

CONTRACT GENERAL PROVISIONS BETWEEN
SAN DIEGO WORKFORCE PARTNERSHIP
AND
WORKFORCE INNOVATION AND OPPORTUNITY ACT GRANT SUBRECIPIENT

Federal Assurances and Certifications

Except as otherwise indicated, Subrecipient, as a Workforce Innovation and Opportunity Act (“WIOA”) grant subrecipient, shall adhere to all the following certifications and assurances. To facilitate evaluation of Subrecipient’s operation and assure compliance with WIOA and other applicable federal, state, or local regulations, subrecipient shall adhere to San Diego Workforce Partnership (“SDWP”) Operations Manual.

1. Compliance

In performance of this agreement, Subrecipient will fully comply with:

- a. The provisions of the WIOA, the Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Final Rule at 2 Code of Federal Regulations (CFR) Chapter I and Chapter II, Part 200, et al (here after referred to as Uniform Guidance 2 CFR Part 200) and the Department of Labor’s (DOL) exceptions at 2 CFR Chapter II, Part 2900, et al. (here after referred to as DOL Exceptions 2 CFR Part 2900) and all regulations, legislation, directives, policies, procedures and amendments issued pursuant thereto.
- b. All State legislation and regulations to the extent permitted by federal law and all policies, directives and/or procedures, which implement the WIOA.
- c. The provisions of Public Law 107-288, Jobs for Veterans Act, as the law applies to DOL job training programs.
- d. Subrecipient will ensure diligence in managing programs under this agreement, including performing appropriate monitoring activities and taking prompt corrective action against known violations of the WIOA. Subrecipient agrees to conform to the provisions of the WIOA and the contract requirements as referenced in Uniform Guidance 2 CFR Part 200, Appendix II, and DOL Exceptions 2 CFR Part 2900, Appendix II to Part 200.

This agreement contains the entire agreement of the parties and supersedes all negotiations, verbal or otherwise and any other agreement between the parties hereto. This agreement is not intended to and will not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association between the SDWP and the Subrecipient.

Subrecipient represents and warrants it is free to enter into and fully perform this agreement.

2. Certification/Assurances

Except as otherwise indicated, the following certifications and provisions apply to all Subrecipients.

- a. Corporate Registration. The Subrecipient, if it is a corporation, certifies it is registered with the Secretary of State of California.

- b. The Subrecipient agrees to comply with the Americans with Disabilities Act (ADA) of 1990, which, prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to ADA. (42 U.S.C.12101 et seq).
- c. Sectarian Activities. The Subrecipient certifies that this agreement does not provide for the advancement or aid to any religious sect, church or creed, or sectarian purpose nor does it help to support or sustain any school, college, university, hospital or other institution controlled by any religious creed, church, or sectarian denomination whatsoever, as specified by Article XVI, Section 5, of the Constitution, regarding separation of church and state.
- d. National Labor Relations Board. The Subrecipient (if not a public entity), by signing this contract, does swear under penalty of perjury, that no more than one final unappeasable finding of contempt of court by a federal court has been issued against the Subrecipient within the immediately preceding two-year period because of Subrecipient's failure to comply with an order of a federal court, which orders the Subrecipient to comply with an order of the National Labor Relations Board (PCC10296).
- e. Prior Findings. Subrecipient, by signing this contract, does swear under penalty of perjury, that it has not failed to satisfy any major condition in a current or previous agreement with the DOL or the State of California and has not failed to satisfy conditions relating to the resolution of a final finding and determination, including repayment of debts.
- f. Drug-Free Workplace Certification. By signing this agreement, the Subrecipient hereby certifies under penalty of perjury, under the laws of the State of California, that the Subrecipient will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:
 - i. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
 - ii. Establish a Drug-Free Awareness Program as required to inform employees about:
 1. the dangers of drug abuse in the workplace;
 2. the person's or organization's policy of maintaining a drug-free workplace;
 3. any available counseling, rehabilitation and employee assistance programs; and
 4. penalties that may be imposed upon employees for drug abuse violations.
 - iii. Every employee who works on this agreement will:
 1. receive a copy of the company's drug-free policy statement; and,
 2. agree to abide by the terms of the company's statement as a condition of employment on the contract; and
 3. notify the employer of any criminal drug statute conviction for a violation

occurring in the workplace no later than 5 days after the conviction.

- iv. Notify the SDWP within 10 days after receiving notice of a criminal drug statute conviction from an employee or otherwise receiving actual notice of a conviction.
 - v. Impose a sanction on or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is convicted, as required by section 8104 of this title.
 - vi. Make a good faith effort to continue to maintain a drug-free workplace through implementation the above subparagraphs.
- g. Child Support Compliance Act. In accordance with the Child Support Compliance Act, the Subrecipient recognizes and acknowledges the importance of child and family support obligations and shall fully comply with applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and that to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Employee Registry maintained by the California Employment Development Department (EDD).
- h. Debarment and Suspension Certification. By signing this agreement, the Subrecipient hereby certifies under penalty of perjury under the laws of the State of California that the Subrecipient will comply with regulations implementing Executive Order 12549 and 12689, Debarment and Suspension, Uniform Guidance 2 CFR Part 200, Appendix II that the prospective participant (i.e., grantee), to the best of its knowledge and belief, that it and its principals:
- i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency.
 - ii. Have not within a three-year period preceding this agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction, violation of federal or state antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property.
 - iii. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state or local) with commission of any of the offenses enumerated in Section 2 of this certification.
 - iv. Have not within a three-year period preceding this agreement had one or more public transactions (federal, state or local) terminated for cause of default. Where the Subrecipient is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this agreement.
- i. Lobbying Restrictions. By signing this contract, the Subrecipient hereby assures and

certifies to the lobbying restrictions which are codified in the DOL regulations at Uniform Guidance 2 CFR Part 200, Appendix II and DOL Exceptions 2 CFR 2900.

- i. No federal appropriated funds have been paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with this federal contract, grant loan, or cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - ii. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress, in connection with this agreement, the undersigned shall complete and submit Standard Form LLL (Rev. 7-97), "Disclosure of Lobbying Activities" form in accordance with its instructions.
 - iii. The undersigned shall require that the language of the lobbying restrictions be included in the award documents for agreement transactions over \$100,000 (per OMB) at all tiers (including subgrant agreements, contracts and subcontracts, under grants, loan, or cooperative agreements), and that all subrecipients shall certify and disclose accordingly.
 - iv. This certification is a material representation of fact upon which reliance is placed when this transaction is executed. Submission of the Lobbying Certification is a prerequisite for making or entering into this transaction imposed by the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.
- j. Priority Hiring Considerations. If this agreement includes services in excess of \$200,000, the Subrecipient shall give priority consideration in filling vacancies in positions funded by the agreement to qualified recipients of aid under Welfare and Institutions Section Code 11200 in accordance with Public Contract Code § 10353.
- k. Sweatfree Code of Conduct
- i. All Subrecipients contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The Subrecipient further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.

- ii. The Subrecipient agrees to cooperate fully in providing reasonable access to the Subrecipients' records, documents, agents or employees, or premises if reasonably required by authorized officials of the SDWP, the Department of Industrial Relations, or the Department of Justice to determine the Subrecipients' compliance with the requirements under paragraph a of the Sweatfree Code of Conduct.
- I. Unenforceable Provision. In the event that any provision of this agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this agreement have force and effect and shall not be affected hereby.
- m. Nondiscrimination Clause
 - i. The conduct of the parties to this agreement will be in accordance with Title VI of the Civil Rights Act of 1964, California's Fair Employment and Housing Act (FEHA), and the Rules and Regulations promulgated there under and the provisions of WIOA, Section 188.
 1. As a condition to the award of financial assistance from the Department of Labor under Title I of WIOA, the grant applicant assures that it will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:
 - Section 188 of the WIOA, which prohibits discrimination against all individuals in the United States on the basis of race; color; religion; sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity); national origin (including Limited English Proficiency [LEP]); age; disability; political affiliation or belief; or, for beneficiaries, applicants, and participants only on the basis of either citizenship status or participation in a WIOA Title I – financially assisted program or activity;
 - Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color and national origin;
 - Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities;
 - The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and
 - Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs;
 - FEHA, California Government Code, section 12900, et seq.; and
 2. The Subrecipient also assures that it will comply with Uniform Guidance 2 CFR Part 200, DOL Exceptions 2 CFR Part 2900 and all other regulations implementing the laws listed above. This assurance applies to the grant applicant's operation of the WIOA Title I-financially assisted program or activity, and to all agreements that grant applicant makes to carry out the WIOA Title I-financially assisted program or activity. The grant applicant understands that the United States has the right to seek judicial enforcement of this assurance.
 3. This Subrecipient shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the

contract.

4. This Subrecipient agrees to conform to nondiscrimination provisions of the WIOA and other federal nondiscrimination requirements as referenced in WIOA Sec. 188, and California nondiscrimination laws and regulations.

n. Indemnification

- i. The following provision applies only if the Subrecipient is a governmental entity:

Pursuant to the provision of Section 895.4 of the California Government Code, Subrecipient agrees to indemnify and hold SDWP harmless from all liability for damage to persons or property arising out of or resulting from acts or omissions of the Subrecipient.

- ii. The following provision applies only if the Subrecipient is a non-governmental entity:

The Subrecipient agrees to the extent permitted by law, to indemnify, defend and save harmless the SDWP, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all Subrecipients, Subrecipient subcontractors, materials persons, laborers and any other persons, firms or corporations, furnishing or supplying work, services, materials, or supplies in connection with the performance of this agreement, and from any and all claims and losses accruing or resulting to any persons, firms or corporations which may be injured or damaged by the Subrecipient in the performance of this agreement. Failure to comply with all requirements of the certifications in this agreement, including but not limited to those in this Section 2, may result in suspension of payment under this agreement or termination of this agreement or both, and the Subrecipient may be ineligible for award of future state agreements/contracts if the SDWP determines that any of the following has occurred: (1) false information on the certifications, or (2) violation of the terms of the certifications by failing to carry out the requirements as noted above.

- o. Salary and Bonus Limitations. In compliance with Public Law 109-234, none of the funds appropriated in Public Law 109-149 or prior Acts under the heading "Employment and Training" that are available for expenditure on or after June 15, 2006, shall be used by a recipient or subrecipient of such funds to pay the salary and bonuses of an individual, either as direct costs or indirect costs, at a rate in excess of Executive Level II, except as provided for under section 101 of Public Law 109-149. This limitation shall not apply to vendors providing goods and services as defined in Uniform Guidance 2 CFR Part 200 and the DOL Exceptions 2 CFR Part 2900. The incurrence of costs and receiving reimbursement for these costs under this award certifies that your organization has read the above special condition and is in compliance.
- p. Federal Funding Accountability and Transparency Act (FFATA). As required by the FFATA, recipients of federal awards are required to report sub-award and executive compensation information. By signing this agreement, the Subrecipient hereby assures and certifies to comply with the provisions of FFATA, which includes requirements referenced in Uniform Guidance 2 CFR Part 200 and DOL Exceptions 2 CFR Part 2900.

q. Air or Water Pollution Violation.

i. Under the State laws, the Subrecipient shall not be:

(1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district;

(2) subject to cease-and-desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or

(3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

ii. Subrecipient must comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q).

r. Solid Waste Disposal Act. Subrecipients must comply with Section 6002 of the Solid Waste Act and 40 CFR Part 247 for items in excess of \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000.

s. Subrecipients must comply with the Davis-Bacon Act (40 U.S.C. 3141-3144 and U.S.C. 3141-3148) for prime construction contracts in excess of \$2,000.

t. Subrecipients must comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708) for contracts in excess of \$100,000 that involve employment of mechanics or laborers.

u. Telecommunications and Video Surveillance Services or Equipment. Subrecipients are prohibited from obligating or expending funds to:

i. Procure or obtain;

ii. Extend or renew a contract to procure or obtain, or

iii. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

1. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

2. Telecommunications or video surveillance services provided by such entities or using such equipment.

3. Telecommunications or video surveillance equipment or services produced or

provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

- v. Domestic Preferences for Procurements. As appropriate and to the extent consistent with law, Subrecipient should, to the greatest extent practicable under a federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.
- i. "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - ii. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

3. Standards of Conduct

The following standards apply to all Subrecipients:

- a. General Assurance: Every reasonable course of action will be taken by the Subrecipient in order to maintain the integrity of this expenditure of public funds and to avoid favoritism and questionable or improper conduct. This agreement will be administered in an impartial manner, free from efforts to gain personal, financial or political gain. The Subrecipient agrees to conform to the nondiscrimination requirements as referenced in WIOA, Section 188, and those outlined in section 2., m., of this agreement.
- b. Avoidance of Conflict of Economic Interest: An executive or employee of the Subrecipient, an elected official in the area, or a member of the Consortium Policy Board and the Workforce Development Board that provides oversight and funding direction to SDWP, will not solicit or accept money or any other consideration from a third person, for the performance of an act reimbursed in whole or part by the Subrecipient or SDWP: Supplies, materials, equipment or services purchased with agreement funds will be used solely for purposes allowed under this agreement. No member of the Local Board will cast a vote on the provision of services by that member (or any organization, which that member represents) or vote on any matter which would provide direct financial benefit to that member (or immediate family of the member) or any business or organization which the member directly represents.

4. Coordination

Subrecipient will, to the maximum extent feasible, coordinate all programs and activities supported under this part with other programs under the WIOA, including the Wagner-Peyser Act, Title 38 of the United States Code, and other employment and training programs at the state and local level.

Subrecipient will consult with the appropriate labor organizations and/or employer representatives in the design, operation or modification of the programs under this agreement.

5. Subcontracting

- a. Any of the work or services specified in this agreement that will be performed other than by the Subrecipient will be evidenced by a written agreement (“Subcontract”) specifying the terms and conditions of such performance and will require approval of SDWP prior to execution, and prior to any work or services being performed.
- b. The Subrecipient must ensure that Subcontractors comply with the same standards that they are held to in this agreement and other contractual requirements.
- c. The Subrecipient will maintain and adhere to an appropriate system, consistent with federal, state and local law, for the award and monitoring of Subcontracts, to ensure they contain acceptable standards for insuring accountability.
- d. The Subrecipient’s system for awarding contracts will contain safeguards to ensure that the Subrecipient does not subcontract with any entity whose officers have been convicted of fraud or misappropriation of funds within the last two years.

6. Funding

It is mutually understood between the parties that this agreement may have been written before ascertaining the availability of congressional and legislative appropriation of funds, this is for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the agreement were executed after that determination was made.

This agreement is valid and enforceable only if (1) sufficient funds are made available by the State Budget Act of the appropriate state fiscal years covered by this agreement for the purposes of this program and; (2) sufficient funds available to the state by the United States Government for the fiscal years covered by this agreement for the purposes of this program. In addition, this agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress and Legislature or any statute enacted by the Congress and Legislature which may affect the provisions, terms, or funding of this agreement in any manner.

- a. At the expiration of the term of this agreement or upon termination prior to the expiration of this agreement as provided in section 19 of this Agreement, funds not obligated for the purpose of this agreement will be immediately remitted to the SDWP, and no longer available to the Subrecipient.
- b. SDWP retains the right at its sole discretion to suspend financial assistance, in whole or in part; to protect the integrity of the funds, to ensure proper operation of the program, or for any other reason SDWP deems appropriate, provided that the Subrecipient is given prompt notice and the opportunity for an informal review of SDWP's decision. The Director or designee will perform this informal review and will issue the final administrative decision within 60 Days of receiving the written request for review. Failure on the part of Subrecipient or a Subrecipient’s Subcontractor to comply with the provisions of this agreement, or with the WIOA or regulations, when such failure involves fraud or misappropriation of funds, may result in immediate withholding of funds.

7. Certificate of Insurance

Subrecipient, at Subrecipient’s sole cost and expense, shall obtain and maintain in effect during the Term a commercial general liability insurance policy, naming San Diego Workforce Partnership, the

City of San Diego, and the County of San Diego as additional insured, protecting against any and all claims for injury to persons or property, protecting against assumed or contractual liability under this Agreement, and covering negligent acts and omissions of Subrecipient and Subrecipient Parties, with such policy to be in the minimum amount of One Million Dollars (\$1,000,000.00) per occurrence, and with an aggregate limit of at least Two Million Dollars (\$2,000,000.00). Subrecipient shall provide SDWP a certificate evidencing such insurance.

8. Payment

- a. It is expressly understood by the parties to this contract that the total compensation to be paid to Subrecipient shall not in any event exceed the amount indicated on the Contract Title Page. No expenditure of contract funds shall be made or obligation incurred in excess of the amount authorized by any budget account title except as provided in this contract.
- b. Payments to Subrecipients will be made in the form of reimbursements of Subrecipient's costs incurred during the preceding month.
- c. Subrecipient shall be reimbursed for administrative costs in proportion to program expenditure and any significant deviation from the operating budget may subject the Subrecipient to possible suspension of funding. SDWP may elect not to honor a particular payment request under this contract if:
 - i. Subrecipient, with or without knowledge, made any misrepresentation of a substantial and material nature with respect to any information furnished to SDWP.
 - ii. Litigation is pending with respect to the performance by Subrecipient of any of its duties or obligations hereunder which may jeopardize or adversely affect the understanding of or the carrying out of this project, including any court action or proceeding involving the Federal Bankruptcy Code (U.S.C. Title 11).
 - iii. Subrecipient is in default under this contract, or if Subrecipient has failed to materially comply with any provision.
 - iv. Subrecipient shall not have submitted the required statement and reports on the dates prescribed by SDWP.

9. Suspension of Funding

- a. Funds may be suspended in whole or in part for cause prior to or in lieu of contract termination. Cause shall include, but is not limited to, the following:
 - i. Failure to comply in any respect with any of the terms or conditions of this contract.
 - ii. Any violation of applicable state, local, or federal regulations or SDWP guidelines.
 - iii. Submittal of reports to SDWP that are incorrect in any substantial and material respect.
 - iv. The grant to SDWP for this program is terminated or suspended.

- v. The Subrecipient is unable or unwilling to accept any additional conditions that may be required by law, by executive order, by regulations, or by other policy announced by the grantor or SDWP.
- b. Upon suspension of contract funding, Subrecipient agrees not to expend any funds related to or connected with the area of conflict from which SDWP has determined that suspension of contract funding is necessary.
- c. It is understood and agreed that subrecipient shall submit to SDWP a contract closeout package in accordance with the procedures delineated in the Chapter VI, Financial Management, of the Operations Manual. Failure to submit said package shall result in the withholding of any final payment due under this contract and/or payments or advances requested under other SDWP-funded contracts until such time as SDWP receives Subrecipient's closeout package for this contract.

10. Accounting and Cash Management

- a. Subrecipient will comply with controls, record keeping and fund accounting procedure requirements of WIOA, federal and state regulations and directives to ensure the proper disbursement of, and accounting for, program funds paid to the Subrecipient and disbursed by the Subrecipient, under this agreement.
- b. Income (including interest income) generated as a result of the receipt of WIOA activities, will be utilized in accordance with policy and procedures established by the SDWP. Subrecipient will account for any such generated income separately.
- c. Subrecipient shall not be required to maintain a separate bank account but shall separately account for WIOA funds on deposit. All funding under this agreement, will be made by check or wire transfer payable to the Subrecipient for deposit in Subrecipient's bank account or city and county governmental bank accounts. To provide for the necessary and proper internal controls, funds should be withdrawn and disbursed by no less than two representatives of the Subrecipient. The SDWP will have a lien upon any balance of WIOA funds in these accounts, which will take priority over all other liens or claims.

11. Amendments

This agreement may be unilaterally modified by the SDWP under the following circumstances:

- a. There is an increase or decrease in federal or state funding levels.
- b. A modification to the agreement is required in order to implement an adjustment to a Subrecipient's plan.
- c. Funds awarded to the Subrecipient have not been expended in accordance with the schedule included in the approved Subrecipient's plan. After consultation with the Subrecipient, the SDWP has determined that funds will not be spent in a timely manner, and such funds are for that reason to the extent permitted by and in a manner consistent with state and federal law, regulations and policies, reverting to the SDWP.
- d. There is a change in local, state, or federal law or regulation requiring a change in the provisions of this agreement.

- e. An amendment is required to change the Subrecipients' name as listed on this agreement. Upon receipt of legal documentation of the name change SDWP will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

Except as provided above, this agreement may be amended only in writing by the mutual agreement of both parties.

12. Records

- a. If participants are served under this agreement, the Subrecipient will establish a participant data system as prescribed by the SDWP.
- b. Subrecipient will retain all records pertinent to this agreement for a period of four years from the date of final payment of this agreement. If, at the end of four years, there is anticipated litigation, active litigation, an administrative proceeding, an investigation, or an audit involving those records, the Subrecipient will retain the records until the resolution of such litigation, proceeding, investigation, or audit. Refer to Uniform Guidance, Subpart D, Part 200.334-200.338.
- c. The SDWP and/or the DOL, or their designee (refer to Uniform Guidance, Subpart F, Part 200.500-200.520) will have access to and right to examine, monitor and audit all records, documents, conditions, and activities related to programs funded by this agreement. For purposes of this section, "access to" means that the Subrecipient shall at all times maintain within the State of California a complete set of records and documents related to programs funded by this agreement. The Subrecipient shall comply with this requirement regardless of whether it ceases to operate or maintain a presence within the State of California before the expiration of the agreement. Subrecipient's performance under the terms and conditions herein specified will be subject to an evaluation by the SDWP of the adequacy of the services performed, timeliness of response, and a general impression of the competency of the Subrecipient and its staff.

13. Audits

- a. The Subrecipient will maintain and make available to auditors, at all levels, accounting and program records including supporting source documentation and cooperate with all auditors. All governmental and non-profit organizations must follow the audit requirements (single audit or program-specific audit requirement) of Uniform Guidance 2 CFR Part 200 and DOL Exceptions 2 CFR Part 2900.
- b. The Subrecipient and/or auditors performing monitoring or audits of the Subrecipient or its sub-contracting service providers will immediately report to the SDWP any incidents of fraud, abuse, or other criminal activity in relation to this agreement, the WIOA, or its regulations.

14. Disallowed Costs

Except to the extent that the state determines it will assume liability, the Subrecipient will be liable for and will repay, to the SDWP, any amounts expended under this agreement found not to be in accordance with WIOA including, but not limited to, disallowed costs. Such repayment will be from

funds (Non-Federal), other than those received under the WIOA.

15. Conflict Resolution

- a. Subrecipient will cooperate in the resolution of any conflict with the DOL that may occur from the activities funded under this agreement.
- b. In the event of a dispute between the SDWP and the Subrecipient over any part of this agreement, the dispute may be submitted to non-binding arbitration upon the consent of both the SDWP and the Subrecipient. The fee for the non-binding arbitration will be allocated to the parties equally. An election for non-binding arbitration pursuant to this provision will not preclude either party from pursuing any remedy for relief otherwise available.

16. Grievances and Complaint System

Subrecipient will establish and maintain a grievance and complaint procedure in compliance with SDWP Operations Manual Chapter 9 that follows the Uniform Guidance 2 CFR Part 200, DOL Exceptions 2 CFR Part 2900, federal regulations and state and local statutes, regulations and policy.

17. Property

All property, whether finished or unfinished documents, data, studies and reports prepared or purchased by the Subrecipient under this agreement, will be disposed of in accordance with the direction of the SDWP. In addition, any tools and/or equipment furnished to the Subrecipient by the SDWP and/or purchased by the Subrecipient with funds pursuant to this agreement will be limited to use within the activities outlined in this agreement and will remain the property of the United States Government, State of California and/or the SDWP. Upon termination of this agreement, Subrecipient will immediately return such tools and/or equipment to the SDWP or dispose of them in accordance with the direction of the SDWP.

18. Intellectual Property Provisions

- a. Federal Funding. In any agreement funded in whole or in part by the federal government, SDWP may acquire and maintain the Intellectual Property rights, title, and ownership, which result directly or indirectly from the agreement, except as provided in 37 CFR Part 401.14. However, pursuant to 37 CFR Part 401.14(b), Uniform Guidance 2 CFR Part 200, and DOL Exceptions 2 CFR Part 2900, the federal government shall have a royalty-free, non-exclusive, irrevocable, paid-up license throughout the world to use, duplicate, or dispose of such Intellectual Property throughout the world in any manner for governmental purposes and to have and permit others to do so.
- b. Defined Terms. For purposes of these Intellectual Property provisions, the following definitions apply:
 - i. "Intellectual Property" means recognized protectable rights and interest such as: patents, (whether or not issued) copyrights, trademarks, service marks, applications for any of the foregoing, inventions, trade secrets, trade dress, logos, insignia, color combinations, slogans, moral rights, right of publicity, author's rights, contract and licensing rights, works, mask works, industrial design rights, rights of priority, know how, design flows, methodologies, devices, business processes, developments, innovations, good will, any data or information maintained, collected

or stored in the ordinary course of business by Subrecipient or SDWP, and all other legal rights protecting intangible proprietary information as may exist now and/or hereafter come into existence, and all renewals and extensions, regardless of whether those rights arise under the laws of the United States, or any other state, country or jurisdiction.

- ii. "Works" means all literary works, writings and printed matter including the medium by which they are recorded or reproduced, photographs, art work, pictorial and graphic representations and works of a similar nature, film, motion pictures, digital images, animation cells, and other audiovisual works including positives and negatives thereof, sound recordings, tapes, educational materials, interactive videos, computer software and any other materials or products created, produced, conceptualized and fixed in a tangible medium of expression. It includes preliminary and final products and any materials and information developed for the purposes of producing those final products. Works does not include articles submitted to peer review or reference journals or independent research projects.

c. Ownership

- i. Except where SDWP has agreed in a signed writing to accept a license, SDWP shall be and remain, without additional compensation, the sole owner of any and all rights, title and interest in all intellectual property, from the moment of creation, whether or not jointly conceived, that are made, conceived, derived from, or reduced to practice by Subrecipient or SDWP and which resulted directly or indirectly from this agreement.
- ii. In the performance of this agreement, Subrecipient may exercise and utilize its Intellectual Property in existence prior to the effective date of this agreement. In addition, under this agreement, Subrecipient may access and utilize certain of SDWP's intellectual property in existence prior to the effective date of this agreement. Except as otherwise set forth herein, Subrecipient shall not use any of SDWP's Intellectual Property now existing or hereafter existing for any purposes without the prior written permission of SDWP. Except as otherwise set forth herein, neither the Subrecipient nor SDWP shall give any ownership interest in or rights to its Intellectual Property to the other Party. If, during the term of this agreement, Subrecipient accesses any third-party Intellectual Property that is licensed to SDWP, Subrecipient agrees to abide by all license and confidentiality restrictions applicable to SDWP in the third-party's license agreement.
- iii. Subrecipient agrees to cooperate with SDWP in establishing or maintaining SDWP's exclusive rights in the Intellectual Property, and in assuring SDWP's sole rights against third parties with respect to the Intellectual Property. If the Subrecipient enters into any agreements or Subcontracts with other parties in order to perform this agreement, Subrecipient shall require the terms of such agreement(s) to include all Intellectual Property provisions contained in paragraphs seventeen a) through seventeen j). Such terms must include, but are not limited to, the Subrecipient assigning and agreeing to assign to SDWP all rights, title and interest in Intellectual Property made, conceived, derived from, or reduced to practice by the Subrecipient, and any subcontractor to the Subrecipient or SDWP and which result directly or indirectly from this agreement or any subcontract.

- iv. Pursuant to paragraph seventeen (c) (3) of these Intellectual Property Provisions, the requirement for the Subrecipient to include all Intellectual Property Provisions of paragraph seventeen a) through seventeen j) of the Intellectual Property Provisions in all agreements and subcontracts it enters into with other parties does not apply to agreements or subcontracts that are for customized and on-the-job training as authorized under 20 CFR 663 .700-730.
- v. Subrecipient further agrees to assist and cooperate with SDWP in all reasonable respects, and execute all documents and, subject to reasonable availability, give testimony and take all further acts reasonably necessary to acquire, transfer, maintain, and enforce SDWP's Intellectual Property rights and interests.

d. Retained Rights/License Rights

- i. Except for Intellectual Property made, conceived, derived from, or reduced to practice by Subrecipient or SDWP and which result directly or indirectly from this agreement, Subrecipient shall retain title to all of its Intellectual Property to the extent such Intellectual Property is in existence prior to the effective date of this agreement.
- ii. Subrecipient hereby grants to SDWP, without additional compensation, a permanent, non-exclusive, royalty free, paid-up, worldwide, irrevocable, perpetual, non-terminable license to use, reproduce, manufacture, sell, offer to sell, import, export, modify, publicly and privately display/perform, distribute, and dispose of Subrecipient's Intellectual Property with the right to sublicense through multiple layers, for any purpose whatsoever, to the extent it is incorporated in the Intellectual Property resulting from this agreement, unless Subrecipient assigns all rights, title and interest in the Intellectual Property to SDWP as set forth herein.
- iii. Nothing in this provision shall restrict, limit, or otherwise prevent Subrecipient from using any ideas, concepts, know-how, methodology or techniques related to its performance under this agreement, provided that Subrecipient's user does not infringe the patent, copyright, trademark rights, license or other Intellectual Property rights of SDWP or third party, or result in a breach or default of any provisions of paragraph seventeen a) through seventeen j) or result in a breach of any provisions of law relating to confidentiality.

e. Copyright

- i. Subrecipient agrees that for purposes of copyright law, all Works as defined in paragraph seventeen (b) (2) of authorship made by or on behalf of Subrecipient in connection with Subrecipient's performance of this agreement shall be deemed "works made for hire." Subrecipient further agrees that the work of each person utilized by Subrecipient in connection with the performance of this agreement will be a "work made for hire," whether that person is an employee of Subrecipient or that person has entered into an agreement with Subrecipient to perform the work for pay or as a volunteer. Subrecipient shall enter into a written agreement with any such person that: (i) all work performed for Subrecipient shall be deemed a "work made for hire" under the Copyright Act and (ii) that person shall assign all right, title, and interest to SDWP to any work product made, conceived, derived from or reduced to practice by Subrecipient or SDWP and which result directly or indirectly

from this agreement.

- ii. All materials, including, but not limited to, computer software, visual works or text, reproduced or distributed pursuant to this agreement that include Intellectual Property made, conceived, derived from, or reduced to practice by Subrecipient or SDWP and which result directly or indirectly from this agreement may not be reproduced or disseminated without prior written permission from SDWP.
- f. Patent Rights. With respect to inventions (refer to Uniform Guidance 2 CFR Part 200 and DOL Exceptions 2 CFR Part 2900, made by Subrecipient in the performance of this agreement, which did not result from research and development specifically included in the scope of work, Subrecipient hereby grants to SDWP a license as described under paragraph seventeen d) for devices or material incorporating, or made through the use of such inventions. If such inventions resulted from research and development work specifically included within the agreement's scope of work, then Subrecipient agrees to assign to SDWP, without additional compensation, all its right, title, and interest in and to such invention(s) and to assist SDWP in securing United States and foreign patents with respect thereto.
- g. Third-Party Intellectual Property. Except as provided herein, Subrecipient agrees that its performance of this agreement shall not be dependent upon or include any Intellectual Property of Subrecipient or third party without first: (i) obtaining SDWP's prior written approval; and (ii) granting to or obtaining for SDWP's, without additional compensation, a license, as described in paragraph seventeen d), for any of Subrecipients or third-party's Intellectual Property in existence prior to the effective date of this agreement. If such a license upon these terms is unattainable, and SDWP determines that the Intellectual Property should be included in or is required for Subrecipients performance of this agreement, Subrecipient shall obtain a license under terms acceptable to SDWP.
- h. Warranties
- i. Subrecipient represents and warrants that:
 - 1. It has secured and will secure all rights and licenses necessary for its performance of this agreement.
 - 2. Neither Subrecipient's performance of this agreement, nor the exercise by either Party of the rights granted in this agreement, nor any use, reproduction, manufacture, sale, offer to sell, import, export, modification, public and private display/performance, distribution, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Subrecipient or SDWP and which result directly or indirectly from this agreement will infringe upon or violate any Intellectual Property right, non-disclosure obligation, or other proprietary right or interest of any third-party or entity now existing under the laws of, or hereafter existing or issued by, any state, the United States, or any foreign country. There are currently no actual or threatened claims by any such third party based on an alleged violation of any such right by Subrecipient.
 - 3. Neither Subrecipients performance nor any part of its performance will violate the right of privacy of or constitute a libel or slander against any

person or entity.

4. It has secured and will secure all rights and licenses necessary for Intellectual Property including, but not limited to, consents, waivers or releases from all authors.
5. It has secured and will secure all rights and licenses necessary for music or performances used, and talent (radio, television and motion picture talent), owners of any interest in and to real estate, sites locations, property or props that may be used or shown.
6. It has not granted and shall not grant to any person or entity any right that would or might derogate, encumber, or interfere with any of the rights granted to SDWP in this agreement.
7. It has appropriate systems and controls in place to ensure that state and federal funds will not be used in the performance of this agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
8. It has no knowledge of any outstanding claims, licenses or other charges, liens, or encumbrances of any kind or nature whatsoever that could affect in any way Subrecipients performance of this agreement.

ii. SDWP MAKES NO WARRANTY THAT THE INTELLECTUAL PROPERTY RESULTING FROM THIS AGREEMENT DOES NOT INFRINGE UPON ANY PATENT, TRADEMARK, COPYRIGHT OR THE LIKE NOW EXISTING OR SUBSEQUENTLY ISSUED.

i. Intellectual Property Indemnity

- i. Subrecipient shall indemnify, defend and hold harmless SDWP and its licensees and assignees, and its officers, directors, employees, agents, representatives, successors, and users of its products, ("Indemnities") from and against all claims, actions, damages, losses, liabilities (or actions or proceedings with respect to any thereof), whether or not rightful, arising from any and all actions or claims by any third party or expenses related thereto (including, but not limited to, all legal expenses, court costs, and attorney's fees incurred in investigating, preparing, serving as a witness in, or defending against, any such claim action, or proceeding, commenced or threatened) to which any of the Indemnities may be subject, whether or not Subrecipient is a party to any pending or threatened litigation, which arise out of or are related to (i) the incorrectness or breach of any of the representations, warranties, covenants or agreements of Subrecipient pertaining to Intellectual Property; or (ii) any Intellectual Property infringement, or any other type of actual or alleged infringement claim, arising out of SDWP's use, reproduction, manufacture, sale, offer to sell, distribution, import, export, modification, public and private performance/display, license, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Subrecipient or SDWP and which result directly or indirectly from this agreement. This indemnity obligation shall apply irrespective of whether the infringement claim is based on a patent, trademark, or copyright registration that was issued after the effective date

of this agreement. SDWP reserves the right to participate in and/or control, at Subrecipient's expense, any such infringement action brought against SDWP.

- ii. Should any Intellectual Property licensed by the Subrecipient to SDWP under this agreement become the subject of an Intellectual Property infringement claim, Subrecipient will exercise its authority reasonably and in good faith to preserve SDWP's right to use the licensed Intellectual Property in accordance with this agreement at no expense to SDWP. SDWP shall have the right to monitor and appear through its own counsel (at Subrecipient's expense) in any such claim or action. In the defense or settlement of the claim, Subrecipient must obtain, or reasonably attempt to retain, the right for SDWP to continue using the licensed Intellectual Property or, replace or modify the licensed Intellectual Property so that the replaced or modified Intellectual Property becomes non-infringing provided that such replacement or modification is functionally equivalent to the original licensed Intellectual Property. If such remedies are not reasonably available, SDWP may be entitled to a refund of all monies paid under this agreement, without restriction or limitation of any other rights and remedies available at law or in equity.
 - iii. Subrecipient agrees that damages alone would be inadequate to compensate SDWP for breach of any term of these Intellectual Property provisions of paragraph seventeen a) through seventeen j) by Subrecipient. Subrecipient acknowledges SDWP would suffer irreparable harm in the event of such breach and agrees SDWP shall be entitled to obtain equitable relief, including without limitation an injunction, from a court of competent jurisdiction, without restriction or limitation of any other rights and remedies available at law or in equity.
- j. Survival. The provisions set forth herein shall survive any termination or expiration of this agreement or any project schedule.

19. Confidentiality Requirements

The State of California and the Subrecipient will exchange various kinds of information pursuant to this agreement. That information will include data, applications, program files, and databases. These data and information are confidential when they define an individual or an employing unit. Confidential information requires special precautions to protect it from unauthorized use, access, disclosure, modification, and destruction. The sources of information may include, but are not limited to, the EDD, the California Department of Social Services, the California Department of Education, the California Department of Corrections and Rehabilitation, the County Welfare Department(s), the County IV-D Directors Office of Child Support, the Office of the District Attorney, the California Department of Mental Health, the California Office of Community Colleges and the Department of Alcohol and Drug Programs. The SDWP and Subrecipient agree that:

- a. Each party shall keep all information that is exchanged between them in the strictest confidence and make such information available to their own employees only on a "need-to-know" basis.
- b. Each party shall provide security sufficient to ensure protection of confidential information from improper use and disclosures, including sufficient administrative, physical, and technical safeguards to protect this information from reasonable unanticipated threats to the security or confidentiality of the information.

- c. The Subrecipient agrees that information obtained under this agreement will not be reproduced, published, sold or released in original or in any other form for any purpose other than those specifically identified in this agreement.
 - i. Aggregate Summaries: All reports and/or publications developed by the Subrecipient based on data obtained under this agreement shall contain confidential data in aggregated or statistical summary form only. "Aggregated" refers to a data output that does not allow identification of an individual or employer unit.
 - ii. Publication: Prior to publication, Subrecipient shall carefully analyze aggregated data outputs to ensure the identity of individuals and/or employer units cannot be inferred pursuant to Unemployment Insurance Code Section 1094(c). Personal identifiers must be removed. Geographic identifiers should be specified only in large areas and as needed, and variables should be recorded in order to protect confidentiality.
 - iii. Minimum Data Cell Size: The minimum data cell size or derivation thereof shall be three participants for any data table released to outside parties or to the public.
- d. Subrecipients that no disaggregate data, identifying individuals or employers, shall be released to outside parties or the public.
- e. The Subrecipient shall notify SDWP of any actual or attempted information security incidents, within 24 hours of initial detection. Information Security Incidents include, but are not limited to, any event (intentional or unintentional), that causes the loss, damage, or destruction, or unauthorized access, use, modification, or disclosure of information assets.
- f. The Subrecipient shall cooperate with the SDWP in any investigation of security incidents. The system, application, or device affected by an information security incident and containing confidential data obtained in the administration of this program shall be immediately removed from operation upon confidential data exposure or a known security breach. It shall remain removed from operation until correction and mitigation measures are applied. If the Subrecipient learns of a breach in the security of the system which contains confidential data obtained under this agreement, then the Subrecipient must provide notification to individuals pursuant to Civil Code Section 1798.82.
- g. The Subrecipient shall provide for the management and control of physical access to information assets (including personal computer systems, computer terminals, mobile computing devices, and various electronic storage media) used in performance of this agreement. This shall include, but is not limited to, security measures to physically protect data, systems, and workstations from unauthorized access and malicious activity; the prevention, detection, and suppression of fires; and the prevention, detection, and minimization of water damage.
- h. At no time will confidential data obtained pursuant to this agreement be placed on a mobile computing device, or on any form of removable electronic storage media of any kind unless the data are fully encrypted.
- i. Each party shall provide its employees with access to confidential information with written instructions fully disclosing and explaining the penalties for unauthorized use or disclosure

of confidential information found in Section 1798.55 of the Civil Code, Section 502 of the Penal Code, Section 2111 of the Unemployment Insurance Code, Section 10850 of the Welfare and Institutions Code and other applicable local, state and federal laws.

- j. Each party shall (where it is appropriate) store and process information in electronic format, in such a way that unauthorized persons cannot reasonably retrieve the information by means of a computer.
- k. Each party shall promptly return to the other party confidential information when its use ends or destroy the confidential information utilizing an approved method of destroying confidential information: shredding, burning, or certified or witnessed destruction. Magnetic media are to be degaussed or returned to the other party.
- l. If the SDWP or Subrecipient enters into an agreement with a third party to provide WIOA services, the SDWP or Subrecipient agrees to include these data and security and confidentiality requirements in the agreement with that third party. In no event shall said information be disclosed to any individual outside of that third party's authorized staff, Subrecipient(s), service providers, or employees.
- m. Each party shall designate an employee who shall be responsible for overall security and confidentiality of its data and information systems and each party shall notify the other of any changes in that designation.

20. Termination

- a. Termination for Default. If either party defaults in the performance of this contract, the non-defaulting party may terminate this contract if such default is not cured by the defaulting party within ten (10) business days after receipt of written notice specifying the default.
- b. Termination on Occurrence of Stated Events. This contract will terminate automatically on the occurrence of any of the following events:
 - i. Bankruptcy or insolvency of either party;
 - ii. Sale of Subrecipient's business;
 - iii. Death of Subrecipient if Subrecipient is an individual.
- c. Termination Due to Unavailability of Funds. When funds are not appropriated or otherwise made available by SDWP to support continuation of this contract, this contract shall be cancelled as of the effective date set forth in the termination notice and Subrecipient shall be reimbursed for the reasonable value of any nonrecurring cost incurred but not yet recovered under this contract.
- d. Termination for Convenience. SDWP, by thirty (30) day written notice, may terminate this contract, in whole or in part, when it is in the best interests of SDWP as determined in SDWP's sole discretion. If the contract is for supplies and is so terminated, Subrecipient shall be compensated in accordance with its auditable costs to point of notification of termination. To the extent that the contract is for services and is so terminated, SDWP shall be liable only for payment in accordance with the payment provisions of the contract for the actual services rendered to the effective date of the termination.

- e. Termination for Breach. If either party defaults in the performance of this Contract or materially breaches any of its provisions, the non-breaching party may immediately terminate this Contract if such default is not cured by the breaching party within ten (10) business days after receipt of written notice specifying the default. Termination will take effect immediately on receipt of notice by the breaching party. For the purposes of this section, material breach of this Contract includes, but is not limited to, the following:
- i. SDWP's failure to pay Subrecipient compensation due within sixty (60) days after SDWP's receipt of written demand for payment.
 - ii. Subrecipient's failure to complete the Services specified in Attachment A – "Description of Services."
 - iii. Subrecipient's material breach of any representation or agreement contained in this Contract.
 - iv. SDWP's material breach of any representation or agreement contained in this Contract.
 - v. Subrecipients failure to comply with monitoring findings regarding its financial controls, as determined by SDWP.

21. Indemnification

Performance of this contract and all work or obligations covered by and arising out of this contract shall be at the risk of Subrecipient exclusively. To the fullest extent permitted by law, Subrecipient shall, with respect to all work or obligations covered by or arising out of this contract, or the performance thereof, indemnify, hold harmless and defend SDWP, Policy Board, the Workforce Development Board, the City of San Diego, and the County of San Diego, and each of its officers, partners, joint venture partners, representatives and/or employees from and against any and all allegations, losses, claims, actions, demands, damages, liabilities, or expenses (including costs, expenses and attorneys' fees), arising directly or indirectly from this contract, or the performance thereof, except to the extent that the matter in question has been caused by SDWP's sole gross negligence or sole willful misconduct.

22. Attorney's Fees and Costs

If any legal action or any arbitration or other proceeding is brought for the enforcement of this contract, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this contract, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled.