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GAVIN NEWSOM
GOVERNOR

REQUEST FOR PROPOSAL—Secondary

Notice to Prospective Proposers

September 22, 2023

You are invited to review and respond to this Request for Proposal (RFP), entitled **DDS Self-Determination Program (SDP) Independent Facilitator Certification (RFP239021)**. In submitting your proposal, you must comply with these instructions. Please be sure to read all portions of this solicitation thoroughly (including the attached sample contract) prior to submitting a proposal, as language vital to the contract to be awarded is found throughout the solicitation. The anticipated term of this Agreement will be December 22, 2023, (or when fully executed, whichever occurs later) through December 21, 2024, with up to two (2), one year options to extend at the original rates submitted by Proposer.

Note that all agreements entered into with the State of California will include by reference General Terms and Conditions and Proposer Certification Clauses that may be viewed and downloaded at [Standard Contract Language for Non-IT Services](#).

In the opinion of the Department of Developmental Services (DDS) this RFP is complete and without need of explanation. However, if you have questions, or should you need any clarifying information, please see Section D. 2, 'Electronic Q & A for This RFP'.

Please note that no *verbal* information given will be binding upon the State unless such information is issued in writing as an official addendum.

Public or private corporations, agencies, organizations, associations, or individuals may submit a proposal in response to this RFP. The proposer must be legally constituted and qualified to do business within the State of California (registered with the California Secretary of State), if applicable. Proposer must be a legally cognizable public agency, sole proprietorship, partnership, or corporation (fully incorporated by the deadline for submitting proposal). Failure to meet the foregoing requirement will result in disqualification.

Proposer, including the proposers' representatives such as executives, officers, board members, and agents, must be responsible and have the capability to professionally carry out the terms of these contracts. Those proposers/proposers' representatives who have had a contract terminated with the DDS in the past 18 months will be disqualified and will not be considered in the award process. This restriction extends to any and all entities for which the proposers' representatives have been responsible for in whole or in part (e.g., making decisions, managing operations).

The Department of Developmental Services (DDS) is waiving the Disabled Veterans Business Enterprise (DVBE) participation requirements for this contract. However, the DVBE Incentive is still in effect. Please see page 17, Section E (3).

Executive Order N-6-22 Russian Sanctions – On March 4, 2022, Governor Gavin Newsom issued Executive Order [N-6-22](#) (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. “Economic Sanctions” refers to sanctions imposed by the U.S. government in response to Russia’s actions in Ukraine, as well as any sanctions imposed under state law. By submitting a bid or proposal, Contractor represents that it is not a target of Economic Sanctions. Should the State determine Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for rejection of the Contractor’s bid/proposal any time prior to contract execution, or, if determined after contract execution, shall be grounds for termination by the State.

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A. Purpose and Description of Services

1. Summary Statement

The California Department of Developmental Services (“Department”) is soliciting proposals to design Independent Facilitator (IF) standards as framed by the department (see Resources, Section F, #1,) and to design and implement a competency-based certification program for Independent Facilitators (IF) for such standards. Participants in California’s Self-Determination Program (SDP) may choose to use an IF to assist them in identifying their needs and help them locate, access, and coordinate services and supports consistent with their individual program plan (IPP).

2. Background

The Department is responsible for overseeing the coordination and delivery of services to Californians with developmental disabilities. California’s 21 community-based non-profit regional centers, funded by the Department, provide assessments and case management and purchase services to meet the needs and choices of individuals with intellectual and developmental disabilities throughout their lives. Of the approximately 400,000 individuals who receive services through the regional centers, more than 3,000 have opted to receive their services through the SDP and this number continues to grow.

California’s statewide SDP was established by statute in 2013. The federal Centers for Medicare and Medicaid Services (CMS) approved California’s initial SDP waiver on June 6, 2018. The program initially operated in a phased-in period. It was made available as an option for all individuals served by regional centers on July 1, 2021.

SDP participants may choose to use a trained IF who meets the Department’s standards and certification requirements. The IF may assist an SDP participant with the following: understanding the foundational principles of SDP and how these change the participant’s role in accessing services and supports, including an increased level of responsibility; identifying immediate and long-term needs and developing options to meet those needs; leading, participating, or advocating on behalf of the participant in the person-centered planning process and development of the participant’s Individual Program Plan (IPP); making informed decisions about the individual budget; and assisting the participant in locating, accessing and coordinating identified services and supports consistent with the participant’s IPP. The cost of the IF is paid by the participant from funds in their individual budget.

B. Scope of Work

1. General Provisions

The following provisions shall apply to all project tasks:

- a. The Proposer shall assign a contract manager who will be responsible for all project deliverables. The Proposer shall provide the Department with the contract manager's resume, email address, office phone number, and mobile phone number.
- b. The Proposer shall provide resumes for all key personnel who will work on the project including the names and contact information for any subcontractors.
- c. The Proposer shall describe the process they will use to obtain the Department's agreement with any staff changes that occur between the submission of the proposal and actual project implementation and any staff changes during project implementation.
- d. The Department must approve, prior to their use, all deliverables, including but not limited to the certification standards, method of providing the training, content of all training materials and the method of certification.
- e. All training modules, delivery methods and tools must comply with the Americans with Disabilities Act (ADA) requirements and meet the technology recommendations and minimum standards described in Section 508 of the Rehabilitation Act of 1973 as amended (29 U.S.C. Section 784).
- f. The Contractor shall provide all original materials utilized and source materials developed during this project, and solely for this project, as requested by the Department.
- g. The Department shall fully own all products and intellectual property developed under this contract.

2. Project Deliverables

- a. Design IF standards built upon the framework (Resources, Section F, #1) established by the Department and consistent with and fully inclusive of the applicable sections of Welfare & Institutions Code 4685.8 (Resources, Section F, #2), Department directives (Resources, Section F, #3), and Medicaid waiver requirements (Resources, Section F #4).
- b. Develop a certification program utilizing the standards for potential IFs approved by the Department.
- c. As part of the certification program, develop training modules which support the certification with a total of not less than 25 hours and not more than 40 hours of total training time, and which are consistent with the Department-approved certification standards.
- d. Be available in a web-based, online format available to potential IFs across the State of California.
- e. Be able to be accessed by potential IFs using an online Learning Management System (LMS) designated by the Department of Developmental Services (DDS)
- f. Provide content in English with closed captioning in English and Spanish and American Sign Language (ASL) on-screen interpretation for all applicable training curriculum and materials including when videos are produced with animation, graphics, and/or music.
- g. Meet accessibility requirements specified under the following:
 - i. California Government Code, Section 11135;
 - ii. Section 508 of the Federal Rehabilitation Act of 1973 (29 U.S.C. § 794d);
 - iii. Web content accessibility guidelines 2.0 or newer version published by the Web Accessibility Initiative of the World Wide Web Consortium at minimum Level AA success criteria;
 - iv. Be developed at a reading level of 6th grade or below;
 - v. Contain customizable, blended learning and training, and customizable learning modules to meet local needs; and,
 - vi. Be adaptable to include synchronous, asynchronous, online instructor-led, in-person and/or blended learning components in the future.

- h. Garner input from DDS, regional centers, and community partners, to include but not limited to self-advocates, families, advocates, and community-based organizations on the certification program and training modules.
- i. Develop training materials and resources relevant to the training curriculum which further the understanding of potential IFs.
- j. Course materials shall be translated into Spanish with the ability for translation into additional languages such as Vietnamese, Chinese, Tagalog, and Korean upon DDS request. Training curriculum and materials that are translated into other languages must be reviewed and approved by DDS personnel or a vendor approved by DDS.
- k. Ensure the training curriculum can be accessed using standard broadband access and equipment including a single screen (e.g., multimedia tablet, laptop, desktop computer, and smartphone).
- l. Develop a method for assessing a potential IF's competency in mastering the standards for certification, such as a post-test with required passing rate, to assess the potential IF's knowledge of the required standards and skills to support SDP participants. Utilize such to certify those individuals who demonstrate mastery of the required standards and skills.
- m. Maintain an updated list of IFs who are certified and provide each training participant with a certificate or other means of verifying they have completed the training. Maintain an online portal where the Department, regional centers, SDP participants and those interested in enrolling in the SDP, and Financial Management Services (FMS) providers can obtain information about certified IFs.
- n. Develop standards for a continuing education (CE) program including training modules which will allow potential IFs to complete required CEs.
- o. Provide the Department with a quarterly report about the certification program, including data about the number of individuals participating in the trainings, feedback about the trainings and recommendations to address any barriers to potential IFs becoming certified and ways to improve the training and certification program.
- p. Develop a satisfaction survey to collect input from regional centers, independent facilitators, consumers and self-advocates, family members, advocates, and community-based organizations on the competency, customer service, and availability of independent facilitators.

3. Proposer Minimum Qualifications

- a. The Proposer has 5 years demonstrated experience and capacity in competency-based curriculum development for complex subject matters related to developmental disabilities services.
- b. The Proposer has demonstrated knowledge of the services and supports used by individuals with intellectual and developmental disabilities, knowledge of self-determination programs and the principles of self-determination.
- c. The Proposer has 3 years demonstrated experience in developing standards and certification programs.
- d. The Proposer has demonstrated experience developing trainings which comply with Web Content Accessibility Guidelines 2.0, levels A and AA, and otherwise meet the accessibility requirements set forth in California Government Code Sections 7405 and 11135, Section 202 of the federal Americans with Disabilities Act (42 U.S.C. § 12132), and Section 508 of the federal Rehabilitation Act (29 U.S.C. § 794d) and the regulations promulgated thereunder (36 C.F.R. Parts 1193 and 1194) (collectively, the "Accessibility Requirements").

- e. The Proposer has 3 years demonstrated experience incorporating strategies for various learning styles, levels of technical skills, and cultural considerations and implementing training strategies that allow people with varying perspectives to have a safe space for learning.
- f. The Proposer has 3 years demonstrated experience and capacity in wide-scale delivery of competency-based trainings on a variety of online platforms including learning management systems.
- g. The Proposer has 3 years demonstrated experience in providing testing to demonstrate information and skills competency, certifying that competence, including maintaining an online portal which provides information about those who have passed the test and completed continuing education requirements.
- h. The Proposer has 3 years demonstrated experience analyzing certification and training programs and making recommendations to enhance the programs. To avoid conflicts of interest, the Proposer, or members of its governing entity/board shall not: a) be a provider vendored by a regional center, including services and supports provided through service code 024 and/or: b) provide paid services or supports to a participant in the Self-Determination Program through that participant's individual budget.
- i. Is able to provide no less than 3 professional letters of reference from entities with experience in and knowledge of self-directed services and supports for individuals with intellectual and developmental disabilities.

C. Project Administration

The Proposer shall perform the activities in the following areas:

- a. Within 45 days of execution of the contract, the awardee shall submit a proposed final draft workplan identifying detailed tasks and timelines to implement the project deliverables and include any data or other resources that are needed from DDS.
- b. The workplan shall include objectives, activities, responsible parties, outcomes/deliverables, and timelines. The workplan will outline effective administration of the deliverables of the contract.
- c. Modify the workplan based on input from DDS and finalize the workplan for approval by DDS within 14 days from receiving the input.
- d. Meet monthly, or as determined by DDS, with DDS staff to discuss progress and issues pertaining to implementation of the contract.
- e. Submit monthly activity and budgetary progress reports summarizing contract activities and expenditures during the prior month, as well as objectives (and associated activities) for the planned future months.

A 10% monetary withhold will be released upon satisfactory completion of all deliverables outlined in the contract.

D. Proposal Requirements and Information

1. Key Action Dates

f.

Event	Date
RFP Available to Prospective Proposers	Friday, September 22, 2023
Written (E-mailed) Question Submittal Deadline	Friday, October 6, 2023, at 1:00 PM PT
Answers to Proposers' Questions Available	Friday, October 13, 2023
Final Date for Proposal Submission	Wednesday, November 1, 2023, at 1:00 PM PT
Proposal Opening	Thursday, November 2, 2023, at 9:00 AM PT
Proposal Scoring **	November 3, 2023 to November 7, 2023
Presentations Held	November 14, 2023 to November 17, 2023
Notice of Intent to Award	Tuesday, November 21, 2023
Proposed Award Date	Friday, December 1, 2023

** *The Proposal Scoring time frame may be shortened if TACPA Preference is not requested by any proposer.*

2. Electronic Q & A for This RFP

For the purpose of submitting questions regarding this RFP, e-mails may be sent to Roberta Kline any time before and up to Friday, October 6, 2023, by 1:00 PM PT. Send your e-mail to roberta.kline@dds.ca.gov. All questions regarding this RFP will be shared via e-mail with each of the agencies/organizations that submit questions and posted to the DGS Cal eProcure website. The Department's answers to questions will be e-mailed and posted on Cal eProcure on Friday, October 13, 2023.

3. Cost Detail Format and Requirements

Use the Sample Cost Proposal Worksheet (Attachment 3) as a guide in preparing your cost proposal.

4. Submission of Proposal

- a. Proposals should provide straightforward and concise descriptions of the proposer's ability to satisfy the requirements of this RFP, including three (3) references, including, but not limited to, companies and specific work performed that demonstrates the ability to provide the services sought by DDS as described in Section A., Purpose and Description of Services, within the last five (5) years.
- b. The Proposer must provide resumés for each professional staff member/sub-proposer.
- c. The Proposer must include each item listed on ATTACHMENT 1, Required Attachments Checklist (page 21), including the Checklist itself.

- d. The proposal must be complete and accurate. Omissions, inaccuracies, or misstatements will be cause for rejection of a proposal.
- e. The proposer shall develop a work plan/plan of action to include, but not limited to:
 - Objectives
 - Minimum required activities to achieve the objectives
 - Outcome/Deliverables
 - Timeline

Which identifies each major task, necessary subtask, and/or specific milestones by which progress can be measured and payments made. See Purpose and Description of Services (page 5). The Plan must address 1) Project Personnel (List all personnel who will be working on the project and their titles and job descriptions) and 2) All aspects of the Purpose and Description of Services section (page 5).

- f. All proposals must be mailed under sealed cover and sent to the Department of Developmental Services by dates and times shown in Section D, Proposal Requirements and Information, Item 1) Key Action Dates (page 9). Proposals received after this date and time will not be considered.
- g. A minimum of one (1) hard copies of the proposal must be submitted. One (1) additional electronic copy of all portions of the proposal MUST also be submitted on a USB thumb drive. Where possible, all documents shall be in Microsoft Word or PDF, with the exception of the cost portion, which shall be in Microsoft Excel or PDF.
- h. The original proposal must be marked "ORIGINAL." All documents contained in the original proposal package must be signed by a person who is authorized to bind the proposing firm. Electronic signatures are acceptable.
- i. All proposal envelopes must be plainly marked with the RFP number and title, your firm name and address, and must be marked, as shown in the following example:

*Your Organization
123 Your Street, Room 100
Your City, Your State 90000*

HD239021 DDS Self-Determination Program Independent Facilitator Certification

The cost portion of the proposals must be in a **separate envelope, marked as above, and also be marked "COST PROPOSAL: DO NOT OPEN."** Cost portion should be saved as a **separate file on the USB drive.**

Proposals not submitted under sealed cover and marked as indicated will be rejected.

If the proposal is made under a fictitious name or business title, the actual legal name of proposer must be provided.

- j. All proposals shall include the documents identified in Section G, Required Attachments (page 21). Proposals not including the proper "required attachments" shall be deemed non-responsive. A non-responsive proposal is one that does not meet the basic proposal requirements and will not be evaluated for consideration of award of this contract.

k. Mail to the following address:

Department of Developmental Services
Attention: Roberta Kline
1215 O Street, MS 10-10
Sacramento, CA 95814

- l. Proposals must be submitted for the performance of all the services described herein. Any deviation from the work specifications will not be considered and will cause a proposal to be rejected.
- m. A proposal will be rejected if it is conditional or incomplete, or if it contains any alterations of form or other irregularities of any kind. The State may reject any or all proposals and may waive an immaterial deviation in a proposal. The State's waiver of an immaterial deviation shall in no way modify the RFP document or excuse the proposer from full compliance with all requirements if awarded the agreement.
- n. Costs incurred for developing proposals and in anticipation of award of the agreement, including any travel expenses incurred during the RFP process, are entirely the responsibility of the proposer and shall not be charged to the State of California.
- o. An individual who is authorized to bind the proposing firm contractually must sign the Attachment 2, Proposal/Proposer Certification Sheet (page 23). The signature must indicate the title or position that the individual holds in the firm. An unsigned proposal will be rejected. Proposers will be required to provide to DDS evidence of their authorization to sign the contract.
- p. A proposer may modify a proposal after its submission by withdrawing its original proposal and resubmitting a new proposal prior to the proposal submission deadline as set forth in the Key Action Dates. Proposal modifications offered in any other manner, oral or written, will not be considered.
- q. A proposer may withdraw its proposal by submitting a written withdrawal request to the State, signed by the proposer or an authorized agent in accordance with n) above. A proposer may thereafter submit a new proposal prior to the proposal submission deadline.
- r. The awarding agency may modify the RFP prior to the date fixed for submission of proposals by the issuance of an addendum to all parties who received a proposal package.
- s. The awarding agency may reject all proposals. In such instance, the agency is not required to award any agreement.
- t. Before submitting a response to this solicitation, proposers should review the response, correct all errors and confirm compliance with the RFP requirements.
- u. Where applicable, a proposer should carefully examine work sites and specifications. No increases to the cost bid submitted by any proposer will be allowed due to a proposer's lack of careful examination of work sites and specifications.
- v. DDS will not accept more than one proposal from a single individual, firm, partnership, corporation, or association whether submitted under the same or different names.
- w. DDS will not accept single bids submitted by a joint proposer. Additionally, if a bid is submitted by a subsidiary of another entity, the main entity must sign and be responsible for the contract.
- x. The State does not accept alternate contract language from any proposer. A proposal with such language will be considered a counterproposal and will be rejected. The State's General Terms and Conditions (GTC 04/2017) are not negotiable.
- y. No oral understanding or agreement shall be binding on either party.

5. Evaluation Process

- a. At the time of proposal opening, each proposal will be checked for the presence or absence of required information in conformance with the submission requirements of this RFP.
- b. Proposals that contain false or misleading statements, or which provide references which do not support an attribute or condition claimed by the proposer, will be rejected.
- c. Award, if made, will be to the highest scored responsive proposal.
- d. Proposal Evaluation: The proposals that meet the minimum qualifications, and include all required information and documents, will be evaluated, and scored according to the criteria indicated below. A responsive proposal is one that meets or exceeds the requirements stated in this RFP. To be considered a responsive proposal, it must achieve a minimum of 70% of the 60 maximum points (42 points) for the first six sections of the rating/scoring listed below.

Following initial scoring of the proposals, all proposals that meet the 70% minimum requirement will be scheduled for the Presentation. Presentations will be via video conference. **Proposers must provide a digital document of their presentation to Roberta.Kline@dds.ca.gov at least 48 hours prior to their presentation.** Their oral presentation should not exceed 60 minutes, followed by 15 minutes for follow-up questions and answers by the DDS evaluation committee. The presentation will be evaluated and scored as a whole according to the criteria indicated below, with the scores being added to the proposal scores. Presentations will be scheduled in accordance with the Key Action Dates.

Only those proposals determined to be responsive and responsible, and meeting the above minimum point threshold, will have their cost portions opened and scored, with the lowest cost receiving the maximum cost points (45), and each subsequent proposal receiving a proportional share based upon their relation to the lowest cost (e.g.: lowest cost is \$100 and receives the max [45] points; the next lowest cost is \$108. \$100 is divided by \$108, which is .93 [rounded to the nearest hundredth]. Multiply .93 by the max points [45] for a total of 41.9 cost points.) All points will be rounded to the nearest tenth of a point.

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Scoring Rubric

Proposer Name: _____

Reviewer Name: _____

Scoring Criteria	Possible Points	Earned Points
1. Can Provide Conflict Free Orientation and Training Services	Met/Not Met	Eligible (Y/N)
The Proposer, or members of its governing entity/board are not: a) a provider vendored by a regional center, including services and supports provided through service code 024 and/or: b) providers of paid services or supports to a participant in the Self-Determination Program through that participant's individual budget. (If this criterion is Not Met, the Proposer is not eligible for this contract.)		
2. Clarity and Organization of Proposal	5	
Proposal is clear, concise, and of quality that can be easily understood.	5	
3. Qualifications and Experience	20	
Proposer's qualifications and experience indicate expertise necessary to develop and deliver a competency-based curriculum for complex subject matters.	5	
Proposer's knowledge of the services and supports used by individuals with intellectual and developmental disabilities, knowledge of self-determination programs and the principles of self-determination.	5	
Proposer's qualifications and experience indicate expertise necessary to: <ul style="list-style-type: none"> • Incorporate strategies for various learning styles, levels of technical skills, cultural considerations, and compliance with accessibility guidelines. • Deliver competency-based trainings in multiple languages and in a variety of online platforms. • Provide testing and certification of competence to demonstrate information and skills outlined in the project deliverables. • Analyze satisfaction and effectiveness of the certification and training curriculum. 	10	

4. Specific Deliverables	25	
The proposal outlines specific strategies and effective administration for the timely and effective completion of all contract deliverables.	5	
The proposal identifies specific strategies to design standards and develop a certification curriculum based off the framework provided by the Department, in collaboration with the Department, and with input from community partners.	5	
The proposal outlines a clear plan for making the training available through the appropriate online learning management system.	5	
The proposal includes specific strategies to assess the IF's knowledge of the required standards and skills to support SDP participants, certify those individuals who demonstrate mastery of the required standards and skills, and develop a continuing education program.	5	
The proposal outlines a clear plan for tracking completion of the certification, verifying certification to participants, and maintaining an online portal accessible to regional centers, FMS providers, and SDP participants to verify certification of any IF.	5	

5. Effective Use of Resources	5	
<p>Does the proposal identify effective strategies to accomplish the following:</p> <ul style="list-style-type: none"> • Recruit, hire and retain qualified personnel and contractors. • Meet diverse language and disability-related needs of training participants. • Develop and/or expand effective working relationships with regional centers, self-advocacy and family member organizations and other community members connected to the DDS service system. 	5	

6. Letters of Reference	5	
Does the proposal include no less than 3 professional letters of reference from entities with experience in and knowledge of self-directed services and supports for individuals with intellectual and developmental disabilities?	5	

7. Presentation of Proposal	45	
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Provide a brief summary of proposer’s qualifications and experience and how these will inform proposer’s work with DDS, the regional centers, and community partners including current and potential Independent Facilitators.	15	
Provide a brief summary of the proposal including 1) the overall approach to developing performance standards for professional services and how this approach is informed by data and research; 2) the overall approach to designing and delivering virtual trainings and how this approach is informed by data and research, and; 3) the draft workplan and the specific strategies that will be used to implement the workplan and overcome barriers or obstacles to implementation.	20	
Provide an overview of the process, strategies implemented, and outcomes of similar projects the Proposer has implemented, including major obstacles and how they were resolved.	10	

8. Costs/Budget	45	
(To be calculated by PASS)	45	

6. Award and Protest

- a. Notice of the proposed award shall be posted in the same manner as the solicitation, on Cal eProcure, for five (5) full working days prior to awarding the agreement.
- b. If any proposer, prior to the award of agreement, files a protest with the Department of Developmental Services and the Department of General Services, Office of Legal Services, 707 Third Street, 7th Floor, Suite 7-330, West Sacramento, CA 95605, on the grounds that the (protesting) proposer would have been awarded the contract had the agency correctly applied the evaluation standard in the RFP, or if the agency followed the evaluation and scoring methods in the RFP, the agreement shall not be awarded until either the protest has been withdrawn or the Department of General Services has decided the matter. It is suggested that you submit any protest by certified or registered mail.
- c. Within five (5) days after filing the initial protest, the protesting proposer shall file with the Department of General Services, Office of Legal Services, and the Department of Developmental Services a detailed statement specifying the grounds for the protest.

- d. Upon resolution of the protest and award of the agreement, Proposer must complete and submit to the awarding agency the Payee Data Record (STD 204 and STD 205), to determine if the Proposer is subject to state income tax withholding pursuant to California Revenue and Taxation Code Sections 18662 and 26131. This form can be found on the Internet at [STD 204](#) and [STD 205](#). No payment shall be made unless a completed STD 204 and STD 205 (if applicable) has been returned to the awarding agency.
- e. Upon resolution of the protest and award of the agreement, Proposer must sign and submit to the awarding agency, page one (1) of the Proposer Certification Clauses ([CCC 04/2017](#)).

7. Disposition of Proposals

- a. Upon proposal opening, all documents submitted in response to this RFP will become the property of the State of California and will be regarded as public records under the California Public Records Act (Government Code Section 6250 et seq.) and subject to review by the public, when no longer considered 'working documents' (a contract has been awarded, or the State opts not to award a contract to any of the proposers).
- b. Proposal packages may be returned only at the proposer's expense unless such expense is waived by the awarding agency.

8. Agreement Execution and Performance

- a. Performance shall start not later than 10 calendar days, or on the express date set by the awarding agency and the Proposer, after all approvals have been obtained and the agreement is fully executed. Should the Proposer fail to commence work at the agreed upon time, the awarding agency, upon five (5) days written notice to the Proposer, reserves the right to terminate the agreement. In addition, the Proposer shall be liable to the State for the difference between Proposer's Proposal price and the actual cost of performing work by another Proposer.
- b. All performance under the agreement shall be completed on or before the termination.

E. Preference Programs

1. Small Business Preference

Certified small businesses or microbusinesses may claim a five percent (5%) preference when submitting their proposal. The five percent (5%) preference is used for computation purposes only, to determine the winning offer; it does not alter the total amount of the resulting contract. The value of the preference is limited to \$50,000 maximum, based upon the lowest responsive, responsible proposal. If a contract is awarded to a small business, microbusiness, or a non-small business utilizing the five percent preference; it is awarded for the actual amount of the proposal.

An explanation of the Small Business Preference program can be found at:

<https://www.dgs.ca.gov/PD/Services/Page-Content/Procurement-Division-Services-List-Folder/Certify-or-Re-apply-as-Small-Business-Disabled-Veteran-Business-Enterprise>.

2. Target Area Contract Preference Act (TACPA)

- a. Preference will be granted to California-based proposers in accordance with Government Code Section 4530 whenever an agreement for goods and/or services is in excess of \$100,000 and the Proposer meets certain requirements as defined in the California Code of Regulations (Title 2, Section 1896.30) regarding labor needed to produce the goods or provide the services being procured.
- b. Proposers desiring to claim the TACPA preference shall complete Attachment 8, STD 830 and Attachment 9, DGS PD 526 and submit with the Bid. Denial of TACPA preference requests is not a basis for rejection of the Bid.
- c. Agreements awarded with applied preference will be monitored throughout the life of the Agreement for compliance with statutory, regulatory, and contractual requirements. The State will take appropriate corrective action and apply sanctions as necessary to enforce the preference program.

3. DVBE Requirements and Incentive

DVBE Program Requirements

The Department of Developmental Services (DDS) is waiving the Disabled Veterans Business Enterprise (DVBE) participation requirements for this contract. However, the DVBE Incentive is still in effect.

The State has established goals for Disabled Veteran Business Enterprises (DVBE) participating in state contracts. To be considered responsive, bidders must complete and return the Bidder Declaration (GSPD-05-105) <https://www.documents.dgs.ca.gov/dgs/fmc/gspd/gspd05-105.pdf> (08/09) and the DVBE Declarations (STD 843) (5/2006) https://www.documents.dgs.ca.gov/dgs/fmc/gspd/pd_843.pdf as applicable. Failure to complete and submit all required forms with the bid, that fully document and meet the DVBE program requirement, may cause the bid to be rejected.

DVBE Incentive

This solicitation provides an incentive for DVBE participation. The following table will be used to establish DVBE incentive amounts.

Confirmed DVBE Participation of:	DVBE Incentive:
5% or Over	5% of available points (except cost points)
4% to 4.99% inclusive	4% of available points (except cost points)
3% to 3.99% inclusive	3% of available points (except cost points)
2% to 2.99% inclusive	2% of available points (except cost points)
1% to 1.99% inclusive	1% of available points (except cost points)
Under 1%	None

4. Non-Small Business Preference Request

- a. A five percent bid preference is available to a non-small business claiming 25 percent California certified SB subcontractor participation. If claiming the non-small business subcontractor preference, the Bid response must include a list of the small business(es) with which you commit to subcontract in an amount of at least 25 percent of the net bid price with one or more California certified SBs.
- b. The required list of California certified SB subcontracts must be provided on Attachment 9 and must include the following: 1) subcontractor name, 2) address, 3) phone number, 4) a description of the work to be performed and/or products supplied, 5) and the dollar amount or percentage of the net bid price (as specified in the solicitation) per subcontractor.
- c. In granting the Non-Small Business Preference, no bid price will be reduced by more than \$50,000. This preference cost adjustment is for bid evaluation purposes only and does not alter the actual cost offered by the Bidder. The Non-Small Business Preference is computed from the lowest responsive and responsible bid price.
- d. A non-small business is defined as a responsive, responsible bidder that is not certified by the DGS OSDS as an SB/MB enterprise.

5. SB 588

Requires an awarding department to withhold \$10,000, or the full payment if it is less than \$10,000.00, from the final payment on a contract until certification is received by the awarding department regarding DVBE participation and payment.

Requires the awarding department to give a prime contractor that fails to meet those certification requirements fifteen (15) to thirty (30) calendar days to cure the defect. If not, the final payment is permanently deducted.

F. Resources

1. Department Framework for Independent Facilitator (IF) Standards

IF Standards shall include, but are not limited to, the following topics and categories:

Qualifications:

- vii. Education and experience requirements
 - Eligible to provide services per Welfare & Institution Code sections 141123(a), 14123(b), and 14043.6.
- viii. Skills & Knowledge
 - California Self-Determination Program (SDP)
 - Federal SDP waiver and applicable state laws and regulations
 - California regional centers
 - Person-centered planning
 - Communication with individuals from diverse communities
 - Cultural competency
- ix. Professional Standards
 - Code of ethics
 - Informed/Supported Decision-Making
 - Conflict of interest requirements
 - Billing requirements
 - HIPAA and confidentiality
 - Performance expectations
- x. Reporting & Documentation
 - Comprehensive written agreement with participant
 - Scope of services
 - Rate structure
 - Discontinuation of services policy
 - Quarterly summary of services
 - Complaint reporting
 - Special Incident Reporting and mandated reporting requirements

2. Welfare & Institutions Code 4685.8(c)(2)

(2) "Independent facilitator" means a person, selected, and directed by the participant, who is not otherwise providing services to the participant pursuant to their IPP and is not employed by a person providing services to the participant. The independent facilitator may assist the participant in making informed decisions about the individual budget, and in locating, accessing, and coordinating services and supports consistent with the participant's IPP. The independent facilitator is available to assist in identifying immediate and long-term needs, developing options to meet those needs, leading, participating, or advocating on behalf of the participant in the person-centered planning process and development of the IPP, and obtaining identified services and supports. The cost of the independent facilitator, if any, shall be paid by the participant out of the participant's individual budget. An independent facilitator shall receive training in the principles of self-determination, the person-centered planning process, and the other responsibilities described in this paragraph at the independent facilitator's own cost. The independent facilitator shall meet standards and certification requirements established by the department.

Full copy of the Self-Determination Welfare & Institutions Code can be accessed here: [Lanterman Act](#)

3. Department Directives

https://www.dds.ca.gov/wp-content/uploads/2019/02/SDP_IndependentFacilitator_20190201.pdf

4. Self-Determination Medicaid Waiver Independent Facilitator Service Code (340) Definition

Independent Facilitator means a person, selected, and directed by the participant, who is not otherwise providing services to the participant pursuant to his or her IPP. The service or function is intended to assist the participant to plan for and access services to implement needed services identified in the participant's IPP. The services may include, but are not limited to:

- a. Participate in the person-centered planning process.
- b. Identify immediate and long-term needs, preferences, goals, and objectives of the participant for developing the IPP.
- c. Make informed decisions about the individual budget.
- d. Develop options to meet the identified immediate and long-term needs and access community services and supports specified in the IPP.
- e. Advocate on behalf of the participant in the person-centered planning process and development of the IPP, obtaining identified services and supports.

The participant/family may hire, or contract with an IF, and shall specify in the IPP the activities which the IF will conduct. A participant may elect to use his or her regional center service coordinator to fulfill the functions of an IF, instead of contracting with, or using the service of an independent facilitator. This service does not duplicate services provided by the participant's service coordinator.

Full Self-Determination Medicaid Waiver can be accessed at [SDP 2021 Renewal Approval Letter and Application](#).

A summary of all SDP service definitions can be accessed at [Self-Determination Program Service Definitions \(ca.gov\)](#).

G. Required Attachments

Refer to the following pages for Required Attachments that are a part of this Request for Proposal.

ATTACHMENT 1 –REQUIRED ATTACHMENTS CHECKLIST

A complete proposal package will consist of the items identified below, in addition to the proposed work plan/plan of action. Complete this checklist to confirm the items in your proposal. Place a check “√” or “X” next to each item that you are submitting to the State. For your proposal to be responsive, all required attachments, including this checklist, must be included.

<u>Attachment</u>	<u>Attachment Name/Description</u>
___ Attachment 1	Required Attachments Checklist
___ Attachment 2	Proposal/Proposer Certification Sheet
___ Attachment 3	Cost Proposal Worksheet (Submitted in separate file)
___ Attachment 4	Proposer References
___ Attachment 5	Payee Data Record (STD 204 and STD 205)
___ Attachment 6	Contractor’s Certification Clauses (CCC) 04/2017
___ Attachment 7	CA Small Business Certification (if applicable)
___ Attachment 8	Target Area Contract Preference Request (TACPA) (STD 830) (if applicable)
___ Attachment 9	Bidder’s Summary (DGS PD 526) (if applicable)
___ Attachment 10	DVBE Certification (if applicable)
___ Attachment 11	Darfur Certification (if applicable)
___ Attachment 12	Insurance Certificate(s) (per Exhibit D, Section 10)**
___ Attachment 13	Bidder Declaration (DGS PD 05-105)
___ Attachment 14	CA Civil Rights Laws Certification must be returned as part of the proposal. Electronic signatures are acceptable.
___ Attachment 15	Sexual Harassment Prevention Policy (for Proposer information and acknowledgement) **
___ Attachment 16	Business Associate Agreement (BAA) Health Insurance Portability and Accountability Act (HIPAA) **
___ Attachment 17	Resumes

**These documents are not required with the proposal but are required upon award of the contract.

ATTACHMENT 2 – PROPOSAL/PROPOSER CERTIFICATION SHEET

This Proposal/Proposer Certification Sheet must be signed and returned along with all the "Required Attachments" as an entire package with digital signatures. The cost proposal must be transmitted in a separate sealed envelope in accordance with RFP instructions.

Do not return Section C, Proposal Requirements and Information, nor the "Sample Agreement" at the end of this RFP.

- A. Place all additional required attachments, with the exception of the Required Attachments checklist, behind this certification sheet.
- B. The signature affixed hereon and dated certifies compliance with all the requirements of this proposal document. The signature below authorizes the verification of this certification.

An Unsigned Proposal/Proposer Certification Sheet may be Cause for Rejection

1. Company Name	2. Telephone Number ()	2a. Fax Number ()
3. Address		
Indicate your organization type:		
4. <input type="checkbox"/> Sole Proprietorship	5. <input type="checkbox"/> Partnership	6. <input type="checkbox"/> Corporation
Indicate the applicable employee and/or corporation number:		
7. Federal Employee ID No. (FEIN)	8. California Corporation No.	
9. Indicate applicable license and/or certification information:		
10. Proposer's Name (Print)	11. Title	
12. Signature	13. Date	
14. Are you certified with the Department of General Services, Office of Small Business Certification and Resources (OSBCR) as:		
a. California Small Business Yes <input type="checkbox"/> No <input type="checkbox"/>	b. Disabled Veteran Business Enterprise Yes <input type="checkbox"/>	
If yes, enter certification number:	No <input type="checkbox"/>	
_____	If yes, enter your certification number below:	
_____	_____	
NOTE: A copy of your Certification is required to be included if either of the above items is checked "Yes".		
Date application was submitted to OSBCR, if an application is pending:		

Completion Instructions for Proposal/Proposer Certification Sheet

Complete the numbered items on the Proposal/Proposer Certification Sheet by following the instructions below.

Item Numbers	Instructions
1, 2, 2a, 3	Must be completed. These items are self-explanatory.
4	Check if your firm is a sole proprietorship. A sole proprietorship is a form of business in which one person owns all the assets of the business in contrast to a partnership and corporation. The sole proprietor is solely liable for all the debts of the business.
5	Check if your firm is a partnership. A partnership is a voluntary agreement between two or more competent persons to place their money, effects, labor, and skill, or some or all of them in lawful commerce or business, with the understanding that there shall be a proportional sharing of the profits and losses between them. An association of two or more persons to carry on, as co-owners, a business for profit.
6	Check if your firm is a corporation. A corporation is an artificial person or legal entity created by or under the authority of the laws of a state or nation, composed, in some rare instances, of a single person and his successors, being the incumbents of a particular office, but ordinarily consisting of an association of numerous individuals.
7	Enter your federal employee tax identification number.
8	Enter your corporation number assigned by the California Secretary of State's Office. This information is used for checking if a corporation is in good standing and qualified to conduct business in California.
9	Complete, if applicable, by indicating the type of license and/or certification that your firm possesses and that is required for the type of services being procured.
10, 11, 12, 13	Must be completed. These items are self-explanatory.
14	If certified as a California Small Business, place a check in the "yes" box, and enter your certification number on the line. If certified as a Disabled Veteran Business Enterprise, place a check in the "Yes" box and enter your certification number on the line. If you are not certified to one or both, place a check in the "No" box. If your certification is pending, enter the date your application was submitted to OSBCR.

ATTACHMENT 3 – SAMPLE COST PROPOSAL WORKSHEET

1. <u>DIRECT LABOR</u>				
		Hours	Hourly Rate	Total
Personnel	(Job Description)	_____@	\$_____	\$_____
	(Job Description)	_____@	\$_____	\$_____
	(Job Description)	_____@	\$_____	\$_____
	(Job Description)	_____@	\$_____	\$_____
	(Job Description)	_____@	\$_____	\$_____
				Subtotal \$_____

2. <u>SUB-PROPOSER(S)</u>				
		Hours	Hourly Rate	Total
Sub-Proposer	(Job Description)	_____@	_____	\$_____
	(Job Description)	_____@	_____	\$_____
				Subtotal \$_____

3. <u>ADMINISTRATIVE/ BENEFITS AND INDIRECT/ OVERHEAD COSTS</u>				
				Subtotal \$_____

4. <u>ESTIMATED TRAVEL COSTS</u>				
				Subtotal \$_____

5. <u>TOTAL COST (Tables 1, 2, 3, and 4)</u>				
				\$_____

Travel costs shall be considered a reimbursable expense up to the amounts permitted by CalHR's current travel/lodging rates and included in the evaluation process.

ATTACHMENT 4 – PROPOSER REFERENCES

Submission of this attachment is mandatory. Failure to complete and return this attachment with your proposal will cause your proposal to be rejected and deemed nonresponsive.

List below three references for services performed within the last five years, which are similar to the scope of work to be performed in this contract. If three references cannot be provided, please explain why on an attached sheet of paper. **DDS or its employees may be not used as a reference.**

REFERENCE 1			
Name of Firm			
Street Address	City	State	Zip Code
Contact Person		Telephone Number	
Date Range of Service		Value or Cost of Service	
Brief Description of Service Provided			

REFERENCE 2			
Name of Firm			
Street Address	City	State	Zip Code
Contact Person		Telephone Number	
Date Range of Service		Value or Cost of Service	
Brief Description of Service Provided			

REFERENCE 3			
Name of Firm			
Street Address	City	State	Zip Code
Contact Person		Telephone Number	
Date Range of Service		Value or Cost of Service	
Brief Description of Service Provided			

ATTACHMENT 5 – PAYEE DATA RECORD

May be found at:

[STD 204 - Payee Data Record](#)

[STD 205 - Payee Data Record Supplement](#)

ATTACHMENT 6 – CCC 04/2017

All Entities must sign the first page of the Proposer's Certification Clause, CCC 04/2017:

[CCC 04/2017 – Contractor Certification Clauses](#)

**ATTACHMENT 7 – CALIFORNIA SMALL BUSINESS CERTIFICATION (IF
APPLICABLE)**

[SB/DVBE Certification](#)

**ATTACHMENT 8 – TARGET AREA CONTRACT PREFERENCE REQUEST
(TACPA) (STD 830) (IF APPLICABLE)**

<http://www.documents.dgs.ca.gov/dgs/fmc/pdf/std830.pdf>

ATTACHMENT 9 – BIDDER’S SUMMARY (DGS PD 526) (IF APPLICABLE)

<https://www.documents.dgs.ca.gov/dgs/fmc/gspd/gspd0526.pdf>

**ATTACHMENT 10 – DISABLED VETERANS BUSINESS ENTERPRISE
CERTIFICATION (IF APPLICABLE)**

[SB/DVBE Certification](#)

ATTACHMENT 11 – DARFUR CONTRACTING ACT CERTIFICATION

If applicable, Proposers must complete the DARFUR Contracting Act Certification and include it with the bid response.

[DGS PD 1 – Darfur Contracting Act Certification](#)

ATTACHMENT 12 – INSURANCE CERTIFICATES

INSURANCE CERTIFICATE(S)

If the contract requires work of a professional nature, then Proposer agrees to maintain such types and amounts of professional liability or responsibility insurance as are customary in the industry for the work being performed under the terms of the Agreement. In no case shall the amount of the insurance be less than \$1,000,000 for any one occurrence and \$2,000,000 in the aggregate.

Certificate of Insurance must be provided at the time of the award.

ATTACHMENT 13 – BIDDER DECLARATION

Bidder Declaration (DGS PD 05-105) may be found at:

[DGS PD 05-105 – Bidder Declaration](#)

ATTACHMENT 14 – CALIFORNIA CIVIL RIGHTS LAWS CERTIFICATION

All Proposers must complete the California Civil Rights Laws Certification and include it with the bid response.

[DGS OLS 04 – California Civil Rights Law Attachment](#)

ATTACHMENT 15 – SEXUAL HARASSMENT PREVENTION POLICY

See sample agreement.

**ATTACHMENT 16 – STATEMENT OF ASSURANCES FOR PROTECTION OF
PROTECTED HEALTH INFORMATION**

See sample agreement.

ATTACHMENT 17 – RESUMES

The Proposer shall provide resumes for all key personnel who will work on the evaluation.

Standard Agreement (STD 213)

See attached sample agreement with related exhibits.

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

STANDARD AGREEMENT

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER HD239021	PURCHASING AUTHORITY NUMBER (If Applicable)
-------------------------------------	---

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

CONTRACTING AGENCY NAME
Department of Developmental Services

CONTRACTOR NAME
To Be Determined

2. The term of this Agreement is:
START DATE
December 22, 2023, or whenever fully executed, whichever is later

THROUGH END DATE
December 21, 2024

3. The maximum amount of this Agreement is:
To Be Determined

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Agreement.

Exhibits	Title	Pages
Exhibit A	Scope of Work	5
Exhibit A - Attachment 1	Department Framework for Independent Facilitator (IF) Standards	1
Exhibit A - Attachment 2	Welfare & Institutions Code 4685.8(c)(2)	1
+ - Exhibit A - Attachment 3	Department Directives	1
+ - Exhibit A - Attachment 4	Self-Determination Medicaid Waiver Independent Facilitator Service Code (340) Definition	1
+ - Exhibit B	Budget Detail and Payment Provisions	1
+ - Exhibit B - Attachment 1	Proposed Budget	1
+ - Exhibit C	General Terms and Conditions	GTC 04/2017
+ - Exhibit D	Special Terms and Conditions	8
+ - Exhibit E	Consultant Services Provisions	2
+ - Exhibit F	Sexual Harassment Prevention Policy Directive	8
+ - Exhibit G	Statement of Assurances for Protection of Protected Health Information	16
+ - Attachment	Resumes	TBD

Items shown with an asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto. These documents can be viewed at <https://www.dgs.ca.gov/OLS/Resources>

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

STANDARD AGREEMENT

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER HD239021	PURCHASING AUTHORITY NUMBER (If Applicable)
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IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

CONTRACTOR

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

Contractor's Name

CONTRACTOR BUSINESS ADDRESS Contractor's Address	CITY Contractor's City	STATE XX	ZIP XXXXX
---	---------------------------	-------------	--------------

PRINTED NAME OF PERSON SIGNING Authorized Signer	TITLE Title of Authorized Signer
---	-------------------------------------

CONTRACTOR AUTHORIZED SIGNATURE	DATE SIGNED
---------------------------------	-------------

STATE OF CALIFORNIA

CONTRACTING AGENCY NAME

Department of Developmental Services

CONTRACTING AGENCY ADDRESS 1215 O Street, MS 10-10	CITY Sacramento	STATE CA	ZIP 95814
---	--------------------	-------------	--------------

PRINTED NAME OF PERSON SIGNING Greg Trahey	TITLE Manager, Contracts Unit
---	----------------------------------

CONTRACTING AGENCY AUTHORIZED SIGNATURE	DATE SIGNED
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CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL	EXEMPTION (If Applicable)
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EXHIBIT A

A. Purpose and Description of Services

1. Summary Statement

The California Department of Developmental Services (“Department”) is soliciting proposals to design independent Facilitator (IF) standards as framed by the Department (Exhibit A Attachment 1), and to design and implement a competency-based certification program for Independent Facilitators (IF) for such standards. Participants in California’s Self-Determination Program (SDP) may choose to use an IF to assist them in identifying their needs and help them locate, access, and coordinate services and supports consistent with their individual program plan (IPP).

2. Background

The Department is responsible for overseeing the coordination and delivery of services to Californians with developmental disabilities. California’s 21 community-based non-profit regional centers, funded by the Department, provide assessments and case management and purchase services to meet the needs and choices of individuals with intellectual and developmental disabilities throughout their lives. Of the approximately 400,000 individuals who receive services through the regional centers, more than 3,000 have opted to receive their services through the SDP and this number continues to grow.

California’s statewide SDP was established by statute in 2013. The federal Center for Medicaid and Medicare Services (CMS) approved California’s initial SDP waiver on June 6, 2018. The program initially operated in a phased-in period. It was made available as an option for all individuals served by regional centers on July 1, 2021.

SDP participants may choose to use a trained IF who meets the Department’s standards and certification requirements. The IF may assist an SDP participant with the following: understanding the foundational principles of SDP and how these change the participant’s role in accessing services and supports, including an increased level of responsibility; identifying immediate and long-term needs and developing options to meet those needs; leading, participating, or advocating on behalf of the participant in the person-centered planning process and development of the participant’s Individual Program Plan (IPP); making informed decisions about the individual budget; and assisting the participant in locating, accessing and coordinating identified services and supports consistent with the participant’s IPP. The cost of the IF is paid by the participant from funds in their individual budget.

EXHIBIT A

B. Scope of Work

1. General Provisions

The following provisions shall apply to all project tasks:

- a. The Proposer shall assign a contract manager who will be responsible for all project deliverables. The Proposer shall provide the Department with the contract manager's resume, email address, office phone number, and mobile phone number.
- b. The Proposer shall provide resumes for all key personnel who will work on the project including the names and contact information for any subcontractors.
- c. The Proposer shall describe the process they will use to obtain the Department's agreement with any staff changes that occur between the submission of the proposal and actual project implementation and any staff changes during project implementation.
- d. The Department must approve, prior to their use, all deliverables, including but not limited to the certification standards, method of providing the training, content of all training materials and the method of certification.
- e. All training modules, delivery methods and tools must comply with the Americans with Disabilities Act (ADA) requirements and meet the technology recommendations and minimum standards described in Section 508 of the Rehabilitation Act of 1973 as amended (29 U.S.C. Section 784).
- f. The Contractor shall provide all original materials utilized and source materials developed during this project, and solely for this project, as requested by the Department.
- g. The Department shall fully own all products and intellectual property developed under this contract.

2. Project Deliverables

- a. Design IF standards built upon the framework (Exhibit A Attachment 1) established by the Department and consistent with and fully inclusive of the applicable sections of Welfare & Institutions Code 4685.8 (Exhibit A Attachment 2), Department directives (Exhibit A Attachment 3), and Medicaid waiver requirements (Exhibit A Attachment 4).
- b. Develop a certification program utilizing the standards for potential IFs approved by the Department.
- c. As part of the certification program, develop training modules which support the certification with a total of not less than 25 hours and not more than 40 hours of total training time, and which are consistent with the Department-approved certification standards.
- d. Be available in a web-based, online format available to potential IFs across the State of California.

EXHIBIT A

- e. Be able to be accessed by potential IFs using an online Learning Management System (LMS) designated by the Department of Developmental Services (DDS).
- f. Provide content in English with closed captioning in English and Spanish and American Sign Language (ASL) on-screen interpretation for all applicable training curriculum and materials including when videos are produced with animation, graphics, and/or music.
- g. Meet accessibility requirements specified under the following:
 - i. California Government Code, Section 11135
 - ii. Section 508 of the Federal Rehabilitation Act of 1973 (29 U.S.C. § 794d)
 - iii. Web content accessibility guidelines 2.0 or newer version published by the Web Accessibility Initiative of the World Wide Web Consortium at minimum Level AA success criteria.
 - iv. Be developed at a reading level of 6th grade or below.
 - v. Contain customizable, blended learning and training, and customizable learning modules to meet local needs; and,
 - vi. Be adaptable to include synchronous, asynchronous, online instructor-led, in-person and/or blended learning components in the future.
- h. Garner input from DDS, regional centers, and community partners, to include but not limited to self-advocates, families, advocates, and community-based organizations on the certification program and training modules.
- i. Develop training materials and resources relevant to the training curriculum which further the understanding of potential IFs.
- j. Course materials shall be translated into Spanish with the ability for translation into additional languages such as Vietnamese, Chinese, Tagalog, and Korean upon DDS request. Training curriculum and materials that are translated into other languages must be reviewed and approved by DDS personnel or a vendor approved by DDS.
- k. Ensure the training curriculum can be accessed using standard broadband access and equipment including a single screen (e.g., multimedia tablet, laptop, desktop computer, and smartphone).
- l. Develop a method for assessing a potential IF's competency in mastering the standards for certification, such as a post-test with required passing rate, to assess the potential IF's knowledge of the required standards and skills to support SDP participants. Utilize such to certify those individuals who demonstrate mastery of the required standards and skills.
- m. Maintain an updated list of IFs who are certified and provide each training participant with a certificate or other means of verifying they have completed the training. Maintain an online portal where the Department, regional centers, SDP participants and those interested in enrolling in the SDP, and Financial Management Services (FMS) providers can obtain information about certified IFs.
- n. Develop standards for a continuing education (CE) program including training modules which will allow potential IFs to complete required CEs.

EXHIBIT A

- o. Provide the Department with a quarterly report about the certification program, including data about the number of individuals participating in the trainings, feedback about the trainings and recommendations to address any barriers to potential IFs becoming certified and ways to improve the training and certification program.
- p. Develop a satisfaction survey to collect input from regional centers, independent facilitators, consumers and self-advocates, family members, advocates, and community-based organizations on the competency, customer service, and availability of independent facilitators.

C. Project Administration

The Proposer shall perform the activities in the following areas:

- a. Within 45 days of execution of the contract, the awardee shall submit a proposed final draft workplan identifying detailed tasks and timelines to implement the project deliverables and include any data or other resources that are needed from DDS.
- b. The workplan shall include objectives, activities, responsible parties, outcomes/deliverables, and timelines. The workplan will outline effective administration of the deliverables of the contract.
- c. Modify the workplan based on input from DDS and finalize the workplan for approval by DDS within 14 days from receiving the input.
- d. Meet monthly, or as determined by DDS, with DDS staff to discuss progress and issues pertaining to implementation of the contract.
- e. Submit monthly activity and budgetary progress reports summarizing contract activities and expenditures during the prior month, as well as objectives (and associated activities) for the planned future months.
- f. Project Representatives:

Department of Developmental Services	Contractor
Name:	Name:
Title:	Title:
Address:	Address:
Phone:	Phone:
Email:	Email:

Either party may designate a different Project Representative and provide updated contact information by giving written notice to the other party. Said changes shall not require amendment to this Contract.

EXHIBIT A

A 10% monetary withhold will be released upon satisfactory completion of all deliverables outlined in the contract.

D. Amendments

- a. The parties reserve the right to amend this agreement by extending the term for an additional two (2) up to one (1) year periods at the original rates submitted by Contractor, and to add funding sufficient for that period at the same rates. Any amendment shall be in writing, signed by both parties, and be approved by the Department of General Services (DGS) if such approval is required.
- b. This contract may be amended by written mutual agreement to address budgetary changes caused by Cal H/R rate changes and/or State or Federal budget appropriation. Additionally, DDS reserves the right to modify the State's Scope of Work, as mutually agreed to by the Contractor, to include additional work related to the Scope of Work in the event such work is identified, considered necessary to fulfill contract requirements, and funds become available. Any budgetary changes via amendment, not including option years, shall not exceed 30% of the original contact value.
- c. Any changes to the Scope and/or funding must be done in writing as a formal contract amendment.

EXHIBIT A Attachment 1

Department Framework for Independent Facilitator (IF) Standards

IF Standards shall include, but are not limited to, the following topics and categories:

- i. Education and experience requirements
 - Eligible to provide services per Welfare & Institutions Code sections 141123(a), 14123(b), and 14043.6.
- ii. Skills & Knowledge
 - California Self-Determination Program (SDP)
 - Federal SDP waiver and applicable state laws and regulations
 - California regional centers
 - Person-centered planning
 - Communication with individuals from diverse communities
 - Cultural competency
- iii. Professional Standards
 - Code of ethics
 - Informed/Supported Decision-Making
 - Conflict of interest requirements
 - Billing requirements
 - HIPAA and confidentiality
 - Performance expectations
- iv. Reporting & Documentation
 - Comprehensive written agreement with participant
 - Scope of services
 - Rate structure
 - Discontinuation of services policy
 - Quarterly summary of services
 - Complaint reporting
 - Special Incident Reporting and mandated reporting requirements

EXHIBIT A Attachment 2

Welfare & Institutions Code 4685.8(c)(2)

“Independent facilitator” means a person, selected, and directed by the participant, who is not otherwise providing services to the participant pursuant to their IPP and is not employed by a person providing services to the participant. The independent facilitator may assist the participant in making informed decisions about the individual budget, and in locating, accessing, and coordinating services and supports consistent with the participant’s IPP. The independent facilitator is available to assist in identifying immediate and long-term needs, developing options to meet those needs, leading, participating, or advocating on behalf of the participant in the person-centered planning process and development of the IPP, and obtaining identified services and supports. The cost of the independent facilitator, if any, shall be paid by the participant out of the participant’s individual budget. An independent facilitator shall receive training in the principles of self-determination, the person-centered planning process, and the other responsibilities described in this paragraph at the independent facilitator’s own cost. The independent facilitator shall meet standards and certification requirements established by the department.

Full copy of the Self-Determination Welfare & Institutions Code can be accessed here: [Lanterman Act](#)

EXHIBIT A Attachment 3

Department Directives

For Department of Developmental Services' Department Directive for Independent Facilitators, see:

https://www.dds.ca.gov/wp-content/uploads/2019/02/SDP_IndependentFacilitator_20190201.pdf

EXHIBIT A Attachment 4

Self-Determination Medicaid Waiver Independent Facilitator Service Code (340) Definition

Independent Facilitator means a person, selected, and directed by the participant, who is not otherwise providing services to the participant pursuant to his or her IPP. The service or function is intended to assist the participant to plan for and access services to implement needed services identified in the participant's IPP. The services may include, but are not limited to:

- a. Participate in the person-centered planning process.
- b. Identify immediate and long-term needs, preferences, goals, and objectives of the participant for developing the IPP.
- c. Make informed decisions about the individual budget.
- d. Develop options to meet the identified immediate and long-term needs and access community services and supports specified in the IPP.
- e. Advocate on behalf of the participant in the person-centered planning process and development of the IPP, obtaining identified services and supports.

The participant/family may hire, or contract with an IF, and shall specify in the IPP the activities which the IF will conduct. A participant may elect to use his or her regional center service coordinator to fulfill the functions of an IF, instead of contracting with, or using the service of an independent facilitator. This service does not duplicate services provided by the participant's service coordinator.

Full Self-Determination Medicaid Waiver can be accessed at

https://www.dds.ca.gov/wp-content/uploads/2021/12/SDP_Renewal_Approval_Letter_and_Application_2021.pdf

A summary of all SDP service definitions can be accessed at

https://www.dds.ca.gov/wp-content/uploads/2019/05/SDP_Service_Definitions.pdf

EXHIBIT B

BUDGET DETAIL AND PAYMENT PROVISIONS

1. Payment Provisions

- a. Upon DDS approval of monthly progress report and submission of an invoice, stating the services provided, the time period covered, project phase, or task completed with associated staff hours and rates, and the Agreement number. Contractor shall be paid in arrears monthly at the rates specified herein or attached hereto, for services performed in a manner acceptable to the State. Payments shall be made after receipt of notification from the Project Representative that acceptable work has been performed by Contractor for a given month. Invoices shall be sent electronically to the Project Representative. Send invoices to:

sdp@dds.ca.gov

- b. Ten (10) percent of the total dollar amount of each invoice will be withheld. Upon completion and acceptance of outcomes, deliverables, and/or summary reports, the ten (10) percent will be released and all remaining balance due shall be paid to the Contractor on the following month's invoice.
- c. Payments to Contractor, as specified herein, shall include all taxes, federal, state, and local, payable by Contractor by reason of this Agreement.

2. Budget Contingency Clause

- a. It is mutually agreed that if the Budget Act of the current fiscal year and/or any subsequent fiscal years covered under this Agreement does not appropriate sufficient funds for this program, this Agreement shall be of no further force and effect. In this event, 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.
- b. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State or offer an amendment to Contractor to reflect the reduced amount.

3. Contract Budget Changes

If this Agreement contains a budget, all proposed transfers between individual line items and additions or deletions of line items shall be requested in writing to the appropriate Project Representative. Such requests shall contain an explanation of the need for the change, identification of the line items to be changed, and a revised budget. The State reserves the right to deny any request for line-item transfers, additions, or deletions. Any line-item budget shift requests made by the contractor exceeding 10% (and/or \$25,000.00) of the contract will require the State to request a formal amendment to the contract, and DGS approval, as applicable.

4. Accounting Procedures

Contractor shall establish and maintain fiscal control and accounting procedures as may be necessary to assure proper disbursement of, and accounting for, all funds received under this Agreement.

EXHIBIT B

5. **Prompt Payment Act**

All payments shall be made in accordance with the California Prompt Payment Act. (Government Code Section 927 et seq.)

EXHIBIT B ATTACHMENT 1

PROPOSED BUDGET

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EXHIBIT D

SPECIAL TERMS AND CONDITIONS

1. Termination for Convenience

The State may terminate performance of work under this Agreement for any reason the State determines that such termination is in the best interests of the State. A written notice will be provided to Contractor at least thirty (30) days prior to the termination.

2. Contractor Overpayments

If it is determined that an overpayment has been made to the Contractor, the State will seek recovery immediately upon discovery of the overpayment by: (a) requesting in writing that Contractor refund the overpayment amount within thirty (30) days after receipt of notice; or (b) offsetting subsequent Contractor payments by the amount of the overpayment if Contractor repayment is not received within thirty (30) days from the date of notice.

3. Accounting Requirements

Contractor shall establish an accounting system using generally accepted accounting principles that will provide information for reports to the State and which will provide documentation for the fiscal activities of the organization related to this Agreement. The accounting system must include adequate cost accounting procedures that will provide accurate costing for contractual amendments, and for any other costs incurred which relate to payment claimed by Contractor.

4. Service Standards

Contractor agrees to comply with all state and federal laws and regulations which are applicable to the services to be provided under this Agreement. In the course of providing such services, Contractor agrees to treat all people with developmental disabilities in a manner that assures their safety, health, rights, dignity, and privacy as specified in, Welfare and Institutions Code, Section 4500; California Code of Regulations, Title 17, Subchapters 5 and 8 and Title 22, Code of Regulations, Sections 70707, 72527, and 76525.

5. Agreement Titles Statement

The clause headings appearing in this agreement have been inserted for the purpose of convenience and ready reference. They do not purport to and shall not be deemed to define, limit, or extend the scope of intent of the clauses to which they pertain.

6. Limitation of State Liability

The liability of the State under this Agreement shall not exceed the amount of funds appropriated for this Agreement by the California Legislature.

7. Licenses

Contractor shall be responsible for obtaining and maintaining all applicable federal, state and local licenses, registrations, permits, and certifications during the entire term of this Agreement.

EXHIBIT D

8. Travel and Per Diem

If travel is a reimbursable item, necessary travel expenses and per diem rates must not exceed the rates specified by the Department of Personnel Administration for comparable classes of state employees. No travel outside the State of California shall be reimbursed unless prior written authorization is obtained from the State.

9. Additional Non-Discrimination Clause (Supplements Article 10, Exhibit C, General Terms and Conditions)

In accordance with and in addition to Article 10 of the Standard Terms and Conditions, Exhibit C, the Department requires all contractors to comply with DDS' policy on sexual harassment. This policy is attached. The contractor is responsible for reviewing it with all applicable employees and requiring their strict adherence to this policy.

10. Insurance

Contractor shall have and maintain throughout the entire term of this Agreement or any extension thereof insurance appropriate to the work to be performed, providing coverage during any performance by the Contractor under this Agreement. This insurance shall be for general liability and/or professional liability and/or any other form as may be proper in the industry in which the Contractor is performing under this Agreement.

Contractor agrees that the liability insurance herein provided for shall be in effect at all times during the term of this Agreement. If insurance coverage expires at any time during the term of this Agreement, Contractor agrees to provide, at least thirty (30) days before said expiration date, a new Certificate of Insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the Agreement or for a period of not less than one (1) year. New Certificates of Insurance are subject to the approval of the Department of General Services, and Contractor agrees that no work or services shall be performed prior to such approval. The State may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

If the contract requires work of a professional nature, then Contractor agrees to maintain such types and amounts of professional liability or responsibility insurance as are customary in the industry for the work being performed under the terms of the Agreement. In no case shall the amount of the insurance be less than \$1,000,000 for any one occurrence and \$2,000,000 in the aggregate.

Contractor shall furnish to the State Certificates of Insurance stating that each type and amount of insurance, as set forth above, is presently in effect for Contractor. The Certificate of Insurance must provide that the State of California, its officers, agents, employees, and servants are included as additional insured, but only with respect to work performed for the State of California under the Agreement.

11. Subcontracting

Contractor shall not enter into subcontracts for the performance of work under this Agreement, without the prior written approval of the State.

EXHIBIT D

12. Performance and Evaluation Provisions Approval of Performance

- a. Performance of this Agreement by Contractor shall be approved by the Contract Manager. Monthly payment for performance is conditioned upon the Contract Manager's determination of whether Contractor has provided satisfactory services in accordance with the terms and conditions of the Agreement.
- b. When services by Contractor are not satisfactorily provided in accordance with the terms and conditions of the Agreement, the Contract Manager, may withhold monthly payments until the matter is resolved to the satisfaction of the State.

13. Resolution of Agreement Disputes

- a. Should any questions or conflicts arise regarding the interpretation or performance of the Agreement, an attempt shall be made by the Contractor and the Contract Manager, responsible for the Agreement, to discuss and resolve the matter.
- b. If resolution is not reached, the Contractor shall notify the Deputy Director of Administration (DDA) or the Administrative Services Director (ASD), whichever is appropriate, in writing of the dispute within fifteen (15) days of the discussion between the Contractor and the Contract Manager.
- c. Any dispute concerning interpretation or performance of this Agreement shall be decided by the Officer who shall state the factual basis for his/her decision in writing and shall serve a copy of the decision on the Contractor. The DDA/ASD decision shall be rendered within thirty (30) days of receipt of a dispute submitted by the Contractor.
- d. In the event the State terminates this Agreement the State may procure, upon such terms and such manner as the Contract Manager may deem appropriate, supplies or services similar to those terminated, the Contractor shall be liable to the State for any excess costs reasonably incurred for such supplies or services similar to those terminated. In the event of a termination for default, Contractor shall be paid at the rate specified in the Agreement for the period of satisfactory performance prior to the effective date of cessation of work as provided in the notice of termination.

14. Notice of Termination of Agreement

- a. If the State terminates this Agreement for any reason, it may fix a date for the cessation of Contractor's performance under the terms of this Agreement. The State shall notify Contractor in writing of its decision to terminate the Agreement. The termination notice shall contain the date upon which the Contractor shall cease performance under the terms of this Agreement. During the period between the Notice of Termination and the date fixed for cessation of performance, Contractor agrees to continue to satisfactorily perform all of the terms and provisions of this Agreement. In addition, Contractor agrees to cooperate with the State and any successor Contractor during this "transition" period.
- b. The State may extend the date specified in any notice of termination or any subsequent extension thereof to any date in the future and Contractor agrees to continue to satisfactorily perform the terms and conditions of this Agreement until the new date. Contractor shall be paid at the same rate provided in the Agreement for the extension period for all services which are satisfactorily performed.

EXHIBIT D

15. Procedures for Termination of Agreement

Upon receipt of a notice of termination Contractor shall take such steps as are reasonably necessary to prepare to terminate its operations on the date specified in the notice of termination or any extension thereof.

16. Waiver of Breach

No waiver of any breach of this Agreement shall be held as a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative; that is, in addition to every other remedy provided therein or by law. The failure of the State to enforce at any time any of the provisions of this agreement or to require at any time performance by Contractor of any of the provisions thereof, shall in no way be construed to be a waiver of such provisions nor in any way affect the validity of this agreement or any part thereof or the right of the State to thereafter enforce each and every provision.

17. Contractor Resource Levels, Reporting Requirements, Standards

- a. Contractor shall meet all the contractual requirements listed herein. Contractor shall provide all labor, materials, supplies, and equipment necessary to perform fully, all responsibilities required by this Agreement in accordance with the Contract Manager's directions.
- b. Contractor further agrees that its performance of work, services, materials, equipment, and supplies under this Agreement shall conform to the professional standards generally accepted in the relevant industry.

18. Cooperation with the State, Other Contractors

- a. Services provided under this contract shall be performed by Contractor in a manner that will not disrupt the operational needs of the State.
- b. Contractor shall cooperate and coordinate with the Department of Developmental Services and the developmental center administration in performing all work.
- c. Contractor shall cooperate with other state contractors who may be engaged in the same or related contracts. Contractor shall also cooperate with a successor Contractor.

19. Loss Liability

The State is not responsible for Contractor's losses on State property, or otherwise, caused by any reason.

20. Protection of State Property

- a. All buildings, appurtenances, and furnishings shall be protected by Contractor from damage caused by work performed under this Agreement.
- b. Such damages to the foregoing, upon approval by the State, shall be repaired and/or replaced at Contractor's expense by State approved methods, so as to restore the damaged areas to their original condition.
- c. Contractor shall ensure that its employees will exercise all necessary caution to avoid any injury to persons or any damage to property.

EXHIBIT D

- d. Contractor shall adhere to the Department's policies, i.e., policy on identification badges and policy regarding keys.

21. Contractor Responsibilities for Employees

- a. Except for approved subcontractors, all personnel shall be direct employees of Contractor. Contractor shall pay all salaries, taxes, and fringe benefits of its personnel, including, but not limited to, Workers' Compensation and Unemployment Insurance, as well as costs incurred for physical examinations and fingerprinting required by the terms of this Agreement. Contractor expressly agrees that it is responsible for the acts or omissions of its employees or their agents. Contractor, at its own expense, shall immediately upon notification by the State, remove any of its employees from providing any services under the terms of this Agreement and shall not return said employee to work until notified in writing by the State. Contractor shall assure that said employee is not physically present at this facility or any other facility covered by the terms of this Agreement until notified in writing by the State that said employee may return to work. The State shall not be the employer of any such personnel.
- b. Should the State or Contractor discover that any employee of Contractor does not meet the standards as set forth above, Contractor agrees at its own expense to immediately relieve the individual of further duties and involvement with the Agreement and assure that they are not physically present at any developmental center.
- c. Should any Contractor employee engage in any act detrimental to the Department's mission of providing care and protection to its residents, any act of injury or abuse to persons or property, or any act of theft or drug abuse, Contractor agrees that it shall be liable for the acts or omissions of its employees or their agents. Contractor agrees to immediately relieve the individual of further duties and involvement with the Agreement and assure that they are not physically present at any developmental center.

22. Management Responsibilities

- a. During the course of this Agreement, the Department reserves the right to approve, in advance, in writing any changes to be made by Contractor as to the individuals identified as managers and supervisors. The Department's review and approval will be made by the Contract Manager to ensure that individuals replacing key personnel shall have comparable technical knowledge, experience, and qualifications in scope, breadth, and depth to those originally accepted as part of Contractor's bid proposal.
- b. The review and approval will also be made to better ensure that individuals replacing staff in these key positions shall have the ability to develop cooperative and constructive working relationships with staff and clients in the performance of their duties. Departmental approval shall not be unreasonably withheld.

23. Health and Safety Responsibilities

- a. Contractor is responsible for the health and safety protection of its employees in the performance of this Agreement.
- b. Contractor shall comply with applicable laws relating to safety, including, but not limited to, the regulations of the Division of Occupational Safety and Health, and the State of California Department of Industrial Relations. Contractor's personnel shall exercise precautions at all times for the protection of persons and property.

EXHIBIT D

- c. In order to protect the health of the developmental center residents, Contractor shall require and be responsible for assuring that all personnel employed to work in the developmental centers undergo a pre-employment and annual health examination prescribed by California Code of Regulations, Title 22, and Section 72535 (a) and (b) testing for Hepatitis B antigen and tuberculosis.
- d. Employees with signs or symptoms of, or known, infectious disease shall not be permitted to work until a physician's clearance is obtained.
- e. Contractor shall maintain a health record for each employee which includes reports of all employment-related health examinations. Such records shall be kept for a minimum of three (3) years following termination of employment.
- f. Contractor shall be responsible for all costs incurred for health examinations, blood tests, and x-rays for Contractor's employees.
- g. Contractor's employees shall participate in emergency disaster exercises.

24. Ownership of Products

Notwithstanding whether or not it may be the subject of a patent or a copyright and or whether or not it is tangible or intangible or intellectual, all products, deliverables, or any like items that are produced, created, developed, or the like, during the term of this Agreement shall immediately become the sole and complete property of the State upon their creation.

25. Weapons

Contractor expressly agrees that it will not permit any of its employees or subcontractors to carry any weapons onto state property. Contractor further expressly agrees that it will be solely responsible for any acts of its employees while on state property. Contractor also states that it has read Penal Code, Section 171b and understands that it prohibits the carrying of weapons on state property.

26. Federal Health Care Programs Exclusion Certification

Contractor hereby certifies that Contractor, Contractor's employees, and/or subcontractors providing services under this Agreement have not been excluded from participating in federally funded health care programs (www.oig.hhs.gov). Contractor understands and agrees that should any such exclusion occur during the term of this Agreement, Contractor shall report it to the facility Director in writing within five (5) days from the date of the exclusion or the time Contractor learns of the exclusion. In addition, Contractor understands and agrees that payment shall not be made for any services provided during the period of exclusion, or if payment has already been made, Contractor will be required to reimburse the facility the full payment.

27. Disabled Veteran Business Enterprise (DVBE) Participation Reporting

If for this agreement contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then contractor must within 60 days of receiving final payment under this agreement (or within such other time period as may be specified elsewhere in this agreement) certify in a report to the awarding department: (1) the total amount the prime contractor received under the contract; (2) the name and address of the DVBE(s) that participated in the performance of the contract; (3) the amount each DVBE received from the prime contractor; (4) that all payments under the contract have been made to the DVBE(s); and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Military and

EXHIBIT D

Veterans Code [M&VC] Section 999.5 (d))

28. Substitution of Disabled Veteran Business Enterprise (DVBE) Subcontractors

Contractor understands and agrees that should award of this contract be based in part on their commitment to use the Disabled Veteran Business Enterprise (DVBE) subcontractor(s) identified in their bid or offer, per Military and Veterans Code (M&VC) Section 999.5 (e), a DVBE subcontractor may only be replaced by another DVBE subcontractor and must be approved by the Department of Developmental Services (DDS) and the Department of General Services (DGS). Changes to the scope of work that impact the DVBE subcontractor(s) identified in the bid or offer and approved DVBE substitutions will be documented by contract amendment.

Failure of Contractor to seek substitution and adhere to the DVBE participation level identified in the bid or offer may be cause for contract termination, recovery of damages under rights and remedies due to the State, and penalties as outlined in M&VC Section 999.9; Public Contract Code (PCC) Section 10115.10, or PCC Section 4110 (applies to public works only).

29. SB 588

Requires an awarding department to withhold \$10,000, or the full payment if it is less than \$10,000, from the final payment on a contract until certification is received by the awarding department regarding DVBE participation and payment.

Requires the awarding department to give a prime contractor that fails to meet those certification requirements fifteen (15) to thirty (30) calendar days to cure the defect. If not, the final payment is permanently deducted.

30. Client Confidentiality

All information and records regarding any client obtained in the course of providing services under this Agreement shall be confidential in accordance with Welfare and Institutions Code, Sections 5328 and 4514, et seq.

31. Professional Responsibility

In accordance with the California Code of Regulations, Title 22, Division 5, Section 70713, Contractor is hereby notified the facility retains all professional and administrative responsibility for services rendered under this Agreement. In addition, Sections 70713, 76507, and 72511 require that when acting as a consultant, Contractor shall apprise the facility Administrator of recommendations, plans for implementation, and continuing assessment through dated and signed reports, which shall be retained by the Administrator for follow-up action and evaluation of performance.

32. Safety and Security

In order to ensure the safety of the clients and employees, and the safekeeping of Contractor's property, Contractor's vehicle(s) must be locked at all times while on the grounds of the facility.

EXHIBIT D

33. Contractor and/or Employees' Background Clearance

If, the services provided under this Agreement are determined by the Executive Director of this facility to be subject to our Department's Policy Memorandum #423, entitled, "Employment Practices within State Developmental Centers," which is incorporated by reference as a part of this Agreement, and a copy provided to Contractor. In the event of any changes to Policy Memorandum #423 during the term of this Agreement, the Contractor shall be provided an updated copy. Contractor expressly agrees to adhere to all of the terms and conditions of said policy as it may be amended from time to time, prior to employing individuals who will provide services under this Agreement. Contractor shall bear all costs associated with obtaining clearance for each said employee in order to comply with this policy. The clearance will consist of, but not be limited to the Department of Developmental Services contacting the appropriate local, state, and federal arresting agencies and courts to obtain disposition documents as deemed necessary by the Department of Developmental Services.

34. Software Certification

Contractor certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of Copyright laws.

35. Confidentiality of Data

All financial, statistical, personal, technical, and other data and information relating to the State's operations, that is designated confidential by the State and made available to Contractor in order to carry out this contract, or which become available to Contractor in carrying out this contract, shall be protected by Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the Contractor. If the methods and procedures employed by Contractor for the protection of the Contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in Contractor's possession, is independently developed by Contractor outside the scope of this Agreement or is rightfully obtained from third parties.

36. Executive Order N-6-22 – Russian Sanctions

On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law. The EO directs state agencies to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should the State determine Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this agreement. The State shall provide Contractor advance written notice of such termination, allowing Contractor at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the State.

EXHIBIT E

CONSULTANT SERVICES PROVISIONS

1. Resumes

If this Agreement is for \$5,000 or more, a resume for each participant who will exercise a major role in the project is attached hereto and made a part of this Agreement. Prior approval by the DDS Project Representative is required before any changes in personnel can be made to this project (SCM, Section 3.02.1, A.1.).

2. Financial Disclosure

Contractor understands that a financial disclosure statement may be required to be filed depending on the nature of the Agreement. Title 2, California Code of Regulations, Section 18701(C) (2), defines the term "consultant," and the type of consultant services which make a state consultant either subject to, or exempt from, the financial disclosure requirements of the Political Reform Act of 1974, Government Code, Section 87100, et seq. If a financial disclosure statement is required, as determined by the State, you will be obligated to file a statement of economic interest as described in the California Code of Regulations, Section 50300.

3. Contracting Restrictions

Contractor is advised that being awarded this Agreement makes you ineligible to bid for or be awarded an Agreement for services or goods, or any other related action that is required, suggested, or otherwise deemed appropriate in the end product of this Agreement. Any subcontractor of no more than 10 percent of the total monetary value of this Agreement is exempt from this requirement (Public Contract Code, Section 10365.5).

4. Progress Reports

If Contractor is receiving progress payments for the services provided under this Agreement, a monthly progress report shall be required to be submitted in writing to the DDS Project Representative each month on or before the tenth of the month following the first month of this Agreement. Said progress reports shall include, but are not limited to, a statement that Contractor is or is not on schedule, any pertinent reports or interim findings, and identify any difficulties or special problems so that remedies can be developed as soon as possible (SCM 3.02.1, B.2.).

5. Product Requirements

If this Agreement exceeds \$5,000, any document or written report prepared as the subject or product of this Agreement shall be required to contain in a separate section the Agreement number and dollar amount of the Agreement and any subcontracts relating to the preparation of such document (Government Code, Section 7550).

6. Product Ownership

Contractor understands and agrees that all products, including but not limited to, data collected and analyzed, and written reports produced under this Agreement are the property of the State. The only exception will be products developed by Contractor and copyrighted prior to Contractor's work on this Agreement. Contractor cannot make reproduction of the Agreement products without the express written approval by the DDS Project Representative.

EXHIBIT E

7. Final Meeting

If requested, Contractor shall hold a final meeting with the DDS Project Representative to present the findings, conclusions, and recommendations of Contractor. In addition, Contractor shall submit a written comprehensive final report if requested by the DDS Project Representative. Both the final meeting and the final report, if required, must be completed on or before the termination date (SCM 3.02.1, B.5. and 6.).

8. Contractor Evaluation

Contractor is advised that performance under this Agreement is required to be evaluated within sixty (60) days of completion of the services if the Agreement is for \$5,000 or more (Public Contract Code, Section 10369).

EXHIBIT F

DEPARTMENT OF DEVELOPMENTAL SERVICES

Title: SEXUAL HARASSMENT PREVENTION POLICY

Effective: June 9, 2023

Authority: California Fair Employment and Housing Act; Title VII of the Civil Rights Act of 1964

DocuSigned by: <i>Carla Castaneda for</i> <small>969361741D0C4E3</small>	June 9, 2023
NANCY BARGMANN, Director Department of Developmental Services	Date

I. SEXUAL HARASSMENT PREVENTION POLICY DIRECTIVE

Policy

The Department of Developmental Services (DDS) is committed to providing a safe work environment where all employees are treated respectfully and professionally. Consistent with this commitment, it is the policy of DDS to prohibit any form of sexual harassment. This sexual harassment prevention policy, which aligns with DDS' Equal Employment Opportunity policy, applies to all employees (including applicants for employment, volunteers, interns, contractors, and other categories under state and federal law) and extends to conduct in connection with an employee's work, even when the conduct takes place away from DDS' premises, such as during business-related travel or off-site functions, including telework, that employees may attend as part of their duties. DDS adopts and maintains this sexual harassment prevention policy to prevent sexually harassing conduct in the workplace and encourage professional and respectful behavior among its employees. All employees are required to comply with this policy.

DDS may take appropriate corrective or disciplinary action, up to and including dismissal, against any employee found to have violated this policy.

Departmental Standard

DDS prohibits any form of sexual harassment, which includes harassment based on a person's sex/gender, gender identity, gender expression, or sexual orientation.

DDS is committed to ensuring compliance with this policy with respect to all benefits of employment, including recruitment, hiring, placement, promotion, transfer, employee discipline, pay and other forms of compensation, training, and general treatment during employment.

Employee Rights

- **The right to a work environment free of discrimination, harassment, and retaliation.**
- **The right to file a complaint alleging a violation of this policy against a co-worker, supervisor, manager, vendor, or contractor.**
- **The right to file a complaint of retaliation based on participation in a protected activity against a co-worker, supervisor, manager, vendor, or contractor.**
- **The right to a prompt, thorough, and impartial investigation of alleged violations of this policy by a trained DDS representative or designee.**
- **The right to be advised of the outcome of an investigation.**
- **The right to file a complaint directly with the California Civil Rights Department (CRD), the federal Equal Employment Opportunity Commission (EEOC), or other appropriate state or federal agencies.**

Retaliation Prohibited

This policy prohibits DDS employees from engaging in any act of retaliation against individuals who claim a violation of this policy, pursue such a claim, cooperate in the investigation of such claims, or who seek to enforce this policy. Any individual engaging in retaliation against a DDS employee in violation of this policy shall be subject to appropriate corrective or disciplinary action, up to and including dismissal, regardless of job level or classification.

II. CONDUCT PROHIBITED BY THIS POLICY

Sexual Harassment

As used in this policy, sexual harassment is defined as harassment based on a person's sex/gender (including pregnancy, childbirth, breastfeeding, or related medical conditions), gender identity, gender expression, or sexual orientation. Sexual harassment includes, but is not limited to, unwelcome or unsolicited sexual advances, requests for sexual favors, conversations regarding sexual activities, verbal or physical conduct of a sexual nature, or verbal or physical conduct based on sex. Sexually harassing conduct does not need to be motivated by sexual desire to constitute a violation of this policy.

Individuals of any gender can experience sexual harassment, and the recipient of harassment does not need to be someone of a different gender or sex than the harasser. In addition, a person may experience sexual harassment even if they are not the target of the harassment. Anyone affected by conduct defined in this policy may experience sexual harassment.

Sexual harassment is categorized into two types:

- 1. Quid Pro Quo (Latin for "this for that"): When someone conditions a job, promotion, work benefit, or any term or condition of employment on another person enduring or submitting to conduct of a sexual nature. For example, offering a promotion in exchange for sexual favors. In a quid pro quo scenario, the submission to or rejection of the conduct is used as the basis for employment-related decisions.**
- 2. Hostile Work Environment: When sexually harassing conduct unreasonably interferes with a person's work performance and/or creates an intimidating, hostile, or offensive work environment. You may experience sexual harassment and the effects of a hostile work environment even if the sexually harassing conduct was not directed at you.**

Examples of behavior prohibited by this policy include, but are not limited to:

- Any behavior that is sexual nature or that sexualizes the workplace.**
- Making demands for sexual favors in exchange for employment benefits, whether express or implied.**
- Unwelcome sexual advances, flirtation, or teasing.**

- Sending sexually suggestive or obscene letters, invitations, notes, e-mails, voice mails, or gifts.
- Making unwelcome comments about sex, gender, gender identity, or sexual orientation, including slurs, jokes, remarks, or epithets, even if the comments are not sexual in nature.
- Leering or making obscene, vulgar, or sexual gestures, including whistling or staring at someone in an offensive or sexually suggestive manner.
- Making unwelcome comments about a person's physical appearance, clothing, or body that are sexual in nature. Examples include describing someone as "sexy," "hot," having an "amazing body," etc.
- Deliberate, unwelcome physical contact or impeding or blocking a person's movement.
- Pressure for sex or pressure for dates, including situations that began as reciprocal relationships and later ceased to be reciprocal.
- Repeatedly asking a person to socialize outside of work when the person has previously said "no" or has not shown interest, including acts of retaliation following a negative response.
- Bringing into the workplace and displaying or distributing in any form sexually suggestive or derogatory objects, pictures, cartoons, posters, or other items, even if the material is not accessible to other staff.

A person that experiences sexual harassment is not required to first express in any way to the individual(s) engaged in the conduct that their behavior is unwelcome in order to constitute a violation of this policy.

Retaliation

As used in this policy, retaliation is defined as any adverse employment action taken against an employee because the employee engaged in activities protected under this policy. Protected activities include, but are not limited to, reporting or assisting in reporting suspected violations of this policy and cooperating in investigations or proceedings arising out of alleged violations of this policy.

An "adverse employment action" is conduct or action that materially affects the terms and conditions of the employee's employment status or is reasonably likely to deter the employee from engaging in protected activity. Even actions that do

not result in a direct loss of compensation may be regarded as an adverse employment action.

Examples of retaliation may include the following: demotion; suspension; reduction in pay; denial of a merit salary increase; failure to hire or consider for hire; refusing to promote or consider for promotion; harassing another employee; denying employment opportunities; changing an employee's work assignments; denying an accommodation; refusing to communicate with an employee when otherwise required by job duties; or excluding an employee from job-related activities.

III. RESPONSIBILITIES OF SUPERVISORS AND MANAGERS

Supervisors and managers are responsible for setting the tone to promote a work environment that is free from sexual harassment.

Supervisors and managers are required to:

- Adhere to and enforce this policy.
- Foster a culture of respect and professionalism in the workplace.
- Not engage in, condone, tolerate, or leave uncorrected conduct that violates this policy.
- Take immediate and appropriate corrective action to prevent future conduct that may violate this policy and document measures taken.

Supervisors and managers who reasonably suspect a potential violation of this policy are required to immediately report the matter to their manager and to DDS' EEO Officer in the Office of Human Rights and Advocacy Services (OHRAS) or a worksite EEO coordinator. Failure by a supervisor or manager to take immediate and appropriate action to address potential violations of this policy may result in appropriate corrective or disciplinary action, up to and including dismissal, regardless of job level or classification.

IV. RESPONSIBILITIES OF EMPLOYEES

All DDS employees shall adhere to this policy and shall not engage in any form of sexual harassment. Employees have a responsibility to promptly report conduct that may violate this policy as soon as possible after an alleged incident occurs. Failure by employees to promptly report conduct that may violate this policy may result in appropriate corrective or disciplinary action.

There is no chain of command when reporting suspected policy violations. An individual does not need supervisor or manager approval to report a potential violation of this policy. If the alleged offender is the employee's supervisor or manager, the employee should report the conduct to any other supervisor or manager, DDS' OHRAS, or a worksite EEO Coordinator.

Employees are required to:

- **Adhere to this policy.**
- **Conduct themselves in a respectful and professional manner.**
- **Immediately report conduct that may violate this policy regardless of the degree to which they may be involved.**
- **Cooperate fully with DDS' investigation of complaints alleging a violation of this policy, including but not limited to, participating in all investigative interviews.**

V. MANDATED HARASSMENT PREVENTION TRAINING

All DDS employees shall complete harassment prevention training once every two years as mandated by Government Code section 12950.1.

VI. THE COMPLAINT PROCESS

A sexual harassment complaint may be brought forward orally, either in person or over the phone, or in writing. Written complaints can be made using DDS' EEO Discrimination Complaint Form, DS 312, which is available on DDS' intranet. Employees may file a complaint with DDS within 365 days of the alleged harassing event. OHRAS shall document and track progress on all complaints filed.

The following process applies when a sexual harassment complaint is filed:

- **An intake review of the complaint shall be completed to determine whether the alleged conduct implicates an activity defined in this policy, and whether an investigation is warranted.**
- **If an investigation is warranted, a trained EEO/workplace investigator shall be assigned to complete a prompt, thorough, and impartial investigation.**
- **Interviews of the complainant (i.e., the person bringing forward the concerns), applicable witnesses, and the respondent (i.e., the person against**

whom allegations have been made) may be conducted, as well as a review of relevant documents and other available evidence.

- If an investigation is warranted, a written report of findings shall be prepared for review by DDS' EEO Officer, Office of Legal Affairs, and the Chief Deputy Director-Operations or designee.
- If an investigation substantiates allegations of a violation of this policy, the Chief Deputy Director-Operations or designee shall refer the report to the employee's management for appropriate remedial, corrective, or disciplinary action.

OHRAS shall review all complaints received to determine whether a complaint alleges a violation of this policy. OHRAS' review may include consultation with other divisions to determine appropriate action to be taken and may result in the referral of complaints to other divisions when the allegations fall outside the scope of this policy. If a complaint falls under this policy, DDS and/or its designee shall investigate the facts and circumstances of any alleged violation, where appropriate. In the event DDS determines that an investigation is not warranted based on the circumstances of a complaint, DDS shall take other appropriate, effective action on a case-by-case basis to address concerns that are brought forward. Even in the absence of a formal complaint, DDS may initiate an investigation where it has reason to believe that an employee may have violated this policy. Moreover, even where a complainant conveys a request to withdraw their initial complaint, DDS may continue its investigation to ensure that the workplace is free from harassment and retaliation as defined in this policy. Anonymous complaints shall also be investigated. The method and level of the investigation may vary according to the details provided in the anonymous complaint.

While the investigative process is treated as confidential, the confidentiality of the complaint under this policy cannot be guaranteed. DDS' investigations of alleged policy violations include interviewing employees and reviewing evidence, which may result in the disclosure of information relating to the facts and/or witnesses during the course of an investigation.

All employees shall cooperate fully with any investigation of alleged violations of this policy. This includes, but is not limited to, reporting for investigative interviews, truthfully and thoroughly answering questions and/or providing statements, furnishing documents and other evidence requested by the investigator, and maintaining confidentiality during ongoing investigations. Failure by employees to cooperate fully with any investigation of alleged violations

of this policy may result in appropriate corrective or disciplinary action, up to and including dismissal, regardless of job level or classification.

VII. DISSEMINATION AND ACKNOWLEDGEMENT OF POLICY

This policy shall be disseminated department-wide to all DDS employees through posting on the DDS' intranet and emailed to all staff at the time of enactment. This policy shall be available for review in the OHRAS and Personnel offices. This policy shall be distributed to all employees as part of harassment prevention training mandated by Government Code section 12950.1.

This policy shall be made available in alternate formats upon request.

VIII. FILING COMPLAINTS OUTSIDE OF DDS

Filing a complaint with DDS provides the organization with an opportunity to address concerns promptly at the lowest level and remedy the situation. However, all employees may also file a complaint directly with the following entities at any time:

California Civil Rights Department

2218 Kausen Drive, Suite 100

Elk Grove, CA 95758

(800) 884-1684 (voice), (800) 700-2320 (TTY), or California's Relay Service at 711

<https://www.calcivilrights.ca.gov>

U.S. Equal Employment Opportunity Commission

450 Golden Gate Avenue 5 West

P.O. Box 36025

San Francisco, CA 94102-3661

(800) 669-4000 or (510) 735-8909 (deaf/hard-of-hearing callers only)

<http://www.eeoc.gov/employees>

Each agency has its own rules for accepting and processing complaints. Employees may follow-up with the above-mentioned agencies prior to filing a complaint to learn more about their respective processes and requirements.

Questions regarding this policy should be directed to:

Office of Human Rights and Advocacy Services

(916) 654-1888, ohras@dds.ca.gov

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EXHIBIT G
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 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, 42 U.S.C. 17921 Section 13400 *et seq.*) ("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 CFR 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 applicable California law governing the exchange, creation, dissemination, maintenance, use or disclosure of PHI that exceeds the requirements of HIPAA, HIPAA Regulations, and the HITECH Act.

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, HIPAA Regulations, the HITECH Act, and any more stringent applicable state law protecting PHI.

Now, therefore, the parties agree as follows:

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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 CFR 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. (See P. below for definition of PHI.)

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- 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, HIPAA Regulations, the HITECH Act, 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 include 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, HIPAA Regulations, and the HITECH Act, 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. **Limited Data Set** – “Limited Data Set” has the same meaning of the term “limited data set” defined in 45 CFR § 164.514(e)(2). Under Section 164.514(e)(2), limited data set excludes the following direct identifiers of the individual or of relatives, employers, or household members of the individuals: (1) names; (2) addresses, other than town or city, state and zip code; (3) telephone numbers; (4) fax numbers; (5) email addresses; (6) social security numbers; (7) medical record numbers; (8) health plan beneficiary numbers; (9) account numbers; (10) certificate/license numbers; (11) vehicle identifiers and serial numbers, including license plate numbers; (12) device identifiers and serial numbers; (13) URLs; (14) IP address numbers; (15) biometric identifiers, including finger and voice prints; and (16) full face photographic images and any comparable images.
- 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.

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- 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 § 164.304, 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

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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.

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F. **Amendments.** In accordance with 45 CFR § 164.504(e)(2)(ii)(F) and 45 CFR § 164.526(a)(2), 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. If an individual makes such request directly to the Contractor, Contractor will forward to DDS within five (5) business days of receipt. Contractor shall ensure the amendment/s are incorporated into the PHI in accordance with 45 CFR § 164.526.

G. **Accounting.**

- 1) Except as provided in Section 4.G.2 herein, Contractor shall document and track disclosures of PHI that it creates, receives, maintains or transmits on behalf of DDS to establish an accounting. The accounting of disclosures shall include: (1) the date of disclosure; (2) the name of the entity or person who received the PHI and, if known, the address of such entity or person; (3) a brief description of the PHI disclosed; and (4) a brief statement describing the reason for the required or permitted disclosure (e.g., pursuant to a court order), or a copy of the written request if applicable as required under 45 CFR § 164.528(b)(2).
- 2) Contractor is not required to document and track disclosures of PHI that it creates, receives, maintains or transmits on behalf of DDS only for the following reasons in accordance with 45 CFR § 164.528(a)(1):
 - a. Disclosures made for treatment, payment and healthcare operations;
 - b. Disclosures made to the individual about themselves;
 - c. Disclosures resulting from or incident to otherwise permitting disclosure in 45 CFR § 164.502;
 - d. Disclosures made pursuant to a valid HIPAA authorization under 45 CFR § 164.508(c);
 - e. Disclosures made for the Contractor's director, or to persons involved in the individual's care or for related purposes as provided in 45 CFR § 164.510;
 - f. Disclosures made pursuant to national security or intelligence purposes as provided in 45 CFR § 164.512 (k)(2);
 - g. Disclosures made to correctional institutions or law enforcement as provided in 45 CFR § 164.512(k)(5); and
 - h. Disclosures that are part of a limited data set.
- 3) Contractor shall provide an accounting of disclosures of PHI to DDS or an individual for the six years prior to the date of the request, in accordance with 45 CFR § 164.528 (a)(1), subject to the exceptions listed therein. Contractor shall respond in writing to a request for accounting of disclosures within thirty

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(30) calendar days of receipt of the request by producing the accounting of disclosures or verifying there were no disclosures.

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, the 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)

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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, and within 10 calendar days of any changes.

7. Security

- A. Contractor shall ensure the security of all computerized data systems containing PHI in compliance with HIPAA, HIPAA Regulations and the HITECH Act, and in accordance with 45 CFR § 164.502(e)(1). These steps shall include, at a minimum, but not be 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 electronic PHI that is confidential, sensitive, or personal when it is stored or transmitted using portable computing devices (including, but not limited to, tablets, smartphones, laptops and notebook computers, electronic tapes) and/or portable electronic storage media (e.g., CD, DVD, flash drives, etc.); and
 - 5) 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, and within 10 calendar days of any changes.

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)).

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- 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, maintain, or transmit electronic PHI, are also directly liable and subject to civil penalties for failing to safeguard electronic PHI in accordance with HIPAA, HIPAA Regulations, and the HITECH Act.

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

- A. In accordance with 45 CFR § 164.504(e)(ii)(2)(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*** 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 immediately:
- 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.

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Content of Notification: In accordance with 45 CFR §§ 164.404(c), 164.410, 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 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) A description of the probable causes of the improper use or disclosure;
- 3) What data elements were involved and the extent of the data involved in the breach;
- 4) A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed PHI or electronic PHI;
- 5) A description and date/s of where the PHI is believed to have been improperly utilized;
- 6) A description of the steps that an individual may take to protect him/her from the breach; and
- 7) 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, transmitted, 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 dates. Contractor, or Contractor's subcontractor or agent, shall pay any costs of such notifications, as well as any costs associated with the breach. The DDS Privacy Officer and the DDS Information Security Officer shall approve the time, manner and content of any such notifications.

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

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California or its jurisdiction, Contractor and DDS shall jointly 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.

- F. **DDS Contact Information.** Contractor shall direct communications to the following DDS staff. DDS reserves the right to make changes to the contact information below by giving written notice to the Contractor. Said changes shall not require an amendment to this Agreement.

DDS Privacy Officer	DDS Information Security Officer
Privacy Officer privacy@dds.ca.gov (916) 654-3405	Information Security Officer iso@dds.ca.gov (916) 654-1704

11. **Term and Termination**

- A. **Term.** The term of this Agreement shall terminate when this 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 material violation of this Agreement by Contractor, DDS shall:
- 1) Provide Contractor with a written notice of the existence of such material violation and a 30-day notice to cure the breach.
 - 2) If Contractor fails to cure such material violation within 30 days, DDS may immediately terminate this contract on written notice.
DDS shall report the violation to the HHS Secretary if such cure is not possible.
- C. **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 HIPAA, HIPAA Regulations, the HITECH Act, or any more stringent applicable state law protecting PHI in an administrative or civil proceeding in which Contractor is a party.

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D. 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, if reasonably feasible, 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, if reasonably feasible, 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 reasonably infeasible, 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. 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.

13. 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.

14. Employee Training and Discipline

- A. Contractor shall use reasonable measures to ensure compliance with the requirements of this Agreement. In doing so, Contractor must provide, at its own expense, annual security and privacy training on HIPAA to its employees who create, receive, maintain or transmit PHI or electronic PHI on behalf of DDS 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.

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- B. Contractor also agrees to discipline employees who intentionally violate any provisions of this Agreement, including up to termination of employment.

15. Audits, Inspection and Enforcement

From time to time, DDS may inspect the facilities, systems, 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).

16. 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 to view the most current Notice of Privacy Practices.
- B. **Permission by Individuals for Use and Disclosure of PHI.** DDS shall provide Contractor, in writing, 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, in writing, 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.

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D. **Requests Conflicting with HIPAA Rules.** DDS shall not request Contractor to use or disclose PHI or electronic PHI in any manner that would not be permissible under HIPAA, HIPAA Regulations, the HITECH Act, or any more stringent applicable state law protecting PHI.

17. Miscellaneous

- A. **Disclaimer.** DDS makes no warranty or representation that compliance by Contractor with this Agreement, HIPAA, HIPAA Regulations or the HITECH Act, 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, HIPAA Regulations, the HITECH Act, , 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 good faith negotiations with DDS concerning an amendment to this Agreement embodying written assurances consistent with the standards and requirements of HIPAA, HIPAA Regulations, and the HITECH Act, or other applicable laws. If negotiations are unsuccessful, DDS may move to terminate this Agreement 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, HIPAA Regulations, and the HITECH Act.
- 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, the 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.

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- 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, HIPAA Regulations, the HITECH Act, 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, HIPAA Regulations, the HITECH Act, 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 the 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.

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 [_hhs.gov/ocr/hipaa](https://www.hhs.gov/ocr/hipaa)

United States Department of Health and Human Services, Centers for Medicare and Medicaid Services – Security Standards
www.cms.hhs.gov/SecurityStandard/

National Institute of Standards and Technology (NIST)
nist.gov/

FEDERAL INFORMATION PROCESSING STANDARDS (FIPS)
csrc.nist.gov/publications/PubsFIPS.html

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CONFIDENTIALITY AGREEMENT

Contractor's Name
Name of Contract
Contract Number

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 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, 42 U.S.C. § 17921 § 13400 *et seq.*), 45 CFR Parts 160 and 164, Sections 56 *et seq.* and 1798.24 – 1798.24b of the California Civil Code, California Welfare and Institutions Code sections 4514, 5328, and 15600 *et seq.*; 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)

RESUMES

Resumes to be inserted here.

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