workload:** Allocated based on Department approvals.

**STANDARD AGREEMENT - AMENDMENT**

STD 213A (Rev. 4/2020)

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AGREEMENT NUMBER

HD199015D

AMENDMENT NUMBER

4

Purchasing Authority Number

1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME

Department of Developmental Services

CONTRACTOR NAME

Regional Center of the East Bay, Inc. dba Regional Center of the East Bay

2. The term of this Agreement is:

START DATE

July 1, 2019

THROUGH END DATE

June 30, 2026

3. The maximum amount of this Agreement after this Amendment is:

\$803,150,206.00

4. The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein:

a. Replaced by this amendment is Exhibit A--Regional Center Contract Language Fiscal Year 2022-2023, in its entirety, which is attached hereto and made part of this contract.

b. This amendment replaces in its entirety Exhibit A of Regional Center Contract Language Fiscal Year 2022-2023--Contract Budget Summary, D-3, with the Exhibit A of Regional Center Contract Language Fiscal Year 2022-2023--Contract Budget Summary, D-4, attached hereto.

c. This amendment increases the total contract dollar amount by \$902,699.00. New total contract dollar amount not to exceed \$803,150,206.00.

Fiscal Year funds identified above may not be used for any other fiscal year than the fiscal year specified unless authorized by the Department to do so.  
*All other terms and conditions shall remain the same.*

*IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.***CONTRACTOR**

CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership, etc.)

Regional Center of the East Bay, Inc. dba Regional Center of the East Bay

CONTRACTOR BUSINESS ADDRESS

500 Davis Street, Suite 100

CITY

San Leandro

STATE

CA

ZIP

94577

PRINTED NAME OF PERSON SIGNING

Frank Pare

TITLE

Board President

CONTRACTOR AUTHORIZED SIGNATURE

DATE SIGNED

STD 213A (Rev. 4/2020)

☒ CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED 87 PAGES

AGREEMENT NUMBER HD199015D	AMENDMENT NUMBER 4	Purchasing Authority Number
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**STATE OF CALIFORNIA**

CONTRACTING AGENCY NAME Department of Developmental Services				
CONTRACTING AGENCY ADDRESS 1215 O Street, 10th Floor, MS 10-10		CITY Sacramento	STATE CA	ZIP 95814
PRINTED NAME OF PERSON SIGNING Greg Trahey		TITLE Manager, Contracts Unit		
CONTRACTING AGENCY AUTHORIZED SIGNATURE		DATE SIGNED		
CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL		EXEMPTION (If Applicable)		



FY 2022-23 Through D-4 Amendment Contract Budget Summary  
Exhibit A, Claimable Categories by Program (Ops, POS, EIP, FRS)

Contracting Agency: Regional Center of the East Bay, Inc.

Contract Number

HD199015

LEAVE DATE BLANK FOR PASS TO FILL

<b>TOTAL OPERATIONS (Ops) which include the line items listed below:</b>	<b>\$68,706,141</b>
<i>Less Separately Claimed Items:</i>	<i>-\$2,248,958</i>
<b>Total Ops Regular Monthly Claim Authority:</b>	<b>\$66,457,183</b>
<i>In accordance with State Contract language under Article III: Fiscal Provisions Item #4 Payment Provisions, paragraph 3, the following Operation category expenditures must be claimed on a separate invoice:</i>	
<b>Mental Health Services Fund</b>	<b>0</b>
<b>Total HCBSW ARPA Ops</b>	<b>59,293</b>
Language Access and Cultural Competency	0
Community Integration Child Adolescent (aka Soc Rec Grants)	59,293
<b>Total Foster Grandparent Sr Companion Program <sup>a/</sup></b>	<b>0</b>
<b>FGP &amp; Sr. Companion, Total General State Funds <sup>a/</sup></b>	<b>0</b>
FGP, General State Fund, Support	0
FGP, General State Fund, Volunteer	0
Sr Compan, General State Fund, Support	0
Sr Compan, General State Fund, Volunteer	0
<b>FGP, Total Federal <sup>b/</sup></b>	<b>0</b>
FGP, Federal Support	0
FGP, Federal Volunteer	0
FGP, Federal Stipend	0
<b>Total Regular Community Placement Plan (CPP) and Community Resource Development Plan (CRDP) Ops</b>	<b>1,434,960</b>
<b>DC Closure/Ongoing Workload</b>	<b>754,705</b>
<b>Service Access &amp; Equity (SAE) Grant Disparities</b>	<b>0</b>

<b>TOTAL PURCHASE OF SERVICES (POS) which include the line items listed below:</b>	<b>\$734,444,065</b>
<i>Less Separately Claimed Items</i>	<i>-\$5,959,097</i>
<b>Total POS Regular Monthly Claim Authority</b>	<b>\$728,484,968</b>
<i>In accordance with State Contract language under Article III: Fiscal Provisions Item #4 Payment Provisions, paragraph 3, the following Purchase of Service category expenditures must be claimed on a separate invoice:</i>	
<b>Total Community Placement Plan (CPP) and Community Resource Development Plan (CRDP) POS</b>	<b>3,199,935</b>
CPP/CRDP Start-Up	2,116,695
Regular CPP Assessment	2,014
Regular CPP Placement	1,081,226
<b>Early Intervention Program (Part C Grant for POS) <sup>c/</sup></b>	<b>1,697,427</b>
<b>HCBSW Compliance</b>	<b>1,061,735</b>

<b>Early Intervention Program (Part C Grant for EIP, Other Agency, FRC) <sup>c/</sup></b>	<b>0</b>
Early Intervention Program, Family Resource Centers Network	0

<b>Total Family Resource Services (FRS)</b>	<b>0</b>
	<b>0</b>

<b>TOTAL BUDGET</b>	<b>\$803,150,206</b>
---------------------	----------------------

<sup>a/</sup> Senior Companion (GF) Program Title: Senior Companion Program, CFDA # 94.016, Award No.19SCPCA002, Performance Period 07/01/19-06/30/22 for the three year grant.

<sup>b/</sup> FGP: Program Title: Foster Grandparent Program, CFDA Number: 94.011, Award No.19SFPCA002, Performance Period 07/01/19-06/30/22 for the three year grant.

<sup>c/</sup> Part C: CFDA Title: Infant and Toddler/Families (Part C) Program Title: Special Education-Grants for Infants and Families with Disabilities.

CFDA Number: 84.181A, Award No: H181A220037. Federal Agency Name: Office of Special Education and Rehabilitative Services, United States Department of Education  
Percent of Part C to Total Contract Funding: 0.21%

Department of Developmental Services, Budget Section, Allocations  
EXHIBIT III Explanation of Items in Allocation

Regional Center:

Regional Center of the East Bay, Inc.

EXHIBIT III

FY 2022-23 D-4 Allocation	Operations	Purchase Of Services	Early Intervention Program	Family Resource Services	Grand Total All Programs
<b>Grand Total of Previous Contract (D-3):</b>	\$ 68,390,287	\$ 733,857,220	\$ -	\$ -	\$ 802,247,507
<b>This Amendment (D-4):</b>					
<b>Operations Allocation (Ops):</b>					
<b>Ops Policy Items:</b>					
Specialized Home Monitoring	272,495				272,495
<b>Promoting Workforce Stability:</b>					
Tuition Reimbursement Program	-567,062				(567,062)
<b>Total Regional Center Performance Measures (RCPM)</b>	<b>627,000</b>				<b>627,000</b>
Regional Center Performance Measures, FY 22-23	265,000				265,000
Additional Regional Center Performance Measures SDP Related	362,000				362,000
<b>Ops CPP/CRDP Items:</b>					
Regular	0				
<b>Non-CPP, "CPP-Related" Items:</b>					
DC Closure / Ongoing Workload	-16,579				(16,579)
<b>UFS CERMS</b>					
<b>EIP Program for ARPA Part C (RCs claim as Ops)</b>					
Increase Technical Assistance & Monitoring to fund a HQ Position			0		
Family Wellness Pilot Program			0		
<b>Early Intervention Program (EIP) Family Resource Centers/Networks:</b>					
<b>Early Intervention Program (EIP) Family Resource Centers/Networks:</b>					
<b>Family Resource Services (Formerly Prevention Program):</b>				0	
<b>Purchase of Services Allocation (POS):</b>					
GAP					
Miscellaneous					
POS Base					
<b>POS Policy Items:</b>					
Compliance with Home and Community Based Services (HCBS)					
Work Activity Program (WAP)					
<b>POS CPP/CRDP Items:</b>					
Start-Up		516,695			516,695
Assessment		2,014			2,014
Placement		68,136			68,136
<b>Total D-4 Amendment</b>	<b>\$ 315,854</b>	<b>\$ 586,845</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 902,699</b>
<b>Total D-4 Contract</b>	<b>\$ 68,706,141</b>	<b>\$ 734,444,065</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 803,150,206</b>

**EXHIBIT A REGIONAL CENTER CONTRACT LANGUAGE  
REGIONAL CENTER OF THE EAST BAY, INC. dba REGIONAL CENTER OF THE  
EAST BAY**

**FISCAL YEAR 2022-2023**

**REGIONAL CENTER MASTER CONTRACT INDEX**  
**(Revised ~~October 11, 2023~~ March 14, 2025)**

**ARTICLE I:                   STANDARD TERMS AND CONDITIONS**

Section	1	Amount of Contract
	2	Term of Contract
	3	Exhibits
	4	Definitions
	5	Control Requirements
	6	Contractor Service Area or Counties
	7	Copyrights/Patents
	8	Zero Tolerance Policy
	9	Whistleblower Policy
	10	Transparency and Access to Public Information
	11	Conflict of Interest
	12	Rights and Privileges Limitations
	13	Contract Titles Statement
	14	Restricting Use of State Funds
	15	Payment of Accrued Benefits
	16	Procedures for Employee Retention

**ARTICLE II:               PROGRAM PROVISIONS**

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	2	Resource Development
	3	Contracting Policy
	4	Federal Funds
	5	Service Standards
	6	Community Placement Plan
	7	Out-of-State Services
	8	Mental Health Facilities
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	2	Allocation of Funding to Contractor
	3	Advance Payment Provisions
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	5	Budget Category Transfers
	6	Contract Funding Stipulations
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	10	Consumer Trust Accounts
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**ARTICLE IV:           CONTRACTOR OPERATIONS**

Section	1	Electronic Data Processing and Data Integrity
	2	Personnel
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	5	Public Disclosure of Contracts
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**ARTICLE V: EVALUATION**

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	3	State Audits of Contractor

**ARTICLE VI: CONTRACT AMENDMENT/CANCELLATION/REOPENING**

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	2	Emergency Response System
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	5	Registered Sex Offenders
	6	Data Compilation
	7	Shared Vendors and Case Management Responsibility
	8	Program Development Funds – Parental Fee Program
	9	Executive Director Recruitment Policy
	10	Reporting on Specified Consumers
	11	Board of Directors Training Plan
	12	W&I Code Section 4731 Consumers’ Rights Complaints
	13	Medicaid Enrollment Requirements
	14	Board Governance
	15	Forensic Cases
	16	Reporting on DDS Conservatees

**ARTICLE VIII: PERFORMANCE**

Section	1	Contract Development
	2	Annual Progress Report
	3	Incentives
	4	Contract Compliance

**ARTICLE IX: STAFFING, MONITORING AND REPORTING**

Section	1	Specialized Personnel and Monitoring
	2	Caseload Ratios
	3	Reporting

**ARTICLE X: ADDITIONAL PROVISIONS**

**EXHIBITS**

A	Contract Budget Summary
B	Home and Community-Based Services Waiver

	Regional Center Fiscal Agent Responsibilities
C	Performance Plan
D	Early Start Statement of Assurances
E	Community Placement Plan and Community Resource Development Plan Statement of Assurances
F	Statement of Assurances for Protection of Protected Health Information
G	Medicaid Enrollment Requirements
H	General Terms and Conditions
I	Contractor Certification Clauses

## **ARTICLE I. STANDARD TERMS AND CONDITIONS**

### **1. Amount of Contract**

The total amount payable to Contractor under this contract shall not exceed ~~\$802,247,507.00~~ **\$803,150,206.00** for Fiscal Year 2022-2023 as reflected in Exhibit A of this contract.

Fiscal year funds identified above may not be used for any other fiscal year than the fiscal year specified unless authorized by the State.

### **2. Term of Contract**

Subject to the provisions of Article VI, Section 1 and Article VIII, Section 1 herein, the period of this contract shall be for seven years as specified below. The term of the contract is from July 1, 2019 through June 30, 2026. The first five years of the term, from July 1, 2019 through June 30, 2024, is intended to meet the requirements specified in W&I Code Section 4629. The last two years of the term, from July 1, 2024 through June 30, 2026, is solely to provide for the claims period specified in Government Code section 16304, and to allow for adjustments to the regional centers' allocations and for the payment of claims up to two years after the close of each fiscal year, specifically FY 2024/2025 and FY 2025/2026.

### **3. Exhibits**

- a. Exhibit A, entitled "Contract Budget Summary," is attached hereto and made a part of this contract.
- b. Exhibit B, entitled "Home and Community-Based Services Waiver Regional Center Fiscal Agent Responsibilities," is attached hereto and made a part of this contract.
- c. Exhibit C, entitled "Performance Plan," is incorporated by reference and made a part of this contract.
- d. Exhibit D, entitled "Early Start Statement of Assurances," is attached hereto and made a part of this contract.
- e. Exhibit E, entitled "Community Placement Plan and Community Resource Development Plan Statement of Assurances," is attached hereto and made a part of this contract.
- f. Exhibit F, entitled "Statement of Assurances for Protection of Protected Health Information," is attached hereto and made a part of this contract.
- g. Exhibit G entitled "Medicaid Enrollment Requirements," is attached hereto and made a part of this contract.

- h. Exhibit H entitled "General Terms and Conditions," is attached hereto and made a part of this contract.
- i. Exhibit I entitled "Contractor Certification Clauses," is attached hereto and made part of this contract.

#### **4. Definitions**

- a. "Allocate" means to forward to the Contractor a contract or contract amendment which has been executed by the State and specifies an amount, or augmented amount, of money available to Contractor to affect the terms of this agreement.
- b. "ARCA" means the Association of Regional Center Agencies.
- c. "State" means the Department of Developmental Services and only the Department of Developmental Services.
- d. "Director" means the director of the Department of Developmental Services.
- e. "Lanterman Act" means Division 4.5 of the (W&I Code) Section 4500, et seq., known and cited as the Lanterman Developmental Disabilities Services Act.
- f. "Operations Budget" means that portion of a Contractor's budget allocation set forth in Exhibit A, that is intended for the delivery of regional center "direct consumer services" and "administration."
- g. "Direct Consumer Services" means those direct services to persons with developmental disabilities delivered by Contractor. These services include but are not limited to case management, funds management for persons with developmental disabilities, rights assurance, diagnosis and assessment, intake, prevention, quality assurance, program development, and other services under the Lanterman Act provided directly by Contractor.
- h. "Administration" means those support activities required of Contractor that are essential to the efficient conduct of business.
- i. "Total Purchase of Service Budget" means that portion of Contractor's budget allocation set forth in Exhibit A which is intended to support the purchase of services (POS) and programs for persons with developmental disabilities.
- j. "Regional Center" means an agency operated by a nonprofit corporation chartered in the State of California (hereinafter referred to as "Contractor") that provides fixed points of contact in the community for persons with developmental disabilities and their families, to the end that such persons



may have access to the facilities and services best suited to them throughout their lifetimes.

- k. "GAP Funds" means that portion of the POS appropriation that is intended to pay for services to newly developed ICF-DD/H, ICF-DD/N, and DD/CNC (formerly known as ICF/DD-CN) health facilities for the period between licensure and certification of the facilities.

## **5. Control Requirements**

The Contractor shall comply with all California statutes, laws, and regulations applicable to nonprofit corporations. Contractor shall also render services to persons with developmental disabilities in accordance with applicable federal and California statutes, regulations, ARC v. DDS (1985) 38 Cal.3d.384 and the terms of this contract.

## **6. Contractor Service Area or Counties:**

Contractor's regional center serves the following area or counties: Alameda, Contra Costa.

## **7. Copyrights/Patents**

Except as provided in this agreement, the Contractor may seek patents or copyrights for inventions, copyrightable materials or other original work product which has been commissioned, funded or developed by the Contractor with funds provided by the State, or otherwise produced in performance of this contract, subject to the rights of the State as set forth in this Section. Inventions, for the purposes of this Section, may include, but not be limited to, prosthetic devices, auxiliary learning aids or any other professional aids of a mechanical nature. Copyrightable materials, for the purposes of this Section, may include, but not be limited to data, plans, drawings, specifications, reports, operating manuals, notes or other consultant work. The State shall have the right to manufacture, reproduce, publish, use and/or distribute all such inventions or copyrightable materials. Upon any such inventions or copyrightable materials shall be the statement: "COPYRIGHTED/PATENTED (as appropriate) DATE (insert date) BY (insert name of contractor); REPRODUCED WITH PERMISSION." No further manufacturing, reproduction, publication, use or distribution shall be made without permission of the Contractor. All copyrights or patents to which this clause is applicable shall be in the name of the Contractor. If any such inventions are patentable, or any such original work product or materials are copyrightable, the Contractor may patent or copyright same except that, whenever any such patents or copyrights are applied for or sought by the Contractor, or any employee or assignee thereof, the Contractor shall promptly and fully report such fact to the State, which reserves a royalty-free, nonexclusive and irrevocable license to manufacture, reproduce, publish, use and/or distribute same. Any revenues derived from the sale of any such invention or copyrighted materials by the Contractor, or any employee or assignee thereof, shall be reported to the State and utilized by the Contractor for the benefit of persons with developmental disabilities.

The Contractor shall include the provisions of this section in all subcontracts to perform work which requires the invention or development of copyrightable materials under this contract. Subcontracts under this section shall specifically note the State's right to manufacture, reproduce, publish, use and/or distribute all inventions or copyrightable materials developed using funds provided by the State.

## **8. Zero Tolerance Policy**

- a. Contractor shall develop and post on its Internet Website by October 1, 2013, a Zero Tolerance Policy regarding consumer abuse and neglect. Contractor shall annually notify all its employees and notify vendors and long-term health care facilities serving consumers of its Zero Tolerance Policy. The Zero Tolerance Policy shall specify:
  - 1) That all Contractor, vendor and long-term health care facility staff serving consumers are required to report, pursuant to W&I Code Section 15630, to the appropriate entities any incident or allegation of suspected abuse or neglect.
  - 2) The entities for reporting suspected abuse or neglect.
  - 3) That upon becoming aware of a reportable incident or allegation of abuse or neglect of a consumer, pursuant to W&I Code Section 15630, Contractor and the associated vendor or long-term health care facility shall take immediate action to ensure the health and safety of the involved consumer and all other consumers receiving services from the Contractor, associated vendor or long-term health care facility.
  - 4) That the Contractor, its vendors and long-term health care facilities serving consumers shall ensure its respective employees are fully informed upon hire and annually thereafter regarding the Contractor's Zero Tolerance Policy and mandatory abuse and neglect reporting laws. Each employee must be knowledgeable of their responsibility to protect consumers from abuse and neglect, the signs of abuse and neglect, the process for reporting suspected abuse or neglect, and the consequences of failing to follow the law and enforce the Zero Tolerance Policy.
- b. The Contractor's Zero Tolerance Policy shall be incorporated into any new or revised contract, vendorization or other agreement for consumer services. Existing vendors and long-term health care facilities serving consumers shall be informed of Contractor's Zero Tolerance Policy; the Contractor's expectation of compliance with its policy; and, the Contractor will utilize all remedies available to it in statute and regulations to protect the health and safety of consumers.

## 9. Whistleblower Policy

- a. Contractor shall institute a board approved regional center Whistleblower policy effective December 31, 2010, addressing the reporting of alleged improper regional center and, or vendor/contractor activities.
  - 1) An “improper regional center activity” is defined as an activity by a regional center, or an employee, officer, or board member of a regional center, in the conduct of regional center business, that is a violation of a state or federal law or regulation; violation of contract provisions; fraud or fiscal malfeasance; misuse of government property; or constitutes gross misconduct, incompetency, or inefficiency.
  - 2) An “improper vendor/contractor activity” means an activity by a vendor/contractor, or an employee, officer, or board member of a vendor/contractor, in the provision of State funded services, that is a violation of a state or federal law or regulation; violation of contract provisions; fraud or fiscal malfeasance; misuse of government property; or constitutes gross misconduct, incompetency, or inefficiency.
- b. This policy must be consistent with the State’s directive entitled “Department of Developmental Services Whistleblower Complaint Process,” dated July 28, 2010, and must:
  - 1) Allow for multiple employees within the regional center to be available to accept complaints,
  - 2) Also includes a process to access the Board of Directors for the purpose of filing complaints,
  - 3) Ensure that the policy clearly indicates that the regional center will not retaliate against any complainant,
  - 4) Ensure that a process is in place to investigate and take appropriate action on complaints, including complaints of retaliation.
  - 5) Address complainant confidentiality, consistent with the State’s Whistleblower Policy, including consumer health and safety, and;
  - 6) Include a process for annually notifying employees and board members of both the regional center’s and the State’s Whistleblower policies and for posting and maintaining the regional center’s whistleblower policy prominently on its website. As part of their eligibility determination and vendorization processes, regional center shall also inform all new clients/families and new vendors of the regional center’s and the State’s Whistleblower policies.

- c. In addition, Contractor shall ensure that the regional center's and the State's Whistleblower Policies are posted on the regional center's website.
- d. Contractor shall review and provide, at minimum, annual training to all board members regarding the regional center governing board's approved Whistleblower Policy to include, but not be limited to the board's role in implementing the policy.

## **10. Transparency and Access to Public Information**

- a. Contractor shall adopt, maintain, and post on its Internet Web site a board-approved policy regarding transparency and access to public information. The transparency and public information policy shall provide for timely public access to information, including, but not limited to, information regarding requests for proposals and contract awards, service provider rates, documentation related to establishment of negotiated rates, audits, and IRS Form 990. The transparency and public information policy shall be in compliance with applicable law relating to the confidentiality of consumer service information and records, including, but not limited to, W&I Code Section 4514.
- b. To promote transparency, Contractor shall include on its Internet Web site, as expeditiously as possible, at least all of the following:
  - 1) Regional center annual independent audits.
  - 2) Biannual fiscal audits conducted by the State.
  - 3) Regional center annual reports pursuant to W&I Code Section 4639.5.
  - 4) Contract awards, including the organization or entity awarded the contract, and the amount and purpose of the award.
  - 5) POS policies and any other policies, guidelines, or regional center-developed assessment tools used to determine the transportation, personal assistant, or independent or supported living service needs of a consumer.
  - 6) The names, types of service, and contact information of all vendors, except consumers or family members of consumers.
  - 7) Board meeting agendas and approved minutes of open meetings of the board and all committees of the board.
  - 8) Bylaws of the regional center governing board.
  - 9) The annual performance contract and year-end performance contract report entered into with the State pursuant to W&I Code Division 4.5.

- 10) The biannual Home and Community-based Services (HCBS) Waiver program review conducted by the State and the Department of Health Care Services (DHCS).
- 11) The board-approved transparency and public information policy.
- 12) The board-approved conflict-of-interest policy.
- 13) A link to the page on the State's website, specified in W&I Code Section 4629.5(d).
- 14) The salaries, wages, and employee benefits for all managerial positions for which the primary purpose is the administrative management of the regional center, including, but not limited to, directors and chief executive officers.
- 15) Regional center-specific reports generated pursuant to, and for the purposes of W&I Code Section 4571(h).
- 16) The Zero Tolerance Policy pursuant to Section 17 of this Article.
- 17) Regional center data pursuant to W&I Code Section 4519.5 and Article VII, Section 6 of this contract.

## **11. Conflict of Interest**

- a. For purposes of compliance with W&I Code Section 4626, the Conflict of Interest Statements (Form DS 6016) required to be completed pursuant to California Code of Regulations, Title 17 (Cal. Code Regs., Title 17), Section 54500-54535 shall be used until such time as the State issues emergency regulations and develops and publishes a standard conflict of interest reporting statement pursuant to W&I Code Section 4626(e).
- b. Contractor shall review and provide, at minimum, annual training to all board members regarding the regional center governing board's approved Conflict of Interest Policy.
- c. Contractor shall ensure that all board members understand and carry out their obligations to implement and appropriately monitor all approved conflict resolution plans for governing board members (i.e., have received and reviewed copies of approved resolutions plans, ensure board members with conflicts do not participate in discussions and/or vote on matters for which a conflict exists).

## **12. Rights and Privileges Limitations**

No rights or privileges granted under this contract shall inure to the benefit of any person not a party to this agreement.

**13. Contract Titles Statement**

Both parties agree that contract articles and section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning or intent of the provisions herein.

**14. Restricting Use of State Funds**

During the duration of this contract, including any extensions or renewals of the contract, Contractor agrees to comply with Government Code Sections 16645 through 16649 and W&I Code Section 4638 that prohibit Contractor's use of State funds to assist, promote or deter union organizing.

**15. Payment of Accrued Benefits**

If this contract is terminated, the State shall pay, as appropriate, accrued benefits pursuant to the contract of employment of each terminated employee. Accrued benefits shall include vacation, sick leave, and any other benefits submitted to and approved, in writing, by the State in advance of or at the time of the termination of this contract.

**16. Procedures for Employee Retention**

Both parties to this contract recognize the specific requirements under law as stated in W&I Code Article 1.1, Sections 4639.80 through 4639.83, pertaining to procedures for employee retention.

## **ARTICLE II: PROGRAM PROVISIONS**

### **1. Utilization of Public and Private Resources**

Contractor shall utilize to the fullest extent reasonably feasible those public and private resources, as specified in Section 4659 of the W&I Code, which are available without additional cost to the Contractor to implement and coordinate the services identified by the Interdisciplinary Team as required to meet the goals and objectives in the Individual Program Plan for each person with a developmental disability and the outcomes on Individualized Family Service Plans (IFSPs) for children and families served through the Early Start Program.

### **2. Resource Development**

- a. Contractor may use POS funds for developing new community resources to protect the consumers' health or safety or because of other extraordinary circumstances, and the State has granted prior written authorization for the expenditure. This provision does not apply to:
  - 1) POS funds allocated as part of the State's Community Placement Plan and Community Resource Development Plan (CPP/CRDP) process.
- b. Contractor shall institute a Board approved policy effective January 1, 2011 specifying the circumstances under which the regional center will issue requests for proposals to address a service need. This policy shall also address the applicable dollar thresholds for requiring the utilization of the request for proposals process; the request for proposals notification process; and, how submitted proposals will be evaluated and the applicant selected. Within 30 days of the effective date, Contractor shall post the Board approved policy on the regional center's website.

Contractor shall specify in its Board approved policy the requirements of W&I Code Section 4648.11, and post the policy on its website.

- c. POS funds may be used to provide grants for reasonable start-up costs associated with resource development. Contractor shall develop and maintain a policy for the disbursement of start-up monies and shall keep accounting and other records to document the use of these monies. Such policy shall include provision for fair and equitable recoupment of start-up funds should the vendor and/or fund recipient cease to provide services to consumers after a specified period of time. This includes start-up funds to purchase real property. The policy must be approved by Contractor's Board of Directors and must ensure that the use of POS funds are:
  - 1) Necessary for establishing a new or additional program, project or resource for providing services and supports to consumers.

- 2) Of direct benefit to consumers.
- 3) Supported by contracts with sufficient detail and measurable performance expectations and results.
- 4) Not used for the purchase of a provider's vehicle.
- 5) Not used for the lease of a provider's vehicle unless approved in advance by the Director or designee.
- 6) Not used for routine maintenance of a provider's plant or facility unless approved in advance by the Director or designee.
- 7) Not used for construction, renovation, alteration, improvement, or repair of real property that is not of direct medical or remedial benefit to the consumer.

### **3. Contracting Policy**

Both parties to this contract recognize the specific requirements under law as stated in W&I Code Section 4625.5 and California Code of Regulations (CCR), Section 54322.

### **4. Federal Funds**

- a. Contractor shall implement mutually agreed to procedures for the administration of all programs funded by Medicaid including: Home and Community-Based Services (HCBS) Waiver, Self-Determination Program (SDP) Waiver, Targeted Case Management (TCM), Intermediate Care Facility-Developmentally Disabled State Plan Amendment (ICF-DD SPA), Nursing Home Reform (NHR), 1915(i) SPA, Early Periodic Screening Diagnosis and Treatment (EPSDT), and Behavioral Health Treatment (BHT). Any modifications to the existing procedures shall be mutually agreed to by the State and ARCA.
- a. Contractor shall ensure that costs that may be reimbursed with Federal Funds are claimed in accordance with the applicable cost principles set forth in Office of Management and Budget Circular (OMB), A-122 and requirements set forth in OMB A-110.
- b. HCBS Waiver Enrollment
  - 1) Contractor shall ensure willing and eligible consumers are enrolled on a flow basis on the HCBS Waiver through implementation of an aggressive enrollment effort that ensures enrollment at the earliest date possible in the fiscal year.
  - 2) Months of enrollment will be considered in the allocation of Contractor Operations funding.



- d. For the Title XX program, the following information applies:

CFDA Title: Social Services Block Grant (SSBG)

CFDA Number: 93.667

Federal Agency Name: United States Department of Health and Human Services

- e. Early Start Program

- 1) Contractor shall provide services for infants, until three years of age, and their families, at no cost to the family, who are eligible for regional center early intervention services in accordance with the provisions of Part C of the Individuals with Disabilities Education Act (20 USC Sec. 1471 et. seq.), its implementing regulations (34 CFR Part 303), the Education Department General Regulations (EDGAR) as specified in 34 CFR Section 303.5, and the California Government Code, Title 14, Section 95000 et. seq. and Cal. Code Regs., Title 17, Section 52000 et. seq.
- 2) The Contractor shall use federal funds provided under Part C of the Individuals with Disabilities Education Act only to supplement and increase service and operations obligations and will in no way be used to supplant state or local funds allocated for infants birth through two years of age.

## **5. Service Standards**

In carrying out its obligations under Article I, Section 12 of this contract, the Contractor shall maintain standards for the purchase of services for persons with developmental disabilities. Within one hundred-twenty (120) days, the State shall review all new or amended purchase of service standards prior to Contractor's implementation of such standards to ensure compliance with statute and regulation.

## **6. Community Placement Plan**

Contractor shall develop and implement an annual State approved CPP/CRDP in accordance with Exhibit E and State CPP/CRDP Guidelines.

Contractor utilizing CPP/CRDP funds for the purpose of acquiring housing shall do so in accordance with Contractor's approved CPP/CRDP, the State's CPP/CRDP Housing Guidelines, and all conditions expressed in the State's approval of the CPP/CRDP.

State shall make every effort to provide Contractor with State Housing Guidelines and CPP/CRDP Guidelines simultaneously. If, however, the amended State Housing Guidelines are released after the submission deadline for the

CPP/CRDP, upon release of amended State Housing Guidelines, the State agrees to allow Contractor the option to modify their CPP/CRDP to reflect any changes to the State's Housing Guidelines.

Any proposed changes to the CPP/CRDP or State Housing Guidelines will be provided to ARCA at least 30 days before they are to take effect. ARCA will have 30 days to provide comments to the State regarding the proposed changes.

State shall allow Contractor at least 60 days from issuance of CPP/CRDP Guidelines to complete and submit its CPP/CRDP for the following year.

State shall approve Contractor's CPP/CRDP and related housing projects no later than August 1.

## **7. Out-of-State Services**

Both parties to this contract recognize the specific requirements under law as stated in W&I Code Section 4519.

## **8. Mental Health Facilities**

Both parties to this contract recognize the specific requirements under law as stated in W&I Code Section 4648.

## **9. Specialized Resources**

As required by W&I Code Section 4418.25(b)(2), Contractor shall provide information on Specialized Resources developed with the use of CPP funds since fiscal year 2005-2006 and shall make these resources available to other regional centers. This information shall be provided monthly in a format agreed to by the State and regional centers.

- a. Contractor must consult with the State to determine whether a specialized resource is available in another regional center service area prior to placement in:
  - 1) The crisis program at Fairview Developmental Center (W&I Code Section 4418.7);
  - 2) A mental health facility ineligible for federal financial participation (FPP) [W&I Code Section 4648(a)(9)(B)(iii) & (C)]; or,
  - 3) Out of state (W&I Code Section 4519.)
- b. Pursuant to W&I Code Section 4418.25(f)(4), annually on February 1, Contractor shall provide to the State progress in the development of needed statewide specialty services and supports, including regional community crisis options, as provided in W&I Code Section 4418.25(b)(3).
- c. Contractor shall comply with all placement restrictions of W&I Code Section 4684.65 regarding ARFPSHNs.

## **10. Self-Determination Program**

- a. Both parties to this contract recognize the specific requirements under law as stated in W&I Code Section 4685.8.
- b. Contractor shall hold at least one Self-Determination Program orientation within 60 days of training conducted by the Department. In consultation with the local volunteer advisory committee, Contractor shall develop a plan to complete orientations for all participants. The plan must take into consideration, at minimum, the language needs of participants and scheduling orientations at times and locations designed to encourage community participation.
- c. Contractor shall report to the State by the 15<sup>th</sup> of each month, or less frequently if mutually agreed to, information on the status of individuals selected for the Self-Determination Program. Information will be reported in a mutually agreed upon format and may include individual orientation completion status, program participation status, and concerns/barriers to Self-Determination Program enrollment identified by selected participants.
- d. Contractor shall provide a general progress report to include the information identified in paragraph (c) on the status of its implementation of the Self-Determination Program to the local volunteer advisory committee.
- e. By February 1, 2019, Contractor shall identify and provide to the State, the name and contact information for an employee who will serve as the point-of-contact for matters related to the Self-Determination Program. The point-of-contact shall be a staff member with broad knowledge of Contractor's implementation of the Self-Determination Program.

## **11. Out-of-State Foster Children**

- a. It is the intention of the parties that dual eligible children who reside out-of-state under the authority of a California county child welfare agency shall be provided with smooth and timely transitions back to regional center services and supports upon their return to residence in California. Absent a request to the contrary from a parent with legal authority, Contractor agrees to maintain a status 2 active file for those regional center-eligible children and non-minor dependents age three and older who Contractor is aware are in residence out-of-state under the authority of a California county child welfare agency (i.e. dual eligible children) subject to the following conditions:
  - 1) Contractor shall conduct and develop an annual Individual Program Plan informed by assessments and information from other involved agencies, to determine current status, service and support needs, and potential alternative services and supports that would be required to support the child in California.

- 2) Contractor shall work with all involved agencies to identify needed services, prospectively determine funding arrangements consistent with W&I Code Section 4684, and if necessary, develop and/or adapt appropriate services to meet the child's needs in California.
  - 3) Contractor shall provide semi-annual face-to-face monitoring and may utilize video conferencing for this purpose.
  - 4) All written progress reports provided by the appropriate California county child welfare agency for each dual eligible child residing out of state under the authority of such county child welfare agency shall be reviewed by Contractor and maintained in its files.
  - 5) In accordance with, but not limited to, local AB 2083 Memorandums of Understanding, Contractor shall actively work with all involved agencies to identify and develop resources to support transitioning the child back to California as soon as appropriate.
  - 6) At the earliest possible opportunity, Contractor shall seek approval for start-up funding from the State for the development of appropriate resources to meet the child's needs when no resource is currently available.
- b. Contractor shall notify the State, and the appropriate county child welfare agency, of any instance in which a parent with legal authority requests the regional center close or inactivate a child's case as referenced in paragraph (a).

## **ARTICLE III: FISCAL PROVISIONS**

### **1. Budget Development Process**

The State and Contractor agree to work together to build Contractor's budget using the best quality data and information available, including information on projected assessments, resource development and placements for the CPP/CRDP. To that end, the State and ARCA agree to implement a process that will provide this data for building the Governor's January Budget and the May Revise. The process will include ARCA proposing policy changes for the State to consider as well as caseload, Medicaid Waivers and other federal funding initiatives, and expenditure trend data.

### **2. Allocation of Funding to Contractor**

- a. By July 1 of each fiscal year, the State and ARCA shall review the existing allocation methodology and make any recommended changes for the Director's approval. The State agrees to provide the regional centers with a report after each allocation issued to Contractor that shows the estimated amount available for Operations, POS, and CPP/CRDP, and the amount allocated to regional centers.
- b. The State shall, by September 1, of each fiscal year, or not later than fifteen (15) days following the enactment of the annual Budget Act, whichever is later, allocate to all regional centers Operations and POS funds consistent with the approved allocation methodology. On or before February 1 of each fiscal year, the State shall allocate to all regional centers the remaining funds unless specified in the approved allocation methodology or agreed to by ARCA. If ARCA and the State do not reach mutual agreement on an approved allocation process, or if the Director does not approve same, no less than one hundred percent (100%) of the Enacted Budget for Operations and ninety-nine percent (99%) of the Enacted Budget for POS, except for any funds appropriated by the Legislature for a specific purpose which has yet to occur, shall be allocated by February 1. The parties agree that it may be necessary to amend this contract in order to allocate funds made available from budget augmentations, if any, and to move funds among regional centers.
- c. By October 1 of each fiscal year, or not later than fifteen (15) days following the enactment of the annual Budget Act, whichever is later, the State shall allocate to the regional centers CPP/CRDP funds in accordance with the CPP allocation methodology agreed to between ARCA and the Department. If ARCA and the State do not reach mutual agreement on an approved allocation process, or if the Director does not approve same, the State shall allocate by October 15 to the regional centers no less than the sum of:
  - (1) 100% of the Start-Up funds per each regional center's approved CPP/CRDP.

- (2) 75% of the Assessment funds per each regional center's approved CPP/CRDP.
  - (3) 25% of the Deflection funds per each regional center's approved CPP/CRDP.
  - (4) 25% of the Placement funds per each regional center's approved CPP/CRDP.
  - (5) 75% of the Operations funds per each regional center's approved CPP/CRDP.
- d. Notwithstanding paragraphs a., b., and c. of this section, the final decision regarding the methodology used to determine the amount of allocations shall rest with the Director.
- e. The Contractor shall submit a monthly POS Expenditure Projection (PEP) report to the State which identifies Contractor's actual and projected expenditures as of the date of this report. By the 10th of each month beginning December 10, which would reflect expenditures through October, the Contractor shall submit the monthly PEP in a format mutually agreed to between ARCA and the State. In the event an agreement cannot be reached, DDS will specify the format to be used with input from ARCA. The final PEP for the year shall be submitted by September 10 of the following fiscal year. This PEP shall reflect expenditures through the first supplemental claim.
- f. As part of the monthly expenditure projection analysis, the State may request, and the Contractor shall provide additional information to explain the expenditure projection.
- g. Contractor shall assure that services to eligible persons with developmental disabilities are provided within the funds identified in Exhibit A of this contract.
- h. In the event the State determines that Contractor has insufficient funds to meet its contractual obligations, the State shall make best efforts to secure additional funds and/or provide Contractor with regulatory and statutory relief.
- i. After notice to the Contractor the State may disencumber any or all funds unexpended and uncommitted by the Contractor out of the amount available under this contract. For the purposes of this Section, such total amount available shall be defined as the amount originally specified in Article I, Section 8, modified by any changes made pursuant to Article III, Section 2, and/or as modified by any executed contract amendment.

- j. Not more than 15 percent of all funds appropriated through Contractor's operations budget shall be spent on administrative costs. For purposes of this section, "direct services" includes, but is not limited to, service coordination, assessment and diagnosis, monitoring of consumer services, quality assurance, and clinical services. Funds spent on direct services shall not include any administrative costs. For purposes of this section, administrative costs include, but are not limited to, any of the following:
- 1) Salaries, wages, and employee benefits for managerial personnel whose primary purpose is the administrative management of the regional center, including, but not limited to, directors and chief executive officers.
  - 2) Salaries, wages, and benefits of employees who perform administrative functions, including, but not limited to, payroll management, personnel functions, accounting, budgeting, auditing, and facility management.
  - 3) Facility and occupancy costs, directly associated with administrative functions.
  - 4) Maintenance and repair.
  - 5) Data processing and computer support services.
  - 6) Contract and procurement activities, except those performed by direct service employees.
  - 7) Training directly associated with administrative functions.
  - 8) Travel directly associated with administrative functions.
  - 9) Licenses directly associated with administrative functions.
  - 10) Taxes.
  - 11) Interest.
  - 12) Property insurance.
  - 13) Personal liability insurance directly associated with administrative functions.
  - 14) Depreciation.
  - 15) General expenses, including, but not limited to, communication costs and supplies directly associated with administrative functions.

### **3. Advance Payment Provisions**

The State shall make available to the Contractor funds for the provision of services under this contract in advance of the Contractor's actual performance therefore, as authorized by W&I Code Section 4621, subject to the following conditions:

- a. Requests for advance payment shall be in accordance with format and procedures requested by the State. The amount to be advanced shall be twenty-five (25) percent of the total contract amount as set forth in the preliminary allocation and in any subsequent contract amendment. The State shall advance funds as soon as reasonably possible following the enactment of the annual Budget Act.
- b. All amounts advanced under this provision shall be deposited by the Contractor in an interest-bearing bank account(s), in a bank legally authorized to engage in the banking business in California and which account(s) is established solely for operation of the regional center. The account(s) shall be in the name of both the State and the Contractor for the purpose of clarifying the State's rights, title and interest to the State funds in said account(s) as stated in "c" of this Section, in the event that a judgment creditor of the Contractor seeks to levy against the funds by means of attachment or execution.

Each withdrawal from said bank account(s) shall be made only by written instrument or electronic transfer of funds performed by the bank as part of an available service. Upon request of the State in writing, the Contractor shall repay to the State such parts of the unliquidated balance of advance payment as shall be in excess of the current requirements. No part of the funds in said bank account(s) shall be commingled with other funds of the Contractor.

- c. Amounts advanced in accordance with this provision when withdrawn from said bank account(s) shall be used only for pending expenditures in accordance with the attached Exhibit A. Except as provided in "b" of this Section, the Contractor has access to the funds placed in said bank account(s) for administrative convenience only, and hereby agrees that it has no right, title or interest therein, and shall make no withdrawals except for those made solely for the purpose of satisfying claims against or expenses of the Contractor incurred pursuant to and in the performance of this agreement.
- d. All interest earned on these funds shall be reported on the next monthly reimbursement claim to the State.
- e. The State shall have a lien upon any balance in said bank account(s) paramount to all other liens, which lien shall secure the repayment of any advance payments made hereunder.



- f. All bank accounts and any investment vehicles containing funds from this contract and used for regional center operations, employee salaries and benefits or for consumers' services and supports, shall be in the name of the State and Contractor. Properly established trust accounts that are approved by the Regional Center Board of Directors for the purpose of administering standard employee benefits do not have to be in the name of the State provided the State has the authority to review the financial transactions of the trust or financial reports prepared by independent auditors. "Standard employee benefits" are those commonly provided to employees in the course of business in private companies.
- g. For the bank account(s) above referenced, there shall be prepared three (3) alternative signature cards with riders attached to each indicating their use. In addition to the preparation of signature cards and riders, Contractor and the bank(s) shall enter into a written agreement specifying the bank(s)' responsibilities relative to said bank account(s). The signature cards, riders and agreement specified herein shall be prepared and administered in accordance with the format and procedures specified by the State.
- h. If Contractor cannot comply with "f" of this Section, alternative arrangements mutually agreeable to the parties shall be utilized.

#### **4. Payment Provisions**

In consideration of the services rendered by the Contractor pursuant to this contract, the State shall reimburse the Contractor, for cash expenditures, monthly in arrears. Reimbursement claims shall be submitted in accordance with the claiming procedures requested by the State.

All funds received pursuant to this contract shall be deposited and retained in a bank account(s) set forth in Article III, Section 3.

All funds expended by the Contractor and reimbursed by the State during the term of this contract shall be for the purposes specified and in conformity with Exhibit A.

Any funds which have not been encumbered for services provided or purchased during the term of the contract, shall revert to the State.

#### **5. Budget Category Transfers**

In accordance with the annual Budget Act, a contract amendment shall be required if funds are to be transferred from one budget category to another. This provision shall apply to those budget categories that are listed in Exhibit A.

## **6. Contract Funding Stipulations**

- a. This agreement is subject to the appropriation of funds by the Legislature for the purpose of this contract. If funds are not appropriated in any fiscal year into which this agreement extends, it is mutually agreed that this agreement shall be of no further force and effect. In this event, except as provided in Article I, Section 25, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this agreement, and Contractor shall not be obligated to perform any provisions of this Agreement. Contractor shall ensure that all POS contracts initiated by Contractor include notification of this condition.
- b. Except as provided in W&I Code Section 4635, if funding for any fiscal year for this program is reduced or deleted by the Budget Act, except as provided in Article 1, Section 25, the State or Contractor shall have the option to either cancel this agreement without liability or agree to an amendment to reflect the reduced amount.

## **7. Travel and Per Diem**

The Contractor shall establish and maintain procedures that assure the State that reimbursements to regional center employees and board members for necessary travel and per diem are equitable, reasonable, and properly documented.

## **8. Independent Financial Audit**

Both parties to this contract recognize the specific requirements under law as stated in W&I Code Section 4639 and the Single Audit Act of 1984, 31 U.S.C. 7501, et seq., and applicable Office of Management and Budget Circulars (A-122 and A-133 or as revised).

## **9. Vendor Fiscal Monitoring**

- a. Contractor shall monitor the expenditure of public funds by monitoring vendor fiscal claims.
- b. The Contractor shall be responsible for auditing: 1) vendors with prior year annual payments made by the contractor to a vendor of less than \$100,000, 2) consumer's personal and incidental funds, and 3) residential facilities with licensed capacity of six or fewer beds regardless of the payment amount. The DDS shall be responsible for auditing vendors with prior year annual payments from regional centers of \$100,000 or more. The contractor may audit other vendors if prior approval is received from the State. The vendor audits shall be conducted in accordance with the provisions of Cal. Code Regs., Title 17, Section 50606, Regional Center Auditing Requirements and in compliance with audit protocols mutually agreed to by the State and Association of Regional Center Agencies.

- c. The Contractor shall meet or exceed the following minimum requirements and will be evaluated based on the results achieved. In evaluating the results of the contractor's efforts, consideration will be given to the fact that funding for fiscal monitors was reduced in FY 2004-05.

The minimum number of audits conducted by Contractor shall be 4% of the total number of separately vendored services for the following service categories: community care facilities with licensed capacity of six or fewer beds, transportation, day programs, in-home respite agencies and respite facilities. The vendors included in the base for establishing the minimum number of audits, shall be those vendors that receive total prior year POS payments from the contractor of \$100,000 or less and those residential facilities with licensed capacity for six or fewer consumers. Prior to June 1 of each year the State will provide the Contractor with the total number of vendors that will be used to calculate the minimum number of audits to be conducted. Contractor shall ensure that the minimum number of audits conducted includes at least 35% billing audits and 20% cost verification and staffing audits. Cost verification audits are audits of cost statements, State authorized rate increases, or verification of costs used by regional centers to set rates as provided for in Cal. Code Regs., Title 17, Staffing audits are audits conducted to verify compliance with staffing levels as specified in Cal. Code Regs., Title 17, or by contract with a service provider as allowed by Cal. Code Regs., Title 17. Procedures for staffing audits may also include verification that staffing levels are appropriate for the consumer's assessed level of care and are in compliance with the vendor's program design narrative. The billing audits conducted shall include vendors serving consumers eligible for the HCBS Waiver. At least one of the vendors audited must be a program that serves children under the age of three. The Contractor shall make a good faith effort and exhaust all reasonable methods of collection to recover all fiscal adjustments identified as a result of the Contractor's vendor audits. Documentation of collection efforts shall be maintained by the Contractor for future review.

By October 1 of each year, Contractor shall submit to the State a listing of all vendor audits conducted during the prior fiscal year and a list of recoveries. The list of recoveries shall identify the vendor, the date of the audit report, the amount recovered during the prior fiscal year and the method of recovery which may be either collection of cash or off-set of vendor billings.

- d. This provision does not negate the requirement that regional centers submit vendor audit reports to the State pursuant to Cal. Code Regs., Title 17, Section 50606(g)(1)(F). Completed reports are to be submitted at least quarterly.

## **10. Consumer Trust Accounts**

Contractor shall ensure that the consumer benefits directly from all interest earned on trust accounts. Guided by prudent business practices, all trust funds must be placed in a separate bank account that earns at least the prevailing rate of monetary interest for a "Business Savings" account, or equivalent account. This account shall be in the name of both the State and Contractor in accordance with the provisions of Article III, Section 3. All interest must be allocated to the individual consumer accounts. Bank charges (net after applying bank credits, if any), that are specifically identifiable to the trust account may be offset against the consumers' interest. In no case shall the amount of bank charges allocated to the individual consumer accounts exceed the amount of interest earned.

## **11. Foundation Support**

- a. Contractor may provide funds to a foundation or similar entity where the purpose of the funds is to provide direct benefits to regional center consumers subject to prior review and written approval by the State in consultation with Contractor.

Contractor may not provide funds or personnel to a foundation or similar entity for fundraising purposes.

- b. Through a written agreement between the Contractor and a foundation, or similar entity, Contractor may provide in-kind administrative services to a foundation, or similar entity, provided such agreement requires reimbursement from the foundation to the Contractor for any services performed by the Contractor or its employees on behalf of the foundation or similar entity. In-kind reimbursement shall be in the form of specifically identifiable, non-monetary benefits for persons with developmental disabilities.
- c. Nothing shall preclude a foundation, or similar entity, from competing for funding from the Contractor or another regional center on the same basis as any member of the general public. Contractor shall, however, comply with sections 54520 and 54521 of Cal. Code Regs., Title 17, with respect to any conflict of interest issues arising between the Contractor and a foundation, or similar entity.

Contractor must request and receive approval from the State prior to entering into a lease agreement in which bond financing will be utilized to fund the loan.

## **ARTICLE IV: CONTRACTOR OPERATIONS**

### **1. Electronic Data Processing and Data Integrity**

- a. The State and Contractor agree to ensure the integrity and confidentiality of the State's databases that reside on the System i and the Office of Technology Services (OTech). Accordingly, Contractor shall not engage in any activity that threatens their integrity and shall develop and implement an operational recovery plan consistent with the requirements of this section. Contractor agrees to adhere to the most current version of the State's 'Security Policy for Regional Centers' as developed by the State and ARCA.
- b. Contractor, using the electronic billing and payment software provided by the State, agrees to comply with the most current version of the State's 'Security Policy for Electronic Billing' as developed by the State and ARCA.
- c. Contractor shall make available accurate and complete UFS and SANDIS information to the State. Accordingly, Contractor shall:
  - 1) Update changes to all mandatory items of the Client Master File at least annually except for the following elements, which must be updated within thirty (30) days of Contractor being aware of any of the following events:
    - a) The death of a consumer;
    - b) The change of address of a consumer; or
    - c) The change of residence type of a consumer.
  - 2) Review the information required in the Client Development Evaluation Report (CDER) whenever an IPP is completed, and update if there is a change.
  - 3) Upon notification by the State of errors in the State's databases that reside on the System i and OTech, Contractor shall rectify those errors within thirty (30) days.
- d. To improve the accuracy of information reported to the State, as well as to reduce the need for surveys of the regional centers to obtain needed information, all regional centers shall use the SANDIS Consumer Information and Resource Information Modules.
- e. As required by the State Administrative Manual Management Memo 01-10 issued June 4, 2001, Contractor certifies that appropriate systems and controls are in place to ensure that State funds are not used to acquire, operate, or maintain computer software in a manner that does not comply with applicable copyrights.

## **2. Personnel**

- a. Contractor agrees to hold the State 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 contract and State of California or federal laws or regulations.
- b. Contractor shall comply with the provisions of Public Contract Code, Section 10353 as required.
- c. Contractor acknowledges the policy in Public Contract Code, Section 7110 (a) and (b) and shall comply with all applicable State of California and federal laws relating to child and family support enforcement.

## **3. Records Maintenance**

In accordance with W&I Code Section 4631(b), Contractor shall be held strictly accountable for reporting all revenues and expenditures, and the effectiveness of the Contractor in carrying out of its programs and fiscal responsibilities. Contractor shall keep records, as follows:

- a. The Contractor shall maintain books, records, documents, case files, and other evidence pertaining to the budget, revenues, expenditures, and consumers served under this contract (hereinafter collectively called the "records") to the extent and in such detail as will properly reflect net costs (direct and indirect) of labor, materials, equipment, supplies and services, overhead and other costs and expenses of whatever nature for which reimbursement is claimed under the provisions of this contract in accordance with mutually agreed to procedures and generally accepted accounting principles.
- b. Contractor shall retain records which pertain to consumer eligibility determinations and redeterminations for the Medicaid Waiver Program for a minimum of five years from the date of an eligibility determination or redetermination.
- c. Contractor may, in fulfillment of its obligation to retain the records as required by this Section, utilize a scanned, digitalized, or other electronic true representation of the original record consistent with Title 17, Section 50602(h) and (i); Title 17, Section 50604 (d); Title 17 Section 50605(a) and (c); Title 17, Section 50612(a) and (f).
- d. Contractor shall comply with the most current version of the State's 'Requirements for Electronic Storage of Records', as developed by the State and ARCA.

#### **4. State Property**

- a. All equipment, material, supplies, or property of any kind furnished by the State, or purchased from funds received under the terms of this contract, shall be the property of the State of California and used for the performance of this contract, unless specifically exempted in the State's Equipment Management System Guidelines.

Contractor shall maintain and administer, in accordance with sound business practice, a program for the utilization, care, maintenance, protection and preservation of State of California property so as to assure its full availability and usefulness for the performance of this contract. Contractor shall comply with the State's Equipment Management System Guidelines for regional center equipment and appropriate directions and instructions which the State may prescribe as reasonably necessary for the protection of State of California property.

- b. Except as authorized in W&I Code section 4669.2, subdivision (a)(8), Contractor is prohibited from expending any state funds that result in the State of California owning, or incurring a liability for, real property.

#### **5. Public Disclosure of Contracts**

In accordance with W&I Code Section 4640.6(k), Contractor shall make available to the public for review, all employment contracts with regional center staff or contractors (entered into on or after January 1, 2003) upon request. No employment contract, or portion thereof, may be deemed confidential or unavailable for public review except the social security number of the contracting party.

- a. The term of an employment contract between Contractor and an employee or contractor shall not exceed five years or the term of the State's contract with the regional center.
- b. When reporting the information to the State, as required by W&I Code Sections 4639.5 and 4640.6(k). Contractor shall include any information regarding Executive Director current annual compensation as defined by IRS Code for completion of the IRS Form 990, and associated detail. This information shall be provided in a format with instructions agreed to by the State and regional centers.

#### **6. Consumer Information Security**

- a. The Contractor agrees to adhere to the most current version of the State's 'Statement of Assurances for Protection of Protected Health Information' (Exhibit F) which sets forth the security and notification requirements and best practices for, but not limited to, the protection of all confidential, sensitive, and/or personal information collected and stored on behalf of the State regardless of format or media type.

- b. Contractor, agrees to adhere to State policy regarding incident reporting, requiring privacy breaches and/or security incidents involving paper and other formats to immediately notify the Department's Information Security Officer, via email at [iso@dds.ca.gov](mailto:iso@dds.ca.gov) in the event of any loss or theft of personal, sensitive, or confidential information in any format, including but not limited to flash drives, cell phones, personal digital assistants (i.e. blackberry), tablets, computers, and laptops within 72 hours.

The notification to the Department must be reported on form DS 5340B or other online submission form as directed by the Department. DDS is mandated by law to notify other entities of disclosure of information; the timelines are extremely short for many of these reports; therefore, it is essential that DDS is notified immediately, within 72 hours, when a suspected privacy breach or security incident is discovered by the Contractor.



## **ARTICLE V: EVALUATION**

### **1. Contractor Evaluation**

- a. The Contractor's performance under this contract will be evaluated. Accordingly, the State, through its authorized representatives, reserves the right to use evaluation methods, including observations, inspections, interviews and other assessment techniques selected by the State.
- b. The State shall notify the Contractor, at least thirty (30) days in advance unless mutually agreed upon otherwise, that an evaluation will take place. It is the State's intent that the on-site portion of any evaluation shall occur during Contractor's normal working hours, unless mutually agreed otherwise, and with the least amount of disruption of day-to-day services, and should last no longer than three (3) weeks.
- c. The State shall prepare a written report specifying the findings of any evaluation performed by the State under this Section. Said report shall not be limited to a description of the areas of Contractor's deficiencies but shall include a description of Contractor's strengths and outstanding achievements, if any. Except as required by law, public release of the State's final evaluation report shall not be made until the report has been reviewed by the Contractor and the Contractor has had thirty (30) days to respond. Contractor's responses will be included within the final report to be published within thirty (30) days from the receipt of said responses.

### **2. Information Requests**

During the term of this contract, the State may require Contractor to furnish program and fiscal information, as the State deems necessary to assess Contractor's status or performance relative to Contractor's fiscal and/or program operations. Prior to requesting such information, the State shall confer with ARCA as to the most efficient and effective means for collecting the information.

### **3. State Audits of Contractor**

- a. The State shall audit records of Contractor to verify Contractor's compliance with this contract. Such audits shall commence within three years following the last date of the prior audit period.
- b. The State shall not commence its routine biennial audit of Contractor prior to 30 days after the State has issued and Contractor has received the final audit report for the prior audit period.
- c. Contractor records pertaining to the provision of services under this contract shall be open for audit by the State for a minimum period of three years following the last date of the prior audit period.
- d. The final audit report shall be issued by the State to the regional center within ninety (90) days of Contractor's written response to the draft audit report

when Contractor's written response to the draft audit report is in agreement with all audit findings and/or recommendations disclosed.

## **ARTICLE VI: CONTRACT AMENDMENT/CANCELLATION/REOPENING**

### **1. Contract Amendments**

- a. Either party may reopen and enter into negotiations on any provision(s) of this contract as deemed necessary to contract or respond to 1) any legislative and/or budgeting actions taken by the Legislature; 2) executive order of the Governor; 3) declared state of emergency; 4) action taken by a court of law; or 5) the need for special language.

Contractor shall immediately notify the State in writing if, as a result of the above, it is unable to comply with any provision of this contract.

- b. Pursuant to Article III, Section 2 hereof, this agreement shall be amended on or before September 1 of each year and may be amended additional times as needed in order to allocate funds made available and to move funds among regional centers as early as possible to the Contractor and the other regional centers.
- c. Should any change in the regulations promulgated by the State, State policies, or provisions of this contract result in increased costs to the Contractor, the State in consultation with the Contractor shall determine the amount of this cost and shall, consistent with state law and subject to the availability of funds appropriated to the State for developmental services, augment Contractor's budget by this amount.

### **2. Severability Clause**

Subject to review and approval of the Department of General Services, in the event this contract is terminated or not renewed pursuant to Article I, Section 3 or Article VIII, Section 4, the State shall negotiate reasonable closing costs with the Contractor.

### **3. Entire Agreement**

This writing, including its attachments and references, is intended both as final expression of the agreement between the parties and as a complete exclusive statement of the agreement.

## **ARTICLE VII: MISCELLANEOUS**

### **1. Lease/Rental Agreements**

The contractor shall include in all new leases or rental agreements for real property a clause that holds the State harmless for such leases.

### **2. Emergency Response System**

Contractor shall implement an emergency response system that ensures that a regional center staff person will respond to a consumer, or individual acting on behalf of a consumer, within two hours of the time an emergency call is placed. This emergency response system shall be operational 24 hours per day, 365 days per year.

### **3. Emergency Planning, Preparedness, Response and Recovery**

a. Definitions for terms, as used in this section:

- 1) “Emergency” means any situation that requires immediate action in which the life or safety of consumers are threatened by events including but not limited to: floods, fires, earthquakes, power outages, chemical spills, or events for which a disaster has been declared by a unit of local, state, federal, or tribal government.
- 2) “Community” means regional center consumers, their families and caregivers, service providers, regional center staff and other relevant local partners.

b. Contractor shall develop, and annually thereafter review and update, as necessary, its emergency plan to encompass planning, preparedness, response and recovery. The plan shall, at minimum, include a description of Contractor’s ongoing efforts to develop and maintain relationships, educate, prepare and plan, and collaborate with County Emergency Management Offices tribal entities, neighboring regional centers, and the community.

c. Contractor shall maintain a current list of key regional center personnel involved in emergency activities, from planning, preparedness, response, recovery, and reporting, and their contact information, and share it with the State’s Emergency Preparedness and Response Office.

d. Contractor shall hire, maintain and designate one full-time Emergency Coordinator position. The Emergency Coordinator shall participate in-person or remotely in state-funded training opportunities and exercises, and quarterly statewide meetings. If every effort has been made for Emergency Coordinator to participate, but is unable, a designee shall participate.

e. Contractor shall work with the State to utilize resources allocated for:

- 1) Training and community engagement, and
  - 2) Generators, batteries, go-bags/emergency kits for consumers living in high-risk areas defined by CalFire and the California Public Utilities Commission, to the extent applicable to the Contractor's catchment area.
- f. During a declared emergency, Contractor shall:
- 1) Provide timely notifications and updates to impacted consumers;
  - 2) Identify facility and program closures that result in consumer displacement and/or loss of services;
  - 3) Coordinate with local, state, federal and tribal entities, the community, and other regional centers, as needed to maintain consumer safety and supports;
  - 4) Provide daily, or at a frequency requested by Contractor and approved by the State, updates to the State regarding the safety, well-being, and unmet needs of consumers, to the extent known to Contractor, in a format mutually agreed upon.
- g. Contractor shall assist consumers after emergency events, and may utilize the service providers for assistance, which may include, but not be limited to, the following:
- 1) Returning home.
  - 2) Identifying alternative sources of services, if needed.
  - 3) Connecting to state and federal assistance programs, which may include, but not be limited to food, income supports, childcare, interpretation, and health care.

#### **4. Collection of Parental Information**

In accordance with W&I Code Section 4657, Contractor shall collect the following for each new case and each review of all clients in out-of-home placement:

- a. The social security number of the parents of the client;
- b. The birthday of the parents of the client;
- c. The disability status of the parents of the client; and,
- d. Whether the parents of the client are deceased or not.

## **5. Registered Sex Offenders**

Effective April 1, 2005, Contractor shall, for every newly eligible consumer over 16 years of age, review Megan's Law website ([www.meganslaw.ca.gov](http://www.meganslaw.ca.gov)) to determine if the consumer is required to register as a sex offender pursuant to Penal Code 290. If the consumer is required to register as a sex offender, the Contractor shall appropriately note this information in the consumer's electronic record and case file.

## **6. Data Compilation**

Both parties to this contract recognize the specific requirements under law as stated in W&I Code Section 4519.5 and 4519.6. Contractor shall provide the report specified in W&I Code Section 4519.5(f) to the State annually by May 31.

## **7. Shared Vendors and Case Management Responsibility**

- a. For the purposes of this section, "community living vendor" includes community care facilities, supported living services, independent living services, Family Home Agency and Foster Family Agency.
- b. When Contractor is not the vendoring regional center but is the regional center with case management responsibility and chooses to place a consumer with another regional center's community living vendor or long-term health care facility, Contractor shall:
  - 1) Prior to the provision of services, notify the vendoring regional center of services to be provided to Contractor's consumer by the vendor or long-term health care facility.
  - 2) When a special incident occurs, ensure the vendor or long-term health care facility submits a special incident report to both Contractor and the vendoring regional center. [Cal. Code Regs, Title 17, Section 54327(d)]
  - 3) Upon becoming aware of a special incident, notify the vendoring regional center.
  - 4) Work collaboratively with the vendoring regional center to follow up and investigate special incidents, as needed.
  - 5) Work collaboratively with the vendoring regional center to enforce a Zero Tolerance Policy regarding abuse or neglect of consumers.
- c. When Contractor is the vendoring regional center but is not the regional center with case management responsibility, Contractor shall notify the regional center utilizing Contractor's community living vendor or long-term health care facility upon becoming aware of the following:

- 1) Unusual type or frequency of special incidents that would impact the health and safety of consumers while receiving services from Contractor's community living vendor or long-term health care facility.
  - 2) Issues that may affect the ability of Contractor's community living vendor or long-term health care facility to provide services, or to provide services in an environment that ensures the health and safety of consumers during the provision of services.
  - 3) If a situation specified in subparagraphs (1) or (2) of this paragraph places a consumer(s) in immediate risk or danger, Contractor shall notify the regional center(s) immediately, and not later than 24 hours.
- d. For all vendor types other than community living vendors and long-term health care facilities, upon becoming aware of a situation specified in subparagraphs (1) or (2) of paragraph (c) of this section, Contractor shall notify all regional centers of the following:
- 1) Vendor name and number(s).
  - 2) Request to contact Contractor if a regional center is currently utilizing the vendor in question.
  - 3) The name(s) and telephone number(s) of the individual(s) to contact for relevant information.
- e. For the purposes of paragraph (d) of this section, Contractor shall notify the regional center(s) as soon as possible, but not later than two working days. If the situation places a consumer(s) in immediate risk or danger, Contractor shall notify the regional center(s) immediately, and not later than 24 hours.
- f. By December 15, 2013, and ongoing as warranted by personnel changes, Contractor shall maintain and provide to the other regional centers, a primary contact person and a backup contact person and their contact information for purposes of making and receiving the notifications specified in paragraph (d) of this section.

## **8. Program Development Funds – Parental Fee Program**

Both Parties to this contract recognize the specific requirements under law as stated in W&I Code Section 4784 and California Code of Regulations 50225.

## **9. Executive Director Recruitment Policy**

Contractor shall notify the State within one business day of an unanticipated executive director vacancy or within one week of learning of an executive director

resignation or retirement. Contractor shall provide the State with its plan for executive director recruitment within one month of the above notification.

## **10. Reporting on Specified Consumers**

- a. Contractor shall report to the State on an ongoing basis and at least monthly, information on:
  - 1) If known, any minor or non-minor dependent who remains a resident of California and is residing out-of-state, whose services are not funded by the regional center.
  - 2) If known, any minor at risk of out-of-state placement, whether the placement would be funded by the regional center or another agency.
- b. Contractor shall report to the State within three business days of any known occurrence, information on any minor or adult residing for five days or more in an emergency room or psychiatric facility, or any minor not accompanied by their parent or legal guardian residing in a shelter.
- c. Information will be reported to a specified State contact in a mutually agreed upon format, to include consumer name, UCI, age, legal status, and a summary of the current circumstances and resources that have been explored.
- d. By August 31, 2020, Contractor shall identify and provide to the State, the name and contact information for any employee who will serve as a point-of-contact for this information.
- e. Nothing in this section shall affect Contractor's compliance with W&I Code Section 4519.

## **11. Board of Directors Training Plan**

- a. Pursuant to W&I Code Section 4622(g), "the regional center shall provide necessary training and support to these board members to facilitate their understanding and participation, including issues related to linguistic and cultural competency. As part of its monitoring responsibility, the department shall review and approve the method by which training, and support are provided to board members to ensure maximum understanding and participation by board members. Each regional center shall post on its internet website information regarding the training and support provided to board members."
- b. Contractor shall submit to the State by December 15 of each year, a proposed comprehensive board of directors' training plan for the next calendar year. At minimum, training topics shall include a review of board governance (e.g., board members' role and responsibilities), conflict of interest and whistleblower policies, and linguistic and cultural competency.



- c. The training plan shall detail training topics, including: frequency, length of each training session and, if known, the name, affiliation, and qualifications of the individual or entity who will provide training to the board.
- d. Contractor shall post on its website information regarding the training and support provided to board members pursuant to W&I Code Section 4266(g), to include the annual board of directors' training plan and schedule.
- e. Contractor shall submit to the State by December 15 of each year, a report on the actual trainings provided to its board of directors in that calendar year, to include the information specified in subsections (b) and (c).

## **12. W&I Code Section 4731 Consumers' Rights Complaints**

By April 15, 2021, and quarterly by the 15<sup>th</sup> of the month following each quarter, Contractor shall report to the State information regarding complaints pursuant to W&I Code Section 4731 for which the regional center sent the complainant a written proposed resolution in response to in the previous quarter. To ensure the State has the information needed to comply with W&I Code Section 4519.2(c), information shall be reported in a mutually agreed upon format and shall include, but not be limited to, the following:

- a. Consumer UCI and initials;
- b. Date complaint was received by the regional center;
- c. Date the proposed resolution was sent to the consumer;
- d. Subject matter of each complaint; and
- e. How the complaint was resolved.

## **13. Medicaid Enrollment Requirements**

- a. Purpose

Regional centers coordinate services for consumers for which federal funding is received from the Centers for Medicare and Medicaid Services, and are therefore required to enroll as a Medicaid provider. Exhibit G sets forth the terms and conditions under which the Contractor shall enroll as a Medicaid provider.

- b. Board of Directors' Recruitment and Training

- 1) Contractor shall provide information regarding these requirements in Contractor's board recruitment outreach and information.
- 2) Contractor shall include as a component in its annual training

regarding board member roles and responsibilities, information about the criteria that trigger submission of a renewal packet as outlined in Exhibit G to ensure ongoing enrollment as a Medicaid provider.

#### **14. Board Governance**

By April 1 ,2022, Contractor shall ensure that either a board-approved policy or board-approved bylaws describe the following:

- a. The respective roles and responsibilities of the governing board in setting policy and overall governance and the Executive Director in day-to-day operations.
- b. The selection, training and monitoring of facilitators who will support board members to ensure maximum understanding and participation in carrying out their roles and responsibilities as per W&I Code section 4622(g)(1) and (2).

#### **15. Forensic Cases**

- a. Starting January 15, 2022, Contractor shall ensure information is entered into its case management database regarding consumers subject to the diversion process pursuant to Penal Code Section 1001.20, et seq. Information shall be entered within 14 days of receipt of minute orders and shall include, but not be limited to, the following:
  - 1) Date(s) and type(s) of related offense(s); and
  - 2) Details of the consumer's diversion program and current status.
- b. Contractor shall give the State a minimum of 14 calendar days' notice of any of the following:
  - 1) Contractor's intent to recommend to the court that a consumer be admitted to the Porterville Developmental Center Secure Treatment Program pursuant to Penal Code Section 1370.1.
  - 2) Contractor's intent to recommend to the court that a consumer currently on a Penal Code Section 1370.1 commitment at Porterville Developmental Center move to a W&I Code Section 6500 commitment.
- c. Contractor shall provide Porterville Regional Project with all required individual documents as soon as possible after a recommendation has been made to the court that a consumer be admitted to Porterville Developmental Center.

## 16. Reporting on DDS Conservatees

- a. Beginning October 1, 2022, Contractor shall report to the State, in a format prescribed by the State, by the fifth (5<sup>th</sup>) working day of each month for the prior month the following information for each individual for whom the Director of DDS is conservator and the responsibilities of conservatorship have been delegated to Contractor pursuant to Health and Safety Code sections 416 through 416.23:
- 1) Change in residence
  - 2) Change in medical presentation or support needs
  - 3) Changes in behavioral presentation or support needs
  - 4) Changes in services, including new services requested and/or authorized
  - 5) Emergency room or urgent care visits, including the reason and outcome of the visit
  - 6) Rights violations
  - 7) Any other significant events or issues not already reported to the State
- b. By December 31, 2023, and biennially thereafter, Contractor shall have completed a person-centered comprehensive assessment for each individual described in paragraph (a) of this section to inform the development of the Individual Program Plan. In implementing this paragraph, Contractor and the State shall adhere to the following timelines:
- 1) By October 31, 2022, Contractor and the State shall define “comprehensive assessment” for the purpose of this paragraph and the necessary trainings for staff who will complete comprehensive assessments.
  - 2) By November 30, 2022, Contractor and the State shall finalize the curriculum for trainings.
  - 3) In December 2022, trainings shall begin.
  - 4) From January 2023 to December 2023, Contractor shall complete all necessary comprehensive assessments.
- c. Consistent with Probate Code section 2360 and the State’s May 2011 program advisory, “COD 11-01, Conservators: Photograph of Conservatee,” by January 31, 2023, and annually thereafter, Contractor shall submit to the State, in a format prescribed by the State, a photograph of each individual described in paragraph (a) of this section.

## **ARTICLE VIII: PERFORMANCE**

### **1. Contract Development**

Contractor agrees to perform in accordance with the goals and objectives set forth in Exhibit C, "Performance Plan," which was developed in accordance with W&I Code Section 4629. Notwithstanding Article I, Section 9 herein the Performance Plan shall be for a period of five years as specified in Exhibit C. The Performance Plan may be modified during the term of this period by mutual written consent of Contractor and the State.

### **2. Annual Progress Report**

By January 31 of each year, Contractor shall prepare and submit a report to the State on Contractor's progress in meeting its performance contract goals and objectives. The report shall include the goals, objectives, baseline data for each objective, and progress on each objective.

### **3. Incentives**

By July 1 of each year, ARCA and the State shall mutually agree on incentives and flexibility as required to ensure that Contractor meets or exceeds its performance standards and to facilitate the achievement of performance objectives. Once agreed to, these incentives and flexibility shall become part of the Contract.

### **4. Contract Compliance**

Based upon Contractor's performance, the State may take corrective action against Contractor, including placing the Contractor on probationary status. If it is found that a Contractor does not meet or is at risk of not meeting performance standards, due to the failure to meet performance objectives or requirements under the Lanterman Act or the terms of the contract, the State may take any or all of the following actions independently or in combination: the provision of technical assistance; loss of fiscal incentives; mandated consultation with designated representatives of ARCA or a management team designated by the State, or both; issuance of a letter of noncompliance; pursuit of legal or equitable remedies for enforcement of specified obligations; or contract termination or contract nonrenewal subject to W&I Code Section 4635. Nothing in this paragraph shall limit the State's authority to take any other appropriate action under the Lanterman Act or the terms of the contract at any time during the term of this contract.

## ARTICLE IX: STAFFING, MONITORING AND REPORTING

### 1. Specialized Personnel and Monitoring

Contractor shall expend not less than the specific amounts allocated for the following provisions unless there is reduction in funding, and/or the State imposes a transfer from Operations to POS.

#### a. Clinical Staff

Contractor shall either hire, or contract for, clinical expertise in the areas of pharmacology, behavioral psychology, and special medical assistance in order to provide assistance in the use of special medications, to monitor complex medical cases, and to be proactive to improve access to preventive health care resources.

#### b. Quarterly Monitoring

Contractor shall have face-to-face contact with ~~all~~ any individuals living in a community out-of-home settings (licensed community care facilities, health facilities, supported living and independent living settings, and adult family homes) and any individual who is conserved by the Director of DDS or the Director of the Regional Center, at least quarterly. These contacts shall be for the purpose of monitoring the health, safety and well-being of each individual, gathering information to assess the effectiveness of services provided to meet the individual's needs and monitoring progress in meeting identified goals.

#### c. Specialized Expertise

##### 1) Contractor shall have, or contract for, all of the following:

- a) Criminal justice expertise to assist Contractor in providing services and support to consumers involved in the criminal justice system as a victim, defendant, inmate or parolee.
- b) Special education expertise to assist Contractor in providing advocacy and support to families seeking appropriate educational services from a school district.
- c) Family support expertise to assist Contractor in maximizing the effectiveness of support and services provided to families.
- d) Housing expertise to assist Contractor in accessing affordable housing for consumers in independent or supported living arrangements.

- e) Community integration expertise to assist consumers and families in accessing integrated services and supports and improved opportunities to participate in community life.
- 2) Contractor shall employ or contract for at least one consumer advocate who is a person with developmental disabilities.
- 3) Contractor shall hire, maintain, and designate one full-time equivalent federal program coordinator position, and shall ensure that the monies appropriated for this position will only be used for that purpose.
  - a) This position shall address issues pertaining to federally funded programs serving individuals with developmental disabilities as appropriate, including the HCBS Waiver.
  - b) In collaboration with the State, this position, when appropriate, shall seek increased FFP
- 4) Contractor shall hire to fulfill the following functions/positions:
  - a) Employment Specialist
  - b) Cultural Specialist
  - c) HCBS Waiver/New Federal Rule Program Evaluators
  - d) Emergency Coordinator
  - e) Deaf Services Specialist
  - f) Participant Choice Specialists in a quantity the Contractor is allocated out of the total of 63 positions funded by the State

d. Federal Programs Compliance Review

Contractor shall use funds budgeted for Federal Programs Compliance Review to establish, maintain, and implement an ongoing internal review process to ensure compliance with federal and state program requirements related to the HCBS Waiver, TCM, and the NHR programs. The internal review process shall assess Contractor's compliance with statutory/regulatory/contractual requirements in, at minimum, the following areas:

- HCBS Waiver eligibility certification/recertification
- Special incident reporting and risk management
- Consumer choice
- Provider Agreement Forms
- Notice of action
- Fair hearings
- IPPs/IFSPs
- Periodic and quarterly reviews of services and progress
- Quality assurance (quarterly reviews, corrective action plans, annual reviews of community care facilities)
- Service coordinator caseload ratios

- TCM documentation of activity and units
- NHR documentation of referrals and evaluations

Contractor shall use the results from the internal review as part of a continuous quality improvement process to enhance performance. The State shall develop and provide Contractor a self-evaluation protocol to assist Contractor in performing the internal review. The results of this internal review shall be made available to the State during the State's monitoring visits.

- e. Contractor shall use funds allocated in the Budget Act of 2005 and each budget year thereafter for complying with the HCBS Waiver requirements solely for the specific purposes budgeted for the 2005-06 fiscal year and each fiscal year thereafter. The State may take any disciplinary action necessary in the event Contractor expends these allocated funds for any purpose other than for complying with these requirements.
- f. Using all funds allocated to the Contractor in accordance with the Settlement Agreement for Capitol People First, et al. v. Department of Developmental Services, et al, (hereafter referenced as Settlement Agreement) as originally authorized in the Budget Act of 2009 and as authorized in subsequent Budget Acts, Contractor shall provide service coordination on behalf of residents of Developmental Centers as set forth in the Settlement Agreement Section IV.A.1. Service coordination may be provided directly by the Contractor or through documented arrangements with another regional center. The Contractor shall make diligent efforts to participate in annual IPP meetings as agreed to in Section IV.A.3. of the Settlement Agreement. Nothing in this contract provision shall be construed to expand Contractor's obligations pursuant to the Settlement Agreement beyond those expressly described in the Settlement Agreement. If any inconsistency exists between the terms of the Settlement Agreement and this contract provision, the terms of the Settlement Agreement shall prevail.

## 2. Caseload Ratios

- a. Contractor shall maintain service coordinator-to-consumer ratios as specified in W&I Code Section 4640.6, in accordance with annual CPP Operations funding to maintain a 1:45 caseload ratio for consumers identified in Caseload Ratio Reference Number 2.3, and FY 21-22 Budget funding to maintain a 1:40 caseload ratio for consumers in Caseload Ratio Reference Number 2.7, as follows:

<b>Caseload Ratio Reference Number</b>	<b>Statutory Requirement or Targeted State Funding</b>	<b>Population</b>	<b>Service Coordinator-to-Consumer Ratio</b>
2.1	WIC §4640.6(c)(4)	Complex needs as defined in WIC §4640.6(c)(4)	1:25

2.2	WIC §4640.6(c)(2)	Moved from a DC in the last 12 months	1:45
2.3	CPP Operations Funding	Moved from a DC and have lived in the community between 12 and 24 months	1:45
2.4	WIC §4640.6(c)(3)(B), adjusted for CPP Operations Funding caseload	Moved from a DC since April 14, 1993, and have lived continuously in the community for greater than 24 months	1:62
2.5	WIC §4640.6(c)(3)(A)	Age 3 and younger	1:62
2.6	WIC §4640.6(c)(3)(A)	Enrolled on the HCBS Waiver	1:62
2.7	FY 21-22 Budget	Low or no purchase of service	1:40
2.8	WIC §4640.6(c)(3)(C)	All others	1:66

- b. Service coordinators may have a mixed caseload consisting of consumers specified in Caseload Ratio Reference Numbers 2.1, 2.2, 2.3, 2.4, 2.5, 2.6 and 2.8 if the overall average caseload is weighted proportionately to ensure that overall regional center average service coordinator-to-consumer ratios as specified in 2.1, 2.2, 2.3, 2.4, 2.5, 2.6 and 2.8 are met. In no case shall a service coordinator for these consumers have an assigned caseload in excess of 84 for more than 60 days.
- c. For purposes of this contract requirement, "service coordinator" means a regional center employee whose primary responsibility includes preparing, implementing, and monitoring consumers' IPPs, securing and coordinating consumer services and supports, and providing placement and monitoring activities.
- d. For purposes of this contract requirement, low purchase of service for a consumer is defined as less than \$2000 in the prior fiscal year. The 1:40 caseload ratio shall be maintained based on the State's allocation of positions to Contractor.
- e. One or more of the requirements of this subsection shall not apply if the regional center has a waiver approved pursuant to W&I Code Section 4640.6(h).

### 3. Reporting

Contractor shall provide service coordinator caseload data, as of March 1, to the State annually by March 10. The data shall be submitted in a format prescribed by the State that shall meet, but not exceed, the data collection requirements imposed by W&I Code Section 4640.6(e). In FY 21-22 only, Contractor shall provide service coordinator caseload data, as of February 1, 2022, to the State



by February 10, 2022. In FY 22-23, Contractor shall also provide service coordinator caseload data, as of October 1, to the State by October 10, pursuant to W&I Code Section 4640.6(g).

## ARTICLE X

### COMMUNITY PLACEMENT PLAN FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES AND EXPENDITURE PLAN

#### 1. BACKGROUND

Golden Gate Regional Center, Regional Center of the East Bay, and San Andreas Regional Center (Collectively, BAHP Contractors or CPPDD Contractors) originally developed the Bay Area Housing Plan in accordance with provisions of Welfare and Institutions Code §4474.1 and §4688.5. With the exception of the property located at 14329 Mulberry Drive in Los Gatos, the 60 properties (each a Property and collectively the Properties) that were developed and comprise the BAHP are described in Attachment A. Each Property is owned by one of three limited liability companies (each a “Borrower” and collectively, the “Borrowers”).

The Bank of America (Bank) returned funds from its security account to the BAHP Contractors. The funds that were returned to the BAHP Contractors from the Bank’s security account are “advanced operating expenses”. Contractor shall report the funds that were returned to it from the Bank’s security account in the same manner as Contractor is required to report under the law other advanced operating expenses. The “advanced operating expenses” are considered and shall be accounted for strictly as advanced funds and shall not be considered or reported as a state claimable expense and shall be subject to the requirements of Article III of this Agreement. In the event of any conflict between the requirements included in Article III of this Agreement and the requirements included in Article X of this Agreement, the requirements included in Article III of this Agreement shall prevail.

#### CPPDD

To obtain bond financing to refinance the BAHP, the California Health and Human Services Agency (HHSA) and the Department of Developmental Services (DDS) provided assurances in letters dated December 27, 2010 to involved parties of the BAHP refinance that the HHSA and the DDS approved a refinance plan for BAHP. In the refinance plan and hereinafter, the BAHP is referred to as the Community Placement Plan for Individuals with Developmental Disabilities (CPPDD). In the refinance plan, the California Health Facilities Finance Agency (CHFFA) issued Seventy-Six Million Nine Hundred Seventy Thousand and no/100 Dollars (\$76,970,000) in revenue bonds and the Office of Statewide Health Planning and Development (OSHPD) provided loan insurance for the bonds. Collectively, Golden Gate Regional Center (GGRC), Regional Center of the East Bay (RCEB) and SARC (formerly referred to as the BAHP Contractors) are hereinafter referred to as the CPPDD Contractors.

Under the CPPDD each property is encumbered by a Long-Term Residency Lease Agreement between a service provider and a Borrower, as amended by a First Amendment to Long-Term Residency Lease Agreement and a Second Amendment to Long-Term Residency Lease (collectively, the Lease). Each CPPDD residential service provider shall receive a service fee for the services provided to each individual residing in the home. The Contractor acknowledges Medicaid eligible residents will use Supplemental Security Income payments for room and board costs, and these funds will

not receive federal reimbursement from the federal Home and Community-Based Services (HCBS) Waiver. The State acknowledges that the CPPDD Contractors are parties to the Lender Lease Assurance Agreement, which provides additional security for repayment of the CPPDD loans. Should Contractor become liable pursuant to the Lender Lease Assurance Agreement, the Contractor shall immediately notify the State and in no instance shall the State seek reimbursement from the HCBS Waiver for Medicaid eligible residents for such liability.

As more specifically described in the Master Memorandum of Understanding (Master MOU) dated February 1, 2011, and entered into by parties that include the CPPDD Contractors, CHFFA, and OSHPD, the CPPDD Contractors shall maintain an aggregate amount of Five Million and no 100/Dollars (\$5,000,000.00) in three separate accounts (Required Balance). The Required Balance is to provide additional liquidity and an operating reserve for the benefit of OSHPD and CHFFA. Contractor granted a security interest in the Required Balance to CHFFA and OSHPD. The funds held in the Required Balance are considered advanced operating expenses, shall be accounted for strictly as advanced funds, shall not be considered or reported as a state claimable expense, and shall be subject to the requirements included in Article III of this Agreement. In the event of a conflict between the requirements included in Article III of this Agreement and the requirements included in Article X of this Agreement, the requirements included in Article III of this Agreement shall prevail.

Notwithstanding anything in the CPPDD to the contrary: (1) any and all funding from the State used by the Contractor in the performance of the obligations under this Agreement is subject to appropriation in the annual State Budget Act by the State Legislature; (2) all contracts between the State and the Contractor are subject to termination without further State liability if funding is not appropriated for these purposes by the State Legislature; (3) the CPPDD Contractors do not act as agents of the State; and (4) the State is not a party to CPPDD and provides no assurances or commitments as to the availability of State funding during any portion of the term of this Agreement. The purpose of this paragraph is to clarify that the State has no financial liability of any nature for any party's obligations under the CPPDD.

## 2. CONTRACT TERMS AND CONDITIONS

The CPPDD and this Article X of the Amendment are hereby incorporated into the Contract. The Contractor agrees to fulfill all terms and conditions or otherwise discharge all duties contained in the CPPDD in accordance with Welfare and Institution Code (WIC) §4688.5. In addition to statutory and regulatory requirements and/or other contractual obligations of the CPPDD Contractors to implement the CPPDD, Contractor hereby agrees to the following terms and conditions (with the understanding that Contractor or its designee may be appointed, with the written permission of the State, to perform the following reporting activities for the benefit of the other CPPDD Contractors):

3. Contractor shall comply with all conditions expressed in WIC §4688.5. Contractor hereby confirms that a Lease Assurance Covenants, Conditions, and Restrictions and Memorandum of Agreement and Lease (the "CC&Rs") dated February 1, 2011, has been recorded against the Properties in the Contractor's catchment area expressing that:

4. Each Property is only available for occupancy by individuals eligible for regional center services.
  5. No sale, encumbrance, hypothecation, assignment, refinancing, pledge, conveyance, exchange or transfer in any other form of the real property, or of any of its interest therein, shall occur without the prior written approval of DDS and the California Health and Human Services Agency.
- B. Under certain of the CPPDD documents, DDS has express rights, such as its right under the CC&Rs, to approve any sale, encumbrance, hypothecation, assignment, refinancing, pledge, conveyance, exchange or transfer of the Properties. The provisions below are in addition to such DDS right.

Contractor agrees that the CC&Rs for each Property shall not be amended without the prior notarized written approval of the State, filed for record with the County Recorder's Office of the County where the applicable Property is situated, with a conformed copy provided to Contractor.

Contractor shall submit to the State, or cause to be submitted to the State, for review and prior written approval any material change to the following documents used for the CPPDD (CPPDD Documents), pursuant to WIC §4688.5, prior to making and/or agreeing to any material changes:

1. Master MOU dated February 1, 2011 among the Borrowers, CPPDD Contractors, CHFFA and OSHPD;
2. Memorandum of Agreement for the Bay Area Housing Plan (Master Agreement for NPO's) dated for reference purposes as of March 30, 2006 among the CPPDD Contractors and the Borrowers' predecessors in interest;
3. Each Lease between the Borrower known as Inclusive Communities East Bay, LLC (ICEB) and a service provider;
4. Lease Assurance Covenants, Conditions and Restrictions and Memorandum of Agreement and Lease dated as of February 1, 2011 among Contractor, ICEB and DDS;
5. Loan Agreement dated as of February 1, 2011 between CHFFA and ICEB;
6. Regulatory Agreement dated February 1, 2011 among the Borrowers, CPPDD Contractors, CHFFA and OSHPD;
7. Deeds of Trust with Fixture Filing and Security Agreement dated as of February 1, 2011, executed by ICEB;

8. Amended and Restated Agreement for Providing Residential Services under the BAHP dated February 1, 2011 between Contractor and each Service Provider;
  9. Special Deposit Account Control Agreement (Security Interest in Deposit Account-Contingency) effective February 16, 2011, executed by Contractor in favor of OSHPD and the Bond Trustee;
  10. First Amendment to Memorandum of Agreement for the Bay Area Housing Plan (NPO MOU for BAHP) dated for reference purposes as of February 1, 2011 among the CPPDD Contractors and the Borrowers; and
  11. Lender Lease Assurance Agreement dated February 1, 2011 by CPPDD Contractors in favor of CHFFA and OSHPD.
- C. Contractor acknowledges that the Borrowers own the Properties described in Attachment A. Contractor has entered into various agreements to secure bonds for the Properties. Contractor agrees to include in its agreement with the Borrowers the obligation of each Borrower to comply with the provisions of the CPPDD Documents.
- D. Contractor agrees to implement the CPPDD as approved by the State.
- E. Contractor acknowledges that the CPPDD loans included funds to cover the costs of issuance (Cost of Issuance) associated with the issuance of revenue bonds for the Properties, as described in detail in Item II of the "State of California – Health and Welfare Agency Health Facility Construction Loan Insurance Estimate of Costs and Requisition OSH-CM-134 (Rev. 04/10)" signed by Kristine McCann and J.P. Marion on February 16, 2011, and incorporated herein by reference. Contractor agrees that if funds for Cost of Issuance are returned to Contractor ("Unused Funds"), the Unused Funds will be returned to the State.
- F. For the purpose of a consumer's absence from the home, the Contractor shall pay the established rate for the full month when the consumer is temporarily absent from the facility 14 days or less per month. Notwithstanding the foregoing, when the consumer's temporary absence is more than 14 days but is due to the need for inpatient care in a health facility as defined in Health and Safety Code Section 1250(a), (b), or (c) and the consumer is expected to return, Contractor shall continue to pay the established rate as long as no other consumer occupies the vacancy created by the consumer's temporary absence, for purposes such as crisis or respite services, or until the Interdisciplinary Team has determined that the consumer will not return to the facility. In all other cases of a consumer absence for more than 14 days, the established rate shall be

prorated for a partial month of service by dividing the established rate by 30.44, then multiplying by the number of days the consumer resided in the facility. Notwithstanding the foregoing, even if the consumer's absence is for more than 14 days, Contractor shall in any event continue to remit payment for Rent to each Service Provider as described in paragraph 6.2 of each Amended and Restated Agreement for Providing Residential Services Under the BAHF ("Service Provider Agreement").

- G. Vacancies; Respite Beds; Beds in Transition. With regard to CPPDD homes, the Contractor shall not submit a claim to the State for a vacant bed, except as provided herein. The Contractor is permitted to hold up to two (2) beds in an Adult Residential Facility for Persons with Special Health Needs (962 home) available for crisis, transition from acute or subacute care, or respite purposes and to pay the established rate for that bed. These beds must be specifically identified to DDS and may only be reassigned to a different home, with prior approval from DDS, when a permanent placement is made into an existing bed held for the purposes noted above. Further, a Bed in Transition (defined below) shall not be considered a vacant bed, and the Contractor may claim to the State (and the State shall reimburse, to the extent the claim is valid) the established contract rate (transition costs) between the Contractor and the provider for Beds in Transition. In all other instances of a bed vacancy, the Contractor shall continue to remit payment to the provider for Rent and claim such payment to the State, as described in paragraph 6.2 of each Service Provider Agreement.

An unoccupied bed shall be considered a "Bed in Transition" when all of the following conditions are satisfied:

6. The Contractor has identified a specific consumer of Contractor's services to occupy the bed (the "Identified Consumer"); and

(2) Based on the Identified Consumer's IPP and other relevant information, the Identified Consumer qualifies for the type of care provided by the service model of the house where the bed is located; and

(3) The Identified Consumer resides in a developmental center; *provided, however*, if there are no qualified consumers of Contractor's services then residing in developmental centers, the Contractor may select another consumer of Contractor's services to fill the bed, in the following order of preference: (i) a consumer who previously resided in a developmental center; or (ii) a consumer who has not previously resided in a developmental center and now resides in a skilled nursing facility or intermediate care facility; and

(4) The Contractor is actively involved in transitioning the Identified Consumer from his or her current residence to the unoccupied bed, as evidenced in the consumer's IPP and Transition Plan.

To be eligible for transition costs, in addition to the claim for reimbursement, the Contractor must submit to DDS a monthly report of Beds in Transition, by the last day of each month, that specifically identifies Beds in Transition in CPPDD homes, the date each bed became vacant, the consumer identified for

placement into each bed consistent with all of the above conditions, and the date each consumer was identified for placement into the home. A bed will not continue to be considered a Bed in Transition when all of the aforementioned conditions for a Bed in Transition are not met, as determined by the Contractor or the State.

In rare circumstances, the Director of DDS, or designee, may allow an unoccupied bed that would not otherwise qualify as a Bed in Transition to be eligible for transition costs on a case by case basis. Further, the Contractor may, with prior approval from the Director of DDS, or designee, which shall not be unreasonably withheld, submit a claim for transition costs when placement is delayed due to events beyond the Contractor's control, including, but not limited to, the need to complete required medical procedures for the consumer.

The Contractor shall attempt to either amend all of its Service Provider Agreements, or enter into new Service Provider Agreements, to make them consistent with the terms and conditions of this Section II.G as soon as practicable, but in any event not later than March 1, 2012. To the extent Contractor is unable to enter into such amendments or new agreements by March 1, 2012, the Department shall at such time cease funding for vacant beds under the provisions of the Service Provider Agreements governing payments for bed vacancies, and instead shall fund for vacant beds and Beds in Transition under the terms of this Article X; the Contractor shall thereafter reimburse its service providers in accordance with the terms of this Article X, based on the funding contingency provisions of each Service Provider Agreement.

- H. Contractor represents that all of the Predevelopment Funds have been expended for CPPDD purposes.
- 7. In accordance with the notice provision in this agreement, Contractor shall provide written notification to the State within 48 hours (excluding holidays and weekends) of discovery or notification of anticipated and/or non-payment of a lease payment associated with any Property. Further, Contractor shall include in agreements with the Borrowers the obligation of the Borrowers to promptly notify both the CPPDD Contractors and the State if any tenant fails to remit any rent payment under its Lease.
- J. All notices specified in this agreement and as required in all CPPDD Documents, including documents related to the CPPDD, shall be provided in writing to the Deputy Director, Community Services and Supports Division at the address provided in Section K. below.
- K. Contractor shall submit copies of any and all of its reports required by CHFFA, OSHPD, and/or Trustee, as defined in the Indenture-for CPPDD, to the State simultaneously with their submission to the entity. The reports shall be mailed to:

Deputy Director  
Community Services and Supports Division  
Department of Developmental Services  
1215 O Street  
Sacramento, CA 95814

### 3. QUARTERLY FISCAL REPORTS

Contractor shall submit a CPPDD Quarterly Fiscal Report to DDS in the format provided in Attachment B.

- A. Quarterly Fiscal Reports will be mailed to Deputy Director, Community Services and Supports Division, beginning January 15, 2012, that reflect the Total Service Fee payments made by Contractor since the bonds were issued to finance the CPPDD to December 31, 2011 and shall include, but not be limited to, the following:
  - 1. Regional Center
  - 2. CPPDD Property Number
  - 3. Home Type
  - 4. Home Capacity
  - 5. Property Address (including the city, state, and zip code)
  - 6. Tax Status (tax-exempt or taxable)
  - 7. Tax Exemption Certification Date
- B. For purposes of completing Attachment B, the "Total Service Fee" means the monthly amount Contractor remits for provision of residential or adult family home agency services.
- C. After January 15, 2012, Quarterly Fiscal Reports shall be submitted to DDS no later than 15 days after the last calendar day of the fiscal quarter month. For example, the next Quarterly Fiscal Report submitted after January 15, 2012, must be submitted no later than April 15, 2012.



## **HOME AND COMMUNITY-BASED SERVICES WAIVER REGIONAL CENTER FISCAL AGENT RESPONSIBILITIES**

### **1. BACKGROUND**

The Department of Health Care Services (hereinafter referred to as DHCS) is the single California agency responsible for administering the California Medical Assistance Program (hereinafter referred to as Medi-Cal), for which federal grants in aid are received pursuant to Title XIX of the federal Social Security Act (hereinafter referred to as Medicaid).

The Department of Developmental Services (hereinafter referred to as Department) is responsible for providing services to persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act, California Welfare and Institutions Code, Section 4500 et seq.

Section 1915(c) of the federal Social Security Act provides for home and community based services as a benefit of the Medicaid program, subject to approval by the Department of Health and Human Services (hereinafter referred to as DHHS) thereby enabling Title XIX coverage of home and community based services for persons with developmental disabilities.

The Department has entered into a contract with DHCS under which the Department shall act as the fiscal agent for Medi-Cal payments and related systems for administering home and community-based services for persons with developmental disabilities.

Contractor is one of 21 private non-profit, locally based agencies under contract with the Department to obtain services for persons with developmental disabilities including home and community-based services.

### **2. CONTRACT PRACTICES**

For the purposes of this contract, the Department and Contractor agree to conform to the requirements of 45 CFR Appendix II to Part 75 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards and to the requirements of the DHHS approved Home and Community-Based Services Waiver (Medicaid Waiver) Program.

### **3. SUBCONTRACTS**

Contractor agrees that contracts, other than small purchases contracts, shall contain provisions or conditions which allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

**4. POPULATION COVERED BY THIS CONTRACT**

The population covered by this exhibit are those Medi-Cal eligible persons who qualify for participation in the Medicaid Waiver Program and/or who would be eligible for Medi-Cal due to eligibility for the Medicaid Waiver Program and those who are enrolled in the Medicaid Waiver Program.

**5. PROCEDURES FOR ENROLLMENT AND RE-ENROLLMENT**

Contractor shall adhere to the enrollment and re-enrollment assurances and procedures as specified in the Medicaid Waiver Program. All participants shall meet the appropriate level of care criteria, shall sign the federally required "Consumer choice of services/living arrangement statement" (form DS 2200); shall have a choice among qualified providers; shall be notified of their right to a fair hearing if choice is denied; services are reduced and Medicaid Waiver Program eligibility is terminated unless the consumer voluntarily disenrolls from the Medicaid Waiver Program; and, shall have a written plan of care which addresses the health, safety, and well-being of the individual participant in a community setting.

Contractor shall maximize federal financial participation by identifying and enrolling all eligible persons, unless the operations (OPS) costs of enrollment exceed the reimbursement to the State of California as determined by a formula which is mutually agreed to by the State and the ARCA. Any child who would become eligible for Medi-Cal benefits through institutional deeming shall be enrolled. Contractor shall redetermine the eligibility of persons enrolled in the Title XIX Home and Community-Based Services Waiver Program (Medicaid Waiver) annually. In consideration for such enrollment and redetermination, the Department shall, in addition to all other allocations, allocate in Contractor's preliminary operations budget their proportionate share of the full amount budgeted for this purpose. The Department and Contractor shall mutually agree to the amount of federal reimbursement that shall be used for the contract budget summary.

Contractor shall implement the mutually agreed to procedures for the administration of the Medicaid Waiver Program. Modifications to the existing procedures shall be mutually agreed to by the Department and ARCA and approved by DHCS.

**6. SERVICES TO BE PROVIDED**

The written plan of care prepared for each Medicaid Waiver participant shall prescribe the amount, duration and scope of services necessary to safely maintain the participant in the community rather than an institution. The written plan of care shall be in accordance with the requirements set forth in the DHHS approved home and community-based services waiver and tailored to meet the specific needs of each individual participant to ensure the person's health and well-being.

**7. THIRD PARTY LIABILITY RESPONSIBILITIES**

In compliance with 42 CFR Chapter IV, Part 433, Subpart D-Third Party Liability, Contractor shall perform the activities required by the Department.

**8. HOME AND COMMUNITY-BASED SERVICES WAIVER APPROVAL TERMINATION**

This exhibit shall continue so long as CMS approves the Medicaid Waiver Program or until the agreement between DHCS and the Department upon which this exhibit is based is terminated.

**9. PAYMENT TO PROVIDERS**

The Contractor and the Department agree that payment to providers of home and community-based waiver services shall be made in accordance with 42 CFR Chapter IV, Part 447.

**10. NONCOMPETITIVE NEGOTIATION JUSTIFICATION**

The Contractor and the Department agree that this exhibit is consistent with CFR Subtitle A, Subchapter A - General Administration, Part 75 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards, Subpart D - Post Federal Award Requirements, Procurement Standards, Section 75.328 - Competition for the following reasons:

- a. The California Legislature has found that, "the service provided to individuals and their families by regional centers is of such a special and unique nature that it cannot be satisfactorily provided by state agencies" (W&I Code Section 4620).

- b. The Legislature has mandated that the Department contract only with private non-profit community agencies which meet the criteria of W&I Code Section 4620 et seq. for the purpose of operating regional centers.
- c. The Legislature requires that contracts between the Department and regional centers specify the service areas to be served thereby resulting in one regional center per service area (W&I Code, Section 4640).

## **EARLY START STATEMENT OF ASSURANCES**

July 1, 2014

### **1. PURPOSE**

This exhibit sets forth the terms and conditions under which the Contractor shall administer the Early Start Program activities.

### **2. EARLY START REPORT**

Contractor agrees to prepare and submit Early Start Reports for all children under age three in accordance with reporting instructions distributed by the State.

### **3. USE OF PART C FUNDS**

Funds received under Part C will only be used in support of the Early Start Program.

### **4. ACCOUNTING PROCEDURES**

Part C funds will not be commingled with regional center general funds, and fiscal control and fund accounting procedures will be followed as may be necessary to assure proper disbursement of, and accounting for the Part C funds.

### **5. FEDERAL SINGLE AUDIT ACT**

Contractor agrees to comply with the federal Single Audit Act requirements.

### **6. EARLY START PROGRAM COMPLIANCE**

Contractor agrees the Early Start Program is in compliance with the provisions of Part C of the Individuals with Disabilities Education Act (20 USC Section 1471 et. seq.) its implementing regulations (34 CFR Part 303), the Education Department General Regulations (EDGAR) as specified in 34 CFR Section 303.5, and the California Government Code, Title 14, Section 95000 et. seq. and Title 17 California Code of Regulations, Section 52000 et. seq. Contractor agrees to provide appropriate early intervention services, as defined under 34 CFR 303.13 and delineated on the individualized family service plan in accordance with 17 CCR 52108 (a)(1) to eligible children and families at no cost.

## **7. PAYROLL RECORDS**

Contractor agrees to maintain payroll records which identify personnel employed in the Early Start Program and make the records available for review by the States' monitoring staff pursuant to 34 CFR Section 303.501.

CFDA Title: Infant and Toddlers with Disabilities

CFDA Number: 84.181A

Award Name: Annual State Application Under Part C of the Individuals with Disabilities Education Act as Amended in 2004, Federal Fiscal Year 2006

Federal Agency Name: Office of Special Education Programs, United States  
Department of Education

**Community Placement Plan and Community Resource Development Plan  
Statement of Assurances**

**1. Community Placement Plan and Community Resource Development Plan**

Contractor shall develop and submit an approved Community Placement Plan and Community Resource Development Plan in accordance with W&I Code Sections 4418.25, and 4418.3; and consistent with W&I Code Sections 4418.7, 4519 and 4648. Contractor's Community Placement Plan and Community Resource Development Plan shall, where appropriate, include budget requests for regional center operations, consumer assessments, resource development, deflections and ongoing placement costs.

**2. Dedicated Funding**

- a. Contractor shall use funds allocated for the regional center's approved Community Placement Plan and Community Resource Development Plan only for the purposes allocated and in compliance with the State's Community Placement Plan and Community Resource Development Plan and Housing Guidelines. Funds will be allocated through the following categories: Operations, Purchase of Service Placement, Purchase of Service Deflection, Purchase of Service Assessment, and Purchase of Service Start Up. The State shall reduce the contract in the amount of any unspent funds allocated for the Community Placement Plan and Community Resource Development Plan that are not used for that purpose. Any unspent funds shall revert to the General Fund State or be transferred to another regional center for Community Placement Plan and Community Resource Development Plan activities. All changes to the approved ~~GPP~~ Community Placement Plan and Community Resource Development Plan allocation must be approved in writing by the Department.
- b. Within 30 days of the enactment of the budget, the State shall notify Contractor of any changes to Contractor's approved Community Placement Plan and Community Resource Development Plan.

**3. Reports**

Contractor agrees to report, as required by the State, on the status and outcomes of their plans at a minimum of quarterly.

**4. Accounting Procedures**

Contractor shall submit a detailed quarterly claim; this claim form shall be mutually agreed to by ARCA and the State.



**Statement of Assurances for Protection of Protected Health Information**

**Health Insurance Portability and Accountability Act (HIPAA)  
Health Information Technology for Economic and Clinical Health (HITECH)**

**1. Background**

The terms of this Agreement are intended to create a business associate relationship between the contracting parties (collectively, "Contractor" and "DDS") as required under the Health Insurance Portability and Accountability Act ("HIPAA"), codified in Title 42 of the United States Code, Section 1320d *et seq.* and its implementing law and regulations such as the Health Information Technology for Economic and Clinical Health Act of 2009, (Public Law 111-005, Title XIII, Subtitle D, Section 13400 *et seq.*, Feb. 17, 2009) ("HITECH Act"), and Title 45 of the Code of Federal Regulations ("CFR") Parts 160 and 164 ("HIPAA Regulations").

Since a business associate relationship is created by this Agreement and protected health information ("PHI"), as defined in Section 3 herein, may be exchanged, created, received, maintained, used and/or disclosed to Contractor, Contractor agrees to comply with all applicable requirements of HIPAA, HIPAA Regulations, and the HITECH Act which pertain to the privacy and security of PHI.

In addition, HIPAA's preemption exception under Title 45 of the Code of Federal Regulations Section 160.203 requires state law to apply if state law is more stringent in protecting PHI. Accordingly, the intent of the parties is that Contractor shall comply with the applicable requirements of California law governing the exchange, creation, dissemination, maintenance, use or disclosure of PHI that exceeds the requirements of HIPAA, the HITECH Act, and HIPAA Regulations.

**2. Recitals**

- A. DDS wishes to disclose to Contractor and/or wishes for the Contractor to receive certain information pursuant to the terms of this Agreement, some of which may constitute PHI.
- B. As set forth in this Agreement Contractor is the "Business Associate", as defined in Section 3 herein, of DDS that provides services, arranges, performs or assists in the performance of functions or activities on behalf of DDS and creates, receives, maintains, transmits, uses or discloses PHI.
- C. DDS and Contractor desire to protect the privacy and provide the security of PHI created, received, maintained, transmitted, used, or disclosed pursuant to this Agreement, in compliance with HIPAA, the HITECH Act, HIPPA Regulations, and any more stringent applicable state law protecting PHI.

Now, therefore, the parties agree as follows:

**3. Definitions**

- A. **Accounting** – “Accounting” means Contractor’s accounting of PHI disclosures to an individual upon his or her request in accordance with 45 CFR § 164.528, subject to the exceptions listed therein. As stated in 45 CFR § 164.528(b) an accounting includes the date of disclosure, the name of the entity or person who received the PHI and, if known, the address of such entity or person, a brief description of the PHI disclosed, and a brief statement of the purpose of disclosure or copy of a written request for disclosure by the Secretary, as defined herein, or by an entity or person permitted under 45 CFR § 164.512.
- B. **Breach or Breaches** – “Breach” or “Breaches” have the same meaning of the term “breach” defined under 45 CFR § 164.402, which is the acquisition, access, use or disclosure of PHI in a manner not permitted under Title 45 of the Code of Federal Regulations Part 164, Subpart E, that compromises the security or privacy of PHI, subject to the breach exclusions listed therein.
- C. **Business associate** – “Business Associate” has the same meaning of the term “business associate” defined in 45 CFR § 160.103, which means an entity or person on behalf of a covered entity who creates, receives, maintains or transmits PHI by conducting services including legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, financial services, claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, billing, patient safety activities benefit management, practice management and/or repricing. “Business associate” also refers to Contractor who is a party to this Agreement.
- D. **Covered entity** – “Covered Entity” has the same meaning of the term “covered entity” defined in 45 CFR § 160.103, which means a health plan, health clearinghouse or healthcare provider. Covered entity also refers to DDS who is a party to this Agreement.
- E. **Designated record set** – “Designated record set” has the same meaning of the term “designated record set” defined in 45 CFR § 164.501, which is a group of records that contains PHI and is maintained by or for a covered entity. The designated record set includes medical records and billing records, enrollment, payment, claims adjudication and case/medical management record systems, and/or records used, in whole or part, to make decisions about individuals.
- F. **Disclosure** – “Disclosure” has the same meaning of the term “disclosure” defined in 45 CFR § 160.103, which is the release, transfer, provision of access to, or divulging in any manner of information outside the entity holding the information.
- G. **Discovery** – “Discovery” has the same meaning of “Breaches treated as discovered” under 45 CFR § 164.410. Under Section 164.410, a breach shall be treated as discovered by a business associate on the first day on which such breach is known, or by exercising reasonable diligence would have been known by the business associate, including its employees or agents.
- H. **Electronic PHI** – “Electronic PHI” is protected health information in an electronic form.

- I. **Encryption** – “Encryption” has the same meaning of the term “encryption” defined in 45 CFR § 164.304, which is the use of an algorithmic process to transform data into a form in which there is a low probability of assigning meaning without use of a confidential process or key.
- J. **Harmful effect** – “Harmful effect” means a negative effect of using or disclosing PHI known to the covered entity or business associate that would violate HIPAA, HITECH Act, HIPAA Regulations as set forth in 45 CFR § 164.530(f), or any more stringent applicable state law protecting PHI.
- K. **Health care operations** – “Health care operations” has the same meaning of the term “health care operations” defined in 45 CFR § 164.501. Under Section 164.501, health care operations includes conducting quality assessment and improvement activities, outcomes evaluation, development of clinical guidelines, patient safety activities, population-based activities relating to improving health, protocol development, case management and care coordination, reviewing competence and qualifications of health care professionals not involving treatment, evaluating provider/vendor performance, conducting training programs for students, trainees or practitioners in the area of health care to improve skills, training of non-health care professionals, accreditation, certification, licensing or credentialing activities, underwriting and enrollment relating to creation, renewal or replacement of health insurance or benefits, medical review, legal services, auditing functions, business planning and development, business management and general administrative activities such as implementation and compliance with HIPAA, HITECH Act, and HIPAA Regulations, customer service, resolution of internal grievances, the creation of de-identified health information or a limited data set, and/or fundraising for the benefit of the business associate.
- L. **Individual or Individuals** – “Individual” or “individuals” have the same meaning of the term “individual” defined in 45 CFR § 160.103, which is the person who is the subject of PHI.
- M. **Lanterman Act** – The “Lanterman Act” means the Lanterman Developmental Disabilities Services Act codified in California Welfare and Institutions Code Sections 4500, *et seq.*
- N. **Minimum necessary** – “Minimum necessary” means the “minimum necessary” standard set forth in 45 CFR § 164.502, which requires covered entities and business associates to make reasonable efforts to limit the use or disclosure of PHI to accomplish the intended purpose of the use, disclosure or request, subject to the exceptions set forth therein.
- O. **Notice of Privacy Practices** – “Notice of Privacy Practices” means the required notice under 45 CFR § 164.520 provided to individuals by a covered entity regarding the use and disclosure of PHI that may be made by the covered entity, and the individual’s rights and covered entity’s legal duties with respect to PHI.
- P. **PHI or protected health information** – “PHI” or “protected health information” have the same meaning of the term “individually identifiable health information” as defined in 45 CFR § 160.103. Under Section 160.103 individual identifiable health information is information that is created or received by a covered entity or business associate that relates to the past, present, or future physical or mental health of an individual; or the past, present, or future payment for the provision of health care to the individual. In addition, the information must identify the

individual or there must be a reasonable basis to believe the information may be used to identify the individual.

- Q. **Required by law** – “Required by law” has the same meaning of the term “required by law” defined in 45 CFR § 164.103, which is a mandate contained in law that compels an entity to make a use or disclosure of PHI and that is enforceable in a court of law.
- R. **Safeguards** – “Safeguards” referenced herein collectively means the required “administrative safeguards” defined in 45 CFR § 164.308, “physical safeguards” defined in 45 CFR § 164.310, and “technical safeguards” defined in 45 CFR § 164.312.
- 1) Under 45 CFR § 164.308 “administrative safeguards” is the implementation of policies and procedures to prevent, detect, contain and correct security violations.
  - 2) Under 45 CFR § 164.310 “physical safeguards” is the implementation of policies and procedures to limit physical access to electronic information systems and the facility or facilities in which PHI is maintained, while ensuring proper authorized access to PHI.
  - 3) Under 45 CFR § 164.312 “technical safeguards” is the implementation of policies and procedures for electronic information systems that maintain electronic PHI to allow access only to those persons or software programs that have been granted access rights specified in 45 CFR § 164.308(a)(4).
- S. **Secretary** – “Secretary” means the Secretary of the United States Department of Health and Human Services.
- T. **Security Incident** – “Security incident” has the same meaning of the term “security incident” defined in 45 CFR § 164.304, which is the attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system.
- U. **Subcontractor or Agent** – “Subcontractor” or “agent” have the same meaning of the term “subcontractor” defined in 45 CFR § 164.10, which is a person to whom a business associate delegates a function, activity or service, other than in the capacity of a member of the workforce of such business associate.
- V. **Unsecured PHI** – “Unsecured PHI” has the same meaning of “unsecured protected health information” defined in 45 CFR § 164.402, and it is PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of technology and methodology specified by the Secretary in the guidance issued under section 13402(h)(2) of Public Law 111-5.
- W. **Use or usage** – “Use” or “usage” have the same meaning of the term “use” defined in 45 CFR § 160.103, which is the sharing, employment, application, utilization, examination, or analysis of PHI within an entity that maintains such information.

#### **4. Permitted Uses and Disclosures of PHI by Business Associate**

- A. **Usage Permitted by This Agreement and HIPAA.** Contractor may use or disclose PHI only to perform functions, activities or services for, or on behalf of the DDS as specified in this Agreement, provided that such use or disclosure does not violate HIPAA, HIPAA Regulations, the HITECH Act, and any more

stringent applicable state law protecting PHI. The use and disclosure of PHI may not be more expansive than applicable to DDS as the "Covered Entity" under 45 CFR Part 164. (45 CFR § 164.504(e)(2)(i)).

- B. **Usage for Legal, Management and Administrative.** In accordance with 45 CFR § 164.504(e)(4), Contractor may disclose PHI if necessary, for the legal, management, or administrative purposes of Contractor. In disclosing PHI, Contractor's disclosure must be required by law, or the Contractor must obtain reasonable assurances from the person to whom the information is disclosed that it 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 notifies Contractor of any instances of which it is aware in which the confidentiality of the information has been breached.
- C. **Minimum Necessary.** Contractor shall comply with the requirements under 45 CFR § 164.502(b) to only request, use, and disclose the minimum PHI necessary to accomplish the intended purpose of the request, use or disclosure.
- D. **Access.** Contractor shall provide access, at the request of DDS, and in the time and manner designated by DDS, to PHI in a designated record set to DDS or, as directed by DDS, to an individual in order to meet the requirements of 45 CFR § 164.524 and 45 CFR § 164.504(e)(2)(ii)(E) regarding an individual's right to access PHI.
  - 1) If Contractor maintains electronic PHI, and an individual requests a copy of his or her PHI in an electronic format, Contractor shall provide such information in an electronic format to enable DDS to fulfill its obligations under the HITECH Act, including but not limited to 42 USC § 17935(e).
- E. **Nondisclosure.** In accordance with 45 CFR § 164.504(e)(2)(ii)(A), Contractor shall not use or further disclose PHI other than as permitted or required by this Agreement, or as required by law.
- F. **Amendments.** In accordance with 45 CFR § 164.526(a) and 45 CFR § 164.504(e)(2)(ii)(F), Contractor shall make any amendment(s) to PHI in a designated record set that DDS directs or agrees to and in the time and manner designated by DDS, or at the request of an individual. Individual requests for amendment(s) are subject to the right of Contractor to exercise denial under 45 CFR § 164.526(a)(2) and under the Lanterman Act. Contractor shall ensure the amendment/s are incorporated into the PHI in accordance with 45 CFR § 164.526.
- G. **Accounting.** Contractor shall provide an accounting of disclosures of PHI to an individual for the six years prior to the date of the individual's request, in accordance with 45 CFR § 164.528 (a)(1), subject to the exceptions listed therein.

**5. Uses and Disclosures Not Provided for by this Agreement**

- A. **Mitigation.** In accordance with 45 CFR § 164.530 (f), Contractor shall mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI in violation of the requirements of this Agreement.
- B. **Requests to Restrict PHI.** Contractor shall not disclose PHI about an individual to a health plan for payment or health care operations purposes if PHI pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full and the individual requests such restriction, in accordance with 42 USC § 17935(a) and 45 CFR 164.522(a).
- C. **No Remuneration Without Written Consent.** In accordance with 42 USC § 17935(d)(1) Contractor shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior written consent of DDS and a valid HIPAA authorization under 45 CFR § 164.508.

**6. Safeguarding Protected Health Information**

- A. In accordance with 45 CFR § 164.504(e)(2)(ii)(B) and 45 CFR Part 164, Subpart C, Contractor shall use appropriate safeguards to prevent use or disclosure of PHI, except as provided in this Agreement or as required by law.
- B. In accordance with 45 CFR Part 164, Subpart C and 45 CFR § 164.314(a)(2)(i)(A) & (B), Contractor shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI, including electronic PHI, it creates, receives, maintains, or transmits in an electronic format on behalf of DDS to prevent unauthorized access, viewing, use, disclosure or breach of PHI, other than as provided for by this Agreement or required by law.
- C. Contractor shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of Contractor's operations and the nature and scope of its activities, and which incorporates the requirements of Section 7, Security, below.
- D. **Privacy Officer.** Contractor shall designate a Privacy Officer who shall: (1) develop policies and procedures on PHI that comply with this Agreement, HIPAA, HIPAA Regulations, HITECH Act, and any more stringent applicable state law protecting PHI; (2) receive complaints/notices pertaining to breaches, and process those complaints/notices in accordance with Section 10, herein; and (3) be the point of contact for communication on privacy matters with DDS. Contractor shall notify DDS's privacy and security officers of the individual designated as Privacy Officer and his/her appropriate contact information (including telephone, work address and email) upon execution of this Agreement. If there is a contact change of the Privacy Officer, Contractor shall notify DDS within 10 calendar days or annually per DDS Technical Bulletin 479.

**7. Security**

- A. Contractor shall ensure the security of all computerized data systems containing PHI in compliance with HIPAA, HIPAA Regulations, the HITECH Act, and the standards provided by National Institute of Standards and Technology (NIST). These steps shall include, at a minimum, but not limited to:
- 1) Ensuring appropriate security levels to maintain the confidentiality, integrity and availability of PHI and electronic PHI in accordance with 45 CFR Part 164, Subpart C;
  - 2) Protecting against any reasonably anticipated threats or hazards to the security or integrity of PHI and electronic PHI in accordance with 45 CFR 164.306(a)(2);
  - 3) Protecting against any reasonably anticipated uses or disclosures of PHI and electronic PHI that are not permitted or required under 45 CFR Part 164, Subpart E, in accordance with 45 CFR 164.306(a)(3);
  - 4) Requiring encryption of all laptops, desktops, tablets, smartphones and other mobile devices, when storing and transmitting electronic PHI, including encryption of portable electronic storage media (e.g., CD, DVD, flash drives, etc.);
  - 5) Requiring the development and maintenance of a Technical Recovery Plan (TRP) documenting the procedures required to restore critical business systems, including conducting an annual performance tabletop test of the TRP and providing annual self-certification of conducting such test to DDS' Information Security Officer; and
  - 6) Designating a Security Officer pursuant to 45 CFR § 164.308 to oversee Contractor's data security program. The Security Officer shall be responsible for carrying out the requirements of this Section and to be the point of contact for communicating on security matters with DDS. Contractor shall notify DDS's privacy and security officers of the individual designated as Security Officer and his/her appropriate contact information (including telephone, work address and email) upon execution of this Agreement. If there is a contact change of the Security Officer, Contractor shall notify DDS within 10 calendar days or annually per DDS Technical Bulletin 479.

**8. Agents and Subcontractors**

- A. Contractor shall require any of its agents, including subcontractors, that create, receive, maintain, or transmit PHI and/or electronic PHI on behalf of Contractor pursuant to its Agreement with DDS, to agree to the same restrictions, safeguards, and conditions that apply to Contractor herein with respect to such information. (45 CFR §§ 164.502, 164.504, 164.506, 164.314(a)(2)(i)(B)).

- B. Contractor's agents and subcontractors who create, receive, maintain, or transmit PHI and/or electronic PHI on behalf of Contractor are business associates of Contractor and are directly liable under HIPAA, HIPAA Regulations and the HITECH Act for any breach they commit. As such, Contractor's agents and subcontractors who create, receive, maintain, or transmit PHI and/or electronic PHI are subject to civil and, in some cases, criminal penalties for making uses and disclosures of PHI that are not authorized by contract or required by law. Contractor's agents and subcontractors who create, receive or transmit electronic PHI, are also directly liable and subject to civil penalties for failing to safeguard electronic PHI in accordance with HIPAA, the HITECH Act, and HIPAA Regulations.

**9. Records available to the State and Secretary and Compliance Reviews**

- A. In accordance with 45 CFR § 164.504(e)(2)(ii)(I), Contractor shall make its internal practices, books and records relating to the use and disclosure of PHI received from DDS, or created or received by Contractor on behalf of DDS, available to DDS or to the Secretary for purposes of investigating or auditing DDS's compliance with the requirements of HIPAA, HIPAA Regulations, and the HITECH Act, in the time and manner designated by DDS or the Secretary.
- B. In accordance with 45 CFR § 160.310, Contractor shall cooperate with the compliance and investigation reviews conducted by the Secretary. PHI access to the Secretary must be provided during Contractor's normal business hours, however, upon exigent circumstances access at any time must be granted. Upon the Secretary's compliance or investigation review, if PHI is unavailable to Contractor and in possession of a subcontractor or agent, it must certify efforts to obtain the information to the Secretary.

**10. Breach Procedure**

- A. **Discovery of Breach.** Contractor shall notify DDS ***within 72 hours by telephone call plus email or fax*** upon the discovery of a breach compromising the security and/or privacy of PHI, or upon a reasonable belief such breach has occurred, as required at 45 CFR §164.410. Notification shall be provided to the DDS Privacy Officer and the DDS Information Security Officer. If the incident occurs after business hours or on a weekend or holiday and involves electronic PHI, notification shall be provided by calling the DDS Service Desk. Upon discovery of such breach or reasonable belief of such breach, Contractor shall:

- 1) Take prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment; and
- 2) Commence an investigation.

**Content of Notification:** Within 72 hours of discovery of such breach or reasonable belief such breach occurred, Contractor shall include the following information in the notification to the DDS Privacy Officer and the DDS Information Security Officer to the extent presently known:



- 1) Identification of each individual whose unsecured PHI or confidential information has been, or is reasonably believed to have been accessed, acquired, used, disclosed, or breached;
  - 2) What data elements were involved, and the extent of the data involved in the breach;
  - 3) A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed PHI or electronic PHI;
  - 4) A description of the steps that an individual may take to protect him/her from the breach; and
  - 5) A description of what Contractor is doing to investigate the breach, to mitigate harm to individuals, and to protect against further breaches.
- B. **Written Report.** In accordance with 45 CFR § 164.504(e)(2)(ii)(C) and 45 CFR § 164.410, Contractor shall provide a written report of the investigation to the DDS Privacy Officer and the DDS Information Security Officer within thirty (30) calendar days of the discovery of the breach or unauthorized use or disclosure.
- C. **Notification of Individuals.** Contractor or Contractor's subcontractor or agent shall notify individuals whose unsecured PHI has been or is reasonably believed by Contractor to have been accessed, acquired, used, or disclosed as a result of the breach as required under 45 CFR § 164.404. Notification shall be provided without unreasonable delay as required by 42 USC § 17932(d), and within 30 calendar days. Contractor, or Contractor's subcontractor or agent, shall pay any costs of such notifications as well as any costs associated with the breach.
- D. **Responsibility for Reporting Breaches Involving Less Than 500 Individuals.** If the cause of breach of PHI or electronic PHI is attributable to the Contractor, or its subcontractors or agents, Contractor is responsible for all required reporting of the breach as specified in 42 USC § 17932 and 45 CFR Part 164, Subpart D. The breach reporting requirements of this paragraph are in addition to the reporting requirements set forth in subsection 10(A-C) above.
- E. **Responsibility for Reporting Breaches Involving 500 or More Individuals.** If a breach of unsecured PHI involves 500 or more residents of the State of California or its jurisdiction, Contractor, with DDS's oversight and input, shall notify the Secretary of the breach immediately upon discovery of the breach and prominent media outlets serving the State of California or its jurisdiction in accordance with 42 USC § 17932 and 45 CFR §§ 164.406, 164.408. The breach reporting requirements of this paragraph are in addition to the reporting requirements set forth in subsection 10(A-C) above. In addition, Contractor, with DDS's input and oversight, shall notify the California Department of Justice, Office of the Attorney General, as required under Civil Code §1898.82.
- F. **DDS Contact Information.** Contractor shall direct communications to the following DDS staff. DDS reserves the right to make changes to the contact information below by giving written notice to the Contractor. Said changes shall not require an amendment to this Agreement.

DDS Privacy Officer	DDS Information Security Officer
Privacy Officer <a href="mailto:privacy@dds.ca.gov">privacy@dds.ca.gov</a> (916) 654-2120	Information Security Officer <a href="mailto:iso@dds.ca.gov">iso@dds.ca.gov</a> (916) 654-1704
Fax (916) 654-3352	Fax (916) 654-3352

## **11. Term and Termination**

- A. **Term.** The term of this Agreement shall terminate when the regional center's contract expires or when all of the PHI provided by the DDS to Contractor, or created or received by Contractor on behalf of the DDS, in any format, is returned to the DDS and any associated storage media is destroyed, whichever is later.
- B. **Termination for Cause.** Upon DDS's knowledge of a pattern of activity or practice by Contractor that constitutes a violation of this Agreement by Contractor, DDS shall comply with the termination procedure set forth under the Lanterman Act.
- 1) DDS may take reasonable steps to provide an opportunity for Contractor to end the violation. If efforts to resolve the problem informally are unsuccessful, DDS shall have the option to issue a letter of noncompliance and establish a Corrective Action Plan ("CAP") under Welfare and Institutions Code section 4635; and if Contractor is not in compliance with the CAP, DDS shall move to terminate this Agreement under Welfare and Institutions Code section 4635.
  - 2) If cure is not possible and Contractor has committed a material breach, DDS shall comply with termination provisions set forth in the Lanterman Act to terminate this Agreement and report the violation to the HHS Secretary.
- C. **Effect of Termination or Nonrenewal**
- 1) In accordance with 45 CFR § 164.504(e)(2)(ii)(J), upon termination of this Agreement or nonrenewal of this Agreement, Contractor shall return or destroy all PHI and/or electronic PHI received from DDS or created or received by Contractor on behalf of the DDS. Contractor shall require that any PHI and/or electronic PHI in possession of subcontractors or agents is returned or destroyed and that no copies of such information is retained.
  - 2) In the event Contractor determines that returning or destroying the PHI and/or electronic PHI is not feasible, Contractor shall notify DDS about the conditions that make return or destruction not feasible. If DDS agrees that the return or destruction of PHI and/or electronic PHI is not feasible, Contractor shall extend the protections of this Agreement to such information and limit further use and disclosures of such personal information to those purposes that

make the return or destruction infeasible, for so long as Contractor, or any of its agents or subcontractors, maintains such information.

**12. Judicial or Administrative Proceeding**

DDS may terminate this Agreement in accordance with the terms and conditions of this Agreement as written herein above if: (1) Contractor is found guilty in a criminal proceeding for a violation of the HIPAA, HIPAA Regulations, or the HITECH Act; or (2) a finding or stipulation that the Contractor has violated a privacy or security standard or requirement of the HITECH Act, HIPAA, HIPAA Regulations or any more stringent applicable state law protecting PHI in an administrative or civil proceeding in which Contractor is a party.

**13. Due Diligence**

Contractor shall exercise due diligence to ensure that it remains in compliance with this Agreement and is in compliance with the applicable provisions of HIPAA, HIPAA Regulations, the HITECH Act, and any more stringent applicable state law protecting PHI, and require its subcontractors and agents to be in compliance with the same.

**14. Sanctions and/or Penalties**

Contractor understands and acknowledges that it is required to comply with the provisions of HIPAA, HIPAA Regulations, the HITECH Act, and any more stringent applicable state law protecting PHI, and that failure to comply with these laws may result in the imposition of civil and/or criminal sanctions and/or other penalties on Contractor as set forth under HIPAA, HIPAA Regulations and the HITECH Act.

**15. Employee Training and Discipline**

- A. Contractor shall use reasonable measures to ensure compliance with the requirements of this Agreement. In doing so, Contractor shall provide annual security and privacy training on HIPAA to its employees who create, receive, maintain or transmit PHI or electronic PHI on behalf of Contractor in accordance with 45 CFR § 164.308(a)(5)(i). Contractor shall require each employee who receives this training to sign a certification indicating the employee's name and the date on which the training was completed. Contractor shall retain each employee's written certifications for DDS inspection for a period of three years following contract termination.
- B. Contractor also agrees to discipline employees who intentionally violate any provisions of this Agreement, including up to termination of employment.

**16. Audits, Inspection and Enforcement**

From time to time, DDS may inspect the facilities, systems, information security controls, books and records of Contractor to monitor compliance with this Agreement. Contractor shall promptly remedy any violation of any provision of this

Agreement and shall certify the same to the DDS Privacy Officer in writing. The fact that DDS inspects, or fails to inspect, or has the right to inspect, Contractor's facilities, systems and procedures does not relieve Contractor of its responsibility to comply with this Agreement, nor does DDS's:

- A. Failure to detect; or
- B. Detection, but failure to notify Contractor or require Contractor's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of DDS enforcement rights under this Agreement.

If Contractor is the subject of an audit, compliance review, or complaint investigation by the Secretary or the Office of Civil Rights, U.S. Department of Health and Human Services, that is related to the performance of its obligations pursuant to this Agreement, Contractor shall notify DDS and provide DDS with a copy of any PHI or electronic PHI that Contractor provides to the Secretary or the Office of Civil Rights concurrently with providing such PHI or electronic PHI to the Secretary. Contractor is responsible for any civil or criminal penalties assessed due to an audit or investigation of Contractor in accordance with 42 USC § 17934(c).

#### **17. Obligations of DDS**

- A. **Notice of Privacy Practices.** DDS shall provide Contractor with the Notice of Privacy Practices that DDS produces in accordance with 45 CFR § 164.520, as well as any changes to such notice. Visit [www.dds.ca.gov](http://www.dds.ca.gov) to view the most current Notice of Privacy Practices:
- B. **Permission by Individuals for Use and Disclosure of PHI.** DDS shall provide Contractor with any changes in, or revocation of, permission by an individual to use or disclose PHI or electronic PHI, if such changes affect the Contractor's permitted or required uses and disclosures.
- C. **Notification of Restrictions.** DDS shall notify Contractor of any restriction to the use or disclosure of PHI that DDS has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Contractor's use or disclosure of PHI.
- D. **Requests Conflicting with HIPAA Rules.** DDS shall not request Contractor to use or disclose PHI or electronic in any manner that would not be permissible under HIPAA, HIPAA Regulations, HITECH Act, or any more stringent applicable state law protecting PHI.

#### **18. Miscellaneous**

- A. **Disclaimer.** DDS makes no warranty or representation that compliance by Contractor with this Agreement, HITECH Act, HIPAA, or HIPAA Regulations will be adequate or satisfactory for Contractor's own purposes or any information in Contractor's possession or control, or transmitted or received by Contractor, is or

will be secure from unauthorized access, viewing, use, or disclosure. Contractor is solely responsible for all decisions made by Contractor regarding the safeguarding of PHI.

- B. **Amendment.** The parties acknowledge that federal and state laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the HIPAA Regulations, and other applicable laws relating to the security or privacy of PHI and/or electronic PHI. Upon DDS's request Contractor agrees to promptly enter into negotiations with DDS concerning an amendment to this Agreement embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the HIPAA Regulations or other applicable laws. If informal attempts to negotiate are unsuccessful, DDS may move to terminate this Agreement in accordance with the Lanterman Act in the event:
- 1) Contractor does not promptly enter into negotiations to amend this Agreement when requested by DDS pursuant to this Section, or
  - 2) Contractor does not enter into an amendment providing assurances regarding the safeguarding of PHI that DDS deems sufficient to satisfy the standards and requirements of HIPAA, the HITECH Act, and the HIPAA Regulations.
- C. **Assistance in Litigation or Administrative Proceedings.** Contractor shall make available to DDS, at no cost to DDS, its employees, subcontractors and/or agents to testify as witnesses, or otherwise, in the event litigation or administrative proceedings are commenced against DDS, its officers or employees, based upon a claimed violation of HIPAA, HIPAA Regulations, HITECH Act or any more stringent applicable state law protecting PHI, which involve the inactions or actions by Contractor. This provision does not apply where Contractor or its subcontractor, employee or agent is a named adverse party to DDS.
- D. **No Third-Party Beneficiaries.** Nothing express or implied in the terms and conditions of this Agreement is intended to confer, nor shall anything herein confer, upon any person other than DDS or Contractor and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.
- E. **Interpretation.** The terms and conditions in this Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the HIPAA Regulations and any more stringent applicable state law protecting PHI. The parties agree that any ambiguity in the terms and conditions of this

Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, HIPAA Regulations, and any more stringent applicable state law protecting PHI.

- F. **References.** A reference in the terms and conditions of this Agreement to a section in HIPAA, HIPAA Regulations, and/or HITECH Act means the section currently in effect or as amended.
- G. **Survival.** The respective rights and obligations of Contractor in this Agreement shall survive the termination or expiration of this Agreement.
- H. **No Waiver of Obligations.** 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, or shall prohibit enforcement of any obligation, on any other occasion.

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**References:**

United States Department of Health and Human Services, Office for Civil Rights, Medical Privacy - National Standards to Protect the Privacy of Personal Health Information: <https://www.hhs.gov/hipaa/index.html>

United States Department of Health and Human Services, Centers for Medicare and Medicaid Services – Security Standards  
[www.cms.hhs.gov/SecurityStandard/](http://www.cms.hhs.gov/SecurityStandard/)

National Institute of Standards and Technology (NIST)  
[nist.gov/](http://nist.gov/)

FEDERAL INFORMATION PROCESSING STANDARDS (FIPS)  
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**CONFIDENTIALITY AGREEMENT**

***REGIONAL CENTER OF THE EAST BAY, INC. dba REGIONAL CENTER OF THE  
EAST BAY***

***Required for Release of DDS Data  
Per the State Administrative Manual Section (5310)***

Contractor hereby acknowledges that Department of Developmental Services (DDS) records and documents are subject to strict confidentiality requirements imposed by State and Federal laws including, but not limited to, Health Insurance Portability and Accountability Act in Title 42 of the United States Code, Section 1320d *et seq.* and its implementing law and regulations such as the Health Information Technology for Economic and Clinical Health Act of 2009, (Public Law 111-005, Title XIII, Subtitle D, 13400 *et seq.*, Feb. 17, 2009), 45 CFR Parts 160 and 164, Sections 56 and following and 1798.24 through 1798.24b of the California Civil Code; California Welfare and Institutions Code sections 4514, 5328, and 15633 and following; California Penal Code Section 11167.5; and any other applicable State or Federal law pertaining to confidentiality.

Contractor assures that the appropriate provisions of both State and Federal law have been met and further assures that all agents of the organization, including subcontractors and agents, understand that unauthorized use, dissemination or distribution of PHI is a crime and that breaches of confidentiality and security may be subject to civil and criminal penalties by the State or Federal government.

Contractor assures that its agents, including subcontractors, will not use, disseminate or otherwise distribute records or documents containing PHI, either on paper or by electronic means, other than as required in the performance of their duties per this contract.

Contractor agrees that unauthorized use, dissemination or distribution of DDS records, documents or information is grounds for immediate termination of any contracts with the DDS and may subject Contractor to penalties, both civil and criminal.

\_\_\_\_\_  
Signature of Contractor's Authorized Representative

Date: \_\_\_\_\_

\_\_\_\_\_  
Name/Title (Print)

## **MEDICAID ENROLLMENT REQUIREMENTS**

### **1. PURPOSE**

Regional centers coordinate services for consumers for which federal funding is received from the Centers for Medicare and Medicaid Services, and are therefore required to enroll as a Medicaid provider in a manner mutually agreed upon with the State. This exhibit sets forth the terms and conditions under which the Contractor shall enroll as a Medicaid provider.

### **2. CONTRACT PRACTICES**

For the purposes of this Agreement, Contractor agrees to comply with all Medicaid provider enrollment requirements in accordance with Title 42 Code of Federal Regulations (CFR) Sections 455.104 (a), (b)(1)(2)(3)(4), (c), (d), (e); 455.105, (a), (b), (c); 455.106 (a), (b), (c); 455.410; 431.107 (b)(3); 424.302 (d); 424.304 (a)(1); and 424.535 (d)(1).

### **3. PROCEDURES FOR ENROLLMENT AND RE-ENROLLMENT**

Contractor shall adhere to the following enrollment and re-enrollment assurances and procedures:

- a. Disclosure information required for all members of the Contractor's Board of Directors as well as the Regional Center Executive Director:
  - 1) The name, address, date of birth, and social security number of the board member or Executive Director/Interim Executive Director identified above.
  - 2) If the board member or Executive Director/Interim Executive Director is related to any of the other individuals above (as a spouse, sibling, parent or child).
  - 3) The name of any other enrolled Medicaid provider in which the individual has an ownership or control interest.
  - 4) The name of any "Excluded Individuals", defined as those that have been placed on either the U.S. Department of Health and Human Services Office of Inspectors' General (OIG) List of Excluded Individuals/Entities or the Department of Health Care Services (DHCS) Medi-Cal Suspended and Ineligible Provider List of persons, or individuals and entities that have been convicted of a criminal offense related to involvement in any program under Medicare, Medicaid or the Title XX services program, or meet the criteria included in Title 17, Section 54311(a)(6).



- b. The disclosure information identified in paragraph a. 1) through 4) must be submitted to the State:
  - 1) Upon execution of this contract.
  - 2) Within 35 days of the individuals identified in paragraph a. becoming a member of the Board of Directors or becoming the Regional Center Executive Director/Interim Executive Director.
  - 3) Upon request of the State during revalidation of enrollment requirements every five years or sooner when any of the following circumstances apply:
    - a) A new Taxpayer Identification (ID) Number is issued by the IRS.
    - b) There is a cumulative change of 50 percent or more in the person(s) with an ownership or control interest (executive directors or board members) since the information provided in the last complete application package that was approved for enrollment.
    - c) The two examples above are the most likely circumstances for a regional center to complete a new application, an exhaustive list can be found at Title 22 CCR Section 51000.30.
- c. Individuals that either fail to disclose the required information or meet the "Excluded Individuals" criteria shall be prohibited from serving in the roles identified in paragraph b.

## GENERAL TERMS AND CONDITIONS

1. VALIDITY: Contractor is aware of the provisions of Public Contract Code, Sections 10295 and 10335, and acknowledges that this contract is void unless approved by the Department of General Services.
2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, federal auditor, any other State agency, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. INDEMNIFICATION: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
6. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon written demand.

8. INDEPENDENT CONTRACTOR: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.
9. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, §11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §§11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article. Contractor 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 the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. (See Cal. Code Regs., tit. 2, §11105.)

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

10. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in Exhibit I are made a part of this Agreement and attached hereto.
11. TIMELINESS: Time is of the essence in this Agreement.
12. COMPENSATION: The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

13. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.
14. CHILD SUPPORT COMPLIANCE ACT: For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:
- a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
  - b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
15. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

## CONTRACTOR CERTIFICATION CLAUSES

### CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

Contractor Name (Printed)	Federal ID Number
By (Authorized Signature)	
Printed Name and Title of Person Signing	
Date Executed	Executed in County of

### CONTRACTOR CERTIFICATION CLAUSES

1. STATEMENT OF COMPLIANCE: Contractor has, unless exempted, complied with the nondiscrimination program requirements. (Gov. Code §12990 (a-f) and CCR, Title 2, Section 11102) (Not applicable to public entities.)
2. DRUG-FREE WORKPLACE REQUIREMENTS: Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 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.
  - b. Establish a Drug-Free Awareness Program to inform employees about
    - 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 counseling, rehabilitation and employee assistance programs; and
    - 4) penalties that may be imposed upon employees for drug abuse violations
  - c. Every employee who works on the proposed Agreement will
    - 1) receive a copy of the company's drug-free workplace policy statement; and
    - 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the two years period immediately preceding execution of the contract because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board. (Pub. Contract Code §10296) (Not applicable to public entities.)
4. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.
5. DOMESTIC PARTNERS: For contracts of \$100,000 or more, Contractor certifies that Contractor is in compliance with Public Contract Code section 10295.3.
6. GENDER IDENTITY: For contracts of \$100,000 or more, Contractor certifies that Contractor is in compliance with Public Contract Code section 10295.35.

### **DOING BUSINESS WITH THE STATE OF CALIFORNIA**

The following laws apply to persons or entities doing business with the State of California.

1. CONFLICT OF INTEREST: Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (Pub. Contract Code §10410):

- 1) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- 2) No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (Pub. Contract Code §10411):

- 1) For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- 2) For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (Pub. Contract Code §10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Pub. Contract Code §10430 (e))

2. LABOR CODE/WORKERS' COMPENSATION AND INSURANCE: Contractor shall maintain insurance coverage for the entire period of this contract that will protect the financial assets provided to Contractor from the State to fulfill the terms and obligations of this contract. Insurance coverage shall include, but not be limited to: workers' compensation insurance; non-owned automobile insurance including personal injury and property damage; property insurance including personal injury, supplies, equipment and other property furnished by or acquired under or allocatable to this contract; employment practices liability insurance to cover discrimination complaints and other similar employment claims; and, Directors', Trustees' and Officers' liability insurance. Contractor shall maintain Fidelity Bonding.

Contractor shall immediately notify the State, in writing, when Contractor is unable to obtain any of the required insurance coverage or any of the required policies are cancelled. (Labor Code Section 3700)

3. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)
4. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
5. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other governmental entity.





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

04/08/2025      Date submitted to RCEB Board for review

04/09/2025      Date approved by RCEB Board Executive Committee (if applicable)

04/28/2025      Date approved by RCEB Board

Operations ☒X\_\_\_

Purchase of Service ☐X\_\_\_

The following contracts have been reviewed by Lynn Nguyen, Director, Finance and Administration and Rebecca Nanyonjo, 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:
State of California Department of Developmental Services Contract with RCEB <b>“A-2” Series</b> Contract Allocation	N/A	Department of Developmental Services and Regional Center of the East Bay	7/1/2024– 6/30/2027	<b>\$1,453,050</b> OPS Allocation  <b>\$56,926,653</b> POS Allocation  <b>Total <u>\$58,379,703</u></b>  This amendment brings the total “A” contract allocations for F/Y 24-25 to <b>\$1,047,878,097</b>	This contract represents the “A-2” contract amendment of the A series between DDS and RCEB for fiscal year <b>2024-25</b> .



PETE CERVINKA  
ACTING DIRECTOR

State of California—Health and Human Services Agency  
**Department of Developmental Services**  
1215 O Street, Sacramento, CA 95814  
[www.dds.ca.gov](http://www.dds.ca.gov)



GAVIN NEWSOM  
GOVERNOR

**EXHIBIT I**  
**COVER LETTER AND CONTRACT AMENDMENT INSTRUCTIONS**

**Attn: Regional Center Director**  
**Contracting Agency President**  
**Regional Center Administrator**

Contract Number: RC Contract, Series A, Amendment 2

Dear Contractor:

Attached are the STD 213A Standard Agreement and exhibits for your A-2 amendment.

Please return a signed copy of your STD 213A to [jacob.thomas@dds.ca.gov](mailto:jacob.thomas@dds.ca.gov) as soon as possible, via email, and cc [rccontracts@dds.ca.gov](mailto:rccontracts@dds.ca.gov). Please do not return the contract exhibits—only the STD 213A is needed.

Should you have questions or concerns, please send them to [rccontracts@dds.ca.gov](mailto:rccontracts@dds.ca.gov).

Sincerely,

A handwritten signature in cursive script that reads 'Jacob Thomas'.

Jacob Thomas  
Contract Analyst

Enclosures

## Explanation of Items Allocated for FY 2024-25 A-2 Amendment

### Operations (Ops)

**Facility Rent:** Allocation based on regional centers' requests, discussions with regional centers and approvals by the Department.

**Foster Grandparents/Senior Companion Program:** Allocation based on volunteer service years as agreed upon with regional centers.

**Miscellaneous:** Allocation based on agreements with specific regional centers.

**Community Placement Plan/Community Resource Development Plan (CPP/CRDP), DC Closure/Ongoing Workload:** Allocation based on Department approvals.

### Policy Items

**Service Access & Equity Grant (SAE):** Allocation based on Department approvals.

**Health and Safety Assistance:** Allocation based on 1 position per RC, and the remaining balance based on each RC's proportionate share of Active Non-English-Speaking Consumers in FY 23/24.

**Specialized Home Monitoring:** Allocation based on each regional center's monitoring of completed and in progress ARFPSHNs, GHCSHNs, EBSHs and CCHs at a 1:4 (Nurse or Behavioral Specialist to Home) ratio.

### Purchase of Services (POS)

**Base Allocation:** Allocation based on each regional center's pro-rata share of Non-CPP POS claims year-to-date as of December 2024 and accounting for full implementation of service provider rate models January 1, 2025.

**Community Placement Plan/Community Resource Development Plan (CPP/CRDP):** Allocation based on Department approvals.

### Policy Items

**HCBSW Compliance:** Allocation based on Department-approved proposals to strengthen service provider compliance.

STD 213A (Rev. 4/2020)

☒ CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED 89 PAGES

AGREEMENT NUMBER	AMENDMENT NUMBER	Purchasing Authority Number
HD249015A	2	

1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME  
Department of Developmental Services

CONTRACTOR NAME  
Regional Center of the East Bay, Inc. dba Regional Center of the East Bay

2. The term of this Agreement is:

START DATE  
July 1, 2024

THROUGH END DATE  
June 30, 2031

3. The maximum amount of this Agreement after this Amendment is:  
\$1,047,878,097.00

4. The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein:

- a. Replaced by this amendment is Exhibit A--Regional Center Contract Language Fiscal Year 2024-2025, in its entirety, which is attached hereto and made part of this contract.
- b. This amendment replaces in its entirety Exhibit A of Regional Center Contract Language Fiscal Year 2024-2025--Contract Budget Summary, A-1, with the Exhibit A of Regional Center Contract Language Fiscal Year 2024-2025--Contract Budget Summary, A-2, attached hereto.
- c. This amendment increases the total contract dollar amount by \$58,379,703.00. New total contract dollar amount not to exceed \$1,047,878,097.00.

Fiscal Year funds identified above may not be used for any other fiscal year than the fiscal year specified unless authorized by the Department to do so.  
*All other terms and conditions shall remain the same.*

*IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.*

**CONTRACTOR**

CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership, etc.)  
Regional Center of the East Bay, Inc. dba Regional Center of the East Bay

CONTRACTOR BUSINESS ADDRESS 500 Davis Street, Suite 100	CITY San Leandro	STATE CA	ZIP 94577
PRINTED NAME OF PERSON SIGNING Frank Pare	TITLE Board President		
CONTRACTOR AUTHORIZED SIGNATURE	DATE SIGNED		

STD 213A (Rev. 4/2020)

☒ CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED 89 PAGES

AGREEMENT NUMBER HD249015A	AMENDMENT NUMBER 2	Purchasing Authority Number
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**STATE OF CALIFORNIA**

CONTRACTING AGENCY NAME Department of Developmental Services			
CONTRACTING AGENCY ADDRESS 1215 O Street, 10th Floor, MS 10-10	CITY Sacramento	STATE CA	ZIP 95814
PRINTED NAME OF PERSON SIGNING Greg Trahey	TITLE Manager, Contracts Unit		
CONTRACTING AGENCY AUTHORIZED SIGNATURE	DATE SIGNED		
CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL	EXEMPTION (If Applicable)		

2024-25 Through A-2 Contract Budget Summary  
Exhibit A, Claiming Categories by Program (Ops, POS, EIP, FRS)

Contracting Agency: Regional Center of the East Bay, Inc.

Contract Number

HD249015

<b>TOTAL OPERATIONS (Ops) which include the line items listed below:</b>	<b>\$</b>	<b>87,632,455</b>
<i>Less Separately Claimed Items:</i>	<i>\$</i>	<i>(2,406,988)</i>
<b>Total Ops Regular Monthly Claim Authority:</b>	<b>\$</b>	<b>85,225,467</b>
<i>In accordance with State Contract language under Article III: Fiscal Provisions Item #4 Payment Provisions, paragraph 3, the following Operation category expenditures must be claimed on a separate invoice:</i>		
<b>Behavioral Health Services Fund (before Jan 1 2025, Mental Health Services Fund)</b>	<b>\$</b>	<b>-</b>
<b>Total Foster Grandparent Sr Companion Program a/b</b>	<b>\$</b>	<b>-</b>
<i>FGP &amp; Sr. Companion, Total General State Funds <sup>a/</sup></i>	<i>\$</i>	<i>-</i>
<i>FGP, General State Fund, Support</i>	<i>\$</i>	<i>-</i>
<i>FGP, General State Fund, Volunteer</i>	<i>\$</i>	<i>-</i>
<i>Sr Companion, State Funds, Support</i>	<i>\$</i>	<i>-</i>
<i>Sr Companion, State Funds, Volunteer</i>	<i>\$</i>	<i>-</i>
<i>FGP, Total Federal <sup>b/</sup></i>	<i>\$</i>	<i>-</i>
<i>FGP, Federal Support</i>	<i>\$</i>	<i>-</i>
<i>FGP, Federal Volunteer</i>	<i>\$</i>	<i>-</i>
<i>FGP, Federal Stipend</i>	<i>\$</i>	<i>-</i>
<b>Language Access and Cultural Competency (General Fund)</b>	<b>\$</b>	<b>1,474,832</b>
<b>Service Access &amp; Equity (SAE) Grant Disparities</b>	<b>\$</b>	<b>-</b>
<b>Total Regular Community Placement Plan (CPP) and Community Resource Development Plan (CRDP) Ops</b>	<b>\$</b>	<b>1,479,376</b>
<b>Developmental Center Closure/Ongoing Workload</b>	<b>\$</b>	<b>927,612</b>

<b>TOTAL PURCHASE OF SERVICES (POS) which include the line items listed below:</b>	<b>\$</b>	<b>960,245,642</b>
<i>Less Separately Claimed Items</i>	<i>\$</i>	<i>(3,885,026)</i>
<b>Total POS Regular Monthly Claim Authority</b>	<b>\$</b>	<b>956,360,616</b>
<i>In accordance with State Contract language under Article III: Fiscal Provisions Item #4 Payment Provisions, paragraph 3, the following Purchase of Service category expenditures must be claimed on a separate invoice:</i>		
<b>Part C, POS</b>	<b>\$</b>	<b>1,216,311</b>
<b>HCBSW Compliance</b>	<b>\$</b>	<b>845,055</b>
<b>Total Community Placement Plan (CPP) and Community Resource Development Plan (CRDP) POS</b>	<b>\$</b>	<b>1,823,660</b>
<i>Start-Up</i>	<i>\$</i>	<i>1,723,660</i>
<i>Assessment</i>	<i>\$</i>	<i>-</i>
<i>Placement</i>	<i>\$</i>	<i>100,000</i>

<b>Early Intervention Program (EIP, Other Agency)</b>		
<i>Early Intervention Program, Family Resource Center</i>	<i>\$</i>	<i>-</i>

<b>Family Resource Services (FRS)</b>		
	<i>\$</i>	<i>-</i>

<b>TOTAL BUDGET</b>	<b>\$</b>	<b>1,047,878,097</b>
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a/ Senior Companion (GF) Program Title: Senior Companion Program, CFDA # 94.016, Award No.22SCICA002, Performance Period 07/01/22-06/30/25 for the three year grant.

b/ FGP: Program Title: Foster Grandparent Program, CFDA Number: 94.011, Award No.22SFICA001, Performance Period 07/01/22-06/30/25 for the three year grant.

c/ Part C: CFDA Title: Infant and Toddler/Families (Part C) Program Title: Special Education-Grants for Infants and Families with Disabilities.

CFDA Number: 84.181A, Award No: H181A240037. Federal Agency Name: Office of Special Education and Rehabilitative Services, United States Department of Education

Percent of Part C to Total Contract Funding: 0.12%

EXHIBIT III Explanation of Items in Allocation

Regional Center: Regional Center of the East Bay, Inc.

EXHIBIT III

FY 2024-25 Regional Center

		<u>Operations</u>	<u>Purchase Of Services</u>	<u>Early Intervention Program</u>	<u>Family Resource Services</u>
Previous Amendment ():		\$86,179,405	\$903,318,989	0	0
This Amendment (A-2):					
Operations Allocation (Ops):					
Total Rent and Utilities:		0			
Facility Rent and allowable Utilities and Maintenance		0			
Projects:					
Foster Grandparent and Sr. Companion Program		0			
Miscellaneous		0			
Ops Policy Items allocated in this Amendment:					
	249,556				
Service Access & Equity Grant (SAE)		0			
Health and Safety Waiver Assistance		249,556			
Specialized Home Monitoring		0			
Early Intervention Program (EIP) Family Resource Centers/Networks:				0	
Family Resource Services (Formerly Prevention Program)					0
Purchase of Services Allocation (POS):					
POS Base			54,357,938		
POS Policy Items:					
	845,055				
HCBSW Compliance			845,055		
Operations CPP and Ongoing Workload Items:					
Regular CPP/CRDP		739,688			
DC Closure / Ongoing Workload (Non-CPP)		463,806			
Purchase of Services CPP/CRDP Items:					
Start-Up			1,723,660		
Assessment			0		
Placement			0		
Total A-2 Amendment		\$1,453,050	\$56,926,653	\$0	\$0
Total A-2 Contract		\$87,632,455	\$960,245,642	\$0	\$0
Grand Total Contract		\$1,047,878,097			

**EXHIBIT A - REGIONAL CENTER CONTRACT LANGUAGE  
REGIONAL CENTER OF THE EAST BAY, INC. dba REGIONAL CENTER OF THE  
EAST BAY**

**FISCAL YEAR 2024-2025**



## **REGIONAL CENTER MASTER CONTRACT INDEX**

(Revised ~~September 12, 2024~~ **March 25, 2025**)

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## **EXHIBITS**

- A Contract Budget Summary
- B Home and Community-Based Services Waiver  
Regional Center Fiscal Agent Responsibilities
- C Performance Plan
- D Early Start Statement of Assurances
- E Community Placement Plan and Community Resource  
Development Plan Statement of Assurances
- F Statement of Assurances for Protection of Protected Health  
Information
- G Medicaid Enrollment Requirements
- H General Terms and Conditions
- I Contractor Certification Clauses

## **ARTICLE I. STANDARD TERMS AND CONDITIONS**

### **1. Amount of Contract**

The total amount payable to Contractor under this contract shall not exceed ~~\$989,498,394.00~~ **\$1,047,878,097.00** for Fiscal Year 2024-2025 as reflected in Exhibit A of this contract.

Fiscal year funds identified above may not be used for any other fiscal year than the fiscal year specified unless authorized by the State.

### **2. Term of Contract**

Subject to the provisions of Article VI, Section 1 and Article VIII, Section 1 herein, the period of this contract shall be for seven years as specified below. The term of the contract is from July 1, 2024 through June 30, 2031. The first five years of the term, from July 1, 2024 through June 30, 2029, is intended to meet the requirements specified in W&I Code Section 4629. The last two years of the term, from July 1, 2029 through June 30, 2031, is solely to provide for the claims period specified in Government Code section 16304, and to allow for adjustments to the regional centers' allocations and for the payment of claims up to two years after the close of each fiscal year, specifically FY 2029/2030 and FY 2030/2031.

### **3. Exhibits**

- a. Exhibit A, entitled "Contract Budget Summary," is attached hereto and made a part of this contract.
- b. Exhibit B, entitled "Home and Community-Based Services Waiver Regional Center Fiscal Agent Responsibilities," is attached hereto and made a part of this contract.
- c. Exhibit C, entitled "Performance Plan," is incorporated by reference and made a part of this contract.
- d. Exhibit D, entitled "Early Start Statement of Assurances," is attached hereto and made a part of this contract.
- e. Exhibit E, entitled "Community Placement Plan and Community Resource Development Plan Statement of Assurances," is attached hereto and made a part of this contract.
- f. Exhibit F, entitled "Statement of Assurances for Protection of Protected Health Information," is attached hereto and made a part of this contract.
- g. Exhibit G entitled "Medicaid Enrollment Requirements," is attached hereto and made a part of this contract.

- h. Exhibit H entitled "General Terms and Conditions," is attached hereto and made a part of this contract.
- i. Exhibit I entitled "Contractor Certification Clauses," is attached hereto and made part of this contract.

#### **4. Definitions**

- a. "Allocate" means to forward to the Contractor a contract or contract amendment which has been executed by the State and specifies an amount, or augmented amount, of money available to Contractor to affect the terms of this agreement.
- b. "ARCA" means the Association of Regional Center Agencies.
- c. "State" means the Department of Developmental Services and only the Department of Developmental Services.
- d. "Director" means the director of the Department of Developmental Services.
- e. "Lanterman Act" means Division 4.5 of the (W&I Code) Section 4500, et seq., known and cited as the Lanterman Developmental Disabilities Services Act.
- f. "Operations Budget" means that portion of a Contractor's budget allocation set forth in Exhibit A, that is intended for the delivery of regional center "direct consumer services" and "administration."
- g. "Direct Consumer Services" means those direct services to persons with developmental disabilities delivered by Contractor. These services include but are not limited to case management, funds management for persons with developmental disabilities, rights assurance, diagnosis and assessment, intake, prevention, quality assurance, program development, and other services under the Lanterman Act provided directly by Contractor.
- h. "Administration" means those support activities required of Contractor that are essential to the efficient conduct of business.
- i. "Total Purchase of Service Budget" means that portion of Contractor's budget allocation set forth in Exhibit A which is intended to support the purchase of services (POS) and programs for persons with developmental disabilities.
- j. "Regional Center" means an agency operated by a nonprofit corporation chartered in the State of California (hereinafter referred to as "Contractor") that provides fixed points of contact in the community for persons with developmental disabilities and their families, to the end that such persons

may have access to the facilities and services best suited to them throughout their lifetimes.

- k. "GAP Funds" means that portion of the POS appropriation that is intended to pay for services to newly developed ICF-DD/H, ICF-DD/N, and DD/CNC (formerly known as ICF/DD-CN) health facilities for the period between licensure and certification of the facilities.

## **5. Control Requirements**

The Contractor shall comply with all California statutes, laws, and regulations applicable to nonprofit corporations. Contractor shall also render services to persons with developmental disabilities in accordance with applicable federal and California statutes, regulations, ARC v. DDS (1985) 38 Cal.3d.384 and the terms of this contract.

## **6. Contractor Service Area or Counties:**

Contractor's regional center serves the following area or counties: Alameda, Contra Costa.

## **7. Copyrights/Patents**

Except as provided in this agreement, the Contractor may seek patents or copyrights for inventions, copyrightable materials or other original work product which has been commissioned, funded or developed by the Contractor with funds provided by the State, or otherwise produced in performance of this contract, subject to the rights of the State as set forth in this Section. Inventions, for the purposes of this Section, may include, but not be limited to, prosthetic devices, auxiliary learning aids or any other professional aids of a mechanical nature. Copyrightable materials, for the purposes of this Section, may include, but not be limited to data, plans, drawings, specifications, reports, operating manuals, notes or other consultant work. The State shall have the right to manufacture, reproduce, publish, use and/or distribute all such inventions or copyrightable materials. Upon any such inventions or copyrightable materials shall be the statement: "COPYRIGHTED/PATENTED (as appropriate) DATE (insert date) BY (insert name of contractor); REPRODUCED WITH PERMISSION." No further manufacturing, reproduction, publication, use or distribution shall be made without permission of the Contractor. All copyrights or patents to which this clause is applicable shall be in the name of the Contractor. If any such inventions are patentable, or any such original work product or materials are copyrightable, the Contractor may patent or copyright same except that, whenever any such patents or copyrights are applied for or sought by the Contractor, or any employee or assignee thereof, the Contractor shall promptly and fully report such fact to the State, which reserves a royalty-free, nonexclusive and irrevocable license to manufacture, reproduce, publish, use and/or distribute same. Any revenues derived from the sale of any such invention or copyrighted materials by the Contractor, or any employee or assignee thereof, shall be reported to the State and utilized by the Contractor for the benefit of persons with developmental disabilities.

The Contractor shall include the provisions of this section in all subcontracts to perform work which requires the invention or development of copyrightable materials under this contract. Subcontracts under this section shall specifically note the State's right to manufacture, reproduce, publish, use and/or distribute all inventions or copyrightable materials developed using funds provided by the State.

## **8. Zero Tolerance Policy**

- a. Contractor shall develop and post on its Internet Website by October 1, 2013, a Zero Tolerance Policy regarding consumer abuse and neglect. Contractor shall annually notify all its employees and notify vendors and long-term health care facilities serving consumers of its Zero Tolerance Policy. The Zero Tolerance Policy shall specify:
  - 1) That all Contractor, vendor and long-term health care facility staff serving consumers are required to report, pursuant to W&I Code Section 15630, to the appropriate entities any incident or allegation of suspected abuse or neglect.
  - 2) The entities for reporting suspected abuse or neglect.
  - 3) That upon becoming aware of a reportable incident or allegation of abuse or neglect of a consumer, pursuant to W&I Code Section 15630, Contractor and the associated vendor or long-term health care facility shall take immediate action to ensure the health and safety of the involved consumer and all other consumers receiving services from the Contractor, associated vendor or long-term health care facility.
  - 4) That the Contractor, its vendors and long-term health care facilities serving consumers shall ensure its respective employees are fully informed upon hire and annually thereafter regarding the Contractor's Zero Tolerance Policy and mandatory abuse and neglect reporting laws. Each employee must be knowledgeable of their responsibility to protect consumers from abuse and neglect, the signs of abuse and neglect, the process for reporting suspected abuse or neglect, and the consequences of failing to follow the law and enforce the Zero Tolerance Policy.
- b. The Contractor's Zero Tolerance Policy shall be incorporated into any new or revised contract, vendorization or other agreement for consumer services. Existing vendors and long-term health care facilities serving consumers shall be informed of Contractor's Zero Tolerance Policy; the Contractor's expectation of compliance with its policy; and, the Contractor will utilize all remedies available to it in statute and regulations to protect the health and safety of consumers.

## 9. Whistleblower Policy

- a. Contractor shall institute a board approved regional center Whistleblower policy effective December 31, 2010, addressing the reporting of alleged improper regional center and, or vendor/contractor activities.
  - 1) An “improper regional center activity” is defined as an activity by a regional center, or an employee, officer, or board member of a regional center, in the conduct of regional center business, that is a violation of a state or federal law or regulation; violation of contract provisions; fraud or fiscal malfeasance; misuse of government property; or constitutes gross misconduct, incompetency, or inefficiency.
  - 2) An “improper vendor/contractor activity” means an activity by a vendor/contractor, or an employee, officer, or board member of a vendor/contractor, in the provision of State funded services, that is a violation of a state or federal law or regulation; violation of contract provisions; fraud or fiscal malfeasance; misuse of government property; or constitutes gross misconduct, incompetency, or inefficiency.
- b. This policy must be consistent with the State’s directive entitled “Department of Developmental Services Whistleblower Complaint Process,” dated July 28, 2010, and must:
  - 1) Allow for multiple employees within the regional center to be available to accept complaints,
  - 2) Also includes a process to access the Board of Directors for the purpose of filing complaints,
  - 3) Ensure that the policy clearly indicates that the regional center will not retaliate against any complainant,
  - 4) Ensure that a process is in place to investigate and take appropriate action on complaints, including complaints of retaliation.
  - 5) Address complainant confidentiality, consistent with the State’s Whistleblower Policy, including consumer health and safety, and;
  - 6) Include a process for annually notifying employees and board members of both the regional center’s and the State’s Whistleblower policies and for posting and maintaining the regional center’s whistleblower policy prominently on its website. As part of their eligibility determination and vendorization processes, regional center shall also inform all new clients/families and new vendors of the regional center’s and the State’s Whistleblower policies.



- c. In addition, Contractor shall ensure that the regional center's and the State's Whistleblower Policies are posted on the regional center's website.
- d. Contractor shall review and provide, at minimum, annual training to all board members regarding the regional center governing board's approved Whistleblower Policy to include, but not be limited to the board's role in implementing the policy.

## **10. Transparency and Access to Public Information**

- a. Contractor shall adopt, maintain, and post on its Internet Web site a board-approved policy regarding transparency and access to public information. The transparency and public information policy shall provide for timely public access to information, including, but not limited to, information regarding requests for proposals and contract awards, service provider rates, documentation related to establishment of negotiated rates, audits, and IRS Form 990. The transparency and public information policy shall be in compliance with applicable law relating to the confidentiality of consumer service information and records, including, but not limited to, W&I Code Section 4514.
- b. To promote transparency, Contractor shall include on its Internet Web site, as expeditiously as possible, at least all of the following:
  - 1) Regional center annual independent audits.
  - 2) Biannual fiscal audits conducted by the State.
  - 3) Regional center annual reports pursuant to W&I Code Section 4639.5.
  - 4) Contract awards, including the organization or entity awarded the contract, and the amount and purpose of the award.
  - 5) POS policies and any other policies, guidelines, or regional center-developed assessment tools used to determine the transportation, personal assistant, or independent or supported living service needs of a consumer.
  - 6) The names, types of service, and contact information of all vendors, except consumers or family members of consumers.
  - 7) Board meeting agendas and approved minutes of open meetings of the board and all committees of the board.
  - 8) Bylaws of the regional center governing board.
  - 9) The annual performance contract and year-end performance contract report entered into with the State pursuant to W&I Code Division 4.5.

- 10) The biannual Home and Community-based Services (HCBS) Waiver program review conducted by the State and the Department of Health Care Services (DHCS).
- 11) The board-approved transparency and public information policy.
- 12) The board-approved conflict-of-interest policy.
- 13) A link to the page on the State's website, specified in W&I Code Section 4629.5(d).
- 14) The salaries, wages, and employee benefits for all managerial positions for which the primary purpose is the administrative management of the regional center, including, but not limited to, directors and chief executive officers.
- 15) Regional center-specific reports generated pursuant to, and for the purposes of W&I Code Section 4571(h).
- 16) The Zero Tolerance Policy pursuant to Section 17 of this Article.
- 17) Regional center data pursuant to W&I Code Section 4519.5 and Article VII, Section 6 of this contract.

## **11. Conflict of Interest**

- a. For purposes of compliance with W&I Code Section 4626, the Conflict of Interest Statements (Form DS 6016) required to be completed pursuant to California Code of Regulations, Title 17 (Cal. Code Regs., Title 17), Section 54500-54535 shall be used until such time as the State issues emergency regulations and develops and publishes a standard conflict of interest reporting statement pursuant to W&I Code Section 4626(e).
- b. Contractor shall review and provide, at minimum, annual training to all board members regarding the regional center governing board's approved Conflict of Interest Policy.
- c. Contractor shall ensure that all board members understand and carry out their obligations to implement and appropriately monitor all approved conflict resolution plans for governing board members (i.e., have received and reviewed copies of approved resolutions plans, ensure board members with conflicts do not participate in discussions and/or vote on matters for which a conflict exists).

## **12. Rights and Privileges Limitations**

No rights or privileges granted under this contract shall inure to the benefit of any person not a party to this agreement.

**13. Contract Titles Statement**

Both parties agree that contract articles and section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning or intent of the provisions herein.

**14. Restricting Use of State Funds**

During the duration of this contract, including any extensions or renewals of the contract, Contractor agrees to comply with Government Code Sections 16645 through 16649 and W&I Code Section 4638 that prohibit Contractor's use of State funds to assist, promote or deter union organizing.

**15. Payment of Accrued Benefits**

If this contract is terminated, the State shall pay, as appropriate, accrued benefits pursuant to the contract of employment of each terminated employee. Accrued benefits shall include vacation, sick leave, and any other benefits submitted to and approved, in writing, by the State in advance of or at the time of the termination of this contract.

**16. Procedures for Employee Retention**

Both parties to this contract recognize the specific requirements under law as stated in W&I Code Article 1.1, Sections 4639.80 through 4639.83, pertaining to procedures for employee retention.

## **ARTICLE II: PROGRAM PROVISIONS**

### **1. Utilization of Public and Private Resources**

Contractor shall utilize to the fullest extent reasonably feasible those public and private resources, as specified in Section 4659 of the W&I Code, which are available without additional cost to the Contractor to implement and coordinate the services identified by the Interdisciplinary Team as required to meet the goals and objectives in the Individual Program Plan for each person with a developmental disability and the outcomes on Individualized Family Service Plans (IFSPs) for children and families served through the Early Start Program.

### **2. Resource Development**

- a. Contractor may use POS funds for developing new community resources to protect the consumers' health or safety or because of other extraordinary circumstances, and the State has granted prior written authorization for the expenditure. This provision does not apply to:
  - 1) POS funds allocated as part of the State's Community Placement Plan and Community Resource Development Plan (CPP/CRDP) process.
- b. Contractor shall institute a Board approved policy effective January 1, 2011 specifying the circumstances under which the regional center will issue requests for proposals to address a service need. This policy shall also address the applicable dollar thresholds for requiring the utilization of the request for proposals process; the request for proposals notification process; and, how submitted proposals will be evaluated and the applicant selected. Within 30 days of the effective date, Contractor shall post the Board approved policy on the regional center's website.

Contractor shall specify in its Board approved policy the requirements of W&I Code Section 4648.11, and post the policy on its website.

- c. POS funds may be used to provide grants for reasonable start-up costs associated with resource development. Contractor shall develop and maintain a policy for the disbursement of start-up monies and shall keep accounting and other records to document the use of these monies. Such policy shall include provision for fair and equitable recoupment of start-up funds should the vendor and/or fund recipient cease to provide services to consumers after a specified period of time. This includes start-up funds to purchase real property. The policy must be approved by Contractor's Board of Directors and must ensure that the use of POS funds are:
  - 1) Necessary for establishing a new or additional program, project or resource for providing services and supports to consumers.

- 2) Of direct benefit to consumers.
- 3) Supported by contracts with sufficient detail and measurable performance expectations and results.
- 4) Not used for the purchase of a provider's vehicle.
- 5) Not used for the lease of a provider's vehicle unless approved in advance by the Director or designee.
- 6) Not used for routine maintenance of a provider's plant or facility unless approved in advance by the Director or designee.
- 7) Not used for construction, renovation, alteration, improvement, or repair of real property that is not of direct medical or remedial benefit to the consumer.

### **3. Contracting Policy**

Both parties to this contract recognize the specific requirements under law as stated in W&I Code Section 4625.5 and California Code of Regulations (CCR), Section 54322.

### **4. Federal Funds**

- a. Contractor shall implement mutually agreed to procedures for the administration of all programs funded by Medicaid including: Home and Community-Based Services (HCBS) Waiver, Self-Determination Program (SDP) Waiver, Targeted Case Management (TCM), Intermediate Care Facility-Developmentally Disabled State Plan Amendment (ICF-DD SPA), Nursing Home Reform (NHR), 1915(i) SPA, Early Periodic Screening Diagnosis and Treatment (EPSDT), and Behavioral Health Treatment (BHT). Any modifications to the existing procedures shall be mutually agreed to by the State and ARCA.
- a. Contractor shall ensure that costs that may be reimbursed with Federal Funds are claimed in accordance with the applicable cost principles set forth in Office of Management and Budget Circular (OMB), A-122 and requirements set forth in OMB A-110.
- b. HCBS Waiver Enrollment
  - 1) Contractor shall ensure willing and eligible consumers are enrolled on a flow basis on the HCBS Waiver through implementation of an aggressive enrollment effort that ensures enrollment at the earliest date possible in the fiscal year.
  - 2) Months of enrollment will be considered in the allocation of Contractor Operations funding.

- d. For the Title XX program, the following information applies:

CFDA Title: Social Services Block Grant (SSBG)

CFDA Number: 93.667

Federal Agency Name: United States Department of Health and Human Services

- e. Early Start Program

- 1) Contractor shall provide services for infants, until three years of age, and their families, at no cost to the family, who are eligible for regional center early intervention services in accordance with the provisions of Part C of the Individuals with Disabilities Education Act (20 USC Sec. 1471 et. seq.), its implementing regulations (34 CFR Part 303), the Education Department General Regulations (EDGAR) as specified in 34 CFR Section 303.5, and the California Government Code, Title 14, Section 95000 et. seq. and Cal. Code Regs., Title 17, Section 52000 et. seq.
- 2) The Contractor shall use federal funds provided under Part C of the Individuals with Disabilities Education Act only to supplement and increase service and operations obligations and will in no way be used to supplant state or local funds allocated for infants birth through two years of age.

## **5. Service Standards**

In carrying out its obligations under Article I, Section 12 of this contract, the Contractor shall maintain standards for the purchase of services for persons with developmental disabilities. Within one hundred-twenty (120) days, the State shall review all new or amended purchase of service standards prior to Contractor's implementation of such standards to ensure compliance with statute and regulation.

## **6. Community Placement Plan**

Contractor shall develop and implement an annual State approved CPP/CRDP in accordance with Exhibit E and State CPP/CRDP Guidelines.

Contractor utilizing CPP/CRDP funds for the purpose of acquiring housing shall do so in accordance with Contractor's approved CPP/CRDP, the State's CPP/CRDP Housing Guidelines, and all conditions expressed in the State's approval of the CPP/CRDP.

State shall make every effort to provide Contractor with State Housing Guidelines and CPP/CRDP Guidelines simultaneously. If, however, the amended State Housing Guidelines are released after the submission deadline for the

CPP/CRDP, upon release of amended State Housing Guidelines, the State agrees to allow Contractor the option to modify their CPP/CRDP to reflect any changes to the State's Housing Guidelines.

Any proposed changes to the CPP/CRDP or State Housing Guidelines will be provided to ARCA at least 30 days before they are to take effect. ARCA will have 30 days to provide comments to the State regarding the proposed changes.

State shall allow Contractor at least 60 days from issuance of CPP/CRDP Guidelines to complete and submit its CPP/CRDP for the following year.

State shall approve Contractor's CPP/CRDP and related housing projects no later than August 1.

## **7. Out-of-State Services**

Both parties to this contract recognize the specific requirements under law as stated in W&I Code Section 4519.

## **8. Mental Health Facilities**

Both parties to this contract recognize the specific requirements under law as stated in W&I Code Section 4648.

## **9. Specialized Resources**

As required by W&I Code Section 4418.25(b)(2), Contractor shall provide information on Specialized Resources developed with the use of CPP funds since fiscal year 2005-2006 and shall make these resources available to other regional centers. This information shall be provided monthly in a format agreed to by the State and regional centers.

- a. Contractor must consult with the State to determine whether a specialized resource is available in another regional center service area prior to placement in:
  - 1) The crisis program at Fairview Developmental Center (W&I Code Section 4418.7);
  - 2) A mental health facility ineligible for federal financial participation (FPP) [W&I Code Section 4648(a)(9)(B)(iii) & (C)]; or,
  - 3) Out of state (W&I Code Section 4519.)
- b. Pursuant to W&I Code Section 4418.25(f)(4), annually on February 1, Contractor shall provide to the State progress in the development of needed statewide specialty services and supports, including regional community crisis options, as provided in W&I Code Section 4418.25(b)(3).
- c. Contractor shall comply with all placement restrictions of W&I Code Section 4684.65 regarding ARFPSHNs.

## **10. Self-Determination Program**

- a. Both parties to this contract recognize the specific requirements under law as stated in W&I Code Section 4685.8.
- b. Contractor shall hold at least one Self-Determination Program orientation within 60 days of training conducted by the Department. In consultation with the local volunteer advisory committee, Contractor shall develop a plan to complete orientations for all participants. The plan must take into consideration, at minimum, the language needs of participants and scheduling orientations at times and locations designed to encourage community participation.
- c. Contractor shall report to the State by the 15<sup>th</sup> of each month, or less frequently if mutually agreed to, information on the status of individuals selected for the Self-Determination Program. Information will be reported in a mutually agreed upon format and may include individual orientation completion status, program participation status, and concerns/barriers to Self-Determination Program enrollment identified by selected participants.
- d. Contractor shall provide a general progress report to include the information identified in paragraph (c) on the status of its implementation of the Self-Determination Program to the local volunteer advisory committee.
- e. By February 1, 2019, Contractor shall identify and provide to the State, the name and contact information for an employee who will serve as the point-of-contact for matters related to the Self-Determination Program. The point-of-contact shall be a staff member with broad knowledge of Contractor's implementation of the Self-Determination Program.

## **11. Out-of-State Children**

- a. It is the intention of the parties that eligible children who reside out-of-state regardless of the placing authority or funding entity shall be provided with smooth and timely transitions back to regional center services and supports upon their return to residence in California. Absent a request to the contrary from a parent, guardian, or legal representative with legal authority, Contractor agrees to maintain a status 2 active file for those regional center-eligible children age three and older who Contractor is aware are in residence out-of-state, subject to the following conditions:
  - 1) Contractor shall conduct and develop an annual Individual Program Plan informed by assessments and information from other involved agencies, to determine current status, service and support needs, and potential alternative services and supports that would be required to support the child in California.



- 2) Contractor shall work with all involved agencies to identify needed services, prospectively determine funding arrangements consistent with W&I Code Section 4684, and if necessary, develop and/or adapt appropriate services to meet the child's needs in California.
  - 3) Contractor shall provide semi-annual face-to-face monitoring and may utilize video conferencing for this purpose.
  - 4) All written progress reports provided by the parent, guardian, or legal representative for each eligible child residing out of state shall be reviewed by Contractor and maintained in its files.
  - 5) If applicable, in accordance with, but not limited to, local AB 2083 Memorandums of Understanding, Contractor shall actively work with all involved agencies to identify and develop resources to support transitioning the child back to California as soon as appropriate.
  - 6) At the earliest possible opportunity, Contractor shall seek approval for start-up funding from the State for the development of appropriate resources to meet the child's needs when no resource is currently available.
- b. Contractor shall notify the State, and the appropriate cross-system partner(s), of any instance in which a parent, guardian, or legal representative with legal authority requests the regional center close or inactivate a child's case as referenced in paragraph (a).

## **12. Service Provider Termination of Vendorization**

Contractor shall notify the State within three (3) business days of Contractor taking action to terminate the vendorization of a service provider, including the reason for termination, in accordance with the provisions of Cal. Code Regs., Title 17, Section 54370(b) or (c).

## **13. Communication Assessments**

- a. Contractor shall offer an initial communication assessment for all individuals served under the Lanterman Act who are identified as deaf, based on Client Development Evaluation Report coding of 2, 3 or 9 for question 60, and 2, 3, 8 or 9 for question 61. The results of the assessment will be used in the development of the Individual Program Plan within 12 months of its completion. This requirement applies to all current individuals served and individuals who become eligible and meet the above criteria. This requirement is contingent upon both of the following:
  - 1) The State developing a communication assessment tool(s).

- 2) The State's Communication Assessment Contractor training or making training available to potential assessors who meet the Communication Contractor's specified qualifications.
- b. Once subparagraphs (1) and (2) of paragraph (a) of this section have been met, Contractor and the State shall mutually agree upon a timeframe for Contractor to arrange and authorize assessments for those accepting the offered communication assessment. Contractor shall report quarterly to the State on:
  - 1) The name and UCI of individuals meeting the requirements for a communication assessment.
  - 2) The name and UCI of individuals who received a communication assessment in the prior quarter, and the date of each assessment.
  - 3) The date the communication assessment results were used to develop each individual's Individual Program Plan.
  - 4) The number of communication assessments initiated but not completed.
  - 5) The number of individuals who meet the criteria in paragraph (a) who have not received a communication assessment.
- c. If Contractor does not conform to the requirements set forth under this section, the State may require Contractor to provide a written corrective action plan outlining the steps Contractor shall take to ensure compliance under this section moving forward.
- d. Contractor shall provide the State with the name of and contact information for its Deaf Specialist(s) by September 30, 2024. Any change in staff or contact information for this position shall be provided to the State within 10 business days.

## **ARTICLE III: FISCAL PROVISIONS**

### **1. Budget Development Process**

The State and Contractor agree to work together to build Contractor's budget using the best quality data and information available, including information on projected assessments, resource development and placements for the CPP/CRDP. To that end, the State and ARCA agree to implement a process that will provide this data for building the Governor's January Budget and the May Revise. The process will include ARCA proposing policy changes for the State to consider as well as caseload, Medicaid Waivers and other federal funding initiatives, and expenditure trend data.

### **2. Allocation of Funding to Contractor**

- a. By July 1 of each fiscal year, the State and ARCA shall review the existing allocation methodology and make any recommended changes for the Director's approval. The State agrees to provide the regional centers with a report after each allocation issued to Contractor that shows the estimated amount available for Operations, POS, and CPP/CRDP, and the amount allocated to regional centers.
- b. The State shall, by September 1, of each fiscal year, or not later than fifteen (15) days following the enactment of the annual Budget Act, whichever is later, allocate to all regional centers Operations and POS funds consistent with the approved allocation methodology. On or before February 1 of each fiscal year, the State shall allocate to all regional centers the remaining funds unless specified in the approved allocation methodology or agreed to by ARCA. If ARCA and the State do not reach mutual agreement on an approved allocation process, or if the Director does not approve same, no less than one hundred percent (100%) of the Enacted Budget for Operations and ninety-nine percent (99%) of the Enacted Budget for POS, except for any funds appropriated by the Legislature for a specific purpose which has yet to occur, shall be allocated by February 1. The parties agree that it may be necessary to amend this contract in order to allocate funds made available from budget augmentations, if any, and to move funds among regional centers.
- c. By October 1 of each fiscal year, or not later than fifteen (15) days following the enactment of the annual Budget Act, whichever is later, the State shall allocate to the regional centers CPP/CRDP funds in accordance with the CPP allocation methodology agreed to between ARCA and the Department. If ARCA and the State do not reach mutual agreement on an approved allocation process, or if the Director does not approve same, the State shall allocate by October 15 to the regional centers no less than the sum of:
  - (1) 100% of the Start-Up funds per each regional center's approved CPP/CRDP.

- (2) 75% of the Assessment funds per each regional center's approved CPP/CRDP.
  - (3) 25% of the Deflection funds per each regional center's approved CPP/CRDP.
  - (4) 25% of the Placement funds per each regional center's approved CPP/CRDP.
  - (5) 75% of the Operations funds per each regional center's approved CPP/CRDP.
- d. Notwithstanding paragraphs a., b., and c. of this section, the final decision regarding the methodology used to determine the amount of allocations shall rest with the Director.
- e. The Contractor shall submit a monthly POS Expenditure Projection (PEP) report to the State which identifies Contractor's actual and projected expenditures as of the date of this report. By the 10th of each month beginning December 10, which would reflect expenditures through October, the Contractor shall submit the monthly PEP in a format mutually agreed to between ARCA and the State. In the event an agreement cannot be reached, DDS will specify the format to be used with input from ARCA. The final PEP for the year shall be submitted by September 10 of the following fiscal year. This PEP shall reflect expenditures through the first supplemental claim.
- f. As part of the monthly expenditure projection analysis, the State may request, and the Contractor shall provide additional information to explain the expenditure projection.
- g. Contractor shall assure that services to eligible persons with developmental disabilities are provided within the funds identified in Exhibit A of this contract.
- h. In the event the State determines that Contractor has insufficient funds to meet its contractual obligations, the State shall make best efforts to secure additional funds and/or provide Contractor with regulatory and statutory relief.
- i. After notice to the Contractor the State may disencumber any or all funds unexpended and uncommitted by the Contractor out of the amount available under this contract. For the purposes of this Section, such total amount available shall be defined as the amount originally specified in Article I, Section 8, modified by any changes made pursuant to Article III, Section 2, and/or as modified by any executed contract amendment.

- j. Not more than 15 percent of all funds appropriated through Contractor's operations budget shall be spent on administrative costs. For purposes of this section, "direct services" includes, but is not limited to, service coordination, assessment and diagnosis, monitoring of consumer services, quality assurance, and clinical services. Funds spent on direct services shall not include any administrative costs. For purposes of this section, administrative costs include, but are not limited to, any of the following:
- 1) Salaries, wages, and employee benefits for managerial personnel whose primary purpose is the administrative management of the regional center, including, but not limited to, directors and chief executive officers.
  - 2) Salaries, wages, and benefits of employees who perform administrative functions, including, but not limited to, payroll management, personnel functions, accounting, budgeting, auditing, and facility management.
  - 3) Facility and occupancy costs, directly associated with administrative functions.
  - 4) Maintenance and repair.
  - 5) Data processing and computer support services.
  - 6) Contract and procurement activities, except those performed by direct service employees.
  - 7) Training directly associated with administrative functions.
  - 8) Travel directly associated with administrative functions.
  - 9) Licenses directly associated with administrative functions.
  - 10) Taxes.
  - 11) Interest.
  - 12) Property insurance.
  - 13) Personal liability insurance directly associated with administrative functions.
  - 14) Depreciation.
  - 15) General expenses, including, but not limited to, communication costs and supplies directly associated with administrative functions.

### **3. Advance Payment Provisions**

The State shall make available to the Contractor funds for the provision of services under this contract in advance of the Contractor's actual performance therefore, as authorized by W&I Code Section 4621, subject to the following conditions:

- a. Requests for advance payment shall be in accordance with format and procedures requested by the State. The amount to be advanced shall be twenty-five (25) percent of the total contract amount as set forth in the preliminary allocation and in any subsequent contract amendment. The State shall advance funds as soon as reasonably possible following the enactment of the annual Budget Act.
- b. All amounts advanced under this provision shall be deposited by the Contractor in an interest-bearing bank account(s), in a bank legally authorized to engage in the banking business in California and which account(s) is established solely for operation of the regional center. The account(s) shall be in the name of both the State and the Contractor for the purpose of clarifying the State's rights, title and interest to the State funds in said account(s) as stated in "c" of this Section, in the event that a judgment creditor of the Contractor seeks to levy against the funds by means of attachment or execution.

Each withdrawal from said bank account(s) shall be made only by written instrument or electronic transfer of funds performed by the bank as part of an available service. Upon request of the State in writing, the Contractor shall repay to the State such parts of the unliquidated balance of advance payment as shall be in excess of the current requirements. No part of the funds in said bank account(s) shall be commingled with other funds of the Contractor.

- c. Amounts advanced in accordance with this provision when withdrawn from said bank account(s) shall be used only for pending expenditures in accordance with the attached Exhibit A. Except as provided in "b" of this Section, the Contractor has access to the funds placed in said bank account(s) for administrative convenience only, and hereby agrees that it has no right, title or interest therein, and shall make no withdrawals except for those made solely for the purpose of satisfying claims against or expenses of the Contractor incurred pursuant to and in the performance of this agreement.
- d. All interest earned on these funds shall be reported on the next monthly reimbursement claim to the State.
- e. The State shall have a lien upon any balance in said bank account(s) paramount to all other liens, which lien shall secure the repayment of any advance payments made hereunder.

- f. All bank accounts and any investment vehicles containing funds from this contract and used for regional center operations, employee salaries and benefits or for consumers' services and supports, shall be in the name of the State and Contractor. Properly established trust accounts that are approved by the Regional Center Board of Directors for the purpose of administering standard employee benefits do not have to be in the name of the State provided the State has the authority to review the financial transactions of the trust or financial reports prepared by independent auditors. "Standard employee benefits" are those commonly provided to employees in the course of business in private companies.
- g. For the bank account(s) above referenced, there shall be prepared three (3) alternative signature cards with riders attached to each indicating their use. In addition to the preparation of signature cards and riders, Contractor and the bank(s) shall enter into a written agreement specifying the bank(s)' responsibilities relative to said bank account(s). The signature cards, riders and agreement specified herein shall be prepared and administered in accordance with the format and procedures specified by the State.
- h. If Contractor cannot comply with "f" of this Section, alternative arrangements mutually agreeable to the parties shall be utilized.

#### **4. Payment Provisions**

In consideration of the services rendered by the Contractor pursuant to this contract, the State shall reimburse the Contractor, for cash expenditures, monthly in arrears. Reimbursement claims shall be submitted in accordance with the claiming procedures requested by the State.

All funds received pursuant to this contract shall be deposited and retained in a bank account(s) set forth in Article III, Section 3.

All funds expended by the Contractor and reimbursed by the State during the term of this contract shall be for the purposes specified and in conformity with Exhibit A.

Any funds which have not been encumbered for services provided or purchased during the term of the contract, shall revert to the State.

#### **5. Budget Category Transfers**

In accordance with the annual Budget Act, a contract amendment shall be required if funds are to be transferred from one budget category to another. This provision shall apply to those budget categories that are listed in Exhibit A.

## **6. Contract Funding Stipulations**

- a. This agreement is subject to the appropriation of funds by the Legislature for the purpose of this contract. If funds are not appropriated in any fiscal year into which this agreement extends, it is mutually agreed that this agreement shall be of no further force and effect. In this event, except as provided in Article I, Section 25, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this agreement, and Contractor shall not be obligated to perform any provisions of this Agreement. Contractor shall ensure that all POS contracts initiated by Contractor include notification of this condition.
- b. Except as provided in W&I Code Section 4635, if funding for any fiscal year for this program is reduced or deleted by the Budget Act, except as provided in Article 1, Section 25, the State or Contractor shall have the option to either cancel this agreement without liability or agree to an amendment to reflect the reduced amount.

## **7. Travel and Per Diem**

The Contractor shall establish and maintain procedures that assure the State that reimbursements to regional center employees and board members for necessary travel and per diem are equitable, reasonable, and properly documented.

## **8. Independent Financial Audit**

Both parties to this contract recognize the specific requirements under law as stated in W&I Code Section 4639 and the Single Audit Act of 1984, 31 U.S.C. 7501, et seq., and applicable Office of Management and Budget Circulars (A-122 and A-133 or as revised).

## **9. Vendor Fiscal Monitoring**

- a. Contractor shall monitor the expenditure of public funds by monitoring vendor fiscal claims.
- b. The Contractor shall be responsible for auditing: 1) vendors with prior year annual payments made by the contractor to a vendor of less than \$100,000, 2) consumer's personal and incidental funds, and 3) residential facilities with licensed capacity of six or fewer beds regardless of the payment amount. The DDS shall be responsible for auditing vendors with prior year annual payments from regional centers of \$100,000 or more. The contractor may audit other vendors if prior approval is received from the State. The vendor audits shall be conducted in accordance with the provisions of Cal. Code Regs., Title 17, Section 50606, Regional Center Auditing Requirements and in compliance with audit protocols mutually agreed to by the State and Association of Regional Center Agencies.



- c. The Contractor shall meet or exceed the following minimum requirements and will be evaluated based on the results achieved. In evaluating the results of the contractor's efforts, consideration will be given to the fact that funding for fiscal monitors was reduced in FY 2004-05.

The minimum number of audits conducted by Contractor shall be 4% of the total number of separately vendored services for the following service categories: community care facilities with licensed capacity of six or fewer beds, transportation, day programs, in-home respite agencies and respite facilities. The vendors included in the base for establishing the minimum number of audits, shall be those vendors that receive total prior year POS payments from the contractor of \$100,000 or less and those residential facilities with licensed capacity for six or fewer consumers. Prior to June 1 of each year the State will provide the Contractor with the total number of vendors that will be used to calculate the minimum number of audits to be conducted. Contractor shall ensure that the minimum number of audits conducted includes at least 35% billing audits and 20% cost verification and staffing audits. Cost verification audits are audits of cost statements, State authorized rate increases, or verification of costs used by regional centers to set rates as provided for in Cal. Code Regs., Title 17, Staffing audits are audits conducted to verify compliance with staffing levels as specified in Cal. Code Regs., Title 17, or by contract with a service provider as allowed by Cal. Code Regs., Title 17. Procedures for staffing audits may also include verification that staffing levels are appropriate for the consumer's assessed level of care and are in compliance with the vendor's program design narrative. The billing audits conducted shall include vendors serving consumers eligible for the HCBS Waiver. At least one of the vendors audited must be a program that serves children under the age of three. The Contractor shall make a good faith effort and exhaust all reasonable methods of collection to recover all fiscal adjustments identified as a result of the Contractor's vendor audits. Documentation of collection efforts shall be maintained by the Contractor for future review.

By October 1 of each year, Contractor shall submit to the State a listing of all vendor audits conducted during the prior fiscal year and a list of recoveries. The list of recoveries shall identify the vendor, the date of the audit report, the amount recovered during the prior fiscal year and the method of recovery which may be either collection of cash or off-set of vendor billings.

- d. This provision does not negate the requirement that regional centers submit vendor audit reports to the State pursuant to Cal. Code Regs., Title 17, Section 50606(g)(1)(F). Completed reports are to be submitted at least quarterly.

## **10. Consumer Trust Accounts**

Contractor shall ensure that the consumer benefits directly from all interest earned on trust accounts. Guided by prudent business practices, all trust funds must be placed in a separate bank account that earns at least the prevailing rate of monetary interest for a "Business Savings" account, or equivalent account. This account shall be in the name of both the State and Contractor in accordance with the provisions of Article III, Section 3. All interest must be allocated to the individual consumer accounts. Bank charges (net after applying bank credits, if any), that are specifically identifiable to the trust account may be offset against the consumers' interest. In no case shall the amount of bank charges allocated to the individual consumer accounts exceed the amount of interest earned.

## **11. Foundation Support**

- a. Contractor may provide funds to a foundation or similar entity where the purpose of the funds is to provide direct benefits to regional center consumers subject to prior review and written approval by the State in consultation with Contractor.

Contractor may not provide funds or personnel to a foundation or similar entity for fundraising purposes.

- b. Through a written agreement between the Contractor and a foundation, or similar entity, Contractor may provide in-kind administrative services to a foundation, or similar entity, provided such agreement requires reimbursement from the foundation to the Contractor for any services performed by the Contractor or its employees on behalf of the foundation or similar entity. In-kind reimbursement shall be in the form of specifically identifiable, non-monetary benefits for persons with developmental disabilities.
- c. Nothing shall preclude a foundation, or similar entity, from competing for funding from the Contractor or another regional center on the same basis as any member of the general public. Contractor shall, however, comply with sections 54520 and 54521 of Cal. Code Regs., Title 17, with respect to any conflict of interest issues arising between the Contractor and a foundation, or similar entity.

Contractor must request and receive approval from the State prior to entering into a lease agreement in which bond financing will be utilized to fund the loan.

## **ARTICLE IV: CONTRACTOR OPERATIONS**

### **1. Electronic Data Processing and Data Integrity**

- a. The State and Contractor agree to ensure the integrity and confidentiality of the State's databases that reside on the System i and California Department of Technology (CDT). Accordingly, Contractor shall not engage in any activity that threatens their integrity and shall develop and implement an operational recovery plan consistent with the requirements of this section. Contractor agrees to adhere to the most current version of the State's 'Security Policy for Regional Centers' as developed by the State and ARCA.
- b. Contractor, using the electronic billing and payment software provided by the State, agrees to comply with the most current version of the State's 'Security Policy for Electronic Billing' as developed by the State and ARCA.
- c. Contractor shall make available accurate and complete case management and financial data related to consumer and vendor services, including but not limited to UFS, eBilling and SANDIS information to the State. Accordingly, Contractor shall:
  - 1) Update changes to all mandatory items of the Client Master File at least annually except for the following elements, which must be updated within thirty (30) days of Contractor being aware of any of the following events:
    - a) The death of a consumer.
    - b) The change of address of a consumer; or
    - c) The change of residence type of a consumer.
  - 2) Review the information required in the Client Development Evaluation Report (CDER) whenever an IPP is completed, and update if there is a change.
  - 3) Upon notification by the State of errors in the State's databases that reside on the System i and CDT, Contractor shall rectify those errors within thirty (30) days.

- 4) Contractor agrees to allow the State to access and use any stored consumer and vendor services data pursuant to W&I Code Section 4407. As part of the Consumer Electronic Records Management System (CERMS)/Uniform Fiscal Systems Modernization (UFSM) projects, the project teams will need to access data that is not typically provided to the State. For the purpose of working through the transition, Contractor shall give the project teams access to all data that are in scope of these projects.
- 5) Contractor shall notify the State of any plans to access data stored within SANDIS, UFS, and the eBilling systems databases, by any third-party applications used by the Contractor.
- 6) Contractor shall notify the State of any plans to use any non-State and third-party tools and applications that either provide or consume data stored within SANDIS, UFS, and the eBilling systems databases.
- 7) The State is actively pursuing the modernization of the State's financial, UFSM, and case management, CERMS, systems for use by Contractors. Contractor shall support the transition to these systems as their system of record, as follows:
  - a) Contractor user acceptance testing (UAT) is performed based on a clearly defined and mutually agreeable UAT test developed by the ARCA Information Systems (AIS) Committee and the State. The test plan shall be developed by both the State and AIS to address the identified needs of the regional centers, the State, service providers, and consumers. The test plan shall include clear, measurable, and realistic metrics with established targets that must be met to ensure readiness for implementation.
  - b) The new solutions are shown to align with the State of California's CalSecure initiative enabling a modern secure platform which protects the privacy of client PHI and PII.
- 8) Without prior approval of the State, Contractor shall not initiate efforts to move off their current case management system to alternative solutions, and should only be considered if it is necessary to protect the security and efficiency of its system pending the finalization and proven effectiveness of CERMS as recognized by the State and Contractor.

If other new functionality is required, Contractor must notify the State and receive the State's approval prior to planning and design. Contractor shall, to the extent possible consistent with maintaining an effective system, focus efforts on data clean-up and transitional efforts to prepare for future solutions.

- 9) Contractor shall work with the State to harden their system environment in alignment with requirements the State must follow. This includes completing and sharing:

- a) A biennial security assessment from an independent third-party;
- b) Establishing a Plan of Action Milestones (POAM); and
- c) Establishing priorities in partnership with the State and working with a contractor to address the critical and high priority items.

The State will look to provide financial assistance for remediation efforts from findings identified in the security assessment and mutually prioritized by the State and Contractor based on shared security interests.

- d. To improve the accuracy of information reported to the State, as well as to reduce the need for surveys of the regional centers to obtain needed information, all regional centers shall use the SANDIS Consumer Information and Resource Information Modules.
- e. As required by the State Administrative Manual Management Memo 01-10 issued June 4, 2001, Contractor certifies that appropriate systems and controls are in place to ensure that State funds are not used to acquire, operate, or maintain computer software in a manner that does not comply with applicable copyrights.
- f. During the term of the contract, Contractor must notify the State in writing if their services or any work under this contract includes, or makes available, any previously unreported GenAI technology, including GenAI from third parties or subcontractors.

At the direction of the State, Contractor shall discontinue the use of any new or previously undisclosed GenAI technology that materially impacts functionality, risk or contract performance, until use of such GenAI technology has been approved by the State.

Failure to disclose GenAI use to the State may be considered a breach of the contract by the State at its sole discretion and the State may consider such failure to disclose GenAI as grounds for termination of the contract for cause in compliance with procedures set forth in the Lanterman Developmental Disabilities Services Act.

The State is entitled to seek any and all relief to which it may be entitled to as a result of such nondisclosure. The State reserves the right to amend the contract, without additional cost, to incorporate GenAI Special Provisions into the contract at its sole discretion and/or terminate any contract that presents an unacceptable level of risk to the State.

## **2. Personnel**

- a. Contractor agrees to hold the State 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 contract and State of California or federal laws or regulations.
- b. Contractor shall comply with the provisions of Public Contract Code, Section 10353 as required.
- c. Contractor acknowledges the policy in Public Contract Code, Section 7110 (a) and (b) and shall comply with all applicable State of California and federal laws relating to child and family support enforcement.

## **3. Records Maintenance**

In accordance with W&I Code Section 4631(b), Contractor shall be held strictly accountable for reporting all revenues and expenditures, and the effectiveness of the Contractor in carrying out of its programs and fiscal responsibilities. Contractor shall keep records, as follows:

- a. The Contractor shall maintain books, records, documents, case files, and other evidence pertaining to the budget, revenues, expenditures, and consumers served under this contract (hereinafter collectively called the "records") to the extent and in such detail as will properly reflect net costs (direct and indirect) of labor, materials, equipment, supplies and services, overhead and other costs and expenses of whatever nature for which reimbursement is claimed under the provisions of this contract in accordance with mutually agreed to procedures and generally accepted accounting principles.
- b. Contractor shall retain records which pertain to consumer eligibility determinations and redeterminations for the Medicaid Waiver Program for a minimum of five years from the date of an eligibility determination or redetermination.
- c. Contractor may, in fulfillment of its obligation to retain the records as required by this Section, utilize a scanned, digitalized, or other electronic true representation of the original record consistent with Title 17, Section 50602(h) and (i); Title 17, Section 50604 (d); Title 17 Section 50605(a) and (c); Title 17, Section 50612(a) and (f).
- d. Contractor shall comply with the most current version of the State's 'Requirements for Electronic Storage of Records', as developed by the State and ARCA.

## **4. State Property**

- a. All equipment, material, supplies, or property of any kind furnished by the State, or purchased from funds received under the terms of this contract,

shall be the property of the State of California and used for the performance of this contract, unless specifically exempted in the State's Equipment Management System Guidelines.

Contractor shall maintain and administer, in accordance with sound business practice, a program for the utilization, care, maintenance, protection and preservation of State of California property so as to assure its full availability and usefulness for the performance of this contract. Contractor shall comply with the State's Equipment Management System Guidelines for regional center equipment and appropriate directions and instructions which the State may prescribe as reasonably necessary for the protection of State of California property.

- b. Except as authorized in W&I Code section 4669.2, subdivision (a)(8), Contractor is prohibited from expending any state funds that result in the State of California owning, or incurring a liability for, real property.

## **5. Public Disclosure of Contracts**

In accordance with W&I Code Section 4640.6(k), Contractor shall make available to the public for review, all employment contracts with regional center staff or contractors (entered into on or after January 1, 2003) upon request. No employment contract, or portion thereof, may be deemed confidential or unavailable for public review except the social security number of the contracting party.

- a. The term of an employment contract between Contractor and an employee or contractor shall not exceed five years or the term of the State's contract with the regional center.
- b. When reporting the information to the State, as required by W&I Code Sections 4639.5 and 4640.6(k). Contractor shall include any information regarding Executive Director current annual compensation as defined by IRS Code for completion of the IRS Form 990, and associated detail. This information shall be provided in a format with instructions agreed to by the State and regional centers.

## **6. Consumer Information Security**

- a. The Contractor agrees to adhere to the most current version of the State's 'Statement of Assurances for Protection of Protected Health Information' (Exhibit F) which sets forth the security and notification requirements and best practices for, but not limited to, the protection of all confidential, sensitive, and/or personal information collected and stored on behalf of the State regardless of format or media type.
- b. Contractor, agrees to adhere to State policy regarding incident reporting, requiring privacy breaches and/or security incidents involving paper and other formats to immediately notify the Department's Information Security Officer, via email at [iso@dds.ca.gov](mailto:iso@dds.ca.gov) in the event of any loss or theft of

personal, sensitive, or confidential information in any format, including but not limited to flash drives, cell phones, personal digital assistants (i.e. blackberry), tablets, computers, and laptops within 72 hours.

The notification to the Department must be reported on form DS 5340B or other online submission form as directed by the Department. DDS is mandated by law to notify other entities of disclosure of information; the timelines are extremely short for many of these reports; therefore, it is essential that DDS is notified immediately, within 72 hours, when a suspected privacy breach or security incident is discovered by the Contractor.



## **ARTICLE V: EVALUATION**

### **1. Contractor Evaluation**

- a. The Contractor's performance under this contract will be evaluated. Accordingly, the State, through its authorized representatives, reserves the right to use evaluation methods, including observations, inspections, interviews and other assessment techniques selected by the State.
- b. The State shall notify the Contractor, at least thirty (30) days in advance unless mutually agreed upon otherwise, that an evaluation will take place. It is the State's intent that the on-site portion of any evaluation shall occur during Contractor's normal working hours, unless mutually agreed otherwise, and with the least amount of disruption of day-to-day services, and should last no longer than three (3) weeks.
- c. The State shall prepare a written report specifying the findings of any evaluation performed by the State under this Section. Said report shall not be limited to a description of the areas of Contractor's deficiencies but shall include a description of Contractor's strengths and outstanding achievements, if any. Except as required by law, public release of the State's final evaluation report shall not be made until the report has been reviewed by the Contractor and the Contractor has had thirty (30) days to respond. Contractor's responses will be included within the final report to be published within thirty (30) days from the receipt of said responses.

### **2. Information Requests**

During the term of this contract, the State may require Contractor to furnish program and fiscal information, as the State deems necessary to assess Contractor's status or performance relative to Contractor's fiscal and/or program operations. Prior to requesting such information, the State shall confer with ARCA as to the most efficient and effective means for collecting the information.

### **3. State Audits of Contractor**

- a. The State shall audit records of Contractor to verify Contractor's compliance with this contract. Such audits shall commence within three years following the last date of the prior audit period.
- b. The State shall not commence its routine biennial audit of Contractor prior to 30 days after the State has issued and Contractor has received the final audit report for the prior audit period.
- c. Contractor records pertaining to the provision of services under this contract shall be open for audit by the State for a minimum period of three years following the last date of the prior audit period.
- d. The final audit report shall be issued by the State to the regional center within ninety (90) days of Contractor's written response to the draft audit report

when Contractor's written response to the draft audit report is in agreement with all audit findings and/or recommendations disclosed.

## **ARTICLE VI: CONTRACT AMENDMENT/CANCELLATION/REOPENING**

### **1. Contract Amendments**

- a. Either party may reopen and enter into negotiations on any provision(s) of this contract as deemed necessary to contract or respond to 1) any legislative and/or budgeting actions taken by the Legislature; 2) executive order of the Governor; 3) declared state of emergency; 4) action taken by a court of law; or 5) the need for special language.

Contractor shall immediately notify the State in writing if, as a result of the above, it is unable to comply with any provision of this contract.

- b. Pursuant to Article III, Section 2 hereof, this agreement shall be amended on or before September 1 of each year and may be amended additional times as needed in order to allocate funds made available and to move funds among regional centers as early as possible to the Contractor and the other regional centers.
- c. Should any change in the regulations promulgated by the State, State policies, or provisions of this contract result in increased costs to the Contractor, the State in consultation with the Contractor shall determine the amount of this cost and shall, consistent with state law and subject to the availability of funds appropriated to the State for developmental services, augment Contractor's budget by this amount.

### **2. Severability Clause**

Subject to review and approval of the Department of General Services, in the event this contract is terminated or not renewed pursuant to Article I, Section 3 or Article VIII, Section 4, the State shall negotiate reasonable closing costs with the Contractor.

### **3. Entire Agreement**

This writing, including its attachments and references, is intended both as final expression of the agreement between the parties and as a complete exclusive statement of the agreement.

## **ARTICLE VII: MISCELLANEOUS**

### **1. Lease/Rental Agreements**

The contractor shall include in all new leases or rental agreements for real property a clause that holds the State harmless for such leases.

### **2. Emergency Response System**

Contractor shall implement an emergency response system that ensures that a regional center staff person will respond to a consumer, or individual acting on behalf of a consumer, within two hours of the time an emergency call is placed. This emergency response system shall be operational 24 hours per day, 365 days per year.

### **3. Emergency Planning, Preparedness, Response and Recovery**

a. Definitions for terms, as used in this section:

- 1) “Emergency” means any situation that requires immediate action in which the life or safety of consumers are threatened by events including but not limited to: floods, fires, earthquakes, power outages, chemical spills, or events for which a disaster has been declared by a unit of local, state, federal, or tribal government.
- 2) “Community” means regional center consumers, their families and caregivers, service providers, regional center staff and other relevant local partners.

b. Contractor shall develop, and annually thereafter review and update, as necessary, its emergency plan to encompass planning, preparedness, response and recovery. The plan shall, at minimum, include a description of Contractor’s ongoing efforts to develop and maintain relationships, educate, prepare and plan, and collaborate with County Emergency Management Offices tribal entities, neighboring regional centers, and the community.

c. Contractor shall maintain a current list of key regional center personnel involved in emergency activities, from planning, preparedness, response, recovery, and reporting, and their contact information, and share it with the State’s Emergency Preparedness and Response Office.

d. Contractor shall hire, maintain and designate one full-time Emergency Coordinator position. The Emergency Coordinator shall participate in-person or remotely in state-funded training opportunities and exercises, and quarterly statewide meetings. If every effort has been made for Emergency Coordinator to participate, but is unable, a designee shall participate.

e. Contractor shall work with the State to utilize resources allocated for:

- 1) Training and community engagement, and
  - 2) Generators, batteries, go-bags/emergency kits for consumers living in high-risk areas defined by CalFire and the California Public Utilities Commission, to the extent applicable to the Contractor's catchment area.
- f. During a declared emergency, Contractor shall:
- 1) Provide timely notifications and updates to impacted consumers;
  - 2) Identify facility and program closures that result in consumer displacement and/or loss of services;
  - 3) Coordinate with local, state, federal and tribal entities, the community, and other regional centers, as needed to maintain consumer safety and supports;
  - 4) Provide daily, or at a frequency requested by Contractor and approved by the State, updates to the State regarding the safety, well-being, and unmet needs of consumers, to the extent known to Contractor, in a format mutually agreed upon.
- g. Contractor shall assist consumers after emergency events, and may utilize the service providers for assistance, which may include, but not be limited to, the following:
- 1) Returning home.
  - 2) Identifying alternative sources of services, if needed.
  - 3) Connecting to state and federal assistance programs, which may include, but not be limited to food, income supports, childcare, interpretation, and health care.

#### **4. Collection of Parental Information**

In accordance with W&I Code Section 4657, Contractor shall collect the following for each new case and each review of all clients in out-of-home placement:

- a. The social security number of the parents of the client;
- b. The birthday of the parents of the client;
- c. The disability status of the parents of the client; and,
- d. Whether the parents of the client are deceased or not.

## **5. Registered Sex Offenders**

Effective April 1, 2005, Contractor shall, for every newly eligible consumer over 16 years of age, review Megan's Law website ([www.meganslaw.ca.gov](http://www.meganslaw.ca.gov)) to determine if the consumer is required to register as a sex offender pursuant to Penal Code 290. If the consumer is required to register as a sex offender, the Contractor shall appropriately note this information in the consumer's electronic record and case file.

## **6. Data Compilation**

Both parties to this contract recognize the specific requirements under law as stated in W&I Code Section 4519.5 and 4519.6. Contractor shall provide the report specified in W&I Code Section 4519.5(f) to the State annually by May 31.

## **7. Shared Vendors and Case Management Responsibility**

- a. For the purposes of this section, "community living vendor" includes community care facilities, supported living services, independent living services, Family Home Agency and Foster Family Agency.
- b. When Contractor is not the vendoring regional center but is the regional center with case management responsibility and chooses to place a consumer with another regional center's community living vendor or long-term health care facility, Contractor shall:
  - 1) Prior to the provision of services, notify the vendoring regional center of services to be provided to Contractor's consumer by the vendor or long-term health care facility.
  - 2) When a special incident occurs, ensure the vendor or long-term health care facility submits a special incident report to both Contractor and the vendoring regional center. [Cal. Code Regs, Title 17, Section 54327(d)]
  - 3) Upon becoming aware of a special incident, notify the vendoring regional center.
  - 4) Work collaboratively with the vendoring regional center to follow up and investigate special incidents, as needed.
  - 5) Work collaboratively with the vendoring regional center to enforce a Zero Tolerance Policy regarding abuse or neglect of consumers.
- c. When Contractor is the vendoring regional center but is not the regional center with case management responsibility, Contractor shall notify the regional center utilizing Contractor's community living vendor or long-term health care facility upon becoming aware of the following:

- 1) Unusual type or frequency of special incidents that would impact the health and safety of consumers while receiving services from Contractor's community living vendor or long-term health care facility.
  - 2) Issues that may affect the ability of Contractor's community living vendor or long-term health care facility to provide services, or to provide services in an environment that ensures the health and safety of consumers during the provision of services.
  - 3) If a situation specified in subparagraphs (1) or (2) of this paragraph places a consumer(s) in immediate risk or danger, Contractor shall notify the regional center(s) immediately, and not later than 24 hours.
- d. For all vendor types other than community living vendors and long-term health care facilities, upon becoming aware of a situation specified in subparagraphs (1) or (2) of paragraph (c) of this section, Contractor shall notify all regional centers of the following:
- 1) Vendor name and number(s).
  - 2) Request to contact Contractor if a regional center is currently utilizing the vendor in question.
  - 3) The name(s) and telephone number(s) of the individual(s) to contact for relevant information.
- e. For the purposes of paragraph (d) of this section, Contractor shall notify the regional center(s) as soon as possible, but not later than two working days. If the situation places a consumer(s) in immediate risk or danger, Contractor shall notify the regional center(s) immediately, and not later than 24 hours.
- f. By December 15, 2013, and ongoing as warranted by personnel changes, Contractor shall maintain and provide to the other regional centers, a primary contact person and a backup contact person and their contact information for purposes of making and receiving the notifications specified in paragraph (d) of this section.

## **8. Program Development Funds – Parental Fee Program**

Both Parties to this contract recognize the specific requirements under law as stated in W&I Code Section 4784 and California Code of Regulations 50225.

## **9. Executive Director Recruitment Policy**

Contractor shall notify the State within one business day of an unanticipated executive director vacancy or within one week of learning of an executive director

resignation or retirement. Contractor shall provide the State with its plan for executive director recruitment within one month of the above notification.

## **10. Reporting on Specified Consumers**

- a. Contractor shall report to the State on an ongoing basis and at least monthly, information on:
  - 1) If known, any minor or non-minor dependent who remains a resident of California and is residing out-of-state, whose services are not funded by the regional center.
  - 2) If known, any minor at risk of out-of-state placement, whether the placement would be funded by the regional center or another agency.
- b. Contractor shall report to the State within three business days of any known occurrence, information on any minor or adult residing for five days or more in an emergency room or psychiatric facility, or any minor not accompanied by their parent or legal guardian residing in a shelter.
- c. Information will be reported to a specified State contact in a mutually agreed upon format, to include consumer name, UCI, age, legal status, and a summary of the current circumstances and resources that have been explored.
- d. By August 31, 2020, Contractor shall identify and provide to the State, the name and contact information for any employee who will serve as a point-of-contact for this information.
- e. Nothing in this section shall affect Contractor's compliance with W&I Code Section 4519.

## **11. Board of Directors Training Plan**

- a. Pursuant to W&I Code Section 4622(g), "the regional center shall provide necessary training and support to these board members to facilitate their understanding and participation, including issues related to linguistic and cultural competency. As part of its monitoring responsibility, the department shall review and approve the method by which training, and support are provided to board members to ensure maximum understanding and participation by board members. Each regional center shall post on its internet website information regarding the training and support provided to board members."
- b. Contractor shall submit to the State by December 15 of each year, a proposed comprehensive board of directors' training plan for the next calendar year. At minimum, training topics shall include a review of board governance (e.g., board members' role and responsibilities), conflict of interest and whistleblower policies, and linguistic and cultural competency.



- c. The training plan shall detail training topics, including: frequency, length of each training session and, if known, the name, affiliation, and qualifications of the individual or entity who will provide training to the board.
- d. Contractor shall post on its website information regarding the training and support provided to board members pursuant to W&I Code Section 4266(g), to include the annual board of directors' training plan and schedule.
- e. Contractor shall submit to the State by December 15 of each year, a report on the actual trainings provided to its board of directors in that calendar year, to include the information specified in subsections (b) and (c).

## **12. W&I Code Section 4731 Consumers' Rights Complaints**

By April 15, 2021, and quarterly by the 15<sup>th</sup> of the month following each quarter, Contractor shall report to the State information regarding complaints pursuant to W&I Code Section 4731 for which the regional center sent the complainant a written proposed resolution in response to in the previous quarter. To ensure the State has the information needed to comply with W&I Code Section 4519.2(c), information shall be reported in a mutually agreed upon format and shall include, but not be limited to, the following:

- a. Consumer UCI and initials;
- b. Date complaint was received by the regional center;
- c. Date the proposed resolution was sent to the consumer;
- d. Subject matter of each complaint; and
- e. How the complaint was resolved.

## **13. Medicaid Enrollment Requirements**

- a. Purpose

Regional centers coordinate services for consumers for which federal funding is received from the Centers for Medicare and Medicaid Services, and are therefore required to enroll as a Medicaid provider. Exhibit G sets forth the terms and conditions under which the Contractor shall enroll as a Medicaid provider.

- b. Board of Directors' Recruitment and Training

- 1) Contractor shall provide information regarding these requirements in Contractor's board recruitment outreach and information.
- 2) Contractor shall include as a component in its annual training

regarding board member roles and responsibilities, information about the criteria that trigger submission of a renewal packet as outlined in Exhibit G to ensure ongoing enrollment as a Medicaid provider.

#### **14. Board Governance**

By April 1 ,2022, Contractor shall ensure that either a board-approved policy or board-approved bylaws describe the following:

- a. The respective roles and responsibilities of the governing board in setting policy and overall governance and the Executive Director in day-to-day operations.
- b. The selection, training and monitoring of facilitators who will support board members to ensure maximum understanding and participation in carrying out their roles and responsibilities as per W&I Code section 4622(g)(1) and (2).

#### **15. Forensic Cases**

- a. Starting January 15, 2022, Contractor shall ensure information is entered into its case management database regarding consumers subject to the diversion process pursuant to Penal Code Section 1001.20, et seq. Information shall be entered within 14 days of receipt of minute orders and shall include, but not be limited to, the following:
  - 1) Date(s) and type(s) of related offense(s); and
  - 2) Details of the consumer's diversion program and current status.
- b. Contractor shall give the State a minimum of 14 calendar days' notice of any of the following:
  - 1) Contractor's intent to recommend to the court that a consumer be admitted to the Porterville Developmental Center Secure Treatment Program pursuant to Penal Code Section 1370.1.
  - 2) Contractor's intent to recommend to the court that a consumer currently on a Penal Code Section 1370.1 commitment at Porterville Developmental Center move to a W&I Code Section 6500 commitment.
- c. Contractor shall provide Porterville Regional Project with all required individual documents as soon as possible after a recommendation has been made to the court that a consumer be admitted to Porterville Developmental Center.

## **16. Reporting on DDS Conservatees**

- a. Beginning October 1, 2022, Contractor shall report to the State, in a format prescribed by the State, by the fifth (5<sup>th</sup>) working day of each month for the prior month the following information for each individual for whom the Director of DDS is conservator and the responsibilities of conservatorship have been delegated to Contractor pursuant to Health and Safety Code sections 416 through 416.23:
  - 1) Change in residence
  - 2) Change in medical presentation or support needs
  - 3) Changes in behavioral presentation or support needs
  - 4) Changes in services, including new services requested and/or authorized
  - 5) Emergency room or urgent care visits, including the reason and outcome of the visit
  - 6) Rights violations
  - 7) Any other significant events or issues not already reported to the State
- b. By December 31, 2023, and biennially thereafter, Contractor shall have completed a person-centered comprehensive assessment for each individual described in paragraph (a) of this section to inform the development of the Individual Program Plan. In implementing this paragraph, Contractor and the State shall adhere to the following timelines:
  - 1) By October 31, 2022, Contractor and the State shall define “comprehensive assessment” for the purpose of this paragraph and the necessary trainings for staff who will complete comprehensive assessments.
  - 2) By November 30, 2022, Contractor and the State shall finalize the curriculum for trainings.
  - 3) In December 2022, trainings shall begin.
  - 4) From January 2023 to December 2023, Contractor shall complete all necessary comprehensive assessments.
- c. Consistent with Probate Code section 2360 and the State’s May 2011 program advisory, “COD 11-01, Conservators: Photograph of Conservatee,” by January 31, 2023, and annually thereafter, Contractor shall submit to the State, in a format prescribed by the State, a photograph of each individual described in paragraph (a) of this section.
- d. Contractor shall notify the designated representative of the State, within 24 hours of learning of a DDS conservatee death or serious incident, involving abuse, neglect or unplanned hospitalization.
  - 1) For reported deaths, Contractor shall submit a copy of the death certificate and mortality review to the State.
- e. Contractor shall carbon copy (cc) the State on the IPP and annual progress report for each DDS conservatee.

- f. Contractor shall meet with the State upon request to discuss a conservatee case.

## **ARTICLE VIII: PERFORMANCE**

### **1. Contract Development**

Contractor agrees to perform in accordance with the goals and objectives set forth in Exhibit C, "Performance Plan," which was developed in accordance with W&I Code Section 4629. Notwithstanding Article I, Section 9 herein the Performance Plan shall be for a period of five years as specified in Exhibit C. The Performance Plan may be modified during the term of this period by mutual written consent of Contractor and the State.

### **2. Annual Progress Report**

By January 31 of each year, Contractor shall prepare and submit a report to the State on Contractor's progress in meeting its performance contract goals and objectives. The report shall include the goals, objectives, baseline data for each objective, and progress on each objective.

### **3. Incentives**

By July 1 of each year, ARCA and the State shall mutually agree on incentives and flexibility as required to ensure that Contractor meets or exceeds its performance standards and to facilitate the achievement of performance objectives. Once agreed to, these incentives and flexibility shall become part of the Contract.

### **4. Contract Compliance**

Based upon Contractor's performance, the State may take corrective action against Contractor, including placing the Contractor on probationary status. If it is found that a Contractor does not meet or is at risk of not meeting performance standards, due to the failure to meet performance objectives or requirements under the Lanterman Act or the terms of the contract, the State may take any or all of the following actions independently or in combination: the provision of technical assistance; loss of fiscal incentives; mandated consultation with designated representatives of ARCA or a management team designated by the State, or both; issuance of a letter of noncompliance; pursuit of legal or equitable remedies for enforcement of specified obligations; or contract termination or contract nonrenewal subject to W&I Code Section 4635. Nothing in this paragraph shall limit the State's authority to take any other appropriate action under the Lanterman Act or the terms of the contract at any time during the term of this contract.

## **ARTICLE IX: STAFFING, MONITORING AND REPORTING**

### **1. Specialized Personnel and Monitoring**

Contractor shall expend not less than the specific amounts allocated for the following provisions unless there is reduction in funding, and/or the State imposes a transfer from Operations to POS.

#### **a. Clinical Staff**

Contractor shall either hire, or contract for, clinical expertise in the areas of pharmacology, behavioral psychology, and special medical assistance in order to provide assistance in the use of special medications, to monitor complex medical cases, and to be proactive to improve access to preventive health care resources.

#### **b. Quarterly Monitoring**

Contractor shall have face-to-face contact with any individual living in a community out-of-home settings (licensed community care facilities, health facilities, supported living and independent living settings, and adult family homes) and any individual who is conserved by the Director of DDS or the Director of the Regional Center, at least quarterly. These contacts shall be for the purpose of monitoring the health, safety and well-being of each individual, gathering information to assess the effectiveness of services provided to meet the individual's needs and monitoring progress in meeting identified goals.

#### **c. Specialized Expertise**

##### **1) Contractor shall have, or contract for, all of the following:**

- a) Criminal justice expertise to assist Contractor in providing services and support to consumers involved in the criminal justice system as a victim, defendant, inmate or parolee.**
- b) Special education expertise to assist Contractor in providing advocacy and support to families seeking appropriate educational services from a school district.**
- c) Family support expertise to assist Contractor in maximizing the effectiveness of support and services provided to families.**
- d) Housing expertise to assist Contractor in accessing affordable housing for consumers in independent or supported living arrangements.**

- e) Community integration expertise to assist consumers and families in accessing integrated services and supports and improved opportunities to participate in community life.
- 2) Contractor shall employ or contract for at least one consumer advocate who is a person with developmental disabilities.
- 3) Contractor shall hire, maintain, and designate one full-time equivalent federal program coordinator position, and shall ensure that the monies appropriated for this position will only be used for that purpose.
  - a) This position shall address issues pertaining to federally funded programs serving individuals with developmental disabilities as appropriate, including the HCBS Waiver.
  - b) In collaboration with the State, this position, when appropriate, shall seek increased FFP
- 4) Contractor shall hire to fulfill the following functions/positions:
  - a) Employment Specialist
  - b) Cultural Specialist
  - c) HCBS Waiver/New Federal Rule Program Evaluators
  - d) Emergency Coordinator
  - e) Deaf Services Specialist
  - f) Participant Choice Specialists in a quantity the Contractor is allocated out of the total of 63 positions funded by the State

d. Federal Programs Compliance Review

Contractor shall use funds budgeted for Federal Programs Compliance Review to establish, maintain, and implement an ongoing internal review process to ensure compliance with federal and state program requirements related to the HCBS Waiver, TCM, and the NHR programs. The internal review process shall assess Contractor's compliance with statutory/regulatory/contractual requirements in, at minimum, the following areas:

- HCBS Waiver eligibility certification/recertification
- Special incident reporting and risk management
- Consumer choice
- Provider Agreement Forms
- Notice of action
- Fair hearings
- IPPs/IFSPs
- Periodic and quarterly reviews of services and progress
- Quality assurance (quarterly reviews, corrective action plans, annual reviews of community care facilities)
- Service coordinator caseload ratios

- TCM documentation of activity and units
- NHR documentation of referrals and evaluations

Contractor shall use the results from the internal review as part of a continuous quality improvement process to enhance performance. The State shall develop and provide Contractor a self-evaluation protocol to assist Contractor in performing the internal review. The results of this internal review shall be made available to the State during the State's monitoring visits.

- e. Contractor shall use funds allocated in the Budget Act of 2005 and each budget year thereafter for complying with the HCBS Waiver requirements solely for the specific purposes budgeted for the 2005-06 fiscal year and each fiscal year thereafter. The State may take any disciplinary action necessary in the event Contractor expends these allocated funds for any purpose other than for complying with these requirements.
- f. Using all funds allocated to the Contractor in accordance with the Settlement Agreement for Capitol People First, et al. v. Department of Developmental Services, et al, (hereafter referenced as Settlement Agreement) as originally authorized in the Budget Act of 2009 and as authorized in subsequent Budget Acts, Contractor shall provide service coordination on behalf of residents of Developmental Centers as set forth in the Settlement Agreement Section IV.A.1. Service coordination may be provided directly by the Contractor or through documented arrangements with another regional center. The Contractor shall make diligent efforts to participate in annual IPP meetings as agreed to in Section IV.A.3. of the Settlement Agreement. Nothing in this contract provision shall be construed to expand Contractor's obligations pursuant to the Settlement Agreement beyond those expressly described in the Settlement Agreement. If any inconsistency exists between the terms of the Settlement Agreement and this contract provision, the terms of the Settlement Agreement shall prevail.

## 2. Caseload Ratios

- a. Contractor shall maintain service coordinator-to-consumer ratios as specified in W&I Code Section 4640.6, and FY 21-22 Budget funding to maintain a 1:40 caseload ratio for consumers in Caseload Ratio Reference Number 2.6, as follows:

<b>Caseload Ratio Reference Number</b>	<b>Statutory Requirement or Targeted State Funding</b>	<b>Population</b>	<b>Service Coordinator-to-Consumer Ratio</b>
2.1	WIC §4640.6(c)(4)	Complex needs as defined in WIC §4640.6(c)(4)	1:25



2.2	WIC §4640.6(c)(2)	Moved from a DC in the last 12 months	1:45
2.43	WIC §4640.6(c)(3)(B), adjusted for CPP Operations Funding caseload	Moved from a DC since April 14, 1993, and have lived continuously in the community for greater than 24 months	1:62
2.4	WIC §4640.6(c)(3)(A)	Age 3 and younger	1:62
2.5	WIC §4640.6(c)(3)(A)	Enrolled on the HCBS Waiver	1:62
2.6	FY 21-22 Budget	Low or no purchase of service	1:40
2.7	WIC §4640.6(c)(3)(C)	All others	1:66

- b. Service coordinators may have a mixed caseload consisting of consumers specified in Caseload Ratio Reference Numbers 2.1, 2.2, 2.43, 2.4, 2.5 and 2.7 if the overall average caseload is weighted proportionately to ensure that overall regional center average service coordinator-to-consumer ratios as specified in 2.1, 2.2, 2.43, 2.4, 2.5 and 2.7 are met. In no case shall a service coordinator for these consumers have an assigned caseload in excess of 84 for more than 60 days.
- c. For purposes of this contract requirement, "service coordinator" means a regional center employee whose primary responsibility includes preparing, implementing, and monitoring consumers' IPPs, securing and coordinating consumer services and supports, and providing placement and monitoring activities.
- d. For purposes of this contract requirement, low purchase of service for a consumer is defined as less than \$2000 in the prior fiscal year. The 1:40 caseload ratio shall be maintained based on the State's allocation of positions to Contractor.
- e. One or more of the requirements of this subsection shall not apply if the regional center has a waiver approved pursuant to W&I Code Section 4640.6(h).

### 3. Reporting

Contractor shall provide service coordinator caseload data, as of March 1, to the State annually by March 10. The data shall be submitted in a format prescribed by the State that shall meet, but not exceed, the data collection requirements imposed by W&I Code Section 4640.6(e). In FY 21-22 only, Contractor shall provide service coordinator caseload data, as of February 1, 2022, to the State by February 10, 2022. In FY 22-23, Contractor shall also provide service coordinator caseload data, as of October 1, to the State by October 10, pursuant to W&I Code Section 4640.6(g).

## **ARTICLE X**

### **COMMUNITY PLACEMENT PLAN FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES AND EXPENDITURE PLAN**

#### **1. BACKGROUND**

Golden Gate Regional Center, Regional Center of the East Bay, and San Andreas Regional Center (Collectively, BAHP Contractors or CPPDD Contractors) originally developed the Bay Area Housing Plan in accordance with provisions of Welfare and Institutions Code §4474.1 and §4688.5. With the exception of the property located at 14329 Mulberry Drive in Los Gatos, the 60 properties (each a Property and collectively the Properties) that were developed and comprise the BAHP are described in Attachment A. Each Property is owned by one of three limited liability companies (each a "Borrower" and collectively, the "Borrowers").

The Bank of America (Bank) returned funds from its security account to the BAHP Contractors. The funds that were returned to the BAHP Contractors from the Bank's security account are "advanced operating expenses". Contractor shall report the funds that were returned to it from the Bank's security account in the same manner as Contractor is required to report under the law other advanced operating expenses. The "advanced operating expenses" are considered and shall be accounted for strictly as advanced funds and shall not be considered or reported as a state claimable expense and shall be subject to the requirements of Article III of this Agreement. In the event of any conflict between the requirements included in Article III of this Agreement and the requirements included in Article X of this Agreement, the requirements included in Article III of this Agreement shall prevail.

#### **CPPDD**

To obtain bond financing to refinance the BAHP, the California Health and Human Services Agency (HHSA) and the Department of Developmental Services (DDS) provided assurances in letters dated December 27, 2010 to involved parties of the BAHP refinance that the HHSA and the DDS approved a refinance plan for BAHP. In the refinance plan and hereinafter, the BAHP is referred to as the Community Placement Plan for Individuals with Developmental Disabilities (CPPDD). In the refinance plan, the California Health Facilities Finance Agency (CHFFA) issued Seventy-Six Million Nine Hundred Seventy Thousand and no/100 Dollars (\$76,970,000) in revenue bonds and the Office of Statewide Health Planning and Development (OSHPD) provided loan insurance for the bonds. Collectively, Golden Gate Regional Center (GGRC), Regional Center of the East Bay (RCEB) and SARC (formerly referred to as the BAHP Contractors) are hereinafter referred to as the CPPDD Contractors.

Under the CPPDD each property is encumbered by a Long-Term Residency Lease Agreement between a service provider and a Borrower, as amended by a First Amendment to Long-Term Residency Lease Agreement and a Second Amendment to Long-Term Residency Lease (collectively, the Lease). Each CPPDD residential service provider shall receive a service fee for the services provided to each individual residing in the home. The Contractor acknowledges Medicaid eligible residents will use Supplemental Security Income payments for room and board costs, and these funds will

not receive federal reimbursement from the federal Home and Community-Based Services (HCBS) Waiver. The State acknowledges that the CPPDD Contractors are parties to the Lender Lease Assurance Agreement, which provides additional security for repayment of the CPPDD loans. Should Contractor become liable pursuant to the Lender Lease Assurance Agreement, the Contractor shall immediately notify the State and in no instance shall the State seek reimbursement from the HCBS Waiver for Medicaid eligible residents for such liability.

As more specifically described in the Master Memorandum of Understanding (Master MOU) dated February 1, 2011, and entered into by parties that include the CPPDD Contractors, CHFFA, and OSHPD, the CPPDD Contractors shall maintain an aggregate amount of Five Million and no 100/Dollars (\$5,000,000.00) in three separate accounts (Required Balance). The Required Balance is to provide additional liquidity and an operating reserve for the benefit of OSHPD and CHFFA. Contractor granted a security interest in the Required Balance to CHFFA and OSHPD. The funds held in the Required Balance are considered advanced operating expenses, shall be accounted for strictly as advanced funds, shall not be considered or reported as a state claimable expense, and shall be subject to the requirements included in Article III of this Agreement. In the event of a conflict between the requirements included in Article III of this Agreement and the requirements included in Article X of this Agreement, the requirements included in Article III of this Agreement shall prevail.

Notwithstanding anything in the CPPDD to the contrary: (1) any and all funding from the State used by the Contractor in the performance of the obligations under this Agreement is subject to appropriation in the annual State Budget Act by the State Legislature; (2) all contracts between the State and the Contractor are subject to termination without further State liability if funding is not appropriated for these purposes by the State Legislature; (3) the CPPDD Contractors do not act as agents of the State; and (4) the State is not a party to CPPDD and provides no assurances or commitments as to the availability of State funding during any portion of the term of this Agreement. The purpose of this paragraph is to clarify that the State has no financial liability of any nature for any party's obligations under the CPPDD.

## 2. CONTRACT TERMS AND CONDITIONS

The CPPDD and this Article X of the Amendment are hereby incorporated into the Contract. The Contractor agrees to fulfill all terms and conditions or otherwise discharge all duties contained in the CPPDD in accordance with Welfare and Institution Code (WIC) §4688.5. In addition to statutory and regulatory requirements and/or other contractual obligations of the CPPDD Contractors to implement the CPPDD, Contractor hereby agrees to the following terms and conditions (with the understanding that Contractor or its designee may be appointed, with the written permission of the State, to perform the following reporting activities for the benefit of the other CPPDD Contractors):

3. Contractor shall comply with all conditions expressed in WIC §4688.5. Contractor hereby confirms that a Lease Assurance Covenants, Conditions, and Restrictions and Memorandum of Agreement and Lease (the "CC&Rs") dated February 1, 2011, has been recorded against the Properties in the Contractor's catchment area expressing that:

4. Each Property is only available for occupancy by individuals eligible for regional center services.
  5. No sale, encumbrance, hypothecation, assignment, refinancing, pledge, conveyance, exchange or transfer in any other form of the real property, or of any of its interest therein, shall occur without the prior written approval of DDS and the California Health and Human Services Agency.
- B. Under certain of the CPPDD documents, DDS has express rights, such as its right under the CC&Rs, to approve any sale, encumbrance, hypothecation, assignment, refinancing, pledge, conveyance, exchange or transfer of the Properties. The provisions below are in addition to such DDS right.

Contractor agrees that the CC&Rs for each Property shall not be amended without the prior notarized written approval of the State, filed for record with the County Recorder's Office of the County where the applicable Property is situated, with a conformed copy provided to Contractor.

Contractor shall submit to the State, or cause to be submitted to the State, for review and prior written approval any material change to the following documents used for the CPPDD (CPPDD Documents), pursuant to WIC §4688.5, prior to making and/or agreeing to any material changes:

1. Master MOU dated February 1, 2011 among the Borrowers, CPPDD Contractors, CHFFA and OSHPD;
2. Memorandum of Agreement for the Bay Area Housing Plan (Master Agreement for NPO's) dated for reference purposes as of March 30, 2006 among the CPPDD Contractors and the Borrowers' predecessors in interest;
3. Each Lease between the Borrower known as Inclusive Communities East Bay, LLC (ICEB) and a service provider;
4. Lease Assurance Covenants, Conditions and Restrictions and Memorandum of Agreement and Lease dated as of February 1, 2011 among Contractor, ICEB and DDS;
5. Loan Agreement dated as of February 1, 2011 between CHFFA and ICEB;
6. Regulatory Agreement dated February 1, 2011 among the Borrowers, CPPDD Contractors, CHFFA and OSHPD;
7. Deeds of Trust with Fixture Filing and Security Agreement dated as of February 1, 2011, executed by ICEB;

8. Amended and Restated Agreement for Providing Residential Services under the BAHP dated February 1, 2011 between Contractor and each Service Provider;
  9. Special Deposit Account Control Agreement (Security Interest in Deposit Account-Contingency) effective February 16, 2011, executed by Contractor in favor of OSHPD and the Bond Trustee;
  10. First Amendment to Memorandum of Agreement for the Bay Area Housing Plan (NPO MOU for BAHP) dated for reference purposes as of February 1, 2011 among the CPPDD Contractors and the Borrowers; and
  11. Lender Lease Assurance Agreement dated February 1, 2011 by CPPDD Contractors in favor of CHFFA and OSHPD.
- C. Contractor acknowledges that the Borrowers own the Properties described in Attachment A. Contractor has entered into various agreements to secure bonds for the Properties. Contractor agrees to include in its agreement with the Borrowers the obligation of each Borrower to comply with the provisions of the CPPDD Documents.
- D. Contractor agrees to implement the CPPDD as approved by the State.
- E. Contractor acknowledges that the CPPDD loans included funds to cover the costs of issuance (Cost of Issuance) associated with the issuance of revenue bonds for the Properties, as described in detail in Item II of the "State of California – Health and Welfare Agency Health Facility Construction Loan Insurance Estimate of Costs and Requisition OSH-CM-134 (Rev. 04/10)" signed by Kristine McCann and J.P. Marion on February 16, 2011, and incorporated herein by reference. Contractor agrees that if funds for Cost of Issuance are returned to Contractor ("Unused Funds"), the Unused Funds will be returned to the State.
- F. For the purpose of a consumer's absence from the home, the Contractor shall pay the established rate for the full month when the consumer is temporarily absent from the facility 14 days or less per month. Notwithstanding the foregoing, when the consumer's temporary absence is more than 14 days but is due to the need for inpatient care in a health facility as defined in Health and Safety Code Section 1250(a), (b), or (c) and the consumer is expected to return, Contractor shall continue to pay the established rate as long as no other consumer occupies the vacancy created by the consumer's temporary absence, for purposes such as crisis or respite services, or until the Interdisciplinary Team has determined that the consumer will not return to the facility. In all other cases of a consumer absence for more than 14 days, the established rate shall be

prorated for a partial month of service by dividing the established rate by 30.44, then multiplying by the number of days the consumer resided in the facility. Notwithstanding the foregoing, even if the consumer's absence is for more than 14 days, Contractor shall in any event continue to remit payment for Rent to each Service Provider as described in paragraph 6.2 of each Amended and Restated Agreement for Providing Residential Services Under the BAHF ("Service Provider Agreement").

- G. Vacancies; Respite Beds; Beds in Transition. With regard to CPPDD homes, the Contractor shall not submit a claim to the State for a vacant bed, except as provided herein. The Contractor is permitted to hold up to two (2) beds in an Adult Residential Facility for Persons with Special Health Needs (962 home) available for crisis, transition from acute or subacute care, or respite purposes and to pay the established rate for that bed. These beds must be specifically identified to DDS and may only be reassigned to a different home, with prior approval from DDS, when a permanent placement is made into an existing bed held for the purposes noted above. Further, a Bed in Transition (defined below) shall not be considered a vacant bed, and the Contractor may claim to the State (and the State shall reimburse, to the extent the claim is valid) the established contract rate (transition costs) between the Contractor and the provider for Beds in Transition. In all other instances of a bed vacancy, the Contractor shall continue to remit payment to the provider for Rent and claim such payment to the State, as described in paragraph 6.2 of each Service Provider Agreement.

An unoccupied bed shall be considered a "Bed in Transition" when all of the following conditions are satisfied:

6. The Contractor has identified a specific consumer of Contractor's services to occupy the bed (the "Identified Consumer"); and

(2) Based on the Identified Consumer's IPP and other relevant information, the Identified Consumer qualifies for the type of care provided by the service model of the house where the bed is located; and

(3) The Identified Consumer resides in a developmental center; *provided, however*, if there are no qualified consumers of Contractor's services then residing in developmental centers, the Contractor may select another consumer of Contractor's services to fill the bed, in the following order of preference: (i) a consumer who previously resided in a developmental center; or (ii) a consumer who has not previously resided in a developmental center and now resides in a skilled nursing facility or intermediate care facility; and

(4) The Contractor is actively involved in transitioning the Identified Consumer from his or her current residence to the unoccupied bed, as evidenced in the consumer's IPP and Transition Plan.

To be eligible for transition costs, in addition to the claim for reimbursement, the Contractor must submit to DDS a monthly report of Beds in Transition, by the last day of each month, that specifically identifies Beds in Transition in CPPDD homes, the date each bed became vacant, the consumer identified for

placement into each bed consistent with all of the above conditions, and the date each consumer was identified for placement into the home. A bed will not continue to be considered a Bed in Transition when all of the aforementioned conditions for a Bed in Transition are not met, as determined by the Contractor or the State.

In rare circumstances, the Director of DDS, or designee, may allow an unoccupied bed that would not otherwise qualify as a Bed in Transition to be eligible for transition costs on a case by case basis. Further, the Contractor may, with prior approval from the Director of DDS, or designee, which shall not be unreasonably withheld, submit a claim for transition costs when placement is delayed due to events beyond the Contractor's control, including, but not limited to, the need to complete required medical procedures for the consumer.

The Contractor shall attempt to either amend all of its Service Provider Agreements, or enter into new Service Provider Agreements, to make them consistent with the terms and conditions of this Section II.G as soon as practicable, but in any event not later than March 1, 2012. To the extent Contractor is unable to enter into such amendments or new agreements by March 1, 2012, the Department shall at such time cease funding for vacant beds under the provisions of the Service Provider Agreements governing payments for bed vacancies, and instead shall fund for vacant beds and Beds in Transition under the terms of this Article X; the Contractor shall thereafter reimburse its service providers in accordance with the terms of this Article X, based on the funding contingency provisions of each Service Provider Agreement.

- H. Contractor represents that all of the Predevelopment Funds have been expended for CPPDD purposes.
- 7. In accordance with the notice provision in this agreement, Contractor shall provide written notification to the State within 48 hours (excluding holidays and weekends) of discovery or notification of anticipated and/or non-payment of a lease payment associated with any Property. Further, Contractor shall include in agreements with the Borrowers the obligation of the Borrowers to promptly notify both the CPPDD Contractors and the State if any tenant fails to remit any rent payment under its Lease.
- J. All notices specified in this agreement and as required in all CPPDD Documents, including documents related to the CPPDD, shall be provided in writing to the Deputy Director, Community Services and Supports Division at the address provided in Section K. below.
- K. Contractor shall submit copies of any and all of its reports required by CHFFA, OSHPD, and/or Trustee, as defined in the Indenture-for CPPDD, to the State simultaneously with their submission to the entity. The reports shall be mailed to:

Deputy Director  
Community Services and Supports Division  
Department of Developmental Services  
1215 O Street  
Sacramento, CA 95814

### 3. QUARTERLY FISCAL REPORTS

Contractor shall submit a CPPDD Quarterly Fiscal Report to DDS in the format provided in Attachment B.

- A. Quarterly Fiscal Reports will be mailed to Deputy Director, Community Services and Supports Division, beginning January 15, 2012, that reflect the Total Service Fee payments made by Contractor since the bonds were issued to finance the CPPDD to December 31, 2011 and shall include, but not be limited to, the following:
  - 1. Regional Center
  - 2. CPPDD Property Number
  - 3. Home Type
  - 4. Home Capacity
  - 5. Property Address (including the city, state, and zip code)
  - 6. Tax Status (tax-exempt or taxable)
  - 7. Tax Exemption Certification Date
- B. For purposes of completing Attachment B, the "Total Service Fee" means the monthly amount Contractor remits for provision of residential or adult family home agency services.
- C. After January 15, 2012, Quarterly Fiscal Reports shall be submitted to DDS no later than 15 days after the last calendar day of the fiscal quarter month. For example, the next Quarterly Fiscal Report submitted after January 15, 2012, must be submitted no later than April 15, 2012.



## **HOME AND COMMUNITY-BASED SERVICES WAIVER REGIONAL CENTER FISCAL AGENT RESPONSIBILITIES**

### **1. BACKGROUND**

The Department of Health Care Services (hereinafter referred to as DHCS) is the single California agency responsible for administering the California Medical Assistance Program (hereinafter referred to as Medi-Cal), for which federal grants in aid are received pursuant to Title XIX of the federal Social Security Act (hereinafter referred to as Medicaid).

The Department of Developmental Services (hereinafter referred to as Department) is responsible for providing services to persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act, California Welfare and Institutions Code, Section 4500 et seq.

Section 1915(c) of the federal Social Security Act provides for home and community based services as a benefit of the Medicaid program, subject to approval by the Department of Health and Human Services (hereinafter referred to as DHHS) thereby enabling Title XIX coverage of home and community based services for persons with developmental disabilities.

The Department has entered into a contract with DHCS under which the Department shall act as the fiscal agent for Medi-Cal payments and related systems for administering home and community-based services for persons with developmental disabilities.

Contractor is one of 21 private non-profit, locally based agencies under contract with the Department to obtain services for persons with developmental disabilities including home and community-based services.

### **2. CONTRACT PRACTICES**

For the purposes of this contract, the Department and Contractor agree to conform to the requirements of 45 CFR Appendix II to Part 75 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards and to the requirements of the DHHS approved Home and Community-Based Services Waiver (Medicaid Waiver) Program.

### **3. SUBCONTRACTS**

Contractor agrees that contracts, other than small purchases contracts, shall contain provisions or conditions which allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

**4. POPULATION COVERED BY THIS CONTRACT**

The population covered by this exhibit are those Medi-Cal eligible persons who qualify for participation in the Medicaid Waiver Program and/or who would be eligible for Medi-Cal due to eligibility for the Medicaid Waiver Program and those who are enrolled in the Medicaid Waiver Program.

**5. PROCEDURES FOR ENROLLMENT AND RE-ENROLLMENT**

Contractor shall adhere to the enrollment and re-enrollment assurances and procedures as specified in the Medicaid Waiver Program. All participants shall meet the appropriate level of care criteria, shall sign the federally required "Consumer choice of services/living arrangement statement" (form DS 2200); shall have a choice among qualified providers; shall be notified of their right to a fair hearing if choice is denied; services are reduced and Medicaid Waiver Program eligibility is terminated unless the consumer voluntarily disenrolls from the Medicaid Waiver Program; and, shall have a written plan of care which addresses the health, safety, and well-being of the individual participant in a community setting.

Contractor shall maximize federal financial participation by identifying and enrolling all eligible persons, unless the operations (OPS) costs of enrollment exceed the reimbursement to the State of California as determined by a formula which is mutually agreed to by the State and the ARCA. Any child who would become eligible for Medi-Cal benefits through institutional deeming shall be enrolled. Contractor shall redetermine the eligibility of persons enrolled in the Title XIX Home and Community-Based Services Waiver Program (Medicaid Waiver) annually. In consideration for such enrollment and redetermination, the Department shall, in addition to all other allocations, allocate in Contractor's preliminary operations budget their proportionate share of the full amount budgeted for this purpose. The Department and Contractor shall mutually agree to the amount of federal reimbursement that shall be used for the contract budget summary.

Contractor shall implement the mutually agreed to procedures for the administration of the Medicaid Waiver Program. Modifications to the existing procedures shall be mutually agreed to by the Department and ARCA and approved by DHCS.

**6. SERVICES TO BE PROVIDED**

The written plan of care prepared for each Medicaid Waiver participant shall prescribe the amount, duration and scope of services necessary to safely maintain the participant in the community rather than an institution. The written plan of care shall be in accordance with the requirements set forth in the DHHS approved home and community-based services waiver and tailored to meet the specific needs of each individual participant to ensure the person's health and well-being.

**7. THIRD PARTY LIABILITY RESPONSIBILITIES**

In compliance with 42 CFR Chapter IV, Part 433, Subpart D-Third Party Liability, Contractor shall perform the activities required by the Department.

**8. HOME AND COMMUNITY-BASED SERVICES WAIVER APPROVAL TERMINATION**

This exhibit shall continue so long as CMS approves the Medicaid Waiver Program or until the agreement between DHCS and the Department upon which this exhibit is based is terminated.

**9. PAYMENT TO PROVIDERS**

The Contractor and the Department agree that payment to providers of home and community-based waiver services shall be made in accordance with 42 CFR Chapter IV, Part 447.

**10. NONCOMPETITIVE NEGOTIATION JUSTIFICATION**

The Contractor and the Department agree that this exhibit is consistent with CFR Subtitle A, Subchapter A - General Administration, Part 75 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards, Subpart D - Post Federal Award Requirements, Procurement Standards, Section 75.328 - Competition for the following reasons:

- a. The California Legislature has found that, "the service provided to individuals and their families by regional centers is of such a special and unique nature that it cannot be satisfactorily provided by state agencies" (W&I Code Section 4620).

- b. The Legislature has mandated that the Department contract only with private non-profit community agencies which meet the criteria of W&I Code Section 4620 et seq. for the purpose of operating regional centers.
- c. The Legislature requires that contracts between the Department and regional centers specify the service areas to be served thereby resulting in one regional center per service area (W&I Code, Section 4640).

## **EARLY START STATEMENT OF ASSURANCES**

July 1, 2014

### **1. PURPOSE**

This exhibit sets forth the terms and conditions under which the Contractor shall administer the Early Start Program activities.

### **2. EARLY START REPORT**

Contractor agrees to prepare and submit Early Start Reports for all children under age three in accordance with reporting instructions distributed by the State.

### **3. USE OF PART C FUNDS**

Funds received under Part C will only be used in support of the Early Start Program.

### **4. ACCOUNTING PROCEDURES**

Part C funds will not be commingled with regional center general funds, and fiscal control and fund accounting procedures will be followed as may be necessary to assure proper disbursement of, and accounting for the Part C funds.

### **5. FEDERAL SINGLE AUDIT ACT**

Contractor agrees to comply with the federal Single Audit Act requirements.

### **6. EARLY START PROGRAM COMPLIANCE**

Contractor agrees the Early Start Program is in compliance with the provisions of Part C of the Individuals with Disabilities Education Act (20 USC Section 1471 et. seq.) its implementing regulations (34 CFR Part 303), the Education Department General Regulations (EDGAR) as specified in 34 CFR Section 303.5, and the California Government Code, Title 14, Section 95000 et. seq. and Title 17 California Code of Regulations, Section 52000 et. seq. Contractor agrees to provide appropriate early intervention services, as defined under 34 CFR 303.13 and delineated on the individualized family service plan in accordance with 17 CCR 52108 (a)(1) to eligible children and families at no cost.

## **7. PAYROLL RECORDS**

Contractor agrees to maintain payroll records which identify personnel employed in the Early Start Program and make the records available for review by the States' monitoring staff pursuant to 34 CFR Section 303.501.

CFDA Title: Infant and Toddlers with Disabilities

CFDA Number: 84.181A

Award Name: Annual State Application Under Part C of the Individuals with Disabilities Education Act as Amended in 2004, Federal Fiscal Year 2006

Federal Agency Name: Office of Special Education Programs, United States  
Department of Education

**Community Placement Plan and Community Resource Development Plan  
Statement of Assurances**

**1. Community Placement Plan and Community Resource Development Plan**

Contractor shall develop and submit an approved Community Placement Plan and Community Resource Development Plan in accordance with W&I Code Sections 4418.25, and 4418.3; and consistent with W&I Code Sections 4418.7, 4519 and 4648. Contractor's Community Placement Plan and Community Resource Development Plan shall, where appropriate, include budget requests for regional center operations, consumer assessments, resource development, deflections and ongoing placement costs.

**2. Dedicated Funding**

- a. Contractor shall use funds allocated for the regional center's approved Community Placement Plan and Community Resource Development Plan only for the purposes allocated and in compliance with the State's Community Placement Plan and Community Resource Development Plan and Housing Guidelines. Funds will be allocated through the following categories: Operations, Purchase of Service Placement, Purchase of Service Deflection, Purchase of Service Assessment, and Purchase of Service Start Up. The State shall reduce the contract in the amount of any unspent funds allocated for the Community Placement Plan and Community Resource Development Plan that are not used for that purpose. Any unspent funds shall revert to the General Fund State or be transferred to another regional center for Community Placement Plan and Community Resource Development Plan activities. All changes to the approved ~~GPP~~ Community Placement Plan and Community Resource Development Plan allocation must be approved in writing by the Department.
- b. Within 30 days of the enactment of the budget, the State shall notify Contractor of any changes to Contractor's approved Community Placement Plan and Community Resource Development Plan.

**3. Reports**

Contractor agrees to report, as required by the State, on the status and outcomes of their plans at a minimum of quarterly.

**4. Accounting Procedures**

Contractor shall submit a detailed quarterly claim; this claim form shall be mutually agreed to by ARCA and the State.



**Statement of Assurances for Protection of Protected Health Information**

**Health Insurance Portability and Accountability Act (HIPAA)  
Health Information Technology for Economic and Clinical Health (HITECH)**

**1. Background**

The terms of this Agreement are intended to create a business associate relationship between the contracting parties (collectively, "Contractor" and "DDS") as required under the Health Insurance Portability and Accountability Act ("HIPAA"), codified in Title 42 of the United States Code, Section 1320d *et seq.* and its implementing law and regulations such as the Health Information Technology for Economic and Clinical Health Act of 2009, (Public Law 111-005, Title XIII, Subtitle D, Section 13400 *et seq.*, Feb. 17, 2009) ("HITECH Act"), and Title 45 of the Code of Federal Regulations ("CFR") Parts 160 and 164 ("HIPAA Regulations").

Since a business associate relationship is created by this Agreement and protected health information ("PHI"), as defined in Section 3 herein, may be exchanged, created, received, maintained, used and/or disclosed to Contractor, Contractor agrees to comply with all applicable requirements of HIPAA, HIPAA Regulations, and the HITECH Act which pertain to the privacy and security of PHI.

In addition, HIPAA's preemption exception under Title 45 of the Code of Federal Regulations Section 160.203 requires state law to apply if state law is more stringent in protecting PHI. Accordingly, the intent of the parties is that Contractor shall comply with the applicable requirements of California law governing the exchange, creation, dissemination, maintenance, use or disclosure of PHI that exceeds the requirements of HIPAA, the HITECH Act, and HIPAA Regulations.

**2. Recitals**

- A. DDS wishes to disclose to Contractor and/or wishes for the Contractor to receive certain information pursuant to the terms of this Agreement, some of which may constitute PHI.
- B. As set forth in this Agreement Contractor is the "Business Associate", as defined in Section 3 herein, of DDS that provides services, arranges, performs or assists in the performance of functions or activities on behalf of DDS and creates, receives, maintains, transmits, uses or discloses PHI.
- C. DDS and Contractor desire to protect the privacy and provide the security of PHI created, received, maintained, transmitted, used, or disclosed pursuant to this Agreement, in compliance with HIPAA, the HITECH Act, HIPPA Regulations, and any more stringent applicable state law protecting PHI.

Now, therefore, the parties agree as follows:

3. **Definitions**

- A. **Accounting** – “Accounting” means Contractor’s accounting of PHI disclosures to an individual upon his or her request in accordance with 45 CFR § 164.528, subject to the exceptions listed therein. As stated in 45 CFR § 164.528(b) an accounting includes the date of disclosure, the name of the entity or person who received the PHI and, if known, the address of such entity or person, a brief description of the PHI disclosed, and a brief statement of the purpose of disclosure or copy of a written request for disclosure by the Secretary, as defined herein, or by an entity or person permitted under 45 CFR § 164.512.
- B. **Breach or Breaches** – “Breach” or “Breaches” have the same meaning of the term “breach” defined under 45 CFR § 164.402, which is the acquisition, access, use or disclosure of PHI in a manner not permitted under Title 45 of the Code of Federal Regulations Part 164, Subpart E, that compromises the security or privacy of PHI, subject to the breach exclusions listed therein.
- C. **Business associate** – “Business Associate” has the same meaning of the term “business associate” defined in 45 CFR § 160.103, which means an entity or person on behalf of a covered entity who creates, receives, maintains or transmits PHI by conducting services including legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, financial services, claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, billing, patient safety activities benefit management, practice management and/or repricing. “Business associate” also refers to Contractor who is a party to this Agreement.
- D. **Covered entity** – “Covered Entity” has the same meaning of the term “covered entity” defined in 45 CFR § 160.103, which means a health plan, health clearinghouse or healthcare provider. Covered entity also refers to DDS who is a party to this Agreement.
- E. **Designated record set** – “Designated record set” has the same meaning of the term “designated record set” defined in 45 CFR § 164.501, which is a group of records that contains PHI and is maintained by or for a covered entity. The designated record set includes medical records and billing records, enrollment, payment, claims adjudication and case/medical management record systems, and/or records used, in whole or part, to make decisions about individuals.
- F. **Disclosure** – “Disclosure” has the same meaning of the term “disclosure” defined in 45 CFR § 160.103, which is the release, transfer, provision of access to, or divulging in any manner of information outside the entity holding the information.
- G. **Discovery** – “Discovery” has the same meaning of “Breaches treated as discovered” under 45 CFR § 164.410. Under Section 164.410, a breach shall be treated as discovered by a business associate on the first day on which such breach is known, or by exercising reasonable diligence would have been known by the business associate, including its employees or agents.
- H. **Electronic PHI** – “Electronic PHI” is protected health information in an electronic form.

- I. **Encryption** – “Encryption” has the same meaning of the term “encryption” defined in 45 CFR § 164.304, which is the use of an algorithmic process to transform data into a form in which there is a low probability of assigning meaning without use of a confidential process or key.
- J. **Harmful effect** – “Harmful effect” means a negative effect of using or disclosing PHI known to the covered entity or business associate that would violate HIPAA, HITECH Act, HIPAA Regulations as set forth in 45 CFR § 164.530(f), or any more stringent applicable state law protecting PHI.
- K. **Health care operations** – “Health care operations” has the same meaning of the term “health care operations” defined in 45 CFR § 164.501. Under Section 164.501, health care operations includes conducting quality assessment and improvement activities, outcomes evaluation, development of clinical guidelines, patient safety activities, population-based activities relating to improving health, protocol development, case management and care coordination, reviewing competence and qualifications of health care professionals not involving treatment, evaluating provider/vendor performance, conducting training programs for students, trainees or practitioners in the area of health care to improve skills, training of non-health care professionals, accreditation, certification, licensing or credentialing activities, underwriting and enrollment relating to creation, renewal or replacement of health insurance or benefits, medical review, legal services, auditing functions, business planning and development, business management and general administrative activities such as implementation and compliance with HIPAA, HITECH Act, and HIPAA Regulations, customer service, resolution of internal grievances, the creation of de-identified health information or a limited data set, and/or fundraising for the benefit of the business associate.
- L. **Individual or Individuals** – “Individual” or “individuals” have the same meaning of the term “individual” defined in 45 CFR § 160.103, which is the person who is the subject of PHI.
- M. **Lanterman Act** – The “Lanterman Act” means the Lanterman Developmental Disabilities Services Act codified in California Welfare and Institutions Code Sections 4500, *et seq.*
- N. **Minimum necessary** – “Minimum necessary” means the “minimum necessary” standard set forth in 45 CFR § 164.502, which requires covered entities and business associates to make reasonable efforts to limit the use or disclosure of PHI to accomplish the intended purpose of the use, disclosure or request, subject to the exceptions set forth therein.
- O. **Notice of Privacy Practices** – “Notice of Privacy Practices” means the required notice under 45 CFR § 164.520 provided to individuals by a covered entity regarding the use and disclosure of PHI that may be made by the covered entity, and the individual’s rights and covered entity’s legal duties with respect to PHI.
- P. **PHI or protected health information** – “PHI” or “protected health information” have the same meaning of the term “individually identifiable health information” as defined in 45 CFR § 160.103. Under Section 160.103 individual identifiable health information is information that is created or received by a covered entity or business associate that relates to the past, present, or future physical or mental health of an individual; or the past, present, or future payment for the provision of health care to the individual. In addition, the information must identify the

individual or there must be a reasonable basis to believe the information may be used to identify the individual.

- Q. **Required by law** – “Required by law” has the same meaning of the term “required by law” defined in 45 CFR § 164.103, which is a mandate contained in law that compels an entity to make a use or disclosure of PHI and that is enforceable in a court of law.
- R. **Safeguards** – “Safeguards” referenced herein collectively means the required “administrative safeguards” defined in 45 CFR § 164.308, “physical safeguards” defined in 45 CFR § 164.310, and “technical safeguards” defined in 45 CFR § 164.312.
- 1) Under 45 CFR § 164.308 “administrative safeguards” is the implementation of policies and procedures to prevent, detect, contain and correct security violations.
  - 2) Under 45 CFR § 164.310 “physical safeguards” is the implementation of policies and procedures to limit physical access to electronic information systems and the facility or facilities in which PHI is maintained, while ensuring proper authorized access to PHI.
  - 3) Under 45 CFR § 164.312 “technical safeguards” is the implementation of policies and procedures for electronic information systems that maintain electronic PHI to allow access only to those persons or software programs that have been granted access rights specified in 45 CFR § 164.308(a)(4).
- S. **Secretary** – “Secretary” means the Secretary of the United States Department of Health and Human Services.
- T. **Security Incident** – “Security incident” has the same meaning of the term “security incident” defined in 45 CFR § 164.304, which is the attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system.
- U. **Subcontractor or Agent** – “Subcontractor” or “agent” have the same meaning of the term “subcontractor” defined in 45 CFR § 164.10, which is a person to whom a business associate delegates a function, activity or service, other than in the capacity of a member of the workforce of such business associate.
- V. **Unsecured PHI** – “Unsecured PHI” has the same meaning of “unsecured protected health information” defined in 45 CFR § 164.402, and it is PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of technology and methodology specified by the Secretary in the guidance issued under section 13402(h)(2) of Public Law 111-5.
- W. **Use or usage** – “Use” or “usage” have the same meaning of the term “use” defined in 45 CFR § 160.103, which is the sharing, employment, application, utilization, examination, or analysis of PHI within an entity that maintains such information.

#### **4. Permitted Uses and Disclosures of PHI by Business Associate**

- A. **Usage Permitted by This Agreement and HIPAA.** Contractor may use or disclose PHI only to perform functions, activities or services for, or on behalf of the DDS as specified in this Agreement, provided that such use or disclosure does not violate HIPAA, HIPAA Regulations, the HITECH Act, and any more

stringent applicable state law protecting PHI. The use and disclosure of PHI may not be more expansive than applicable to DDS as the "Covered Entity" under 45 CFR Part 164. (45 CFR § 164.504(e)(2)(i)).

- B. **Usage for Legal, Management and Administrative.** In accordance with 45 CFR § 164.504(e)(4), Contractor may disclose PHI if necessary, for the legal, management, or administrative purposes of Contractor. In disclosing PHI, Contractor's disclosure must be required by law, or the Contractor must obtain reasonable assurances from the person to whom the information is disclosed that it 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 notifies Contractor of any instances of which it is aware in which the confidentiality of the information has been breached.
- C. **Minimum Necessary.** Contractor shall comply with the requirements under 45 CFR § 164.502(b) to only request, use, and disclose the minimum PHI necessary to accomplish the intended purpose of the request, use or disclosure.
- D. **Access.** Contractor shall provide access, at the request of DDS, and in the time and manner designated by DDS, to PHI in a designated record set to DDS or, as directed by DDS, to an individual in order to meet the requirements of 45 CFR § 164.524 and 45 CFR § 164.504(e)(2)(ii)(E) regarding an individual's right to access PHI.
  - 1) If Contractor maintains electronic PHI, and an individual requests a copy of his or her PHI in an electronic format, Contractor shall provide such information in an electronic format to enable DDS to fulfill its obligations under the HITECH Act, including but not limited to 42 USC § 17935(e).
- E. **Nondisclosure.** In accordance with 45 CFR § 164.504(e)(2)(ii)(A), Contractor shall not use or further disclose PHI other than as permitted or required by this Agreement, or as required by law.
- F. **Amendments.** In accordance with 45 CFR § 164.526(a) and 45 CFR § 164.504(e)(2)(ii)(F), Contractor shall make any amendment(s) to PHI in a designated record set that DDS directs or agrees to and in the time and manner designated by DDS, or at the request of an individual. Individual requests for amendment(s) are subject to the right of Contractor to exercise denial under 45 CFR § 164.526(a)(2) and under the Lanterman Act. Contractor shall ensure the amendment/s are incorporated into the PHI in accordance with 45 CFR § 164.526.
- G. **Accounting.** Contractor shall provide an accounting of disclosures of PHI to an individual for the six years prior to the date of the individual's request, in accordance with 45 CFR § 164.528 (a)(1), subject to the exceptions listed therein.

**5. Uses and Disclosures Not Provided for by this Agreement**

- A. **Mitigation.** In accordance with 45 CFR § 164.530 (f), Contractor shall mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI in violation of the requirements of this Agreement.
- B. **Requests to Restrict PHI.** Contractor shall not disclose PHI about an individual to a health plan for payment or health care operations purposes if PHI pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full and the individual requests such restriction, in accordance with 42 USC § 17935(a) and 45 CFR 164.522(a).
- C. **No Remuneration Without Written Consent.** In accordance with 42 USC § 17935(d)(1) Contractor shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior written consent of DDS and a valid HIPAA authorization under 45 CFR § 164.508.

**6. Safeguarding Protected Health Information**

- A. In accordance with 45 CFR § 164.504(e)(2)(ii)(B) and 45 CFR Part 164, Subpart C, Contractor shall use appropriate safeguards to prevent use or disclosure of PHI, except as provided in this Agreement or as required by law.
- B. In accordance with 45 CFR Part 164, Subpart C and 45 CFR § 164.314(a)(2)(i)(A) & (B), Contractor shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI, including electronic PHI, it creates, receives, maintains, or transmits in an electronic format on behalf of DDS to prevent unauthorized access, viewing, use, disclosure or breach of PHI, other than as provided for by this Agreement or required by law.
- C. Contractor shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of Contractor's operations and the nature and scope of its activities, and which incorporates the requirements of Section 7, Security, below.
- D. **Privacy Officer.** Contractor shall designate a Privacy Officer who shall: (1) develop policies and procedures on PHI that comply with this Agreement, HIPAA, HIPAA Regulations, HITECH Act, and any more stringent applicable state law protecting PHI; (2) receive complaints/notices pertaining to breaches, and process those complaints/notices in accordance with Section 10, herein; and (3) be the point of contact for communication on privacy matters with DDS. Contractor shall notify DDS's privacy and security officers of the individual designated as Privacy Officer and his/her appropriate contact information (including telephone, work address and email) upon execution of this Agreement. If there is a contact change of the Privacy Officer, Contractor shall notify DDS within 10 calendar days or annually per DDS Technical Bulletin 479.

**7. Security**

- A. Contractor shall ensure the security of all computerized data systems containing PHI in compliance with HIPAA, HIPAA Regulations, the HITECH Act, and the standards provided by National Institute of Standards and Technology (NIST). These steps shall include, at a minimum, but not limited to:
- 1) Ensuring appropriate security levels to maintain the confidentiality, integrity and availability of PHI and electronic PHI in accordance with 45 CFR Part 164, Subpart C;
  - 2) Protecting against any reasonably anticipated threats or hazards to the security or integrity of PHI and electronic PHI in accordance with 45 CFR 164.306(a)(2);
  - 3) Protecting against any reasonably anticipated uses or disclosures of PHI and electronic PHI that are not permitted or required under 45 CFR Part 164, Subpart E, in accordance with 45 CFR 164.306(a)(3);
  - 4) Requiring encryption of all laptops, desktops, tablets, smartphones and other mobile devices, when storing and transmitting electronic PHI, including encryption of portable electronic storage media (e.g., CD, DVD, flash drives, etc.);
  - 5) Requiring the development and maintenance of a Technical Recovery Plan (TRP) documenting the procedures required to restore critical business systems, including conducting an annual performance tabletop test of the TRP and providing annual self-certification of conducting such test to DDS' Information Security Officer; and
  - 6) Designating a Security Officer pursuant to 45 CFR § 164.308 to oversee Contractor's data security program. The Security Officer shall be responsible for carrying out the requirements of this Section and to be the point of contact for communicating on security matters with DDS. Contractor shall notify DDS's privacy and security officers of the individual designated as Security Officer and his/her appropriate contact information (including telephone, work address and email) upon execution of this Agreement. If there is a contact change of the Security Officer, Contractor shall notify DDS within 10 calendar days or annually per DDS Technical Bulletin 479.

**8. Agents and Subcontractors**

- A. Contractor shall require any of its agents, including subcontractors, that create, receive, maintain, or transmit PHI and/or electronic PHI on behalf of Contractor pursuant to its Agreement with DDS, to agree to the same restrictions, safeguards, and conditions that apply to Contractor herein with respect to such information. (45 CFR §§ 164.502, 164.504, 164.506, 164.314(a)(2)(i)(B)).

- B. Contractor's agents and subcontractors who create, receive, maintain, or transmit PHI and/or electronic PHI on behalf of Contractor are business associates of Contractor and are directly liable under HIPAA, HIPAA Regulations and the HITECH Act for any breach they commit. As such, Contractor's agents and subcontractors who create, receive, maintain, or transmit PHI and/or electronic PHI are subject to civil and, in some cases, criminal penalties for making uses and disclosures of PHI that are not authorized by contract or required by law. Contractor's agents and subcontractors who create, receive or transmit electronic PHI, are also directly liable and subject to civil penalties for failing to safeguard electronic PHI in accordance with HIPAA, the HITECH Act, and HIPAA Regulations.

**9. Records available to the State and Secretary and Compliance Reviews**

- A. In accordance with 45 CFR § 164.504(e)(2)(ii)(I), Contractor shall make its internal practices, books and records relating to the use and disclosure of PHI received from DDS, or created or received by Contractor on behalf of DDS, available to DDS or to the Secretary for purposes of investigating or auditing DDS's compliance with the requirements of HIPAA, HIPAA Regulations, and the HITECH Act, in the time and manner designated by DDS or the Secretary.
- B. In accordance with 45 CFR § 160.310, Contractor shall cooperate with the compliance and investigation reviews conducted by the Secretary. PHI access to the Secretary must be provided during Contractor's normal business hours, however, upon exigent circumstances access at any time must be granted. Upon the Secretary's compliance or investigation review, if PHI is unavailable to Contractor and in possession of a subcontractor or agent, it must certify efforts to obtain the information to the Secretary.

**10. Breach Procedure**

- A. **Discovery of Breach.** Contractor shall notify DDS ***within 72 hours by telephone call plus email or fax*** upon the discovery of a breach compromising the security and/or privacy of PHI, or upon a reasonable belief such breach has occurred, as required at 45 CFR §164.410. Notification shall be provided to the DDS Privacy Officer and the DDS Information Security Officer. If the incident occurs after business hours or on a weekend or holiday and involves electronic PHI, notification shall be provided by calling the DDS Service Desk. Upon discovery of such breach or reasonable belief of such breach, Contractor shall:

- 1) Take prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment; and
- 2) Commence an investigation.

**Content of Notification:** Within 72 hours of discovery of such breach or reasonable belief such breach occurred, Contractor shall include the following information in the notification to the DDS Privacy Officer and the DDS Information Security Officer to the extent presently known:



- 1) Identification of each individual whose unsecured PHI or confidential information has been, or is reasonably believed to have been accessed, acquired, used, disclosed, or breached;
  - 2) What data elements were involved, and the extent of the data involved in the breach;
  - 3) A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed PHI or electronic PHI;
  - 4) A description of the steps that an individual may take to protect him/her from the breach; and
  - 5) A description of what Contractor is doing to investigate the breach, to mitigate harm to individuals, and to protect against further breaches.
- B. **Written Report.** In accordance with 45 CFR § 164.504(e)(2)(ii)(C) and 45 CFR § 164.410, Contractor shall provide a written report of the investigation to the DDS Privacy Officer and the DDS Information Security Officer within thirty (30) calendar days of the discovery of the breach or unauthorized use or disclosure.
- C. **Notification of Individuals.** Contractor or Contractor's subcontractor or agent shall notify individuals whose unsecured PHI has been or is reasonably believed by Contractor to have been accessed, acquired, used, or disclosed as a result of the breach as required under 45 CFR § 164.404. Notification shall be provided without unreasonable delay as required by 42 USC § 17932(d), and within 30 calendar days. Contractor, or Contractor's subcontractor or agent, shall pay any costs of such notifications as well as any costs associated with the breach.
- D. **Responsibility for Reporting Breaches Involving Less Than 500 Individuals.** If the cause of breach of PHI or electronic PHI is attributable to the Contractor, or its subcontractors or agents, Contractor is responsible for all required reporting of the breach as specified in 42 USC § 17932 and 45 CFR Part 164, Subpart D. The breach reporting requirements of this paragraph are in addition to the reporting requirements set forth in subsection 10(A-C) above.
- E. **Responsibility for Reporting Breaches Involving 500 or More Individuals.** If a breach of unsecured PHI involves 500 or more residents of the State of California or its jurisdiction, Contractor, with DDS's oversight and input, shall notify the Secretary of the breach immediately upon discovery of the breach and prominent media outlets serving the State of California or its jurisdiction in accordance with 42 USC § 17932 and 45 CFR §§ 164.406, 164.408. The breach reporting requirements of this paragraph are in addition to the reporting requirements set forth in subsection 10(A-C) above. In addition, Contractor, with DDS's input and oversight, shall notify the California Department of Justice, Office of the Attorney General, as required under Civil Code §1898.82.
- F. **DDS Contact Information.** Contractor shall direct communications to the following DDS staff. DDS reserves the right to make changes to the contact information below by giving written notice to the Contractor. Said changes shall not require an amendment to this Agreement.

DDS Privacy Officer	DDS Information Security Officer
Privacy Officer <a href="mailto:privacy@dds.ca.gov">privacy@dds.ca.gov</a> (916) 654-2120	Information Security Officer <a href="mailto:iso@dds.ca.gov">iso@dds.ca.gov</a> (916) 654-1704
Fax (916) 654-3352	Fax (916) 654-3352

## 11. **Term and Termination**

- A. **Term.** The term of this Agreement shall terminate when the regional center's contract expires or when all of the PHI provided by the DDS to Contractor, or created or received by Contractor on behalf of the DDS, in any format, is returned to the DDS and any associated storage media is destroyed, whichever is later.
- B. **Termination for Cause.** Upon DDS's knowledge of a pattern of activity or practice by Contractor that constitutes a violation of this Agreement by Contractor, DDS shall comply with the termination procedure set forth under the Lanterman Act.
- 1) DDS may take reasonable steps to provide an opportunity for Contractor to end the violation. If efforts to resolve the problem informally are unsuccessful, DDS shall have the option to issue a letter of noncompliance and establish a Corrective Action Plan ("CAP") under Welfare and Institutions Code section 4635; and if Contractor is not in compliance with the CAP, DDS shall move to terminate this Agreement under Welfare and Institutions Code section 4635.
  - 2) If cure is not possible and Contractor has committed a material breach, DDS shall comply with termination provisions set forth in the Lanterman Act to terminate this Agreement and report the violation to the HHS Secretary.
- C. **Effect of Termination or Nonrenewal**
- 1) In accordance with 45 CFR § 164.504(e)(2)(ii)(J), upon termination of this Agreement or nonrenewal of this Agreement, Contractor shall return or destroy all PHI and/or electronic PHI received from DDS or created or received by Contractor on behalf of the DDS. Contractor shall require that any PHI and/or electronic PHI in possession of subcontractors or agents is returned or destroyed and that no copies of such information is retained.
  - 2) In the event Contractor determines that returning or destroying the PHI and/or electronic PHI is not feasible, Contractor shall notify DDS about the conditions that make return or destruction not feasible. If DDS agrees that the return or destruction of PHI and/or electronic PHI is not feasible, Contractor shall extend the protections of this Agreement to such information and limit further use and disclosures of such personal information to those purposes that

make the return or destruction infeasible, for so long as Contractor, or any of its agents or subcontractors, maintains such information.

**12. Judicial or Administrative Proceeding**

DDS may terminate this Agreement in accordance with the terms and conditions of this Agreement as written herein above if: (1) Contractor is found guilty in a criminal proceeding for a violation of the HIPAA, HIPAA Regulations, or the HITECH Act; or (2) a finding or stipulation that the Contractor has violated a privacy or security standard or requirement of the HITECH Act, HIPAA, HIPAA Regulations or any more stringent applicable state law protecting PHI in an administrative or civil proceeding in which Contractor is a party.

**13. Due Diligence**

Contractor shall exercise due diligence to ensure that it remains in compliance with this Agreement and is in compliance with the applicable provisions of HIPAA, HIPAA Regulations, the HITECH Act, and any more stringent applicable state law protecting PHI, and require its subcontractors and agents to be in compliance with the same.

**14. Sanctions and/or Penalties**

Contractor understands and acknowledges that it is required to comply with the provisions of HIPAA, HIPAA Regulations, the HITECH Act, and any more stringent applicable state law protecting PHI, and that failure to comply with these laws may result in the imposition of civil and/or criminal sanctions and/or other penalties on Contractor as set forth under HIPAA, HIPAA Regulations and the HITECH Act.

**15. Employee Training and Discipline**

- A. Contractor shall use reasonable measures to ensure compliance with the requirements of this Agreement. In doing so, Contractor shall provide annual security and privacy training on HIPAA to its employees who create, receive, maintain or transmit PHI or electronic PHI on behalf of Contractor in accordance with 45 CFR § 164.308(a)(5)(i). Contractor shall require each employee who receives this training to sign a certification indicating the employee's name and the date on which the training was completed. Contractor shall retain each employee's written certifications for DDS inspection for a period of three years following contract termination.
- B. Contractor also agrees to discipline employees who intentionally violate any provisions of this Agreement, including up to termination of employment.

**16. Audits, Inspection and Enforcement**

From time to time, DDS may inspect the facilities, systems, information security controls, books and records of Contractor to monitor compliance with this Agreement. Contractor shall promptly remedy any violation of any provision of this

Agreement and shall certify the same to the DDS Privacy Officer in writing. The fact that DDS inspects, or fails to inspect, or has the right to inspect, Contractor's facilities, systems and procedures does not relieve Contractor of its responsibility to comply with this Agreement, nor does DDS's:

- A. Failure to detect; or
- B. Detection, but failure to notify Contractor or require Contractor's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of DDS enforcement rights under this Agreement.

If Contractor is the subject of an audit, compliance review, or complaint investigation by the Secretary or the Office of Civil Rights, U.S. Department of Health and Human Services, that is related to the performance of its obligations pursuant to this Agreement, Contractor shall notify DDS and provide DDS with a copy of any PHI or electronic PHI that Contractor provides to the Secretary or the Office of Civil Rights concurrently with providing such PHI or electronic PHI to the Secretary. Contractor is responsible for any civil or criminal penalties assessed due to an audit or investigation of Contractor in accordance with 42 USC § 17934(c).

#### **17. Obligations of DDS**

- A. **Notice of Privacy Practices.** DDS shall provide Contractor with the Notice of Privacy Practices that DDS produces in accordance with 45 CFR § 164.520, as well as any changes to such notice. Visit [www.dds.ca.gov](http://www.dds.ca.gov) to view the most current Notice of Privacy Practices:
- B. **Permission by Individuals for Use and Disclosure of PHI.** DDS shall provide Contractor with any changes in, or revocation of, permission by an individual to use or disclose PHI or electronic PHI, if such changes affect the Contractor's permitted or required uses and disclosures.
- C. **Notification of Restrictions.** DDS shall notify Contractor of any restriction to the use or disclosure of PHI that DDS has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Contractor's use or disclosure of PHI.
- D. **Requests Conflicting with HIPAA Rules.** DDS shall not request Contractor to use or disclose PHI or electronic in any manner that would not be permissible under HIPAA, HIPAA Regulations, HITECH Act, or any more stringent applicable state law protecting PHI.

#### **18. Miscellaneous**

- A. **Disclaimer.** DDS makes no warranty or representation that compliance by Contractor with this Agreement, HITECH Act, HIPAA, or HIPAA Regulations will be adequate or satisfactory for Contractor's own purposes or any information in Contractor's possession or control, or transmitted or received by Contractor, is or

will be secure from unauthorized access, viewing, use, or disclosure. Contractor is solely responsible for all decisions made by Contractor regarding the safeguarding of PHI.

- B. **Amendment.** The parties acknowledge that federal and state laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the HIPAA Regulations, and other applicable laws relating to the security or privacy of PHI and/or electronic PHI. Upon DDS's request Contractor agrees to promptly enter into negotiations with DDS concerning an amendment to this Agreement embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the HIPAA Regulations or other applicable laws. If informal attempts to negotiate are unsuccessful, DDS may move to terminate this Agreement in accordance with the Lanterman Act in the event:
- 1) Contractor does not promptly enter into negotiations to amend this Agreement when requested by DDS pursuant to this Section, or
  - 2) Contractor does not enter into an amendment providing assurances regarding the safeguarding of PHI that DDS deems sufficient to satisfy the standards and requirements of HIPAA, the HITECH Act, and the HIPAA Regulations.
- C. **Assistance in Litigation or Administrative Proceedings.** Contractor shall make available to DDS, at no cost to DDS, its employees, subcontractors and/or agents to testify as witnesses, or otherwise, in the event litigation or administrative proceedings are commenced against DDS, its officers or employees, based upon a claimed violation of HIPAA, HIPAA Regulations, HITECH Act or any more stringent applicable state law protecting PHI, which involve the inactions or actions by Contractor. This provision does not apply where Contractor or its subcontractor, employee or agent is a named adverse party to DDS.
- D. **No Third-Party Beneficiaries.** Nothing express or implied in the terms and conditions of this Agreement is intended to confer, nor shall anything herein confer, upon any person other than DDS or Contractor and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.
- E. **Interpretation.** The terms and conditions in this Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the HIPAA Regulations and any more stringent applicable state law protecting PHI. The parties agree that any ambiguity in the terms and conditions of this

Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, HIPAA Regulations, and any more stringent applicable state law protecting PHI.

- F. **References.** A reference in the terms and conditions of this Agreement to a section in HIPAA, HIPAA Regulations, and/or HITECH Act means the section currently in effect or as amended.
- G. **Survival.** The respective rights and obligations of Contractor in this Agreement shall survive the termination or expiration of this Agreement.
- H. **No Waiver of Obligations.** 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, or shall prohibit enforcement of any obligation, on any other occasion.

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**References:**

United States Department of Health and Human Services, Office for Civil Rights, Medical Privacy - National Standards to Protect the Privacy of Personal Health Information: <https://www.hhs.gov/hipaa/index.html>

United States Department of Health and Human Services, Centers for Medicare and Medicaid Services – Security Standards  
[www.cms.hhs.gov/SecurityStandard/](http://www.cms.hhs.gov/SecurityStandard/)

National Institute of Standards and Technology (NIST)  
[nist.gov/](http://nist.gov/)

FEDERAL INFORMATION PROCESSING STANDARDS (FIPS)  
[csrc.nist.gov/publications/PubsFIPS.html](http://csrc.nist.gov/publications/PubsFIPS.html)

**CONFIDENTIALITY AGREEMENT**

***REGIONAL CENTER OF THE EAST BAY, INC. dba REGIONAL CENTER OF THE  
EAST BAY***

***Required for Release of DDS Data  
Per the State Administrative Manual Section (5310)***

Contractor hereby acknowledges that Department of Developmental Services (DDS) records and documents are subject to strict confidentiality requirements imposed by State and Federal laws including, but not limited to, Health Insurance Portability and Accountability Act in Title 42 of the United States Code, Section 1320d *et seq.* and its implementing law and regulations such as the Health Information Technology for Economic and Clinical Health Act of 2009, (Public Law 111-005, Title XIII, Subtitle D, 13400 *et seq.*, Feb. 17, 2009), 45 CFR Parts 160 and 164, Sections 56 and following and 1798.24 through 1798.24b of the California Civil Code; California Welfare and Institutions Code sections 4514, 5328, and 15633 and following; California Penal Code Section 11167.5; and any other applicable State or Federal law pertaining to confidentiality.

Contractor assures that the appropriate provisions of both State and Federal law have been met and further assures that all agents of the organization, including subcontractors and agents, understand that unauthorized use, dissemination or distribution of PHI is a crime and that breaches of confidentiality and security may be subject to civil and criminal penalties by the State or Federal government.

Contractor assures that its agents, including subcontractors, will not use, disseminate or otherwise distribute records or documents containing PHI, either on paper or by electronic means, other than as required in the performance of their duties per this contract.

Contractor agrees that unauthorized use, dissemination or distribution of DDS records, documents or information is grounds for immediate termination of any contracts with the DDS and may subject Contractor to penalties, both civil and criminal.

\_\_\_\_\_  
Signature of Contractor's Authorized Representative

Date: \_\_\_\_\_

\_\_\_\_\_  
Name/Title (Print)

## **MEDICAID ENROLLMENT REQUIREMENTS**

### **1. PURPOSE**

Regional centers coordinate services for consumers for which federal funding is received from the Centers for Medicare and Medicaid Services, and are therefore required to enroll as a Medicaid provider in a manner mutually agreed upon with the State. This exhibit sets forth the terms and conditions under which the Contractor shall enroll as a Medicaid provider.

### **2. CONTRACT PRACTICES**

For the purposes of this Agreement, Contractor agrees to comply with all Medicaid provider enrollment requirements in accordance with Title 42 Code of Federal Regulations (CFR) Sections 455.104 (a), (b)(1)(2)(3)(4), (c), (d), (e); 455.105, (a), (b), (c); 455.106 (a), (b), (c); 455.410; 431.107 (b)(3); 424.302 (d); 424.304 (a)(1); and 424.535 (d)(1).

### **3. PROCEDURES FOR ENROLLMENT AND RE-ENROLLMENT**

Contractor shall adhere to the following enrollment and re-enrollment assurances and procedures:

- a. Disclosure information required for all members of the Contractor's Board of Directors as well as the Regional Center Executive Director:
  - 1) The name, address, date of birth, and social security number of the board member or Executive Director/Interim Executive Director identified above.
  - 2) If the board member or Executive Director/Interim Executive Director is related to any of the other individuals above (as a spouse, sibling, parent or child).
  - 3) The name of any other enrolled Medicaid provider in which the individual has an ownership or control interest.
  - 4) The name of any "Excluded Individuals", defined as those that have been placed on either the U.S. Department of Health and Human Services Office of Inspectors' General (OIG) List of Excluded Individuals/Entities or the Department of Health Care Services (DHCS) Medi-Cal Suspended and Ineligible Provider List of persons, or individuals and entities that have been convicted of a criminal offense related to involvement in any program under Medicare, Medicaid or the Title XX services program, or meet the criteria included in Title 17, Section 54311(a)(6).



- b. The disclosure information identified in paragraph a. 1) through 4) must be submitted to the State:
  - 1) Upon execution of this contract.
  - 2) Within 35 days of the individuals identified in paragraph a. becoming a member of the Board of Directors or becoming the Regional Center Executive Director/Interim Executive Director.
  - 3) Upon request of the State during revalidation of enrollment requirements every five years or sooner when any of the following circumstances apply:
    - a) A new Taxpayer Identification (ID) Number is issued by the IRS.
    - b) There is a cumulative change of 50 percent or more in the person(s) with an ownership or control interest (executive directors or board members) since the information provided in the last complete application package that was approved for enrollment.
    - c) The two examples above are the most likely circumstances for a regional center to complete a new application, an exhaustive list can be found at Title 22 CCR Section 51000.30.
- c. Individuals that either fail to disclose the required information or meet the "Excluded Individuals" criteria shall be prohibited from serving in the roles identified in paragraph b.

## GENERAL TERMS AND CONDITIONS

1. VALIDITY: Contractor is aware of the provisions of Public Contract Code, Sections 10295 and 10335, and acknowledges that this contract is void unless approved by the Department of General Services.
2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, federal auditor, any other State agency, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. INDEMNIFICATION: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
6. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon written demand.

8. INDEPENDENT CONTRACTOR: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.
9. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, §11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §§11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article. Contractor 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 the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. (See Cal. Code Regs., tit. 2, §11105.)

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

10. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in Exhibit I are made a part of this Agreement and attached hereto.
11. TIMELINESS: Time is of the essence in this Agreement.
12. COMPENSATION: The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

13. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.
14. CHILD SUPPORT COMPLIANCE ACT: For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:
- a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
  - b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
15. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

## CONTRACTOR CERTIFICATION CLAUSES

### CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

Contractor Name (Printed)	Federal ID Number
By (Authorized Signature)	
Printed Name and Title of Person Signing	
Date Executed	Executed in County of

### CONTRACTOR CERTIFICATION CLAUSES

1. STATEMENT OF COMPLIANCE: Contractor has, unless exempted, complied with the nondiscrimination program requirements. (Gov. Code §12990 (a-f) and CCR, Title 2, Section 11102) (Not applicable to public entities.)
2. DRUG-FREE WORKPLACE REQUIREMENTS: Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 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.
  - b. Establish a Drug-Free Awareness Program to inform employees about
    - 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 counseling, rehabilitation and employee assistance programs; and
    - 4) penalties that may be imposed upon employees for drug abuse violations
  - c. Every employee who works on the proposed Agreement will
    - 1) receive a copy of the company's drug-free workplace policy statement; and
    - 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the two years period immediately preceding execution of the contract because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board. (Pub. Contract Code §10296) (Not applicable to public entities.)
4. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.
5. DOMESTIC PARTNERS: For contracts of \$100,000 or more, Contractor certifies that Contractor is in compliance with Public Contract Code section 10295.3.
6. GENDER IDENTITY: For contracts of \$100,000 or more, Contractor certifies that Contractor is in compliance with Public Contract Code section 10295.35.

### **DOING BUSINESS WITH THE STATE OF CALIFORNIA**

The following laws apply to persons or entities doing business with the State of California.

1. CONFLICT OF INTEREST: Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (Pub. Contract Code §10410):

- 1) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- 2) No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (Pub. Contract Code §10411):

- 1) For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- 2) For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (Pub. Contract Code §10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Pub. Contract Code §10430 (e))

2. LABOR CODE/WORKERS' COMPENSATION AND INSURANCE: Contractor shall maintain insurance coverage for the entire period of this contract that will protect the financial assets provided to Contractor from the State to fulfill the terms and obligations of this contract. Insurance coverage shall include, but not be limited to: workers' compensation insurance; non-owned automobile insurance including personal injury and property damage; property insurance including personal injury, supplies, equipment and other property furnished by or acquired under or allocatable to this contract; employment practices liability insurance to cover discrimination complaints and other similar employment claims; and, Directors', Trustees' and Officers' liability insurance. Contractor shall maintain Fidelity Bonding.

Contractor shall immediately notify the State, in writing, when Contractor is unable to obtain any of the required insurance coverage or any of the required policies are cancelled. (Labor Code Section 3700)

3. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)
4. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
5. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other governmental entity.