

*SONOMA COUNTY  
SPECIAL EDUCATION LOCAL PLANNING AREA*

*2010-2011*

*MASTER CONTRACT  
FOR  
NONPUBLIC, NONSECTARIAN  
SCHOOL/AGENCY SERVICES  
v3-1-10*

SONOMA COUNTY  
SPECIAL EDUCATION LOCAL PLANNING AREA  
2010-2011 MASTER CONTRACT FOR  
NONPUBLIC, NONSECTARIAN SCHOOL/AGENCY SERVICES  
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**SONOMA COUNTY SPECIAL EDUCATION LOCAL PLANNING AREA  
MASTER CONTRACT FOR  
NONPUBLIC, NONSECTARIAN SCHOOL/AGENCY SERVICES**

THIS MASTER CONTRACT ("Contract") is made and entered into this 1<sup>st</sup> day of **July 2010**, between Sonoma County Superintendent of Schools, acting on behalf of Sonoma County Special Education Local Planning Area, hereinafter referred to as the "SELPA," and \_\_\_\_\_, hereinafter referred to as "CONTRACTOR" for the purpose of providing special education and/or designated instruction and services to individuals with exceptional needs under the authorization of California Education Code § 56157 and § 56365 - 56366.12.

**I. TERM**

This Contract shall commence on **July 1, 2010** and terminate at 5:00 p.m. on **July 31, 2011** unless terminated earlier date as provided herein.

**II. SERVICE DESCRIPTION AND RATE SCHEDULE**

On or before the commencement date of this Contract CONTRACTOR shall provide to SELPA a written description of its program of special education, designated instruction and services ("DIS"), behavior management system, incident reporting procedures, and school calendar which shall include the daily start time and dismissal time.

The NPS school calendar for July 1, 2010 to July 31, 2011 shall provide for up to 180 Regular School days. The number of **2011** **ESY** days shall not exceed **25 days**.

The regular school year days on the NPS calendar shall align with the regional transportation calendar applicable to the geographic location of CONTRACTOR's NPS. The **ESY** days on CONTRACTOR's NPS calendar shall align with the SCOE 2011 ESY calendar except that CONTRACTOR's ESY days may conclude up to five (5) days after SCOE ESY days conclude.

Notwithstanding the foregoing, NPS CONTRACTORS with SELPA-approved transportation services may provide ESY days on a different schedule but only if CONTRACTOR's transportation services are available to all students enrolled in the NPS and SELPA approves CONTRACTOR's proposed schedule.

All ESY days must provide for a minimum of 240 minutes and a maximum of 360 minutes and shall be paid on a per minute basis based on current daily rate.

The NPS calendar including the number of days per year and ESY days is subject to SELPA approval.

If CONTRACTOR executed a Master Contract with SELPA for the 2009-10 school year, the number of extended school year days in July and August, 2010 shall not exceed a total of 30 days when added to the number of ESY days CONTRACTOR provided in June, 2010.

CONTRACTOR may not charge a SELPA member district any rates other than the rates agreed to in this Master Contract.

CONTRACTOR acknowledges that the school calendar does not represent the number of days SELPA Member Districts are required to contract for services. The number of regular school days and extended school days in any ISA shall be determined in accordance with the individual needs of the pupil as specified in the pupil's IEP and shall occur within the SELPA-approved school calendar, unless otherwise authorized in advance in writing by LEA.

CONTRACTOR agrees to maintain current certifications, credentials, and licenses to provide its program of special education and DIS, as certified pursuant to Education Code § 56366.1 and related regulations, at the rates set forth below.

**A. Basic Education Program - Nonpublic Schools Only – Exhibit A**

1. Daily Program Rates. During the term of this Contract, CONTRACTOR shall provide special education and DIS in accordance with Individual Service Agreements (ISA) executed by CONTRACTOR and SELPA Member Districts (**Exhibit A**) at the rate of \_\_\_\_\_ per day for students placed in an LCI and/or foster home by Department of Human Services, Aide to State Adoptions, Department of Probation, Department of Drug and Alcohol, or Regional Center; for students placed in an LCI via AB 3632/Chapter 26.5 of the Government Code and for all other students the rate shall be \_\_\_\_\_ per day.

2. Partial Day. Daily Program Rates for pupils whose individual education program (IEP) authorizes less than a full instructional day shall be reduced proportionately (pupil's instructional day in minutes/minutes in full instructional day) x Daily Program Rate unless otherwise specified in ISA.

**B. Designated Instruction and Related Services**

Service	Rate/Day or Hour

**III. CONTRACT DOCUMENTS**

This Contract includes the attached General Provisions, **Exhibits A – N**, and any ISAs executed by CONTRACTOR and SELPA Member Districts. No payment shall be due under this Contract for special education or DIS provided to any pupil unless and until a SELPA member district and CONTRACTOR execute an ISA for such pupil.

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

Carl Wong  
Sonoma County Superintendent of Schools

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**GENERAL PROVISIONS  
TO  
SONOMA COUNTY SPECIAL EDUCATION LOCAL PLANNING AREA  
MASTER CONTRACT  
FOR  
NONPUBLIC, NONSECTARIAN SCHOOL/AGENCY SERVICES**

**A. DEFINITION OF TERMS AND ACRONYMS**

The following terms and acronyms shall apply in this Contract:

- CONTRACT (Master Contract)
- CDE (California Department of Education)
- CDOJ (California Department of Justice)
- DAYS (Calendar days, unless otherwise specified)
- DIS (Designated Instruction and Services)
- FAPE (Free Appropriate Public Education)
- FERPA (Family Educational Rights and Privacy Act of 1974)
- IEP (Individualized Education Program)
- ISA (Individual Service Agreement)
- ITP (Individual Transition Plan)
- IMMEDIATE or IMMEDIATELY (Within 24 hours)
- LEA (The Local Education Agency that is the district of residence of a pupil (with IEP) for whom an ISA has been executed, except when student resides at an LCI or Licensed Residential Home. When Student resides at an LCI or a Licensed Residential Home, LEA shall mean Sonoma County Office of Education-Special Education).
- LCI (Licensed Children's Institution)
- Office of Administrative Hearings (OAH)
- NOTIFICATION (Within fourteen (14) calendar days, unless otherwise specified)
- NPS/NPA (Nonpublic School/Nonpublic Agency)
- PARENT (Means the natural parent, adoptive parent, surrogate parent, legal guardian, or any other adult granted educational decision-making rights by the natural or adoptive parent, a court of competent jurisdiction, or as otherwise provided by law)
- SCOE (Sonoma County Office of Education)
- SCOE Student (Any student for whom SCOE, Department of Special Education, is responsible for providing special education and related services pursuant to the Sonoma County SELPA Local Plan.)
- SELPA Member District (Alexander Valley Union SD, Bellevue Union SD, Bennett Valley Union SD, CA Virtual Academy, Cinnabar SD, Cloverdale Unified SD, Cotati-Rohnert Park Unified SD, Dunham SD, Forestville Union SD, Fort Ross SD, Geyserville Unified SD, Gravenstein Union SD, Guerneville SD, Harmony Union SD, Healdsburg Unified SD, Horicon SD, Kashia SD (c/o SCOE), Kenwood SD, Liberty SD, Mark West Union SD, Monte Rio Union SD, Montgomery SD, Oak Grove Union SD, Old Adobe Union SD, Pathways Charter, Petaluma City SD, Petaluma Joint Union HSD, Piner-Olivet Union SD, Rincon Valley Union SD, Roseland SD, Santa Rosa City Elementary SD, Santa Rosa City High SD, Sonoma County Office of Education Special Education, Sonoma County Office of Education Court & Community School, Sebastopol Union SD, Sebastopol Independent Charter, Sonoma Valley Unified, Twin Hills SD, Two Rock Union SD, Waugh SD, West Side Union SD, West Sonoma County Union HSD, Wilmar Union SD, Windsor Unified SD)

**B. INDIVIDUAL SERVICE AGREEMENT - Exhibit A**

CONTRACTOR shall execute with SELPA Member Districts an ISA, (**Exhibit A**) for each pupil who is to receive special education and/or DIS from CONTRACTOR under this Contract, and each such ISA is incorporated herein by this reference. Services under an ISA shall occur only on the regular school days or extended school year days on the SELPA-approved school calendar, unless otherwise authorized in advance in writing by LEA at the SELPA approved rate for the services specified in the ISA. CONTRACTOR shall deliver the specified services using personnel who possess the requisite certifications and qualifications. Any substitution of personnel proposed by CONTRACTOR shall be conditioned upon written notice to, and prior written approval of, the LEA.

For SCOE Students, an ISA shall be executed at the following times: (1) within 30 days after placement in an NPS, (2) when a service is added to or deleted from the pupil's IEP, and (3) as needed to reflect changes at the annual review of the pupil's IEP.

Changes to a pupil's educational program including special education, DIS, and instructional setting provided under this Contract shall be made only by modification to the pupil's IEP in accordance with applicable laws and regulations, mediated agreement, or an order from the OAH or a court of competent jurisdiction.

DIS shall only be provided during the period of the pupil's regular or extended school year program and will occur at the NPS site or in the case of NPAs at the pupil's school of attendance, unless otherwise specified by the pupil's IEP.

For Pupils attending an NPS, unless otherwise specified in the pupil's ISA, CONTRACTOR shall provide DIS to pupils on only those days when the pupil's school of attendance is in session and the pupil is scheduled to attend school in accordance with the SELPA-approved NPS school calendar.

If DIS is not so provided due to the absence of CONTRACTOR'S Personnel, make up sessions shall be provided within thirty (30) days of the missed session. If CONTRACTOR does not provide all make-up services within thirty (30) days of the missed session(s), by the thirty-fifth day, CONTRACTOR must submit a schedule, to provide the make-up services on or before the 60<sup>th</sup> day of the missed sessions(s) or the last school day of the year, whichever is earlier. Section Q.2.b. shall apply to the make-up schedule, which shall be subject to LEA approval.

At any time during the term of this Contract, the parent, CONTRACTOR, or LEA may request a review of a Pupil's IEP, subject to all procedural safeguards provided by law.

CONTRACTOR shall not terminate any ISA without the advance written authorization of LEA except by mutual written agreement by CONTRACTOR and LEA as determined by IEP team.

An ISA may provide for special education and DIS beyond the term of this Contract, but the ISA shall be null and void upon termination of the Contract.

### **C. COPY OF IEP AND ASSESSMENTS**

1. As specified in the ISA, CONTRACTOR will provide each pupil a program of special education and DIS that is consistent with the pupil's IEP. The program of special education provided to pupils under the ISA shall be responsive to LEA's required sequence of courses and related curriculum for pupils. Prior to enrollment of a pupil CONTRACTOR shall obtain from the LEA a copy of each pupil's most recent IEP and related assessments.

2. Under this Contract, CONTRACTOR shall not accept for placement in CONTRACTOR's NPS any pupil residing in an LCI, except upon referral from SCOE-Special Education. SCOE's administrative placement and referral into NPS will generally start 5 working days after SCOE receives student referral packet from LCI or Foster Home/Agency.

### **D. PROGRESS REPORTS**

Progress reports relating to goals and objectives in a pupil's IEP and other data required for review shall be sent by CONTRACTOR to LEA and parents at intervals required by federal and state law (e.g., progress report and report card periods in pupil's district of residence), as required by a pupil's IEP, and within five (5) days of LEA's request.

### **E. EDUCATIONAL MATERIALS/GRADUATION REQUIREMENTS - NONPUBLIC SCHOOLS – Exhibit N**

As required by Education Code § 56366.10(b), CONTRACTOR shall ensure that pupils have access to the following educational materials, services and programs consistent with each pupil's individualized education program: (1) (A) For kindergarten and grades 1 to 8, inclusive, state adopted, standards-based, core curriculum and instructional materials. (B) For grades 9 to 12, inclusive, standards-based, core curriculum and instructional materials used by any local educational agency that contracts with the nonpublic, nonsectarian school. (2) College preparation courses. (3) Extracurricular activities, such as art, sports, music, and academic clubs. (4) Career preparation and vocational training, consistent with transition plans pursuant to state and federal law. (5) Supplemental assistance, including individual academic tutoring, psychological counseling, and career and college counseling.

For pupils working toward a high school diploma, CONTRACTOR shall provide a program of instruction that meets the requirements of the State of California and the pupil's school district of residence. CONTRACTOR shall obtain from the pupil's school district of residence the course/content requirements to obtain a high school diploma. For pupils in grades nine (9) through twelve (12), inclusive, at the close of each semester, or upon pupil transfer CONTRACTOR shall prepare transcripts and submit them to the pupil's school district of residence or to the school district to which pupil will transfer for evaluation of progress toward completion of diploma requirements and, for SCOE Students, to SCOE – Special Education NPS Program. In addition, upon a SCOE student's high school graduation, CONTRACTOR shall provide to SCOE-Special Education NPS Program either a copy of the pupil's diploma or, in the form of **Exhibit N**, a letter confirming the pupil met all graduation requirements and specifying the date of graduation.

## **F. STATEWIDE MANDATED ASSESSMENT**

CONTRACTOR shall administer all statewide achievement tests, the High School Exit Examination and any other state assessments in accordance with applicable laws and regulations and LEA procedures. For SCOE Students taking the High School Exit Exam, CONTRACTOR shall be responsible for transporting students to a test location specified by SCOE.

## **G. BEHAVIOR MANAGEMENT – Exhibit L & Exhibit O**

CONTRACTOR shall designate an individual employed, contracted, and/or otherwise hired by CONTRACTOR as a “behavior intervention case manager” (BICM) as that term is defined in Title 5 of the California Code of Regulations Section 3001(f) and the Sonoma County SELPA Positive Behavioral Interventions Implementation Guidelines for the Hughes Bill. Upon commencement of any services by new personnel and at least annually for all personnel, CONTRACTOR shall ensure that its Personnel are trained in crisis intervention, emergency procedures, and appropriate behavior management strategies. CONTRACTOR shall adhere to positive behavioral interventions set forth in California Education Code § 56520-56524 and California Code of Regulations Title 5, § 3001 and 3052, including data collection for behavioral issues, formulation of positive behavioral intervention plans, conducting functional behavior assessments, functional analysis of assessment, behavior intervention plans. Effective July 1, the SELPA adopted form (**Exhibit O**) Functional Analysis Assessment Report must be used by NPS. CONTRACTOR shall participate in the development and implementation of behavior management plan at the NPS for LEA transportation of day students to the NPS school site.

The SELPA Behavior Emergency Intervention Report (**Exhibit L**) is to be used when a student has an “unpredictable, spontaneous behavior, which poses a clear and present danger of serious physical harm to the individual or others”. Whenever an emergency intervention is used, the parents must be notified within one school day and the SELPA Behavior Emergency Report must be prepared no later than the end of the day on which the incident occurred and faxed to the LEA. CONTRACTOR must provide a copy of report to parents and SELPA within one school day.

## **H. SUSPENSION AND EXPULSION – Exhibit M**

Suspensions of pupils by CONTRACTOR shall be consistent with the provisions of applicable state and federal laws and regulations. CONTRACTOR shall have a written policy regarding suspension procedures. Such procedures shall include a process for documenting conduct that may lead to an expulsion by the LEA, and the process for communicating disciplinary matters to the LEA. It is understood that the LEA shall be responsible for any expulsion decision, hearing and/or appeal. CONTRACTOR shall notify LEA within five (5) days and provide all related written documentation each time a pupil is suspended, including the reason for said suspension on SELPA Suspension & Expulsion Data Collection Form (**Exhibit M**). Written documentation shall include, but not be limited to, pupil’s name, date, time, offense, rationale for disciplinary action taken, and most recent behavioral intervention plan, if any. CONTRACTOR agrees to participate in any manifestation determination by providing input, data, and other related information, and attending any related IEP meetings. The LEA shall notify CONTRACTOR’S representative of the IEP meeting at which the manifestation determination will be made.

## **I. CLASS SIZE - NONPUBLIC SCHOOL**

When CONTRACTOR is a NPS, CONTRACTOR shall ensure that the number of pupils loaded to a class shall not exceed twelve (12) pupils unless otherwise permitted as provided in this section.

One time per year class size may be increased to up to 13 enrolled students for a period of 5 school days, or less, provided CONTRACTOR notifies SELPA and all LEAs within 24 hours of the commencement and termination dates of the temporary increase in enrollment. With the prior written approval of each LEA with any students enrolled in a class, enrollment may be increased up to fourteen (14) enrolled students for a period of **30** school days, or less.

If CONTRACTOR provides special education for individuals with exceptional needs between the ages of three (3) and five (5) years, inclusive, CONTRACTOR shall comply with the appropriate instructional adult to child ratios pursuant to California Education Code § 56440 et seq.

## **J. APPROPRIATE THERAPY SPACE**

CONTRACTOR will make available appropriate therapy space for DIS providers. The space shall be a safe and appropriate environment that is free from distraction and conducive to the provision of effective services.

## **K. SURROGATE PARENTS**

CONTRACTOR shall notify the SELPA (Attn: Program Specialist – Parent Surrogates) immediately after the CONTRACTOR becomes aware of the need for the appointment of a surrogate parent. A surrogate parent is necessary when the parent is absent, the court has limited the parents’ rights to make educational decisions for their child, and/or the child is a dependent or ward of the court and the court has so limited the parents’ rights. CONTRACTOR agrees that the SELPA and authorized representatives will select, appoint and train said surrogate. A surrogate parent must have no interests that conflict with the interests of the child, have knowledge and skills that ensure adequate representation of the child, and may not be an employee of a public or private

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agency involved in the education and/or care of the child. The surrogate parent shall be required to sign an affidavit stating that no such conflict of interest exists and this affidavit will be kept on file by the SELPA.

## **L. IEP/ITP MEETINGS**

Upon LEA and CONTRACTOR'S mutual consent, CONTRACTOR may send notice of all IEP meetings to the parent and other appropriate individuals as determined in consultation with LEA's special education coordinator or designee. CONTRACTOR shall include with the notice to parent, the SELPA Alternative Dispute Resolution brochure and to the extent required by applicable laws and regulations Parent Rights and Procedural Safeguards. The notice shall be provided at least ten (10) days prior to the meeting except as otherwise permitted by law.

CONTRACTOR and LEA shall ensure that ITPs are completed and implemented for all pupils beginning at age 16 or younger as required by California Education Code § 56043 (h).

CONTRACTOR agrees to use SELPA's IEP, ITP and service log forms, which may from time-to-time be modified.

When an IEP team has determined that a pupil should be transitioned into another private or public school setting, CONTRACTOR, in conjunction with LEA, shall facilitate implementation of the IEP team recommendation. This may include, but not be limited to, facilitation of dual enrollment, scheduling, transportation arrangements and other pupil supports. These provisions shall also apply to mediated agreements and OAH decisions.

CONTRACTOR is responsible for ensuring the attendance of the pupil's special education teacher and appropriate DIS Personnel at IEP/ITP meetings, which will be held at pupil's NPS, unless otherwise approved by LEA. At least ten (10) days before any IEP/ITP meeting, CONTRACTOR shall notify LEA if the pupil's parent/guardian requires a translator.

CONTRACTOR's performance of this Section L shall be at no additional cost.

## **M. DUE PROCESS & COMPLAINTS**

CONTRACTOR shall fully participate in mediations and hearings at no additional cost as requested by LEA. CONTRACTOR shall also fully participate in related investigation and provide documentation pertaining to any complaint filed with the State of California, the Office for Civil Rights, or any other state and/or federal governmental body or agency.

CONTRACTOR shall inform parent(s) of their due process rights upon 1) initial referral or parent request for evaluation; 2) registration of a complaint or a request for a due process hearing; 3) deciding to make a removal that constitutes a change of placement for disciplinary reasons; 4) parent request; and 5) to the extent otherwise required by applicable laws and regulations.

## **N. PROGRAM MONITORING**

### **1. INSPECTION AND AUDIT OF RECORDS**

CONTRACTOR shall make available access to and provide copies of any books, documents, papers, reports, records, including but not limited to CONTRACTOR's articles of incorporation, bylaws, and list of current board of directors, and other matter relating to the Contract within ten (10) working days of a request by SELPA or LEA or as required by law. SELPA or LEA shall state the reason for request at time of the request. CONTRACTOR shall make available to SELPA all budgetary information and projections for purpose of contract negotiations for the period being audited to facilitate assessment of the extent to which funds were expended consistently with said budgetary information. Fiscal records shall be maintained by CONTRACTOR for five (5) years and shall be available for audit.

### **2. FACILITIES AND PROGRAM REVIEW**

CONTRACTOR shall allow access to its facilities for periodic monitoring of each pupil's instructional program by SELPA and LEA representatives and designees. Such representatives and designees shall have reasonable access to observe each pupil at work, observe the instructional and residential setting, interview CONTRACTOR, review each pupil's progress including the behavior intervention plan and ITP, if any, and related documentation, as LEA deems appropriate. Such access may include unannounced monitoring visits. SELPA and LEA representatives and designees making site visits shall initially report to CONTRACTOR's site administrative office. CONTRACTOR shall be invited to participate in LEA's progress review of pupil's enrolled in CONTRACTOR's program.

### **3. PARENTAL VISITATION**

CONTRACTOR shall permit reasonable parental visits to all the school facilities including, but not limited to, the instructional setting attended by the pupil, school and recreational activity areas, and if applicable, pupil's living quarters.

CONTRACTOR's operating programs with residential components shall cooperate with parents' reasonable requests for pupil's home visits during holidays, weekends, and other appropriate times. CONTRACTOR shall ensure that parental visits comply

with known procedures established by court orders and other agencies (e.g., Sonoma County Department of Mental Health) having proper jurisdiction over the pupil and/or the pupil's IEP.

#### **4. EVALUATION OF PROGRESS – Exhibit B**

This section applies only if CONTRACTOR is an NPS. Each year the LEA shall evaluate whether pupils for whom an ISA with CONTRACTOR is in effect are making appropriate educational progress. To the extent reasonably possible the evaluation shall be conducted as part of the development and provision of an IEP and shall include:

- a) A review of the pupil's educational progress (including all state assessment results pursuant to Ed. Code § 52052(b));
- b) An evaluation of whether the pupil's needs continue to be best met in an NPS and whether changes to the IEP are necessary; and
- c) If CONTRACTOR is owned, operated by, or associated with an LCI, a review of whether the NPS is in compliance with Education Code § 56366.9 (i.e., prohibition against requiring enrollment in a particular NPS as a condition of residential placement) and Health and Safety Code § 1501.1(b) (i.e., NPS complies with all licensing requirements relevant to the pupil).

CONTRACTOR shall participate and fully cooperate in the evaluation, which will include, but not be limited to, completion of the Checklist attached hereto as **Exhibit B**.

#### **O. CERTIFICATION, CREDENTIALS AND LICENSES – Exhibit C**

1. CONTRACTOR shall comply with written notice requirements of Education Code § 56366.1(b)(1) when CONTRACTOR seeks an initial certification or renewal of certification.

2. If CONTRACTOR's state certification or waiver will expire during the term of this Contract, CONTRACTOR shall provide SELPA and LEA with an updated certification prior to the expiration date. This Contract shall terminate if CONTRACTOR's state certification or waiver expires and is not renewed without interim break or is revoked, rescinded or otherwise nullified during the term of this Contract. If such terminating event occurs, CONTRACTOR shall notify LEA in writing immediately. CONTRACTOR shall not be entitled to payment during any period when a valid state certification or waiver was not in effect.

3. CONTRACTOR shall employ, contract, and/or otherwise hire individuals who are adequately trained to perform duties required under the IEP/ISA and have sufficient experience, according to prevailing professional standards, to provide the services for which the individual is engaged. Individuals employed, contracted, and/or otherwise hired by CONTRACTOR shall be licensed, credentialed, and/or otherwise qualified as required by applicable laws and regulations. CONTRACTOR shall not be compensated for special education and/or DIS provided by such individuals who were not at the time services were rendered appropriately licensed, credentialed and otherwise qualified or whose credential(s) or license(s) were not on file with SCOE.

4. CONTRACTOR shall be responsible for verification of security clearance, credentials, and licenses held by its employees, agents, regular/on-going volunteers and SUBCONTRACTORS before such persons may commence services. Education credentials and licenses shall be on file at SCOE. At the time of execution of this Contract, and within thirty (30) days of any change, CONTRACTOR shall complete under penalty of perjury, and submit to SELPA a "Statement of Certifications, Credentials, Licenses, and Clearances," in the form attached hereto as **Exhibit C**.

5. CONTRACTOR shall notify LEA in writing, by email, or by facsimile within five (5) days of the occurrence of Personnel changes, which may affect the provision of special education and/or DIS to pupils.

6. CONTRACTOR shall ensure that all teaching and pupil services Personnel who are not fully credentialed are directly supervised by a person who possesses a valid, appropriate credential. Supervision shall include, but not be limited to, direct access by staff to his/her supervisor on a daily basis for technical support, guidance and emergency interventions in order to provide FAPE to pupils.

7. CONTRACTOR shall not be compensated for special education and/or DIS provided by Personnel.

#### **P. RECORDS**

##### **1. PUPIL RECORDS – Exhibit D**

CONTRACTOR agrees to keep a current listing of names and positions of employees who have access to "pupil records" as that term is defined by Education Code § 49061(b). All pupil records shall be kept in a secure location to prevent access by unauthorized individuals. CONTRACTOR will maintain access log delineating date, time, agency, and identity of any person accessing pupil records who is not in the direct employ of the CONTRACTOR. Subcontractors shall not be considered in the direct employ of the CONTRACTOR for the purposes of accessing pupil records. CONTRACTOR also agrees to comply with the parental right to request records, the parental right to inspect a pupil's file as defined in the federal law under the Family

Educational Rights and Privacy Act of 1974 (“FERPA”) and California Education Code § 49060 et seq. and 56000 et seq., and to maintain the confidentiality of pupil records in accordance with applicable laws and regulations.

Within five (5) days of a pupil’s transfer out of CONTRACTOR’s school or agency or closure of CONTRACTOR’s school or agency, CONTRACTOR shall forward all pupil records to the pupil’s district of residence or new NPS, as the case may be. For SCOE Students, CONTRACTOR shall also send to SCOE Special Education NPS Program, students’ final transcript and SCOE “Exit Form” (**Exhibit D**). The records shall include, but not be limited to, current transcripts, IEPs, ITPs, assessments, and reports and results of mandated statewide assessments, if applicable. Failure to comply may result in withholding of payment under Section Q.8. of this Contract.

## **2. ATTENDANCE RECORDS – Exhibit E**

a) CONTRACTOR shall keep daily attendance of each pupil and shall report attendance monthly to LEA using the forms and methods issued by the State Superintendent of Public Instruction in January of each year. Such attendance shall be kept on attendance register forms approved by the State Superintendent of Public Instruction. CONTRACTOR shall keep daily attendance and report attendance monthly to LEA using the form attached hereto as **Exhibit E**.

b) CONTRACTOR shall permit LEA representatives, upon reasonable notice, to meet with staff of CONTRACTOR for the purpose of auditing attendance reporting.

c) ABSENCES - NONPUBLIC SCHOOL: No later than the fifth (5th) consecutive day of a pupil’s absence, CONTRACTOR shall notify LEA of such absence in writing, unless a written time extension is granted by LEA. CONTRACTOR will maintain written records regarding all absences. These records shall indicate absences from school and/or absence from residential placement as appropriate.

d) ABSENCES – NONPUBLIC AGENCY ONLY: CONTRACTOR shall notify LEA in writing when a pupil’s absences exceed three (3) sessions. Make-up sessions shall be scheduled to occur within thirty (30) days after the missed session. All DIS shall be provided by CONTRACTOR during the LEA’s regular school and extended school calendar days unless otherwise specified in the IEP.

e) TEACHER ABSENCE - When a classroom teacher is absent, CONTRACTOR shall provide a substitute teacher or provide coverage by an appropriately qualified and credentialed staff person, to provide instruction and fulfill other duties of the absent teacher. A substitute teacher shall hold a current teaching credential in accordance with Ed. Code § 56061. CONTRACTOR shall provide to LEA written documentation of substitute coverage specifying the dates and classroom in which the substitute served and the monthly payment demand documentation referenced in Section Q 7(a).

f) WITHDRAWAL BY PARENT: CONTRACTOR shall immediately (within 24 hours) report by telephone to LEA if a parent withdraws a pupil from the NPS or NPA. CONTRACTOR shall confirm said telephone call in writing within three (3) days of withdrawal.

g) MAINTENANCE OF RECORDS: The following attendance records shall be maintained by CONTRACTOR for as long as CONTRACTOR remains in operation for the provision of special education and/or DIS: attendance registers and roll books of teachers; daily service logs and notes or other documents used to record the provision of DIS; absence verification records (parent/doctor notes, telephone logs, and related documents); bus rosters if transportation is provided by CONTRACTOR. All records shall be maintained in accordance with applicable laws and regulations.

## **3. CHANGE OF RESIDENCE**

CONTRACTOR shall notify parents in writing of their obligation to notify CONTRACTOR of changes in pupil’s residence. CONTRACTOR shall notify LEA in writing of pupil’s and/or parent’s change of residence, including any addition of a group home and license, within three (3) days after CONTRACTOR becomes aware of a pupil’s change in residency. This Contract shall terminate as to any pupil upon the termination of the pupil’s residency within LEA’s boundaries.

If the pupil’s new residence is located outside of LEA’s boundaries and CONTRACTOR fails to follow the procedures specified in this provision, LEA shall not be responsible for the costs of services delivered after the pupil’s change of residence if CONTRACTOR knew of the pupil’s change of residence.

When the CONTRACTOR becomes aware of an emergency change of placement (e.g. hospitalization, juvenile hall, etc.), CONTRACTOR shall verbally notify LEA immediately (within 24 hours) and shall confirm the same in writing within three (3) days.

## **Q. PAYMENT PROVISIONS**

### **1. CHARGES**

- a) Except as provided in Section II of this Contract CONTRACTOR shall not bill for or collect any charges as a condition of enrollment, participation in, or receipt of special education and/or DIS necessary for the provision of FAPE.
- b) CONTRACTOR shall guarantee that all charges to the LEA are consistent, justified and based on standards applied to all pupils enrolled in or receiving services from CONTRACTOR.
- c) CONTRACTOR may charge for services rendered in accordance with a written agreement executed by all relevant parties following a mediation or due process hearing. The written agreement shall be attached to the pupil's ISA.
- d) CONTRACTOR shall not charge the parent of any pupil for whom an ISA has been executed under this Contract for special education and/or DIS specified in the pupil's IEP. This provision applies but is not limited to screening procedures and interviews that occur prior to or as a condition of the pupil's enrollment, except as agreed in writing, in advance, by LEA, CONTRACTOR, and parent and attached to the pupil's ISA.
- e) CONTRACTOR may charge a parent or guardian for voluntary extracurricular activities only if prior written notification is given to parent/guardian as to the cost and the voluntary, extracurricular nature of the activity and the parent/guardian consents in writing to the pupil's participation. Pupils not participating in voluntary extracurricular activities shall continue to receive special education and/or DIS as set forth in their IEPs.
- f) Subject to the advance written approval of Sonoma County Office of Education – Special Education, for SCOE Students only, CONTRACTOR may charge for (1) home-to-school transportation at a flat rate and/or at the rate of \$0.45 per mile, and (2) transportation to and from off-site physical education as provided in the pupil's IEP at the rate of \$0.45 per mile, not to exceed a total of 25 miles round trip. CONTRACTOR shall submit an attendance register with all claims for physical education transportation charges. Transportation by third parties shall be subject to this paragraph and Section X, below.

### **2. SCHOOL CALENDARS – Exhibit K**

- a) On the School Calendar Form attached hereto as **Exhibit K** CONTRACTOR shall submit its SELPA approved school instructional calendar (regular and extended year) to the LEA upon execution of an ISA.
- b) Services shall not be scheduled and payment shall not be due for services provided during winter break, spring break, inter-sessions, or the period between extended school year and the fall semester, or at any time other than in accordance with the SELPA-approved school calendar, unless otherwise authorized in writing in advance by LEA.
- c) SELPA observes the following legal holidays: Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, Christmas Day, New Year's Day, Dr. Martin Luther King, Jr. Day, Lincoln's Birthday, Washington's Birthday (Presidents' Day), Memorial Day, and other holidays as specified in the SCOE official calendar. CONTRACTOR shall not schedule the provision of services on any such dates without advance, written authorization of LEA.
- d) No later than April 1, 2011 CONTRACTOR shall submit its proposed 2011-12 school instructional calendar, on the form attached hereto as **Exhibit K**, to SELPA for approval. Each NPS shall declare no more than 205 days per year (180 regular school days and up to 25 ESY days), with a semester break declared midyear

### **3. INSTRUCTIONAL DAY/YEAR**

- a) The minimum total number of instructional minutes per school day provided by CONTRACTOR shall be equal to the number of instructional minutes established for LEA schools unless otherwise specified within the pupil's IEP and/or ISA. The minimum number of instructional minutes per day shall allow for the inclusion of lunch, recess and passing time in the total daily instructional minutes calculation when documented interventions and/or data is being used to support student's IEP goals. For Pre-K through grade twelve (12), unless otherwise specified on the pupil's IEP, the number of instructional minutes per day shall be as follows excluding recess, lunch, and passing time: one hundred eighty (180) minutes for pre-kindergarten pupils; two hundred (200) minutes for kindergarten pupils; three hundred ten (310) minutes for pupils in grades one (1) through eight (8); and three hundred sixty (360) minutes for pupils in grades nine (9) through twelve (12).
- b) The total number of annual instructional minutes shall be equivalent to those provided to pupils attending LEA schools unless pupil's IEP specifies fewer minutes than specified in paragraph a, above.

### **4. PAYMENT UNIT - NONPUBLIC SCHOOL ONLY**

- a) A unit of service for payment purposes is one day of attendance as defined in California Education Code § 46010. Except as provided in this Contract, LEA shall not be responsible for payment of services for days on which a pupil's attendance does not qualify for Average Daily Attendance (ADA) reimbursement under state law.

b) CONTRACTOR shall notify LEA when Medi-Cal is billed for education-related expenses, specifying which education-related services are billed to Medi-Cal and date(s) of service.

## **5. PAYMENT UNIT - NONPUBLIC AGENCY ONLY**

A unit of service for payment purposes is one hour of DIS. Except as provided in this Contract, LEA shall not be responsible for payment days in which a pupil's attendance does not qualify for Average Daily Attendance (ADA) reimbursement under state law.

## **6. ABSENCES**

a) CONTRACTOR shall notify LEA in writing by facsimile or personal delivery by the fifth (5th) day of a pupil's consecutive or cumulative day of a pupil's absence.

b) All absences must be satisfactorily verified and CONTRACTOR shall maintain verification records for a minimum of five (5) years. The following persons may verify absences: school or public health nurse, physician, school principal, teacher, or school person assigned by the school to make verification. Any reasonable method of verification may be used provided it includes a written note from the pupil's parent, guardian or representative, or the pupil if the pupil is at least 18 years of age or an approved telephone log maintained by one of the aforementioned persons who is authorized to verify absences. CONTRACTOR is responsible for verification of absences in accordance with the Education Code and Title 5 of the California Code of Regulations.

c) CONTRACTOR shall not be compensated for any days of absence or suspension during the regular or extended school year.

## **7. PAYMENT DEMAND – Exhibits E, F, G & J**

a) NPS CONTRACTORS shall submit monthly written payment demands on SELPA approved invoice form **Exhibit J**, SELPA approved attendance form **Exhibit E**, and in the manner prescribed by the CDE documentation of services rendered as specified in the student's ISA. The copies of attendance registers/service records and Invoice payment demand shall be submitted to LEA within thirty (30) days after the end of each attendance calendar month in which services are rendered, except in November, December, March, June, when attendance registers/service records must be faxed to LEA on the last school day of the month. NPA CONTRACTORS shall submit monthly written payment demands and copies of related service records on the approved form (**EXHIBIT F**) to LEA within thirty (30) days after then end of each calendar month in which the service was rendered.

b) Separate attendance registers must be submitted for each related service specified on the ISA. CONTRACTOR shall use SELPA approved form, **EXHIBIT F**, and attach it to the ISA. For Preschool students receiving services in the home program the CONTRACTOR shall use SELPA approved form, **EXHIBIT G**.

c) The original attendance registers must be completed and signed by the service provider. CONTRACTOR shall be responsible for verifying the accuracy of said registers and for informing service providers of their personal responsibility for the completion and accuracy of said attendance registers.

d) CONTRACTOR shall maintain separate registers for the special education program and each related service. Original attendance forms (i.e., roll books for the special education program and service logs and notes for each related service) shall be completed by the service provider whose signature must appear on such forms and shall be available for review, inspection, or audit by LEA or other agencies having jurisdiction over such matters during the effective period of this Contract and for a period of five (5) years thereafter. CONTRACTOR shall verify the accuracy of reported attendance which is the basis of services being billed for payment and shall inform service providers of their personal responsibility for the services being reported as rendered.

e) Upon approval of said payment demand, LEA shall make payment in an amount equal to the number of creditable days of attendance multiplied by the agreed upon unit amount. Payment shall be made within forty-five (45) days of LEA's receipt of payment demand except when approval is denied and LEA exercises its right to withhold. Should the LEA or SCOE fail to comply, the nonpublic nonsectarian school or nonpublic agency may require the LEA, or county office to pay an additional amount of 1 1/2 percent of the unpaid balance per month until full payment is made.

f) Unless SCOE otherwise agrees in writing, CONTRACTOR shall not be entitled to any compensation for special education and/or DIS provided to any SCOE student prior to the date SCOE places the student.

## **8. RIGHT TO WITHHOLD**

(a) LEA may withhold payment to CONTRACTOR when:

(1) CONTRACTOR has failed to perform, in whole or in part, under the terms of this Contract;

(2) CONTRACTOR was overpaid by LEA as determined by inspection, review, and/or audit of its program, work, and/or records;

(3) CONTRACTOR has failed to submit a payment demand that fully complies with the requirements of Section Q.7, including failure to use the proper form;

(4) Special education and/or DIS are provided to pupils by persons who are not appropriately credentialed, licensed, or otherwise qualified;

(5) LEA has not received prior to school closure or contract termination all documents concerning one or more pupils enrolled in CONTRACTOR's program;

(6) CONTRACTOR fails to confirm a pupil's change of residence to another district or confirms the change or residence to another district, but fails to notify LEA as required under Section P(3);

(7) CONTRACTOR receives payment from Medi-Cal or from any other agency or funding source for a service provided to a LEA pupil or

(8) CONTRACTOR has failed to fully comply with Section T, Insurance.

(b) The amount which may be withheld by LEA with respect to each of the subparagraphs in paragraph Q.8.a. are as follows:

(1) The portion of the payment demand the service or services CONTRACTOR failed to perform;

(2) The amount of overpayment;

(3) The portion of the payment demand for which satisfactory documentation was not provided by CONTRACTOR

(4) The portion of the payment demand for services provided by any person not appropriately credentialed, licensed, or otherwise qualified;

(5) The proportionate amount of the payment demand related to the applicable pupil(s) from the date the violation occurred and until the violation is cured;

(6) The amount charged for any services after the pupil's change of residence to a residence outside of LEA's boundaries;

(7) The amount paid to CONTRACTOR by Medi-Cal or another agency or funding source for the service provided to the LEA pupil; and

(8) The amount of any payment demand applicable to the period during which CONTRACTOR failed to comply with Section T.

c) If LEA determines that cause exists to withhold payment to CONTRACTOR, LEA shall provide, within ten (10) working days, written notice to CONTRACTOR that LEA is withholding payment to CONTRACTOR. Such notice shall specify the basis or bases for LEA's withholding of payment. Within fourteen (14) 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 or bases for LEA's notice of withholding and shall provide LEA with written documentation of its corrective action.

d) Except as provided in Section Q.8.e., below, no payment of the amount withheld shall be due if LEA has given a notice of withholding unless within fourteen (14) days from the date of receipt of such notice CONTRACTOR provides LEA with satisfactory written documentation establishing that the basis or bases for the notice of withholding were in error. Upon showing of good cause LEA shall extend CONTRACTOR's time to submit written documentation of error by an additional ten (10) days.

e) If the notice of withholding is based on Section Q.8.a.3, no payment of the amount withheld shall be due if CONTRACTOR fails to submit a fully compliant payment demand within 30 calendar days after the date of the notice of withholding. LEA may impose a monetary deduction of \$100 from invoice for each required deadline of non-compliance. Compliance deadlines to include, but not be limited to, the following: Attendance for ADA reporting Section Q.7.a., Change of address notification Section P.3., Drop/Exit Form Section P.1., and CBEDS data,

f) If CONTRACTOR submits an invoice to LEA thirty (30) days or more after the date listed in Section Q 7(a), the amount due on the invoice shall be reduced by 10% . If CONTRACTOR submits an invoice to LEA sixty (60) or more days after the date listed in Section Q.7(a), the amount due on the invoice shall be reduced by 25%. If the CONTRACTOR and LEA fail to resolve an invoice issue, either party may request the assistance of the Steering Committee to resolve the matter.

g) If CONTRACTOR fails to timely submit a make-up schedule as specified under General Provisions Section B., LEA may withhold payment to CONTRACTOR in the amount of ten percent (10%) on any payment demand for services rendered on and after the thirty-first day of a missed session until the make-up schedule is submitted in a form acceptable to LEA. LEA shall give written notice of withholding pursuant to this section and approve or disapprove a make-up schedule within five (5) business days after receipt. LEA's failure to respond within that period shall be deemed approval. Any notice of disapproval shall state the reasons for disapproval. In the event of disapproval, CONTRACTOR shall submit a revised make-up schedule to LEA for review and approval.

If CONTRACTOR fails to complete make-up services on or before the 60<sup>th</sup> day of the missed sessions(s) or the last school day of the year, whichever is earlier, CONTRACTOR'S "Daily Program Rate", or if specified in Section II.B., the "Rate/Day" or "Rate/Hour for the particular services(s) missed, shall be reduced by twenty-five percent (25%). The reduced rate shall apply for the period commencing on the thirty-first (31<sup>st</sup>) day after any missed sessions(s) until all the missed services have been make up, unless the CONTRACTOR and LEA otherwise agree in writing, and LEA may take the reduction from any sum due under this Contract.

## **9. Audit Exceptions**

a) CONTRACTOR agrees to accept responsibility for receiving, replying to, and/or complying with any audit exceptions by LEA or by appropriate state or federal audit agencies occurring as a result of CONTRACTOR'S performance of this Contract. CONTRACTOR also agrees to pay to LEA within thirty (30) days of written demand by LEA the full amount of LEA'S liability to the state, if any, resulting from any audit exceptions to the extent attributable to CONTRACTOR'S failure to perform properly any of its obligations under this Contract.

b) Upon LEA's request and except as otherwise provided by law, CONTRACTOR shall provide LEA, a state agency, a federal agency, and/or an independent agency/firm contracted by LEA, access to the following records within seven (7) days: registers and roll books of teachers; daily service logs and notes or other documents used to record the provision of special education or DIS; absence verification records (parent/doctor notes, telephone logs, and related documents); bus rosters; staff lists specifying credentials held, business licenses held, documents evidencing other qualifications, social security numbers, dates of hire, and dates of termination; staff time sheets; non-paid staff and volunteer sign-in sheets; transportation and other related services subcontracts; school calendars; bell/class schedules; liability and worker's compensation insurance policies; state nonpublic school and/or agency certifications; marketing materials; by-laws; lists of current board of directors/trustees, if incorporated; statements of income and expenses; general journals; cash receipts and disbursement books; general ledgers and supporting documents; federal/state payroll quarterly reports; and bank statements and cancelled checks. Such access shall include unannounced inspections by LEA.

c) CONTRACTOR shall comply with any requests resulting from an inspection, review, or audit by LEA, a state agency, a federal agency, and/or an independent agency/firm in a reasonable and timely manner. If an inspection, review, or audit by LEA, a state agency, a federal agency, and/or an independent agency/firm determines that CONTRACTOR owes LEA monies as a result of CONTRACTOR'S over-billing or failure to perform, in whole or in part, any of its obligations under this Contract, LEA shall provide to CONTRACTOR written notice demanding payment from CONTRACTOR and specifying the basis or bases for such demand. Unless CONTRACTOR and LEA otherwise agree in writing, CONTRACTOR shall pay to LEA the full amount owed as result of CONTRACTOR'S failure to perform, in whole or in part, any of its obligations under this Contract as determined by an inspection, review, or audit by LEA, a state agency, a federal agency, and/or an independent agency/firm. CONTRACTOR shall make such payment to LEA within thirty (30) days of receipt of LEA's written notice demanding payment.

## **10. EDUCATIONAL FUNDS**

Any educational funds CONTRACTOR receives from an LEA for educational costs shall be used solely for educational costs and not for costs of a residential program. (Ed. Code § 56366.5.) CONTRACTOR shall maintain records which accurately account for receipt and expenditure of funds received for educational costs.

## **R. COMPLIANCE WITH LAWS**

### **1. GENERAL**

During the term of this Contract, CONTRACTOR shall comply with all applicable federal, state, local, CDE, and LEA statutes, laws, ordinances, rules, policies, and regulations including, but not limited to, those relating to the required special education, DIS, facilities for individuals with exceptional needs, pupil enrollment and transfer, corporal punishment, pupil discipline, positive behavior interventions, non-discrimination, sexual harassment, and the Americans with Disabilities Act. CONTRACTOR shall fully cooperate with any due process proceedings or complaint investigations.

### **2. FINGERPRINTS – Exhibit H**

CONTRACTOR shall comply with the requirements of Education Code § 44237. In addition, for any persons acting with CONTRACTOR'S authorization or consent, who may come in contact with pupils and who is not covered by § 44237, CONTRACTOR, to the fullest extent permitted by law, shall comply with the requirements of Education Code § 45125.1 as though such person were CONTRACTOR'S employee. (CONTRACTOR'S employees and any person acting with CONTRACTOR'S authorization or consent who may come into contact with pupils shall collectively hereinafter be referred to as "Personnel".) To the extent permitted or required by law CONTRACTOR shall obtain subsequent arrest information on all Personnel.

CONTRACTOR shall not permit any Personnel to come into contact with pupils until the California Department of Justice has completed its review of criminal history files, as set forth in the Education Code, and it has been determined that such Personnel has not committed any crime that would preclude California public school employment. CONTRACTOR shall complete and submit to SELPA **Exhibit H**.

At the commencement of the Contract term CONTRACTOR shall certify in writing to SELPA under penalty of perjury, full compliance with this provision as to all current Personnel and shall provide SELPA with a list of the names of such Personnel. Thereafter, CONTRACTOR shall similarly certify compliance with respect to any new Personnel, on or before the date such new Personnel assume any duties that may involve contact with pupils.

### **3. TUBERCULOSIS**

Upon execution of this Contract and upon the employment or hiring of any new employee, CONTRACTOR shall provide to LEA a report of certificate of tuberculosis examination under Education Code § 49406 and Health and Safety Code § 121525 showing each of its employees was examined and found free from active tuberculosis. The report shall be signed under penalty of perjury.

### **4. CHILD ABUSE REPORTING**

CONTRACTOR assures LEA that all employees, contractors, agents, and volunteers are familiar with and will adhere to child abuse, missing children and dependent adult reporting obligations and procedures as required by law, including but not limited to, California Education Code § 49370 and California Penal Code § 11164 et seq. CONTRACTOR agrees to provide training to all Personnel regarding mandated reporting of child abuse, missing children, and dependent adults. CONTRACTOR agrees that all staff members will abide by such laws in a timely manner. CONTRACTOR shall provide training upon commencement of services by new Personnel and at least annually for all Personnel. CONTRACTOR shall maintain a written record of its most recent training, including date, matters covered, written materials provided to Personnel, and names of Personnel who received training. A copy of the written record shall be submitted to LEA at least twice per year, in September and in April. For any pupil for whom an ISA is in effect CONTRACTOR shall submit simultaneously to LEA immediately by phone or facsimile and by mail a report of (a) any incident or allegations of molestation, child abuse, or missing/AWOL children (b) any incident when a pupil requires or is referred for mental health services or medical attention and (c) any injuries to pupil resulting from physical restraint.

### **5. NON-DISCRIMINATION**

CONTRACTOR shall not discriminate on the basis of race, religion, sex, national origin, sexual orientation, or disability in its employment practices or operation of its programs. CONTRACTOR shall serve Medi-Cal and non-Medi-Cal eligible pupils.

### **6. SEXUAL HARASSMENT**

CONTRACTOR shall have established procedures for reporting, investigation and resolution of sexual harassment complaints involving pupils covered by an ISA. The procedures must include notice to LEA and to appropriate governmental, social service, and law enforcement agencies. CONTRACTOR shall ensure that a comprehensive investigation is commenced promptly and completed without delay. CONTRACTOR shall invite LEA to participate in any such investigation. Upon commencement of services by new Personnel and at least annually for all Personnel CONTRACTOR agrees to provide training regarding the unlawfulness of sexual harassment. CONTRACTOR shall maintain for at least two (2) years a written record of its training, including date, matters covered, written materials provided to Personnel, and names of Personnel who received training.

### **7. AMERICANS WITH DISABILITIES ACT**

CONTRACTOR shall be responsible for any structural changes and/or facilities modifications required by state and/or federal law.

### **8. STATE MEAL MANDATE – NPS only**

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

### **9. HEALTH AND SAFETY**

#### **a) UNIVERSAL HEALTH PRECAUTIONS**

CONTRACTOR agrees that all employees, contractors, agents, and volunteers who may come into contact with pupils in the course of performing duties under this Contract shall follow universal health care precautions when providing medical treatment or assistance to a pupil. Upon commencement of any services by new Personnel and at least annually for all Personnel CONTRACTOR shall ensure that its Personnel are trained regarding universal health care precautions. CONTRACTOR shall

maintain a written record of such training, including date, matters covered, written materials provided to Personnel, and names of Personnel who received training, for at least two (2) years. CONTRACTOR shall post notices as required under the Health and Safety Code Title 8 § 5193.

#### **b) MEDICATIONS**

CONTRACTOR shall distribute medications only when it has obtained an original, written statement from the pupil's physician detailing the type, dose, frequency and method of administration and written permission from the pupil's parent to dispense the prescribed medication. CONTRACTOR shall keep a written log delineating date, time, dose, type of medication, method of administration, and the name of CONTRACTOR's Personnel who dispensed medication to the pupil. CONTRACTOR shall not make any change in medication, dose, frequency or method of administration without the advance written authorization of a licensed physician and the pupil's parent.

#### **c) ACCIDENT/INCIDENT REPORT**

CONTRACTOR agrees to give immediate verbal notice and submit a written report to LEA within five (5) days of any serious injury to a pupil. Serious injury means an injury requiring notification of law enforcement or emergency Personnel.

#### **d) DISASTER PLAN**

CONTRACTOR shall keep on file a detailed disaster plan containing complete written emergency procedures and operations in the event of a catastrophic occurrence such as, but not limited to, an earthquake, attack on Personnel and/or pupil, fire disaster, lockdown, intruder, bomb threat, medical emergencies and/or power outage. CONTRACTOR agrees to maintain and keep available for inspection by LEA or District representative a log containing the date, time, and length of all disaster drills completed between August 1st and July 31st during the current school year, as well as all disaster drills completed during the previous three (3) years.

#### **e) FIRE CODE**

CONTRACTOR shall report within seven (7) days to LEA any violations or items found out of compliance by the fire marshal during inspection of CONTRACTOR's premises. CONTRACTOR shall have in place an operational fire warning system that complies with all required local, state and federal laws. CONTRACTOR shall also have occupancy capacity signs clearly posted in all rooms as required in the California Health and Safety Code and/or by the fire marshal.

### **S. INDEMNIFICATION**

To the fullest extent permitted by law, CONTRACTOR shall indemnify, defend, and hold "Indemnitees" harmless from any claim, demand, suit, and action, whether they be equitable or otherwise, and any cost, damage, loss, injury, fine, penalty, and attorney's fee (collectively "Liability") arising out of injury or death of any person or damage to any property caused by, connected with, or attributable to the willful misconduct, errors or omissions, or negligent acts of CONTRACTOR, CONTRACTOR'S officers, employees, agents, or subcontractors performing under this Contract (including ISAs), except with respect to any particular Indemnitee any Liability arising out of the willful misconduct of that Indemnitee.

The term "Indemnitees" includes Sonoma County Superintendent of Schools, Sonoma County Board of Education, each of their officers, agents and employees, and the SELPA Member Districts and each of their governing boards, officers, agents and employees.

To the fullest extent permitted by law, each SELPA Member District shall indemnify, defend, and hold "SELPA Member District's Indemnitees" harmless from any claim, demand, suit, and action, whether they be equitable or otherwise, and any cost, damage, loss, injury, fine, penalty, and attorney's fee (collectively "Liability") arising out of injury or death of any person or damage to any property caused by, connected with, or attributable to the willful misconduct, errors or omissions, or negligent acts of SELPA Member District, SELPA Member District's officers, employees, agents, or subcontractors performing under this Contract (including ISAs), except with respect to any particular SELPA Member District's Indemnitee any Liability arising out of the willful misconduct of that SELPA Member District Indemnitee.

The term "SELPA Member District's Indemnitees" includes Sonoma County Superintendent of Schools, Sonoma County Board of Education, each of their officers, agents and employees.

## T. INSURANCE

### 1. **General Liability Insurance.**

During the entire term of this Contract, CONTRACTOR, at its own expense, shall keep in effect a policy or policies of occurrence-based general liability insurance, including contractual liability coverage, and automobile liability coverage of owned and non-owned vehicles used by CONTRACTOR in relation to the performance of service(s) under this Contract, of at least \$1,000,000 combined single limit for all damages arising out of death or injury to, or death from, each accident or, occurrence and \$1,000,000 combined single limit for all damages arising out of injury to or destruction of property for each accident or occurrence.

CONTRACTOR shall similarly insure for all activities of its subcontractors unless CONTRACTOR requires and the subcontractor(s) obtains certificates of insurance and signed endorsements in compliance with this Section T. CONTRACTOR shall be responsible for providing to SELPA any of its subcontractors' certificates of insurance and signed endorsements prior to the subcontractor's provision of any services.

Each policy shall be endorsed with the following language:

- a. The following are each named as an additional insured for all liability arising out of the operations by or on behalf of the named insured, and this policy protects each additional insured and each of their governing boards, officers, agents and employees against liability for bodily injuries, deaths, or property damage or destruction in the performance of the Contract: Sonoma County Superintendent of Schools, Sonoma County Board of Education, Sonoma County SELPA, and the SELPA Member Districts identified in the Sonoma County Special Education Local Planning Area Master Contract for Nonpublic, Nonsectarian School/Agency Services;
- b. The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured and the coverage herein shall apply, up to the stated limit, as though separate policies have been issued to each insured;
- c. The insurance provided herein is primary and no insurance held or owned by any additional insured shall be called upon to contribute to a loss; and
- d. Coverage provided by this policy shall not be canceled or the dollar amount reduced without thirty (30) days prior written notice given to Sonoma County SELPA.

### 2. **Professional Liability Insurance**

During the entire term of this Contract, CONTRACTOR, at its own expense, shall keep in effect a policy or policies of professional liability ("errors and omissions") insurance covering CONTRACTOR's activities under this Contract in an amount not less than \$1,000,000.

### 3. **Worker's Compensation Insurance**

During the entire term of this Contract, CONTRACTOR, at its own expense, shall keep in effect a policy or policies of worker's compensation insurance to the extent required by applicable laws and regulations.

### 4. **Proof of Insurance and Endorsements**

At least 30 days prior to the commencement of the Term, CONTRACTOR shall provide SELPA with (a) certificate(s) of insurance, issued by carrier or carriers satisfactory to SELPA, showing the required limits of insurance, the deductible(s), if any, and term of coverage and (b) signed endorsements for each policy as required above. **If the period of coverage expires prior to the Term of this Contract, CONTRACTOR shall provide SELPA with new certificate(s) of insurance and signed endorsements through the end of the Term prior to expiration of coverage.**

If CONTRACTOR fails to comply with this Section T, SELPA in its discretion may terminate this Contract.

CONTRACTOR shall not be entitled to any compensation for any special education and/or DIS provided to any pupil for any period during which CONTRACTOR failed to fully comply with this Section T.

SELPA reserves the right to revise the requirements of Section T at any time. If SELPA determines that additional insurance coverage is necessary, SELPA may reopen negotiations with CONTRACTOR to modify this Section T.

## **U. DISPUTES**

Disagreements between LEA and CONTRACTOR concerning the meaning, requirements, or performance of this Contract shall first be brought to the attention of the other party in writing, pursuant to the notice provision of this Contract, in an attempt to resolve the dispute at the lowest level. Education Code § 56366, subdivision (c), shall govern the resolution of fee disputes for pupils enrolled in a NPS or NPA prior to execution of the Master Contract or ISA. For up to ninety (90) days the LEA is permitted to issue a warrant based upon an attendance report at the previously agreed upon per diem rate. If the Master Contract or ISA has not been finalized within sixty (60) days, "either party may appeal" to the State Superintendent of Public Instruction pursuant to the provisions of the California Education Code § 56366(b).

In addition to any other remedies available by law or under this Contract, SELPA and SELPA Member Districts may withhold further payment if CONTRACTOR fails to timely submit supporting documents (e.g., Exhibits C, H, NPS/A certification, proof of insurance and related endorsements, and subcontractor and subcontractor's proof of insurance) required under this Contract.

If any legal action or proceeding arising out of or relating to this Contract is brought by either party to this Contract, the prevailing party shall be entitled to receive from the other party, in addition to any other relief that may be granted, reasonable attorneys' fees, costs, and expenses incurred in the action or proceeding by the prevailing party.

## **V. TERMINATION**

a) This Contract may be terminated by either party for cause. To terminate this Contract either party shall give twenty (20) calendar days written notice prior to the date of the termination. Upon termination without default of CONTRACTOR, LEA shall pay, without duplication, for all services satisfactorily performed and verified expenses incurred to date of termination. Expenses shall be itemized for review and approval by LEA.

b) In consideration of this payment, CONTRACTOR shall turn over to LEA all documents pertaining to its services, in possession of CONTRACTOR or under its control at the time of termination.

c) ISA's for NPS/NPA services may be terminated without twenty (20) days advance notice if both parties agree to do so in writing.

d) LEA shall not terminate an ISA for NPS/NPA services because of the availability of a public class initiated during the course of the Contract unless the parent agrees to the transfer of a pupil to a public school program, or pursuant to an order from OAH and/or an order rendered by a court of competent jurisdiction.

e) Continued enrollment and provision of FAPE to a pupil currently attending NPS and/or receiving services from a NPA shall not be terminated during the pendency of hearing proceedings under California Education Code § 56505, unless the LEA and pupil's parent agree otherwise.

## **W. CONFLICTS OF INTEREST**

CONTRACTOR agrees to furnish to SELPA a copy of its current bylaws and a current list of its Board of Directors (or Trustees), if it is incorporated. CONTRACTOR and any member of its Board of Directors (or Trustees) shall avoid any relationship with SELPA and LEAs that constitutes or gives the appearance of a conflict of interest including, but not limited to, employment with SELPA or LEA.

## **X. MISCELLANEOUS**

### **1. SUBCONTRACT AND ASSIGNMENT**

a) CONTRACTOR shall not assign or enter into subcontracts for any of the services contemplated, including transportation, under this Contract without first obtaining written approval from SELPA. Such subcontract(s) or assignment(s) and approval(s) shall be attached and made part of this Contract.

b) CONTRACTOR agrees that its subcontractors and assignees shall keep in effect a policy or policies of liability insurance acceptable to SELPA. CONTRACTOR shall submit proof of insurance to SELPA prior to any SUBCONTRACTOR'S commencement of services, and CONTRACTOR shall ensure that insurance providers give SELPA written notice at least thirty (30) days prior to cancellation or material change in coverage. As a condition of subcontracting or assignment, subcontractors/assignees shall also provide satisfactory proof of insurance and endorsements as set forth in Section T, above.

c) CONTRACTOR agrees that subcontractors providing transportation shall keep in effect a liability insurance policy providing a limit of at least \$1,000,000. CONTRACTOR shall submit proof of insurance upon SUBCONTRACTOR'S renewal of coverage. Transportation SUBCONTRACTORS shall submit copies of insurance policies upon request of SELPA; otherwise, certificates of insurance may be acceptable proof of insurance, provided that the information thereon complies with this provision and is verifiable.

**2. MODIFICATIONS AND AMENDMENTS**

This Contract may be modified by written agreement of the parties, except that the RATE SCHEDULE set forth Section II shall apply for the entire term of the Contract and shall not be subject to modification.

**3. NOTICES – Exhibit I**

Except as otherwise provided all notices required to be given under this Contract shall be in writing and delivered either in person or by certified or registered mail, postage prepaid.

Notices to SELPA shall be addressed as follows:

NPS/A Program Director, Sonoma County Office of Education  
5340 Skylane Boulevard  
Santa Rosa, California 95403

Notices and Invoices to LEA shall be addressed to:

Director/Coordinator of Special Education Services at address specified in **Exhibit I**

Notices to CONTRACTOR shall be addressed to CONTRACTOR as set forth below CONTRACTOR’s signature.

If mailed, notice shall be effective upon receipt by addressee. If delivered by hand, the effective date shall be the date of receipt of addressee.

**4. INDEPENDENT CONTRACTOR STATUS**

This Contract is by and between two independent entities and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association.

**5. RENEWAL**

Neither SELPA nor CONTRACTOR is required to renew this Contract in subsequent years.

**6. ENTIRE AGREEMENT**

This Contract and any exhibits or attachments hereto constitute the entire agreement between SELPA and CONTRACTOR and supersedes any prior or contemporaneous understanding or agreement with respect to the services contemplated. This Contract binds the heirs, successors, assignees, agents, and representatives of CONTRACTOR.

**7. GOVERNING LAW**

This Contract shall be governed by the laws of the State of California with venue in Sonoma County, California.

**8. SEVERABILITY CLAUSE**

If any provision of this Contract is held in whole or in part to be unenforceable by a court of competent jurisdiction, it shall be severed and the remainder of this Contract shall continue in full force and effect.

**9. LEGAL REPRESENTATION**

Sonoma County Superintendent of Schools and LEAs are advised and represented by School & College Legal Services of California. They are advised that they may seek independent legal counsel to review this Contract on their behalf. Each party specifically waives any conflict of interest in School & College Legal Services of California's formulation of this Contract. In the event of any dispute in relation to this Contract between Sonoma County Superintendent of Schools and any one or more LEA or between any of the LEAs, neither School & College Legal Services of California nor any attorney employed or associated with that office, now or at the time of the dispute, shall represent any party in that dispute.

## **Description of EXHIBITS**

**Exhibit A** – Individual Service Agreement Form (Master Contract Section II. A.1. and General Provisions Paragraph B)

Instructions to LEA for Completing the ISA

**Exhibit B** – Least Restrictive Environment Checklist (General Provisions Paragraph N (4))

**Exhibit C** – Staff List - Statement of Certifications, Credentials, Licenses, and Clearances (General Provisions Paragraph O (4))

**Exhibit D** – SCOE Exit Form (General Provisions Paragraph P (1))

**Exhibit E** – Daily Attendance Record – SCOE Students (General Provisions Paragraph P (2)(a))

**Exhibit F** – Attendance Register – K-12 (General Provisions Paragraph Q (7)(b))

**Exhibit G** – Attendance Register – Preschool (General Provisions Paragraph Q (7)(b))

**Exhibit H** – Fingerprint Clearance Form (General Provisions Paragraph R (2))

**Exhibit I** – LEA Addresses for Notices and Invoices (General Provisions Paragraph X (3))

**Exhibit J** – Invoice Form (General Provisions Paragraph Q (7) (a))

**Exhibit K** – School Calendar (General Provisions Paragraph Q (2))

**Exhibit L** – Behavioral Emergency Intervention Report SELPA/Hughes Bill, Form #7a (General Provisions Paragraph G)

Use of Behavior Emergency Intervention Report – Exhibit L

**Exhibit M** – SELPA Suspension & Expulsion Data Collection Form (General Provisions Paragraph H)

**Exhibit N** – Confirmation of completion of graduation requirements (General Provisions Paragraph E)

**Exhibit O** – Functional Analysis Assessment Report (General Provisions Paragraph G)