

# **CALIFORNIA DEPARTMENT OF EDUCATION FUNDING TERMS AND CONDITIONS (FT&C)**

FT&C For:

CalWORKs Stage 2 (C2AP)

CalWORKs Stage 3 (C3AP)

Alternative Payment Program (CAPP)

General Child Care and Development (CCTR)

Family Child Care Home Education Networks (CFCC)

Severely Disabled Program (CHAN)

Migrant Alternative Payment Program (CMAP)

Migrant Child Care and Development Program (CMIG)

Resource and Referral Program (CRRP)

California State Preschool Program (CSPP)

**FISCAL YEAR 2020-21**

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## INTRODUCTION

These are the Funding Terms and Conditions (FT&C) for early learning and care contracts for fiscal year 2020-2021. Each contractor is required as a condition of its contract ("The Contract") with the California Department of Education (CDE), to adhere to the following laws and documents, as may be in effect during the 2020-2021 fiscal year:

1. Education Code statutes applied to child care programs identified within the Child Care and Development Services Act;
2. The FT&C;
3. The specific Program Requirements;
4. The CDE Audit Guide;
5. The California School Accounting Manual;
6. The procedures and standards set forth in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, (2 CFR Part 200 and Title 45 CFR Part 75), hereinafter referred to as Uniform Guidance (UG);
7. Title 5 California Code of Regulations (5 CCR) Division 1, Chapter 19 and 19.5, sections 18000 et seq., including 12-Month Eligibility Implementation Guidance (Implementation Guidance) and CSPP Free or Reduced Price Meal (FRPM) Implementation Guidance (CSPP FRPM Implementation Guidance). NOTE: Guidance documents shall only be in effect until superseding regulations are promulgated in 5 CCR.
8. Title 22 California Code of Regulations, community care facilities license regulations, including child care centers;
9. Any other requirements incorporated into the contract (including any approved pilot plan), in addition to all other applicable laws and regulations, including any applicable law and regulations that may become effective during the term of this contract.

**Any non-compliance with The Contract may subject the contractor to termination of the contract. Any variance from The Contract must be authorized in writing by the CDE and signed by the Director of the Early Learning and Care Division (ELCD) or the Director's authorized representative. Unless otherwise noted, these compliance requirements apply to all programs.** Contractors may adopt any reasonable policies relating to the administration of the program so long as such policies are not in conflict with law, regulations, or the terms of this contract, including any contract amendments. Those potentially affected by the policies shall be duly notified, as provided for in statute and regulation, and adhere to any due process requirements, if applicable.

Contractors may adopt any reasonable policies relating to the administration of the program so long as such policies are not in conflict with law, regulations, or the terms of this contract, including any contract amendments. Those potentially affected by the policies shall be duly notified, as provided for in statute and regulation, and adhere to any due process requirements, if applicable.

California Education Code (EC) Section 8385(f) requires all early learning and care contracts entered into by the CDE for means-tested early learning and care programs, including, but not limited to, Alternative Payment, General Child Care and Child Care for Recipients of the California Work Opportunities and Responsibility to Kids (CalWORKs) Programs (described in EC 8220, EC 8240 and EC 8350) to implement best practices identified pursuant to subdivision (c) which states, "In developing its recommendations, the CDE shall place priority on prevention of fraud and overpayments, and shall consider existing best practices for doing so."

Early Learning and Care contracts are funded with state general funds, federal funds, or a combination of funds. The funding amounts are listed on the contract encumbrance page.

Contracts may be fully or partially funded through a grant from the federal Department of Health and Human Services and subject to Code of Federal Regulations (CFR) 45, Parts 98 and 99, the Child Care and Development Block Grant (CCDBG) Act of 1990, as amended by the CCDBG Act of 2014, Public Law 1113-186, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, 42 USC 9858.

If the Catalogue of Federal Domestic Assistance (CFDA) number is 93596 (shown as FC# in the funding block), the fund title is Child Care Mandatory and Matching Funds of the Child Care and Development Fund. If the CFDA number is 93575, the fund title is Child Care and Development Block Grant subject to the Child Care and Development Block Grant Act of 1990, the Omnibus Budget Reconciliation Act of 1990, Section 5082, Public Law 101-508, as amended, Section 658J and 658S, and Public Law 102-586.

## I. DEFINITIONS

### As applicable to each specific program type.

Any terms not defined in this section shall be defined, if applicable, as set forth in the *Education Code* or in Title 5 of the *California Code of Regulations (CCR)*.

"12-Month Eligibility Implementation Guidance" or "Implementation guidance" provides guidance and instruction for implementation of the new requirements in California *EC* 8263(h), referred to as "12-month eligibility." See *Management Bulletin 17-14*

"Actual and allowable net costs" means the costs which may be reimbursed under a particular child development contract after disallowed costs and restricted income have been subtracted from total expenditures. 5 *CCR* 18013 (a)

"Additional funds" means award of new contracts or expanded contracts that increase the contractor's level of administrative responsibility. Additional funds do not include cost of living adjustments, rate increases and one-time-only supplemental funds or Alternative Payment program contingency funds. 5 *CCR* 18000

"Adjusted child days of enrollment" means child days of enrollment after special needs adjustment factors specified in *EC* 8265.5 have been applied. 5 *CCR* 18013

"Adjusted monthly income" means total countable income, minus verified child support payments paid by the parent whose child is receiving child development services, excluding the non-countable income listed below: 5 *CCR* 18078 (a)

1. Earnings of a child under age eighteen (18) years;
2. Loans;
3. Grants or scholarships to students for educational purposes other than any balance available for living costs;
4. Food stamps or other food assistance;
5. Earned Income Tax Credit or tax refund;
6. GI Bill entitlements, hardship duty pay, hazardous duty pay, hostile fire pay, or imminent danger pay;
7. Adoption assistance payments received pursuant to Welfare and Institutions (W&I) Code Section 16115 et seq.;
8. Non-cash assistance or gifts;
9. All income of any individual counted in the family size who is collecting federal Supplemental Security Income (SSI) or State Supplemental Program (SSP) benefits;



10. Insurance or court settlements including pain and suffering and excluding lost wages and punitive damages;
11. Reimbursements for work-required expenses such as uniforms, mileage, or per diem expenses for food and lodging;
12. Business expenses for self-employed family members;
13. When there is no cash value to the employee, the portion of medical and/or dental insurance documented as paid by the employer and included in gross pay; and
14. Disaster relief grants or payments, except any portion for rental assistance or unemployment.

"Administrative costs" means costs incurred for administrative activities where neither the family, the child nor the service providers for Alternative Payment programs and family child care homes directly benefit from the activity. 5 CCR 18013(b)

"Adult" means a person who is at least eighteen (18) years of age. HHS, DSS, CCL, Child Care Center, Division 12, Ch. 1 Section 101152 Definitions "Agency Self-Evaluation Annual Report" is a form issued by the CDE for use by contractors to submit a summary of findings of the program self-evaluation. 5 CCR 18270.5 (a) and 18279 (c)

"Agency" or "Contractor" refers to any entity that is authorized to perform early learning and care services pursuant to the Education Code. An agency may be a public agency or private agency.

"Agency Self-Evaluation Annual Report" is a form issued by the CDE for use by contractors to submit a summary of findings of the program self-evaluation. 5 CCR 18270.5 (a) and 18279 (c)

"Agricultural work" or "agricultural labor" means all service performed:

1. on a farm, in the employ of any person, in connection with cultivating the soil, or in connection with the production or processing of any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;
2. in the employ of the operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane;
3. in the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, canning, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity.

The definition of agricultural work shall not be deemed to be applicable with respect to

service performed in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or on a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer. As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards. *CFR 34 Part 200*

"Alternative payments" includes payments that are made by one child care agency to another agency or child care provider for the provision of early learning and care services, and payments that are made by an agency to a parent for the parent's purchase of early learning and care services. *EC 8208 (a)*

"Alternative payment program" means a local government agency or nonprofit organization that has contracted with the CDE pursuant to *EC 8220.1* to provide alternative payments and to provide support services to parents and providers. Types of programs include C2AP, C3AP, CAPP, and CMAP. *EC 8208 (b)*

"Applicant or contracting agency" means a school district, community college district, college or university, county superintendent of schools, county, city, public agency, private, nontax-exempt agency, private tax-exempt agency, or other entity that is authorized to establish, maintain, or operate services. Private agencies and parent cooperatives, duly licensed by law, shall receive the same consideration as any other authorized entity with no loss of parental decision making prerogatives as consistent with the provisions of this chapter. *EC 8208 (c)*

"Approved work activity" is an activity contained in the parent's welfare-to-work plan as described and further defined in *W&I 11322.6 et seq.* and may include:

1. Unsubsidized employment;
2. Subsidized private sector employment;
3. Subsidized public sector employment;
4. Work experience;
5. On-the-job training;
6. Grant-based on-the-job training;
7. Supported work or transitional employment;
8. Work-study;
9. Self-employment;
10. Community or vocational education and training;

11. Job search and job readiness assistance;
12. Education directly related to employment;
13. Satisfactory progress in secondary school or in a course of study leading to a General Education Development (GED) certification;
14. Mental health, substance abuse and domestic violence services; or
15. Other activities necessary to assist an individual in obtaining unsubsidized employment.

“Assistance Unit” means a group of related persons living in the same home who have been determined eligible for CalWORKs cash assistance by the county. California-DSS-Manual-EAS Eligibility and Assistance Standards, Chapter 82-800 Assistance Unit.

"At risk of abuse, neglect, or exploitation" refers to children who are so identified in a written referral from a legal, medical, social services agency, or emergency shelter. *EC 8208 (k)*

“Attendance” means the number of children present at an early learning and care facility. “Attendance,” for purposes of reimbursement, includes excused absences by children because of illness, quarantine, illness or quarantine of their parent, family emergency, or to spend time with a parent or other relative as required by a court of law or that is clearly in the best interest of the child. *EC 8208 (e)*

“Audit Guide” refers to the most recent *CDE Audit Guide*, which is a resource for audit requirements and guidance applicable to certain state and federal programs operated by private and public organizations under agreements with the CDE. The *Audit Guide* should be used by independent auditors in conducting audits of state and federal early learning and care programs.

"Authorized representative" means either:

1. A person who has been delegated the responsibility to sign a child in and out of a child care program in the absence of the parent; 5 CCR 18013 (f)
2. A person designated by the contractor to certify eligibility for subsidized services and/or issue a notice of action, application for services or notice of action, recipient of services; 5 CCR 18082 (b), 18083 (j)
3. A person designated by the parent that would be allowed to review the child's data file; or 5 CCR 18117 (b)
4. A person designated by the parent to represent the parent at a local hearing upon filing an appeal after receipt of a notice of action. 5 CCR 18120 (e)

"Benefit to the State" means that the activity will improve knowledge or expertise in areas directly related to subsidized early learning and care services. 5 CCR 18013 (e)

“California School Accounting Manual” provides accounting policies and procedures, as well as guidance in implementing those policies and procedures.

“California State Preschool Program (CSPP)” means age and developmentally appropriate subsidized early learning and care programs designed to facilitate the transition to kindergarten for eligible three and four-year-old children. Services includes part-day or full-day services designed to meet the needs of working families. The CSPP includes educational development, health services, social services, nutritional services, parent education and parent participation, evaluation, and staff development. *EC 8235-8239*

“California State Preschool Program (CSPP) Free and Reduced Priced Meal (FRPM) Sites” means a CSPP site that has been verified as operating within the attendance boundaries of a qualified FRPM school. *CSPP FRPM Implementation Guidance 18013*

“CalWORKs cash aid recipient” means an adult or minor teen parent who receives cash aid from the county welfare department for the CalWORKs or Cal-Learn program. *EC 8350-8359.1*

“Ceases operation” means the contractor does not provide subsidized services in accordance with the contractor's program operating calendar submitted to and approved by the CDE for the applicable contract period. *5 CCR 18013*

“Center-based programs” means all programs providing services directly to children at a licensed center or family child care home and not through the use of an alternative payment voucher. Types of center-based programs include CCTR, CSPP, CHAN, CMIG and CFCC.

“Child Care Certificate” means a check or other disbursement that is issued by the contractor directly to a parent who may use the certificate only as payment for child care services. Nothing shall preclude the use of the certificate for sectarian child care services if freely chosen by the parent. A child care certificate is assistance to the parent, not assistance to the provider. *45 CFR Section 98.2*

“Child care and development programs” means those programs which offer a full range of services for children from infancy to (13) thirteen years of age for any part of the day, by a public or private agency, in centers and family child care homes. See also “Early learning and care program”. *EC 8208 (i)*

These programs include Alternative Payment Programs, Center-based programs and Resource and referral programs and specifically include the following:

1. General child care and development.
2. Migrant child care and development.
3. California state preschool program.
4. Resource and referral.

5. Child care and development services for children with exceptional needs.
6. Family child care home education network.
7. Alternative payment program.

"Child Care and Development Services" means those services designed to meet a wide variety of needs of children and their families, while their parents or guardians are working, in training, seeking employment, incapacitated, or in need of respite. These services may include direct care and supervision, instructional activities, resource and referral programs, and alternative payment arrangements. See also, "Early learning and care services". *EC 8208 (j)*

"Child care provider" means an adult or agency that provides child care services. *5 CCR 18400 (b)*

"Child Days of Enrollment" means the total number of days every child is certified to attend a center-based program, excluding CFCC, regardless of attendance.

"Child development fund" means the restricted fund used by the contractor to account for contract funds and related net reimbursable program costs. *5 CCR 18064, EC 8328*

"Child Protective Services (CPS)" means children receiving protective services through the local county welfare department as well as children identified by a legal, medical, social service agency or emergency shelter as abused, neglected or exploited or at risk of abuse, neglect or exploitation. *5 CCR 18078*

"Children with exceptional needs" means, as set forth in *EC 8208(l)* either of the following:

1. Infants and toddlers under (3) three years of age who have been determined to be eligible for early intervention services pursuant to the California Early Intervention Services Act (*Title 14* (commencing with Section 95000) of the *Government Code* (GC)) and its implementing regulations. These children include an infant or toddler with a developmental delay or established risk condition, or who is at high risk of having a substantial developmental disability, as defined in subdivision (a) of Section 95014 of the GC. These children shall have active individualized family service plans, shall be receiving early intervention services, and shall be children who require the special attention of adults in a child care setting.
2. Children ages three (3) to twenty-one (21) years, inclusive who have been determined to be eligible for special education and related services by an individualized education program team according to the special education requirements contained in Part 30 (commencing with Section 56000) of Division 4 of *Title 2*, and who meet eligibility criteria described in Section 56026 and, Article 2.5 (commencing with Section 56333) of Chapter 4 of Part 30 of Division 4 of *Title 2*, and Sections 3030 and 3031 of *5 CCR*. These children shall have an active individualized education program, shall be receiving early intervention services or appropriate special education and related services, and shall be children who

require the special attention of adults in a child care setting. These children include children with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbances (also referred to as emotional disturbance), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities, who need special education and related services consistent with Section 1401(3)(A) of *Title 20 of the United States Code*.

"Co-located programs" are those that share the same facility, but cannot be commingled because they are different types of programs with different program requirements.

"Commingled child care services" means the provision of services to both subsidized and nonsubsidized children in the same classroom at the same time. 5 CCR 18013

"Compliance review" means that a team of the CDE staff reviews a contractor's program at the program site to determine compliance with applicable laws, regulations, or contractual provisions. 5 CCR 18023 (1)

"Contract period" means the time span the contract is in effect as specified in the child development contract. 5 CCR 18013

"Co-payment" means any usual and customary provider charges that exceed the maximum subsidy amount. The family shall be responsible for paying the provider the difference between the provider's rate and the maximum subsidy amount. This shall be considered the family's co-payment. The contractor shall not be responsible for collecting the family's co-payment. 5 CCR 18220.6

"CSPP eligible four-year-old children" means children who will have their fourth birthday on or before December 1 of the fiscal year in which they are enrolled in a California state preschool program. EC 8208 (aj)

"CSPP eligible three-year-old children" means children who will have their third birthday on or before December 1 of the fiscal year in which they are enrolled in a California state preschool program. Children who have their third birthday on or after December 2 of the fiscal year, may be enrolled in a California state preschool program on or after their third birthday. Any child under four years of age shall be served in a California state preschool program facility, licensed in accordance with Title 22 of the California Code of Regulations. EC 8208(ai)

"CSPP FRPM Implementation guidance" provides guidance and instructions to California State Preschool Program (CSPP) contractors about implementing new eligibility criteria pursuant to California *Education Code* (EC) Sections 8236.3 and 8263(a)(2). See *Management Bulletin 20-01*

"Day of Operation" means a day in which the contractor provides service to one or more certified children enrolled in a Center-Based program, excluding CFCCs. For Alternative Payment and CFCC programs, a day of operation means a day the administrative office is open for business.

"Declaration" means a written statement signed by a parent under penalty of perjury attesting that the contents of the statement are true and correct to the best of his or her knowledge. 5 CCR 18078

"Depreciation" means a cost in the current fiscal year that is based on acquisition costs, less any estimated residual value, computed on a straight line method (based on the normal, estimated useful life expectancy of the asset). 5 CCR 18013

"Desired Results Parent Survey" is a document issued by the CDE to solicit information from parents regarding the child care program or services that the child and family receive. 5 CCR 18270.5 (d)

"Developmental profile" means a record of a child's physical, cognitive, social, and emotional development that is used to inform teachers and parents about a child's developmental progress in meeting desired results. In center-based programs, teacher and parent observations shall be included as part of the information used to complete the child's developmental profile. In family child care home education networks, the observations of agency staff, in consultation with providers, and parents shall be included as part of the information used to complete the child's developmental profile. 5 CCR 18270.5 (b), 18272

"Desired Results Developmental Profile" is a document issued by the CDE to record the information in the developmental profile defined in subsection 18270.5(b) that is incorporated by reference. 5 CCR 18270.5 (c).

"Disallowed costs" means costs that have been incurred but are not reimbursable because they are not reasonable and/or necessary for the performance of the contract or are otherwise nonreimbursable. 5 CCR 18013

"Displace families" means to disenroll families in order to reduce service levels due to insufficient funding or inability of a contractor to operate one or more sites because of reasons stated in EC section 8271. 5 CCR 18078

"Diversion services" means one-time assistance services provided by the county welfare department, either in cash or in non-cash services, to an otherwise CalWORKs eligible family, when the county welfare department determines that such assistance will help the family avoid becoming a CalWORKs cash aid recipient. 5 CCR 18400 (d)

"Early learning and care program" means those programs which offer a full range of services for children from infancy to (13) thirteen years of age for any part of the day, by a public or private agency, in centers and family child care homes. See also "Child care and development programs". EC 8208 (i)

These programs include Alternative Payment Programs, Center-based programs and Resource and referral programs and specifically include the following:

1. General child care and development.
2. Migrant child care and development.



3. California state preschool program.
4. Resource and referral.
5. Child care and development services for children with exceptional needs.
6. Family child care home education network.
7. Alternative payment program.

“Early learning and care services” means those services designed to meet a wide variety of needs of children and their families, while their parents or guardians are working, in training, seeking employment, incapacitated, or in need of respite. These services may include direct care and supervision, instructional activities, resource and referral programs, and alternative payment arrangements. See also, “Child care and development services”.

“Education program” for purposes of program quality, 5 CCR subchapter 12, means the environment, activities, and services provided to the children.

“Employment agreement” is a formal agreement that specifies the conditions of the relationship between an individual employee and an employer including compensation and expectations. Also referred to as an employment contract.

“English Learner (EL) Students” (Formerly Known as Limited-English-Proficient or LEP) means those students for whom there is a report of a primary language other than English on the state-approved Home Language Survey **and** who, on the basis of the state approved oral language (grades kindergarten through grade twelve) assessment procedures and literacy (grades three through twelve only), have been determined to lack the clearly defined English language skills of listening comprehension, speaking, reading, and writing necessary to succeed in the school's regular instructional programs. EC 313 and 5 CCR 60810

“Environment rating scale” means an instrument that measures program quality by rating the education program (5 CCR 18272), the staff development program (5 CCR 18273), and parent involvement and education (5 CCR 18273) 5 CCR 18270.5 (f)

Environment rating scales include the CDE most recently used versions of the following:

1. “ECERS” means the document entitled, Early Childhood Environment Rating Scale;
2. “ITERS-” means the document entitled, Infant-Toddler Environment Rating Scale;
3. “FDCCERS” means the document entitled, Family Child Care Environment Rating Scale;
4. “SACERS” means the document entitled, School-Age Care Environment Rating Scale; 5 CCR 18270 (f)



"Families experiencing homelessness" means parents, children, and youths as individuals who lack a fixed, regular, and adequate nighttime residence. This includes children and youths who:

1. share the housing of other persons due to loss of housing, economic hardship, or a similar reason;
2. live in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations;
3. live in emergency or transitional shelters; or are abandoned in hospitals;
4. have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;
5. live in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
6. are migratory children who qualify as homeless because the children are living in circumstances described above. (42 U.S.C. Sec. 11301 et seq.)

"Family" means the parents and the children for whom the parents are responsible; who comprise the household in which the child receiving services is living. For purposes of income eligibility and family fee determination, when a child and his or her siblings are living in a family that does not include their biological or adoptive parent, "family" shall be considered the child and related siblings. 5 CCR 18078

"Family child care home education network" means an entity organized under law that contracts with the CDE pursuant to EC 8245 to make payments to licensed family child care home providers and to provide education and support services to those providers and to children and families eligible for state-subsidized early learning and care services. A family child care home education network may also be referred to as a family child care home system. EC 8208 (p)

"Family Child Care Homes" refers to licensed child care provided in a private home. 22 CCR 102352 (f)

"Family fee" means the fee determined from the fee schedule. 5 CCR 18078

"Fee schedule" means the "Family Fee Schedule" issued by the CDE pursuant to EC 8273 and 8447 (e). The "fee schedule" is used by child development contractors to assess fees for families utilizing early learning and care services. 5 CCR 18078

"Family size" for C2AP and C3AP means the number of adults and children related by blood, marriage, or adoption that comprise the household in which the child is living.

1. When an adult living in the household is neither the parent of the child nor the spouse of the parent, the adult and the adult's children if any, shall be excluded from the calculation of family size.

2. When a child is living with adult(s) other than a natural or adoptive parent, the child shall be considered a family of one. In these cases, a need criterion as specified in 5 CCR Section 18406(b) or (c) or 18421(b) or (c) must be met by the caretaker of the child. 5 CCR 18400 (e)

"Family size" for all other programs means the number of people constituting a "family" as determined by documentation supporting the number of children and parents in the family. 5 CCR 18100

"Fishing" means any activity directly related to the catching or processing of fish or shellfish for initial commercial sale or as a principal means of personal subsistence. 34 CFR 200.81 (b)

"Former CalWORKs cash aid recipient" means an adult individual or minor teen parent who has previously received and is no longer receiving cash aid under the CalWORKs or Cal-Learn programs because of, but not limited to, earnings, other income, or a sanction of the adult imposed by county welfare department. 5 CCR 18400 (f)

"FPM/CMR" means Federal Program Monitoring/Contract Monitoring Review (formerly referred to as Coordinated Compliance Review) and is the monitoring and review instrument for child development programs to determine compliance. 5 CCR 18023 (d)(2)

"Full signature" means the legal signature of the individual (e.g., signature normally used on checks and other documents). If the individual is not literate in written English, the individual may sign with an "X" which must be initialed by the contractor's authorized representative (5 CCR 18065). Pursuant to EC 8227.5 and 8262.1, the use of a digital signature shall have the same force and effect as the use of a manual signature, if it meets established program and technology requirements.

"Immediate need" for purposes of TrustLine approval means a situation in which both subdivisions (1) and (2) apply:

1. An eligible parent has a need for child care and is employed, participating in a CalWORKs work activity, is in training as described in 5 CCR 18087, or is incapacitated as defined 5 CCR 18400(g) and 18078
2. The contractor determines that no child care is reasonably available from a licensed, TrustLine registered or TrustLine-exempt provider that meets the parent's need for care. 5 CCR 18078

"Income fluctuation" means income that varies due to:

1. Migrant, agricultural, or seasonal work;
2. Intermittent earnings or income, bonuses, commissions, lottery winnings, inheritance, back child support payment, or net proceeds from the sale of real property or stock; or

3. Unpredictable days and hours of employment, overtime, or self-employment. 5 CCR 18078 (j)

"Indirect costs" are general and administrative costs that benefit the operations of the entire organization, but cannot be identified to specific programs or activities. Examples of indirect costs are described in the federal cost principles codified under the *Uniform Guidance (UG)*, 2 CFR, 200.414. 5 CCR 18013

"Indirect cost allocation plan" means a written approved justification and rationale for assigning the relative share of indirect costs across more than one program or contract. School districts and county offices of education shall use the CDE approved rate if it is less than ten percent (10%). A Nonprofit's Board of Directors will approve the indirect cost allocation plan. 5 CCR 18013

"Initial certification" means the formal process for completing an application for services and collecting information and documentation to determine that the family and/or child meets the legal requirements for receipt of subsidized child development services as specified in EC sections 8263(a)(1)(A) and 8263 (a)(1)(B). The signature of the authorized representative on an application for services certifies that the legal requirements have been met and documented. Implementation Guidance 18078(j)

"Initial Income eligibility" means the definition set forth in EC 8263.1(a) Implementation Guidance 18078(h)

"Interactive literacy activities" means activities in which parents or legal guardians actively participate in facilitating the acquisition by their children of pre-reading skills through guided activities such as shared reading, learning the alphabet, and basic vocabulary development. EC 8238 (a)

"Legally qualified professional" means a person licensed under applicable laws and regulations of the State of California to perform legal, medical, health or social services for the general public. 5 CCR 18078

"Licensed-exempt provider" means an individual or organization that is not required to be licensed, as specified in *Health and Safety Code (H&SC)* 1596.792, or any other federal law or regulation.

"Licensed provider" means an individual or organization that has obtained a child care license, as specified in 22 CCR 101152. H&SC 1596.90

"Limited-English-proficient" and "non-English proficient" means children who are unable to benefit fully from an English only early learning and care program as a result of either of the following:

1. Having used a language other than English when they first began to speak; or
2. Having a language other than English predominately or exclusively spoken at home. EC 8208 (t)

"Local education agency (LEA)" means a school district, a county office of education, a community college district, or a school district on behalf of one or more schools within the school district. *EC 8208 (a)*. Direct fund charter schools that have been funded to operate early learning and care programs are also considered to be LEAs.

"Magnet school" means an entire school with a focus on a special area of study, such as science, the performing arts, or career education, designed to attract pupils from across the school district who may choose to attend the magnet school instead of their local public school. *CSPP FRPM Implementation Guidance 18013*

"Maximum reimbursable amount" means the total dollar amount of a contract. Reimbursement from the State shall not exceed the maximum reimbursable amount. The initial maximum reimbursable amount shall be the approved original version of the annual contract based on the Budget Act as signed by the Governor. *5 CCR 18013 (o)*

"Migrant agricultural worker family" means a family that has earned at least fifty percent (50%) of its total gross income from employment in fishing, agriculture or agriculturally-related work during the twelve (12) month period immediately preceding the date of application for early learning and care services. *EC 8231*

"Monthly attendance record or invoice" means documentation that includes, at a minimum, the name of the child receiving services, the dates and actual times care was provided each day, including the time the child entered and the time the child left care each day, that is signed under penalty of perjury by both the parent or guardian and the child care provider, attesting that the information provided is accurate. *EC 8221.5*

"Net reimbursable program costs" means the portion of the actual and allowable net costs that are incurred in the provision of early learning and care services for subsidized children. *5 CCR 18013*

"New contract" means either:

1. A contract award to applicants who do not currently contract with the CDE for early learning and care services; or
2. A contract award to current contractor that is for a program type as specified in *EC 8208(i)* that is different than the child development contract(s) currently administered by the applicant. *5 CCR 18000 (d)*

"Nontraditional hours" refers to evenings and/or weekends for licensed providers when a licensed provider is meeting the certified need for child care that includes hours during the period from 6:00 p.m. to and 6:00 a.m., Monday through Friday, or any time on Saturday or Sunday. *5 CCR 18075.1 (b)*.

"Notice of Action, Application for Services" means a written statement of specific information issued by the contractor that informs the applicant of the contractor's decision to approve or deny early learning and care services. See Program Requirements for a description of the specific information that must be included to have the contractor's decision reviewed. *5 CCR 18094, 18400(k) and EC 8261, 8263*

"Notice of Action, Recipient of Services" means a written statement of specific information issued by the contractor informing the family receiving child care services that a change has been made to their service agreement. These changes may include, but are not limited to, need and eligibility requirements that are no longer being met, or fees have not been paid, or the fee or amount of services provided by the contractor will be modified. 5 CCR 18078, 18095, 18400 (l) and EC 8261, 8263

"Ongoing income eligibility" means the definition set forth in EC 8263.1(b) Implementation Guidance 18078.

"Parent" means a biological parent, adoptive parent, stepparent, foster parent, caretaker, relative, legal guardian, or domestic partner of the parent as defined in *Family Code* section 297, or any other adult living with a child who has responsibility for the care and welfare of the child. EC 8208 (u)

"Parental Incapacity" means the temporary or permanent inability of the child's parent(s) to provide care and supervision of the child(ren) for part of the day due to a physical or mental health condition. 5 CCR 18078

"Parent involvement and education" means those activities specifically designed to include parents in the education of their children, help parents participate in the program, and enhance their understanding of child development. EC 8208 (u)

"Parent survey" means a questionnaire completed by the parent to assess the child care program or services that the child and family receive. The parent survey asks for information about how the program helps parents support their child's learning and development and meets the family's needs. 5 CCR 18270.5 (h)

"Private agency" or "Private contractor" means an entity other than a public agency that is tax exempt or non-tax exempt and under contract with the CDE for the provision of early learning and care services. 5 CCR 18013

"Program self-evaluation process" means those activities and procedures used by the contractor to evaluate its program quality and compliance with applicable laws, regulations, and contractual provisions. 5 CCR 18270.5 (i)

"Provisional child care provider" means an individual, exempt from licensure pursuant to *Health and Safety Code (HSC)* sections 1596.792(d) or (f), who provides child care for a child or children of an eligible parent for a period of up to thirty (30) days when there is an immediate need. The provisional child care provider shall have completed a TrustLine application and submitted fingerprints, in accordance with *HSC* sections 1596.603 and 1596.605. 5 CCR 18078

"Public agency" or "Public contractor" means a school district, community college district, county superintendent of schools, campus of the California State University or the University of California system, county, city or other public entity under contract with the CDE for the provision of early learning and care services. 5 CCR 18013

"Qualified FRPM school" is a public elementary school, that is not a charter or magnet

school, where at least 80% of the enrolled students are eligible for the Free and Reduced Priced Meal program. *CSPP FRPM Implementation Guidance* 18013

"Quality assurance" means activities intended to benefit children and families including, but not limited to, services to parents and providers such as lending libraries, resource libraries, training of parents and providers and monitoring of program quality requirements.

"Reasonable and necessary costs" are those costs that do not exceed what an ordinarily prudent person would incur in the conduct of a competitive business under the circumstances prevailing at the time of the decision to incur the cost, and whether the cost is of a type recognized as ordinary and necessary for the operation of the entity or the proper and efficient performance of the award. 45 CFR 75.404

"Recertification" means the formal process for completing an application for services and collecting information and documentation to determine that the family and/or child meets the legal requirements for ongoing receipt of services as specified in Education Code sections 8263(a)(1)(A) and 8263(a)(1)(B). The signature of the authorized representative on an application for services certifies that the legal requirements have been met and documented. *Implementation Guidance* 18078(q)

"Recipients of service" means families and/or children enrolled in an early learning and care program subsidized by the CDE. 5 CCR 18078

"Regional Market Rate" means the current rate charged for various types of child care services as determined by a survey of providers. *EC* 8357

"Regional market rate ceilings" means the maximum amount calculated by the CDE that providers in different regions of the state may be reimbursed for the same type of child care for the same age child in accordance with statutory ceilings currently in effect. 5 CCR 18074.1 (c)

"Restricted income" means income that may only be expended for specific limited purposes that would be reimbursable according to the contract. 5 CCR 18068

"Sectarian organization or sectarian child care provider" means any organization or provider that engages in religious conduct or activity or that seeks to maintain a religious identity in some or all of its functions. *CFR* 45 Section 98.2

"Self-Certification of Income" means a declaration signed by the parent under penalty of perjury identifying: (5 CCR 18078)

1. To the extent known, the employer and date of hire and stating the rate and frequency of pay, total amount of income received for the preceding month(s), the type of work performed, and the hours and days worked, when an employer refuses or fails to provide requested employment information or when a request for documentation would adversely affect the parent's employment; or
2. The amount and frequency of sources of income for which no documentation is



possible. 5 CCR 18084 (a) (4)

"Service delivery area" means the community, geographic area, or political subdivision in which the early learning and care services are to be provided as specified in the Request for Applications. 5 CCR 18000 (f)

"Severely disabled children" are children with exceptional needs from birth to twenty-one (21) years of age, inclusive, who require intensive instruction and training in programs serving pupils with the following profound disabilities: autism, blindness, deafness, severe orthopedic impairments, serious emotional disturbance or severe developmental disability. These children may be assessed by public school special education staff, regional center staff or another appropriately licensed clinical professional. EC 8208 (y)

"Site supervisor" means a person, who, regardless of his or her title, has operational program responsibility for an early learning and care program at a single site. A site supervisor shall hold a permit issued by the Commission on Teacher Credentialing that authorizes supervision of an early learning and care program operating in a single site. The Superintendent of Public Instruction may waive the requirements of this subdivision if the Superintendent determines that the existence of compelling need is appropriately documented. EC 8208 (aa).

For CSPP, a site supervisor may qualify under any of the provisions above, or may qualify by holding an administrative credential or an administrative services credential. A person who meets the qualifications of a site supervisor under both EC Sections 8244 and 8360.1 is also qualified under this subdivision.

"Social service agency" means an agency that, in the course of day-to-day business, provides personal counseling, personal or group therapy provided by personnel properly certified or licensed under California law. Examples of such agencies include county welfare departments and county mental health departments.

"Staff development program" means those activities that address the needs, interests, and skills of program staff or service providers to improve program quality. 5 CCR 18270.5 (j)

"Stage 1" means the first stage of CalWORKs child care services. Stage 1 child care services are administered by the California Department of Social Services (DSS) through county welfare departments pursuant to EC 8351. Stage 1 child care begins when authorized by the county welfare department. 5 CCR 18400 (n)

"Stage 2" means the second stage of CalWORKs child care services. Stage 2 child care services are administered by the CDE through contracts with Alternative Payment program providers pursuant to EC 8353. Stage 2 child care begins when the county welfare department determines that a CalWORKs family is stable and transfers the family to a Stage 2 child care contractor for child care services, or a family applies and is found eligible for Stage 2 services. 5 CCR 18400(o)

"Stage 3" means the third stage of CalWORKs child care services. Stage 3 child care services are administered by the CDE through contracts with Alternative Payment

program providers pursuant to *EC 8354*. Stage 3 child care begins when a CalWORKs family receiving Stage 1 or Stage 2 child care services has fully utilized the family's twenty-four (24) months of eligibility to Stage 1 and Stage 2 child care services following the date the adult stopped receiving cash assistance. 5 *CCR 18400(p)*

"Standard reimbursement rate" means that rate established by the Superintendent of Public Instruction (SSPI) pursuant to *EC 8265* and *EC 8208 (ab)*

"State median income" means the most recent median income for California families as determined by the State Department of Finance (DOF). *EC 8263.1* and 5 *CCR 18078 (r)*

"Subcontract" means a written agreement between the contractor and any entity to perform a service on behalf of the contractor.

"Subcontract for early learning and care services" means a specific type of subcontract where the contractor enters into a written agreement with another entity to carry out all or part of the early learning and care services.

"Subsidized families" means eligible families who are receiving early learning and care services and on whose behalf the CDE or the California Department of Social Services (DSS) is providing a reimbursement, in whole or in part. 5 *CCR 18074.1 (d)*

"Superintendent" unless otherwise noted, refers to the California State Superintendent of Public Instruction (SSPI). *EC 95*

"Support services" means those services which, when combined with early learning and care services, help promote the healthy physical, mental, social and emotional growth of children and families. *EC 8208 (ae)*

"Time Out" means that a family receiving CalWORKs Stage 1 or Stage 2 child care services becomes ineligible for Stage 1 or Stage 2 because the adult has been off cash aid for twenty-four (24) months. 5 *CCR 18400 (r)*

"Total contract amount" for the purposes of determining the limit of allowable administrative and program support services for Alternative Payment type programs means either the initial maximum reimbursable amount or the total of direct payments to providers, which includes family fees for certified children and interest earned on advanced contract funds, plus reimbursable administrative and support services costs, whichever is greater. 5 *CCR 18013*

"Total countable income" means all income of the individuals counted in the family size (5 *CCR 18078*) including, but not limited to, the following:

1. Gross wages or salary, advances, commissions, overtime, tips, bonuses, gambling or lottery winnings;
2. Wages for migrant, agricultural, or seasonal work;
3. Public cash assistance;



4. Gross income from self-employment less business expenses with the exception of wage draws;
5. Disability or unemployment compensation;
6. Workers compensation;
7. Spousal support, child support received from the former spouse or absent parent, or financial assistance for housing costs or car payments paid as part of or in addition to spousal or child support;
8. Survivor and retirement benefits;
9. Dividends, interest on bonds, income from estates or trusts, net rental income or royalties;
10. Rent for room within the family's residence;
11. Foster care grants, payments or clothing allowance for children placed through child welfare services;
12. Financial assistance received for the care of a child living with an adult who is not the child's biological or adoptive parent;
13. Veterans pensions;
14. Pensions or annuities;
15. Inheritance;
16. Allowances for housing or automobiles provided as part of compensation;
17. Portion of student grants or scholarships not identified for educational purposes as tuition, books, or supplies;
18. Insurance or court settlements for lost wages or punitive damages;
19. Net proceeds from the sale of real property, stocks, or inherited property; or
20. Other enterprise for gain.

"Total expenditures" means all costs for the provision of subsidized services under the contract and any nonsubsidized services which are provided in commingled classrooms. 5 CCR 18013

"Unrestricted income" means income that has no restrictions regarding use by the donor, and income restricted by the donor for purposes that are not reimbursable according to the contract, including income for services to children not subsidized by the contract. 5 CCR 18013

“Unsubsidized” or “nonsubsidized” refers to children or families other than eligible families receiving reimbursement for early learning and care services. 5 CCR 18074.1 (e)

"Use allowance" means an alternate method for claiming the use of the contractor's assets as a cost when depreciation methods are not used. 5 CCR 18013

“Welfare-to-work activity” means a county welfare department approved activity, including but not limited to, employment, job search, job training, educational training, or participating as a volunteer in a job-related activity. 5 CCR 18400 (s)

## **II. GENERAL PROVISIONS**

### **A. Notification of Address Change**

(5 CCR 18014)

1. Contractors shall notify the CDE in writing of any change in the mailing address for communication regarding the contract (administrative address) within ten (10) calendar days of the address change. For non-public agencies, the notification must be accompanied by:
  - a. Board minutes verifying the change in address; and
  - b. A copy of the notification to the Internal Revenue Service of the address change.
2. Contractors shall notify the CDE in writing of any proposed change in operating facility address(es) at least thirty (30) calendar days in advance of the change unless such change is required by an emergency such as fire, flood, or earthquake.

### **B. Notification of E-mail Contact Changes**

Contractors shall assure that at all times the e-mail address on file at the CDE is accurate for contacting the following individuals:

1. Executive Officer
2. Program Director

Contractors shall utilize procedures provided by the CDE to electronically add new addresses or delete old addresses, as needed.

### **C. Materials Developed with Contract Funds**

(5 CCR 18016)

If the contractor receives income from materials developed with contract funds, the use of the income shall be restricted to the early learning and care program.

If the materials were developed in part with contract funds, the income from the sale of the materials that shall be used in the child development and development program shall be computed in direct proportion to the share of contract funds used in development of the materials.

Materials developed with contract funds shall contain an acknowledgement of the use of state (general) or federal funds in the development of materials and a disclaimer that the contents do not necessarily reflect the position or policy of the CDE.

D. Prohibition Against Religious Instruction or Worship

(5 CCR 18017)

CCTR, CSPP, CHAN, CMIG, and CFCC contractors shall not provide nor be reimbursed for early learning and care services which include religious instruction or worship.

E. Issuance and Use of Checks

(5 CCR 18018)

Except for external payroll services, private contractors:

1. Shall not use any pre-signed, pre-authorized, or pre-stamped checks without the prior written approval of the CDE; and
2. Shall require two (2) authorized signatures on all checks unless:
  - a. The contractor has a policy approved by its governing board requiring dual signatures only on checks above a specified dollar amount.
  - b. The annual audit verifies that appropriate internal controls are maintained.

F. Plan For Provider Reimbursement And Certificates For Alternative Payment Programs

(Applies To C2AP, C3AP, CAPP, CMAP, AND CFCC) (EC 8261, 5 CCR 18226, 45 CFR 98.45(l)(1)(ii))

The contractor shall develop and implement a plan for the timely reimbursement to providers. The plan shall include a provision requiring that providers be reimbursed within 21 calendar days of the receipt of a complete record or invoice for services

Procedures shall include measures to ensure security of certificates and prevent fraud and/or abuse and provide for timely redemption of certificates by either parents or providers.

Within two business days of receiving license suspension or revocation notification from the Resource and Referral Program, the contractor shall terminate payment to the affected facility as of the effective date of the suspension or revocation.

Contractors must set up an electronic reimbursement program for licensed and license-exempt providers so that the reimbursement to providers may be electronically transmitted to the financial institution of their choice.

Contractors may not require the providers to use direct deposit or any other form of electronic reimbursement to receive their reimbursements. However, any

contractors which had a policy in place prior to July 1, 2019 which required that providers be reimbursed via direct deposit or other form of electronic reimbursement may continue to require those affected providers receive reimbursement in conformance with such policy. Any new providers starting with such contractors after July 1, 2019, or any contractors without such a policy in place prior to July 1, 2019, must give providers the option of receiving their reimbursements electronically.

When the contractor makes the reimbursement to the early learning and care provider, electronically or otherwise, they must provide a description of the reimbursement to the provider, including the child(ren) served, and the month of service covered by the reimbursement.

Any fees assessed by a provider's financial institution for electronic banking would be incurred by the provider; the fees would not be paid by the contractor.

#### G. Prohibition against Loans and Advances

(5 CCR 18019)

1. Contractors shall not loan contract funds to individuals, corporations, organizations, public agencies or private agencies.
2. Contractors shall not advance unearned salary to employees.
3. Contractors shall not make advance payments to subcontractors and shall compensate subcontractors after services are rendered or goods are received except for:
  - a. Subcontractors providing early learning and care services; and
  - b. Subcontractors with subcontracts exempt from the provisions of 5 CCR 18026.

#### H. Contracts with Multiple Service Areas

1. CCTR, CSPP, CHAN, and CMIG contractors with more than one service delivery area as specified in and funded through a single contract shall maintain service at the same level, plus or minus ten percent (10%) of the contracted child hours or child days of enrollment as applicable, in the individual service area(s) specified in its current contract. (5 CCR 18022)
2. The contractor may request approval from the CDE to vary service levels by more than ten percent (10%) if the contractor can demonstrate that the need for services in the designated area(s) has changed.
3. The CDE shall approve or deny the variable service level request within thirty (30) calendar days of receipt of the request.

4. If the variable service level request is denied, the contractor may appeal this decision in accordance with 5 CCR 18308.
5. Non-CalWORKs Alternative Payment program and CFCC contractors with more than one service delivery area, as specified in and funded through a single contract, shall maintain service at the same level in the individual service area(s) as most recently approved by CDE.

I. Compliance Reviews

(Applies to all programs) (5 CCR 18023 (b), (c), (d))

1. At least once every three (3) years, and as resources permit, the CDE shall conduct reviews at the contractor's office(s) and operating facility(ies) to determine the contractor's compliance with applicable laws, regulations and/or contractual provisions.
2. The compliance reviews shall be conducted according to the provisions of the FPM/CMR.
3. The compliance reviews shall be conducted by consultants, analysts, and/or management staff of the CDE or other State of California representatives.

J. Reviews of Alternative Payment Agencies

(EC 8385)

Annually, the CDE shall conduct a review of each Alternative Payment agency to determine an error rate in each of the following areas:

1. Family fee determinations;
2. Eligibility;
3. Basis of hours of care; and
4. Provider payments

K. Contractor's Termination for Convenience

(5 CCR 18024)

1. A contractor may terminate the contract for any reason during the contract term.
2. The contractor shall notify the CDE of its intent to terminate the contract at least ninety (90) calendar days prior to the date the contractor intends to terminate the contract.
3. Within fifteen (15) days from the date the contractor notifies the CDE of its

intent to terminate the contract, the contractor shall submit:

- a. A current inventory of equipment purchased in whole or in part with contract funds; and
  - b. The names, addresses and telephone numbers of all families served by the contract and all staff members funded by the contract.
  - c. CFCC and Alternative Payment program contractors shall also submit the names, addresses and telephone numbers of all providers of subsidized services funded by the early learning and care contract.
4. Upon receipt of a notice of intent to terminate, the CDE will transfer the program to another agency as soon as practicable.

L. Uniform Complaint Procedures

(5 CCR 4600-4694)

5 CCR 4610 authorizes the CDE the responsibility for Uniform Complaint Procedures (UCP). Early learning and care programs are covered under the UCP. Contractors shall abide by the applicable procedures set forth in 5 CCR 4600-4694.

For additional general information regarding the UCP, contact the Categorical Program Complaint Management Office, California Department of Education, via telephone (916) 319-0929, or visit the CDE Web site at the following link:

<https://www.cde.ca.gov/re/cp/uc/>

M. Eligibility for Funding

(5 CCR 18001, 18303, 18304, and 18023)

A current contractor is eligible to apply for new or additional funds except when one or more of the following conditions apply during the Request for Application (RFA) cycle:

1. The contractor is on conditional status because of fiscal or programmatic noncompliance as described in 5 CCR 18303 or 18304; or
2. The CDE has conducted a compliance review pursuant to 5 CCR 18023 and the contractor has failed to cure items of fiscal and programmatic noncompliance identified in the review within twelve (12) months of the issuance of the compliance review report; or
3. The CDE reduced the contractor's current year maximum reimbursement amount due to the contractor's inability to utilize its full contract amount, whether through low enrollment or low expenditures for the same contract type.

4. A current contracting agency may be determined, on a case-by-case basis, to be ineligible to receive expansion funding if:
  - The agency was previously awarded expansion funding and has not yet begun to provide services with that funding; or
  - The CDE has evidence that the agency has not been able to successfully fulfill current contract requirements by serving children in a quality program and in a fiscally responsible manner.

A current contractor that is applying for additional funds may be awarded less than the full amount requested during negotiations of the award, particularly if it has been determined that they are not fully utilizing their current contract maximum reimbursable amount.

An applicant that is not a current CDE contractor is not eligible to apply for funding if one of the following conditions apply:

1. The contractor had a previous contract with the CDE that was terminated or not continued by the CDE for fiscal or programmatic noncompliance as described in section 18303 or 18304 within three (3) years immediately preceding the date the RFA was posted; or
2. The applicant contractor has an outstanding accounts receivable balance with the CDE; or
3. The applicant contractor has a delinquent audit with the CDE pursuant to 5 CCR 18073.

#### N. Review of Contracts for Continued Funding

(5 CCR 18010)

1. Contractors have no vested right to a subsequent contract.
2. Contractors that are not on conditional contract status, but which have evidenced fiscal or programmatic noncompliance with the provisions of this contract, laws, or regulations, shall receive an administrative review to determine whether they will receive an offer for continued funding.
3. Contractors currently on conditional status that do not meet the requirements specified in the Conditional Status Addendum may not be offered a subsequent contract and shall be so notified by the CDE at least ninety (90) calendar days prior to the end of the current contract period.
4. Contractors that intend to accept the offer to continue services in the subsequent contract period shall respond to a continued funding application request from the CDE in accordance with the instructions and timelines specified in the request.



5. Failure to respond within the timelines specified in the continued funding application request shall constitute notification to the CDE of the contractor's intent to discontinue services at the end of the current contract period unless the contractor has received a written extension of the original timeline from the CDE.

O. Applicability of Corporations Code

Except for partnerships and sole proprietorships, private contractors shall be subject to all applicable sections of the *Corporations Code* including standards of conduct and management of the organization.

P. Conflicts of Interest

(EC 8258)

1. All transactions shall be fair and reasonable and conducted at arm's length where the contractor is a party to a transaction and the other party is one of the following:
  - a. An officer or employee of the contractor or of an organization having financial interest in the contractor; or
  - b. A partner or controlling stockholder or an organization having a financial interest in the contractor; or
  - c. A family member of a person having a financial interest in the contractor.
2. No person employed by the CDE in a policymaking position in the area of early learning and care programs shall serve as a member of the board of directors, advisory council, or advisory committee for any agency receiving funds pursuant to this chapter. The provisions of this subdivision shall not apply to any person appointed prior to January 1, 1985.
3. No retired, dismissed, separated, or formerly employed person of the CDE employed under the State Civil Service or otherwise appointed to serve in the CDE may enter into a contract pursuant to *EC* Section 8262 in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by the CDE. The prohibition contained in this subdivision shall apply to the person only during the two-year period beginning on the date the person left state employment.
4. For a period of twelve (12) months following the date of his or her retirement, dismissal, or separation from state service, no person employed under State Civil Service or otherwise appointed to serve in the CDE may enter into a contract pursuant to *EC* Section 8262 if he or she was employed by the department in a policymaking position in the area of early learning and care programs within the twelve (12) month period prior to his or her retirement,

dismissal, or separation.

5. For a period of twelve (12) months following the date of his or her retirement, dismissal, or separation from state service, no person employed under State Civil Service or otherwise appointed to serve in the CDE may be employed by a contractor pursuant to *EC* Section 8262 if he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by the CDE.
6. The provisions above shall not apply to any persons who were already in the situations described by these subdivisions prior to January 1, 1985.
7. Based on corporate law (*Corporations Code* sections 310, 5233-5234, 7233 and 9243 as applicable), the general rules to be followed to ensure that transactions are conducted "at arm's length" include:
  - a. Prior to consummating the transaction, the governing body should authorize or approve the transaction in good faith and the board should require the interested party, or parties, to make full disclosure to the board both in writing and during the board meeting where the transaction is being discussed; and
  - b. All parties having a financial interest in the transaction should refrain from voting on the transaction and it should be so noted in the board minutes.
8. If the transaction involves the renting of property, either land or buildings, owned by affiliated organizations, officers or other key personnel of the contractor or their families, the board of directors shall request the interested party to obtain a "fair market rental estimate" from an independent appraiser, licensed by the California Office of Real Estate Appraisers that supports all reimbursable costs under the transaction.
  - a. A new "fair market rental estimate" for each change, adjustment or escalation to any reimbursable costs under a transaction is required.
  - b. If the contractor has no board or is a sole proprietor, the requirement for a "fair market rental estimate" shall also apply.
9. The contractor has the burden of supporting the reasonableness of rental costs. If the property is owned by the contractor, rental costs are not reimbursable and costs may be claimed only as depreciation or use allowance.
10. Any transaction described in this section shall be disclosed by the auditor in the notes to the financial statement in the annual audit. (*Uniform Guidance*, Subpart F)
11. Rental costs for equipment owned by affiliated organizations, officers, or other key personnel of the contractor or their families are allowable only as

depreciation or use allowance.

Q. Unlawful Denial of Services

(GC 11135 and 5 CCR 4900)

As used in this section, “disability” means any mental or physical disability as defined in GC 12926.

1. No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.
2. With respect to discrimination on the basis of disability, programs and activities subject to 5 CCR 4900(a) shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

R. Computer Software Copyright Compliance

By signing this agreement, the contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.

S. Recycled Paper Certification

(PCC 12205, 12209, 12320)

The contractor agrees to certify in writing to the CDE, under penalty of perjury, the minimum, if not exact, percentage of recycled content, both post-consumer waste and secondary waste as defined in *Public Contract Code (PCC)*, sections 12161 and 12200, in materials, goods or supplies offered or products used in the performance of this Agreement, regardless of whether the product meets the required recycled product percentage as defined in the *PCC*, sections 12161 and 12200. Contractor may certify that the product contains zero recycled content.

T. Healthy Schools Act

All early learning and care center-based contractors are subject to the requirements of the Healthy Schools Act (HSA) as specified in *EC* sections 17608 to 17614.

For more information about the requirements of the HSA, contact the Department of Pesticide Regulation (DPR), Integrated Pest Management (IPM) via e-mail at [ccipmlist@cdpr.ca.gov](mailto:ccipmlist@cdpr.ca.gov) or visit the DPR School and Child Care IPM Web site at: <http://www.cdpr.ca.gov/schoolipm/>

To comply with the provisions of the HSA, early learning and care center-based contractors shall, among other requirements:

1. Identify a school designee
  - a. Choose a center employee who will make sure the requirements of the Healthy Schools Act (HSA) are met when pesticides are used at your center.
2. Develop an IPM plan
  - a. Create an IPM plan using the DPR IPM Plan template available on the DPR School and Child Care IPM website; or get a self-drafted center IPM plan approved by DPR.
3. Provide annual written notification
  - a. Send parents, guardians, and staff a written notification of pesticides you expect to apply at your center during the year.
4. Establish individual notification registry
  - a. Establish a registry for all interested parents, guardians, and staff to sign up and receive notifications of individual pesticide applications.
5. Post warning signs
  - a. Post signs where you will apply pesticides.
6. Keep Records
  - a. Keep records of pesticide applications made by center staff and pest management contractors for at least four years.
7. Send pesticide use reports to DPR
  - a. Send pesticide use reports for pesticide applications made by center employees to DPR at least once per year.
8. Never use prohibited pesticides
  - a. Always check the list of Pesticide Products Prohibited from Use in California Schools and Child Care Facilities prior to using a new pesticide product.

9. Complete Annual IPM Training

- a. Take a DPR-approved training course before applying pesticides, and renew annually.

### **III. FACILITIES AND EQUIPMENT**

(5 CCR 18034)

#### **A. Facilities and Equipment Expenditures**

Facilities and Equipment Expenditures, are subdivided into two categories:

##### **1. Capitalized**

- a. Buildings and Improvements: Sites; renovations and repairs of sites; buildings; renovations and repairs of buildings, building fixtures, services systems; and
- b. Capitalized Equipment: Tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the contractor for financial statement purposes, or \$5,000. (2 CFR 200.33)

##### **2. Non-capitalized**

- a. Non-capitalized equipment expenditures are those for tangible personal property with a useful life of more than one year other than those described in Capitalized Equipment above.

#### **B. Buildings and Improvements**

1. Buildings are only reimbursable as depreciation or use allowance.
2. To be reimbursable as direct costs, prior written approval by the CDE is required for improvements to land, buildings, or equipment which materially increase their value or useful life. (2 CFR 200.439(b)(3))
3. If the Contractor wishes to share the use of real property among multiple programs, the associated reimbursable capital expenditures shall be prorated among the programs according to the benefits received.
4. Building and improvement expenditures are not reimbursable as indirect costs, except as depreciation or use allowance.

#### **C. Renovation and Repair**

(5 CCR 18034)

1. Improvement of sites and adjacent grounds to meet or exceed the 22 CCR, Community Care Licensing Standards are reimbursable for both private and public agencies. Reimbursable improvements are those that:

- a. Do not unnecessarily increase the value (as defined in 18013(v)) of a facility; and
- b. The contractor has obtained prior CDE approval for proposed work for \$10,000 or more.

D. Depreciation and Use Allowance

1. Depreciation and use allowance may be claimed on eligible, appropriate capital assets.
2. Depreciation shall not be claimed on land, donated assets or assets purchased with public funds, on any fully depreciated asset or on idle or excess facilities.
3. A use allowance shall not be claimed on land or assets purchased with contract funds or on assets for which depreciation has been claimed.
4. When depreciation is applied to assets acquired in prior years, the annual charges shall not exceed the amounts that would have resulted had depreciation been claimed from the date of acquisition.
5. The use allowance for buildings and improvements is computed at an annual rate not to exceed two percent (2%) of acquisition costs.
6. The use allowance for equipment is computed at an annual rate not to exceed six and two-thirds percent (6 2/3%) of acquisition costs.
7. To be reimbursable, interest paid on private sector debt for the purchase, lease-purchase, repair or renovation of early learning and care facilities owned or leased by contractors providing center-based care must be actual interest paid, not to exceed a fair market rate of interest. This provision does not apply to family child care home facilities.

E. Preapproval Requirements

(5 CCR 18029 and 18040)

1. All equipment and equipment replacement purchases that meet either of the following criteria shall be approved in writing in advance by the CDE. (2 CFR 200.33 and 200.439(b)(1))
  - a. The per-unit acquisition cost equals or exceeds the lesser of the capitalization level established by the contractor for financial statement purposes, or \$5,000, including tax, shall be approved in writing in advance by the CDE.
  - b. The sum of all items included in the purchase exceeds \$10,000, including tax, shall be approved in writing in advance by the CDE.

- i. All expenses associated with a purchase that are necessary for the equipment or improvement to perform its intended purpose, prior to cost allocation, should be included in determining if prior approval is required. (E.g., a playground structure includes multiple components, although each component may be purchased separately. When determining pre-approval requirements, all components purchased for the playground should be considered.)
  - ii. Subdividing equipment purchases into separate items to avoid the preapproval requirement is prohibited.
- 2. Proposed renovation and repair work for ten thousand dollars (\$10,000) or more, including tax, shall be approved in writing in advance by the CDE. (2 CFR 200.439(b)(3))
- 3. Approval requests shall be submitted on the Request for Approval of Equipment form.
- 4. Bids, if applicable, shall be attached to the Request for Approval of Equipment when submitted to the CDE for approval.
  - a. One copy of the request shall be retained by the CDE.
  - b. One copy will be returned to the contractor approved or disapproved within thirty (30) calendar days of receipt.
  - c. If the request for approval of an equipment purchase is disapproved, the contractor may appeal the decision in accordance with instructions specified in 5 CCR 18040(d), 18302.
- 5. Procurement practices must be in accordance with 5 CCR Section 18040.
- 6. Public Agencies shall comply with the applicable sections of the PCC.
- 7. Lease-purchase agreements are subject to the above requirements.
- 8. If the work is to be performed through a subcontract, the requirements of the FT&C section titled *Subcontracts* also applies.
- 9. When private agencies submit proposed subcontracts for renovation and repair for approval, evidence shall be included that the proposed subcontractor has obtained a payment bond in an amount not less than one-half (1/2) the amount of the proposed subcontract. 5 CCR 18029 (d)



F. Obtaining Bids for Equipment Purchases, Leases, Replacements and Improvements for Private Agencies

1. All equipment purchases, replacements, and improvements not performed by the contractor's staff exceeding five thousand dollars (\$5,000), including tax, must have at least three (3) bids or estimates.
  - a. Each bid or estimate must contain prices for equivalent and comparable items and/or services.
  - b. When available, consolidating procurements to obtain a more economical purchase is required.
  - c. Subdividing equipment purchases into separate items to avoid the competitive bidding requirement is prohibited.
2. If bids or estimates are required, the contractor shall purchase the goods or services from the lowest responsible bidder or estimator. The contractor shall conform to the materials, terms and conditions of the invitation for bid, and with 5 CCR 18040.
3. If bids or estimates are required, and three (3) bids or estimates cannot be obtained, the contractor shall provide adequate documentation of the reason(s) why three (3) bids or estimates could not be obtained (e.g., an emergency situation, or the item is only available from a single source).
4. Lease-purchase agreements are subject to the above requirements.

G. Obtaining Bids for Equipment Purchases for Public Agencies

Public Agencies shall comply with the applicable sections of the *Public Contract Code*.

H. Asset Management

1. Asset Control System

(2 CFR 200.313(d)(3))

A control system must be developed to ensure adequate safeguards to prevent loss, damage or theft (any loss, damage or theft must be investigated) and adequate maintenance procedures must be developed to keep the equipment in good condition.

2. Inventory (2 CFR 200.313 (d) (1))

- a. An inventory of all equipment and all non-disposable items with an estimated useful life of more than one year, purchased in whole or in part

with early learning and care contract funds, shall be maintained. For more guidance refer to *California School Accounting Manual* Procedure 770.

- b. Property records must be maintained that include the following:
  - i. Description;
  - ii. Serial number or other identification number;
  - iii. The source of funding;
  - iv. The acquisition date;
  - v. The cost;
  - vi. The location, use and condition; and
  - vii. Any ultimate disposition date including date of disposal and sale price if applicable.
- c. A physical inventory must be taken at least every two (2) years and reconciled with property records. 2 *CFR* 200.313(d)(2)

I. Title, Use, Disposition and Retention

1. Buildings and Improvements

- a. Title to real property acquired in whole or part with state early learning and care (CD) funds shall vest in the contractor subject to the condition that the contractor shall use the real property for the authorized purpose of the CD program as long as it has a contract with the CDE and shall not encumber the property without the prior written approval of the CDE. 2 *CFR* 200.311(a)
- b. When the real property is no longer needed for the purposes of any CDE program, the Contractor shall request disposition instructions from the CDE, which shall observe one of the following three disposition instructions:
  - i. The CDE may permit the contractor to retain title without further obligation to the CDE after the contractor compensates the CDE or that percentage of the current fair market value of the property, net of reasonable and necessary selling costs, attributable to the CDE's share of the acquisition cost.
  - ii. The contractor may be directed to sell the property under guidelines provided by the CDE and pay the CDE for that percentage of the current fair market value of the property, net of reasonable and

necessary selling and fix-up costs, attributable to the CDE's share of the acquisition cost.

- iii. The contractor may be directed to transfer title to the property to the CDE or to an eligible third party, provided that, in such cases, the contractor shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

## 2. Equipment

(5 CCR 18025)

- a. Title – When equipment is purchased with state funds, title shall vest with the contractor only for such period of time as the contractor has a contract with the CDE
- b. Retention of Equipment – The CDE may provide written authorization for the contractor to retain the equipment for the contractor's own use if a fair compensation is paid to the state for the state's share of the cost of the equipment. Fair compensation shall be determined by the state using the state's share of original acquisition cost, less depreciation, computed on a straight-line method over the estimated useful life expectancy of the equipment
- c. Use – When equipment is purchased in whole or in part with state funds, the contractor shall use the equipment exclusively in the program(s) from which funds were used to purchase the equipment. If the contractor wishes to share the use of the equipment between/among two (2) or more programs, the cost of such equipment shall be prorated between/among the programs
- d. Disposition – The contractor may dispose of obsolete equipment and remove the asset at its recorded value. If the sale of equipment originally purchased with state funds occurs, the proceeds from the sale of the equipment must be returned to the program. If the contractor no longer has a contract with the CDE, the contractor shall dispose of the equipment in accordance with written directions from the CDE.

#### **IV. SUBCONTRACTS**

A. A written subcontract is required for all service agreements, except as defined below.

B. Subcontracts Excluded from Requirements of this Section

(5 CCR 18026)

The following types of relationships are not subject to the requirements contained in this section:

1. Employment agreements;
2. Facility rental or lease agreements except as set forth below;
3. Payment arrangements with family child care homes and/or providers;
4. Medical or dental service agreements;
5. Bookkeeping/auditing agreements, except that agencies must still follow requirements in the FT&C section *Bids for Subcontracts*.; (5 CCR 18027)
6. Food services agreements;
7. Janitorial and grounds keeping agreements;
8. A subcontract with a public agency, except for a subcontract with a public agency to provide early learning and care services; and
9. Subcontracts with an individual for less than ten thousand dollars (\$10,000), except that agencies must still follow requirements in the FT&C section *Bids for Subcontracts*.

However, no subcontract shall in any way relieve the contractor of any responsibility for performance under this contract.

Contractors are responsible for ensuring financial and compliance audits of all subcontractors.

C. Required Subcontract Provisions

(5 CCR 18031)

The following provisions apply to all subcontracts unless exempted in Section A. above.

Every subcontract shall be in writing and specify:

1. The dates within which the subcontractor is to perform the contract.

2. The time for subcontractor performance shall not begin prior to, nor shall the time extend beyond, the time period of the contract between the contractor and the state.
3. The dollar amount of the subcontract or specify an amount not to exceed a maximum dollar amount.
4. The service(s) to be provided under the subcontract and the responsibilities of each party under the subcontract.
5. The subcontractor, and the agents and employees of the subcontractor, in the performance of the subcontract, are acting in an independent capacity and not as officers, employees or agents of the State of California.
6. Modifications of the subcontract shall be in writing, and for subcontracts in excess of \$10,000, prior written CDE approval is required unless the subcontract is otherwise exempt from prior CDE approval.
7. The subcontract is the complete and exclusive statement of the mutual understanding of the parties and that the subcontract supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of the subcontract.
8. The remedies, in case of a breach of contract, for subcontracts in excess of ten thousand dollars (\$10,000).
9. The State of California retains title to any equipment or supplies purchased with state funds and the equipment shall be returned to the contractor upon termination of the subcontract. The subcontract shall also specify that the subcontractor shall obtain prior written approval from the contractor and the CDE for any unit of equipment that costs in excess of five thousand dollars (\$5,000).
10. The subcontractor shall be reimbursed for travel and per diem expenses only at rates that do not exceed the rates paid to the CDE's non-represented employees computed in accordance with California Department of Human Resources regulations, *California Code of Regulations*, Title 2, Division 1, Chapter 3, Subchapter 1.
11. The subcontractor agrees to indemnify and hold harmless the State of California, its officers, agents and employees from any and all claims and losses occurring or resulting to any and all contractors, subcontractors, materialmen, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of the subcontract, and from any and all claims and losses occurring or resulting to any person, firm or corporation that may be injured or damaged by the subcontractor in the performance of the subcontract.
12. For those subcontracts requiring prior approval, the subcontractor shall

maintain records for program review, evaluation, audit and/or other purposes and make the records available to agents of the state for a period of five (5) years.

13. The provisions of the "Nondiscrimination Clause" included in the prime contract as specified in the 2 CCR 11105.
14. Funding of the subcontract should be made subject to the appropriation and availability of funds from the state.
15. All subcontracts should contain a provision that the subcontractor is liable for any audit exception caused by, or as a result of, the subcontractor's lack of performance as required by the subcontract.
16. The subcontract should provide that the subcontractor, its agents and employees, in the performance of the subcontract, are acting in an independent capacity and not as agents or employees of the contractor.
17. Subcontracts for ten thousand dollars (\$10,000) or more cannot become effective and binding on either the prime contractor or the subcontractor until approved in writing by the CDE, and any work performed by the subcontractor prior to the date of such approval shall not be used as a claim against the state. Modifications to any contracts for \$10,000 or more shall also not be effective until approved in writing by the CDE and any work in performance of such modification prior to the date of approval of the modification shall not be used as a claim against the state. Specific approval requirements are set forth in Section F below.
18. The consideration paid to the subcontractor, as provided in the subcontract, should be stated to be the full compensation for all the subcontractor's expenses incurred in the performance of the subcontract.
19. All subcontracts, rental agreements and other contractual arrangements should include a termination for convenience clause permitting termination of such agreements without cost to the contractor.

D. Private Agencies-Bids for Subcontracts

(5 CCR 18027 & 2 CFR 200.320(f))

1. Private contractors shall obtain at least three (3) bids or estimates for subcontracts exceeding five thousand dollars (\$5,000), prior to cost allocation
2. If three (3) bids or estimates cannot be obtained, the private contractor shall maintain documents in its records that establish:
  - a. The reasons three (3) bids or estimates could not be obtained; and
  - b. The reasonableness of the proposed expenditure without three (3) bids or

estimates.

- c. Documentation for the single-source vendor or service provider, including the reason that vendor should be approved, must be submitted for approval in lieu of three bids.
3. The subcontract shall be awarded to the lowest responsible bidder.
4. The contractor shall not split subcontracts to avoid competitive bidding requirements.
5. Subcontracts for early learning and care services as defined in section I. Definitions, between a public agency contractor and a private subcontractor are exempt from bidding but not from advance approval by the CDE, if they are for ten thousand dollars (\$10,000) or more.

E. Public Agencies Subcontracts

1. Public Agencies shall award subcontracts in accordance with the Public Contract Code.

F. Prior CDE Approval for Subcontracts \$10,000 and Above

(5 CCR 18028-18030)

1. Contractors shall obtain prior written approval from the CDE for subcontracts of ten thousand dollars (\$10,000) or more, prior to cost allocation, that are otherwise not excluded from the provisions as stated in the FT&C section *Subcontracts Excluded from the Requirements of this Section*.
2. Prior to execution of a subcontract and commencement of work, the contractor shall submit two (2) copies of the proposed subcontract to the CDE for approval, including a proposed line-item budget which shows the costs of the services to be performed. The budget for a proposed subcontract for renovation and repair shall show the total cost of labor and the total cost of materials. Bids, if applicable, shall be submitted to the CDE when requesting approval. If three (3) bids were not obtained, the contractor shall provide written justification when the subcontract is submitted to the CDE for prior approval. Contractors shall demonstrate that approval of the subcontract is cost effective to the state.
3. For proposed capital outlay subcontracts, private agencies shall include documents showing that the bidder selected by the contractor has obtained a payment bond in an amount not less than one-half (1/2) the amount of the proposed subcontract.
4. Requests for approval of subcontracts for transportation services shall include a Certificate of Insurance of the subcontractor in an amount not less than \$1 million per occurrence (or a greater amount if required by the Public Utilities

Commission regulations), listing the contractor and the state as additional named insured.

5. One copy of the subcontract will be retained by the CDE and the other copy returned to the contractor approved or disapproved within thirty (30) calendar days of receipt of all required documents.

No reimbursement shall be made to the contractor or subcontractor for work performed prior to CDE approval. A disapproved contract will include a statement of the reason(s) for not approving the subcontract. If the request for approval of a subcontract is denied, the contractor may appeal the decision in accordance with instructions specified in the FT&C section *Appeals and Termination, Contract Administration Disputes*.

6. The CDE does not assume any responsibility for performance of approved subcontracts nor does the CDE assume responsibility for any unpaid debt of the contractor resulting from subcontracting liens.
7. Subcontracts which increase the contractor's cost of performance are nonreimbursable. Subcontracts which contain a provision for reimbursement for cost-plus-a-percentage-of-cost are not reimbursable.

G. Audit Requirements for Subcontracts

(5 CCR 18032)

An organization that operates an early learning and care program under a direct service contract with the CDE is called a contractor. The contractor may choose to enter into an agreement with another organization (subcontractor), where the subcontractor operates one (1) or more of the contractor's early learning and care programs. Consequently, an entity may be acting in the dual capacity of contractor and subcontractor for one (1) or more CDE contractors – each having one (1) or more CDE contracts. In some cases, a subcontractor may not have its own CDE contract directly with the CDE.

The organization receiving funds from the state shall be responsible for obtaining the required financial and compliance audits of the organization and any subcontractors, except for subcontracts exempt from CDE review, as agreed to by the Departments of Finance (DOF) and General Services (DGS).

The audit of the subcontract shall be submitted to the CDE as follows:

1. School districts, county offices of education, community colleges, and direct funded charter schools, shall submit the audit of the subcontract by the fifteenth day of the fifth month following the fiscal year in which the subcontracted services were performed;
2. All other contractors shall submit the subcontract audit along with the contractor's audit as specified in 5 CCR 18071.



## **V. COSTS, EARNINGS AND REIMBURSEMENT**

(5 CCR 18033, 18034)

### **A. Contract Amount Adjustments**

(Applies to C2AP, C3AP)

Child Development and Nutrition Fiscal Services (CDNFS) shall conduct monthly analyses of caseloads and expenditures and adjust agency contract maximum reimbursable amounts and allocations as necessary to ensure that funds are distributed in proportion to need. Prior to such action, however, CDNFS will notify the contractor of the proposed action and the contractor will be given an opportunity to provide written documentation that demonstrates the CDNFS projections are inaccurate. Because of the need to transfer funds to an under-funded agency as quickly as possible, the contractor shall have three (3) working days from the date of notification to respond.

### **B. Reasonable and Necessary Costs**

(5 CCR 18013 (s), 18033, 2 CFR 200.404)

Contractors may be reimbursed for actual costs that are reasonable and necessary to the performance of the contract. Reasonable and necessary costs are those costs that do not exceed what an ordinarily prudent person would incur in the conduct of a competitive business under the circumstances prevailing at the time of the decision to incur the cost, and whether the cost is of a type recognized as ordinary and necessary for the operation of the entity or the proper and efficient performance of the award. Consideration must be given to market prices for comparable goods or services for the geographic area.

### **C. Indirect Costs**

(5 CCR Sections 18013 (m), 18013 (n))

1. If indirect costs are claimed, an indirect cost allocation plan must be on file with the contractor and available for review by the CDE staff and auditors.
2. In accordance with the *Uniform Guidance* 200.414(f), the maximum indirect cost rate for any non-federal entity that has never received a negotiated indirect cost rate, shall be ten percent (10%) of the modified total direct costs.
3. For any non-federal entity that has a negotiated indirect cost rate, which includes all school districts and county offices of education, the maximum indirect cost rate shall be the lessor of the negotiated indirect cost rate or the ten percent (10%) indirect cost rate referenced in *Uniform Guidance* 200.414(f).

4. This rate is applied to budget categories 1000-5000 only in determining the maximum amount of indirect costs that are reimbursable under the contract.
5. The amount of cost allocable to this contract shall not exceed the benefits to this contract. The allocation method must quantify this benefit among all similar programs and then distribute the costs accordingly.
6. The indirect cost rate shall not include consideration of any costs otherwise non-reimbursable. If a depreciation or use allowance is included in the indirect cost rate, such allowance shall not be claimed on the asset.

D. Administrative Costs

(EC 8276.7, 5 CCR 18013 (c))

Contractors may claim administrative costs, as defined in 5 CCR 18013 (c), which are related to the administration of the early learning and care program.

Reimbursement of administrative costs shall not exceed fifteen percent (15%) of the net reimbursable program costs or actual administrative costs, whichever is less.

The fifteen percent (15%) includes any allowance for indirect costs and audits. Contractors shall maintain written documentation of the rationale used in determining direct and administrative costs.

E. Service Level Exemption (Start-Up) for New or Expanded Programs

(EC 8275)

1. Allowable start-up costs will be in an amount not to exceed fifteen percent (15%) of new or expansion funding authorized in the Budget Act for State Early Learning and Care Programs. EC 8275 (a)
2. Start-up costs must be necessary for the establishment and stability of new early learning and care programs (EC 8275 (c)) and include:
  - a. Employment and orientation of necessary staff;
  - b. Setting up of the program and facility;
  - c. Finalization of rental agreements and necessary deposits;
  - d. Purchase of a reasonable inventory of materials and supplies; and
  - e. Purchase of an initial premium for insurance.
3. Contractors shall maintain an auditable record of start-up costs which shall be included within the audit at the end of the year.

4. Reimbursable start-up costs shall occur prior to attainment of full enrollment.
5. If all or part of the fifteen percent (15%) allowable start-up costs is needed and spent, that portion will **not** have to be earned through provision of services.
6. If the contractor neither needs nor chooses to claim any of the fifteen percent (15%) start-up costs, the full service requirements shall be earned at the contract rate.
7. Migrant early learning and care agencies operating on a seasonal basis shall be reimbursed up to fifteen percent (15%) of the contract amount annually for approved start-up and close-down costs associated with starting up and closing down agency operations to correspond with periods of service needed by migrant families as specified in *EC 8233(b)*.

F. Costs for Travel and Per Diem & Restrictions

(GC 11139.8, *EC 8265*, 8269, 5 *CCR 18031*, 18034, and 18041)

Contractors and subcontractors shall be reimbursed for travel and per diem expenses at rates not exceeding those amounts paid to the CDE's represented employees computed in accordance with the California Department of Human Resources regulations, California *Code of Regulations*, Title 2, Division 1, Chapter 3, Subchapter 1, Article 2.

Contractors with collective bargaining agreements allowing higher rates of reimbursement shall not pay the difference out of contract funds.

The CDE shall notify the contractor of a change in expense rates within thirty (30) calendar days after the CDE has received notification of a change in rates from the California Department of Human Resources.

Contractors shall be reimbursed for out-of-state travel expenses only with prior written approval from the CDE. The CDE shall not approve out-of-state travel expenses:

1. For more than one employee, per contract per year.
2. For contractors with delinquent accounts payable which are delinquent more than ninety (90) calendar days after the date of the original invoice.
3. For contractors on conditional status.
4. When there is no clear benefit to the state.
5. When the benefit to the state can be obtained within California.

The CDE shall approve or deny the request for out-of-state travel within thirty (30) calendar days of the receipt of the request. If the request is denied, the contractor

may appeal the decision in accordance with instructions specified in the FT&C section *Internal Appeal Procedures to Resolve Contract Administration Disputes*.

Out-of-state travel to states identified in California's travel ban will not be considered. Costs associated with traveling to banned states will not be reimbursable.

G. Specific Items of Reimbursable Costs

(EC 8261, 8269 and 5 CCR 18034)

Reimbursable costs include, but are not limited to, the following:

1. Start-up costs of child development agencies or facilities in an amount not to exceed fifteen percent (15%) of the expansion or increase of each agency's total contract amount.
2. Close down costs for Migrant Programs as specified in EC 8233.
3. Administrative costs not to exceed fifteen percent (15%) of net reimbursable program costs.
4. Employee compensation, including fringe benefits, and personal service contracts.
5. Equipment and equipment replacement with prior CDE approval if required in the FT&C section *Facilities and Equipment*.
6. Supplies purchased in accordance with procurement practices found in 2 CFR sections 200.317 to 200.326, including bidding requirements for micro-purchases that exceed \$10,000.
7. Improvement of sites and adjacent grounds to meet or continue to meet 22 CCR Community Care Licensing Standards in accordance with the FT&C section *Renovation and Repair*.
8. Taxes, insurance, and maintenance for buildings and/or equipment.
9. Depreciation based on the useful life of an asset in accordance with the FT&C section *Depreciation and Use Allowance*.
10. A use allowance for buildings and improvements in accordance with the FT&C section *Depreciation and Use Allowance*.
11. Travel and per diem expenses, including approved out-of-state travel, in accordance with the FT&C section *Costs for Travel and Per Diem*.
12. An indirect cost rate based on an approved indirect cost plan, in accordance with the FT&C section *Indirect Costs*.

13. (Applies to CCTR, CSPP, CHAN, CMIG, and CFCC ) Lease payments or depreciation and interest on loans incurred to acquire, rehabilitate or construct licensable facilities not to exceed fair market rents in the community in which the facility is located in accordance with guidelines issued by the CDE.
14. (Applies to CCTR, CSPP, CHAN, CMIG, and CFCC) Interest on private sector debt financing for purchase, lease-purchase, repair or renovation of early learning and care facilities owned or leased for providing center-based care upon demonstration that the amount of interest paid in a year does not exceed the value obtained by the state in the use of the facilities for the early learning and care program during the year in accordance with guidelines issued by the CDE.
15. Payments to providers made in accordance with applicable state laws and regulations.
16. (Applies to C2AP, C3AP, CAPP, CMAP, CFCC) Support services as specified in the FT&C section *Definitions*.

H. Nonreimbursable Costs

(EC 8261, 8269 and 5 CCR 18035)

The following costs shall not be reimbursable under the early learning and care contract:

1. Bad debts, including losses arising from uncollectible accounts and any related legal costs. (Uncollected parent fees are not considered to be bad debts if documentation of collection attempts exists.);
2. Contributions;
3. Costs of amusement or entertainment;
4. Costs of fines or penalties;
5. Costs of idle facilities unless those costs are related to a partial year program and the costs of the idle facilities have been approved by the CDE;
6. Costs incurred after the contract has been terminated;
7. Fund raising costs except as specified in 5 CCR 18277;
8. Interest expenses except:
  - a. Interest on borrowed funds when apportionments are withheld because of a delay or error attributable to the state and the amount of interest claimed is approved by the CDE.
  - b. When interest is part of a lease purchase agreement.

- c. When the interest is part of payments on a loan incurred to acquire, rehabilitate or construct licensable facilities, not to exceed fair market rents existing in the community in which the facility is located.
  - d. When the interest is on private sector debt financing for the purchase, lease-purchase, repair or renovation of early learning and care facilities owned or leased by the contractor, and it has been demonstrated that the amount of interest paid in a year does not exceed the value obtained by the state in the use of the facilities for the early learning and care program during the year in accordance with guidelines issued by the CDE;
- 9. Investment management costs;
- 10. Costs of organization of a nonprofit corporation such as incorporation fees or consultant fees;
- 11. Public relations consultant fees;
- 12. Costs of legal, consulting and accounting services incurred in prosecution of claims against the state
- 13. State and federal income taxes;
- 14. Costs for the acquisition of sites and buildings except through depreciation, unless the costs are for a licensable facility in the community served by the program and the costs do not exceed fair market rents existing in the community in which the facility is located, in accordance with guidelines issued by the CDE;
- 15. Bonuses, unless part of a collective bargaining agreement;
- 16. Compensation to the members of the board of directors except for:
  - a. Reimbursement for travel and/or per diem, computed in accordance with Costs for Travel and Per Diem, incurred while the members are conducting business for the organization
  - b. As provided in the California *Corporation Code* Section 5227, et seq.
- 17. Costs of subcontracts, which increase the contractor's cost or subcontracts, which contain a provision for reimbursement for cost-plus-a-percentage-of-costs;
- 18. Costs incurred in prior or future years, with the exception of the cost of an annual independent audit, which may be claimed either in the contract period which was the subject of the audit, or during the contract period in which the audit is completed.
- 19. Costs that are not adequately documented.

I. Charging of Expenditures

(EC 8261, 8269 and 5 CCR 18037)

Net reimbursable program costs must be incurred during the contract period. Contractors shall not use current year contract funds to pay prior or future year obligations. However, the cost of the annual independent audit may be claimed either in the contract period which was the subject of the audit or during the contract period in which the audit is completed.

J. Recoupment of Advanced Contract Funds

(EC 8261, 8265, 8269 and 5 CCR 18038)

The CDE shall recoup any payments made for costs which were not reasonable and necessary. The amount recouped shall be the excess payment over the reasonable or fair market value, or one hundred percent (100%) of the cost, if the cost was not necessary. The CDE may elect to recover any costs associated with recouping advanced contract funds, including collection services or attorney fees.

K. Use of Subsidized Family Fees

(EC 8235, 8261, 8269, 8273, 8273.1, and 5 CCR 18039)

(Applies to C2AP, C3AP, CAPP, CCTR, CFCC, CHAN, CMAP, CMIG, CSPP)  
Fees received from subsidized parents are to be expended and earned by the contractor before contract funds shall be claimed for reimbursement.

(Applies to CCTR, CSPP, CHAN, CMIG) Such fees shall be expended on reimbursable costs and earned by providing child days of enrollment. In order to be reimbursed the full contract amount, in addition to the fees received from subsidized parents, the contractor must have additional reimbursable expenditures and provide child days of enrollment beyond the minimum required by the contract. Notwithstanding any other law, commencing with the 2014–15 fiscal year, family fees shall not be assessed for families enrolled in the part-day California preschool program. (EC 8273.1)

L. Determination of Reimbursable Amount

(EC 8261, 8269 and 5 CCR 18054)

**CCTR, CSPP, CHAN, CMIG** contractors shall be reimbursed for an audited claim that is the least of the following:

1. The maximum reimbursable amount as stated in the annual early learning and care contract;
2. The actual and allowable net costs; or

3. Contract service earnings – The adjusted child days/hours of enrollment for certified children, pursuant to *EC* 8265.5 and 8266.1, times the contract rate per child day/hour of enrollment, times the actual percentage of attendance plus five percent (5%), but in no case to exceed one hundred percent (100%) of enrollment.

**C2AP, C3AP, CAPP, CMAP** contractors shall be reimbursed for an audited claim that is the least of the following:

The maximum reimbursable amount as stated in the annual early learning and care contract; or

1. The amount earned, which are reimbursable expenditures of:
  - a. Direct payments to providers, (which consist of the rate charged by the provider in accordance with applicable statutory and regulatory provision, not to exceed the Regional Market Rate Ceiling), and which includes family fees for certified children and interest earned on advanced contract funds; and
  - b. Actual administrative and support costs related to early learning and care services provided, which combined cannot exceed seventeen and one half percent (17.5%) of the total contract amount, and no more than fifteen percent (15%) may be for administrative costs alone.

**CFCC** contractors shall be reimbursed for an audited claim that is the lesser of the following:

1. The maximum reimbursable amount as stated in the annual child development contract; or
2. The amount earned which is defined as net reimbursable program costs, of which at least seventy percent (70%) must be payments for direct services, not more than thirty percent (30%) may be for support services and administrative costs together, and no more than fifteen percent (15%) may be for administrative costs alone.

**CRRP** contractors shall be reimbursed for an audited claim that is the lesser of the following:

1. The maximum reimbursable amount as stated in the annual early learning and care contract; or
2. The actual and allowable net costs.

M. Minimum Days of Operation

(5 CCR 18055)



If the contractor fails to operate at least ninety-eight percent (98%) of the minimum days of operation required in its contract, ceases operation or the contract is terminated prior to the end of the contract period, the maximum reimbursable amount shall be reduced in proportion to the percentage of the contract minimum days of operation that the contractor was not in operation.

N. Reduction, Withholding, and Canceling Apportionments to Contractors

(EC 8261, 8269 and 5 CCR 18056)

The CDE shall reduce, withhold or cancel any scheduled apportionment when one (1) or more of the following conditions exist:

1. The contractor has not submitted an acceptable audit for any prior year of operation on or before the date due.
2. The contractor has not submitted the required reports on or before the date due.
3. The contractor will not earn the full contract amount based on the current year projected and the prior year actual net reimbursable program costs as determined by the CDNFS.
4. A creditor of the contractor has placed a lien on the contractor's scheduled apportionments.
5. The contractor has accounts payable which are:
  - a. More than ninety (90) days delinquent to the CDE and
  - b. Not the subject of an appeal
6. If any apportionment is to be reduced, withheld or cancelled, the CDE shall provide the contractor prior written notice of the intended action.

O. Order of Expenditure

(5 CCR 18057)

Expenditures from the Child Development Fund shall occur in the following order:

1. Fees collected from parents of certified children shall be first in and first out;
2. State or federal contract funds apportioned by the CDE shall be second in and second out; and
3. Interest received on advanced contract funds shall be last in and last out.

## VI. ACCOUNTING AND REPORTING REQUIREMENTS

### A. General Provisions

(EC 8261 and 5 CCR 18063)

Contractors shall follow the accounting procedures specified in the most recent edition of the *California School Accounting Manual*. Contractors shall report revenue and expenditures on an accrual basis. The School Accounting Manual specifies that under an accrual basis of accounting, revenues are recorded when earned and expenditures are recorded when a liability is incurred, regardless of when the receipt or payment of cash takes place.

### B. Child Development Fund and Interest Bearing Accounts

(5 CCR 18064)

All contractors shall establish a fund to be known as the "Child Development Fund" as specified in EC 8328, except that private contractors shall establish the fund in a federally insured banking institution located in California. Contractors with multiple fund sources shall establish separate program cost accounts for each source of funds pursuant to EC 8261 and 8269; 5 CCR 18064 (a) (b).

If a contractor places advanced contract funds in an interest bearing account, the interest bearing account shall be a separate account within the Child Development Fund. Interest earned shall be retained by the contractor if it is expended on reimbursable costs and earned by providing subsidized child days of enrollment, beyond the minimum required to earn the maximum reimbursable amount, at a rate equal to the lesser of the daily contract rate or the actual program costs, pursuant to EC 8261 and 8269; 5 CCR 18064(c).

### C. Enrollment and Attendance Accounting

(EC 8221.5, 8261, 8269 and 5 CCR 18065)

1. A child shall not be enrolled in more than one program for the same time period on the same day.
2. CCTR, CSPP, CHAN, and CMIG contractors shall use daily sign-in/sign-out sheets as a primary source document for audit and reimbursement purposes.
  - a. On a daily basis, one of the following persons shall enter the time of arrival and departure on a sign-in/sign-out sheet and shall sign the sheet using their full signature for both arrival and departure times:
    - i. The parent or other adult authorized by the parent to drop off/pick up a child; or

- ii. The staff person designated by the contractor as the person responsible for entering the times of arrival and departure if the child is not dropped off/picked up by a parent or other adult authorized by the parent.
  - b. First and last initials of the contractor's authorized representative, along with a notation of the time, are required to be documented when a school-age child departs for and returns from school during the day.
- 3. C2AP, C3AP, CAPP, CMAP, and CFCC contractors shall use the monthly attendance record or invoice as the primary source document for audit and reimbursement purposes.
  - a. Child care providers shall submit a monthly attendance record or invoice, for each child who received services, Child care providers shall maintain attendance records or invoices in the original format in which they were created.
  - b. The monthly attendance record or invoices shall include, at a minimum:
    - i. The dates and actual times the child entered and left care each day. This information shall be documented on a daily basis.
    - ii. The signature of the parent or guardian, the name of the child receiving services and signature of the child care provider attesting under penalty of perjury that the information included on the monthly attendance record or invoice is true and accurate.
  - c. Contractors shall reimburse child care providers based on the following criteria:
    - i. The hours of service provided that are broadly consistent with the certified hours of need.
    - ii. For families with variable schedules, the actual days and hours of attendance, up to the maximum certified hours.
    - iii. For license-exempt providers that provide part-time services, the actual days and hours of attendance up to the maximum certified hours.
    - iv. Contractors shall reimburse providers within 21 calendar days of the receipt of a complete invoice for services (CCGDB 98.45(l)(1)).

#### D. Attendance and Absences

(5 CCR 18066)

(Applies only to CCTR, CSPP, CHAN, CMIG)

Attendance, for the purposes of reimbursement, includes excused absences because of illness or quarantine of the child, illness or quarantine of their parent, family emergency, court-ordered visitations or a reason which is clearly in the best interest of the child.

If the absence is claimed by the contractor as an excused absence, the attendance accounting records shall contain verification including:

1. The name of the child;
2. The date(s) of absence;
3. The specific reason for the absence; and
4. The signature of the parent or the contractor's authorized representative if verification is made by telephone.

If an excused absence is based on time spent with a parent or other relative as required by a court of law, the family data file shall contain a copy of the Court Order.

Contractors shall adopt reasonable policies delineating circumstances that would constitute an excused absence for "family emergency" and "in the best interest of the child."

Except for children who are recipients of protective services or at risk of abuse or neglect, excused absences "in the best interest of the child" shall be limited to ten (10) days during the contract period.

Contractors shall also adopt a policy governing unexcused absences that may include reasonable limitations, if any. Contractors shall inform parents of these policies.

#### E. General Record Keeping Requirements

(EC 8227.3, 8262.1, 33421 and 5 CCR 18067)

1. Pursuant to EC 33421, all records shall be retained by each contractor at least five (5) years or where an audit has been requested by a state agency, until the date the audit is resolved, whichever is longer. Claims for reimbursement shall not be paid unless there are documents to support the claims. The contractor has the burden of supporting claims for reimbursement.
2. Pursuant to EC 35254, public contractors must ensure that no original records be destroyed prior to the second July 1<sup>st</sup> succeeding the completion of the audit.
3. All CDE contractors and providers providing early learning and care services to eligible families, may maintain records electronically and are authorized to

convert records from a paper format to an electronic format, in compliance with state and federal standards as determined by the CDE (EC 8227.3 and 8262.1).

4. If the contractor has more than one (1) CDE program, then the method used to allocate administrative costs must be documented.
5. Contractors are required to maintain records to support salaries and benefits charged to early learning and care programs in accordance with the *California School Accounting Manual*.
6. State employees or representatives shall be allowed access to all program related or fiscal records during normal work hours. (EC 33421 and 5 CCR 18301(4))

#### F. Attendance and Expenditure Reports

(Applies to CCTR, CSPP, CHAN, CMIG) (EC 8261, 8269, 8406.6 and 5 CCR 18068)

Contractors on conditional and provisional status shall report monthly (due to CDNFS by the 20th of the following month). All other contractors shall submit four (4) cumulative attendance and fiscal reports to CDNFS for the quarters ending September 30, December 31, March 31, and June 30. Reports not received in CDNFS by the 20<sup>th</sup> of the month, following the end of the contractor's reporting period, shall be deemed delinquent and apportionment(s) shall be withheld until the required report is received.

Contractors shall submit reports containing the following information for each contract to the CDNFS:

1. Days of enrollment, as indicated on the family's Notice of Action, for all children served in the program in the current reporting period and year to date.
2. Days of attendance, per the child's sign in and out records and other accompanying attendance records, for all children served in the program in the current reporting period and year to date.
3. Total days of operation in the current reporting period and year to date.
4. All services, revenues and expenditures for both subsidized and non-subsidized children, if non-subsidized and subsidized children are commingled as defined in Section I above.
5. Amount and sources of all revenues, including restricted and unrestricted income utilized for the child development program, other than advanced contract funds for the current reporting period and the year-to-date.
  - a. Restricted income that is not expended during the contract period remains

restricted and shall be considered deferred revenue and is not reported on the Attendance and Expenditure Reports until expended, at which time it is reported as restricted income.

6. Total expenditures related to the program operation for the current reporting period and the year-to-date total, including all expenses for specific purposes, as designated by restricted income and all non-reimbursable expenses.

Reports not received by the due date shall be considered delinquent. Penalties for delinquent reporting are specified in 5 CCR Section 18056.

Contractors on conditional status or provisional status shall report monthly.

The report shall include a certification that the information contained in the report is correct and complete and the original signature, or digital signature where applicable, of the person authorized by the contractor to certify the report.

Contractors have sixty (60) days from the due date for submission of the audit to submit a revised final report. For local educational agencies, the final report shall be the final accounting of any amount payable to or receivable from the contractor pursuant to this contract.

#### G. Alternative Payment and CFCC Expenditure Reports

(Applies to C2AP, C3AP, CAPP, CMAP, CFCC)

Contractors on conditional and provisional status shall report monthly (due to CDNFS by the 20th of the following month). All other contractors shall submit four (4) cumulative fiscal reports to CDNFS for the quarters ending September 30, December 31, March 31, and June 30. All reports must be submitted strictly through the internet via CDE's official Web site. Reports not received by the 20<sup>th</sup> of the month, following the end of the contractor's reporting period, shall be deemed delinquent and apportionment(s) shall be withheld until the required report is received.

Contractors shall submit reports containing the following information for each contract:

1. Amount and sources of all revenues, other than advanced contract funds for the current reporting period and year-to-date, restricted and unrestricted income shall be reported as follows:
  - a. Restricted income expended during the contract period shall be reported as "restricted." Restricted income that is not expended during the contract period remains restricted and shall be considered "deferred revenue" and is not reported on the Attendance and Expenditure Reports until expended, at which time it is reported as restricted income.
  - b. All unrestricted income shall be reported as "unrestricted."

2. Total expenditures related to the program operation for the current reporting period and the year-to-date total, including all expenses for specific purposes as designated by restricted income and all non-reimbursable expenses.

Reports not received by the due date shall be considered delinquent. Penalties for delinquent reporting are specified in 5 CCR 18056.

Each report shall include a certification of the person authorized by the contractor that the information contained in the report is correct and complete.

Contractors have sixty (60) days from the due date for submission of the audit to submit a revised final report. For local educational agencies, the final report shall be the final accounting of any amount payable to or receivable from the contractor pursuant to this contract.

### 3. Total Days of Operation

C2AP, C3AP, CAPP, CMAP, CFCC will include the Days of Operation in the current reporting period and year to date.

## H. Caseload Reports

(Applies to C2AP, C3AP)

1. In addition to submitting a monthly expenditure report, all CalWORKs contractors shall submit a CalWORKs Caseload Report(s) on a monthly basis. Caseload reports shall be submitted strictly through the internet via CDE's official Web site and are due to CDNFS by the 20<sup>th</sup> of the following month. Caseload reports not received by CDNFS by the 20<sup>th</sup> of the month, following the end of the contractor's reporting period, shall be deemed delinquent and apportionment(s) shall be withheld until the required report(s) is received.
  - a. If a contractor provides services in more than one (1) county, the contractor is required to submit a separate CalWORKs Caseload Report for each county in which services are being provided.
  - b. CalWORKs Caseload Reports shall represent actual service and expenditure data for the report month.
  - c. Each report shall include a certification of the person authorized by the contractor that the information contained in the report is correct and complete.

## I. CRRP Expenditure Reports

5 CCR 18068

Contractors on conditional and provisional status shall report monthly (due to CDNFS by the 20th of the following month). All other contractors shall submit four

(4) cumulative fiscal reports to CDNFS for the quarters ending September 30, December 31, March 31, and June 30. Reports not received in CDNFS by the 20th of the month, following the end of the contractor's reporting period, shall be deemed delinquent and apportionment(s) shall be withheld until the required report is received.

Contractors shall submit reports containing the following information for each contract to the CDNFS:

1. Total days of operation in the current reporting period and year to date;
2. Amount and sources of all revenues, other than advanced contract funds, for the current reporting period and the year-to-date total;
3. Total expenditures related to the program operation for the current reporting period and the year-to-date total.

The report shall include a certification that the information contained in the report is correct and complete and the original signature of the person authorized by the contractor to certify the report.

Contractors have sixty (60) days from the due date for submission of the audit to submit a revised final fiscal report. For local educational agencies, the final report shall be the final accounting of any amount payable to or receivable from the contractor pursuant to this contract.

J. Service Data Report for Resource and Referral Programs

(5 CCR 18069) (Applies to CRRP)

Contractors shall submit reports to the CDE which contain the following data at intervals specified above.

1. Number of requests for general child care information and child care referrals;
2. Age categories of child care requests and referrals:
  - a. Infant (birth to eighteen months);
  - b. Toddlers (eighteen months to thirty-six months);
  - c. Preschool (three years to kindergarten enrollment; and
  - d. School age (kindergarten enrollment to age 14.
3. Time categories of child care referrals:
  - a. Full-time;
  - b. Part-time.



4. Number of children needing:
  - a. Before and/or after school;
  - b. Summer only child care;
  - c. Other child care (evening, overnight, weekends, drop-in, etc.).
5. Reasons for requesting referrals:
  - a. Employed;
  - b. Looking for work;
  - c. In school/training;
  - d. Other parental needs;
  - e. Child protective services (CPS)/respite referral;
  - f. Alternative/back-up care;
  - g. Mildly ill child;
  - h. Enrichment and/or development.
6. Number of:
  - a. Licensed child care centers;
  - b. Licensed family day care homes;
  - c. License-exempt child care centers

Other license-exempt providers (optional). Penalties for delinquent reporting are specified

K. Child Development Data Collection

(5 CCR 18070)

The contractor shall submit the following:

Monthly Child Care Population Information (CDD-801A) submitted electronically in accordance with instructions from the CDE.

If the contractor is selected and notified by mail to submit sample data, they must complete the Child Development Data Collection Sample Report (CDD-801B) electronically in accordance with the instructions from the CDE.

Contractors shall submit complete, accurate reports to the CDE by the date specified, and in the format specified in the CDE's request for this information. Incomplete, inaccurate, or incorrectly formatted reports, and reports not received by the required date, shall be considered delinquent. Penalties for delinquent reporting are specified in 5 CCR 18056.

L. Other Report Data

(5 CCR 18070)

Contractors shall submit statistical, cost and program data as requested by the CDE in order for the CDE to prepare various legislatively mandated reports, to meet state and federal reporting requirements and for the effective administration of early learning and care programs.

Contractors submitting data to the CDE will include a certification that the data are correct and complete, and the signature of the person authorized by the contractor to certify the data. The signature may be electronic as specified by the CDE.

Contractors shall submit complete, accurate data to the CDE by the date specified, and as specified, in the CDE's request for this information. Incomplete, inaccurate, or incorrectly formatted reports, and reports not received by the required due date shall be considered delinquent. Penalties for delinquent reporting are specified.

M. Building a Better Early Care and Education System (BBECES)

(Applies to all contract types that provide care through family child care homes and/or through individual licensed-exempt providers)

(EC 8430-8432; Civil Code 1798.17; 42 USC 9858c(2)(D) and (U); 45 CFR 98.16(aa), 98.33 and 98.42)

"Family childcare provider" or "provider" for purposes of implementation of Section VI(M) of these Funding Terms and Conditions means a childcare provider who participates in a state-funded early care and education program and is either of the following:

(A) An individual who operates a family daycare home, as defined in Section 1596.78 of the Health and Safety Code, and who is licensed pursuant to the requirement in Section 1596.80 of the Health and Safety Code.

(B) An individual who provides early care and education in their own home or in the home of the child receiving care and is exempt from licensing requirements pursuant to Section 1596.792 of the Health and Safety Code. EC 8431 (a)(1)

1) Submission and Disclosure of Child Care Provider Information

Contractors are required to collect and submit to the CDE, or its designee, as required by law, the following information for all licensed family child care home providers and individual licensed-exempt child care providers providing subsidized child care services and in conformance with the format, timeline and manner prescribed by the CDE, and in accordance with the BBECES:

- a) Name of child care provider (excluding volunteers and assistants)
- b) Mailing address of provider
- c) Home address of provider
- d) County of provider home address
- e) Email Address of provider, if known
- f) Cell, Work and Home phone numbers of provider, if known
- g) Whether provider is licensed or not, and, if licensed, the license number
- h) The date subsidized care began
- i) The date subsidized care ended, if applicable
- j) Agency, contractor, subcontractor, or political subdivision administering the program

The information collected from family child care providers, as defined, may be re-disclosed by the CDE to provider organizations as defined in law as well as other state agencies as permitted by law for purposes of organizing, representing, and assisting family child care providers, as well as for purposes of emergency response planning and monitoring health and safety requirements to comply with Child Care and Development Block Grant requirements.

Contractors shall not delay or obstruct the collection of the provider information.

Contractors must notify family child care providers in writing of the collection and use of the information in order to comply with applicable laws, including the Information Practices Act.

Upon learning that a family child care provider will no longer receive a subsidized child care payment, contractors shall, as required by law and in conformance with the format, timeline and manner prescribed by the CDE, inform the CDE of the date the provider ended subsidized care.

## 2) Notices and Communications

Contractors are required to distribute to providers and/or post on their website all notices and communications as may be required by the BBECES or any applicable Memorandum of Understanding.

### 3) Reimbursement

Contractors are required to deduct from reimbursement any dues as requested by a certified provider organization. The deductions may include membership dues, initiation fees, general assessments, and payment of any other membership benefit program sponsored by the certified provider organization.

If the deductions from a provider's subsidy payments required action by more than one contractor, the certified provider organization shall establish reasonable procedures to ensure that the total amount deducted does not exceed the total dues and other voluntary deductions owned by that provider.

A contractor must rely on a certification from the certified provider organization requesting a deduction that it has and will maintain an authorization, signed by the individual provider from whose subsidy the deduction is to be made. A certified provider organization that certifies that it has and will maintain authorization shall not be required to provide a copy of an individual authorization to the entity unless a dispute arises about the existence or terms of the authorizations.

### 4) Memorandum of Understanding

Must adhere to any requirements that bind contractors in any applicable memorandum of understanding

### 5) Interference

Contractors are prohibited from interfering with the right of providers to collectively bargain and further prohibited from deterring or discouraging providers to join the union

### 6) Training Partnership

Contractors must notify the certified provider organization of orientations, preservice meetings, meetings, and trainings, either in-person or online, and allow representatives from the certified provider organization to present at the orientations and training as permitted under the BBECES or as provided for in any applicable memorandum of understanding.

## N. Annual Financial and Compliance Audits

(5 CCR 18071 and EC 8224)

Contractors shall submit to the CDE, Audits and Investigations Division (A&I), an acceptable annual financial and compliance audit. All audits shall be performed by one of the following:

1. A Certified Public Accountant who possesses a valid license to practice within the State of California;

2. A Public Accountant licensed on or before December 31, 1970 and currently certified and licensed by the State of California;
3. A member of the CDE's staff of auditors.
4. Public contractors may have their audits prepared by in-house auditors or internal audit staff that performs auditing functions and meets the tests of independence found in the Government Auditing Standards, issued by the Comptroller General of the United States.

The audits for school districts and county offices of education for the contract period shall be submitted to the State Controller and the CDE by **December 15**, in accordance with *EC 41020* and extensions shall only be granted in accordance with *EC 41020.2*.

The audit reports for community colleges are due to CDE by **December 31**.

All other contractors shall submit their annual audit to CDE by the 15<sup>th</sup> day of the fifth month following the end of the contractor's fiscal year, or earlier if specified by CDE. The audit report must meet the requirements of the *Audit Guide*, including the requirements for early learning and care specific supplementary information. If a contractor receives less than twenty-five thousand dollars (\$25,000) per year from any state agency, the audit shall be conducted and submitted biennially, unless the CDE deems there is evidence of fraud or other violation of state law in connection with the contract. If the contract is terminated during the contract period, then the audit required under this paragraph shall cover the period from the beginning of the contract through the date of termination.

Any contractor who subcontracts their early learning and care services to another entity (see "Subcontract for early learning and care services" in Definitions) is required to submit an audit report that complies with the *Audit Guide* for their for their subcontractor(s) as well as for their agency.

Private agencies (including proprietary entities) that expend seven hundred fifty thousand dollars (\$750,000) or more in total federal funds are required to have an Organization Wide Audit (OWA) performed in accordance with the *Uniform Guidance* and the *Audit Guide*.

Governmental and other public agencies (excluding school districts, county offices of education and community college districts) must comply with the requirements of the *Uniform Guidance* and the *Audit Guide*. All other agencies (excluding school districts, county offices of education and community colleges) must submit a contractor audit performed in accordance with the *Audit Guide*.

The audits for Alternative Payment Programs (APs) shall include, but not be limited to, a sampling of the evidence of fees charged to, and paid by, families of non-subsidized children, the daily enrollment of subsidized children, the number of days of service provided to subsidized children, the assessment and collection of parent fees, and the availability of support services to subsidized children and

their families as needed pursuant to the terms of the contract.

O. Review of Audit by the CDE Audits and Investigations Division (A&I)

(5 CCR 18072)

The A&I shall conduct a review of the audit to determine whether the audit is acceptable and to determine the contractor's net reimbursable program costs.

The contractor may appeal the A&I findings according to the procedures specified, if the amount of the demand for remittance meets or exceeds the threshold specified in *EC 8402(a)(3)*.

P. Delinquent Audits and One-Time-Only Extensions

(5 CCR 18073)

If an audit is not received on or before the required due date and an extension has not been granted, the audit shall be considered delinquent and all apportionments shall be withheld.

Except for contractors on conditional status, the A&I may annually grant a contractor a one-time-only, thirty (30) calendar day extension of the audit due date provided the inability of the contractor to submit the audit by the due date was beyond the fault and control of the contractor.

Contractors shall be liable for all CDE costs incurred in obtaining an independent audit if the contractor fails to produce or submit an acceptable audit.

Q. California State Auditor

(GC 8546.7)

Contractors shall be subject to the examination and audit of the California State Auditor for a period of three (3) years after final payment under this contract.

R. Budget and Calendar

Contractors shall submit a revised calendar to the ELCD and CDNFS whenever there are changes to the most recent version submitted. Contractors shall submit revised budgets as requested.

S. Reserve Accounts

All contractors are encouraged to develop and maintain a reserve within the Child Development Fund. This reserve is derived from earned, but unexpended contract funds. Reserve account funds are state funds the contractor holds in reserve as deferred revenue until they are properly spent or returned to the CDE.

**C2AP, C3AP, CAPP, CMAP, CFCC** contractors may retain a reserve balance of

up to two percent (2%) of the maximum allowable administration and support costs for the aggregate sum of all alternative payment contracts or one thousand dollars (\$1,000), whichever is greater. *EC 8450 (d)*

**CCTR, CHAN, and CMIG** contractors may retain a reserve balance equal to five percent (5%) of the sum of the maximum reimbursable amounts of all contracts to which the contractor is a party, or two thousand dollars (\$2,000), whichever is greater. *EC 8450*

**CSPP** contractors may retain a reserve balance in a center-based reserve account, separate from reserve funds maintained in a resource and referral reserve account or alternative payment reserve account. The reserve account may be equal to fifteen percent (15%) of the sum of the maximum reimbursable amounts of CSPP, CCTR, CMIG, CHAN contracts to which the contractor is a party, or two thousand dollars (\$2,000), whichever is greater. Of the fifteen percent (15%), ten percent (10%) shall be solely used for the purposes of professional development for CSPP instructional staff. *EC 8450 (b)(2)(B)*

**CRRP** contractors may retain a reserve balance not to exceed three percent (3%) of the contract maximum reimbursable amount. This reserve is derived from unexpended contract funds. *EC 8450 (c)*

#### Reserve Account Requirements

The following criteria must be followed when establishing and using any reserve account:

1. Each agency wishing to establish a reserve shall submit a letter of intent no later than July 20 following the close of the fiscal year for which the reserve will be established. The letter of intent must be on the form provided by CDNFS and signed by the executive director (or authorized designee for public agencies).
2. Each reserve must be maintained in an interest-bearing account and the amount of interest earned will be included in the reserve balance.
3. Reserve monies can only be used for expenses that are allowable reimbursable expenses. Transfers from one reserve account type (or category) to another are not allowable. However, transfers to a current-year contract in the same reserve category are allowable and shall be reported as restricted program income on that contract's attendance and fiscal report.
4. Reserve monies are generated from current year contracts, therefore, the transferable amount generated during the contract period will not be available until July 1 of the subsequent fiscal year.
5. Transfers to the reserve will be authorized by CDNFS only once per fiscal year. Upon receipt of the June final report, preliminary reserve amounts will be calculated by CDNFS and reported to the contractor. If the contractor is an

LEA, this may be the official notification provided there are no further amendments. For agencies required to submit an audit to the CDE, the amount will not be final until the audit is closed by the A&I and there are no outstanding billings.

6. Participating agencies must submit a Reserve Account Activity Report with a copy of their supporting General Ledger for each reserve account category type along with their June attendance and fiscal report due July 20. Reports not received in CDNFS by July 20 shall be deemed delinquent and apportionment(s) shall be withheld until the required report is received.
7. Upon closure of a reserve account or termination of early learning and care contracts, all monies in any reserve account shall be returned to the CDE.



## **VII. TECHNICAL ASSISTANCE**

*(EC 8406.6)*

Technical assistance shall be provided to any contracting agency making a written request to its assigned consultant or administrator within sixty (60) days of receipt of the request.

## **VIII. CONTRACT CLASSIFICATIONS**

### **A. Clear Contract**

(*EC 8406.6*)

This designation shall be given to a contract that is neither a provisional contract, as described in paragraph (B) nor a conditional contract, as described in paragraph (C).

### **B. Provisional Contract**

(*EC 8406.6 and 5 CCR 18068*)

This designation applies to an agency's first contract for any particular service or to the contract of an existing contracting agency for a new, modified, or different type of service. The timeframe of a provisional contract is at the discretion of the CDE and is given to ensure that the contracting agency can demonstrate fiscal and programmatic compliance before the contract is designated as a clear contract. Contractors on provisional status shall submit monthly fiscal and attendance reports to CDNFS. The contract status shall be reviewed annually.

### **C. Conditional Contract**

(*EC 8406.6, 5 CCR 18001, 18068, and 18306*)

This designation applies to a high-risk contract awarded to a contracting agency that evidences fiscal or programmatic noncompliance, or both fiscal and programmatic noncompliance.

A contracting agency with one or more contracts designated as conditional is deemed to be on conditional status with the CDE for all early learning and care program purposes and is subject to any restrictions deemed reasonable to secure compliance.

The conditional contract shall include Conditional Status Addendum that contains a bill of particulars detailing the items of noncompliance, the standards that must be met to avoid termination of the contract and to qualify the agency for clear contract status, and a technical assistance plan.

Failure to demonstrate substantive progress toward fiscal or program compliance within six (6) months of that designation shall constitute a breach of contract and may subject the contract to termination for any applicable cause specified in *EC 8406.7* or *8407*, in accordance with Section 8402.

Contractors receiving conditional contracts (stamped on the face sheet of the contract) shall be on conditional status until the CDE issues a contract rider formally clearing the contract.

While on conditional status, the contractor shall submit monthly fiscal and attendance reports to CDNFS. The first monthly report shall include a current inventory of equipment purchased in whole or in part with contract funds.

Contractors on “conditional” status are not eligible to apply for new or additional funds.

Contractors on “conditional” status shall receive technical assistance from the CDE.

## **IX. APPEALS, TERMINATIONS, AND NON-RENEWALS**

(*EC 8400-8409 and 5 CCR 18301, 18302*)

### **A. Resolution of Contract Administration Disputes**

(*EC 8401.5 and 5 CCR 18301*)

The procedure specified in this Section shall be used to resolve disputes between contractors and the CDE that may arise regarding the interpretation and application of any term or condition of a contract, including, but not limited to, requests for waivers, approval of subcontracts or expenditures requiring approval, requests for reimbursement rate adjustments, or reductions in the total amount of contract reimbursement that are not appealable.

The contractor shall attempt to resolve contract disputes at the lowest staff level within the CDE.

If the dispute is not resolved at the lowest staff level, the contractor may appeal the decision by submitting a written description of the issues and the basis for the dispute to the Regional Administrator of the CDE having jurisdiction over the contractor's service delivery area. The Regional Administrator shall make a determination and shall send a written notification of the decision to the contractor, together with the reasons for the decision, within thirty (30) calendar days of the receipt of the appeal by the Regional Administrator.

The contractor may appeal the decision of the Regional Administrator to the Associate Director of the ELCD by submitting a written description of the issues in dispute, and a copy of the Regional Administrator's decision. The Associate Director of the ELCD shall send notification of the decision to the contractor and shall specify the reason(s) for the decision within thirty (30) calendar days of the receipt of the appeal by the Associate Director. The decision of the Associate Director of the ELCD shall be the final administrative action afforded the contractor.

### **B. Independent Appeal Procedures**

(*EC 8402 and 5 CCR 18301*)

Pursuant to the requirements of *EC 8400 through 8409*, an independent appeal procedure shall be available to any contractor whose contract is terminated, or where the denial of an agency's contracted payment or a demand for remittance of an overpayment is more than twenty-five thousand dollars (\$25,000) or four percent (4%) of a local contracting agency's annual contract, whichever is less.

Such appeals shall be heard by independent hearing officers in accordance with procedures established by the Office of Administrative Hearings (OAH) as specified in *California Code of Regulations, Title 1*, sections 1121 through 1126,

C. Immediate Termination

(EC 8406.7, 8406.9 and 8408)

1. A contracting agency that evidences any of the following acts or omissions may have its contract immediately terminated if there is documented evidence of the acts and omissions, and upon review and recommendation of the general counsel of the CDE for any of the following reasons:
  - a. Fraud, or conspiracy to defraud.
  - b. Misuse or misappropriation of state or federal funds, including a violation of *EC 8406.9*.
  - c. Embezzlement.
  - d. Threats of bodily or other harm to a state official.
  - e. Bribery or attempted bribery of a state official.
  - f. Unsafe or unhealthy physical environment or facility.
  - g. Substantiated abuse or molestation of children.
  - h. Failure to report suspected child abuse or molestation.
  - i. Theft of supplies, equipment or food.
  - j. Cessation of operations without the permission of the CDE, or acts or omissions evidencing abandonment of the contract or contracts.
  - k. C2AP, C3AP, CAPP, CMAP, and CFCC contractors that fail to fully reimburse a significant number of approved child care providers as determined by the CDE, within fifteen (15) calendar days after the date set in the plan for timely payments to child care providers, adopted by the contracting agency, pursuant to 5 *CCR 18226*, unless the failure is attributable to a delay in receiving apportionments from the state.
  - l. Failure to pay salaries owed to employees, or pay federal payroll tax, for more than fifteen (15) days after the employee salaries, or federal payroll taxes were due, unless the failure is attributable to a delay in receiving apportionments from the state.
  - m. Contractors that have in place or who place a person in a position of fiscal responsibility or control who have been convicted of a crime involving misuse or misappropriation of state or federal funds, or a state or federal crime involving moral turpitude, may have its contract terminated if there is documented evidence of the conviction, and upon review and recommendation of the general counsel of the CDE.

For purposes of this section, “position of fiscal responsibility or control” includes any authority to direct or control expenditure of, or any access to, state or federal early learning and care funds received pursuant to this section whether that authority or access is conferred based on the person’s status as an employee, director, manager, board member, or volunteer, or based on any other status.

If the agency provides evidence to the CDE, before the effective date given in the notice of immediate termination, that the convicted person has been removed from the position of fiscal responsibility or control and provides assurance that the person will not be returned to a position of fiscal responsibility or control, the CDE shall withdraw the termination action.

2. A contractor whose contract is immediately terminated retains appeal rights.

Contractors that are the subject of an immediate termination shall not continue to operate during the appeal of termination.

#### D. Non-Immediate Termination

(EC 8406.7, 8406.9, 8407 and 5 CCR 18301)

1. In addition to the grounds set forth above in *Immediate Termination*, which also may be the basis for a non-immediate termination, termination of a contract during the contract period may occur when:
  - a. A contractor fails to correct items of fiscal or programmatic noncompliance within six (6) months of receiving a conditional contract which includes a Conditional Status Addendum stating the specific items of noncompliance and the corrective actions necessary to come into compliance; or
  - b. A contractor fails or refuses to make available for examination or copying by an authorized employee of the CDE any records or documents that the contractor is required to retain, upon a request by that employee to examine or copy such records or documents; or
  - c. A contractor refuses to permit an authorized employee of the CDE to enter a facility operated by the contractor during the days and/or hours of operation on file with the CDE, for the purpose of reviewing administrative operations of the contractor or for observing early learning and care services provided by the contractor.
2. Any action by the CDE to terminate a contract, other than to terminate a contract on an immediate basis or to take action to deny the contracting agency more than four percent (4%) or twenty-five thousand dollars (\$25,000), (whichever is less), of an agency’s contract or to demand remittance of an overpayment of an agency’s contract of more than the same amount, as stated in EC 8402(a)(1) through (3), shall be preceded by a ninety (90) day notice of the action, stating the specific reasons for the action and describing the

contractor's appeal rights. Except for cases of immediate termination, contractors that are terminated shall be allowed to continue to operate during the appeal of termination.

#### E. Appeals Procedures For Independent Appeals

(5 CCR 18301 and GC 11500)

##### 1. Notice of Defense/Appeal Petition

The contractor shall be served notice of the action as set forth in *EC 8406* and *GC 1500 et seq.* The contractor may contest the noticed action as set forth in *GC 11506* by filing a notice of defense/appeal petition with the CDE within fifteen (15) days after service of the action, and may request a hearing before the OAH. The notice of defense/appeal petition shall include:

- a. A clear, concise statement of the action being appealed; and
- b. The name, address and telephone number of the contractor's authorized representative for the proceeding.

In addition, the contractor may also, as part of the Notice of defense/appeal petition:

- a. Object to the action upon the grounds that it does not state acts or omissions upon which the contractor may proceed;
  - b. Object to the form of the action on the grounds it is so indefinite or uncertain that the respondent cannot identify the transaction or prepare a defense;
  - c. Admit any of the charges in the action in whole or in part;
  - d. Object to the action upon the grounds that, under the circumstances, compliance with the requirements of a regulation would result in a material violation of another regulation enacted by another department affecting substantive rights.
- ##### 2. Failure To Submit A Timely Notice Of Defense Or Appeal Petition Or Proceed With Appeal

If a contractor is served a notice of action and fails to properly file a notice of defense/appeal petition, or files a notice of defense/appeal petition, but fails to appear at the appeal hearing, action may be taken by the CDE (or by the Administrative Law Judge for failure to appear at the hearing) based upon the contractor's express admissions or other evidence and affidavits without any notice to the contractor. Notwithstanding the default, the CDE or the OAH may, before a proposed decision is issued, grant an appeal hearing on reasonable notice to the parties. If the CDE issues a default decision against the

contractor, it must serve notice of that decision on the contractor and the contractor has seven (7) days after service to request that the decision be vacated stating the grounds relied on. The CDE, in its discretion, may vacate the decision and grant a hearing on a showing of good cause.

### 3. Hearing

If the contractor submits a timely request for a hearing, the CDE shall have ten (10) calendar days to request that the OAH schedule a hearing and transmit the following to the OAH:

- a. The notice of defense/appeal petition submitted to the CDE by the contractor;
- b. The original notice of action sent to the contractor; and
- c. The name, address and telephone number of the CDE authorized representative for the proceeding.

The OAH shall schedule a hearing on the appeal filed by a contractor to commence no later than thirty (30) calendar days following the receipt of the petition by the CDE, but at least ten (10) calendar days' written notice will be given of the time and place of the hearing. An OAH hearing officer will hear evidence submitted by the CDE and the contractor during the hearing. The hearing will be recorded. The hearing officer may continue hearings, if deemed necessary.

### 4. The Decision

The hearing officer shall issue a final decision, in writing, within thirty (30) calendar days after the submission of the case. The decision shall be sent by registered mail or personally served on the representatives of the parties by OAH. The decision shall be the final administrative action afforded the contractor.

### 5. Settlement between the Parties

The CDE and contractor may, at any time before or after issuance of a notice of action, agree to a settlement of the actions. The settlement terms, as agreed to by both parties, are to be incorporated into a stipulation and waiver decision that is approved by the CDE agency head or his or her designee and issued by the CDE. The decision shall be the final administrative action afforded the contractor.

### 6. Request for Additional Written Materials on File at CDE

Contractors may request, in writing, any public documents on which the CDE intends to rely from the CDE files at a cost of fifteen cents (\$.15) cents per page, payable in advance. The CDE will mail the material requested not later than ten



(10) days from the receipt of the request.

F. Contractor's Responsibility After Notice of Termination/Nonrenewal

(5 CCR 18302 and 18054)

After receiving notice of the CDE's decision to terminate the contract or to make no offer of continued funding, the contractor shall submit copies to, or make available for copying by the CDE, all of the following:

1. A current inventory of equipment purchased in whole or in part with contract funds;
2. The names, addresses and telephone numbers of all families served by the contract, all staff members funded by the contract; and
3. Monthly enrollment and attendance reports until the contract is actually terminated or until the final month for which the contractor retains a contract. C2AP, C3AP, CAPP, CMAP, and CFCC contractors shall also submit the names, addresses and telephone numbers of all providers of subsidized services under the contract

The CDE shall only be obligated to compensate the contractor for net reimbursable program costs or earnings, whichever is less, in accordance with this contract through the date of termination. There shall be no other compensation to the contractor. The CDE shall offset any monies the contractor owes against any monies CDE owes under this contract.

## **X. CONTRACT STATUS CHANGE PROCEDURES**

(EC 8401.5 and 8406.6)

### **A. Administrative Review of Changes in Contract Status**

(5 CCR 18303)

Contract performance shall be reviewed at least annually by CDE staff who shall determine by April 1 of each year whether to offer continued funding on a clear contract, continued funding on a conditional basis or to make no offer of continued funding.

If the staff recommends conditional status or no offer of continued funding, the contractor shall be notified in writing of the reasons for the proposed change in contract status by April 7. The notice of proposed action shall be sufficiently specific to allow the contractor to respond to the factual basis for the proposed action.

If the contractor disagrees with the proposed action, the contractor's response shall be received by the CDE within ten (10) calendar days of receipt of the notice of proposed action. The contractor's response shall include any written materials in support of its position and, if the contractor intends to make an oral presentation, the response shall so specify.

If the action is being appealed, the staff recommendation and the contractor's response shall be reviewed by an administrative review panel convened by the Director of the ELCD within seven (7) calendar days of receipt of the contractor's response. The review panel will consist of representatives of ELCD management, CDNFS, CDE's Legal Office, A&I, Contracts Office, and a representative of an early learning and care service provider familiar with the type(s) of program(s) operated by the contractor.

Upon review of the written submissions, the panel will do one of the following:

1. Issue a final decision upholding or modifying the proposed change in status if no oral presentation has been requested;
2. Schedule a time and place for an oral presentation by the contractor; or
3. Issue a final decision to not change the contract status.

If an oral presentation has been requested, the contractor will be notified by telephone of the time and place of the presentation. The oral presentation will be scheduled no later than fourteen (14) calendar days from receipt of the contractor's response.

At the oral presentation, the contractor or the contractor's representative will have an opportunity to explain any material submitted in its response. While the

contractor may present any information or arguments that are relevant to the proposed action, the review panel may set reasonable limits on the scope of the presentation.

Within seven (7) calendar days after the oral presentation, the review panel shall issue and mail to the contractor a decision upholding, reversing or modifying the proposed change in contract status. The decision of the review panel shall be the final action of the CDE with regard to that contract.

**B. Conditional Status Imposed During the Contract Period**

(5 CCR 18304)

If the contractor demonstrates fiscal or programmatic noncompliance during the contract period, based on such information as an annual audit report, a FPM/CMR, or a change in licensing status, the CDE may place the contract on conditional status for the remainder of the contract period.

The contractor shall receive notice and may request an administrative review of the proposed action as required by 5 CCR 18303, in the event such a change in contract status is recommended by staff of the CDE.

If the contract is placed on conditional status during the last ninety (90) days of the contract period and the contractor is offered continued funding, the contract for the subsequent contract period will also be on conditional status.

**C. Conditional Status Addendum**

(EC 8406.7, 8406.9, 5 CCR 18305)

If the contractor is placed on conditional status during the contract period a Conditional Status Addendum will be issued by the CDE and the Conditional Status Addendum shall be considered a part of the annual child development contract and binding on the contractor.

A Conditional Status Addendum shall contain a bill of particulars as specified in EC 8406.6, which shall detail the items of noncompliance, the standards that must be met to avoid termination of the contract and to qualify the contractor for clear contract status and a technical assistance plan. The Addendum shall further include all the following:

1. The specific item(s) of noncompliance which the contractor must correct;
2. The specific corrective action(s) which must be taken;
3. The time period within which the contractor must complete the corrections; and
4. Notice that failure to demonstrate substantive progress within six (6) months shall constitute a breach of contract and may result in termination of the

contract either through an immediate or ninety (90) day noticed action, or no offer of continued funding.

D. Duration of Conditional Contract Status

(EC 8406.6(a)(3) and 5 CCR 18307)

Failure to demonstrate substantive progress toward fiscal or program compliance within six (6) months of being on conditional status shall constitute a breach of contract and may subject the contract to termination for any applicable cause specified in EC 8406.7 or 8407 in accordance with EC 8402. Regardless of whether the contractor complies with the terms of the Conditional Status Addendum, the contractor's contract may not be renewed the following year pursuant to the procedures set forth in the FT&C section *Appeals and Termination*.

A contractor with a repayment plan shall remain on conditional contract status and not receive any apportionments until full repayment is made.

A contractor on conditional contract status that is not on a repayment plan shall remain in that status until:

1. The CDE issues written notice to the contractor that the conditional status has been cleared;
2. The contractor is issued a clear contract; or
3. The contract terminates according to its terms.

A contractor may request written verification from the CDE that some of the deficiencies have been corrected even if the contractor will not be removed from conditional contract status.

E. Contractor's Responsibility After Notice of Termination or Notice of Decision to Make No Offer of Continued Funding

(5 CCR 18302)

After receiving notice of the CDE's decision to terminate the contract or to make no offer of continued funding, the contractor shall submit copies to, or make available for copying by the CDE, all of the following:

1. A current inventory of equipment purchased in whole or in part with contract funds;
2. The names, addresses and telephone numbers of all families served by the contract, all staff members funded by the contract; and
3. Monthly enrollment and attendance reports until the contract is actually

terminated or until the final month for which the contractor retains a contract. CFCC contractors and Alternative Payment programs shall also submit the names, addresses and telephone numbers of all providers of subsidized services under the contract.