

Legislative File ID Number: 20-1435  
Introduction Date: 8/12/2020  
Enactment Number: 20-1171  
Enactment Date: 8/12/2020 If

# *Nonpublic, Nonsectarian School/Agency Services*

## *Master Contract*

***2020-21***

The Behavior Center

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Contract Year: 2020-2021

Contract Number:

LEA: \_\_\_\_\_

\_\_\_\_\_

**NONPUBLIC SCHOOL/AGENCY/RELATED SERVICES PROVIDER:**

# The Behavior Center

## **NONPUBLIC, NONSECTARIAN SCHOOL/AGENCY SERVICES MASTER CONTRACT**

### **AUTHORIZATION FOR MASTER CONTRACT AND GENERAL PROVISIONS**

#### **1) MASTER CONTRACT**

- a) This Master Contract is entered into this 1st day of July, between the OAKLAND SELPA (hereinafter referred to as "LEA") and The Behavior Center (hereinafter referred to as "CONTRACTOR") for the purpose of providing special education and/or related services to LEA students with exceptional needs under the authorization of California Education Code sections 56157, 56361 and 56365 et seq. and Title 5 of the California Code of Regulations section 3000 et seq., AB490 (Chapter 862, Statutes of 2003) and AB1858 (Chapter 914, Statutes of 2004). It is understood that this Master Contract does not commit LEA to pay for special education and/or related services provided to any LEA student, or CONTRACTOR to provide such special education and/or related services, unless and until an authorized LEA representative approves the provision of special education and/or related services by CONTRACTOR pursuant to an Individualized Education Program (hereinafter referred to as "IEP"), and/or Individual Family Service Plan (hereinafter referred to as IFSP)
- b) The Collaborative: The Bay Area Collaborative represents ten (10) SELPAs and Member NPA/S (see appendix A for a complete listing and contact information). Nonpublic schools and nonpublic agencies that are contracting with in one of the participating SELPAs agree to participate in this collaborative process to establish a uniform contract for identified services and standards. The established system provides NPA/Ss with an opportunity to have input to the development of the process, contract issues, etc., and a simplified, standard process for rate negotiation with the participating SELPAs. Issues listed on the Rate Schedule portion of this Master Contract may be reviewed on an annual basis upon request of the CONTRACTOR using the established Bay Area SELPA Collaborative system. CONTRACTOR agrees that the rates set forth in this Master Contract will remain unchanged from July 1 through June 30 of the term of contract, with no changes in the services provided, unless changed in a duly executed amendment to this Master Contract signed by both parties. Increases in rates will be considered on an annual basis and remain unchanged for the term of the contract from

July 1 through June 30, with no changes in level of service provided without written approval by both parties.

- c) NPA/Ss that are not a member of the Bay Area Collaborative should negotiate rates with their geographically corresponding SELPA(s). The LEA will contact the corresponding SELPA to verify established rates. Increases in rates will be considered on an annual basis and remain unchanged for the following year from July 1 through June 30, with no changes provided without written approval by both parties.
- d) Any CONTRACTOR not participating as a member of the Bay Area SELPA Collaborative shall individually negotiate rates following local SELPA and/or LEA procedures. Those CONTRACTORs shall notify the SELPA with whom they contract of any proposed rate changes effective July 1 by March 1 of the preceding year.
- e) The Bay Area SELPA Collaborative Chair shall maintain, annually update and disseminate to all LEAs, NPS/As who are members of the Collaborative, a master rate schedule reflecting such NPS/A rates.
- f) Upon CONTRACTOR's acceptance of a student referred by the LEA, the LEA shall complete an Individual Services Agreement (hereinafter referred to as "ISA") as specified in the LEA Procedures which shall identify the provider of each service required by the student's IEP/IFSP). For purposes of enrollment, the LEA must provide approval before any authorization for payment can be made. Such authorization may be provided electronically, by telecommunications, by mail or by fax. Unless otherwise agreed in writing, or in the student's ISA, CONTRACTOR acknowledges its obligation to provide all services specified in the pupil's IEP/IFSP. The LEA acknowledges its responsibility to pay for all services rendered to LEA students by CONTRACTOR. The ISA shall be executed within ninety (90) days of an LEA student's enrollment. (Education Code Section 56366(c)(1)) LEA and CONTRACTOR shall enter into an ISA for each LEA student served by CONTRACTOR. CONTRACTOR shall notify the LEA in writing in advance of providing any service(s) when CONTRACTOR is unable to meet the requirements of this Master Contract or of any Individual Services Agreement.
- g) Unless placement is made pursuant to an Office of Administrative Hearings (hereinafter referred to as "OAH") order, a lawfully executed agreement between LEA and parent or authorized by LEA for a transfer student pursuant to California Education Code section 56325, LEA is not responsible for the costs associated with nonpublic school placement until the date on which an IEP team meeting is convened, the IEP team determines that a nonpublic school placement is appropriate, and the IEP is signed by the student's parent.

## **2) DEFINITIONS**

The following definitions shall apply for purposes of this contract:

- a) The term "CONTRACTOR" means a nonpublic, nonsectarian school/agency certified by the California Department of Education and its officers, agents and employees.
- b) The term "authorized LEA representative" means a LEA administrator designated to be responsible for nonpublic school/agencies. It is understood, a representative of the Special Education Plan Local Area (SELPA) of which the LEA is a member is an authorized LEA representative in collaboration with the LEA. The LEA maintains sole responsibility for the contract, unless otherwise specified in the contract.
- c) The term "credential" means a valid credential, life diploma, permit, a county office of education Temporary County Certificate or document in special education or pupil personnel services issued by, or under the jurisdiction of, the State Board of Education if issued prior to 1970 or the California Commission on Teacher Credentialing, which entitles the holder thereof to perform services for which certification qualifications are required as defined in Title 5 of the California Code of Regulations section 3001(g).
- d) The term "qualified" means that a person holds a certificate, permit or other document equivalent to that which staff in a public school are required to hold to provide special education and designated instruction and services and has met federal and state certification, licensing, registration, or other comparable requirements which apply to the area in which he or she is providing special education or related services, including those requirements set forth in Title 34 of the Code of Federal Regulations sections 200.56 and 200.58, and those requirements set forth in Title 5 of the California Code of Regulations Sections 3064 and 3065, and adheres to the standards of professional practice established in federal and state law or regulation, including the standards contained in the California Business and Professions Code.
  - i) Nothing in this definition shall be construed as restricting the activities in services of a graduate needing direct hours leading to licensure, or of a student teacher or intern leading to a graduate degree at an accredited or approved college or university, as authorized by state laws or regulations.
- e) The term "license" means a valid non-expired document issued by a licensing agency within the Department of Consumer Affairs or other state licensing office authorized to grant licenses and authorizing the bearer of the document to provide certain professional services, including but not limited to mental health and board and care services at a residential placement, or refer to themselves using a specified professional title. If a license is not available through an appropriate state licensing agency, a certificate of registration with the appropriate professional organization at the national or state level which has standards established for the certificate that are equivalent to a license shall be deemed to be a license as defined in Title 5 of the California Code of Regulations section 3001(l).

- f) Parent means a biological or adoptive parent, unless the biological or adoptive parent does not have legal authority to make educational decisions for the child, a guardian generally authorized to act as the child's parent or authorized to make educational decisions for the child, an individual acting in the place of a biological or adoptive parent, including a grandparent, stepparent, or other relative with whom the child lives, or an individual who is legally responsible for the child's welfare, a surrogate parent, a foster parent if the authority of the biological or adoptive parent to make educational decisions on the child's behalf has been specifically limited by court order in accordance with Code of Federal Regulations 300.30(b)(1) or (2). Parent does not include the state or any political subdivision of government or the nonpublic school or agency under contract with the LEA for the provision of special education or designated instruction and services for a child. (California Education Code section 56028).
- g) The term "days" means calendar days unless otherwise specified.
- h) The phrase "billable day" means a school day in which instructional minutes meet or exceed those in comparable LEA programs.
  - i) The phrase "billable day of attendance" means a school day as defined in California Education Code Section 46307, in which a student is in attendance and in which instructional minutes meet or exceed those in comparable LEA programs unless otherwise stipulated in an IEP or ISA.
- i) It is understood that the term "Master Contract" also means "Agreement" and is referred to as such in this document.

### **3) TERM OF MASTER CONTRACT**

The term of this Master Contract shall be from July 1, 2020 to June 30, 2021 (Title 5 California Code of Regulations section 3062(a)). Neither the CONTRACTOR nor the LEA is required to renew this Master Contract in subsequent contract years. However, the parties acknowledge that any subsequent Master Contract is to be re-negotiated prior to June 30, 2020. If the subsequent Master Contract has not been executed prior to June 30, 2020, this Contract shall remain in force and effect until terminated as provided herein or a new Master Contract is executed.

### **4) CERTIFICATION AND LICENSES**

CONTRACTOR shall be certified by the California Department of Education (hereinafter referred to as "CDE") as a nonpublic, nonsectarian school/agency. All nonpublic school and nonpublic agency services shall be provided consistent with the area of certification and licensure specified by CDE Certification and as defined in California Education Code, section 56366 *et seq* and within the professional scope of practice of each provider's license, certification and/or credential. A current copy of CONTRACTOR's nonpublic school/agency certification or a waiver of such certification issued by the CDE pursuant to Education Code

section 56366.2 must be provided to LEA on or before the date this contract is executed by CONTRACTOR. This Master Contract shall be null and void if such certification or waiver is expired, revoked, rescinded, or otherwise nullified during the effective period of this Master Contract. Total student enrollment shall be limited to capacity as stated on CDE certification.

In addition to meeting the certification requirements of the State of California, CONTRACTOR that operates a non-public school or agency outside of this State shall be certified and all staff persons providing services to pupils shall be certified and/or licensed by that state to provide, respectively, special education and related services and designated instruction and related services to pupils under the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.).

- a) If CONTRACTOR is a licensed children's institution (hereinafter referred to as "LCI"), CONTRACTOR shall be licensed by the state, or other public agency having delegated authority by contract with the state to license, to provide nonmedical care to children, including, but not limited to, individuals with exceptional needs. The LCI must also comply with all licensing requirements relevant to the protection of the child, and have a special permit, if necessary, to meet the needs of each child so placed. If the CONTRACTOR operates a program outside of this State, CONTRACTOR must obtain all required licenses from the appropriate licensing agency in both California and in the state where the LCI is located.
- b) A current copy of CONTRACTOR's licenses and nonpublic school/agency certifications, or a validly issued waiver of any such certification must be provided to LEA on or before the date this Master Contract is executed by CONTRACTOR. CONTRACTOR must immediately (and under no circumstances longer than three (3) calendar days) notify LEA if any such licenses, certifications or waivers are expired, suspended, revoked, rescinded, challenged pursuant to an administrative or legal complaint or lawsuit, or otherwise nullified during the effective period of this Master Contract. If any such licenses, certifications or waivers are expired, suspended, revoked, rescinded, or otherwise nullified during the effective period of this Master Contract, this Master Contract shall be null and void.
- c) Notwithstanding the foregoing, if current (re)certification documents are not available through no fault of the NPS/A, this Master Contract shall remain in effect until such documents are made available to the NPS/A, which shall in turn submit copies of same to the LEA within five (5) business days of receipt by the NPS/A. The NPS/A shall, within five (5) business days of any change in the status of its approved capacity to serve a specific number of students notify the LEA of the change.

## **5) COMPLIANCE WITH LAWS, STATUTES, REGULATIONS**

- a) During the term of this Master Contract the CONTRACTOR and the LEA shall comply with all applicable federal and state laws and regulations relating to the provision of



special education and related services, and facilities for individuals with exceptional needs.

- b) CONTRACTOR shall also comply with all applicable policies pursuant to the Local Plan, unless, taking into consideration all of the surrounding facts and circumstances, a policy or policies or a portion of a policy does not reasonably apply to CONTRACTOR.
- c) CONTRACTOR hereby acknowledges and agrees that it accepts all risks and responsibilities for its failure to comply with applicable LEA policies and shall indemnify LEA under the provisions of section 16 of this Master Contract for all liability, loss, damage and expense (including reasonable attorneys' fees) resulting from or arising out of CONTRACTOR's failure to comply with LEA policies.
- d) The CONTRACTOR shall comply with those policies, relating to among other things, the provision of special education and/or related services, facilities for individuals with exceptional needs, LEA pupil enrollment and transfer, LEA student inactive status, corporal punishment, student discipline, and positive behavior interventions.

## **6) RIGHT TO REPORT MASTER CONTRACT VIOLATIONS**

CONTRACTOR and LEA acknowledge and understands that either party may report to the CDE any violations of the provisions of this Master Contract; and that this may result in the suspension and/or revocation of CDE nonpublic school/agency certification pursuant to California Education Code section 56366.4(a) or action by the CDE against the LEA.

## **7) INTEGRATION / CONTINUANCE OF CONTRACT FOLLOWING EXPIRATION OR TERMINATION**

- a) This Master Contract includes the LEA Procedures and each Individual Services Agreement and they are incorporated herein by this reference. Upon written request, LEA agrees to make all of its policies and procedures available to CONTRACTOR, either electronically or by hard copy. This Master Contract supersedes any prior or contemporaneous written or oral understanding or agreement with respect to the terms set forth in this Master Contract. This Master Contract may be amended only by written amendment executed by both parties. Notwithstanding the foregoing, the LEA may modify the LEA procedures from time to time without the consent of CONTRACTOR.
- b) CONTRACTOR shall provide the LEA with information as requested in writing to secure a Master Contract or a renewal.
- c) At a minimum, such information shall include current copies of teacher credentials and clearance, insurance documentation and CDE certification. The LEA may require additional information as applicable. In the event that this Master Contract expires or terminates, CONTRACTOR shall continue to be bound to all of the terms and conditions

of the most recent executed Master Contract between CONTRACTOR and LEA for so long as CONTRACTOR is servicing authorized students at the discretion of the LEA.

## **8) INDIVIDUAL SERVICES AGREEMENT**

- a) This contract shall include an Individual Services Agreement (ISA) developed for each LEA student to whom CONTRACTOR is to provide special education and/or related services. An ISA shall only be issued for LEA students enrolled with the approval of the LEA pursuant to Education Code section 56366 (a)(2)(A).
- b) ISAs are void upon termination or expiration of the Master Contract. In the event that this Master Contract expires or terminates, CONTRACTOR and the LEA shall continue to be bound to all of the terms and conditions of the most recent executed ISAs between CONTRACTOR and LEA for so long as CONTRACTOR is servicing authorized LEA students, until such time as a new Master Contract is executed.
- c) Any and all changes to a LEA student's educational placement/program provided under this Master Contract and/or an ISA shall be made solely on the basis of a revision to the LEA student's IEP/IFSP. At any time during the term of this Master Contract, a LEA student's parent, CONTRACTOR, or LEA may request a review of a LEA student's IEP/IFSP subject to all procedural safeguards required by law, including notice to and participation by the CONTRACTOR in the IEP Team meeting.
- d) Unless otherwise provided in this Master Contract, the CONTRACTOR shall provide all services specified in the IEP/IFSP unless the CONTRACTOR and the LEA agree otherwise in the ISA. (California Education Code sections 56366(a) (5) and 3062(e)). In the event the CONTRACTOR is unable to provide a specific service at any time during the term of the ISA, the CONTRACTOR shall notify the LEA in writing within five (5) business days of the last date a service was provided.
- e) If a parent or LEA contests the termination of an ISA by initiating a due process proceeding with the California Office of Administrative Hearings (hereinafter referred to as "OAH"), CONTRACTOR shall abide by the "stay-put" requirement of state and federal law unless the parent agrees otherwise or an interim alternative educational placement is deemed lawful and appropriate by LEA or OAH.
- f) Disagreements between LEA and CONTRACTOR concerning the formulation of an ISA or the Master Contract may be appealed to the local SELPA office prior to appeal to the State Superintendent of Public Instruction pursuant to the provisions of California Education Code section 56366 (C) (2).

## ADMINISTRATION OF CONTRACT

### 9) NOTICES

All notices provided for by this contract shall be in writing. Notices shall be faxed, emailed with verification of receipt, mailed by first class mail deposited with the United States Postal Service or delivered by hand and shall be effective as of the date of receipt by addressee. All notices mailed to LEA shall be addressed to both:

Name Jennifer Blake  
LEA Oakland SELPA  
Address 1011 Union Street  
City, State, Zip Oakland, CA 94607  
Phone 510-879-8094

Name Coleen R. Sparkman  
LEA The Behavior Center  
Address PO Box 4428  
City, State, Zip Modesto, CA 95352  
Phone 925.587.1456

Notices to CONTRACTOR shall be addressed as indicated on signature page.

### 10) MAINTENANCE OF RECORDS

- a) All records shall be maintained by CONTRACTOR as required by state and federal laws and regulations. Notwithstanding the foregoing sentence, CONTRACTOR shall maintain all records for at least five (5) years after the termination of this Master Contract. For purposes of this Master Contract, "records" shall include, but not be limited to: student records as defined by California Education Code section 49061(b); cost data records as set forth in Title 5 of the California Code of Regulations section 3061; registers and roll books of teachers and/or daily service providers; daily service logs and notes and other documents used to record the provision of related services including supervision; daily service logs and notes used to record the provision of services provided through additional instructional assistants, NPA behavior intervention aides, and bus aides; absence verification records (parent/doctor notes, telephone logs, and related documents) if the CONTRACTOR is funded for excused absences, however, such records are not required if positive attendance is required; bus rosters; staff lists specifying credentials held and documents evidencing other staff qualifications, social security numbers, dates of hire, and dates of termination; records of employee training and certification, staff time sheets; non-paid staff and volunteer sign-in sheets; transportation and other related services subcontracts; school calendars; bell/class schedules when applicable; liability and worker's compensation insurance policies; state nonpublic school and/or agency certifications; by-laws of current board of directors/trustees, if incorporated; statement of income and expenses; general journals; cash receipts and disbursement books; general ledgers and supporting documents; documents evidencing financial expenditures; federal/state payroll quarterly reports; and bank statements and cancelled checks or facsimile thereof.
- b) CONTRACTOR shall maintain LEA electronic and physical student records in a secure location to ensure confidentiality and prevent unauthorized access. CONTRACTOR shall

maintain a current list of the names and positions of CONTRACTOR's employees who have access to confidential records. CONTRACTOR shall maintain an access log for each LEA student's record which lists all persons, agencies, or organizations requesting or receiving information from the record and the legitimate interests thereof (California Education Code Section 49064). Such log shall be maintained as required and include the name, title, agency/organization affiliation, and date/time of access for each individual requesting or receiving information from the LEA student's record. Such logs need to record access to the LEA student's records by: (a) the LEA student's parent; (b) an individual to whom written consent has been executed by the LEA student's parent; or (c) employees of LEA or CONTRACTOR having a legitimate educational interest in requesting or receiving information from the record (Education Code Section 49064). CONTRACTOR/LEA shall maintain copies of any written parental concerns granting access to student records. For purposes of this paragraph, "employees of LEA or CONTRACTOR" do not include subcontractors. CONTRACTOR shall grant parents access to student records, and comply with parents' requests for copies of student records, as required by state and federal laws and regulations. CONTRACTOR agrees, in the event of school or agency closure, to forward LEA student records to LEA within five (5) business days. These records shall include, but not be limited to, the LEA student's current transcripts, IEP/IFSPs, and reports. LEA and/or SELPA shall have access to and receive copies of any and all records upon request within five (5) business days.

#### **11) SEVERABILITY CLAUSE**

If any provision or portion of a provision of this Master Contract is held, in whole or in part, to be unenforceable for any reason, the remainder of that provision and of the entire Master Contract shall be severable and remain in effect.

#### **12) SUCCESSORS IN INTEREST**

This Master Contract binds CONTRACTOR's successors and assignees. Contractor shall notify the LEA within 30 days of any change of ownership or corporate control.

#### **13) VENUE AND GOVERNING LAW**

The laws of the State of California shall govern the terms and conditions of this Master Contract with venue in the County where the LEA is located.

#### **14) MODIFICATIONS AND AMENDMENTS**

This Master Contract may be modified or amended by the LEA to conform to administrative and statutory guidelines issued by any state, federal or local governmental agency. The LEA shall provide the CONTRACTOR thirty (30) days' notice of any such changes or modifications made to conform to administrative or statutory guidelines and a copy of the statute or regulation upon which the modification or changes are based.

## **15) TERMINATION OF MASTER CONTRACT AND/OR INDIVIDUAL SERVICES AGREEMENT**

This Master Contract may be terminated with or without cause by either the CONTRACTOR or LEA. To terminate the Master Contract either party shall give twenty (20) calendar days prior written notice (California Education Code Section 56366(a)(4)). At the time of termination, CONTRACTOR shall provide to LEA any and all documents CONTRACTOR is required to maintain under this Master Contract. ISAs are void upon termination of this Master Contract, as provided in Section 5 or 6. CONTRACTOR or LEA may terminate an ISA for cause. To terminate the ISA, either party shall give twenty (20) calendar days prior written notice (refer to Section 7).

In the event of the closure of a non-public school or agency, the LEA will be given as much notice as is reasonably possible.

## **16) INSURANCE**

- a) CONTRACTOR shall procure and maintain for the duration of the Master Contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with performance under this Master Contract by CONTRACTOR, its agents, representatives, or employees.
- b) Prior to final approval of this Master Contract, CONTRACTOR shall deliver to the LEA a certificate of insurance for each required policy with insurers and additional insured policy endorsements for the comprehensive general liability insurance and comprehensive automobile liability insurance. If at any time said policies of insurance lapse or become canceled, this MASTER CONTRACT shall become void. The acceptance by LEA of the above-required insurance does not serve to limit the liability or responsibility of the insurer or CONTRACTOR.
- c) Insurance coverage shall be at least as broad as:
  - i) Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
  - ii) Insurance Services Office form number CA 0001 (Ed. 1/2010) covering Automobile Liability, code 1 (any auto).
  - iii) Workers' Compensation insurance as required by the state in which services are performed and Employer's Liability Insurance with limits of \$2,000,000/\$2,000,000/\$2,000,000.
- d) CONTRACTOR shall maintain limits of insurance no less than:

	Agencies with 1-5 providers	Agencies with 6+ providers and non-public school	Residential
General Liability			
Per occurrence	\$1,000,000	\$2,000,000	\$3,000,000
Fire damage	\$500,000	\$500,000	\$500,000
Medical expenses	\$5,000	5,000	5,000
Personal and adv. Injury	\$1,000,000	\$1,000,000	\$1,000,000
General aggregate	\$1,000,000	\$2,000,000	\$6,000,000
Business Auto Liability combined single limit	\$2,000,000	\$2,000,000	\$2,000,000
Professional Liability/Errors and Omissions coverage not to exclude sexual molestation and abuse coverage unless that coverage is afforded elsewhere in the commercial general liability insurance			
Per Occurrence	\$1,000,000	\$1,000,000	\$3,000,000
General Aggregate	\$3,000,000	\$3,000,000	\$6,000,000
Workers Compensation and Employers Liability	\$2,000,000	\$2,000,000	\$2,000,000

e) For all insurance coverage procured by CONTRACTOR, the following terms apply:

- i) Any deductibles or self-insured retentions above \$25,000 must be declared in writing to and approved by the LEA. At its option, LEA may require the CONTRACTOR, at the CONTRACTOR's sole cost, to: (a) cause its insurer to reduce to levels specified by the LEA or eliminate such deductibles or self-insured retentions as respects to the LEA, its officials and employees, or (b) procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- ii) The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
  - a) The LEA, its subsidiaries, officials and employees are to be covered as additional insured as respects: liability arising out of activities performed by or on behalf of CONTRACTOR; products and completed operations of the CONTRACTOR; premises owned, occupied or used by the CONTRACTOR; or automobiles owned, leased, hired or borrowed by the CONTRACTOR. The coverage shall contain no special limitations on the scope of protection afforded to the LEA, its subsidiaries, officials and employees.
  - b) For any claims related to the services performed in connection with this Master Contract, the CONTRACTOR's insurance coverage shall be the primary insurance with respect to the LEA, its subsidiaries, officials and employees. Any insurance or self-insurance maintained by the LEA, its subsidiaries, officials and employees shall be excess of the CONTRACTOR's insurance and shall not contribute with it.
  - c) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the LEA.
- f) Insurance is to be placed with insurers admitted by the State of California and with a current A.M. Best's rating of no less than A-: VII, unless otherwise acceptable to the LEA.
- g) The CONTRACTOR shall furnish the LEA with original or photocopies of endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All Certificates of Insurance shall reference the contract number, the name of school or agency submitting the contract number, the name of school or agency submitting the certificate, an

indication if the school or agency is an NPS or NPA, and the location of the school or agency submitting the certificate.

- h) If LEA or CONTRACTOR determines that change in insurance coverage obligations under this section is necessary, either party may reopen negotiations to modify the insurance obligations.

## **17) INDEMNIFICATION AND HOLD HARMLESS**

- a) CONTRACTOR shall indemnify and hold LEA and its Board Members, administrators, employees, agents, attorneys, volunteers, and subcontractors ("LEA Indemnities") harmless against all liability, loss, damage and expense (including reasonable attorneys' fees) resulting from or arising out of this Master Contract or its performance, to the extent that such loss, expense, damage or liability was caused, in whole or in part, by negligence, intentional act or willful misconduct of CONTRACTOR, including, without limitation, its agents, employees, subcontractors or anyone employed directly or indirectly by it (excluding LEA and LEA Indemnities). The duty and obligation to defend shall arise immediately upon tender of a claim or lawsuit to the CONTRACTOR.
- b) LEA shall indemnify and hold CONTRACTOR and its Board Members, administrators, employees, agents, attorneys, and subcontractors ("CONTRACTOR Indemnities") harmless against all liability, loss, damage and expense (including reasonable attorneys' fees) resulting from or arising out of this Master Contract or its performance, to the extent that such loss, expense, damage or liability was proximately caused by the gross negligence or willful act of LEA, including, without limitation, its agents, employees, subcontracts or anyone employed directly or indirectly by it (excluding CONTRACTOR and/or any CONTRACTOR indemnities).
- c) LEA represents that it is self-insured in compliance with the laws of the State of California, that the self-insurance covers district employees acting within the course and scope of their respective duties and that its self-insurance covers the LEA's indemnification obligations under this Master Contract.

## **18) INDEPENDENT CONTRACTOR**

This Master Contract is by and between two independent entities that have an independent contractual relationship. CONTRACTOR shall provide all services under this Agreement as an independent contractor, and neither party shall have the authority to bind or make any commitment on behalf of the other. Nothing contained in this Master Contract shall be deemed to create any association, partnership, joint venture or relationship of principal and agent, master and servant, or employer and employee between the LEA and CONTRACTOR and any of their employees, agents, affiliates or other representatives, or between the LEA and any individual assigned by CONTRACTOR to perform any services for the LEA.



If the LEA is determined to be a partner, joint venture, co-principle, employer or co-employer of CONTRACTOR, CONTRACTOR shall indemnify and hold harmless the LEA from and against any and all claims for loss, liability, or damages arising from that determination, as well as any expenses, costs, taxes, penalties and interest charges incurred by the LEA as a result of that holding.

## **19) SUBCONTRACTING**

- a) CONTRACTOR shall provide written notification to LEA before subcontracting for special education and/or related services pursuant to this Master Contract. CONTRACTOR shall enter into an initial subcontract only with a provider who is certified as a nonpublic school or nonpublic agency to delivery any of the instructional or related services contemplated under this Master Contract. The LEA and the CONTRACTOR shall maintain a copy of the written approval. CONTRACTOR shall provide all required clearances for its employees, including, but not limited to fingerprint requirements, and tuberculosis. When subcontracting with a nonpublic agency, CONTRACTOR shall not charge LEA a higher rate than its own approved collaborative rate.
- b) Furthermore, when CONTRACTOR enters into subcontracts for the provision of special education and/or related services (including without limitation transportation) for any student, CONTRACTOR shall cause each subcontractor to procure and maintain insurance during the term of each subcontract. Such subcontractor's insurance shall comply with the provisions of Section 16. Each subcontractor shall furnish the LEA with original endorsements and certificates of insurance effecting coverage required by Section 16. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on the forms provided by the LEA. All endorsements are to be received and approved by the LEA before the subcontractor's work commences. As an alternative to the LEA's forms, a subcontractor's insurer may provide complete, certified copies of all required insurance policies, including endorsements affective the coverage required by this Master Contract. All subcontractors must meet the requirements as contained in Section 46 Fingerprint Clearance Requirements and Section 47 Staff Qualifications of this Master Contract.

## **20) CONFLICTS OF INTEREST**

- a) CONTRACTOR and any member of its Board of Directors (or Trustees) shall avoid any relationship with LEA that constitutes or may constitute a conflict of interest pursuant to California Education Code Section 56042 and including, but not limited to, employment with LEA, provision of private party assessments and/or reports, and attendance at IEP/IFSP team meetings acting as a student's advocate.
- b) Unless CONTRACTOR and LEA otherwise agree in writing, LEA shall neither execute an ISA with CONTRACTOR nor amend an existing ISA for a LEA student when a recommendation for special education and/or related services is based in whole or in

part on assessment(s) or reports provided by CONTRACTOR to the LEA student without prior written authorization by LEA. This paragraph shall apply to CONTRACTOR regardless of when an assessment is performed or a report is prepared (i.e., before or after the LEA student is enrolled in CONTRACTOR's school/agency) or whether an assessment of the LEA student is performed or a report is prepared in the normal course of the services provided to the LEA student by CONTRACTOR.

## **21) NON-DISCRIMINATION**

CONTRACTOR programs, activities, and practices shall be free from unlawful discrimination, including discrimination against an individual or group based on race, color, ancestry, nationality, national origin, ethnic group identification, age, religion, marital, pregnancy, or parental status, physical or mental disability, sex, sexual orientation, gender, gender identity or expression, or genetic information; a perception of one or more of such characteristics; or association with a person or group with one or more of these actual or perceived characteristics.

## **EDUCATIONAL PROGRAM**

### **22) FREE AND APPROPRIATE PUBLIC EDUCATION (FAPE)**

- a) LEA shall provide CONTRACTOR with a copy of the IEP/IFSP including the Individualized Transition Plan (hereinafter referred to as "ITP") of each LEA student served by CONTRACTOR. Unless otherwise agreed to by the CONTRACTOR and the LEA, CONTRACTOR shall provide to each LEA student special education and/or related services (including transition services) within the nonpublic school or nonpublic agency consistent with the LEA student's IEP/IFSP and as specified in the ISA. If CONTRACTOR is a NPS, CONTRACTOR shall not accept an LEA student if it cannot provide or ensure the provision of the services outlined in the student's IEP/IFSP (California Education Code Section 56366.10(a)).
- b) Unless otherwise agreed to between CONTRACTOR and LEA, CONTRACTOR shall be responsible for the provision of all appropriate supplies, equipment, or facilities for LEA pupils, as specified in the LEA student's IEP/IFSP and ISA. Supplies and equipment purchased and/or provided by the LEA remains the property of the LEA. Supplies and/or equipment provided by the CONTRACTOR remains the property of the CONTRACTOR, if CONTRACTOR is not specifically reimbursed by the LEA for that specific supply or equipment. CONTRACTOR shall make no charge of any kind to parents for special education and/or related services as specified in the LEA pupil's IEP/IFSP and ISA (including, but not limited to, screenings, assessments, or interviews that occur prior to or as a condition of the LEA pupil's enrollment under the terms of this Master Contract).

- c) Voluntary services and/or activities not necessary for the LEA student to receive a free appropriate public education shall not interfere with the LEA pupil's receipt of special education and/or related services as specified in the LEA student's IEP/IFSP and ISA.

## **23) GENERAL PROGRAM OF INSTRUCTION**

### **a) General Program**

- i) All nonpublic school and nonpublic agency services shall be provided consistent with the area of certification specified by CDE Certification and as defined in California Education Code section 56366 et seq. No service will be provided by the CONTRACTOR outside of the CONTRACTOR's certification unless otherwise agreed to by the LEA.
- ii) When CONTRACTOR is a nonpublic school, CONTRACTOR's general program of instruction shall: (a) be consistent with LEA's standards regarding required courses of study and curriculum; (b) include curriculum that addresses mathematics, literacy and the use of educational, assistive technology and transition services; (c) be consistent with CDE's standards regarding the particular course of study and curriculum; (d) provide the services as specified in the LEA student's IEP/IFSP and ISA. The State Standards and coursework selected for each student shall be aligned with the student's IEP/IFSP to meet the individual student's needs.
- iii) LEA students shall have access to the following educational materials, services, and programs that are consistent with each student's individualized educational program: (a) For kindergarten and grades 1-8 inclusive, state adopted Common Core State Standards ("CCSS") for curriculum and instructional materials; and for grades 9-12 inclusive, standards-aligned, core curriculum and instructional materials used by any local educational agency that contracts with the non-public, non-sectarian school; (b) college preparation courses; (c) extracurricular activities, such as art, sports, music and academic clubs; (d) career preparation and vocational training, consistent with transition plans pursuant to state and federal law and; (e) supplemental assistance, including individual academic tutoring, psychological counseling, and career and college counseling (California Education Code 56366.10). CONTRACTOR's general program of instruction shall be described in writing and a copy provided to LEA within 5 days upon request.
- iv) When NPS CONTRACTOR serves LEA students in grades nine through twelve inclusive, LEA shall provide to CONTRACTOR a specific list of the course requirements to be satisfied by LEA students leading toward graduation or completion of diploma requirements. When CONTRACTOR is a nonpublic agency and/or related services provider, CONTRACTOR's general program of instruction and/or services shall be consistent with LEA and CDE guidelines and

provided as specified in the LEA student's IEP/IFSP and ISA. The nonpublic agency providing Behavior Intervention Development services shall review or develop a written plan that specifies the nature of its' nonpublic agency service for each LEA pupil within thirty (30) days of enrollment which shall be available upon request. CONTRACTOR shall immediately notify LEA in writing if no parent, guardian or adult caregiver is present at the IEP meeting held to review and approve the plan. CONTRACTOR shall provide to LEA a written description of the general program of instruction and/or services provided prior to the effective date of this Master Contract. Contractors providing Behavior Intervention services must have a Board Certified Behavior Analyst, or an appropriately trained professional.

- v) Except for emergency situations requiring a change of location in order to continue the education of LEA students, school-based services may not be unilaterally converted by CONTRACTOR to a substitute program or provided at a location not specifically authorized by the IEP/IFSP team. Except for services provided by a contractor that is a licensed children's institution, all services not provided in the school setting require the presence of, or the prior written consent of a parent, guardian or adult caregiver during the delivery of services. LCI contractors shall ensure that appropriate and qualified residential or clinical staff is present during the provision of services under this Master Contract.

b) Transportation Services:

- i) In the event that transportation services for a student served by CONTRACTOR pursuant to an Individual Services Agreement are to be provided by a party other than CONTRACTOR or the LEA or its transportation providers, such services shall be reflected in a separate agreement signed by the parties hereto, and provided to the LEA and SELPA Director by the CONTRACTOR. Except as provided below, CONTRACTOR shall compensate the transportation provider directly for such services, and shall charge the LEA for such services at the actual and reasonable rates billed by the transportation provider, plus a ten percent (.10) administrative fee, unless a "flat rate" is provided in the transportation contract. In the event that the transportation provider notifies the LEA or SELPA Director that CONTRACTOR is more than 90 days behind in payment for transportation services, LEA shall have the right, in its sole and exclusive discretion, but not the obligation, to make payment for such services directly to the transportation provider, and to deduct such payments from any sums owed to CONTRACTOR pursuant to this Master Contract and any Individual Services Agreement between the parties. In the event that the LEA makes direct payment of the transportation provider's charges, it shall be entitled to withhold both the transportation charges themselves and such additional amount as shall be reasonably necessary to compensate the LEA for the staff and other costs incurred in making direct payment of those charges. The

remedies provided to the LEA pursuant to this Paragraph shall not be exclusive. CONTRACTOR shall not include transportation through the use of services or equipment owned, leased or contracted through the LEA unless expressly provided in the Individual Services Agreement for the student transported.

- ii) When CONTRACTOR is a nonpublic agency, CONTRACTOR shall not provide transportation nor subcontract for transportation services for LEA student unless the LEA and the CONTRACTOR agree otherwise in writing.

## **24) INSTRUCTIONAL MINUTES**

- a) When CONTRACTOR is a nonpublic school, the total number of instructional minutes per school day provided by CONTRACTOR shall be at least equivalent to the number of instructional minutes per school day provided to LEA students at like grade level, attending LEA schools, unless otherwise specified in the student's IEP/IFSP, and shall be specified in the LEA student's ISA developed in accordance with the LEA student's IEP/IFSP.
- b) For NPS students in grades pre-kindergarten through 12, unless otherwise specified in the LEA student's IEP/IFSP, the number of instructional minutes, excluding recess, lunch, and passing time, shall be at least the minimum as specified in Education Code Sections 46110-46147, and in no case will be less than the amount as specified in the IEP/IFSP. In addition, the total number of annual instructional minutes shall be at least equivalent to the total number of annual instructional minutes provided to LEA students attending LEA schools in like grade level unless otherwise specified in the LEA student's IEP/IFSP.
- c) When CONTRACTOR is a nonpublic agency and/or related services provider, the total number of minutes per school day provided by CONTRACTOR shall be specified in the LEA student's ISA developed in accordance with the LEA student's IEP/IFSP.

## **25) CLASS SIZE**

- a) When CONTRACTOR is a nonpublic school, CONTRACTOR shall ensure that class size shall not exceed a ratio of one teacher per fourteen (14) pupils. Each classroom with 2 or more students shall be assigned at least one paraprofessional. Upon written approval by an authorized LEA representative, class size may be temporarily increased by a ratio of 1 teacher to sixteen (16) pupils when necessary to provide services to pupils with disabilities. For any billing period where the class size has exceeded sixteen (16) students for five consecutive school days, the CONTRACTOR shall have a 10% decrease in its approved daily rate for those LEA students that exceeded sixteen (16), for those days (over five).
- b) In the event a nonpublic school is unable to fill a vacant teaching position responsible for direct instruction to students, and the vacancy has direct impact on the California

Department of Education Certification of that school, the nonpublic school shall develop a plan to assure appropriate coverage of student by first utilizing existing certificated staff. The nonpublic school and the LEA may agree to one 30 school day period per contract year where class size may be increased to assure coverage by an appropriately credentialed teacher. Such an agreement shall be in writing and signed by both parties. This provision does not apply to a nonpublic agency.

- c) CONTRACTOR providing special education instruction for individuals with exceptional needs between the ages of three and five years, inclusive, shall also comply with the appropriate instructional adult to child ratios pursuant to California Education Code sections 56440 et seq.

## **26) CALENDARS**

- a) When CONTRACTOR is a Non-Public School, the CONTRACTOR shall submit to LEA a school calendar with the total number of billable days not to exceed 180 days for the regular school year, plus extended school year billable days as determined by the IEP/IFSP team ((34 CFR § Section 300.106); a minimum of 20 instructional days (excluding July 4<sup>th</sup>). Billable days shall include only those days that are included in the submitted and approved school calendar, and/or required by the IEP/IFSP for each student. CONTRACTOR shall adhere to the requirements for providing Extended School Year as outlined in Title 5, Article 4 of the California Code of Regulations. Unless otherwise specified by the students IEP/IFSP, educational services shall occur at the school site.
- b) When CONTRACTOR is a nonpublic agency, CONTRACTOR shall be provided with a LEA developed/approved calendar; CONTRACTOR herein agrees to observe holidays as specified in the LEA-developed/approved calendar. CONTRACTOR shall provide services pursuant to the LEA-developed/approved calendar, or as specified in the LEA pupil's IEP/IFSP and ISA. Unless otherwise specified in the LEA student's IEP/IFSP and ISA, CONTRACTOR shall provide related services to LEA pupils on only those days that the LEA pupil's school of attendance is in session and the LEA student attends school. CONTRACTOR shall bill only for services provided on billable days of attendance as indicated on the LEA calendar unless otherwise specified in the LEA student's IEP/IFSP and ISA.
- c) CONTRACTOR shall identify at least five (5) "emergency days" in their calendar to be used as regular school days during school closure when no attendance waiver is approved by the CDE.

## **27) DATA REPORTING**

- a) CONTRACTOR shall agree to provide all data related to student information and billing information with LEA. CONTRACTOR shall agree to provide all data related to any and all sections of this contract and requested by and in the format require by the LEA. CONTRACTOR shall provide the LEA with invoices, attendance reports and progress

reports for LEA students enrolled in CONTRACTOR's nonpublic school or nonpublic agency.

- b) Using forms developed by the California Department of Education or as otherwise mutually agreed upon by CONTRACTOR and LEA, CONTRACTOR shall provide LEA, on a monthly basis, a written report of all incidents in which a statutory offense is committed by any LEA student, regardless if it results in a disciplinary action of suspension or expulsion. This includes all statutory offenses as described in Education Codes 48900 and 48915. CONTRACTOR shall also include, in this monthly report, incidents resulting in the use of a behavioral restraint and/or seclusion even if they were not a result of a violation of Education Code Sections 48900 and 48915.
- c) The LEA shall provide the CONTRACTORS with approved forms and/or format for such data including but not limited to invoicing, attendance reports and progress reports. The LEA may approve use of CONTRACTORS-provided forms at their discretion.

## **28) LEAST RESTRICTIVE ENVIRONMENT/DUAL ENROLLMENT**

- a) CONTRACTOR and LEA shall follow all LEA policies and procedures that support Least Restrictive Environment ("LRE") placement options and/or Dual Enrollment options for students to have access to the general curriculum and to be educated with their nondisabled peers to the maximum extent appropriate.
- b) CONTRACTOR and LEA shall ensure that LRE placement options are addressed at all IEP/IFSP team meetings regarding students for whom ISAs have been or may be executed. This shall include IEP/IFSP team consideration of supplementary aids and services, goals and objectives necessary for placement in the LRE and that may be necessary to enable students to transition to less restrictive settings. The District has the responsibility to determine the offer of FAPE in the Least Restrictive Environment.
- c) When an IEP/IFSP team has determined that an LEA student should be transitioned into the public school setting, CONTRACTOR shall assist the LEA in implementing the IEP/IFSP team's recommendations to support the transition.

## **29) STATEWIDE ACHIEVEMENT TESTING**

- a) When CONTRACTOR is a nonpublic school, CONTRACTOR shall be available to administer all Statewide assessments within the California Assessment of Student Performance and Progress ("CAASPP"), Desired Results Developmental Profile ("DRDP"), achievement and abilities tests (using LEA-authorized assessment instruments), the Fitness Gram, and English Language Proficiency Assessment for California (ELPAC) or alternate assessment for ELPAC, as appropriate to the student, and mandated by LEA pursuant to LEA and state and federal guidelines. In the event the LEA requests that the NPS administer the assessments, NPS staff will be trained by a contracting LEA in the administration of all State-wide assessments in accordance with

the guidelines of Ed Code 56385. Verification of training will be maintained with CONTRACTOR.

- b) NPS CONTRACTOR is subject to the alternative accountability system developed pursuant to Education Code section 52052, in the same manner as public schools. Each LEA student placed with CONTRACTOR by the LEA shall be tested, as determined by the student's IEP, by qualified staff of CONTRACTOR in accordance with that accountability program. Contractor shall report the test results to the CDE as required by Education Code section 56366(a)(8)(A). Test results shall be made available to the CONTRACTOR by the LEA, if the results are not sent to the CONTRACTOR by the test publisher or CDE.
- c) LEA shall provide NPS with the SSID for each LEA student. LEA shall cooperate with CONTRACTOR to accommodate CONTRACTOR's testing window. (Education Code Section 56366(a)(8)(B))

### **30) ATTENDANCE AT DISTRICT MANDATED MEETINGS**

CONTRACTOR shall attend District mandated meetings when legal mandates, and/or LEA policy and procedures are reviewed, including but not limited to the areas of: curriculum, high school graduation, standards-based instruction, cultural and linguistic needs of students with disabilities, dual enrollment responsibilities, LRE responsibilities, transition services, and standardized testing. LEA shall provide CONTRACTOR with reasonable notice of mandated meetings. Attendance at such meetings does not constitute a billable service hour(s). After attending one meeting during the school year (including Extended School Year), upon request, a CONTRACTOR who is providing NPA services may request payment for services for attending any additional meetings mandated by the LEA. The request for payment will be at the CONTRACTOR'S agreed upon hourly rate.

### **31) POSITIVE BEHAVIOR INTERVENTIONS**

- a) CONTRACTOR shall comply with the requirements of Education Code section 56521.5 regarding positive behavior interventions. LEA students who exhibit serious behavioral challenges must receive timely and appropriate assessments and positive supports and interventions in accordance with the federal law and its implementing regulations. If the individualized education program ("IEP") team determines that a student's behavior impedes his or her learning or the learning of others, the IEP team is required to consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior, consistent with Section 1414(d)(3)(B)(i) and (d)(4) of Title 20 of the United States Code and associated federal regulations. This could mean that instead of developing a BIP, the IEP team may conclude it is sufficient to address the student's behavioral problems through the development of behavioral goals and behavioral



interventions to support those goals. NPS site based staff and relevant NPA staff will be trained in positive behavior strategies prior to working with students.

- b) CONTRACTOR shall maintain a written policy pursuant to California Education Code section 56521.1 regarding emergency interventions and Behavioral Emergency Reports (BER). CONTRACTOR shall ensure that all of its staff members are trained annually in crisis intervention and emergency procedures, and evidenced-based practices and interventions specific to the unique behavioral needs of the CONTRACTOR's pupil population as related to appropriate behavior management strategies. The training shall be provided within 30 days of employment to new staff who have any contact or interaction with pupils during the schoolday, and annually to all staff who have any contact or interaction with pupils during the schoolday. The CONTRACTOR shall select and conduct the training in accordance with California Education Code section 56366.1. CONTRACTOR shall maintain written records of the training and provide written verification of the training annually and upon request. This training shall include, but not be limited to:
  - i) Positive behavioral intervention and supports, including collection, analysis, and use of data to inform, plan, and implement behavioral supports.
  - ii) How to understand and address challenging behaviors, including evidence-based strategies for preventing those behaviors.
  - iii) Evidence-based interventions for reducing and replacing challenging behaviors, including deescalation techniques.
- c) Staff will not participate in restraint of students until trained in crisis prevention programs. Evidence of training in a SELPA approved crisis intervention program to staff working in a staffing ratio of 1:1 with students with severe behavioral needs shall be submitted to the LEA at the beginning of the school year and within thirty (30) days of any new hire as referenced above. If the training is not able to be provided within 30 days, the non-public school or agency will notify the LEA to determine a plan to provide the training in a timely manner.
- d) Pursuant to Education Code section 56521.1 emergency interventions shall not be used as a substitute for a Behavior Intervention Plan (BIP), and instead may only be used to control behavior that is unpredictable and spontaneous. For an emergency intervention to be used, the behavior must pose a clear and present danger of serious physical harm to the individual with exceptional needs, or others. Before emergency interventions may be applied, the behavior must be of the kind that cannot be immediately prevented by a response less restrictive than the temporary application of a technique used to contain the behavior. Emergency intervention shall not be employed longer than necessary to contain the behavior. If a situation requires prolonged use of emergency intervention, staff must seek assistance from the school site administrator or a law enforcement agency.

- e) CONTRACTOR shall complete a BER when an emergency occurs that is defined as a serious, dangerous behavior that staff has determined to present a clear and present danger to others. It requires a non-violent physical intervention to protect the safety of student, self, or others and a physical intervention has been used; or a physical intervention has not been used, but an injury or serious property damage has occurred. Personal Safety Techniques may or may not have been used. Emergencies **require** a BER form be completed and submitted to the LEA within twenty-four (24) hours for administrative action. CONTRACTOR shall notify Parent within twenty-four (24) hours via telephone. If the student does not have a Behavior Intervention Plan ("BIP") or Positive Behavior Intervention Plan ("PBIP"), an IEP team shall schedule a meeting to review the BER, determine if there is a necessity for a functional behavioral assessment, and to determine an interim plan. If the student already has a BIP, the IEP team shall review and modify the BIP if a new serious behavior has been exhibited or existing behavioral interventions have proven to be ineffective. CONTRACTOR shall schedule with LEA an IEP meeting within two (2) days.
- f) Pursuant to Education Code section 56521.2, CONTRACTOR shall not authorize, order, consent to, or pay for the following interventions, or any other interventions similar to or like the following:
- i) Any intervention that is designed to, or likely to, cause physical pain, including, but not limited to, electric-shock.
  - ii) An intervention that involves the release of noxious, toxic, or otherwise unpleasant sprays, mists, or substances in proximity to the face of the individual.
  - iii) An intervention that denies adequate sleep, food, water, shelter, bedding, physical comfort, or access to bathroom facilities.
  - iv) An intervention that is designed to subject, used to subject, or likely to subject, the individual to verbal abuse, ridicule, or humiliation, or that can be expected to cause excessive emotional trauma.
  - v) Restrictive interventions that employ a device, material, or objects that simultaneously immobilize all four extremities, including the procedure known as prone containment, except that prone containment or similar techniques may be used by trained personnel as a limited emergency intervention.
  - vi) Locked seclusion, unless it is in a facility otherwise licensed or permitted by state law to use a locked room.
  - vii) An intervention that precludes adequate supervision of the individual.
  - viii) An intervention that deprives the individual of one or more of his or her senses.

- g) CONTRACTOR shall comply with Education Code section 48905.8. Specifically,
  - i) CONTRACTOR shall not do any of the following:
    - a) Use seclusion or a behavioral restraint for the purpose of coercion, discipline, convenience, or retaliation.
    - b) Use locked seclusion, unless it is in a facility otherwise licensed or permitted by state law to use a locked room.
    - c) Use a physical restraint technique that obstructs a pupil's respiratory airway or impairs the pupil's breathing or respiratory capacity, including techniques in which a staff member places pressure on a pupil's back or places his or her body weight against the pupil's torso or back.
    - d) Use a behavioral restraint technique that restricts breathing, including, but not limited to, using a pillow, blanket, carpet, mat, or other item to cover a pupil's face.
    - e) Place a pupil in a facedown position with the pupil's hands held or restrained behind the pupil's back.
    - f) Use a behavioral restraint for longer than is necessary to contain the behavior that poses a clear and present danger of serious physical harm to the pupil or others.
  - ii) CONTRACTOR shall:
    - a) Keep constant, direct observation of a pupil who is in seclusion, which may be through observation of the pupil through a window, or another barrier, through which the educational provider is able to make direct eye contact with the pupil. This observation shall not be through indirect means, including through a security camera or a closed-circuit television.
    - b) Afford to pupils who are restrained the least restrictive alternative and the maximum freedom of movement, and shall use the least number of restraint points, while ensuring the physical safety of the pupil and others.
    - c) If prone restraint techniques are used, a staff member shall observe the pupil for any signs of physical distress throughout the use of prone restraint. Whenever possible, the staff member monitoring the pupil shall not be involved in restraining the pupil.
- h) Notwithstanding the provisions of Education Code 48905.8, NPS/NPA staff shall not use prone restraint. All restraint practices must be reviewed and revised when they have an adverse effect on a student and are used repeatedly for an individual child, either on

multiple occasions within the same classroom or multiple uses by the same individual. CONTRACTOR shall notify the student's parent/guardian when any type of physical or mechanical restraint or seclusion has been used. Upon the use of any type of physical or mechanical restraint or seclusions of a District student, CONTRACTOR shall complete a BER per the reporting and notification requirements listed above.

- i) In the case of a child whose behavior impedes the child's learning or that of others, the individualized education program team shall consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior, consistent with Section 1414(d)(3)(B)(i) and (d)(4) of Title 20 of the United States Code and associated federal regulations.

### **32) STUDENT DISCIPLINE**

- a) CONTRACTOR shall maintain and abide by a written policy for student discipline that is consistent with state and federal law and regulations. Using forms developed by the California Department of Education or as otherwise mutually agreed upon by CONTRACTOR and LEA, CONTRACTOR shall provide LEA, on a monthly basis, a written report of all incidents in which a statutory offense is committed by any LEA student, regardless if it results in a disciplinary action of suspension or expulsion. This includes all statutory offenses as described in Education Codes 48900 and 48915. CONTRACTOR shall also include, in this monthly report, incidents resulting in the use of a behavioral restraint and/or seclusion even if they were not a result of a violation of Education Code Sections 48900 and 48915.
- b) When NPS CONTRACTOR seeks to remove a LEA student from his/her current educational placement for disciplinary reasons, CONTRACTOR shall immediately submit a written discipline report to the LEA. Written discipline reports shall include, but not be limited to: the LEA student's name; the time, date, and description of the misconduct; the disciplinary action taken by CONTRACTOR; and the rationale for such disciplinary action. A copy of the LEA student's behavior plan, if any, shall be submitted with the written discipline report. CONTRACTOR and LEA agree to participate in a manifestation determination at an IEP/IFSP meeting no later than the tenth (10th) day of suspension. LEA shall notify and invite CONTRACTOR representatives to the IEP/IFSP team meeting where the manifestation determination will be made.

### **33) IEP / IFSP TEAM MEETINGS**

- a) Upon referral of an LEA student to CONTRACTOR, the LEA shall provide CONTRACTOR with a copy of that student's IEP/IFSP, as well as available assessment information, and facilitate, if requested, an observation of the student. CONTRACTOR retains the right to decline enrollment of any student, unless ordered by the Office of Administrative Hearing (OAH) or a Court of Competent Jurisdiction. CONTRACTOR shall notify the LEA written notification of its intent to decline enrollment of the LEA student.

- b) An IEP/IFSP team meeting shall be convened at least annually to evaluate: (1) the educational progress of each student placed with CONTRACTOR, including all state assessment results pursuant to the requirements of Education Code section 52052; (2) whether or not the needs of the LEA student continue to be best met at the nonpublic school; and (3) whether changes to the LEA student's IEP/IFSP are necessary, including whether the student may be transitioned to a public school setting. With parent and LEA concurrence, an IEP team may excuse a required IEP team member either from the entire meeting or after the member's report.
- c) Each LEA student shall be allowed to provide confidential input to any representative of his or her IEP/IFSP team. Except as otherwise provided in the Master Contract, CONTRACTOR and LEA shall participate in all IEP/IFSP team meetings regarding LEA students for whom ISAs have been or may be executed. A CONTRACTOR who is providing NPA services may request payment for services for attending any meeting that occurs after the Annual Review of the IEP/IFSP. At any time during the term of this Master Contract, the parent, the CONTRACTOR or the LEA may request a review of the student's IEP/IFSP, subject to all procedural safeguards required by law, including reasonable notice given to, and participation of, the CONTRACTOR in the meeting. Every effort shall be made to schedule IEP/IFSP team meetings at a time and place that is mutually convenient to parents, CONTRACTOR and LEA. CONTRACTOR shall provide to LEA assessments and written assessment reports by service providers upon request and/or pursuant to LEA policy and procedures.
- d) Changes in any LEA student's educational program, including instruction, services, or instructional setting, provided under this Master Contract may only be made on the basis of revisions to the student's IEP/IFSP. In the event that the CONTRACTOR believes the student requires a change of placement, the CONTRACTOR may request a review of the student's IEP/IFSP for the purposes of consideration of a change in the student's placement. Student is entitled to remain in the last agreed upon and implemented placement unless parent agrees otherwise or an interim alternative educational placement is deemed lawful and appropriate by LEA or OAH.

### **34) SURROGATE PARENTS AND FOSTER YOUTH**

CONTRACTOR shall comply with LEA surrogate parent assignments. Surrogate parents shall serve as the child's parent and have all the rights relative to the student's education that a parent has under the Individuals with Disabilities Education Act pursuant to 20 USC 1414-1482 and 34 CFR 300.1-300.756. A student in foster care shall be defined pursuant to California Education Code section 42238.01(b). The LEA shall annually notify the CONTRACTOR who the LEA has designated as the educational liaison for foster children. When a student in foster care is enrolled in a nonpublic school by the LEA any time after the completion of the student's second year of high school, the CONTRACTOR shall schedule the student in courses leading towards graduation based on the diploma requirements of the LEA unless provided notice otherwise in writing pursuant to Section 51225.1.

### **35) DUE PROCESS PROCEEDINGS**

CONTRACTOR shall fully participate in special education due process proceedings including mediations and hearings, as requested by LEA. Participation further includes the willingness to make CONTRACTOR's staff available for witness preparation and testimony as is necessary to facilitate a due process hearing. CONTRACTOR shall also fully participate in the investigation and provision of documentation related to any complaint filed with the State of California, the Office of Civil Rights, or any other state and/or federal governmental body or agency. Full participation shall include, but in no way be limited to, cooperating with LEA representatives to provide complete answers raised by any investigator and/or the immediate provision of any and all documentation that pertains to the operation of CONTRACTOR's program and/or the implementation of a particular student's IEP/Individual and Family Service Plan ("IFSP").

### **36) COMPLAINT PROCEDURES**

CONTRACTOR shall maintain and adhere to its written procedures for responding to parent complaints. These procedures shall include annually notifying and providing parents of LEA students with appropriate information (including complaint forms) for the following: (1) Uniform Complaint Procedures pursuant to Title 5 of the California Code of Regulations section 4600 et seq.; (2) Nondiscrimination policy pursuant to Title 5 of the California Code of Regulations section 4960 (a); (3) Sexual Harassment Policy, California Education Code 231.5 (a) (b) (c); (4) Title IX Pupil Grievance Procedure, Title IX 106.8 (a) (d) and 106.9 (a); and (5) Notice of Privacy Practices in compliance with Health Insurance Portability and Accountability Act (HIPAA), if applicable. CONTRACTOR shall include verification of these procedures to the LEA upon request. CONTRACTOR shall immediately notify LEA of any complaints filed against it related to LEA students and provide LEA with all documentation related to the complaints and/or its investigation of complaints, including any and all reports generated as a result of an investigation.

### **37) LEA STUDENT PROGRESS REPORTS/REPORT CARDS AND ASSESSMENTS**

- a) Unless LEA requests in writing that progress reports be provided on a monthly basis, progress reports shall be sent by CONTRACTOR to LEA and parents no later than October 30th, January 30th, April 30th, and July 30th or as otherwise specified on the IEP/IFSP or requested in writing by the LEA, with respect to LEA students enrolled in CONTRACTOR's educational program. An updated report shall be submitted if there is no current progress report when LEA student is scheduled for a review by the LEA's IEP/IFSP team or when an LEA student's enrollment is terminated. Payment of invoices may be held until progress reports are provided. A copy of the progress reports/report cards shall be maintained at the CONTRACTOR's place of business and made available upon request of LEA and/or the LEA student's parent(s).
- b) CONTRACTOR shall complete academic or other assessment of the LEA student one month prior to the LEA student's annual or triennial review IEP/IFSP team meeting for the purpose of reporting the LEA student's present levels of performance at the

IEP/IFSP team meeting as required by state and federal laws and regulations and pursuant to LEA policies, procedures, and/or practices. Supporting documentation, such as test protocols and data collection, shall be made available to LEA upon request. CONTRACTOR shall not charge the LEA student's parent(s) or LEA for the provision of progress reports, report cards, and/or any assessments, interviews, or meetings. Additional formalized standardized assessments shall be at the determination of the IEP team and the responsibility of the LEA unless otherwise agreed upon between LEA and CONTRACTOR. If Contractor is asked to provide formalized standardized assessment, such service will be paid at the rate stated in Section 62.

### **38) TRANSCRIPTS**

When CONTRACTOR is a nonpublic school, CONTRACTOR, at the close of each semester or upon LEA student transfer, shall prepare transcripts for LEA students in grades nine through twelve inclusive, and submit them to the LEA student's district of residence, for evaluation of progress toward completion of diploma requirements, or if appropriate, a Certificate of Completion, as specified in LEA Procedures. CONTRACTOR shall submit to the LEA names of LEA students and their schools of residence for whom transcripts have been submitted as specified by the LEA.

### **39) LEA STUDENT CHANGE OF RESIDENCE**

- a) Within three (3) school days after CONTRACTOR or LEA becomes aware of a LEA student's change of residence, CONTRACTOR shall notify LEA and/or the LEA shall notify CONTRACTOR of the LEA student's change of residence as specified in LEA Procedures. Upon enrollment, CONTRACTOR shall notify parents in writing of the parent's obligation to notify CONTRACTOR of the LEA student's change of residence. CONTRACTOR shall maintain, and provide upon request by LEA, documentation of such notice to parents.
- b) If the LEA student's change of residence is to a residence outside of LEA's service boundaries or CONTRACTOR fails to follow the procedures specified in this provision, LEA shall not be responsible for the costs of services delivered after the LEA student's change of residence, if CONTRACTOR had knowledge or should reasonably have had knowledge of the LEA student's change of residence. LEAs will adhere to requirements for students identified as homeless or foster youth under current education code.

### **40) WITHDRAWAL OF LEA STUDENT FROM PROGRAM**

CONTRACTOR shall immediately report, by telephone, to the LEA when a LEA student is withdrawn from school and/or services. CONTRACTOR shall confirm such telephone call with written submission within three (3) days.

#### **41) PARENT ACCESS**

- a) CONTRACTOR shall provide for reasonable parental access to students and all facilities including, but not limited to, the instructional setting, recreational activity areas, meeting rooms and student living quarters. CONTRACTOR shall comply with any known court orders regarding parental visits and access to LEA students.
- b) CONTRACTOR operating programs associated with a NPS/RTC shall cooperate with a parent's reasonable request for LEA student therapeutic visits in their home or at the NPS/RTC. CONTRACTOR shall require that parents obtain prior written authorization for therapeutic visits from the CONTRACTOR and the LEA at least thirty (30) days in advance. CONTRACTOR shall facilitate all parent travel and accommodations and for providing travel information to the parent as appropriate. Payment by LEA for approved travel-related expenses shall be made directly through the LEA.
- c) CONTRACTOR providing services in the student's home as specified in the IEP shall assure that at least one parent of the child, or an adult caregiver with written and signed authorization to make decisions in an emergency, is present. The names of any adult caregiver other than the parent shall be provided to the LEA prior to the start of any home based services, including written and signed authorization in emergency situations. The parent shall inform the LEA of any changes of caregivers and provide written authorization for emergency situation. The adult caregiver cannot also be an employee or volunteer associated with the NPS/NPA service provider.
- d) For services provided in a student's home as specified in the IEP, CONTRACTOR must ensure that the parent or LEA approved responsible adult is present during the provision of services. All problems and/or concerns reported to parents, both verbal and written, shall also be provided to the LEA.

#### **42) SERVICES AND SUPERVISION ON PUBLIC SCHOOL CAMPUSES**

- a) If CONTRACTOR provides services on LEA public school campuses, CONTRACTOR shall comply with Penal Code Section 627.1 et. seq., and LEA procedures regarding visitors to school campuses specified by LEA policy and in the LEA Procedures, and shall follow the procedures of the campus at which services are being provided.
- b) CONTRACTOR shall be responsible for purchase and provision of the supplies and assessment tools necessary to implement the provision of services on LEA public school campuses.
- c) In the event CONTRACTOR wishes to bring an animal, other than a bona fide service animal, on LEA premises, both CONTRACTOR'S management and LEA must agree in writing.



#### **43) LICENSED CHILDREN'S INSTITUTION CONTRACTORS**

- a) If CONTRACTOR is a licensed children's institution (hereinafter referred to as "LCI"), CONTRACTOR shall adhere to all legal requirements regarding educational placements for LCI students as stated in Education Code 56366 (a) (2) (C), 56366.9 (c) (1), Health and Safety Code section 1501.1(b), AB 1858 (2004), AB490 (Chapter 862, Statutes of 2003), AB 1261 (2005), AB 1166 Chapter 171 (2015), AB 167 Chapter 224 (2010), AB 2016 Chapter 324 (2013), AB 379 Chapter 772 (2015), AB 1012 Chapter 703 (2015), A LCI shall not require that a student be placed in its nonpublic school as a condition of being placed in its residential facility.
- b) If CONTRACTOR is a nonpublic, nonsectarian school that is owned, operated by, or associated with a LCI, CONTRACTOR shall provide to LEA, on a quarterly basis, a list of all LEA students, including those identified as eligible for special education. For those identified special education students, the list shall include: 1) special education eligibility at the time of enrollment, and 2) the educational placement and services specified in each student's IEP/IFSP at the time of enrollment.

#### **44) STATE MEAL MANDATE**

When CONTRACTOR is a nonpublic school, CONTRACTOR and LEA shall satisfy the State Meal Mandate under California Education Code sections 49530, 49530.5 and 49550.

#### **45) MONITORING**

- a) CONTRACTOR shall allow access by LEA to its facilities for periodic monitoring of each LEA student's instructional program and shall be invited to participate in the review of each student's progress. LEA shall have access to observe each LEA student at work, observe the instructional setting, interview CONTRACTOR, and review each LEA student's records and progress. Such access shall include unannounced monitoring visits. When making site visits, LEA shall initially report to CONTRACTOR's site administrative office.
- b) The LEA (or SELPA) shall report the findings resulting from the monitoring visit to the California Department of Education within 60 calendar days of the onsite visit.
- c) The LEA (or SELPA) shall conduct an onsite visit to the NPS before placement of a pupil if the LEA does not have any pupils enrolled at the school at the time of placement.
- d) If CONTRACTOR is also a LCI, LEA shall annually evaluate whether CONTRACTOR is in compliance with Education Code section 56366.9 and Health and Safety Code section 1501.1(b).
- e) During the term of this Master Contract, CONTRACTOR shall participate in a District Review to be conducted as aligned with the CDE On-site Review or more often if

necessary. This review will address programmatic aspects of the Nonpublic School/Agency, compliance with relevant state and federal regulations, and Master Contract compliance.

- f) CONTRACTOR shall participate in compliance reviews of LEA in accordance with requirements of CDE. CONTRACTOR will use all SELPA IEP forms. CONTRACTOR will adhere to all SELPA assurances and procedures required for compliance.
- g) CONTRACTOR understands that LEA reserves the right to institute a program audit with or without cause. The program audit may include, but is not limited to, a review of core compliance areas of health and safety; curriculum/instruction; related services; and contractual, legal, and procedural compliance.
- h) When CONTRACTOR is a nonpublic school, CONTRACTOR shall prepare a School Accountability Report Card in accordance with California Education Code Section 56366(a)(9) and 33126 and state guidelines.

## **PERSONNEL**

### **46) FINGERPRINT CLEARANCE REQUIREMENTS**

- a) CONTRACTOR shall comply with the requirements of California Education Code section 44237, 35021.1, 35021.2 and 56366.1 including, but not limited to: obtaining clearance from both the California Department of Justice (hereinafter referred to as "CDOJ") and clearance from the Federal Bureau of Investigation (hereinafter referred to as "FBI") for CONTRACTOR's employees and volunteers, unless CONTRACTOR determines that the volunteers will have no direct contact with LEA students, prior to service with any LEA student. CONTRACTOR hereby agrees that CONTRACTOR's employees and volunteers, unless CONTRACTOR determines that the volunteers will have no direct contact with LEA pupils, shall not come in contact with LEA students until CDOJ and FBI clearance are ascertained. CONTRACTOR shall certify in writing to LEA that none of its employees, and volunteers, unless CONTRACTOR determines that the volunteers will have no direct contact with LEA students, or contractors who may come into contact with LEA students have been convicted of a violent or serious felony as those terms are defined in California Education Code section 44237(h), unless despite the employee's conviction of a violent or serious felony, he or she has met the criteria to be eligible for employment pursuant to California Education Code section 44237(i) or (j). In addition, CONTRACTOR shall make a request for subsequent arrest service from the CDOJ as required by California Penal Code section 11105.2.
- b) According to Education Code sections 44237 and 56366.1 CONTRACTOR shall verify that it has received a successful criminal background check clearance and has enrolled in subsequent arrest notice service, as specified, **for each owner, operator, and**

**employee of the nonpublic, nonsectarian school or agency who may have contact with students.** Further this bill deletes the exemption for applicants possessing a valid California state teaching credential or who are currently licensed by another state agency that requires a criminal record summary, from submitting 2 sets of fingerprints for the purpose of obtaining a criminal record summary from the Department of Justice and the Federal Bureau of Investigation. Notwithstanding the restrictions on sharing and destroying criminal background check information, CONTRACTOR, upon demand, shall make available to the State Superintendent evidence of a successful criminal background check clearance and enrollment in subsequent arrest notice service, as provided, for each owner, operator, and employee of the nonpublic, nonsectarian school or agency. CONTRACTOR is required to retain the evidence with their "Custodian of Records", as specified, for all staff, including those licensed or credentialed by another state agency. Background clearances and proof of subsequent arrest notification service as required by California Penal Code section 11105.2 for all staff shall be provided upon request to the State Superintendent.

#### **47) STAFF QUALIFICATIONS**

- a) CONTRACTOR shall ensure that all individuals employed, contracted, and/or otherwise hired by CONTRACTOR to provide classroom and/or individualized instruction or related services hold a license, certificate, permit, or other document equivalent to that which staff in a public school are required to hold in the service rendered consistent with Education Code section 56366.1(n)(1) and are qualified pursuant to Title 5 of the California Code of Regulations sections 3064 and 3065.
- b) Only those nonpublic, nonsectarian schools or agencies located outside of California that employ staff that hold a current valid credential or license to render special education and related services as required by that state shall be eligible to be certified. NPA/NPS staff shall be required to hold credentials and licenses within the state where they are providing services regardless of where the agency is located.
- c) CONTRACTOR shall comply with personnel standards and qualifications regarding instructional aides and teacher assistants respectively pursuant to Federal requirements and California Education Code sections 45340 et seq. and 45350 et seq. CONTRACTOR shall comply with all laws and regulations governing the licensed professions, including but not limited to, the provisions with respect to supervision.
- d) Notwithstanding the foregoing, if current license or credential documents are not available through no fault of the NPS/A, timely application having theretofore been made, this Master Contract shall remain in effect until such documents are made available to the NPS/A from the Consumer Affairs Department or the Commission on Teacher Credentialing. The NPS/A shall in turn submit copies of same to the LEA within five (5) business days of receipt by the NPS/A.

#### **48) VERIFICATION OF LICENSES, CREDENTIALS AND OTHER DOCUMENTS**

- a) CONTRACTOR shall submit to LEA a staff list, and copies of all current licenses, credentials, permits and/or other documents, which entitle the holder to provide special education and/or related services by individuals employed, contracted, and/or otherwise hired by CONTRACTOR. CONTRACTOR shall notify the CDE and the LEA in writing as specified in the LEA Procedures and CDE within forty-five (45) days when personnel changes occur which may affect the provision of special education and/or related services to LEA students as specified in the LEA Procedures. Notwithstanding the foregoing, if current license or credential documents are not available through no fault of the NPS/A, timely application having theretofore been made, this Master Contract shall remain in effect until such documents are made available to the NPS/A from the Consumer Affairs Department or the Commission on Teacher Credentialing. The NPS/A shall in turn submit copies of same to the LEA within five (5) business days of receipt by the NPS/A.
- b) CONTRACTOR shall monitor the status of licenses, credentials, permits and/or other documents for all individuals employed, contracted, and/or otherwise hired by CONTRACTOR to provide special education services to LEA students. CONTRACTOR shall provide to LEA updated information regarding the status of licenses, credentials, permits and/or other documents as specified in LEA Procedures. CONTRACTOR will be considered to be in breach of this contract for any service provided by an unqualified provider or one who has an expired credential. In such an event, the provider shall be paid at 70% of the agreed upon rate.

#### **49) CALSTRS REPORTING REQUIREMENT**

CONTRACTOR shall identify to the LEA any employee (or the CONTRACTOR, if the CONTRACTOR is an individual) expected to perform services under this Agreement who is then-receiving CalSTRS benefits, and who may perform creditable service for the LEA as defined in Education Code 22119.5. Identification to the LEA shall include the individual's full legal name and STRS and social security identification numbers. Before any services by the individual are provided, the CONTRACTOR shall provide to the LEA a signed written confirmation from the individual that he/she is aware of the separation-from-service requirement earnings limitations imposed by Education Code Sections 22714, 24114, 24116, 24214, 24214.5, and 24215. CONTRACTOR shall thereafter provide on a monthly basis to the LEA the actual amounts paid to the individual for services rendered under this Agreement, with the LEA responsible for reporting the individual's earnings to CalSTRS as required by law or regulation.

Pursuant to Education Code 22164.5(b), the activities of an employee of CONTRACTOR shall not be included in the definition of "retired member activities" if all of the following conditions apply:

- (1) The employee performs a limited-term agreement.
- (2) The third-party employer does not participate in a California public pension system.
- (3) The activities performed by the individual are not normally performed by employees

of an employer, as defined in Section 22131.

## **50) STAFF ABSENCE**

- a) When CONTRACTOR is a nonpublic school and CONTRACTOR's classroom teacher is absent, CONTRACTOR shall provide an appropriately credentialed substitute teacher in the absent teacher's classroom in accordance with California Education Code section 56061. CONTRACTOR shall provide to LEA documentation of substitute coverage on LEA substitute teacher log. Substitute teachers shall remain with their assigned class during all instructional time. LEA shall not be responsible for payment for instruction and/or services when an appropriately credentialed substitute teacher is not provided. If a teacher is absent and a non-qualified substitute has been provided, CONTRACTOR will notify the LEA immediately. The LEA will determine how to address the denial of FAPE.
- b) When CONTRACTOR is a nonpublic agency and/or related services provider, and CONTRACTOR's service provider is absent, CONTRACTOR shall provide a qualified (as defined in section eight (8) of this Master Contract and as determined by LEA) substitute, unless LEA provides appropriate coverage in lieu of CONTRACTOR's service providers. LEA will not pay for services unless a qualified substitute is provided and/or CONTRACTOR provides a mutually agreed upon plan evidencing the provision of "make-up" services by a qualified service provider within thirty (30) calendar days from the date on which the services should have been provided. Provider shall notify LEA immediately of the development of the plan for any missed services that include: 5 or more consecutive days of specialized academic instruction (SAI) or more than 2 weeks of missed related services. CONTRACTOR shall not "bank" or "carry over" make-up service hours under any circumstances, unless otherwise agreed to in writing by CONTRACTOR and LEA.

## **HEALTH AND SAFETY MANDATES**

### **51) HEALTH AND SAFETY**

- a) CONTRACTOR shall comply with all applicable federal, state, local, and LEA laws, regulations, ordinances, policies, and procedures regarding student and employee health and safety. CONTRACTOR shall comply with the requirements of California Education Code sections 35021 et. seq. regarding the examination of CONTRACTOR's employees and volunteers for tuberculosis. CONTRACTOR shall provide to LEA documentation for each individual volunteering, employed, contracted, and/or otherwise hired by CONTRACTOR of such compliance before an individual comes in contact with an LEA student. CONTRACTOR will comply with the requirements of California Education Code section 35021 et seq., regarding preventing registered sex offenders from volunteering and to request fingerprinting clearance of volunteers.

- b) CONTRACTOR shall comply with OSHA Bloodborne Pathogens Standards, Title 29 Code of Federal Regulations (CFR) section 1910.1030, when providing medical treatment or assistance to a student. CONTRACTOR further agrees to provide annual training regarding universal health care precautions and to post required notices in areas designated in the California Health and Safety Code.

## **52) FACILITIES, FACILITIES MODIFICATIONS AND FIRE DRILLS**

- a) Facilities: CONTRACTOR shall provide special education and/or related services to LEA pupils in facilities that comply with all applicable federal, state, and local laws, regulations, and ordinances related to, but not limited to: disability access; fire, health, sanitation, and building standards and safety; fire warning systems; zoning permits; and occupancy capacity. CONTRACTOR shall be responsible for any structural changes and/or modifications to CONTRACTOR's facilities as required complying with applicable federal, state, and local laws, regulations, and ordinances.
- b) Fire Drills: When CONTRACTOR is a nonpublic school, CONTRACTOR shall conduct fire drills monthly for elementary and intermediate students and twice per school year for secondary students, as required by Title 5 California Code of Regulations, Section 550.

## **53) ADMINISTRATION OF MEDICATION**

- a) CONTRACTOR shall comply with the requirements of Federal Regulations and California Education Code and the California Code of Regulations, when CONTRACTOR serves an LEA student that is required to take prescription and/or over-the-counter medication during the school day. CONTRACTOR may designate personnel to assist the LEA student with the administration of such medication after the LEA student's parent(s) provides to CONTRACTOR:
  - i) a written statement from a physician detailing the type, administration method, amount, and time schedules by which such medication shall be taken; and
  - ii) a written statement from the LEA student's parent(s) granting CONTRACTOR permission to administer medication(s) as specified in the physician's statement.
- b) CONTRACTOR shall maintain, and provide to LEA upon request, copies of such written statements. CONTRACTOR shall maintain a written log for each LEA student to whom medication is administered. Such written log shall specify the LEA student's name; the type of medication; the date, time, and amount of each administration; and the name of CONTRACTOR's employee who administered the medication.
- c) CONTRACTOR maintains full responsibility for assuring appropriate staff training in the administration of such medication consistent with physician's written orders or current student's Individual Health Care Plan. Any change in medication type, administration

method, amount or schedule must be authorized by both a licensed physician and parent.

#### **54) INCIDENT/ACCIDENT REPORTING**

CONTRACTOR shall notify the LEA within 12 hours of learning of any significant accident or incident. CONTRACTOR shall properly submit required accident or incident reports within one business day pursuant to the procedures specified in LEA Procedures.

#### **55) MANDATED REPORTING REQUIREMENTS**

- a) CONTRACTOR hereby agrees to annually train all staff members, so that they are familiar with and agree to adhere to its own child and dependent adult abuse reporting obligations and procedures as specified in California Penal Code section 11164 et seq. and California Education Code 44691. To protect the privacy rights of all parties involved (i.e., reporter, child and alleged abuser), reports will remain confidential as required by law and professional ethical mandates. A written notice acknowledging the legal requirements of such reporting and verification of staff adherence to such reporting shall be submitted to the LEA upon request.
- b) CONTRACTOR agrees to provide annual training to all employees regarding mandated child abuse reporting laws, and shall maintain documentation, signed by each staff member receiving such training. CONTRACTOR agrees that its obligations to report incidents of abuse or neglect to the LEA are in addition to, and not in lieu of, CONTRACTOR's obligation to immediately report suspected abuse or neglect to the appropriate public authorities; a written report should be submitted within 36 hours (PC 11166(a)). CONTRACTOR shall maintain confidential records of any report of suspected child abuse and shall inform the LEA by facsimile or email within 24 hours (and followed up with U.S. mail) of becoming aware of circumstances including, but not limited to allegations of abuse involving a staff member.
- c) CONTRACTOR shall notify the LEA of general concerns regarding the health and safety of a student that may impact the student's educational program, including the need for mental health services, injuries requiring medical attention or injuries resulting from physical restraint.

#### **56) SEXUAL HARASSMENT**

CONTRACTOR shall maintain, and provide upon request, a Sexual and Gender Identity harassment policy that clearly describes the kinds of conduct that constitutes sexual harassment and that is prohibited by the CONTRACTOR's policy, as well as federal and state law. The policy should include procedures to make complaints without fear of retaliation, and for prompt and objective investigations of all sexual harassment complaints. CONTRACTOR further agrees to provide annual training to all employees regarding the laws concerning sexual harassment and related procedures.

## **57) REPORTING OF MISSING CHILDREN**

- a) CONTRACTOR assures LEA that all staff members, including volunteers, are familiar with and agree to adhere to requirements for reporting missing children as specified in California Education Code section 49370. A written statement acknowledging the legal requirements of such reporting and verification of staff adherence to such reporting shall be properly submitted to the LEA upon request.
- b) In the event a child elopes from an NPS or Residential Treatment Center and evades adult supervision, the LEA shall be notified immediately following contact to law enforcement.

## **FINANCIAL**

## **58) ENROLLMENT, CONTRACTING, SERVICE TRACKING, ATTENDANCE REPORTING, AND BILLING PROCEDURES**

- a) CONTRACTOR shall ensure that the school or agency has the necessary financial resources to provide an appropriate education for the students enrolled and will distribute those resources in such a manner to implement the IEP/IFSP for each and every student.
- b) CONTRACTOR shall be paid for the provision of special education and/or related services specified in the LEA student's IEP/IFSP and ISA. All payments by LEA shall be made in accordance with the terms and conditions of this Master Contract.
- c) CONTRACTOR shall maintain registers for the basic education program and each related service. Original attendance forms shall be completed by the actual service provider whose signature shall appear on such forms and shall be available for review, inspection, or audit by LEA during the effective period of this contract and for a period of five (5) years after the date of origination. CONTRACTOR shall verify the accuracy of minutes of reported attendance that is the basis of services being billed for payment.
- d) CONTRACTOR shall submit accurate and timely invoices and related documents to LEA for payment, for each calendar month when education or related services were provided to an LEA student. Invoices shall be submitted no later than thirty (30) days after the end of the attendance accounting period in which the services were rendered. LEA shall make payment to CONTRACTOR based on the number of billable days of attendance and hours of service at rates specified in this contract within forty-five (45) days of LEA's receipt of properly submitted hard copy of invoices prepared and submitted as specified in California Education Code Section 56366.5. CONTRACTOR shall correct deficiencies and submit rebilling invoices no later than thirty (30) calendar days after the invoice is returned by LEA. LEA shall pay properly submitted re-billing invoices no later than forty-five (45) days from the date a completely corrected re-billing invoice is received by LEA.



- e) If the LEA fails to comply with the provision of payment within 45 days of receipt of the request for payment of services, the CONTRACTOR may require the LEA to pay an additional amount of 1-1/2 percent of the unpaid balance per month until full payment is made (California Education Code 56366.6 (b)). Upon written notification of dispute, CONTRACTOR shall not apply additional charges to the disputed bill until the matter is resolved.

## **59) RIGHT TO WITHHOLD PAYMENT**

- a) LEA may withhold payment to CONTRACTOR when:
  - i) CONTRACTOR has failed to perform, in whole or in part, under the terms of this contract
  - ii) CONTRACTOR was overpaid by LEA as determined by inspection, review, and/or audit of its program, work, and/or records
  - iii) CONTRACTOR has failed to provide supporting documentation with an invoice, as required by Section 57
  - iv) education and/or related services are provided to LEA pupils by personnel who are not appropriately credentialed, licensed, or otherwise qualified
  - v) LEA has not received prior to school closure or contract termination, all documents concerning one or more LEA pupils enrolled in CONTRACTOR's educational program
  - vi) CONTRACTOR fails to confirm a pupil's change of residence to another district or confirms the change of residence to another district, but fails to notify LEA with five (5) days of such confirmation
  - vii) CONTRACTOR receives payment from Medi-Cal or from any other agency or funding source for a service provided to a LEA pupil.
- b) The amount which may be withheld by LEA with respect to each of the subparagraphs of the preceding paragraph are as follows:
  - i) the value of the service CONTRACTOR failed to perform
  - ii) the amount of overpayment

- iii) the entire portion of the invoice for which satisfactory documentation has not been provided by CONTRACTOR
  - iv) the amount invoiced for services provided by the individual not appropriately credentialed, licensed, or otherwise qualified
  - v) the proportionate amount of the invoice related to the applicable pupil for the time period from the date of the violation occurred and until the violation is cured
  - vi) the proportionate amount of the invoice related to the applicable pupil for the time period from the date of the violation occurred and until the violation is cured
  - vii) the amount paid to CONTRACTOR by Medi-Cal or another agency or funding source for the service provided to the LEA pupil.
- c) If LEA determines that cause exists to withhold payment to CONTRACTOR, LEA shall, within ten (10) business days of receipt of such invoice, provide to CONTRACTOR written notice that LEA is withholding payment. Such notice shall specify the basis or bases for LEA's withholding payment and the amount to be withheld. Within thirty (30) days from the date of receipt of such notice, CONTRACTOR shall take all necessary and appropriate action to correct the deficiencies that form the basis for LEA's withholding payment or submit a written request for extension of time to correct the deficiencies. Upon receipt of CONTRACTOR's written request showing good cause, LEA shall extend CONTRACTOR's time to correct deficiencies (usually an additional thirty (30) days), otherwise payment will be denied.
- d) If after subsequent request for payment has been denied and CONTRACTOR believes that payment should not be withheld, CONTRACTOR shall send written notice to LEA specifying the reason it believes payment should not be withheld. LEA shall respond to CONTRACTOR's notice within thirty (30) business days by indicating that a warrant for the amount of payment will be made or stating the reason LEA believes payment should not be made. If LEA fails to respond within thirty (30) business days or a dispute regarding the withholding of payment continues after the LEA's response to CONTRACTOR's notice, CONTRACTOR shall invoke the following escalation policy.
- i) Persons involved after forty-one (41) business days: If CONTRACTOR notifies LEA that the dispute has not been resolved by the LEA Specialist, LEA's Administrator will become involved and shall attempt to resolve the dispute. The LEA Coordinator shall respond to the CONTRACTOR in writing within ten (10) business days.
  - ii) Persons involved after fifty-one (51) business days: If CONTRACTOR notifies LEA that the dispute has not been resolved by the LEA Administrator, the SELPA Director shall become involved. The SELPA Director shall respond to the

CONTRACTOR in writing within ten (10) business days. This shall be the final LEA determination regarding the withholding of payment.

- iii) Persons involved after sixty-one (61) business days: Dispute Resolution, as defined in the SELPA's Local Plan, shall be followed.
- e) If the dispute has not been resolved through the SELPA's Dispute Resolution process, the party claiming injury may seek legal or CDE redress, or may submit, if mutually agreed to in writing by the parties, the matter to binding arbitration by an arbitrator or arbitration service agreed upon by the parties. Each party shall be responsible for their own fees for arbitration, if applicable. The parties agree that this Master Contract provision dealing with Master Contract disputes does not alter the parties' right to bring action in accordance with the applicable statute of limitations under state or federal law.

## **60) PAYMENT FROM OUTSIDE AGENCIES**

CONTRACTOR shall notify LEA when Medi-Cal or any other agency is billed for the costs associated with the provision of special education and/or related services covered by this Master Contract or the ISA to LEA pupils. Upon request, CONTRACTOR shall provide to LEA any and all documentation regarding reports, billing, and/or payment by Medi-Cal or any other agency for the costs associated with the provision of special education and/or related services covered by this Master Contract or ISA to LEA pupils.

## **61) PAYMENT FOR STUDENT ABSENCES**

- a) Two accounting/billing options are offered at the discretion of the LEA: "Excused Absence" or "Positive Attendance." In neither case will CONTRACTOR bill for any absences during Extended School Year (ESY).
  - i) **Positive Attendance Method**
    - a) A factor of 1.055 shall be applied to all approved rates when a Positive Attendance method is used. Actual days of attendance without exception shall be counted as a unit of service.
  - ii) **Excused Absence Method**
    - a) LEA shall not be responsible for payment for more than 8 cumulative days of absences, for each of the first ninety days and second ninety days of the school year (i.e., semester), unless a written time extension is granted by LEA. No more than three of the 8 cumulative absences shall be unexcused.

- b) On the 4th consecutive day of a pupil's absence, CONTRACTOR shall notify LEA of such absence. If CONTRACTOR fails to provide such notice by the 4th day of consecutive absence, CONTRACTOR shall not be compensated for services delivered during continuing absence after the 4th consecutive day of excused absence.
  - c) All excused absences must be verified and a copy must be submitted to LEA with the monthly invoice. All documentation must be kept for at least five (5) years from the date of origination.
  - d) Only the individuals listed below may verify the reason for absence:
    - (1) School or public health nurse
    - (2) Physician
    - (3) Principal
    - (4) Teacher
    - (5) School employee assigned to make such verification
    - (6) Student eighteen years of age or over
    - (7) Parent
  - e) Any reasonable method which established the reason for the absence may be used:
    - (1) Written note from parent, guardian, representative or adult pupil (over 18 or emancipated)
    - (2) Telephone conversation with parent, guardian, representative, or adult pupil (over 18 or emancipated)
  - f) Standards for excused absences are defined in the education code. Contractor is responsible for verification of excused absence in accordance with current requirements.
- b) The following shall apply in the event of an NPS school closure due to an emergency consistent with guidelines followed by LEAs under Education Code Section 41422:
- i) Pursuant to an application for a waiver by an LEA, the CONTRACTOR shall receive the daily rate for pupils who were in attendance prior to the emergency closure as though they were continuing in their regular attendance.
  - i) In the event a waiver is not approved, the CONTRACTOR shall schedule a makeup day of service on one of the emergency days pursuant to the school calendar . The NPS will work collaboratively with LEAs and inform them of a date(s) on which the makeup day will occur.

## **62) NONPUBLIC AGENCY PUPIL ABSENCE**

If CONTRACTOR is a nonpublic agency, it shall notify LEA of the absence of an LEA student no later than the fifth consecutive service day of the student's absence. A unit of service for payment purposes shall not be credited for an excused absence when CONTRACTOR is

provided 24 hours advance verbal notification of the student's absence. A unit of service for payment purposes shall not be credited to CONTRACTOR for CONTRACTOR'S staff development days.

### **63) INSPECTION AND AUDIT**

- a) The CONTRACTOR shall maintain and the LEA shall have the right to examine and audit all of the books, records, documents, accounting procedures and practices and other evidence that reflect all costs claimed to have been incurred or fees claimed to have been earned under this Master Contract.
- b) CONTRACTOR shall provide access to LEA to all records including, but not limited to student records as defined by California Education Code section 49061(b). CONTRACTOR shall make available to LEA all budgetary information including operating budgets submitted by CONTRACTOR to LEA for the relevant contract period being audited.
- c) CONTRACTOR shall provide access to LEA to all records including, but not limited to:
  - i) student records as defined by California Education Code section 49061(b)
  - ii) registers and roll books of teachers
  - iii) daily service logs and notes or other documents used to record the provision of related services
  - iv) Medi-Cal/daily service logs and notes and other documents used to record provision of services provided by instructional assistants, behavior intervention aides, bus aides, and supervisors
  - v) absence verification records (parent/doctor notes, telephone logs, and related documents)
  - vi) bus rosters
  - vii) staff lists specifying credentials held, business licenses held, documents evidencing other qualifications, social security numbers, dates of hire, and dates of termination
  - viii) staff time sheets; non-paid staff and volunteer sign-in sheets
  - ix) transportation and other related service subcontracts
  - x) school calendars
  - xi) bell/class schedules
  - xii) liability and worker's compensation insurance policies
  - xiii) state nonpublic school and/or agency certifications
  - xiv) marketing materials
  - xv) by-laws
  - xvi) lists of current board of directors/trustees, if incorporated; statements of income and expenses
  - xvii) general journals
  - xviii) cash receipts and disbursement books
  - xix) general ledgers and supporting documents

- xx) federal/state payroll quarterly reports; and bank statements and canceled checks or facsimile thereof.
  - xxi) Such access shall include unannounced inspections by LEA. CONTRACTOR shall make available to LEA all budgetary information including operating budgets submitted by CONTRACTOR to LEA for the relevant contract period being audited.
- d) CONTRACTOR shall make all records, or copies of records, available at either the office of the LEA or at the CONTRACTOR's offices (to be specified by LEA) at all times and without charge. All records shall be provided to LEA within ten (10) working days of a written request from LEA. CONTRACTOR shall, at no cost to LEA, provide assistance for such examination or audit. LEA's rights under this section shall also include access to CONTRACTOR's offices for purposes of interviewing CONTRACTOR's employees. If any document or evidence is stored in an electronic form, a hard copy shall be made available to the LEA, unless the LEA agrees to the use of the electronic format. CONTRACTOR may request from the LEA an extension of time to comply with any records request, which shall not be unreasonably withheld.
- e) If an inspection, review, or audit by the LEA, a state agency, a federal agency, and/or an independent agency/firm determines that the CONTRACTOR or the LEA owes the other monies as a result of over billing, underpayment, or failure to perform, in whole or in part, any of its obligations under this Master Contract, the party owed money shall provide to the other party written notice demanding payment and specifying the basis or bases for such demand. Unless otherwise agreed in writing, the party that owes money shall make such payment within thirty (30) days of receipt of the written notice demanding payment. In the event that a party from whom payment is demanded disputes that any payment is owed, the matter shall be resolved in accordance with the dispute resolution section of this Master Contract.
- f) The attached rate schedule limits the number of LEA students that may be enrolled and maximum dollar amount of the contract. It may also limit the maximum number of students that can be provided specific services. Per diem rates for LEA students whose IEPs authorize less than a full instructional day shall be adjusted proportionally. Special education and/or related services offered by CONTRACTOR, shall be provided by qualified personnel as per State and Federal law, and the codes and charges for such educational and/or related services during the term of this contract, shall be as stated in Section 62.

#### **64) RATE SCHEDULE**

Per Diem rates for students whose IEPs authorize less than a full instructional day may be adjusted proportionally. In such cases only, the adjustments in basic education rate shall be based on the percentage the required minimum number of minutes per grade level as noted in California Education Code Section 46200-46208.

Special education and/or related services offered by CONTRACTOR shall be provided by qualified personnel as per State and Federal law, and the codes and charges for such educational and/or related services during the term of this contract, shall be as stated below.

The CONTRACTOR: **The Behavior Center**

The CONTRACTOR CDS NUMBER: \_\_\_\_\_

PER ED CODE 56366 – TEACHER-TO-PUPIL RATIO: \_\_\_\_\_

Education service(s) offered by the CONTRACTOR and the charges for such service(s) during the term of this contract, as negotiated on behalf of the LEAs, shall be as follows:

a) Non-Bundled Education Program

i) General Program Tuition Daily Rate: \_\_\_\_\_

ii) Related Services:

Service	Rate	Period
Intensive Individual Services (340)	\$100.00	Hour
Language and Speech (415) INDIVIDUAL		
Language and Speech (415) GROUP		
Adapted Physical Education (425)		
Health and Nursing: Specialized Physical Health Care (435)		
Health and Nursing: Other Services (436)		
Assistive Technology Services (445)		
Occupational Therapy (450) INDIVIDUAL		
Occupational Therapy (450) GROUP		
Physical Therapy (460) INDIVIDUAL		
Physical Therapy (460) INDIVIDUAL		
Individual Counseling (510)		
Counseling and Guidance (515)		
Parent Counseling (520)		

Social Work Services (525)		
Psychological Services (530)		
Behavior Intervention Services (535)	\$175.00 (BCaBA/BCBA)	Hour
Specialized Services for Low Incidence Disabilities (610)		
Specialized Deaf and Hard of Hearing (710)		
Interpreter Services (715)		
Audiological Services (720)		
Specialized Vision Services (725)		
Orientation and Mobility (730)		
Specialized Orthopedic Services (740)		
Reader Services (745)		
Transcription Services (755)		
Recreation Services, Including Therapeutic (760)		
College Awareness (820)		
Work Experience Education (850)		
Job Coaching (855)		
Mentoring (860)		
Travel Training (870)		
Other Transition Services (890)		
Other (900)	Consultation (BCBA-D) - \$250.00	Hour
Service		

b) Bundled Education Program

- i) Includes Educational Counseling (not ed related mental health) services, Speech & Language services, Behavior Intervention Planning, and Occupational Therapy as specified on the student's IEP.
- ii) Daily Rate: \_\_\_\_\_



## APPROVALS

Master Contract approved by the governing Board on 8/12/2020

Total amount of contract not to exceed \$15,000.00


The parties hereto have executed this Individual Services Agreement by and through their duly authorized agents or representatives as set forth below.

CONTRACTOR	DISTRICT
The Behavior Center  (Name of Nonpublic School/Agency)	Oakland Unified SELPA  (Name of SELPA / LEA)
 <small>Coleen Sparkman (July 19, 2020 11:41 PDT)</small> (Signature & Date)	 (Signature & Date)      7/17/2020
Coleen R. Sparkman, COO  (Name & Title of Authorized Representative)	Jennifer Blake Executive Director, Special Education Dept.  (Name & Title of Authorized Representative)
Coleen R. Sparkman  (Notices to Contractor shall be addressed to)	Jennifer Blake  (Notices to LEA shall be addressed to)
PO Box 4428  (Contractor Address)	1011 Union Street  (LEA Address)
Modesto, CA 95352  (Contractor City, State, Zip Code)	Oakland, CA 94607  (LEA City, State, Zip Code)
Phone: 925.587.1456 Fax: 925.587.9003 Email: natalie@thebehaviorcenter.org Website: thebehaviorcenter.org	Phone: 510-879-8094 Fax: 510-451-4364 Email: jennifer.blake@ousd.org Website: www.ousd.org


	(Address Additional Notices to)
	Phone: Fax: Email:

**Oakland Unified School District**

**Contractor**

By:  Date: 8/13/2020  
 Jody London  
 President, Board of Education

By: \_\_\_\_\_ Date: \_\_\_\_\_  
 Name: Coleen R. Sparkman  
 Title: COO

By:  Date: 8/13/2020  
 Dr. Kyla Johnson-Trammell  
 Superintendent and  
 Secretary, Board of Education

Approved as to Form

By:  Date: 7/23/20  
 Andrea Epps  
 Deputy General Counsel






# BAC.OUSD Master Contract 2020-21\_FINAL

Final Audit Report

2020-05-19

Created:	2020-05-19
By:	Natalie Nielsen (nnielsen@tpathways.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAa4s5RtF7jdOyAt-O_X0lxjM1ruzbNPoI

## "BAC.OUSD Master Contract 2020-21\_FINAL" History

-  Document created by Natalie Nielsen (nnielsen@tpathways.org)  
2020-05-19 - 6:31:56 PM GMT- IP address: 173.254.186.122
-  Document emailed to Coleen Sparkman (csparkman@tpathways.org) for signature  
2020-05-19 - 6:32:37 PM GMT
-  Email viewed by Coleen Sparkman (csparkman@tpathways.org)  
2020-05-19 - 6:34:36 PM GMT- IP address: 173.254.186.122
-  Document e-signed by Coleen Sparkman (csparkman@tpathways.org)  
Signature Date: 2020-05-19 - 6:41:18 PM GMT - Time Source: server- IP address: 173.254.186.122
-  Signed document emailed to Natalie Nielsen (nnielsen@tpathways.org) and Coleen Sparkman (csparkman@tpathways.org)  
2020-05-19 - 6:41:18 PM GMT



**CALIFORNIA DEPARTMENT OF EDUCATION**  
**NOTICE OF NONPUBLIC AGENCY CERTIFICATION**

Date: January 29, 2020

NPA ID: 9901521

Nonpublic Agency: The Behavior Center

Site Administrator: Natalie Nielsen

Site Address: 5601 Arnold Road, Ste 108

City: Dublin CA 94568

**Maximum Capacity:** 5      **Grades:** PK to 12      **Student Gender:** Coed

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2020 CERTIFICATION STATUS:

**APPROVED**

*Per California Education Code 56366.4(a)(5)(A), the superintendent may revoke or suspend the certification of a nonpublic, nonsectarian school or agency for any of the following reasons: Failure to notify the department in writing of any of the following within 45 days of the occurrence: changes in credentialed, licensed, or registered staff who render special education and related services; ownership; management; or control of the nonpublic, nonsectarian school or agency.*

EFFECTIVE DATES:

January 01, 2020 through December 31, 2020

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**Authorized Sites to Serve:**      ☒ LEAs      ☒ NPA Site      ☐ NPS Sites      ☐ Virtual Services

---

**Authorized to Provide the Following Related Services:**

<input type="checkbox"/> APE	<input checked="" type="checkbox"/> BII	<input type="checkbox"/> LSDR	<input type="checkbox"/> PCT	<input type="checkbox"/> SDTI	<input type="checkbox"/> VECD
<input type="checkbox"/> AS	<input type="checkbox"/> CG	<input type="checkbox"/> MT	<input type="checkbox"/> PS	<input type="checkbox"/> SW	<input type="checkbox"/> LI:
<input type="checkbox"/> ATS	<input type="checkbox"/> EE	<input type="checkbox"/> OM	<input type="checkbox"/> PT	<input type="checkbox"/> TS	<input type="checkbox"/> Other Services Authorized:
<input checked="" type="checkbox"/> BID	<input type="checkbox"/> HNS	<input type="checkbox"/> OT	<input type="checkbox"/> RS	<input type="checkbox"/> VS	

---

Certification is not an endorsement of the services offered by the nonpublic agency (NPA), but states only that the NPA meets minimum legal standards. "Approved" or "Conditional" certifications authorize the NPA to accept students placed by local educational agencies (LEAs) under California Education Code, Section 56366.

Focused Monitoring and Technical Assistance VI Unit

Special Education Division



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

01/24/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> James G Parker Insurance Associates License #0554959 P O Box 3947 Fresno CA 93650	<b>CONTACT NAME:</b> Crystal Carey CISR <b>PHONE (A/C, No, Ext):</b> (559) 222-7722 <b>E-MAIL ADDRESS:</b> ccarey@jgparker.com <b>FAX (A/C, No):</b> (559) 222-1724
<b>INSURED</b> The Behavior Center LLC 5601 Arnold Road, Suite 108 Dublin CA 94568	<b>INSURER(S) AFFORDING COVERAGE</b> <b>INSURER A:</b> Capitol Specialty Insurance Corp <b>INSURER B:</b> <b>INSURER C:</b> <b>INSURER D:</b> <b>INSURER E:</b> <b>INSURER F:</b>

**COVERAGES****CERTIFICATE NUMBER:** 20-21 GL PL**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y		HS0262624105	01/22/2020	01/22/2021	EACH OCCURRENCE \$ 3,000,000
	DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000						
	MED EXP (Any one person) \$ 5,000						
	PERSONAL & ADV INJURY \$ 3,000,000						
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$
	<b>UMBRELLA LIAB</b> <b>EXCESS LIAB</b> DED RETENTION \$						BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y / N <input type="checkbox"/>	N / A				PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES** (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Certificate holder is included as Additional Insured with respects to General Liability per form HCO-GTC-001 (12/18) attached.

**CERTIFICATE HOLDER****CANCELLATION**Oakland Unified SELPA  
1011 Union Street

Oakland

CA 94607

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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## Healthcare Organizations Professional Liability Package Policy

### General Terms and Conditions

This Policy is comprised of these General Terms and Conditions, the Declarations, the **Application**, the Coverage Sections purchased, and any Endorsements thereto.

The Coverage under this Policy is provided on either a Claims Made and Reported Basis, or on an Occurrence Basis, in accordance with the terms of each Coverage Section.

Words or phrases that appear in bold text (other than in headings and titles) have special meaning as specified in this Policy.

In consideration of the payment of the premium and in reliance upon all statements made and information contained in the **Application**, the **Insurer** and the **Named Insured**, on behalf of all **Insureds**, agree as follows:

#### I. COVERAGE TERMS

These General Terms and Conditions will apply to all Coverage Sections of this Policy, unless stated to the contrary in any Coverage Section. The terms and conditions of each Coverage Section will apply only to that Coverage Section. If any provision in these General Terms and Conditions is inconsistent with or conflicts with the terms and conditions of any Coverage Section, the terms and conditions of such Coverage Section will control for purposes of determining coverage under that Coverage Section.

Any defined term in these General Terms and Conditions which is also defined in a Coverage Section, will, for purposes of determining coverage under that Coverage Section, have the meaning set forth in that Coverage Section.

#### II. SUPPLEMENTARY PAYMENTS

##### A. LOSS OF EARNINGS AND EXPENSES

In addition to the Policy Aggregate Limit of Liability, the **Insurer** will pay loss of earnings due to time off from work, plus any reasonable travel and related expenses incurred by an **Insured**, where such **Insured** is participating in a hearing, trial, mediation, arbitration or deposition in connection with a covered **Claim** or at the **Insurer's** request. The amount the **Insurer** shall pay shall not exceed \$500 per day, per **Insured**, and no more than a total amount of \$5,000 per **Claim** regardless of the number of **Insureds** participating.

No deductible shall apply to payments made pursuant to this provision.

#### III. WHO IS AN INSURED

##### A. INSUREDS

**Insured** means any **Insured Entity** or **Insured Person**, as follows:

1. **Insured Entity** includes:
  - (a) the **Named Insured**;
  - (b) any **Subsidiary** which exists as of the Effective Date of this Policy;
  - (c) any management company of the **Named Insured**, but only with respect to their duties as the management company of the **Named Insured** and only if a management agreement between the management company and the **Named Insured** is executed and effective prior to the date that the events or incidents underlying or alleged in the **Claim** took place; and
  - (d) any other entity or organization specified in an Endorsement to this Policy as an **Insured Entity**.
2. **Insured Person** includes any past, present or future individual who is a:
  - (a) principal, if the **Insured Entity** is a sole proprietorship;
  - (b) partner, if the **Insured Entity** is a partnership;
  - (c) general partner or managing general partner, if the **Insured Entity** is a limited partnership;
  - (d) managing member, if the **Insured Entity** is a limited liability company;
  - (e) any officer, trustee or member of the Board of Directors, if the **Insured Entity** is a corporation;
  - (f) any member of a duly authorized board or committee of an **Insured Entity**;

- (g) any administrator of an **Insured Entity**;
- (h) any medical director of an **Insured Entity** (but only with respect to their administrative duties and not for the direct provision of **Medical Services to Patients**);
- (i) any **Employee**, student or **Volunteer**.

Coverage under this Policy for the **Insured Persons** listed above shall only apply while such individuals are acting within the capacity and scope of his or her duties on behalf of an **Insured Entity**.

## IV. COVERAGE EXTENSIONS

### A. ADDITIONAL INSURED BY CONTRACT

1. Coverage under this Policy shall be extended to apply to **Claims** against other individuals or organizations when required by written contract or agreement with the **Named Insured**, or pursuant to any permit (hereinafter referred to as "Additional Insureds"). The written contract, agreement or permit must be executed and effective prior to the date that the events or incidents underlying or alleged in the **Claim** took place. Coverage is provided for such Additional Insureds only for those allegations in the **Claim** which arise out of the otherwise covered negligent acts, errors or omissions of an **Insured** (other than an Additional Insured).
2. Coverage for the Additional Insureds shall not be deemed to increase the Limits of Liability of this Policy or broaden the terms of coverage. All Additional Insureds will share in the applicable Limits of Liability for any covered **Claim**. **Loss** paid on behalf of any Additional Insured, and **Defense Expenses** if applicable, will reduce and may exhaust any applicable Limits of Liability under this Policy. This Policy shall not provide coverage for any **Claim**, allegation or liability which arises out of an Additional Insured's own negligence, act, error or omission, work or conduct.
3. Primary, Non-Contributory Coverage:  
This Policy will be primary to and not seek contribution from any other insurance available to an Additional Insured; provided that: (a) the Additional Insured is the Named Insured under such other policy; and (a) the **Named Insured** has agreed in the written contract, agreement or permit that this insurance would be primary and would not seek contribution from any other insurance available to the Additional Insured.

### B. OTHER COVERAGE EXTENSIONS

Coverage under this Policy shall also apply to **Claims** against the following persons or entities, but only with respect to liability arising out of the actions of an **Insured**:

1. the debtor-in-possession or bankruptcy estate, including any bankruptcy trustee, of an **Insured Entity**, as established under United States bankruptcy laws, or any equivalent representative of an **Insured Entity** under the laws of any other jurisdiction;
2. the estate, heirs, executors, administrators, assignees and legal representatives of an **Insured Person**, in the event of the death or incapacity of such **Insured Person**; and
3. the lawful spouse of an **Insured Person** listed above, including any natural person qualifying as a domestic partner under the provisions of any applicable federal, state, or local law in the United States.

## V. DEFINITIONS

Some bold-faced words may be defined in other parts of this Policy.

### A. **Application** means:

1. the application forms and any supplemental application forms, including those forms of any other insurance carrier or company, which are submitted to the **Insurer** in connection with the application and underwriting process for this Policy, or any prior policy of which this is a renewal; and
2. any and all materials and information submitted to the **Insurer** in connection with the application and underwriting process and all publicly available material developed or disseminated by the **Insured** about the **Insured** that the **Insurer** obtained prior to the Effective Date of the Policy;

all of which are deemed to be on file with the **Insurer** and are deemed to be attached to, and form a part of this Policy, as if physically attached.

### B. **Auto** means a land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment.

- C. **Bodily Injury**, unless otherwise defined in a specific Coverage Section, means physical harm, including sickness, disease or death, to the physical health of a person. It includes mental anguish, injury or illness, or emotional distress, whether or not it results from such physical harm, sickness or disease to the same person.
- D. **Claim** means:
1. a written demand;
  2. a civil proceeding;
  3. an arbitration proceeding to which an **Insured** must submit or does submit with the **Insurer's** consent; and
  4. any other alternative dispute resolution proceeding to which an **Insured** submits with the **Insurer's** consent;
- which seeks monetary damages from an **Insured** for a **Wrongful Act** for which coverage is provided under this Policy.
- Claim** does not include a request for medical records; a patient incident report, a variance report, or any other report made for loss prevention purposes; a subpoena for documents or testimony; an investigation, proceeding or suit brought by or on behalf of any governmental agency (unless such coverage is specifically provided in any Coverage Section); or a demand or legal proceeding seeking solely non-monetary or injunctive relief.
- E. **Defense Expenses** means any of the following costs or expenses incurred in the investigation, negotiation defense or settlement of any covered **Claim**:
1. reasonable and necessary expenses incurred by the **Insurer** on the **Insured's** behalf;
  2. reasonable fees charged by attorneys selected or pre-approved by the **Insurer** to defend an **Insured**;
  3. the cost of appeal bonds or bonds to release attachments, but only for bond amounts within the applicable Limits of Liability; provided that the **Insurer** will not be obligated to apply for or furnish these bonds; and
  4. reasonable and necessary expenses incurred by the **Insured** at the **Insurer's** request or with the **Insurer's** consent.
- F. **Employee** means the following natural persons:
1. a person performing work or services for an **Insured Entity** for wages or other compensation on a full-time or part-time basis;
  2. a leased worker, or a person leased to an **Insured Entity** by a labor leasing firm under an agreement between the **Insured Entity** and the labor leasing firm, to perform duties related to the conduct of the **Insured Entity's** business; and
  3. a temporary worker, or a person who is substituting for a permanent employee on leave or is needed to meet seasonal or short-term workload conditions (other than a **Locum Tenens**).
- Employees** are **Insureds** under this Policy, but only for **Wrongful Acts** committed while acting within the scope of their duties for an **Insured Entity**
- G. **Employment Practices** means any acts, errors or omissions, practices, policies or procedures relating to employment or prospective employment with any **Insured Entity**, including but not limited to the following: breach of any employment contract, including any contract or agreement with a labor union; failure or refusal to hire or employ; dismissal, discharge, reduction in force, downsizing or termination of employment, whether actual or constructive; demotion, reassignment, failure or refusal to promote, or deprivation of career opportunity; discipline of employees; evaluation of employees; discrimination or harassment of any kind or on any basis including but not limited to race, sex, marital status, ancestry, physical or mental handicaps, age, sexual preference, pregnancy or religion or other status that is protected under any applicable federal, state or local statute or ordinance; humiliation or defamation; retaliatory treatment against an employee arising out of the employee's attempted or actual exercise of rights under the law; employment-related misrepresentations; or failure to implement appropriate workplace or employment policies or procedures.
- H. **Executive Officer** means any senior executive, manager, officer, or risk manager, of an **Insured Entity**.
- I. **Insured** means those persons and/or entities identified in Section III. **WHO IS AN INSURED**, or specifically included as an **Insured** in any Endorsement to this Policy.
- J. **Insurer** means the company issuing this Policy as indicated on the Declarations.
- K. **Loading or Unloading** means the handling of property:
1. after it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or **Auto**;
  2. while it is in or on an aircraft, watercraft or **Auto**; or
  3. while it is being moved from an aircraft, watercraft or **Auto** to the place where it is finally delivered;
- but **Loading or Unloading** does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or **Auto**.



- L. **Loss** means amounts that an **Insured** becomes legally obligated to pay in connection with a **Claim** covered under this Policy. **Loss** includes:
1. settlements;
  2. judgments;
  3. pre-judgment and post-judgment interest on any settlement or judgment, where required by law; and
  4. punitive or exemplary damages, to the extent that such damages are insurable under the laws of the applicable jurisdiction that is most favorable to the insurability of punitive or exemplary damages.
- Loss** does not include:
- (a) **Defense Expenses**;
  - (b) amounts for which an **Insured** is not legally liable;
  - (c) taxes;
  - (d) any return, refund or disgorgement of fees, profits, charges or other amounts;
  - (e) fines or penalties, including civil or administrative fines or penalties and civil monetary penalties;
  - (f) the multiplied portion of any multiplied damages award;
  - (g) relief or redress in any form other than monetary compensation or monetary damages, including without limitation the cost of complying with any injunctive, declaratory or administrative relief;
  - (h) costs or fees awarded in favor of the claimant; or
  - (i) amounts deemed uninsurable under applicable law.
- M. **Management Control** means:
1. having ownership interests representing greater than fifty percent (50%) of the voting, appointment, or designation power for the selection of a majority of the members of the Board of Directors of a corporation, the Management Committee of a joint venture or partnership, or the Management Board of a limited liability company;
  2. having ownership interests in an entity representing greater than fifty percent (50%) of the outstanding shares or equity interests; or
  3. having the right, pursuant to a written contract or the by-laws, charter, operating agreement or similar documents, to elect, appoint or designate a majority of the members of the Board of Directors of a corporation, the Management Committee of a joint venture or partnership, or the Management Board of a limited liability company.
- N. **Medical Services** means healthcare, medical care, or treatment provided to any individual, including any of the following: medical, dental, psychiatric, mental health, chiropractic, osteopathic, nursing, or other professional healthcare; the furnishing or dispensing of medications, drugs, blood, blood products, or medical, dental, or psychiatric supplies, equipment, or appliances in connection with such care; the furnishing of food or beverages in connection with such care; the providing of counseling or other social services in connection with such care; and the handling of, or the performance of post-mortem examinations on, human bodies.
- O. **Mobile Equipment** means any of the following types of land vehicles, including any attached machinery or equipment:
1. bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
  2. vehicles maintained for use solely on premises the **Named Insured** owns or rents;
  3. vehicles that travel on crawler treads;
  4. vehicles, whether self-propelled or not, maintained primarily to provide mobility or permanently mounted:
    - (a) power cranes, shovels, loaders, diggers or drills; or
    - (b) road construction or resurfacing equipment such as graders, scrapers or rollers.
- P. **Named Insured** means the entity designated as such in Item 1. of the Declarations.
- Q. **Occurrence** means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
- R. **Patient** means any person or human body seeking, registered or admitted to receive **Medical Services** from an **Insured**, before, during or after registration for such services, and whether on an in-patient, out-patient or emergency basis.
- S. **Policy Period** means the period from the Effective Date to the Expiration Date of this Policy, as specified in the Declarations. However, if this Policy is cancelled by either the **Named Insured** or the **Insurer**, the **Policy Period** ends at the effective date of the cancellation.

- T. **Pollutants** means any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapors, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed. **Pollutants** shall also include biomedical waste, which includes any waste which is generated during the diagnosis, treatment or immunization of human beings or in research activities.
- U. **Property Damage** means:
1. physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
  2. loss of use of tangible property of others that is not physically injured.
- V. **Retroactive Date** means the applicable date set forth on the Declarations of this Policy.
- W. **Sexual Misconduct** means any type of actual, alleged, attempted, suggested or proposed physical contact, speech or activity of a sexual nature, whether or not consensual, and includes sexual molestation and sexual abuse.
- X. **Subsidiary** means any entity of which the **Named Insured** has **Management Control**, either directly or indirectly through one or more **Subsidiaries**. A **Subsidiary** shall not include any partnership, joint venture or limited liability company, unless specifically designated as such in an Endorsement to this Policy.
- Y. **Volunteer** means a person who provides his or her services or labor to an **Insured Entity**, but who does not have a contract to provide, and is not compensated for, such services and labor.
- Z. **Wrongful Act** means any:
1. **Healthcare Professional Services Wrongful Act**, as defined in the Healthcare Professional Liability Coverage Section;
  2. **Employee Benefits Wrongful Act**, as defined in the Employee Benefits Liability Coverage Section;
  3. **Sexual Misconduct Wrongful Act**, as defined in the Sexual Misconduct Liability Coverage Section;
  4. Offense resulting in **Personal Injury** or **Advertising Injury**, as defined in the General Liability Coverage Section;
  5. **Occurrence** resulting in **Bodily Injury**, **Property Damage**, or **Damages to Premises Rented to You**, as defined in the General Liability Coverage Section;
- if coverage under the respective Coverage Section is purchased by the **Named Insured**, as specified in the Declarations.

## VI. LIMITS OF LIABILITY / DEDUCTIBLES

### A. LIMITS OF LIABILITY

1. The Limits of Liability provided under this Policy represent the most the **Insurer** will pay under this Policy for **Loss**, and **Defense Expenses** when applicable and in accordance with the terms set forth in each respective Coverage Section, regardless of the number of:
  - (a) **Insureds**;
  - (b) Additional Insureds as described in Section IV.A. of these General Terms and Conditions;
  - (c) **Claims** that are made;
  - (d) Persons or organizations making **Claims**; or
  - (e) **Wrongful Acts**.

All **Insureds** and Additional Insureds shall share in the Limits of Liability under this Policy.
2. Each Claim Limit of Liability  
 The Each Claim Limit of Liability specified in the Declarations for an Insuring Agreement or Coverage Section represents the maximum amount the **Insurer** will pay for all **Loss**, and **Defense Expenses** when applicable, from a single **Claim** for which coverage is provided by that Insuring Agreement or Coverage Section, subject to Section VI.E. below.
3. Each Occurrence Limit of Liability or Each Wrongful Act Limit of Liability  
 The Each Occurrence Limit of Liability or Each Wrongful Act Limit of Liability as specified in the Declarations for an Insuring Agreement or Coverage Section represents the most the **Insurer** will pay for all **Loss**, and **Defense Expenses** when applicable, from a single **Occurrence** or **Wrongful Act** for which coverage is provided by that Insuring Agreement or Coverage Section, subject to Section VI.E. below.
4. Coverage Aggregate Limit of Liability  
 The Coverage Aggregate Limit of Liability for each purchased Coverage Section, as specified in the Declarations, is maximum amount payable by the **Insurer's** for all **Loss**, and **Defense Expenses** when applicable, and all other amounts under the respective Coverage Section. However, if a specific coverage in a Coverage Section indicates that its Limits of

Liability are in addition to the Coverage Aggregate Limit of Liability, then payments made pursuant to such coverage shall not reduce or erode the Coverage Aggregate Limit of Liability or the Policy Aggregate Limit of Liability.

If a Coverage Aggregate Limit of Liability is exhausted by the payment of **Loss**, and **Defense Expenses** when applicable, or other amounts payable under the respective Coverage Section, the **Insurer** will have no further obligation to pay any further amounts under such Coverage Section, and the premium for such Coverage Section will be fully earned.

5. Policy Aggregate Limit of Liability

The Policy Aggregate Limit of Liability, as specified in the Declarations, is the maximum amount payable by the **Insurer** under this Policy for all **Loss**, and **Defense Expenses** when applicable, from all **Claims, Occurrences or Wrongful Acts**, and for all other amounts payable, for which coverage is provided under all purchased Coverage Sections, subject to paragraph 4. Above.

If the Policy Aggregate Limit of Liability is exhausted by the payment of **Loss**, and **Defense Expenses** when applicable, and other amounts payable, the **Insurer** will have no further obligation to pay any further amounts under this Policy, or have any obligation of any kind with respect to any **Claim** under this Policy, and the Total Policy Premium specified in the Declarations will be fully earned.

6. Exhaustion of Limits of Liability – Transition of Defense

When the applicable Limit of Liability for a **Claim** (or the applicable Coverage Aggregate Limit of Liability or Policy Aggregate Limit of Liability) is exhausted, the control and defense of such **Claim** shall transfer to the **Insured**, and the **Insured** must cooperate in this transfer and accept the control and defense of such **Claim**. The **Insurer** shall notify the **Named Insured** in writing if the Limit of Liability is likely to be exhausted by payments and initiate the transfer of control and defense to the appropriate **Insured**, as determined by the **Named Insured**.

The **Insurer** agrees to take such steps, as it deems appropriate, to avoid a default in, or continue the defense of, such **Claims** until such transfer is completed, provided the appropriate **Insured** is cooperating in completing such transfer. The **Named Insured** shall, upon written notice from the **Insurer**, promptly reimburse the **Insurer** for expenses the **Insurer** incurs in taking those steps.

## B. PAYMENT OF DEFENSE EXPENSES

1. Generally, **Defense Expenses** are paid in addition to the Limits of Liability, and payment by the **Insurer** of **Defense Expenses** will not reduce the Limits of Liability for such Coverage Sections or the Policy Aggregate Limit of Liability.

However, with respect to the Sexual Misconduct Liability Coverage Section, and specific Insuring Agreements in the Professional Liability Coverage Section, **Defense Expenses** are part of and not in addition to the applicable Limits of Liability, and payments by the **Insurer** of **Defense Expenses** may, as indicated in the Coverage Section, reduce and exhaust such Limits of Liability for such Coverage Section and the Policy Aggregate Limit of Liability:

However, the **Insurer** will not be obligated to defend or continue to defend any **Claim** or pay **Defense Expenses** for any **Claim** under such Coverage Sections after Limit of Liability has been exhausted by the payment of **Loss**, both **Loss** and **Defense Expenses** as applicable, or other amounts payable under this Policy.

2. Advancement and Reimbursement of Defense Expenses

If the **Insurer** initially defends any **Insured**, or pay **Defense Expenses** including attorney's fees and costs, for any **Claim** against any **Insured**, but it is later determined that the **Claim**, the parties involved in the **Claim**, or the **Defense Expenses** which the **Insurer** has paid, are not covered or insured under this Policy, then the **Insurer** shall have the right to be reimbursed in full for all such **Defense Expenses**.

## C. DEDUCTIBLE

1. The **Insurer** will only be liable for the amount of **Loss** in any **Claim**, which is in excess of the applicable Deductible amount as specified in the Declarations. Provided however, that with respect to the Sexual Misconduct Coverage Section, if purchased by the **Insured**, the **Insurer** will only be liable for the amount of **Loss** and **Defense Expenses** in any **Claim**, which is in excess of the applicable Deductible amount as specified in the Declarations.
2. The Deductible amount will be borne by the **Insureds** and remain uninsured.
3. If the total of all **Loss** (or **Loss** and **Defense Expenses** with respect to the Sexual Misconduct Coverage Section) from any **Claim**, is within the applicable Deductible, the **Insurer** will have no duty to pay under this Policy.
4. The Deductible amount is part of the Limits of Liability. Payments of **Loss** by the **Insured** within the Deductible amount will reduce and erode the Limits of Liability.
5. If, at the **Insurer's** sole discretion, the **Insurer** has advanced or paid all or any part of the Deductible on behalf of the **Insured**, the **Insured** will be obligated to reimburse such amounts to the **Insurer** upon demand.

## D. NON-STACKING OF LIMITS

### 1. Between Coverage Sections

In the event that more than one Coverage Section of this Policy could apply to the same **Claim** or series of related **Claims**, or the same **Wrongful Act** or series of **Wrongful Acts**, only the applicable Each Claim, Each Occurrence or Each Wrongful Act Limit of Liability and the respective Deductible of one Coverage Section shall apply, which shall be determined in good faith by the **Insurer**, taking into consideration the predominant allegations in the **Claim**, the facts and circumstances underlying the **Claim**, and the respective interests of the parties to this Policy.

In no event shall the Limits of Liability of more than one coverage or Coverage Section apply to the same **Claim** even if any applicable coverage or Coverage Section has a dedicated Limit of Liability as specified in an Endorsement to this Policy or otherwise.

### 2. With Other Policies Issued by the Insurer

If any **Loss**, including **Defense Expenses** if applicable, from any **Claim** that is covered by this Policy, are also covered by another policy issued by the **Insurer** or any affiliate thereof to any **Insured** or Additional Insured, the maximum limit of liability payable under both policies for such **Loss**, and **Defense Expenses** if applicable, will not exceed the largest single each Claim, Each Occurrence or Each Wrongful Act Limit of Liability available under either policy, and the corresponding Deductible or Retention will apply. This shall not apply if such other Policy is specifically written as excess insurance over this Policy.

## E. RELATED CLAIMS; RELATED ACTS

### 1. Related Claims

All **Claims** based upon or arising out of the same or related facts, circumstances, situations, **Patient**, transactions or events, or series thereof, whether related logically, causally or in any other way, will be deemed a single **Claim** subject to one Each Claim Limit of Liability and one Deductible.

Such **Claim** shall be considered to have been made on the earlier of the following dates:

- (a) the date the first of such **Claims** is made against an **Insured**; or
- (b) the date the **Insurer** receives an **Insured's** written notice of circumstances in accordance with Section VII.A. of these General Terms and Conditions.

### 2. Related Wrongful Acts

All **Wrongful Acts** based on or arising out of the same or related acts, errors, omissions, facts, circumstances, situations, **Patients**, transactions or events, or series thereof, whether related logically, causally or in any other way, will be treated as one **Wrongful Act** subject to one Each Occurrence or Each Wrongful Act Limit of Liability and one Deductible.

Such **Wrongful Act** shall be deemed to have taken place on the date of the first act, error or omission or event.

If such **Wrongful Act** began or took place prior to the applicable Retroactive Date (for Claims-Made coverage) or Effective Date (for Occurrence coverage) of this Policy, then no coverage shall apply under this Policy to any **Claims** arising therefrom.

## VII. CONDITIONS

### A. REPORTING REQUIREMENTS; DUTIES IN THE EVENT OF A CLAIM OR INCIDENT

Refer to the "WHAT TO DO IF YOU HAVE A CLAIM OR POTENTIAL CLAIM OR INCIDENT" notice attached to the front of this Policy for Claims Department contact information.

#### 1. Notice of Claims - Applicable to Claims-Made Coverages Only

The **Insured** must, as a condition precedent to the obligations of the **Insurer** under this Policy, provide written notification to the **Insurer** of any **Claim** first made against an **Insured** during the **Policy Period** as soon as practical after any **Insured** becomes aware of such **Claim**, but no later than sixty (60) days after the end of the **Policy Period**. If a **Claim** is first made within any applicable Extended Reporting Period, the **Insured** will provide written notification to the **Insurer** of such **Claim** as soon as practicable but in no event later than the expiration of the Extended Reporting Period.

A **Claim** will be considered first made when any **Insured** first receives notice of such **Claim** in writing.

#### 2. Notice of Claims - Applicable to Occurrence Coverages Only

The **Insured** must, as a condition precedent to the obligations of the **Insurer** under this Policy, provide written notification to the **Insurer** of any **Claim** for an **Occurrence** or **Wrongful Act** which commences and takes place during

the **Policy Period** as soon as practical after any **Insured** becomes aware of such **Claim**, but no later than sixty (60) days thereafter.

3. Notice of Circumstances or Incidents – Applicable to Claims-Made Coverages Only

If during the **Policy Period**, the **Insured** first becomes aware of a circumstance or incident which may reasonably be expected to be the basis of a **Claim** against an **Insured**, and the **Insured**, as soon as practical but in no event later than the Expiration Date of the **Policy Period**, gives the **Insurer** written notice of the circumstance or incident, then the **Insurer** will treat any subsequently resulting **Claim** as if it had first been made during the **Policy Period**. All terms and conditions of this Policy in effect on the date that the **Insurer** receives notice of such circumstance or incident will apply to the resulting **Claim**.

4. Notice of Circumstances or Incidents – Applicable to Occurrence Coverages Only

If during the **Policy Period**, the **Insured** first becomes aware of a circumstance or incident which may reasonably be expected to be the basis of a **Claim** against an **Insured**, and the **Insured** shall as soon as practical give the **Insurer** written notice of the circumstance or incident.

5. Notices to the Insurer

Notices to the **Insurer** must be sent to the address or email shown in the notice listed above, and include all of the following information:

- (a) the names, addresses and other contact information of all persons and/or organizations involved in the **Claim**, circumstance or incident, and the specific persons or organizations making or likely to make the **Claim**;
- (b) a description of the time, place and nature of the circumstances or incidents, or the events underlying or alleged in the **Claim**; and
- (c) a description of the potential loss or damages.

6. Preservation of Rights

The **Insured** shall take all steps necessary to preserve its rights and the rights of the **Insurer** with respect to any **Claim**, and shall do nothing to prejudice those rights.

## B. DEFENSE AND SETTLEMENT; COOPERATION

1. Defense and Investigation

- (a) It shall be the right and duty of the **Insurer** to defend any **Claim** to which coverage applies under this Policy, unless specifically indicated otherwise for a specific coverage or Insuring Agreement or in an Endorsement to this Policy.
- (b) If the **Insurer** has the right and duty to defend a **Claim**, the **Insurer** will have the right to select and retain counsel on behalf of the **Insured** to investigate and defend such **Claim**.
- (c) If the **Insurer** does not have the duty to defend a **Claim**, the **Insured** will have the responsibility to select and retain counsel for the investigation and defense of such **Claim**, subject to the prior approval of the **Insurer** which shall not be unreasonably withheld.
- (d) **Defense Expenses** paid by the **Insurer** may be paid in addition to or may reduce and exhaust the Limits of Liability, in accordance with the terms of each Insuring Agreement or Coverage Section.
- (e) The **Insurer** will not be obligated to pay **Loss** or **Defense Expenses** for any **Claim** under this Policy, or to defend or continue to defend any **Claim**, after the applicable Limit of Liability, or the Coverage Aggregate or Policy Aggregate Limit of Liability, is exhausted.

2. Insured's Duty to Cooperate

When the **Insurer** has the duty to defend:

- (a) The **Insured** must cooperate with the **Insurer** in the investigation, settlement and defense of any **Claim** for which coverage is provided under this Policy.
- (b) Upon the **Insurer's** request, the **Insured** must authorize the **Insurer** to obtain records and other information.
- (c) The **Insured** must provide the **Insurer** with any requested information and keep the **Insurer** informed of developments of which it is notified.
- (d) The **Insureds** must attend hearings, depositions, meetings and trials and other proceedings at the request of the **Insurer** and assist the **Insurer** in securing and providing evidence and obtaining the attendance of witnesses.
- (e) The **Insured** must cooperate with the **Insurer** upon the **Insurer's** request, in enforcing any rights of contribution or indemnity against another party who may be liable to an **Insured**.

- (f) No **Insured** will, except at the **Insured's** own cost, voluntarily make a payment, assume any obligation, admit any liability, or incur any expense or assume any other obligation, without the **Insurer's** prior written consent.
- (g) The **Insured** must send the **Insurer** copies of all demands, notices, settlement offers, summonses or legal papers received in connection with a **Claim** or potential **Claim**.

3. Settlement of a Claim

- (a) No **Insured** may settle any **Claim**, make any offer of settlement, or stipulate to any judgment or any decision in any regulatory action or proceeding, without the **Insurer's** prior written consent. The **Insured** may not take any action which would compromise any proposed settlement which is acceptable to the **Insurer**.
- (b) The **Named Insured** shall be authorized to act on behalf of all **Insureds** with respect to any settlement.
- (c) The **Insurer** may settle any **Claim** with the prior consent of the **Named Insured**, which shall not be unreasonably withheld. Such prior consent is not required in connection with any **Claim** under the **Sexual Misconduct Coverage Section**, if purchased by the **Insured**.
- (d) The **Insurer** and the **Named Insured** agree to cooperate in good faith with respect to the settlement of any **Claim**, and to promptly notify the other of any offer of settlement.

## C. LEGAL ACTION AGAINST THE INSURER

No person or organization has a right under this Policy:

- 1. to join the **Insurer** as a party or otherwise bring the **Insurer** into a suit seeking **Loss** from an **Insured**; or
- 2. to sue the **Insurer**, unless the **Insured** has fully complied with all terms and conditions of this Policy.

## D. CANCELLATION; NO OBLIGATION TO RENEW

1. Cancellation

- (a) The **Named Insured** may cancel this Policy by mailing or delivering to the **Insurer** advance written notice of cancellation.
- (b) The **Insurer** may cancel this Policy by mailing or delivering to the **Named Insured**, at the most recent address on file with the **Insurer**, written notice of cancellation at least:
  - (1) Ten (10) days before the effective date of cancellation if the **Insurer** cancels for non-payment of premium; or
  - (2) Sixty (60) days before the effective date of cancellation if the **Insurer** cancels for any other reason;or such notice as otherwise specified by state law.
- (c) Notice of cancellation will state the effective date of cancellation. The **Policy Period** will end on that date.
- (d) If this Policy is cancelled, the **Insurer** will send any premium refund due to the **Named Insured**. If the **Insurer** cancels, the refund will be pro rata. If the **Named Insured** cancels, the refund will be calculated as ninety percent (90%) of the prorated return premium. The cancellation will be effective even if the **Insurer** has not made or offered a refund.
- (e) If notice is mailed, proof of mailing will be sufficient proof of notice.

2. No Obligation to Renew

- (a) The **Insurer** will not be obligated or required to renew this Policy. Any offer of renewal terms involving a change of Limit of Liability, Deductible, premium, or other terms and conditions will not constitute, nor be construed as, a refusal by the **Insurer** to renew this Policy.
- (b) The **Insurer** may elect to non-renew this Policy by mailing to the **Named Insured**, at the most recent address on file with the **Insurer**, at least sixty (60) days advance written notice, or notice as otherwise specified by state law.
- (c) If notice is mailed, proof of mailing will be sufficient proof of notice.

## E. EXTENDED REPORTING PERIOD – CLAIMS MADE COVERAGES ONLY

This Section shall only apply to those coverages purchased by the **Insured** which apply on a Claims-Made and Reported basis. With respect to the Professional Liability Coverage Section, the Extended Reporting Periods shall only apply to Insuring Agreement A. Professional Liability Coverage.

1. Automatic Extended Reporting Period

- (a) If the **Named Insured** or the **Insurer** cancels or non-renews this Policy for any reason, other than for non-payment of premium and/or Deductible or for non-compliance with the terms and conditions of this Policy, then the **Named**



**Insured** will be entitled to an Automatic Extended Reporting Period of thirty (30) days from the effective date of the cancellation or nonrenewal of this Policy, in which to report **Claims**.

- (b) If an Optional Extended Reporting Period described below is purchased, then this Automatic Extended Reporting Period will be included within the Optional Extended Reporting Period and will not extend such Optional Extended Reporting Period.
- (c) The Automatic Extended Reporting Period shall not be effective if the **Insured** has procured replacement coverage with another insurance carrier.

## 2. Optional Extended Reporting Period

If the **Named Insured** or the **Insurer** cancels or non-renews this Policy for any reason, other than for non-payment of premium and/or Deductible or for non-compliance with the terms and conditions of this Policy, then the **Named Insured** will have the right to purchase an Optional Extended Reporting Period as follows:

- (a) The right to purchase the Optional Extended Reporting Period will terminate unless written notice of the **Named Insured's** intention to purchase it, together with payment of additional premium due, is received by the **Insurer** within thirty (30) days after the effective date of the cancellation or non-renewal.
- (b) The additional premium for the Optional Extended Reporting Period will be calculated as a percentage of the total annual premium, as specified in the Declarations.
- (c) The additional premium for the Optional Extended Reporting Period will be fully earned upon the effective date of the Optional Extended Reporting Period. Once purchased, the Optional Extended Reporting Period may not be cancelled.
- (d) The coverage provided under the Optional Extended Reporting Period is excess over any other insurance or coverage purchased by or for the **Insured** which also applies to a **Claim**.

## 3. Terms Applicable to both Automatic and Optional Extended Reporting Periods

- (a) All terms and conditions of this Policy in effect on the last day of the **Policy Period** will apply to a **Claim** made during the Extended Reporting Period.
- (b) The Extended Reporting Period does not extend the **Policy Period** or change the scope of coverage provided, nor does it provide an increased or reinstated Limit of Liability.
- (c) The Extended Reporting Period applies only to **Claims** first made against an **Insured** during the Extended Reporting Period for covered **Wrongful Acts** or **Occurrences** that occur on or after the Retroactive Date and before the effective date of cancellation or non-renewal of this Policy.

## F. CHANGE IN OPERATIONS

The **Named Insured** agrees to notify the **Insurer**, in advance if possible, of any material changes in its operations or activities during the **Policy Period** as soon as practicable. If the **Insurer** determines that these changes in operations or activities result in a change to an **Insured's** exposure, the **Insurer** will have the right to modify coverage terms, exclude coverage for any new risk or exposure that results from the material changes, and/or make adjustments to the premium or rates charged.

"Material changes" means changes to the **Insured's** operations or activities which materially increase or change the risk, as underwritten by the **Insurer** as of the Effective Date of this Policy, including but not limited to:

- 1. The suspension, revocation or restriction of an **Insured Entity's** or **Executive's** professional license, program certification, facility license, operating certificate, professional certification, registration, or similar requirement under federal, state or local law;
- 2. the use, acquisition, creation or opening of any facilities, practice groups or offices not described in the **Application**;
- 3. the creation or use of any practices, procedures or services not described in the **Application**; or
- 4. any other business operations or activities not previously disclosed to the **Insurer** in the **Application**.

## G. NEWLY ACQUIRED OR FORMED ENTITIES

- 1. A **Subsidiary** that is acquired or formed by the **Named Insured** during the **Policy Period**, and at the time of such transaction generates less than twenty-five percent (25%) of the total revenue of the **Named Insured** as reflected in the **Named Insured's** most recent audited consolidated financial statement, will automatically be covered under this Policy as an **Insured Entity** if there is no other similar insurance available to such entity.

2. A **Subsidiary** that is acquired or formed by the **Named Insured** during the **Policy Period**, and at the time of such transaction generates equal to or more than twenty-five percent (25%) of the total revenue of the **Named Insured** as reflected in the **Named Insured's** most recent audited consolidated financial statement, may be covered under this Policy as an **Insured Entity** if there is no other similar insurance available to such entity, but only subject to the following:

Coverage is afforded to such new **Subsidiary** only until the ninetieth (90th) day after the acquisition or formation, or until the end of the **Policy Period**, whichever is earlier. Coverage will cease for such new **Subsidiary** after this period, unless, within this period:

- (a) the **Named Insured** advises the **Insurer** of the acquisition or formation of the new organization in writing;
  - (b) the **Named Insured** provides any information or documentation as requested by the **Insurer** for evaluation;
  - (c) the **Named Insured** pays any additional premium required; and
  - (d) the **Insurer** issues an Endorsement to include the new **Subsidiary** as an **Insured Entity**.
3. For any other entity acquired or formed during the **Policy Period** which is not a **Subsidiary**, or which is a partnership, joint venture or limited liability corporation, there shall be no coverage provided under this Policy unless the **Named Insured** notifies the **Insurer** in writing, and the **Insurer** agrees to provide coverage for such new entity under this Policy subject to any additional terms, conditions and premium as may be required by the **Insurer**, and issues an Endorsement to this Policy to that effect.

## H. OTHER INSURANCE

The insurance afforded by this Policy is excess of, but shall not be subject to the terms and conditions of, any other valid and collectible insurance available to the **Insured**, except insurance specifically arranged by the **Named Insured** to apply in excess of this insurance.

## I. REPRESENTATIONS

1. By accepting this Policy the **Named Insured** agrees, on behalf of all **Insureds**, that:
  - (a) the statements in the **Application**, along with any and all attachments submitted with the same, or in connection with the application process and furnished to the **Insurer** are, after conducting due diligence and inquiry with any individuals who may have knowledge or information about the matters inquired about in such **Application**, true, accurate and complete;
  - (b) those statements furnished to the **Insurer** are representations the **Named Insured** made on behalf of all **Insureds**;
  - (c) those representations are a material inducement to the **Insurer** to issue this Policy;
  - (d) the **Insurer** has issued this Policy in reliance upon those representations; and
  - (e) if this Policy is a renewal of a previous policy issued by the **Insurer**, the **Insured's** representations include representations made in all previous applications for previous policies issued by the **Insurer**.
2. In the event of any material misrepresentation in the **Application**, or fraud or misrepresentation with respect to the presentation of any **Claim** for which coverage is sought under this Policy, the **Insurer** may void or cancel this Policy or deny coverage under this Policy to any **Insured**, in accordance with applicable laws and regulations.

With respect to any misrepresentation in the **Application** or with respect to any **Claim**, the knowledge of any **Insured Person** will not be imputed to any other **Insured Person**; however, the knowledge of and **Executive Officer** of an **Insured Entity**, or any person in a functionally equivalent position, will be imputed to the **Insured Entity** when determining whether to void or cancel this Policy or deny coverage hereunder.

## J. RESPONSIBILITIES OF NAMED INSURED

The **Named Insured** specified in the Declarations shall act on behalf of all **Insureds** for the payment or return of premium, the payment of Deductible amounts, the receipt and acceptance of any Endorsement issued to form a part of this Policy, giving and receiving any notices or communications with respect to any **Claim**, giving and receiving notice of cancellation or non-renewal, and exercising any rights to an Extended Reporting Period.

## K. SUBROGATION

1. The **Insurer** and the **Insured** may have rights to recover from a third party, all or part of any payment that the **Insurer** or the **Insured** makes with respect to a **Claim** for which coverage is provided under this Policy. If so, the rights of the **Insured** are transferred to the **Insurer**. The **Insured** must do nothing to prejudice such rights. At the **Insurer's** request, the **Insured** will do everything necessary to transfer and secure such rights and help the **Insurer** enforce them, including the execution of documents necessary to enable the **Insurer** to effectively bring suit.



2. Any recoveries will be applied as follows:

- (a) First to the **Insurer** if the **Insurer** incurs expenses to bring suit or otherwise exercise rights of recovery, up to the amount of incurred expenses;
- (b) Second to the **Insurer** up to the amount of its payment for **Loss** or any other amounts payable under this Policy; and
- (c) Third to the **Named Insured** as recovery of Deductible amounts paid by any **Insured**.

3. Waiver of Subrogation:

However, the **Insurer** waives its rights to pursue subrogation in connection with payments under this Policy against individuals or entities, including any Additional Insureds, with whom the **Named Insured** has entered into a written contractual agreement requiring such waiver of subrogation (prior to the date of any loss or damages).

#### L. TERRITORY – WORLDWIDE COVERAGE

This Policy applies to covered acts, errors, omissions or events which are committed by any **Insured** anywhere in the world; provided that the **Claim** is brought in the United States and its territories or possessions or Canada.

#### M. COMPLIANCE WITH ECONOMIC OR TRADE SANCTIONS

This insurance does not apply, and no payment shall be made hereunder, to the extent that trade sanctions or economic sanctions, embargos or other similar programs, laws or regulations, in the United States, the European Union, or any other country, prohibit the **Insurer** from providing insurance or making payment.

#### N. CONFORMITY TO STATUTE

1. Any terms of this Policy which are in conflict with the terms of any applicable laws construing this Policy, including any Endorsement to this Policy which is required by any state Department of Insurance or equivalent authority are hereby amended to conform to such laws.
2. In the event any portion of this Policy will be declared or deemed invalid or unenforceable under applicable law, such invalidity or unenforceability will not affect the validity or enforceability of any other portion of this Policy.

#### O. BANKRUPTCY

The bankruptcy or insolvency of an **Insured** or an **Insured's** estate will not relieve the **Insurer** of its obligations under this Policy nor deprive the **Insurer** of its rights or defenses under this Policy.

#### P. TRANSFER OF RIGHTS AND DUTIES

An **Insured's** rights and duties under this Policy may not be transferred without the **Insurer's** prior written consent.

#### Q. VALUATION AND CURRENCY

If **Loss** is paid in currency other than United States of America dollars, then payment under this Policy will be considered to have been made in United States of America dollars at the conversion rate published in *The Wall Street Journal* on the date of payment.

#### R. HEADINGS

The descriptions in the headings and subheadings of this Policy are solely for convenience and do not constitute any part of this Policy's terms and conditions.

#### S. POLICY CHANGES

This Policy contains all the agreements between the **Insurer** and the **Named Insured** concerning the insurance afforded. This Policy's terms can be amended or waived only by Endorsement issued by the **Insurer** and made a part of this Policy.

### VIII. EXCLUSIONS

- A. No coverage is provided under this Policy for **Loss**, including **Defense Expenses**, in connection with any **Claim** or other proceeding based upon, arising out of, resulting from or in connection with, in whole or in part, whether or not any other cause or event contributes concurrently or in any sequence to, any actual or alleged:

1. Intentional Misconduct

Criminal, dishonest, fraudulent, malicious or knowingly wrongful actions, or any intentional violation of any law, by any **Insured**; or the gaining by any **Insured**, of any profit, remuneration or advantage to which such **Insured** is not legally entitled;

Provided however, that this Exclusion will not apply:

- (a) unless there is a testimonial and uncontradicted admission, final adjudication or a finding in any proceeding establishing that such conduct occurred; or
- (b) to any natural person **Insured** who did not actually commit, participate in, have prior knowledge of, or conceal, such conduct.

To determine the applicability of this Exclusion to any **Insured**, the misconduct of any **Insured Person** will not be imputed to any other **Insured Person**. The conduct of an **Executive Officer** will be imputed to the **Insured Entity** to determine the applicability of this Exclusion.

If any **Insured** is found to have engaged in, or admits to engaging in, the conduct specified in this Exclusion, such **Insured** will reimburse the **Insurer** for any **Defense Expenses** advanced to or paid on behalf of such **Insured**;

2. Asbestos

Injury or damage arising in whole or in part, either directly or indirectly, out of asbestos, regardless of whether the asbestos is:

- (a) airborne as a fiber or particle;
- (b) contained in any product;
- (c) carried or transmitted on clothing or by any other means; or
- (d) contained in or a part of:
  - (1) any building;
  - (2) any building material;
  - (3) any insulation product; or
  - (4) any component part of any building, building material or insulation product.

3. Aircraft, Auto, Watercraft

Injury or damage arising, in whole or in part, out of the ownership, maintenance, use or entrustment to others of any aircraft, **Auto**, **Mobile Equipment**, or watercraft. Use includes operation and **Loading and Unloading**.

Provided however, that this Exclusion shall not apply to an otherwise covered **Claim** under the Professional Liability Coverage Section for injury caused during the loading or unloading of **Patients** into or from any vehicle, watercraft or aircraft by the **Insured**.

4. Certain Statutory Obligations

Violation of the Employee Retirement Income Security Act of 1974 (ERISA), the Fair Labor Standards Act (FLSA), the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Reconciliation Act (COBRA), the Occupational Safety and Health Act (OSHA), all as may be amended, or any similar federal, state or local statutory or common law, or any rules or regulations promulgated thereunder.

5. Contractual Liability

Liability of any **Insured** under any contract or agreement, including any express warranty or guarantee, without regard to whether such liability is direct or assumed; or the breach of an express or implied contract or agreement;

Provided however, that this Exclusion will not apply to liability an **Insured** would have in the absence of such contract or agreement;

This Exclusion is subject to the provisions of Section IV.A. Additional Insureds By Contract.

6. Discrimination

Discrimination against any person or entity on any basis, including not limited to, race, creed, color, religion, sex, sexual orientation, gender identity, ethnic background, national origin, age, disability, handicap or pregnancy.

7. Employment Practices

**Employment Practices.**

8. Fungi and Bacteria

Injury or damage arising in whole or in part, directly or indirectly, out of fungi or bacteria, including mold or mildew, any mycotoxins, toxins, allergens, spores, scents, vapors, gases or by-products released by fungi, regardless of whether such fungi is:

- (a) airborne;
- (b) contained in any product; or
- (c) contained in or a part of any building, structure, building material, or any component part of any of the foregoing.

Provided however, that this Exclusion shall not apply to an otherwise covered **Claim** under the Professional Liability Coverage Section arising out of fungi or bacteria which are contained in FDA-approved medications or in any products which are intended for consumption or use by human beings, or which a **Patient** allegedly becomes exposed to during a medical procedure or treatment.

9. Pollution

Injury or damage resulting from:

- (a) the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **Pollutants** at any time; or
- (b) any request, demand or order that any **Insured** abate, test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, encapsulate, remediate, dispose of, or in any way respond to, or assess the effects of, **Pollutants**;

Provided however, that this Exclusion does not apply to the extent that coverage is provided under the General Liability Coverage Section, if purchased by the **Insured**, for:

- (1) **Bodily Injury** if sustained within a building which is or was at any time owned or occupied, or rented or loaned to, any **Insured** and caused by **Pollutants** produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests; or
- (2) **Bodily Injury** or **Property Damage** arising out of heat, smoke or fumes from a **Hostile Fire** but only to the extent that coverage is provided under Section I.E. of the General Liability Coverage Section, unless the **Hostile Fire** occurred or originated:
  - (i) At any premises, site or location which is or was at any time used by or for any **Insured** or others for the handling, storage, disposal, processing or treatment of waste; or
  - (ii) At any premises, site or location on which any **Insured** or any contractors or subcontractors working directly or indirectly on any **Insured's** behalf are performing operations to test for, monitor, clean up, remove, contain, treat, detoxify, neutralize or in any way respond to, or assess the effects of **Pollutants**.

10. Healthcare Fraud

Violation of any federal, state or local laws, rules or regulations pertaining to healthcare fraud, including but not limited to improper billing practices.

Provided however, that this Exclusion does not apply to the extent that coverage is provided under Insuring Agreement F. Billing Errors and Omissions Claims Coverage, of the Professional Liability Coverage Section.

11. War

Injury or damage resulting from:

- (a) war, including undeclared civil war;
- (b) warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (c) insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these;

regardless of any other cause or event that contributes concurrently or in any sequence to the injury or damage.

12. Workers' Compensation

Obligation, injury or damage, for which any **Insured** may be liable under workers' compensation, unemployment compensation, disability benefits or any similar law.

13. Loss of Management Control

**Wrongful Act** of a **Subsidiary** or any of its **Insured Persons** which occurred either prior to the date the **Named Insured** gained **Management Control** of such **Subsidiary** or after the date the **Named Insured** ceased to have **Management Control** of such **Subsidiary**.

14. Prior and Pending Litigation

Pending or prior litigation, suit, proceeding or investigation of which any **Insured** had notice as of the Effective Date of this Policy; or alleging or derived from the same or essentially the same facts, events or acts, errors or omissions as alleged in such pending or prior litigation, suit, proceeding or investigation;

15. Privacy/Security of Information

Misappropriation, misuse or disclosure of personal, confidential, private or proprietary information; or any violation of federal, state, local or foreign laws governing the use and protection of personal, confidential, private or proprietary information, including but not limited to the Health Information Portability and Accountability Act (HIPAA) Privacy Rule and the Health Information Technology for Economic and Clinical Health Act (HITECH); or any breach of or unauthorized access to or use of a computer, electronic device, computer network or computer system security;

Provided however, that this Exclusion does not apply to coverage provided under Insuring Agreement E. HIPAA Claims Coverage, of the Professional Liability Coverage Section.

16. Intellectual Property

Acts, errors or omissions in violation of any law or regulation protecting intellectual property rights of any kind, including but not limited to infringement or misappropriation of any copyright, trademark, patent, service mark or other intellectual property; or plagiarism or piracy; or any regulatory, enforcement or licensing complaint, investigation, action or proceeding brought by any agency or organization with the power to regulate or enforce intellectual property rights;

Provided however, that this Exclusion does not apply to the extent that coverage is provided for **Advertising Injury** under the General Liability Coverage Section, if purchased by the **Insured**.

17. Antitrust; Unfair or Deceptive Trade Practices

Antitrust activities, anti-competitive activities, price fixing, price discrimination, predatory pricing, restraint of trade, monopolization, unfair competition, unfair or deceptive business practices or trade practices, or conspiracy relating to any of the foregoing; or any actual or alleged violation of the Federal Trade Commission Act, the Sherman Antitrust Act, the Clayton Act, the Robinson-Patman Act, as amended, or any rules or regulations promulgated pursuant thereto, or any other state or federal law relating to any of the foregoing;

18. TCPA or CAN-SPAM Violations

Unsolicited communications, telephone calls, facsimile transmissions, regular mail, electronic mail, texts, or audio or video recordings; wiretapping; telemarketing; any other form of unsolicited or invasive communication made by or on behalf of any **Insured**; or any actual or alleged violation of the Telephone Consumer Protection Act ("TCPA") or the CAN-SPAM Act of 2003, or any rules or regulations promulgated pursuant thereto, or any other federal, state or local statute, law, rule or regulation prohibiting, limiting or otherwise regulating the dissemination, disposal, collection, recording, sending, transmitting, communicating or distribution of oral or written material or information.

B. No coverage shall be provided under this Policy for any **Claim**:

1. Brought by or on behalf of any **Insured** or Additional Insured against any other **Insured** or Additional Insured;

Provided however that this Exclusion will not apply to preclude or limit coverage for an otherwise covered **Claim** by an **Employee** under the Employee Benefits Liability Coverage Section, if purchased by the **Insured**.

# Request for Taxpayer Identification Number and Certification

Give Form to the  
requester. Do not  
send to the IRS.

► Go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9) for instructions and the latest information.

Print or type.  
See Specific Instructions on page 3.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank. <b>The Behavior Center, LLC</b>		
2 Business name/disregarded entity name, if different from above		
3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only <b>one</b> of the following seven boxes.  <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input checked="" type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► _____ <b>Note:</b> Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner. <input type="checkbox"/> Other (see instructions) ► _____	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):  Exempt payee code (if any) _____  Exemption from FATCA reporting code (if any) _____  <i>(Applies to accounts maintained outside the U.S.)</i>	
5 Address (number, street, and apt. or suite no.) See instructions. <b>P.O. Box 4428</b>	Requester's name and address (optional)	
6 City, state, and ZIP code <b>Modest, CA 95354</b>		
7 List account number(s) here (optional)		

## Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

**Note:** If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number								
			-			-		
or								
Employer identification number								
4	7	-	3	4	9	6	9	5

## Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign  
Here

Signature of  
U.S. person ►

Date ► 2-15-19

## General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9).

## Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

*If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.*