

**EXHIBIT A - REGIONAL CENTER CONTRACT LANGUAGE  
[REGIONAL CENTER BOARD NAME]**

**FISCAL YEAR 2022-2023**

# REGIONAL CENTER MASTER CONTRACT INDEX

(Revised XXXXX)

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## ARTICLE I. STANDARD TERMS AND CONDITIONS

### 1. Amount of Contract

The total amount payable to Contractor under this contract shall not exceed \$XXXXXX 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.

**For only CVRC, KRC, SARC, SG/PRC, TCRC, and VMRC:**

- j. Exhibit J entitled "Memorandum of Understanding, Foster Grandparent Program," is attached hereto and made a part of this contract.

**For only CVRC, KRC, NBRC, SARC, SG/PRC, TCRC and VMRC:**

- k. Exhibit K entitled "Memorandum of Understanding, Senior Companion Program," is attached hereto and made a 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: XXXXXX (For LA regional centers: Contractor's regional center serves that portion of Los Angeles County which includes XXXXX Health Districts.)

## **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.

**Family Resource Center language only for HRC, IRC, FDLRC, NLACRC, RCOC, SG/PRC, SCLARC, TCRC and WRC:**

- 3) Contractor shall develop an annual Family Resource Center/Network Plan (FRCP) with input and concurrence from local agencies providing early intervention services. The plan shall include the following:
  - a) A description of how the Contractor provides family resource services, including but not limited to:
    - i) Parent-to-parent support
    - ii) Information dissemination and referral
    - iii) Public awareness
    - iv) Family-professional collaboration
    - v) Transition assistance for families
- 4) Contractor shall submit an annual report prepared in accordance with the State's Early Start Program Memoranda (ESPM).
- 5) Contractor shall maintain, in the Uniform Fiscal System (UFS), separate accountability for all federal funds expended for family resource service activities.

**Foster Grandparent language only for CVRC, KRC, SARC, SG/PRC, TCRC and VMRC:**

- f. Foster Grandparent Program
  - 1) Contractor shall comply with provisions of the Foster Grandparent Program as specified in Exhibit J.

**Senior Companion language only for CVRC, KRC, NBRC, SARC, SG/PRC, TCRC and VMRC:**

- g. Senior Companion Program
  - 1) Contractor shall comply with provisions of the Senior Companion Program as specified in Exhibit K.

**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, Contactor 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 any individual living in a community out-of-home setting (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).



## **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 ~~CPP~~ 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 <b>Privacy Officer</b>	DDS <b>Information Security Officer</b>
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**

*<Name of Entity/Project>*

***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.

## MEMORANDUM OF UNDERSTANDING FOSTER GRANDPARENT PROGRAM

This Memorandum of Understanding is between the State and the Contractor, in order to clarify the relationship and obligations of the parties for the Foster Grandparent Program (FGP).

The FGP provides meaningful community service opportunities for low-income seniors 55 years or older. They must be willing to work with physically, mentally and emotionally disabled children, adolescents, and teenagers, in environments conducive to and under the direction of teachers and staff who are dedicated to promoting independence, normalization, and community integration for each individual to the best of their ability.

This Memorandum of Understanding clarifies the relationship and obligations of the parties with respect to the FGP.

- I. The State is responsible for:
  - A. Administering the statewide Program of satellite Volunteer Projects.
  - B. Formulating, designing, and maintaining the necessary data and statistics on the FGP.
  - C. Writing the annual grant application and negotiating with each volunteer site.
  - D. Allocating resources and reviewing and authorizing reimbursements for local Project expenditures.
  - E. Communicating and advising local projects on federal guidelines and requirements.
  - F. Making periodic on-site visits to local projects.
  - G. Providing oversight consultation and technical assistance to the local FGP Project Manager and the local administration.
- II. The State and Contractor have joint responsibility for:
  - A. Planning for project changes in size, emphasis, or areas of involvement.
  - B. Ensuring that expenditures are in compliance with federal guidelines and in accordance with generally accepted accounting principles.



- C. Conformity to the AmeriCorps Seniors Program guidelines.
- D. Furnishing adequate accident and liability insurance coverage as required by federal guidelines.
- E. Assuring adequate health and safety precautions for the FGs.
- F. Implementation of the States FGP Programming for Impact Statement.

III. Contractor Responsibilities

The State delegates to the Executive Director and the FGP Project Manager responsibility for:

- A. Day-to-day operation of the Project.
- B. Maintenance of an active recruitment plan.
- C. Interviewing prospective FGs, selecting and orienting FGs, and responsibility for assuring that AmeriCorps Seniors required monthly training objectives are achieved.
- D. Providing direct supervision, support, and disciplinary action as necessary to the FGs. FGs are volunteers who are subject to the same disciplinary procedures as regional center employees.
- E. Making FG assignments and evaluating FG services in cooperation with local administration.
- F. Maintaining records and preparing reports as required by the State. They will be submitted to the State's FG Statewide Director or designee.
  - 1. Monthly: Hours, number of volunteers and fiscal information (FG Program Monthly Report form DS 2541).
  - 2. Quarterly: Hours, number of volunteers, in-service, training (FG Program Quarterly Report form DS 2542).
  - 3. Annual Project Profile/Volunteer Activity Survey: to be received no later than the date requested on the cover memo forwarding forms to the FGP Project Manager.

- G. Maintaining and filling vacancies on the FGP Advisory Council. Ensuring that the Advisory Council meets regularly and is actively involved in the Program, and that the meetings minutes are sent to the State's FGP Statewide Director.

In cooperation with the Program Advisory Council, arrange for a FGs' appeals procedure to resolve problems arising between the FG and the Volunteer Project.

- H. Ensuring for the provision of one meal reimbursement per day of service for each FG.
  - I. Preparing an annual evaluation of each FG or more often as needed.
  - J. Arranging for an annual physical examination, applicable, for the FGs.
  - K. Arranging for fingerprint and background clearances for FGs prior to enrollment in FGP.
  - L. Ensuring daily transportation reimbursement for FGs each day of service, chargeable to non-federal support.
  - M. Assuring that the FGs and the children engage only in activities which are appropriate to the objectives of the Program.
- IV. Contractor shall maintain separate records and accounts for the FGP as deemed necessary by the State (including property, personnel, and financial records) to enable it to meet the State's fiscal responsibilities to AmeriCorps Seniors, and to assure a proper accounting for all Program funds, both federal and non-federal shares. These records will be made available for audit purposed to AmeriCorps Seniors or the Comptroller General of the United States or their authorized representative, and be retained for three years after the expiration of the contract unless permission to destroy them is granted by AmeriCorps Seniors.

**MEMORANDUM OF UNDERSTANDING**  
**SENIOR COMPANION PROGRAM**

This Memorandum of Understanding is between the State and the Contractor, in order to clarify the relationship and obligations of the parties for the Senior Companion Program (SCP).

The SCP provides meaningful community service opportunities for low income seniors 55 years or older, who are willing to volunteer to work with physically, mentally and emotionally disabled adults 22 years old and over. They provide continued education towards achieving independence, providing companionship, mentoring, work training, crafts and leisure activities. They are under the supervision of program and site managers.

This Memorandum of Understanding clarifies the relationship and obligations of the parties with respect to the SCPs.

- I. The State is responsible for:
  - A. Administering the statewide Program of satellite Volunteer Projects.
  - B. Formulating, designing, and maintaining the necessary data and statistics on the SCPs.
  - C. Writing the annual grant application and negotiating with each volunteer site.
  - D. Allocating resources and reviewing and authorizing reimbursements for local Project expenditures.
  - E. Communicating and advising local projects on federal guidelines and requirements.
  - F. Making periodic on-site visits to local projects.
  - G. Providing oversight consultation and technical assistance to the local SCP Project Manager and the local administration.
- II. The State and Contractor have joint responsibility for:
  - A. Planning for project changes in size, emphasis, or areas of involvement.
  - B. Ensuring that expenditures are in compliance with federal guidelines and in accordance with generally accepted accounting principles.

- C. Conformity to AmeriCorps Seniors Program guidelines.
- D. Furnishing adequate accident and liability insurance coverage as required by federal guidelines.
- E. Assuring adequate health and safety precautions for the protection of the SCs.
- F. Implementation of the States SCP Programming for Impact Statement.

III. Contractor Responsibilities

The State delegates to the Executive Director and the SCP Project Manager responsibility for:

- A. Day-to-day operation of the Project.
- B. Maintenance of an active recruitment plan.
- C. Interviewing prospective SCs, selecting and orienting SCs, and responsibility for assuring that AmeriCorps Seniors required monthly training objectives are achieved.
- D. Providing direct supervision, support, and disciplinary action as necessary to the SCs. SCs are volunteers who are subject to the same disciplinary procedures as regional center employees.
- E. Making SC assignments and evaluating SC services in cooperation with local administration.
- F. Maintaining records and preparing reports as required by the State. They will be submitted to the State's SC Statewide Director or designee.
  - 1. Monthly: Hours, number of volunteers and fiscal information (SC Program Monthly Report form DS 2541).
  - 2. Quarterly: Hours, number of volunteers, in-service, training (SC Program Quarterly Report form DS 2542).
  - 3. Annual Project Profile/Volunteer Activity Survey: to be received no later than the date requested on the cover memo forwarding forms to the SCP Project Manager.

- G. Maintaining and filling vacancies on the SCP Advisory Council. Ensuring that the Advisory Council meets regularly and is actively involved in the Program, and that the meetings minutes are sent to the State's SCP Statewide Director.

In cooperation with the Program Advisory Council, arrange for a SCs' appeals procedure to resolve problems arising between the SC and the Volunteer Project.

- H. Ensuring for the provision of one meal reimbursement per day of service for each SC.
  - I. Preparing an annual evaluation of each SC or more often as needed.
  - J. Arranging for an annual physical examination, applicable, for the SCs.
  - K. Arranging for fingerprint and background clearances for SCs prior to enrollment in SCP.
  - L. Ensuring daily transportation reimbursement for SCs each day of service, chargeable to non-federal support.
  - M. Assuring that the SCs and the children engage only in activities which are appropriate to the objectives of the Program.
- IV. Contractor shall maintain separate records and accounts for the Senior Companion Program as deemed necessary by the State (including property, personnel, and financial records) to enable it to meet the State's fiscal responsibilities to AmeriCorps Seniors, and to assure a proper accounting for all Program funds, both federal and non-federal shares. These records will be made available for audit purposed to AmeriCorps Seniors or the Comptroller General of the United States or their authorized representative, and be retained for three years after the expiration of the contract unless permission to destroy them is granted by AmeriCorps Seniors.