

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

308



**FROM:** Department of Public Health

**SUBMITTAL DATE:**  
April 15, 2014

**SUBJECT:** Approve the Agreement 14-90026 with California Department of Health Care Services covering Fiscal Years 2014/15, 2015/16 and 2016/17 for contracted Medi-Cal Administrative Activities Allowable for Federal Financial Participation. All Districts. [\$1,020,000] 100% Federal Funds.

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Approve the Agreement for Fiscal Years (FY) 2014/15, 2015/16 and 2016/17 (July 1, 2014 thru June 30, 2017) with California Department of Health Care Services (DHCS) as it pertains to Medi-Cal Administrative Activities Allowable (MAA) for Federal Financial Participation (FFP);
2. Authorize the Chairman of the Board of Supervisors to sign six (6) copies of the Agreement and two (2) copies of the Contractor Certification Clauses (CCC); and
3. Authorize the Director of Public Health to enter into MOUs with various County departments that will claim FFP under this Agreement.
4. Authorize receipt of funds into an Agency fund (fund # 65720) to be held for distribution; and
5. Authorize the Director of the Department of Public Health (DOPH) to collect a proportional amount of monies from participating departments for costs incurred in the coordination of this Agreement.

**BACKGROUND:** (on page 2)

IM/aw/td

*Susan D. Harrington*  
Susan D. Harrington, Director  
Department of Public Health

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ 340,000	\$ 340,000	\$ 1,020,000	\$ 0	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0	

**SOURCE OF FUNDS:** 100% Federal Funding

**Budget Adjustment:** No

**For Fiscal Year:** 14/15

**C.E.O. RECOMMENDATION:**

APPROVE

BY: *Jennifer L. Sargent*  
Jennifer L. Sargent

County Executive Office Signature

**MINUTES OF THE BOARD OF SUPERVISORS**

FORM APPROVED COUNTY COUNSEL  
BY: *Neal R. Kipnis*  
DATE: *4/15/14*  
Departmental Concurrence

- A-30
- 4/5 Vote
- Positions Added
- Change Order

Prev. Agn. Ref.: 3/27/12 Item 3.7

District: All

Agenda Number:

3-9

**SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

**FORM 11:** Approve the Agreement 14-90026 with California Department of Health Care Services covering Fiscal Years 2014/15, 2015/16 and 2016/17 for contracted Medi-Cal Administrative Activities Allowable for Federal Financial Participation for. All Districts. [\$1,020,000] 100% Federal Funds.

**DATE:** April 15, 2014

**PAGE:** 2 of 2

**BACKGROUND:**

**Summary**

This agreement continues to allow the County of Riverside DOPH to receive FFP for MAA, via the State's Administrative Plan for eligible clients. DOPH will perform Medi-Cal Administrative Activities on behalf of DHCS to assist in the proper and efficient administration of the Medi-Cal Program. This agreement will cover FY 2014/15, 2015/16 and 2016/17. In order to continue participation in the MAA program, a new California Department of Health Care Services agreement must be signed.

**Impact on Residents and Businesses**

This agreement will continue to facilitate enrollment of Riverside County residents into Medi-Cal and assist students and families to access Medi-Cal services such as outreach-providing Medi-Cal information, assisting families with the Medi-Cal application, arranging transportation to medical services, providing translation for medical services and referral to Medi-Cal covered services.

**SUPPLEMENTAL:**

**Additional Fiscal Information**

DOPH is anticipating annual funding of \$340,000 from this agreement. Budget adjustment is not required in the DOPH budget. Additionally, annual MAA funds of \$300,000 are distributed to the Public Guardian and Riverside County Regional Medical Center (RCRMC), who are also participating in the program.

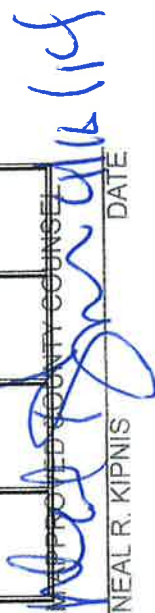
**Contract History**

On July 21, 1992, the Board of Supervisors authorized the Health Services Agency Director to coordinate SB-910 implementation activities for the County, of which MAA is part. The DOPH is acting as the single County Agency through which claims will be made under this agreement.

CCC-307

**CERTIFICATION**

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

<i>Contractor/Bidder Firm Name (Printed)</i> County of Riverside		<i>Federal ID Number</i> 95-6000930
<i>By (Authorized Signature)</i> 		
<i>Printed Name and Title of Person Signing</i> Jeff Stone, Chairman of the Board of Supervisors		
<i>Date Executed</i>	<i>Executed in the County of</i> Riverside	

FORM PROVIDED BY COUNTY COUNSEL  
BY: NEAL R. KIPNIS  
DATE

**CONTRACTOR CERTIFICATION CLAUSES**

1. STATEMENT OF COMPLIANCE: Contractor has, unless exempted, complied with the nondiscrimination program requirements. (Gov. Code §12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)

2. DRUG-FREE WORKPLACE REQUIREMENTS: Contractor 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:

- a. 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.
- b. Establish a Drug-Free Awareness Program 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.
- c. Every employee who works on the proposed Agreement will:
  - 1) receive a copy of the company's drug-free workplace policy statement; and,
  - 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the Contractor has made false certification, or violated the

certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board. (Pub. Contract Code §10296) (Not applicable to public entities.)

4. CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT: Contractor hereby certifies that contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lesser of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

5. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.

6. SWEATFREE CODE OF CONDUCT:

a. All Contractors 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, materials, 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 contractor 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](http://www.dir.ca.gov), and Public Contract Code Section 6108.

b. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations,



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STATE OF CALIFORNIA  
**STANDARD AGREEMENT**  
 STD 213\_DHCS (Rev. 01/13)

REGISTRATION NUMBER	AGREEMENT NUMBER 14-90026
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- This Agreement is entered into between the State Agency and the Contractor named below:  
(Also known as DHCS, CDHS, DHS or the State)  
 STATE AGENCY'S NAME  
**Department of Health Care Services**  
(Also referred to as Contractor)  
 CONTRACTOR'S NAME  
**County of Riverside**
- The term of this Agreement is: **July 1, 2014**  
 through **June 30, 2017**
- The maximum amount of this Agreement is: **\$ 48,000,000**  
**Forty-Eight Million Dollars**
- The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of this Agreement.

Exhibit A – Scope of Work	8 pages
Exhibit B – Budget Detail and Payment Provisions	6 pages
Exhibit C * – General Terms and Conditions	<u>GTC 610</u>
Exhibit D (F) – Special Terms and Conditions (Attached hereto as part of this agreement)	26 pages
Exhibit E – Additional Provisions	5 pages
Exhibit F – Contractor's Release	1 pages
Exhibit G – HIPAA Business Associate Addendum	14 pages

See Exhibit E, Provision 1 for additional incorporated exhibits.

Items shown above with an Asterisk (\*), are hereby incorporated by reference and made part of this agreement as if attached hereto. These documents can be viewed at <http://www.dgs.ca.gov/ois/Resources/StandardContractLanguage.aspx>.

**IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.**

<b>CONTRACTOR</b>	
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.) <b>County of Riverside</b>	
BY (Authorized Signature) 	DATE SIGNED (Do not type)
PRINTED NAME AND TITLE OF PERSON SIGNING	
ADDRESS <b>4065 County Circle Drive, Room 403 Riverside, CA 92503</b>	
<b>STATE OF CALIFORNIA</b>	
AGENCY NAME <b>Department of Health Care Services</b>	
BY (Authorized Signature) 	DATE SIGNED (Do not type)
PRINTED NAME AND TITLE OF PERSON SIGNING	
ADDRESS <b>1501 Capitol Avenue, Suite 71.5195, MS 1403, P.O. Box 997413, Sacramento, CA 95899-7413</b>	

FORM APPROVED COUNTY OF RIVERSIDE  
BY: NEAL R. KIPNIS

<b>California Department of General Services Use Only</b>
<input type="checkbox"/> Exempt per.

**Exhibit A**  
**Scope of Work**

**1. Service Overview**

Contractor agrees to provide to the California Department of Health Care Services (DHCS) the services described herein:

Contractor shall perform Medi-Cal Administrative Activities (MAA) on behalf of DHCS to assist in the proper and efficient administration of the Medi-Cal Program by improving the availability and accessibility of Medi-Cal Services to Medi-Cal eligible and potentially eligible individuals and their families. These activities include: Medi-Cal Outreach, Facilitating Medi-Cal Application, Medi-Cal Non-Emergency Transportation, Contracting for Medi-Cal Services, Program Planning and Policy Development, Medi-Cal Administrative Activities Coordination and Claims Administration and Training.

**2. Service Location**

The activities shall be performed at applicable facilities within the Riverside County geographic region.

**3. Service Hours**

The services shall be provided during normal Contractor working hours and days.

**4. Project Representatives**

A. The project representatives during the term of this Agreement will be:

**Department of Health Care Services**

Michelle Kristoff, Chief  
Administrative Claiming Local & School  
Services Branch  
Telephone: (916) 341-6106  
Fax: (916) 324-0738  
E-Mail: michelle.kristoff@dhcs.ca.gov

**County of Riverside**

Jeff Stone,  
Chairman, Board of Supervisors  
Telephone: (951) 358-5079  
Fax: (951) 358-5292  
E-Mail: jbenoit@rivocha.org

B. Direct all inquiries to:

**Department of Health Care Services**

Administrative Claiming Local & Schools  
Services Branch  
Attention: Frank Sullivan  
1501 Capitol Ave., MS 4603  
P.O. Box 997436  
Sacramento, CA 95899-7436  
Telephone: (916) 552-9052  
Fax: (916) 324-0738  
E-Mail: [frank.sullivan@dhcs.ca.gov](mailto:frank.sullivan@dhcs.ca.gov)

**County of Riverside**

Attention: Robert Wisdom  
MAA/TCM Coordinator  
4065 County Circle Drive, Room 403  
Riverside, CA 92503  
Telephone: (951) 358-5079  
Fax: (951) 358-5292  
E-Mail: [rwisdom@rivcocha.org](mailto:rwisdom@rivcocha.org)

C. Either party may make changes to the information above by giving written notice to the other party. Said changes shall not require an amendment to this agreement.

**Exhibit A**  
Scope of Work

**5. Services to be Performed**

A. The following Medi-Cal Administrative Activities (MAA) are *eligible* for Federal Financial Participation (FFP) only when they are identified in a MAA Claiming Plan approved by the State and the Centers for Medicare and Medicaid Services (CMS):

1) **Allowable Medi-Cal Outreach:** This activity may consist of discrete campaigns or may be an ongoing activity. This activity is directed to groups or individuals targeted to two goals:

- a. Bringing potential eligibles into the Medi-Cal system for the purpose of determining Medi-Cal eligibility.
- b. Bringing Medi-Cal eligibles into Medi-Cal services.

Outreach may consist of discrete campaigns or may be an ongoing activity, such as: sending teams of employees into the community to contact homeless alcoholics or drug abusers; establishing a telephone or walk-in service for referring persons to Medi-Cal services or eligibility offices; operating a drop-in community center for underserved populations, such as minority teenagers where Medi-Cal eligibility and service information is disseminated.

**NOTE: Public health outreach conducted by Local Government Agencies (LGAs) shall not duplicate the requirements on Medi-Cal managed care providers to pursue the enrollment of Medi-Cal eligibles in their service areas.**

c. Allowable outreach activities shall be discounted by the Medi-Cal percentage or not discounted as follows:

(1) Not Discounted: Outreach campaigns directed to the entire population to encourage potential Medi-Cal eligibles to apply for Medi-Cal are allowable, and the costs do not have to be discounted by the Medi-Cal percentage. These campaigns are Medi-Cal only eligibility outreach campaigns:

a) Outreach campaigns directed toward bringing Medi-Cal eligibles into Medi-Cal covered services are allowable and the costs do not have to be discounted by the Medi-Cal percentage. In such campaigns, the language should clearly indicate that the message is directed only to persons eligible for Medi-Cal, and not the general public. These campaigns are service campaigns, targeted on specific Medi-Cal services, such as Early and Periodic Screening, Diagnosis and Treatment (EPSDT).

b) A health education program or campaign may be allowable as a Medi-Cal administrative cost if it is targeted specifically to Medi-Cal services and for Medi-Cal eligible individuals, such as an educational campaign on immunization addressed to parents of Medi-Cal children. If the entire campaign is focused on Medi-Cal, the costs need not be discounted.

(2) Discounted: Outreach campaigns directed towards bringing specific high risk populations (including both Medi-Cal and non-Medi-Cal persons) into health care services are only allowable to the extent they bring Medi-Cal eligibles into Medi-Cal services. The costs of these activities are claimable but discounted by the Medi-Cal percentage.

**Exhibit A**  
**Scope of Work**

- a) If a specific Medi-Cal health education program is included as part of a broader general health education program, the Medi-Cal portion may be allowable if the cost of the general health education program is discounted according to the Medi-Cal percentage. Telephone, walk-in, or drop-in services for referring persons to Medi-Cal services, sometimes called "Information and Referral" are also allowable and discounted by the Medi-Cal percentage.
  - b) Discount methods approved by DHCS and CMS for calculating the Medi-Cal percentage discount may be utilized.
  - c) The Contractor may contract with non-governmental agencies or programs to conduct outreach activities. The subcontracted providers of TCM services, except in local education agencies, may conduct outreach activities, so long as the TCM service(s) and outreach activities are not performed by the same subcontractor employee. The subcontracted providers shall maintain an accurate accounting and reporting of the time spent on providing TCM services and performing allowable MAA outreach activities.
- 2) **Not-Allowable Medi-Cal Outreach:** Some activities that are not considered Medi-Cal outreach under any circumstances are:
- a. General preventive health education programs or campaigns addressed to lifestyle changes in the general population (e.g., Substance Abuse Narcotics Education (SANE), Drug Abuse Resistance Education (DARE), dental prevention, antismoking, alcohol reduction, etc.) are not allowable MAA.
  - b. Outreach campaigns directed toward encouraging persons to access social, educational, legal or other services not covered by Medi-Cal are not allowable.
- 3) **Facilitating Medi-Cal Application (Eligibility Intake):** This activity includes explaining Medi-Cal eligibility rules and the Medi-Cal eligibility process to prospective applicants; assisting an applicant to fill out a Medi-Cal eligibility application; gathering information related to the application and eligibility determination or re-determination from a client, including resource information and third party liability information, as a prelude to submitting a formal Medi-Cal application to the county welfare department; and/or providing necessary forms and packaging all forms in preparation for the Medi-Cal eligibility determination. This activity does not include the eligibility determination itself. These costs do not have to be discounted. The Contractor may contract with non-governmental agencies or programs to conduct eligibility intake activities. Providers of TCM services may conduct eligibility intake, so long as the service(s) and eligibility intake are not performed by the same employee. The non-governmental agencies or programs shall maintain an accurate accounting and reporting of the time spent on providing TCM services and performing Medi-Cal eligibility intake activities.
- 4) **Non-Emergency, Non-Medical Transportation:** The actual costs of arranging and providing non-emergency, non-medical transportation, and accompaniment, when medically necessary, by an attendant (not a TCM case manager) of Medi-Cal eligibles to Medi-Cal services are allowable as a Medi-Cal administrative cost to the extent that such costs are actually borne by the Contractor in accordance with 42 Code of Federal Regulations, Section 440.170. Examples of allowable non-emergency, non-medical transportation costs include: taxi vouchers, bus tokens, mileage etc. The cost of mileage, meals and lodging will be no higher than allowed for travel by the federal General

**Exhibit A**  
**Scope of Work**

Services Administration. The cost of providing non-emergency, non-medical transportation for which no actual cost is borne by the State or Contractor is not an allowable MAA cost.

- a. **Separate Transportation Unit or Service:** In situations where a Contractor operates a separate transportation unit or contracts for the provision of transportation services, the costs of the unit or the contractor of actually providing the Medi-Cal non-emergency, non-medical transportation services for Medi-Cal eligibles to Medi-Cal covered services are an allowable Medi-Cal administrative cost. Costs may be calculated on a per mile or per trip basis for each Medi-Cal client transported, or by any other method allowed by Federal Law and Regulation.
  - b. **Transportation Costs and Targeted Case Management (TCM):** The costs of arranging for transportation of Medi-Cal eligibles to Medi-Cal services are part of the TCM rate. Therefore, the costs incurred by TCM case managers in arranging transportation for Medi-Cal eligibles to Medi-Cal services are not claimable as Medi-Cal administration. The TCM rate includes the travel costs incurred by the TCM case manager in providing the TCM services. A TCM case manager may transport or accompany a Medi-Cal eligible to a Medi-Cal service appointment only if the case manager is performing case management functions while actually accompanying the client. In such situations, the costs of the accompanying and transportation will be in the TCM rate and should not be claimed separately as an administrative activity.
- 5) **MAA Implementation Training:** Activities include the giving or receiving of training related to the overall implementation of the MAA program.
- 6) **Other Training:** Training activities shall be time studied in accordance with the purpose of the training. For example, training related to Medi-Cal outreach shall be claimed as "Outreach"; training related to assisting a potential applicant complete a Medi-Cal application shall be claimed as "Facilitating Medi-Cal Application", etc. Training that is unrelated to MAA is not allowable.
- 7) **Contracting for Medi-Cal Services:** This activity involves entering into agreements with community based organizations or other provider agencies for the provision of Medi-Cal services other than TCM and/or MAA. The costs of TCM subcontract administration should be included in the TCM rate.

**NOTE: A Contractor has the option of claiming the costs of contract administration for allowable MAA, such as Outreach, under that activity or the costs may be claimed under Contract Administration. Under no circumstances are the costs of contract administration for allowable MAA to be claimed under both Contract Administration and the activity, such as Outreach. Contracting for Medi-Cal services may only be claimed under Contract Administration.**

Contracting for Medi-Cal services and/or MAA is claimable as an administrative activity when the administration of those agreements meets all of the following criteria:

- a. The contract administration is performed by an identifiable unit of one or more employees, whose tasks officially involve contract administration, according to the duty statements or job descriptions of the employees being claimed.
- b. The contract administration involves contractors that provide Medi-Cal services and/or MAA. The costs of contracting for TCM services with non-LGA providers should be claimed as part of the TCM rate. These costs cannot be separately claimed as MAA.



**Exhibit A**  
**Scope of Work**

- c. TCM case managers and LGA subcontractors cannot claim for contract management. It is claimable only when performed by an LGA.
- d. The administrative costs of contracting by LGAs as service providers under managed care arrangements may not be claimed administratively and are considered to be in the managed care capitation payment to the LGA.
- e. The contract administration must be directed to one or more of the following goals:
  - (1) Identifying, recruiting, and contracting with community agencies as Medi-Cal service contract providers;
  - (2) Providing technical assistance to Medi-Cal subcontractors regarding County, State and Federal regulations;
  - (3) Monitoring provider agency capacity and availability; and
  - (4) Ensuring compliance with the terms of the agreement.

The contracts being administered must be for Medi-Cal services and/or MAA and may involve Medi-Cal populations only or may be general medical service agreements involving Medi-Cal and other indigent, non-Medi-Cal populations. When the contract involves a Medi-Cal and non-Medi-Cal population, the costs of contract administration shall be **discounted** by the Medi-Cal percentage.

- 8) **Program Planning and Policy Development (PP&PD):** This activity may be claimed at the enhanced rate (75 percent FFP) if performed by a Skilled Professional Medical Personnel (SPMP), or the non-enhanced rate (50 percent FFP) if performed by a non-SPMP.
- a. Allowable: This activity is claimable when performed, either part-time or full-time, by one or more Contractor employees and subcontractors whose tasks officially involve PP&PD. Contractor employees performing this activity must have the tasks identified in the employee's position descriptions/duty statements. If the programs serve both Medi-Cal and non-Medi-Cal clients, the costs of PP&PD activities must be allocated according to the Medi-Cal percentages being served by the programs.

This activity is claimable as a direct charge for Medi-Cal administration only when PP&PD is performed by a unit of one or more Contractor employees who spend 100 percent of their paid working time performing this activity. This activity is claimable only if the administrative amounts being claimed for PP&PD persons and activities are not otherwise included in other claimable cost pools; and the amounts being claimed for such persons employed by (and activities taking place in) a service provider setting are not otherwise being reimbursed through the billable service rate of that provider. Costs for persons performing this activity less than 100 percent of their time will be based on a time-survey.

In LGAs with county-wide managed care arrangements, PP&PD activities are claimable as Medi-Cal administration only for those services that are excluded from the managed care contracts.

Under the conditions specified above, the following tasks are allowable as MAA under this activity:

**Exhibit A**  
**Scope of Work**

- (1) Developing strategies to increase Medi-Cal system capacity and close Medi-Cal service gaps. This includes analyzing Medi-Cal data related to a specific program or specific group.
- (2) Interagency coordination to improve delivery of Medi-Cal services.
- (3) Developing resource directories of Medi-Cal services/providers.
- (4) For subcontractors, some PP&PD support services are allowable, e.g., developing resource directories, preparing Medi-Cal data reports, conducting needs assessments, or preparing proposals for expansion of Medi-Cal services.

- b. Not allowable: This activity is not allowable if staff performing this function are employed full-time by service providers, such as clinics. The full costs of the employee's salary are assumed to be included in the billable fee-for-service rate and separate MAA claiming is not allowed.

This activity is not allowable if staff who deliver services part-time in a LGA service provider setting, such as a clinic, are performing PP&PD activities relating to the service provider setting in which they deliver services.

- 9) **General Administration:** This includes activities that are eligible for cost distribution on an OMB Circular A-87 approved cost allocation basis. These costs are to be distributed proportionately to all of the activities performed:
- a. Attend or conduct general, non-medical staff meetings;
  - b. Develop and monitor program budgets;
  - c. Provide instructional leadership, site management, supervise staff, or participate in Employee performance reviews;
  - d. Review departmental or unit procedures and rules;
  - e. Present or participate in, in-service orientations and programs; and
  - f. Participate in health promotion activities for employees of the Contractor.
- 10) **Paid Time Off:** This activity is to be used by all staff involved in MAA to record usage of paid leave, including vacation, sick leave, holiday time and any other employee time off that is paid. This does not include lunch or meal breaks, off payroll time, or Compensatory Time Off (CTO) which shall be allocated as prescribed by the State.

11) **Compensatory Time Off:**

CTO shall be time surveyed to the activity performed while working the extra hours.

**Exhibit A**  
Scope of Work

- 12) **MAA/TCM Coordination and LGA Claims Administration:** Contractor employees whose position description/duty statement includes the administration of MAA and TCM on a Local Governmental Agency (LGA) service region-wide basis, may claim for the costs of these activities on the MAA detailed invoice as a direct charge.

Costs incurred in the preparation and submission of MAA claims at any level, including staff time, supplies, and computer time, may be direct charged. If the MAA/TCM Coordinator and/or claims administration staff are performing this function part-time, along with other duties, they must certify the percentage of total time spent performing the duties of MAA coordination and/or claims administration. The percentage certified for the MAA/TCM Coordinator and/or claims administration staff activities must be used as the basis for federal claiming. Charges for supervisors, clericals, and support staff may be allocated based upon the percentage of certified time of the MAA/TCM Coordinator and claims administration staff.

- a. The MAA/TCM Coordinator and claims administration staff may claim the costs of the following activities, as well as any other reasonable activities directly related to the Contractor's administration of TCM services and MAA at the LGA-wide level:
- (1) Drafting, revising, and submitting MAA Claiming Plans, and TCM performance monitoring plans.
  - (2) Serving as liaison with and monitoring the performance of claiming programs within the LGA and with the State and Federal Governments on MAA and TCM.
  - (3) Administering LGA claiming, including overseeing, preparing, compiling, revising and submitting MAA and TCM invoices on a LGA-wide basis to the State.
  - (4) Attending training sessions, meetings, and conferences involving MAA and/or TCM.
  - (5) Training Contractor program and subcontractor staff on State, Federal, and Local requirements for MAA and/or TCM claiming.
  - (6) Ensuring that MAA and/or TCM invoices do not duplicate Medi-Cal invoices for the same services or activities from other providers. This includes ensuring that services are not duplicated when a Medi-Cal beneficiary receives TCM services from more than one case manager.

**NOTE:** The costs of the MAA/TCM Coordinator's time and claims administration staff time must not be included in the MAA claiming or in the TCM rate, since the costs associated with the time are to be direct charged. Charges for supervisors, clericals, and support staff for these employees may be allocated based upon the percentage of certified time of the MAA/TCM Coordinator and claims administration staff. The costs of TCM claiming activity at the TCM provider level are to be included in the TCM rate.

- b. Using the State Department of Health Care Services Time Survey for Employees Performing Medi-Cal Administrative Activities and/or Targeted Case Management (DHCS 7093), which will be disseminated through policy directives, issued by the State, conduct an annual time survey for one month. DHCS has designated the annual MAA time survey to occur in either September or October. The time survey will identify all time spent on each of the above allowable MAA, non-

**Exhibit A**  
Scope of Work

claimable activities, and general administration and paid time off, which are proportionately allocated to all activities. The activities of staff providing Medi-Cal administration must be documented in accordance with the provisions of 42 CFR Sections 432.50, 433.32, and 433.34, and 45 CFR Parts 74 and 95, and OMB Circular A-87.

All non-Medi-Cal related activities and direct patient care services shall be time surveyed to Other Programs/Activities" or "Direct Patient Care" on the Time Survey form, as appropriate.

- c. Comply with enabling legislation, regulations, administrative claiming process directives, and the Policy and Procedure Letters of the DHCS Safety Net Financing Division incorporated by reference in Exhibit E, Provision 1, which define program specific allowable MAA.
  - d. Provide to the State, comprehensive Medi-Cal Administrative Claiming Plan, in the format specified by the State. The claiming plan must be approved by the State and this agreement must be signed by both parties prior to the submission of MAA invoices.
  - e. Not discriminate against any eligible person because of race, religion, political beliefs, color, national or ethnic origin, ancestry, mental or physical disability, medical condition, marital status, age or sex.
  - f. Ensure all applicable State and federal requirements, as identified in Exhibit E, Provision 4, are met in performing MAA under this agreement. It is understood and agreed that failure by the Contractor to ensure all applicable State and Federal requirements not met in performing MAA under this agreement shall be sufficient cause for the State to deny or recoup payments to the Contractor and/or to terminate this agreement.
  - g. Submit a letter of intent to participate in the MAA Program six (6) months prior to the termination of this agreement for the purpose of extending the term of the agreement or initiating a new agreement, whichever is preferred by DHCS.
  - h. When an amendment of the contract is necessary because the original projected expenditure (aka: funding) was insufficient, a request must be submitted to DHCS at least 6 months prior to the end of the FY for which additional funding is necessary. If this request is not received timely, the contract will not be amended to address the insufficient funding and subsequent affected invoices will not be paid.
- B. The following MAA are *not eligible* for Federal Financial Participation (FFP) and must be excluded from claims:
- 1) Extensions of Direct Medical Services: Not allowable as MAA are activities that are integral parts or extensions of direct medical services, such as patient follow-up, patient assessment, patient education, or counseling.

**Exhibit B**  
**Budget Detail and Payment Provisions**

**1. Invoicing and Payment**

- A. For administrative activities satisfactorily rendered and upon receipt and approval of the invoices, the DHCS agrees to compensate the Contractor for actual expenditures incurred in accordance with the conditions specified herein.
- B. Invoices shall include the Agreement Number and shall be submitted not more frequently than quarterly in arrears to:

<u>Regular Mail</u>	<u>Overnight Mail</u>
CMAA Analyst Department of Health Care Services Safety Net Financing Division Administrative Claiming Local & Schools Services Branch MS 4603 PO Box 997436 Sacramento, CA 95899-7436	CMAA Analyst Department of Health Care Services Safety Net Financing Division Administrative Claiming Local & Schools Services Branch MS 4603 1501 Capitol Avenue Sacramento, CA 95814

C. Invoices shall:

- 1) Be prepared on both the Summary Invoice and Detailed Invoice incorporated by reference in Exhibit E, Provision 1.
- 2) Be prepared on Contractor letterhead and must be signed by an authorized official, employee or agent certifying that the expenditures claimed represent actual expenses for the activities performed under this agreement on the Summary Invoice.
- 3) Bear the Contractor's name as shown on the agreement on both the Summary Invoice and on the Detailed Invoice.
- 4) Identify the billing and/or performance period covered by the invoice on both the Summary Invoice and on the Detailed Invoice.
- 5) Itemize costs for the billing period in the same or greater level of detail as indicated in this agreement on the Detailed Invoice. Subject to the terms of this agreement, reimbursement may only be sought for those costs and/or cost categories expressly identified as allowable in this agreement and approved by DHCS.
- 6) Provide the State with complete invoice and expenditure information to include in the Centers for Medicare and Medicaid Services CMS 64 no later than *eighteen* (18) months after the end of the quarter for which the claim was submitted. This information shall be provided on the standardized Summary Invoice and Detailed Invoice.
- 7) Identify on the Detailed Invoice, the claim categories to which expenditure data must adhere for insertion into the CMS 64. A separate Detailed Invoice shall be submitted for each program, clinic, non-governmental entity and subcontractor claiming MAA costs pursuant to this agreement, except for contracted employees under the direct control of the Contractor. Contracted employees' costs shall be aggregated and reported in accordance with the MAA Invoice instructions. The Detailed Invoice(s) for each of the programs claimed shall correspond to the name of the claiming programs identified in the Contractors MAA Claiming Plan. The Invoice instructions and the MAA Claiming Plan are found in the LGA MAA Provider Manual incorporated by reference in Exhibit E, Provision 1.

**Exhibit B**  
Budget Detail and Payment Provisions

D. Rates Payable

- 1) The invoices may include the cost of expenses of staff and the operating expenses and equipment costs necessary to collect data, disseminate information, and carry out the staff activities outlined in this agreement.
  - a. The maximum rate of Federal reimbursement for compensation (salary and benefits), of activities qualifying under Federal regulations applying to "Skilled Professional Medical Personnel (SPMP)" of a public agency and their "directly supporting staff" shall be 75 percent of such costs for activities identified as "enhanced." The maximum rate of reimbursement for allowable costs of activities identified as "non-enhanced", performed by SPMP and their directly supporting staff, shall be 50 percent. The maximum rate of reimbursement for all allowable costs other than compensation applicable to SPMPs and their directly supporting staff shall be 50 percent.

(1) An SPMP is defined as an employee of the Contractor who has completed a 2-year or longer program leading to an academic degree or certification in a medically-related profession *and* who performs duties and responsibilities requiring professional medical knowledge and skills. Directly supporting staff are also employees of the Contractor. They are secretarial, stenographic, copy, file, or record clerks who are directly supervised by the SPMP, *and* who provide clerical services necessary for carrying out the professional medical responsibilities and administrative activities of the SPMP.

- b. The rate of federal reimbursement is 50 percent Federal Financial Participation (FFP) for all costs of non- SPMPs and all costs of subcontractors (non-governmental entities) performing allowable administrative activities as defined in Provision 5, Services to be Performed, of Exhibit A, Scope of Work.
- c. The maximum rate of reimbursement for all non-public subcontractors to the Contractor shall be 50 percent for all categories of cost.

- E. Certify the certified public expenditure from the Contractor's General Fund, or from any other funds allowed under federal law and regulation, for Title XIX funds claimed for MAA performed pursuant to W&I Code Section 14132.47. The State shall deny payment of any claim submitted under this agreement if it determines that the certification is not adequately supported for purposes of Federal Financial Participation (FFP). Expenditures certified for MAA costs shall not duplicate, in whole or in part, claims made for the costs of direct patient care. The following certification statement shall be made on each Summary Invoice submitted to the State for payment for the performance of MAA:

"I certify under penalty of perjury that the information provided on this invoice is true and correct, based on actual expenditures for the period claimed, and that the funds/contributions have been expended as necessary for federal matching funds pursuant to the requirements of 42 CFR 433.51, for allowable administrative activities and that these claimed expenditures have not been nor shall not subsequently be used for federal match in this or any other program. I have notice that the information is to be used for filing of a claim with the Federal Government for federal funds and knowing misrepresentation constitutes violation of the Federal False Claims Act."



**Exhibit B**  
**Budget Detail and Payment Provisions**

**2. Budget Contingency Clause**

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

**3. Prompt Payment Clause**

Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.

**4. Amounts Payable**

- A. The amounts payable under this agreement shall not exceed:
  - 1) \$16,000,000 for the budget period of 07/01/14 through 06/30/15,
  - 2) \$16,000,000 for the budget period of 07/01/15 through 06/30/16,
  - 3) \$16,000,000 for the budget period of 07/01/16 through 06/30/17.
- B. Reimbursement shall be made for allowable expenses up to the amount annually encumbered commensurate with the state fiscal year in which services are performed and/or goods are received.

**5. Participation in Medi-Cal Administrative Claiming Process**

- A. As a condition of participation in the Medi-Cal Administrative Claiming process, and in recognition of revenue generated in the Medi-Cal Administrative Claiming process, the Contractor shall pay an annual participation fee through a mechanism agreed to by the State and Contractors, or, if no agreement is reached by August 1 of each year, directly to the State.
- B. The participation fee shall be used to cover the cost of administering the Medi-Cal Administrative Claiming process, including, but not limited to, claims processing, technical assistance, and monitoring. The State shall determine and report staffing requirements upon which projected costs will be based.
- C. The amount of the participation fee shall be based upon the anticipated State salaries, benefits, operating expenses and equipment, necessary to administer the Medi-Cal Administrative Claiming process and other costs related to that process.

**6. Non-Federal Matching Funds for Medi-Cal Administrative Activities**

The Contractor will expend one hundred percent (100%) of the non-federal share of the cost of performing Medi-Cal Administrative Activities. By signing this agreement the Contractor

**Exhibit B**  
Budget Detail and Payment Provisions

certifies that the funds expended for this purpose shall be from the Contractor's general fund or from any other funds allowable under federal law and regulation.

**7. Claiming Overhead Costs**

- A. In order to claim administrative overhead costs, also referred to as "External Administrative Overhead" costs, the Contractor must have a State Controller's Office approved LGA administrative overhead cost allocation plan for the applicable period and these costs must be claimed in accordance with the plan. A LGAs plan is submitted to the California State Controller's Office, which has delegated authority from the Federal Government to approve it.
- B. Internal (departmental) administrative overhead costs are allowable for FFP only if there is a departmental overhead indirect cost allocation plan prepared and on file for audit purposes for the applicable period and costs are claimed in accordance with it following Federal Office of Management and Budget (OMB) Circular A-87 guidelines.
- C. Both external and internal administrative cost allocation plans must comply with provisions of the federal OMB Circular A-87, entitled "Cost Principles for State, Local, and Indian Tribal Governments" and Federal Publication OASC-10, entitled "A Guide for State and Local Governments/Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government."
- D. The Contractor must assure that costs claimed as direct costs not duplicate costs claimed through the application of the indirect cost rate.

**8. Offset of Revenues**

- A. To the extent that other funding sources have paid or would pay for the costs at issue, Federal Financial Participation (FFP) is not available and the costs must be removed from the total costs (*OMB Circular A-87, Attachment A, Part C., Item 4.a.*). The revenue offset categories which must be applied in developing the net costs include, but are not limited to:
  - 1) All unallowable federal funds, including not only federal grants but also federal payments for services under Medicare fee-for-service or encounter rates.
  - 2) All state expenditures which have been previously matched by the federal government (*includes Medicaid funds for medical assistance, such as the payment rate for services under fee-for-service or encounter rates*). Claims submitted will not be duplicative of Medicaid claims for costs that are part of the all inclusive rate for direct patient care.
  - 3) Private insurance and other fees collected from non-governmental sources.
  - 4) All applicable credits must be offset against claims for Medicaid funds. Applicable credits refer to those receipts or reduction of expenditure type transactions that offset or reduce expense items allocable to federal awards as direct or indirect costs.
  - 5) A program may not claim any federal match for administrative activities if its total cost has already been paid by the revenue sources above. A government program may not be reimbursed in excess of its actual costs, i.e., make a profit.

**Exhibit B**  
**Budget Detail and Payment Provisions**

**9. Requirements for Federal Financial Participation**

- A. Per 42 CFR, Section 432.2 et seq., and Section 433.1 et seq., Skilled Professional Medical Personnel (SPMP), and directly supporting staff, eligible for enhanced funding are defined as physicians, dentists, nurses, and other specialized personnel who have professional education and training in the field of medical care or appropriate medical practice and who are in an employer-employee relationship with the Contractor. SPMPs do not include other non-medical health professionals such as public administrators, medical analysts, lobbyists, senior managers or administrators of public assistance programs or of the Medi-Cal program.
- B. The seventy-five percent (enhanced) federal matching rate is only available for a Contractor that is contractually linked to the DHCS to perform Medi-Cal Administrative Activities. The enhanced federal matching rate can be claimed for salaries, benefits, travel and training of SPMP and their directly supporting clerical staff who are in an employee-employer relationship with the Contractor and are involved in activities that are necessary for the proper and efficient administration of the Medi-Cal Program.
- C. Fifty percent (non-enhanced) federal matching rate can be claimed for any of the Contractor's staff, or subcontractors, involved in the performance of activities that are necessary for the proper and efficient administration of the Medi-Cal Program. This includes claiming for SPMP and directly supporting clerical staff performing related activities that are non-enhanced. Additionally, the ability to claim SPMP under the MAA program is activity driven not education based. Expenditures for the actual furnishing of medical services by SPMP do not qualify for reimbursement via Medi-Cal Administrative Claiming, as medical services are paid for in the fee-for-services system.
- D. Qualifying SPMP costs may be matched at the 75 percent rate in proportion to the time worked by SPMP in performing those duties that require professional medical knowledge and skills, as evidenced by position descriptions, job announcements, or job classifications.

**10. Expense Allowability/Fiscal Documentation**

- A. Invoices, received from a contractor and accepted and/or submitted for payment by DHCS, shall not be deemed evidence of allowable agreement costs.
- B. Contractor shall maintain for review and audit and supply to DHCS upon request, adequate documentation of all expenses claimed pursuant to this agreement to permit a determination of expense allowability.
- C. If the allowability or appropriateness of an expense cannot be determined by the DHCS because invoice detail, fiscal records, or backup documentation is nonexistent or inadequate according to generally accepted accounting principles or practices, all questionable costs may be disallowed and payment may be withheld by the DHCS. Upon receipt of adequate documentation supporting a disallowed or questionable expense, reimbursement may resume for the amount substantiated and deemed allowable.

**Exhibit B**  
Budget Detail and Payment Provisions

**11. Federal Audit Disallowances**

- A. In addition to the indemnification required by Exhibit C, Provision 5, and notwithstanding any other provision of this agreement, the State shall be held harmless, in accordance with Provision 2, Budget Contingency Clause, paragraphs A and B, from any federal audit disallowance and interest resulting from payments made to the Contractor pursuant to W&I Code Section 14132.47, and this agreement, less the amounts already remitted to the State.
- B. To the extent that a federal audit disallowance and interest results from a claim or claims for the Contractor has received reimbursement for MAA, the State shall recoup from the Contractor which submitted the disallowed claim, through offsets or by direct billing, amounts equal to the amount of the disallowance plus interest in that fiscal year, less any amount already remitted to the State for the disallowed claim. All subsequent claims submitted to the State applicable to any previously disallowed MAA or claim, may be held in abeyance, with no payment made, until the federal disallowance issue is resolved.
- C. To the extent that a federal audit disallowance and interest results from a claim or claims for which the Contractor has received reimbursement for MAA performed by a non-governmental entity under agreement with, and on behalf of, the Contractor, the State shall be held harmless by that particular Contractor for 100 percent of the amount of any such final federal audit disallowance and interest less the amounts already remitted to the State for the disallowed claim.

**12. Program Name and Number for Federal Claiming**

- A. Title 31 – Money and Finance, Subtitle V – General assistance Administration, Chapter 75 – Requirements for Single Audits, Section 7502 requires each pass-through entity provide the subrecipient program names and any identifying numbers from which such assistance is derived. The Catalog of Federal Domestic Assistance (CFDA) number for this federal program is 93.778, Medical Assistance Program.
- B. Contractor shall include the language in Provision 12, Item A, in its contracts with subrecipients and vendors.

GENERAL TERMS AND CONDITIONS

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. INDEMNIFICATION: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation 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 person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
6. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

8. INDEPENDENT CONTRACTOR: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

9. RECYCLING CERTIFICATION: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 307 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12. TIMELINESS: Time is of the essence in this Agreement.

13. COMPENSATION: The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.



15. ANTITRUST CLAIMS: The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.

2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT: For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:

a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all 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

b. The contractor, 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 Hire Registry maintained by the California Employment Development Department.

17. 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 thereby.

18. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

a. If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)

b. If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

20. LOSS LEADER:

If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

ARTICLE I. DEFINITIONS AND RESOLUTIONS OF LANGUAGE CONFLICTS

- A. The term "Agreement" or "Contract" shall mean the Standard Agreement (Std. 213), Exhibits A, B, C, D, E and any subsequent amendments, unless otherwise provided in this Article.
- B. In the event of any inconsistency between the articles, attachments, or provisions which constitute this Agreement, the following order of precedence shall apply:
  - 1. Standard Agreement (STD 213), etc., and any amendments thereto;
  - 2. Scope of Work, Exhibit A
  - 3. Special terms and conditions Exhibit D
  - 4. General terms and conditions, Exhibit C
  - 5. Exhibits B, E
  - 6. All other documents incorporated herein by reference.
- C. "State" and "Department" mean the State of California and the California Department of Aging (CDA) interchangeably.
- D. "Health Services" and "DHCS" mean the Department of Health Care Services.
- E. "Contractor" means the governmental, or nonprofit entity to which funds are given under this Agreement and which is accountable to DHCS or CDA, or both, and/or federal government for use of these funds.
- F. "Subcontractor" means the legal entity that receives funds from the Contractor to provide direct services identified in this Agreement.
- G. "Vendor" means the entity hired by the Contractor to provide Waiver Services.
- H. Subcontract and/or vendor agreement means a subcontract and/or vendor agreement supported by funds from this Agreement.
- I. In the event of conflict between the provisions set forth in this Agreement as defined in Paragraph A, and any Program Memo or other correspondence, the provisions in this Agreement shall prevail.
- J. "Reimbursable item" also means "allowable cost" and "compensable item."
- K. "Manual" means the Multipurpose Senior Services Program (MSSP) Site Manual, dated July 1, 1992, and all subsequent amendments and revisions.
- L. "CFR" means Code of Federal Regulations. "CCR" means California Code of Regulations. "GC" means Government Code. "W&I Code" means Welfare and Institutions Code. "USC" means United States Code. "PCC" means Public Contract Code.
- M. "HIPAA" means Health Insurance Portability and Accountability Act.
- N. "Client" means any individual who has met MSSP eligibility requirements and been enrolled in the MSSP program."

ARTICLE I. DEFINITIONS AND RESOLUTIONS OF LANGUAGE CONFLICTS (Continued)

- O. "Xerox" means Xerox State Health Care, LLC, the Medi-Cal fiscal intermediary.
- P. "OMB" means federal Office of Management and Budget.
- Q. Multipurpose Senior Services Program Medi-Cal Qualified.

AID PROGRAM DEFINITION  
CODE

1. CASH GRANT

- |    |          |   |
|----|----------|---|
| 10 | AGED     | SSI/SSP Aid to the Aged – Cash assistance program administered by the Social Security Administration, pays a cash grant to needy persons age 65 or older.                                   |
| 20 | BLIND    | SSI/SSP Aid to the Blind – Cash assistance program administered by the Social Security Administration, pays a cash grant to needy blind persons of any age.                                 |
| 60 | DISABLED | SSI/SSP Aid to the Disabled – Cash assistance program administered by the Social Security Administration, pays a cash grant to needy persons who meet the federal definition of disability. |

2. PICKLE ELIGIBLES/20 PERCENT SOCIAL SECURITY DISREGARDS

- |       |       |   |
|-------|-------|---|
| ***16 | AGED  | Aid to the Aged-Pickle Eligibles – Persons age 65 or older who were eligible for and receiving SSI/SSP and Title II Benefits concurrently in any month since April, 1977, and were subsequently discontinued from SSI/SSP but would be eligible to receive SSI/SSP if their Title II cost-of-living increases were disregarded. These persons are eligible for Medi-Cal benefits as public assistance recipients in accordance with the provisions of the <u>Lynch v. Rank</u> lawsuit. |
| ***26 | BLIND | Aid to the Blind-Pickle Eligibles – Persons who meet the federal criteria for blindness and are covered by the provision of the <u>Lynch v. Rank</u> lawsuit. See aid code 16 for definition of Pickle Eligibles.   |

ARTICLE I. DEFINITIONS AND RESOLUTIONS OF LANGUAGE CONFLICTS (Continued)

\*\*\*66 DISABLED Aid to the Disabled-Pickle Eligibles –  
Persons who meet the federal definition of disability  
and are covered by the provision of the Lynch v. Rank  
lawsuit. See aid code 16 for definition of Pickle  
Eligibles.

\*\*NOTE: This also includes persons who were discontinued from cash grant  
status due to the 20 percent Social Security increase under Public Law 32-336.  
These persons are eligible for Medi-Cal benefits as public assistance recipients  
in accordance with CCR, Title 22, Section 50247.

3. MEDICALLY NEEDED, NO SHARE OF COST

AID PROGRAM DEFINITION  
CODE

14	AGED-MN	Aid to the Aged-Medically Needed – Persons age 65 or older who do not wish or are not eligible for a cash grant but are eligible for Medi-Cal only. No share of cost required of the beneficiaries.
24	BLIND-MN	Aid to the Blind-Medically Needed – Persons who meet the federal definition of disability and do not wish or are not eligible for a cash grant, but are eligible for Medi-Cal only. No share of cost required of the beneficiaries.
64	DISABLED- MN	Aid to the Disabled-Medically Needed – Persons who meet the federal definition of disability and do not wish or are not eligible for a cash grant, but are eligible for Medi-Cal only. No Share of cost required of the beneficiaries.

4. MEDICALLY NEEDED, SHARE OF COST

17	AGED-MN SOC	Aid to the Aged-Medically Needed, Share of cost- See Aid Code 14 for definition of AGED-MN. Share of cost is required of the beneficiaries.
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ARTICLE I. DEFINITIONS AND RESOLUTIONS OF LANGUAGE CONFLICTS (Continued)

<u>AID CODE</u>	<u>PROGRAM</u>	<u>DEFINITION</u>
27	BLIND-MN SOC	Aid to the Blind-Medically Needy, Share of cost- See Aid Code 24 for definition of BLIND-MN. Share of cost is required of the beneficiaries.
67	DISABLED MN-SOC	Aid to the Disabled-Medically Needy, Share of Cost – See Aid Code 64 for definition of Disabled-MN. Share of cost is required of the beneficiaries.

\*\*\*NOTE: As a result of the implementation of the IHSS Plus waiver, the special program codes of 1F, 2F, and 6F that were paired with the 17, 27, and 67 aid codes are no longer valid Medi-Cal aid codes as of November 1, 2005. MSSP sites are only required to serve clients with the aid codes of 17, 27, or 67 who were active as of November 1, 2005 or were subsequently re-determined into aid codes 17, 27 or 67.

5. AGED AND DISABLED FEDERAL POVERTY LEVEL PROGRAM

1H	AGED	Aged persons who, due to their income levels, would normally be included in the Medi-Cal Share of Cost population (Aid Code 17). Under this new program, those recipients with a Share of Cost of \$1 to \$326 will be given full scope, no Share of Cost Medi-Cal.
6H	DISABLED	Disabled persons who, due to their income levels, would normally be included in the Medi-Cal Share of Cost population (Aid Code 17). Under this program, those recipients with a Share of Cost of \$1 to \$326 will be given full scope, no Share of Cost Medi-Cal.

6. INSTITUTIONAL DEEMING

1X	NO SOC	Multipurpose Senior Services Program Medi-Cal Qualified. Eligible due to application of spousal impoverishment rules.
1Y	SOC	Multipurpose Senior Services Program Medi-Cal Qualified. Eligible due to application of



ARTICLE I. DEFINITIONS AND RESOLUTIONS OF LANGUAGE CONFLICTS (Continued)

spousal impoverishment rules. Share of cost is required of the beneficiaries. These recipients are identified apart from the regular Medi-Cal SOC population by the Special Program Aid Code of 1F.

7. CONTINUED ELIGIBILITY – REDETERMINATION

AID PROGRAM DEFINITION  
CODE

1E	AGED	Continued eligibility for the Aged - Former SSI beneficiaries who are aged until the county redetermines their eligibility.
2E	BLIND	Continued eligibility for the Blind - Former SSI beneficiaries who are blind until the county redetermines their eligibility.
6E	DISABLED	Continued eligibility for the Disabled - Discontinued SSI beneficiaries who are disabled until the county redetermines their eligibility.

8. CONTINUED ELIGIBILITY – REDETERMINATION

1D	AGED	Continued eligibility for the Aged – Discontinued IHSS Residual beneficiaries who are aged until the county redetermines their eligibility.
2D	BLIND	Continued eligibility for the Blind Discontinued IHSS Residual beneficiaries who are blind until the county redetermines their eligibility.
6D	DISABLED	Continued eligibility for the Disabled - Discontinued IHSS Residual beneficiaries who are disabled until the county redetermines their eligibility.

ARTICLE I. DEFINITIONS AND RESOLUTIONS OF LANGUAGE CONFLICTS (Continued)

P. Definition of Services Provided Under the Waiver

Definitions of each of the services approved by the Centers for Medicare and Medicaid Services of the Department of Health and Human Services under the existing 1915 (c) Home- and Community-Based Services Waiver are as follows. The numbers in parentheses are program code designations for the particular service.

1. **ADULT DAY SUPPORT CENTER (1.0):** This is a community-based program that provides nonmedical care to meet the needs of functionally-impaired adults. Services are provided according to an individual plan of care in a structured comprehensive program that will provide a variety of social, psychosocial, and related support services in a protective setting on less than a 24-hour basis. The State Department of Social Services (DSS) licenses these centers as community care facilities. Eligible clients are those who:
  - Need, but do not have, a caretaker available during the day
  - Are isolated and in need of social stimulation
  - Need a protective setting for social interaction
  - Need psychological support to prevent institutionalization.Care in adult day support centers will be provided when specific therapeutic goals are stipulated in the client's plan of care. Adult day support center care is not meant to be merely diversional or recreational in nature.
2. **ADULT DAY CARE (1.1):** Will be provided to MSSP clients who are identified in their plan of care as benefiting from being in a social setting with less intense supervision and fewer professional services than offered in an adult day support center. Adult Day Care services will be provided when the client's plan of care indicates that the service is necessary to reach a therapeutic goal. Adult day care centers are community-based programs that provide nonmedical care to persons 18 years of age or older in need of personal care services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a 24-hour basis. The DSS licenses these centers as community care facilities.
3. **HOUSING ASSISTANCE (2.2, 2.3, 2.4, 2.5 AND 2.6):** These services are necessary to ensure the health, welfare, and safety of the client in his or her physical residence or home setting. As specified in the client's plan of care, services may include provision of physical adaptations and assistive

ARTICLE I. DEFINITIONS AND RESOLUTIONS OF LANGUAGE CONFLICTS (Continued)

devices, emergency assistance in situations which demand relocation and assistance to restore utility service. Housing Assistance services include:

- a. **MINOR HOME REPAIRS AND MAINTENANCE (2.2):** Minor Home Repairs do not involve major structural changes or repairs to a dwelling. Maintenance is defined as those services necessary for accessibility (e.g., ramps, grab bars, handrails, items above what is covered by the State Plan, and installation), safety (e.g., electrical wiring, smoke alarms), or security (e.g., locks). Eligible clients are those whose health and/or safety or independence are jeopardized because of deficiencies in their place of residence. This service is limited to clients who are owners/occupiers of their own home, or those in rental housing where the owner refuses to make needed repairs or otherwise alter the residence to adapt to special client needs. Written permission from the landlord (including provision for removal of modifications, if necessary) is required before undertaking repairs or maintenance on leased premises. All services shall be provided in accordance with applicable State or local building codes.
- b. **NONMEDICAL HOME EQUIPMENT (2.3):** Includes those assistive devices, appliances and supplies which are necessary to assure the client's health, safety and independence. This service includes the purchase or repair of nonmedical home equipment and appliances such as refrigerators, stoves, microwave ovens, blenders, kitchenware, heaters, air conditioners, fans, washing machines, dryers, vacuum cleaners, furniture (i.e., couches, lamps, tables, chairs mattresses, bedding, and emergency supply kits and goods) under the following circumstances:
  - i. The client is receiving Deinstitutional Care Management services, and the items are required to facilitate discharge from the institution to a community residence
  - ii. The client's assessment identifies the need for this service including how it is a necessary support if the client is to remain in the community, and the care plan specifies the required item(s)
  - iii. In either circumstance, the following criteria must be met and documented in the case record:

ARTICLE I. DEFINITIONS AND RESOLUTIONS OF LANGUAGE CONFLICTS (Continued)

- (a). The items are unobtainable through other resources, and their purchase would be a financial hardship for the client
    - (b). The items are necessary to preserve the client's health, improve functional ability and assure maximum independence, thereby preventing elevation to a higher level of care and avoiding more costly institutionalization
  - c. **EMERGENCY MOVE (2.4):** Involves facilitating a smooth transition from one living situation to another. Eligible clients are those who, due to loss of residence or the need for a change in residence, require assistance with relocation. Services may be provided by moving companies or other individuals who can guarantee the safe transfer of the client's possessions. Activities may include materials and labor necessary for such moves.
  - d. **EMERGENCY UTILITY SERVICE (2.5):** Allows for payment of utilities only when the client has no other resources to meet this need. Additionally, the client must be at risk to receive a shut-off notice and the potential shut off of utility services would place the health and safety of the client in jeopardy.
  - e. **TEMPORARY LODGING (2.6):** Allows for payment of hotel or motel lodging for those clients, usually from rural areas, who must travel long distances and stay overnight for medical treatments not available in their home area. Lodging rates shall not exceed State per diem limits; these limits vary depending on geographic area.
4. **SUPPLEMENTAL CHORE (3.1):** Is for purposes of household support and applies to the performance of household tasks rather than to the care of the client. Chore activities are limited to: household cleaning, laundry (including the services of a commercial laundry or dry cleaner), shopping, food preparation, and household maintenance, as long as the client does not live in a Residential Care Facility for the Elderly (RCFE). Client instruction in performing household tasks and meal preparation may also be provided.

ARTICLE I. DEFINITIONS AND RESOLUTIONS OF LANGUAGE CONFLICTS (Continued)

This service is for purposes of household support for those services above and beyond those available through the State Plan. Examples include:

- a. The MSSP client has not yet been assessed for IHSS, and needs services in the interim until IHSS services can be arranged
- b. The regular IHSS provider is not available, and IHSS cannot provide a substitute
- c. IHSS services are in place; however, MSSP has assessed a greater need. In these cases, every effort will be made to negotiate with IHSS towards an increase in those services before authorizing expenditure of waiver funds

5. **SUPPLEMENTAL PERSONAL CARE (3.2):** This service is provided to individuals whose needs exceed the maximum amount available under the State Plan or who are temporarily without a provider. This service provides assistance to maintain bodily hygiene, personal safety, and activities of daily living (ADL). These tasks are limited to nonmedical personal services: feeding, bathing, oral hygiene, grooming, dressing, care of and assistance with prosthetic devices, rubbing skin to promote circulation, turning in bed and other types of repositioning, assisting the individual with walking, and moving the individual from place to place (e.g., transferring). Client instruction in self-care may also be provided; may also include assistance with preparation of meals, but does not include the cost of the meals themselves.

Purchase of personal care supplies may be covered where there are no other resources and the purchase would create a financial hardship. These items include supplies not covered under the State Plan.

When specified in the plan of care, this service may also include such housekeeping chores as bed making, dusting, and vacuuming, which are essential to the health and welfare of the recipient. The household chores which are performed by the worker are essentially ancillary to the provision of the client-centered care. Thus, if food is spilled, it may be cleaned up, and when bed linen is soiled it may be changed, washed, and put away. However, at no time would household chores become the central activity furnished by a personal care worker.

When a personal care service is to be performed by an unlicensed health care worker permissible duties will be limited to those allowed by the

ARTICLE I. DEFINITIONS AND RESOLUTIONS OF LANGUAGE CONFLICTS (Continued)

worker's employer, or permissible according to the Board of Registered Nursing policy on unlicensed assistive personnel, and as permitted by the individual's certification, if applicable.

Personal care service providers may be paid while the client is institutionalized. This payment is made to retain the services of the care provider and is limited to seven (7) calendar days per institutionalization.

6. **SUPPLEMENTAL HEALTH CARE (3.3):** Addresses the care of health problems by appropriately licensed or certified persons when such care is not otherwise available under the State Plan. Refer to MSSP Site Manual Chapter 3 for a list of criteria.
7. **SUPPLEMENTAL PROTECTIVE SUPERVISION (3.7):** Ensures provision of supervision in the absence of the usual care provider to persons residing in their own homes, who are very frail or otherwise may suffer a medical emergency. Such supervision serves to prevent immediate placement in an acute care hospital, skilled nursing facility, or other 24-hour care facility, e.g., Residential Care Facility for the Elderly (RCFE). Such supervision does not require medical skills and can be performed by an individual trained to summon aid in the event of an emergency. This service may also provide a visit to the client's home to assess a medical situation during an emergency (e.g., natural disaster). Waiver Service funds may not be used to purchase this service until existing county Title XX Social Services and Title XIX Medi-Cal resources have been fully utilized and an unmet need remains.
8. **SUPPLEMENTAL PROFESSIONAL CARE ASSISTANCE (3.9):** This service is covered by Medicare and requires the client to have a skilled need and physician's order on file. Supplemental professional care assistance is a comprehensive skilled service delivered by a certified home health aide (CHHA). The CHHA works under the supervision of a registered nurse employed by a certified home health agency.
9. **CARE MANAGEMENT:** Assists clients in gaining access to needed Waiver and other State Plan services, as well as needed medical, social, and other services, regardless of the funding source. Care managers are responsible for ongoing monitoring of the provision of services included in the client's plan of care. Additionally, care managers initiate and oversee the process of assessment and reassessment of client level of care and the monthly review of plans of care.

ARTICLE I. DEFINITIONS AND RESOLUTIONS OF LANGUAGE CONFLICTS (Continued)

- a. **SITE-PROVIDED CARE MANAGEMENT (50):** The MSSP care management system vests responsibility for assessing, care planning, authorizing, locating, coordinating and monitoring a package of long-term care services for community-based clients with a local MSSP site contractor and specifically with the site care management team. The care management teams at each of the local sites are trained professionals working under the job titles of nurse care manager and social work care manager; these professionals may be assisted by care manager aides. The teams are responsible for care management services including the assessment, care plan development, service authorization/delivery, monitoring, and follow up components of the program. Although the primary care manager will be either a senior services counselor or health practitioner, both professionals will be fully utilized in carrying out the various case management functions. Care records must document all client contact activity each month.
  - b. **PURCHASED CARE MANAGEMENT (4.3):** for the vast majority of MSSP clients, care management services are provided solely by site care management staff. However, clients have the right to request care management by qualified outside subcontractors/vendors. In some cases of temporary need, the site may retain an outside subcontractor/vendor to provide the services of a care manager. If either of these two situations arises, the site must ensure that there is no overlap between Site- Provided Care Management (50) and Purchased Care Management (4.3). Any duplication of these services will be subject to recovery and will be collected through formal channels administered by DHCS Payment Systems Division, Recovery Section. Additional case-specific resources may be purchased from social, legal/ paralegal specialists in the community in order to augment the resources and skills of site-based case managers. Examples include the purchase of more skilled diagnostic and consultant services by social, and legal/paralegal professionals. Fees necessary to procure birth certificates or other legal documents required for establishment of public benefits or assistance are also covered.
10. **DEINSTITUTIONAL CARE MANAGEMENT (DCM) (4.6):** This service is used ONLY with individuals who are institutionalized. It allows care management and waiver services to begin up to 180 days prior to an individual's discharge from an institution. It may be used in two situations, as follows:



ARTICLE I. DEFINITIONS AND RESOLUTIONS OF LANGUAGE CONFLICTS (Continued)

- a. Where MSSP has gone into a facility (nursing facility or acute hospital) to begin working with a resident to facilitate their discharge into the community
- b. Where an established MSSP client is institutionalized and MSSP services are necessary for the person to be discharged back into the community

In either situation, all services (monthly Administration and Care Management, plus any purchased services) provided during this period are combined into one unit of DCM and billed upon discharge. For those individuals who do not successfully transition to the waiver, all services provided are combined into one unit of DCM and billed at the end of the month the decision is made to cease MSSP activity.

11. **RESPIRE** (5.1, 5.2): The State's Medicaid Plan does not provide for respite care. By definition, the purpose of respite care is to relieve the client's informal caregiver and thereby prevent breakdown in the informal support system. Respite service will include the supervision and care of a client while the family or other individuals who normally provide primary care take short-term relief or respite which allows them to continue as caregivers. Respite may also be needed in order to cover emergencies and extended absences of the caregiver.

As dictated by the client's circumstances, services will be provided In-Home (5.1) or Out-of-Home (5.2) through appropriate available resources such as board and care facilities, skilled nursing facilities, etc. Federal Financial Participation will not be claimed for the cost of room and board except when provided as part of respite care in a facility approved by the State that is not a private residence. Individuals providing services in the client's residence shall be trained and experienced in homemaker services, personal care, or home health services, depending on the requirements in the client's plan of care.

12. **TRANSPORTATION** (6.3 [ESCORT, HOUR] AND 6.4 [ONE-WAY TRIP]): These services provide access to the community (e.g., non-emergency medical transportation to health and social service providers) and special events for clients who do not have means for transportation or whose mobility is limited, or who have functional disabilities requiring specialized vehicles and/or escort. These services are in contrast to the transportation service authorized by the State Medicaid Plan which is limited to medical services or clients who have documentation from their physician that they are medically unable to use public or ordinary transportation. Whenever possible, family, neighbors, friends, or community agencies which can provide this service without charge will be utilized.

ARTICLE I. DEFINITIONS AND RESOLUTIONS OF LANGUAGE CONFLICTS (Continued)

Transportation services are usually provided under public paratransit or public social service programs (e.g., Title III of the Older Americans Act) and shall be obtained through these sources without the use of MSSP resources, except in situations where such services are unavailable or inadequate. Service providers may be paratransit subsystems or public mass transit; specialized transport for the older adults and adults with disabilities; private taxicabs where no form of public mass transit or paratransit is available or accessible; or private taxicabs when they are subsidized by public programs or local government to service the elderly and handicapped (e.g., in California, some counties provide reduced fare vouchers for trips made via private taxicabs for the elderly and handicapped).

Escort services will be provided when necessary to assure the safe transport of the client. Escort services may be authorized for those clients who cannot manage to travel alone, and require assistance beyond what is normally offered by the transportation provider. This service will be provided by trained paraprofessionals or professionals, depending on the client's condition and care plan requirements.

13. **NUTRITIONAL SERVICES (7.1, 7.2, and 7.3):** These services may be provided daily, but are not to constitute a full nutritional regimen (three meals a day). [42 CFR 440.180 (b)]
- a. **CONGREGATE MEALS (7.1):** Meals served in congregate meal settings for clients who are able to leave their homes or require the social stimulation of a group environment in order to maintain a balanced diet. Congregate meals can be a preventive measure for the frail older person who has few (if any) informal supports, as well as a rehabilitative activity for people who have been physically ill or have suffered emotional stress, due to losses associated with aging. This service should be available to MSSP clients through Title III of the Older Americans Act. MSSP funds shall only be used to supplement congregate meals when funding is unavailable or inadequate through Title III or other public or private sources.
  - b. **HOME DELIVERED MEALS (7.2):** Meals for clients who are homebound, unable to prepare their own meals and have no caregiver at home to prepare meals for them. As with Congregate Meals, the primary provider of this service is Title III of the Older Americans Act. MSSP funds shall only be used to supplement home-delivered meals when they are unavailable or inadequate through Title III or other public or private sources.

ARTICLE I. DEFINITIONS AND RESOLUTIONS OF LANGUAGE CONFLICTS (Continued)

- c. **FOOD (7.3):** Provision of food staples is limited to purchase of food to facilitate and support a client's return home following institutionalization, and to food purchases which are medically required.

If oral nutrition supplements (ONS) are to be purchased using waiver service funds, the following actions must occur and be documented in the client record:

- The NCM must assess the client's nutritional needs and determine that an ONS is advisable
- The use of home-prepared drinks/supplements did not benefit the client's health
- All other options for payment of an ONS have been exhausted (client, family, etc.)

If all three criteria have been satisfied, an ONS may be purchased initially for a period of three months. If an ONS needs to be continued beyond the three month timeframe, a physician order must be obtained.

Since an ONS is no longer a covered Medi-Cal benefit for most clients, sites are **not** required to submit a TAR or obtain a denial. The physician order must be renewed on an annual basis or as needed.

14. **PROTECTIVE SERVICES (8.3, 8.4, and 8.5):** These services include protection for clients who are isolated and homebound due to health conditions; who suffer from depression and other psychological problems; individuals who have been harmed, or threatened with harm (physical or mental) by other persons or by their own actions; or those whose cognitive functioning is impaired to the extent they require assistance and support in making and carrying out decisions regarding personal finances.
- a. **SOCIAL SUPPORT (8.3):** Includes periodic telephone contact, visiting or other social and reassurance services to verify that the individual is not in medical, psychological, or social crisis, or to offset isolation; expenses for activities and supplies required for client participation in rehabilitation programs; therapeutic classes and exercise classes are also provided. Such services shall be provided based on need, as designated in the client's plan of care. The MSSP has found that isolation and lack of social interaction can seriously impact some clients' capacity to remain independent. Lack of motivation or incentive or the lack of any meaningful

ARTICLE I. DEFINITIONS AND RESOLUTIONS OF LANGUAGE CONFLICTS (Continued)

relationships can contribute to diminishing functional capacity and premature institutionalization.

These services are often provided by volunteers or through Title III of the Older Americans Act; however, these services may not be available in a particular community and do, infrequently, require purchase. The waiver will be used to purchase friendly visiting only if the service is unavailable in the community or is inadequate as provided under other public or private programs.

- b. **THERAPEUTIC COUNSELING (8.4):** Includes individual or group counseling to assist with social, psychological, or medical problems which have been identified in the assessment process and included in the client's care plan.

The MSSP has found that therapeutic counseling is essential for preventing some clients from being placed in a nursing facility (NF).

This service may be utilized in situations where clients or their caretakers may face crises, severe anxiety, emotional exhaustion, personal loss/grief, confusion, and related problems. Counseling by licensed or certified counselors in conjunction with other services (e.g., respite, IHSS, meals) may reverse some states of confusion and greatly enhance the ability of a family to care for the client in the community, or allow the client to cope with increasing impairment or loss.

- c. **MONEY MANAGEMENT (8.5):** This service assists the client with activities related to managing money and the effective handling of personal finances. Services may be either periodic or as full-time substitute payee. Services may be provided by organizations or individuals specializing in financial management or performing substitute payee functions.

- 15. **COMMUNICATIONS SERVICES (9.1 and 9.2):** Clients who receive these services are those with special communication problems such as vision, hearing, or speech impairments and persons with physical impairments likely to result in a medical emergency. Services shall be provided by organizations such as: speech and hearing clinics; organizations serving blind individuals; hospitals; senior citizens centers; providers specializing in communications equipment for disabled or at-risk persons. Services shall be available on a routine or emergency basis as designated in the client's plan of care.

ARTICLE I. DEFINITIONS AND RESOLUTIONS OF LANGUAGE CONFLICTS (Continued)

- a. **COMMUNICATION/TRANSLATION/INTERPRETATION (9.1):** The provision of translation and interpretive services for purposes of instruction, linkage with social or medical services, and conduct of business is essential to maintaining independence and carrying out the ADL and Instrumental Activities of Daily Living (IADL) functions.

For non-English speaking clients, this service is the link to the entire in-home and community-based service delivery system. MSSP resources shall be used to support this service only where family and community resources are unable to meet the need, and as described in the care plan.

- b. **COMMUNICATION/DEVICE (9.2):** The rental/purchase of 24-hour emergency assistive services, or installation of a telephone, to assist in communication (excluding monthly telephone charges) for clients who are at risk of institutionalization due to physical conditions likely to result in a medical emergency. Purchase of emergency response systems is limited to those clients who live alone, or who are alone for significant parts of the day, and have no regular caregiver for extended periods of time, and who would otherwise require extensive routine supervision. The following are allowable:

- i. 24-hour answering/paging
- ii. Beepers
- iii. Medic-alert type bracelets/pendants,
- iv. Intercoms
- v. Life-lines
- vi. Wander-alerts
- vii. Monitoring services
- viii. Light fixture adaptations (blinking lights, etc.)
- ix. Telephone adaptive devices not available from the telephone company
- x. Other electronic devices/services designed for emergency assistance.

Telephone installation or reactivation of service will only be authorized to enable the use of telephone-based electronic response systems where the client has no telephone, or for the isolated client who has no telephone and who resides where the telephone is the only means of communicating health needs. This service will only be authorized when the client has a medical/health condition that makes him/her vulnerable to medical emergency (e.g., congestive heart failure or emphysema).

ARTICLE II. ASSURANCES

A. Law, Policy and Procedure, Licenses, and Certificates

1. The Contractor agrees to administer this Agreement and require any subcontractors to administer their subcontracts in accordance with this Agreement, and with all applicable local, State, and federal laws and regulations including, but not limited to, discrimination, wages and hours of employment, occupational safety, and to fire, safety, health, and sanitation regulations, directives, guidelines, and/or manuals related to this Agreement and resolve all issues using good administrative practices and sound judgment. The Contractor and its subcontractors shall keep in effect all licenses, permits, notices, and certificates that are required by law.
2. The Contractor agrees to make reasonable efforts to ensure that all subcontractors/vendors are properly licensed, certified, or have valid permits for the services being provided.

B. Subcontracts

The Contractor shall require language in all subcontracts to require all subcontractors to comply with all applicable State and federal laws.

C. Nondiscrimination

The Contractor shall comply with all federal statutes relating to nondiscrimination. These include those statutes and laws contained in the Contractor Certification Clauses (CCC 307) which is hereby incorporated by reference. In addition, the Contractor shall comply with the following:

1. Equal Access to Federally Funded Benefits, Programs and Activities (Title VI of the Civil Rights Act of 1964)

The Contractor shall ensure compliance with Title VI of the Civil Rights Act of 1964 (42 USC. Section 2000d; 45 CFR Part 80), which prohibits recipients of federal financial assistance from discriminating against persons based on race, color, religion, or national origin.

2. Equal Access to State-Funded Benefits, Programs and Activities

The Contractor shall, unless exempted, ensure compliance with the requirements of Government Code sections 11135-11139.5, and Section 98000 et seq. of Title 22 of the California Code of Regulations, which prohibit recipients of state financial assistance from discriminating against persons based on race, national origin, ethnic group identification, religion,

ARTICLE II. ASSURANCES (Continued)

age, sex, sexual orientation, color, or disability. (22 CCR 98323) (Chapter 182, Stats. 2006)

3. The Contractor assures the State that it complies 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 the ADA. (42 U.S.C. Sections 12101 et seq.).
4. The Contractor agrees to include these requirements in all vendor/subcontractor agreements it enters into with vendors/subcontractors to provide services pursuant to this Agreement.

D. Standards of Work

The Contractor agrees that the performance of work and services pursuant to the requirements of this Agreement shall conform to accepted professional standards.

E. Conflict of Interest

1. The Contractor shall prevent employees, consultants, or members of governing bodies from using their positions for purposes including, but not limited to, the selection of subcontractors/vendors, that are, or give the appearance of being, motivated by a desire for private gain for themselves or others, such as family, business, or other ties.
2. In the event that the State determines that a conflict of interest exists, any increase in costs associated with the conflict of interest may be disallowed by CDA and such conflict may constitute grounds for termination of the Agreement.
3. This provision shall not be construed to prohibit employment of persons with whom the Contractor's officers, agents, or employees have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant, and such persons have successfully competed for employment with the other applicants on a merit basis.

F. Covenant Against Contingent Fees

1. The Contractor warrants that no person or selling agency has been employed or retained to solicit this Agreement. There has been no agreement to make commission payments in order to obtain this Agreement.
2. For breach or violation of this warranty, CDA shall have the right to void this Agreement without liability, or at its discretion to deduct from the



ARTICLE II. ASSURANCES (Continued)

Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingency fee.

G. Payroll Taxes and Deductions

The Contractor shall promptly forward payroll taxes, insurances, and contributions, including State Disability Insurance, Unemployment Insurance, Old Age Survivors Disability Insurance, and federal and State Income taxes withheld, to designated governmental agencies as required by law.

H. Facility Construction or Repair

1. When applicable for purposes of construction or repair of facilities, the Contractor shall comply with the provisions contained in the following acts and/or will include such provisions in any applicable agreements with subcontractors/vendors:
  - a. Copeland "Anti-Kickback" Act (18 USC 874, 40 USC 276c) (29 CFR, Part 3)
  - b. Davis-Bacon Act (40 USC 276a-7) (29 CFR, Part 5)
  - c. Contract Work Hours and Safety Standards Act (40 USC 327-333) (29 CFR, Part 5, 6, 7, 8)
  - d. Executive Order 11246 of September 14, 1965, entitled "Equal Employment Opportunity" as amended by Executive Order 11375 of October 13, 1967, as supplemented in Department of Labor Regulations (41 CFR, Part 60)
2. Payments are not permitted for construction, renovation, alteration, improvement, or repair of privately-owned property which would enhance the owner's value of such property except where permitted by law and by CDA.
3. When a Contract or vendor agreement provides funding for construction and non-construction activities, the Contractor or vendor must obtain prior written approval from CDA before making any fund or budget transfers between construction and non-construction.

I. Contracts in Excess of \$100,000

For Contracts in excess of \$100,000, the Contractor shall comply with all applicable orders or requirements issued under the following laws:

1. Clean Air Act, as amended (42 USC 1857)
2. Clean Water Act, as amended (33 USC 1368)

ARTICLE II. ASSURANCES (Continued)

3. Federal Water Pollution Control Act, as amended (33 USC 1251 et seq.)
4. Environmental Protection Agency Regulations (40 CFR, Part 15 and Presidential Executive Order 11738).
5. Public Contract Code Section 10295.3

J. Debarment, Suspension, and Other Responsibility Matters

1. The Contractor certifies to the best of its knowledge and belief, that it and its subcontractors/vendors:
  - a. Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency
  - b. 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
  - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification
  - d. Have not within a three-year period preceding this Agreement had one or more public transactions (federal, State, or local) terminated for cause or default
2. The Contractor shall report immediately to the Department in writing any incidents of alleged fraud and/or abuse by either the Contractor or Contractor's subcontractor.
3. The Contractor shall maintain any records, documents, or other evidence of fraud and abuse until otherwise notified by the Department.
4. The Contractor agrees to timely execute any and all amendments to this Agreement or other required documentation relating to their subcontractor/vendors debarment/suspension status.

K. Agreement Authorization

1. If a public entity, the Contractor shall submit to the Department a copy of an approved resolution, order, or motion referencing this Agreement

ARTICLE II. ASSURANCES (Continued)

number authorizing execution of this Agreement. If a private nonprofit entity, the Contractor shall submit to the Department an authorization by the board of directors to execute this Agreement, referencing this Agreement number. These documents must also identify the action taken.

2. Documentation in the form of a resolution, order, or motion by the Governing Board is required for the original and each subsequent amendment to this Agreement. This requirement may also be met by a single resolution from the Governing Board of the Contractor authorizing the entity's Director or designee to execute the original and all subsequent amendments to this Agreement.

L. Contractor's Staff

1. The Contractor shall maintain adequate staff to meet the Contractor's obligations under this Agreement.
2. The staff shall be available to the State for training and meetings which the State may find necessary from time to time.

M. Corporate Status

1. The Contractor shall be either a public entity or private non-profit corporation. If a private nonprofit corporation, the Contractor shall be in good standing with the Secretary of State of California and shall maintain that status throughout the term of the Agreement.
2. The Contractor shall ensure that any subcontractors/vendors providing services under this Agreement shall be of sound financial status. Any private subcontracting corporation or JPA shall be in good standing with the Secretary of State of California and shall maintain that status throughout the term of the Agreement.
3. Failure of a corporation to maintain good standing with the Secretary of the State of California shall result in suspension or termination of this Agreement with CDA until satisfactory status is restored. Failure to maintain good standing by a subcontracting/vendor corporation shall result in suspension or termination of the subcontract/vendor agreement until satisfactory status is restored.

N. Lobbying Certification

The Contractor, by signing this Agreement, hereby certifies to the best of his or her knowledge and belief, that:

1. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of

ARTICLE II. ASSURANCES (Continued)

Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement

2. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal 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, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions
  3. The Contractor shall require that the language of this certification be included in the award documents for all subcontracts or vendor agreements at all tiers (including subgrants, and contracts under grants, loans, and cooperative agreements which exceed \$100,000) and that all subrecipients shall certify and disclose accordingly
  4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. This certification is a prerequisite for making or entering into this transaction imposed by U.S. Code, Title 31, Section 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 such failure.
- O. The Contractor shall monitor, evaluate, and take effective action to address any needed improvement in the delivery of culturally and linguistically appropriate services to clients.

ARTICLE III. AGREEMENT

A copy of this Agreement is on file and available for inspection at the California Department of Aging, 1300 National Drive, Suite 200, Sacramento, CA 95834.

ARTICLE IV. COMMENCEMENT OF WORK

The Contractor shall not begin work in advance of receiving written notice that the contract is approved. Work performed in advance of approval may be considered as having been done at the Contractor's risk as a mere volunteer and the State has no obligation to pay for work performed in advance of approval of the Agreement.

ARTICLE V. SUBCONTRACTOR/VENDOR AGREEMENTS

- A. The Contractor is responsible for carrying out the terms of the Agreement, including the satisfaction, settlement, and resolution of all administrative, programmatic, and fiscal aspects of the program, including issues that arise out of any subcontractor/vendor agreements. The Contractor shall not delegate or

**ARTICLE V. SUBCONTRACTOR/VENDOR AGREEMENTS (Continued)**

contract these responsibilities to any other entity. This includes, but is not limited to, disputes, claims, protests of award, or other matters of a contractual nature.

- B. In the event any subcontractor/vendor is utilized by the Contractor for any portion of this Agreement, the Contractor shall retain the prime responsibility for all the terms and conditions set forth, including but not limited to, the responsibility for preserving the State's copyrights and rights in data in accordance with Article XXI, of this exhibit, for handling property in accordance with Article VII of this exhibit, and ensuring the keeping of, access to, availability, and retention of records of subcontractors in accordance with Article VI of this exhibit.
- C. Funds for this Agreement shall not be obligated in subcontractor/vendor agreements for services beyond the ending date of this Agreement.
- D. The Contractor shall have no authority to contract for, or on behalf of, or incur obligations on behalf of the State of California.
- E. Copies of subcontractor/vendor agreements, Memorandums and/or Letters of Understanding shall be on file with the Contractor and shall be made available for review at the request of CDA.
- F. The Contractor shall monitor the insurance requirements of its subcontractors/vendors in accordance with Article XII of this Exhibit D, Section E.
- G. The Contractor shall require language in all subcontractor/vendor agreements to require all subcontractors/vendors to indemnify, defend, and save harmless the Contractor, its officers, agents, and employees from any and all claims and losses accruing or resulting to any contractors, vendors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with any activities performed for which funds from this Contract were used and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the subcontractor/vendor in the performance of this Contract.
- H. The Contractor shall ensure that all potential vendors of Waiver Services complete a CDA-approved Vendor Application. The subcontractor/vendor selection process shall be based upon equitable criteria, provide for adequate publicity, screen out potential subcontractor/vendors who are not qualified to provide the needed services, and provide for awards to the lowest responsible and responsive bidder(s). Vendor Agreements for Waived Services shall consist of standard format language consistent with this Contract.
- I. Subcontractor/Vendor Agreements shall require all vendors to report immediately in writing to the Contractor any incidents of fraud or abuse to clients, in the delivery of services, in subcontractor/vendor operations.
- J. The Contractor shall require language in all subcontractor/vendor agreements to require all subcontractors/vendors to comply with all applicable state and federal laws, including but not limited to the Americans with Disabilities Act (ADA) of

ARTICLE V. SUBCONTRACTOR/VENDOR AGREEMENTS (Continued)

1990 (42 USC 12101 et. seq.) and California Government Code Sections 11135-11139.5.

- K. The Contractor shall require all subcontractor/vendor agreements to comply with the HIPAA Business Associate requirements as it appropriately relates to services rendered.

ARTICLE VI. RECORDS

- A. The Contractor shall maintain complete records (which shall include, but not be limited to, accounting records, contracts, agreements, reconciliation of the "FINAL ACCOUNTING RECONCILIATION" (CDA Closeout) to the audited financial statements, letters of agreement, insurance documentation in accordance with Article XII of this Exhibit, Memorandums and/or Letters of Understanding and client records) of its activities and expenditures hereunder in a form satisfactory to CDA and shall make all records pertaining to this Agreement available for inspection and audit by the State or its duly authorized agents, at any time during normal business hours. All such records must be maintained and made available by the Contractor: (1) until an audit has occurred and an audit resolution has been issued or unless otherwise authorized in writing by CDA or DHCS' Audit Branch; (2) for such longer period, if any, as is required by applicable statute, by any other clause of this Agreement or by Sections B and C of this Article; or (3) for such longer period as CDA deems necessary.
- B. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for the same periods as specified in Section A. The Contractor shall ensure that any resource directories and all client records remain the property of CDA upon termination of this Agreement and are returned to CDA or transferred to another Contractor as directed by CDA.
- C. In the event of any litigation, claim, negotiation, audit exception, or other action involving the records, all records relative to such action shall be maintained and made available until every action has been cleared to the satisfaction of CDA and DHCS and so stated in writing to the Contractor.
- D. Adequate source documentation of each transaction shall be maintained relative to the allowability of expenditures reimbursed by DHCS under this Agreement. If the allowability of expenditures cannot be determined because records or documentation of the Contractor are nonexistent or inadequate according to Generally Accepted Accounting Principles and Procedures, the expenditures will be questioned in the audit and may be disallowed during the audit resolution process.
- E. The Contractor agrees that CDA or its delegate will have the right to review, obtain, and copy all records pertaining to the performance of this Agreement. The Contractor agrees to provide CDA or its delegate with any relevant information requested and shall permit the awarding agency or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records,

ARTICLE VI. RECORDS (Continued)

accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with Government Code, Section 8546.7 et seq. The Contractor further agrees to maintain such records for a period of three (3) years or for such a longer period as CDA deems necessary after final payment under the Agreement and until after CDA's Audit Branch has completed an audit.

- F. Client records are to be kept as long as the case is open and active. Following termination, client records will be maintained for a period of six (6) years following the year of case closure, or for a longer period if deemed necessary by CDA. A longer period of retention may be established by individual sites. After the authorized period has expired, confidential records shall be shredded and disposed of in a manner that will maintain confidentiality.

ARTICLE VII. REPORTS

- A. The Contractor shall submit written reports, on a format prescribed by the State, to the State, as follows:

1. Quarterly Status Reports

- a. Reports are due no later than the 30<sup>th</sup> of the month, following the close of the quarter. CDA may grant a waiver of the deadline date requirement based on extenuating circumstances
- b. Reports are a snapshot of the last day of each quarter and shall include an overview of significant developments during the report period, identified problems, and solutions. The report narrative should be concise and informative. The subject areas to be addressed are:
- Care Management Staffing –Including the Full Time Equivalent (FTEs) for each position and staffing ratio. Also including staff exemptions and self-certification of staff meeting program requirements
  - Care Management Activity –Including staff turnover, training, quality assurance, client/vendor grievances and Fair Hearings, Adult Protective Services (APS) reporting, internal/external program reviews and corrective action plans, client/vendor satisfaction surveys, policy changes, and contract compliance regarding contracted caseload
  - Management Information System –Problems/issues with the Xerox billing system and Xerox technical support
  - Fiscal –Quarterly Waiver Cost Monitoring Report
  - Caseload Count



ARTICLE VII. REPORTS (Continued)

- Staff Roster
- Self-Certified Training

2. Ad Hoc Reports

The Contractor shall submit Ad Hoc Reports as may be required from time to time by CDA. Typical subject areas may include, but are not limited to:

- a. General site operations
- b. Facility and equipment
- c. Emergency care
- d. Availability of care
- e. Client satisfaction
- f. MIS operations
- g. Administrative procedures
- h. Database
- i. Possible noncompliance with this Agreement
- j. Fiscal year closeout

3. Fiscal Closeout Reports

As part of the closeout procedures for this contract, the Contractor shall submit a closeout package which must include the following documents:

- a. Final Accounting Reconciliation form
- b. Closeout Budget
- c. Fiscal Summary Report for the State
- d. Report of Property Furnished/Purchased with Agreement Funds (cumulative CDA 32)
- e. Copy of any Request to Dispose of Property (CDA 248)

CDA will transmit specific closeout instructions to the Contractor in the spring. Closeout reports are due on or before close of business on May 31 of each fiscal year.

4. Monthly Client Count

Reports are due on the 5<sup>th</sup> of each month. CDA may grant a waiver of the deadline date based on extenuating circumstances.

- B. The Contractor, at its discretion, may at any time prepare and submit reports and correspondence to CDA summarizing problems and concerns.

ARTICLE VIII. PROPERTY

- A. Unless otherwise provided for in this Article, property refers to all assets, used in operation of this Agreement. All purchases of property not listed in the budget require written approval from CDA.

ARTICLE VIII. PROPERTY (Continued)

1. Property includes land, buildings, improvements, machinery, vehicles, furniture, tools, and intangibles, etc.
  2. Property does not include consumable office supplies such as paper, pencils, toner cartridges, file folders, etc.
- B. Property meeting all of the following criteria is subject to the reporting requirements in Section E below:
1. Has a normal useful life of at least 1 year
  2. Has a unit acquisition cost of at least \$500; (a desktop or laptop setup, including all peripherals is considered a unit, if purchased as a unit.
  3. Is used to conduct business under this Agreement
- C. Additions, improvements, and betterments to assets meeting all of the conditions in Section B must also be reported. Additions typically involve physical extensions of existing units. Improvements and betterments typically do not increase the physical size of the asset. Instead, improvements and betterments enhance the condition of an asset (e.g., extend life, increase service capacity, and lower operating costs). Examples of assets that might be improved and bettered include roads, bridges, curbs and gutters, tunnels, parking lots, streets and sidewalks, drainage, and lighting systems.
- D. Intangibles are property which lack physical substance but give valuable rights to the owner. Examples of intangible property include patents, copyrights, leases, and computer software. By contrast, hardware consists of tangible equipment (e.g., computer, printer, terminal, etc.). Costs include all amounts incurred to acquire and to ready the intangible asset for its intended use. Typical intangible property costs include the purchase price, legal fees, and other costs incurred to obtain title to the asset.
- E. The Contractor shall keep track of property purchased with CDA funds, and submit electronically to CDA, annually with the Closeout, a cumulative inventory of all property furnished or purchased by the contractor with funds awarded under the terms of this Agreement or any predecessor agreement for the same purpose. The Contractor shall use the electronic version (Excel) of the Report of Project Property Furnished/Purchased with Agreement Funds (CDA 32), unless otherwise directed by the Department, to report property to the Department.

The Contractor shall record the following information when property is acquired:

1. Date purchased – month and year on purchase order or date acquired by transfer.
2. Item/property description (include model number)
3. CDA tag number or other tag identifying it as CDA property

ARTICLE VIII. PROPERTY (Continued)

4. Serial number (if applicable)
  5. Purchase cost or other basis of valuation
  6. Fund source
- F. All reportable property must be physically inventoried on a bi-annual basis.
- G. Disposal of Property
1. Prior to disposal of any property listed on the CDA 32 that was purchased by the Contractor or the subcontractor/vendor with funds from this Agreement or any predecessor Agreement, the Contractor must obtain approval from the Department for all items with a unit cost of \$500 or more. Disposition, which includes sale, trade-in, discarding, or transfer to another agency may not occur until approval is received from the Department. The Contractor shall e-mail to the Department the electronic version of the Request to Dispose of Property (CDA 248). CDA will then instruct the contractor on disposition of the property. Once approval for disposal has been received from CDA, the item(s) shall be removed from the Contractor's inventory report.
  2. The Contractor must remove all confidential, sensitive, or personal information from CDA property prior to disposal, including removal or destruction of data on devices with digital memory and storage capacity. This includes, but is not limited to, magnetic tapes, flash drives, personal computers, personal digital assistants (PDAs), cell or smart phones, multi-function printers, photocopiers, faxes, and laptops.
- H. The Contractor shall immediately investigate and within five (5) days fully document the loss, destruction, or theft of such property.
- I. CDA reserves title to all State-purchased or financed property not fully consumed in the performance of this Agreement, unless otherwise required by federal law or regulations, or as otherwise agreed by the parties.
- J. The Contractor shall exercise due care in the use, maintenance, protection, and preservation of such property during the period of the project, and shall assume responsibility for replacement or repair of such property during the period of the project or until the Contractor has complied with all written instructions from CDA regarding the final disposition of the property.
- K. In the event of the Contractor's dissolution or upon termination of this Agreement, the Contractor shall provide a final property inventory to CDA. CDA reserves the right to require the Contractor to transfer such property to another entity, or to CDA.

ARTICLE VIII. PROPERTY (Continued)

- L. To exercise the above right, no later than 120 days after termination of the Agreement or notification of the Contractor's dissolution, CDA will issue specific written disposition instructions to the Contractor.
- M. The Contractor shall use the property for the purpose for which it was intended under the Agreement. When no longer needed for that use, the Contractor shall use it, if needed, and with written approval of CDA for other purposes in this order:
  - 1. Another CDA program providing the same or similar service or
  - 2. Another CDA-funded program
- N. The Contractor may share use of the property and equipment or allow use by other programs, upon written approval of CDA. As a condition of the approval, CDA may require reimbursement under this Agreement for its use.
- O. The Contractor or vendor shall not use equipment or supplies acquired under this Agreement with federal and/or State monies for personal gain or to usurp the competitive advantage of a privately-owned business entity.
- P. If purchase of equipment is a reimbursable item, the equipment to be purchased will be specified in the budget.
- Q. The Contractor shall include the provisions contained in this Article in all its subcontractor/vendor agreements issued under this Agreement.
- R. Property, for the purpose of this Agreement, does not include any equipment or supplies acquired utilizing Waived Services funds on behalf of MSSP clients.

ARTICLE IX. ACCESS

The Contractor shall provide access to the federal or State Contractor agency, the Controller General of the United States, or any of their duly authorized federal or State representatives to any books, documents, papers, and records of the Contractor or vendor which are directly pertinent to this specific Agreement for the purpose of making an audit, examination, excerpts, and transcriptions. The Contractor assures CDA that it will include this requirement in its subcontractor/vendor agreements or subcontracts.

ARTICLE X. MONITORING, ASSESSMENT, AND EVALUATION

- A. Authorized State representatives shall have the right to monitor, assess, and evaluate the Contractor's performance pursuant to this Agreement. Said monitoring, assessment, and evaluation may include, but is not limited to, audits, and inspections of project premises, as appropriate, and interviews of project staff and participants.
- B. The Contractor shall cooperate with the State in the monitoring, assessment, and evaluation processes, which include making any program, and administrative staff (fiscal, etc.) available during any scheduled process.

ARTICLE XI. AUDIT

- A. The Contractors that expend \$500,000 or more in Federal funds shall arrange for an audit to be performed as required by the Single Audit Act of 1984, Public Law 98-502, Single Audit Act Amendments of 1996, Public Law 104-156, and Office of Management and Budget (OMB) Circular A-133, and a copy submitted to the : California Department of Aging, Attn: Audit Branch, 1300 National Drive, Suite 200, Sacramento, CA 95834. A copy shall be submitted within 30 days after receipt of the auditor's report or nine months after the end of the audit period whichever occurs first, or, unless a longer period is agreed to in advance by the cognizant or oversight agency.
- B. The Contractor shall perform a reconciliation of the "Final Accounting Reconciliation" (CDA Closeout) to the audited financial statements. The reconciliation shall be maintained and made available for CDA review.
- C. Unless prohibited by law, the cost of audits completed in accordance with provisions of Single Audit Act Amendments of 1996, are allowable charges to Federal Awards. The costs may be considered a direct cost, or an allocated indirect cost, as determined in accordance with provisions of applicable OMB cost principle circulars.
- D. The Contractor may not charge to federal awards the cost of any audit under the Single Audit Act Amendments of 1996, not conducted in accordance with the Act.
- E. CDA and DHCS shall have access to all audit reports of Contractors and have the option to perform audits and/or additional work, as needed.
- F. All audits shall be performed in accordance with and address all issues contained in any federal OMB Compliance Supplement that applies to this program.
- G. The Contractor shall include in its contract with an independent auditor a clause permitting access by the State to the work papers of the independent auditor.
- H. Audits to be performed shall be, minimally, financial and compliance audits, and may include economy and efficiency and/or program results audits.
- I. The Contractor shall cooperate with, and participate in, any further audits which may be required by DHCS.
- J. The Contractor agrees that CDA, DHCS, the Department of General Services, the Bureau of State Audits, or their designated representative shall, at all times, have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is required and until after CDA's Audit Branch has completed an audit. The Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Contractor agrees to include a similar right of CDA and DHCS to audit records and interview staff in any subcontract/vendor

ARTICLE XI. AUDIT (Continued)

agreement related to performance of this Agreement (GC 8546.7, PCC 10115 et seq., CCR Title 2, Section 1896).

- K. The Catalog of Federal Domestic Assistance Number is 93.778, Grantor Medical Assistance Program.

ARTICLE XII. INSURANCE

- A. Prior to commencement of any work under this Agreement, the Contractor shall provide for the term of this Agreement, the following insurance:

1. General liability of not less than \$1,000,000 per occurrence for bodily injury and property damage combined. Higher limits may be required by CDA in cases of higher than usual risks.
2. Automobile liability including non-owned auto liability, of not less than \$1,000,000 per occurrence for volunteers and paid employees providing services supported by this Agreement.
3. If applicable, or unless otherwise amended by future regulation contractors and subcontractors/vendors shall comply with the Public Utilities Commission (PUC) General Order No. 115-E which requires higher levels of insurance for charter-party carriers of passengers and is based on seating capacity as follows unless otherwise amended by future regulation:
  - \$750,000 if seating capacity is under 8
  - \$1,500,000 if seating capacity is 8 – 15
  - \$5,000,000 if seating capacity is over 15
4. Professional liability of not less than \$1,000,000 as it appropriately relates to the services rendered. Coverage shall include medical malpractice and/or errors and omissions.

- B. The insurance will be obtained from an insurance company acceptable to the Department of General Services, Office of Risk and Insurance Management, or be provided through partial or total self-insurance acceptable to the Department of General Services.

- C. Evidence of insurance shall be in a form and content acceptable to the Department of General Services, Office of Risk and Insurance Management. Insurance obtained through commercial carriers shall meet the following requirements:

1. The Certificate of Insurance shall provide that the insurer will not cancel the insured's coverage without 30 days prior written notice to the State, or ten (10) days written notice if the reason for cancellation is for non-payment of insurance premium

ARTICLE XII. INSURANCE (Continued)

2. The Certificate of Insurance shall provide that the "Department of Aging", State of California, its officers, agents, employees, and servants are included as additional insured, with respect to work performed for the State of California under this Agreement. Professional liability coverage is exempt from this requirement
  3. CDA shall be named the certificate holder and the address must be listed on the certificate
- D. The insurance provided herein shall be in effect at all times during the term of this Agreement. In the event the insurance coverage expires during the term of this Agreement, the Contractor agrees to provide CDA, at least 30 days prior to the expiration date, a new certificate of insurance evidencing insurance coverage as provided herein for a period not less than the remaining Agreement term or for a period not less than one (1) year. In the event the Contractor fails to keep in effect at all times said insurance coverage, CDA may, in addition to any other remedies it may have, terminate this Agreement.
- E. The Contractor shall require its subcontractors/vendors under this Agreement, other than units of local government which are similarly self-insured, to maintain adequate insurance coverage for general liability, workers' compensation liabilities, and if appropriate, auto liability including non-owned auto and/or professional liability, and further, the Contractor shall require all of its subcontractors/vendors to hold the Contractor and CDA harmless. The subcontractors'/vendors' Certificate of Insurance shall also have the Contractor, not the State, as the certificate holder and additional insured. The Contractor shall maintain certificates of insurance for all its subcontractors/vendors.
- F. A copy of each appropriate Certificate of Insurance referencing this Agreement Number, or letter of self-insurance, shall be submitted to the Department with this Agreement.
- G. The Contractor shall be insured against liability for workers' compensation or undertake self-insurance in accordance with the provisions of the Labor Code, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

ARTICLE XIII. TERMINATION AND TRANSITION PLAN

A. Termination

1. Termination Without Cause

- a. The State may terminate performance of work under this Agreement, in whole or in part, without cause if the State determines that a termination is in the State's interest. The State shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date thereof. Such termination shall be effective 30 days from the



ARTICLE XIII. TERMINATION AND TRANSITION PLAN (Continued)

delivery of the Notice of Termination. The Parties agree that, as to the terminated portion of the Agreement, the Agreement shall be deemed to remain in effect until such time as the termination settlement, if any, is concluded and the Agreement shall not be void.

- b. After receipt of a Notice of Termination, and except as directed by the State, the Contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any funds due under this clause.

The Contractor shall:

1. Stop work as specified in the Notice of Termination
2. Place no further subcontracts/vendor agreements for materials, or services, except as necessary to complete the continued portion of the contract
3. Terminate all subcontracts/vendor agreements to the extent they relate to the work terminated
4. Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts/vendor agreements (the approval or ratification of which will be final for purposes of this clause)
5. Submit a Transition Plan as specified in Section B of this Article XIII

2. Termination for Cause

- a. The State may, by written notice of termination to the Contractor, terminate this Agreement, in whole or in part, as a consequence of any of the following events:
  1. In case of threat of life, health or safety of the public (termination of Agreement shall be effective immediately)
  2. A violation of the law or failure to comply with any condition of this Agreement
  3. Inadequate performance or failure to make progress so as to endanger performance of this Agreement
  4. Failure to comply with reporting requirements
  5. Evidence that the Contractor is in an unsatisfactory financial condition as determined by the Department or evidence of a

ARTICLE XIII. TERMINATION AND TRANSITION PLAN (Continued)

- financial condition that endangers performance of this Agreement and/or the loss of other funding sources
6. Delinquency in payment of taxes or payment of costs for performance of this Agreement in the ordinary course of business
  7. Appointment of a trustee, receiver, or liquidator for all or a substantial part of the Contractor's property, or institution of bankruptcy, reorganization or the arrangement of liquidation proceedings by or against the Contractor
  8. Service of any writ of attachment, levy of execution, or commencement of garnishment proceedings against the Contractor's assets or income
  9. The commission of an act of bankruptcy
  10. Finding of debarment or suspension, Article II J
  11. The Contractor's organizational structure has materially changed
- b. Termination of this Agreement, shall take effect immediately in the case of threat to life, health, or safety of the public or, in all other cases, upon 30 days subsequent to written notice to the Contractor. The notice shall describe the action being taken, the date of termination, the reason for such action and, any conditions of the termination, including the requirement of a transition plan as identified in Section B of this Article XIII. The notice shall also inform the contractor of any right to appeal such decision to the State and of the procedure for doing so.
3. Notice of Termination by Contractor
- The Contractor shall give the Department written Notice of Intent to Terminate at least 180 days prior to the proposed effective date of termination. The notice shall include the reason for such action and the anticipated last day of work. Upon receipt of such notice, the Department will work with the Contractor to terminate the Agreement. Without such notice, the Contractor does not have the authority to terminate the Agreement.
4. The Contractor's Obligations Upon Notice of Termination
- a. In the event of termination or anticipated termination of this Agreement, in full or in part, the Contractor shall take immediate steps to ensure the health and safety of clients in the MSSP program managed by the Contractor. Contractor agrees to cooperate in any and all efforts to refer MSSP clients to other local

ARTICLE XIII. TERMINATION AND TRANSITION PLAN (Continued)

agencies in order to maintain continuity of services required for each client.

- b. The Contractor shall provide adequate staff and vendor agreements to provide services to clients during the course of client transition to another MSSP site.
- c. The Contractor shall deliver updated client records to the subsequent MSSP contractor or as directed by CDA upon notice by CDA.
- d. The Contractor shall provide a current needs assessment for each of its clients to the subsequent MSSP contractor or as directed by CDA.
- e. The Contractor shall, with assistance from CDA, develop a written Transition Plan, to locate alternative services for each client through another MSSP site or community agency in accordance with Section B of this Article.
- f. The Contractor shall be responsible for providing all necessary client services until termination or expiration of the Contract and shall remain liable for the processing and payment of invoices and statements for covered services provided to clients prior to such expiration or termination.
- g. A full accounting and closeout of the Contractor's existing budget will be required. While it is recognized that the Contractor will require funding to continue client services and operations at a reduced level until the termination of this Agreement, the Contractor and CDA agree that it is also necessary to transfer funding to those MSSP sites that will be assuming responsibility for clients of the Contractor. Therefore, upon demand of CDA, the Contractor will immediately execute a contract amendment to return funds not anticipated to be required for remaining operations.
- h. The Contractor shall make available copies of medical records, patient files, and other pertinent information, including information maintained by any subcontractor/vendor, necessary for efficient care management of clients, as determined by CDA. Costs of reproduction will be authorized by CDA as an approved expenditure of local assistance administrative funds. In no circumstances will a Medi-Cal beneficiary be billed for this service.

B. Transition Plan

1. The Contractor shall submit a Transition Plan to the State within 15 days of delivery of the written Notice to Terminate the Contract. The Transition

ARTICLE XIII. TERMINATION AND TRANSITION PLAN (Continued)

Plan must be approved by CDA and shall, at a minimum, include the following:

- a. Current client count and identifying client information upon request
  - b. Description of how clients will be notified about the change in their MSSP provider
  - c. Plan to communicate with other MSSP sites, local agencies and advocacy organizations that can assist in locating alternative services
  - d. Plan to inform community referral sources of the pending termination of this MSSP contract and what alternatives, if any, exist for future referrals
  - e. Plan to evaluate health and safety of clients in order to assure appropriate placement
  - f. Plan to transfer confidential medical and client records to a new contractor or care management agency
  - g. Plan for adequate staff to provide continued care through the term of the Contract
  - h. A full inventory and plan to dispose or, transfer, or return to CDA all property purchased during the entire operation of the Contract
  - i. Additional information as necessary to effect a safe transition of clients to other MSSP or community care management programs
2. The Contractor shall implement the Transition Plan as approved by CDA. CDA will monitor the Contractor's progress in carrying out all elements of the Transition Plan.
  3. If the Contractor fails to provide and implement a transition plan as required by Section B of this Article XIII, the Contractor agrees to implement a transition plan submitted by CDA to the Contractor following the Contractor's Notice of Termination.
  4. Phase-out Requirements
    - a. Phase-out for this Contract will consist of the processing, payment and monetary reconciliation necessary to pay claims for Waiver Services.
    - b. Phase-out for the Contract will consist of the resolution of all financial and reporting obligations of the Contractor. The Contractor shall remain liable for the processing and payment of invoices and other claims for payment for Waived Services and

**ARTICLE XIII. TERMINATION AND TRANSITION PLAN (Continued)**

other services provided to clients pursuant to this Contract prior to the expiration or termination. The Contractor shall submit to CDA all reports required.

- c. All data and information provided by the Contractor shall be accompanied by letter, signed by the responsible authority, certifying, under penalty of perjury, to the accuracy and completeness of the materials supplied.

**ARTICLE XIV. REMEDIES**

The Contractor agrees that any remedy provided in this Agreement is in addition to, and not in derogation of, any other legal or equitable remedy available to the Department as a result of breach of this Agreement by the Contractor, whether such breach occurs before or after completion of the project.

**ARTICLE XV. DISSOLUTION OF ENTITY**

The Contractor shall notify CDA immediately of any intention to discontinue existence of the entity or to bring an action for dissolution.

**ARTICLE XVI. REVISIONS OR MODIFICATIONS**

- A. No amendment or variation of the terms of this Agreement shall be valid unless made in writing and approved as required. No oral understanding or agreement not incorporated in this Agreement is binding on any of the parties.
- B. The State reserves the right to revise or modify this Agreement to reflect any restrictions, limitations, or conditions enacted by Congress or the Legislature or as directed by the Executive Branch of State Government.

**ARTICLE XVII. NOTICES**

- A. Any notice to be given hereunder by either party to the other may be effected by personal delivery in writing or by registered or certified mail, postage prepaid, return receipt requested, or overnight mail, provided the Contractor retains receipt, and shall be communicated as of actual receipt.
- B. Any notice given to the CDA for a contractor's change of legal name, main address, or name of Director shall be addressed to the Director of the Department.
- C. A change in a contractor's Site Director requires that a notice be addressed to the MSSP Branch Chief. This notice shall be on the contractor's letter head, and must include the new Director's qualifications, as outlined in the MSSP Site Manual, Chapter 2.

ARTICLE XVII. NOTICES

- D. All other notices with the exception of those identified above shall be addressed to the California Department of Aging, Multipurpose Senior Services Program Branch, 1300 National Drive, Suite 200, Sacramento, California 95834. Notices mailed to the Contractor shall be to the address indicated on the coversheet of this Agreement.
- E. Either party may change its address by written notice to the other party in accordance with this Article.

ARTICLE XVIII. APPEAL PROCESS

In the event of an Agreement dispute or grievance regarding the terms and conditions of this Agreement both parties shall abide by the following procedures:

- A. The Contractor should first discuss the problem informally with the designated CDA Program Analyst. If the problem is not resolved, the Contractor must, within 15 working days of the failed attempt to resolve the dispute with the CDA Program Analyst, submit a written complaint together with any evidence to the Division Deputy Director. The complaint must include a description of the disputed issues, the legal authority/basis for each issue which supports the Contractor's position, and the remedy sought. The Deputy Director shall, within 15 working days after receipt of the Contractor's written complaint, make a determination on the dispute and issue a written decision and reasons therefore. All written communication shall be pursuant to Article XVII of this Agreement. Should the Contractor disagree with the decision of the Division Deputy Director, the Contractor may appeal the decision to the Chief Deputy Director of the California Department of Aging.
- B. The Contractor's appeal of the Division Deputy Director must be submitted within ten (10) working days from the date of the decision of the Division Deputy Director; be in writing; state the reasons why the decision is unacceptable; and include the original complaint, the decision that is the subject of appeal, and all supporting documents. Within 20 working days from the date of the Contractor's appeal, the Chief Deputy Director or designee shall meet with the Contractor to review the issues raised on appeal. The Chief Deputy Director shall issue a final written decision within 15 working days of such meeting.
- C. The Contractor may appeal the final decision of the Chief Deputy Director in accordance with the procedures set forth in Title 1 of the California Code of Regulations, Section 1200.
- D. The Contractor shall continue to carry out the obligations under this Agreement during any dispute. Costs incurred by the Contractor or vendor for administrative/court review are not reimbursable by the Department.

ARTICLE XIX. DEPARTMENT CONTACT

- A. The name of the Department's contact to request revisions, waivers, or modifications affecting this Agreement, will be provided by the State to the Contractor upon full execution of this Agreement.

ARTICLE XIX. DEPARTMENT CONTACT (Continued)

- B. The Contractor shall submit the name of its Agency Contract Representative (ACR), for this Agreement by submitting an Agency Contract Representative form to the CDA's Contracts and Business Services Section. This form requires the ACR's address, phone number, e-mail address, and FAX number to be included on this form. For any change in this information, the Contractor shall submit an amended Agency Contract Representative form to the same address. This form may be requested from the Contracts and Business Services Section.

ARTICLE XX. INFORMATION INTEGRITY AND SECURITY

A. Information Assets

The Contractor shall have in place operational policies, procedures, and practices to protect State information assets, i.e., public, confidential, sensitive and/or personal information as specified in State Administrative Manual, Section 5310, GC Section 11019, Department of Finance (DOF) Management Memo 06-12, and DOF Budget Letter 06-34).

Information assets include (but are not limited to):

1. Information collected and/or accessed in the administration of the State programs and services
2. Information stored in any media form, paper or electronic

B. Encryption on Portable Computing Devices

The Contractor is required to encrypt (or use an equally effective measure) any data collected under this Agreement that is confidential, sensitive, and/or personal including data stored on portable computing devices (including, but not limited to, laptops, personal digital assistants, and notebook computers) and /or portable electronic storage media (including, but not limited to, discs, thumb, flash drives, and portable hard drives).

C. Disclosure

1. The Contractor shall ensure that personal, sensitive and confidential information is protected from inappropriate or unauthorized access or disclosure in accordance with applicable laws, regulations and State policies. The requirement to protect information shall remain in force until superseded by laws, regulations or policies.
2. The Contractor shall protect from unauthorized disclosure names and other identifying information, concerning persons receiving services pursuant to this Agreement, except for statistical information not identifying any participant.
3. "Identifying information" shall include, but not be limited to, name, identifying number, social security number, State driver's license or State

ARTICLE XX. INFORMATION INTEGRITY AND SECURITY (Continued)

identification number, financial account numbers, symbols or other identifying characteristics assigned to the individual, such as finger or voice print or a photograph.

4. The Contractor shall not use the identifying information in paragraph 3 above for any purpose other than carrying out the Contractor's obligations under this Agreement.
5. The Contractor shall not, except as otherwise specifically authorized or required by this Agreement or court order, disclose any identifying information obtained under the terms of this Agreement to anyone other than CDA without prior written authorization from CDA. The Contractor may be authorized, in writing, by a participant to disclose identifying information specific to the authorizing participant.
6. The Contractor may allow a participant to authorize the release of information to specific entities but shall not request or encourage any participant to give a blanket authorization or sign a blank release, nor shall the Contractor accept such blanket authorization from any participant.

D. Training/Education

1. The Contractor agrees to provide ongoing education and training, at least annually, for all employees and subcontractors who handle personal, sensitive or confidential information. The Contractor's employees and subcontractors will complete the Security Awareness Training module located on the Department's website, [www.aging.ca.gov](http://www.aging.ca.gov) within 30 days of the start date of this Agreement or within 30 days of the start date of any new employee or subcontractor. The Contractor must maintain certificates of completion on file and provide them to CDA upon request. Training may be provided on an individual basis or in groups. A sign-in sheet is acceptable documentation for group training in lieu of individual certificates. If internet access is not available, a hardcopy of the training module may be provided to employees and/or volunteers for their completion.
2. The Contractor may substitute CDA's Security Awareness Training program with its own Security Training provided such training meets or exceeds CDA's training requirement. The Contractor shall maintain documentation of training and education provided to their staff and/or subcontractors.
3. All employees, volunteers and subcontractors/vendors who handle personal, sensitive or confidential information relating to CDA's programs must participate in Security Awareness Training.



ARTICLE XX. INFORMATION INTEGRITY AND SECURITY (Continued)

E. Contractor Confidentiality Statement

The Contractor shall sign and return a Contractor/Vendor Confidentiality Statement (CDA 1024 Form) with this Agreement. This is to ensure that the Contractors/Vendors are aware of, and agree to comply with, their obligations to protect CDA information assets from unauthorized access and disclosure.

F. Software Maintenance

The Contractor shall apply security patches and upgrades, and keep virus software up-to-date on all systems on which State data may be used.

G. The Contractor agrees to comply with the privacy and security requirements of HIPAA as specified in this Agreement.

1. Recitals

- a. This Agreement has been determined to constitute a business associate relationship under the Health Insurance Portability and Accountability Act ("HIPAA") and its implementing privacy and security regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations:").
- b. The California Department of Aging (CDA) and/or the California Department of Health Care Services (DHCS) wish to disclose to Business Associate certain information pursuant to the terms of this Agreement, some of which may constitute Protected Health Information ("PHI").
- c. "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium that relates to the past, present, or future physical or mental condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI shall have the meaning given to such term under HIPAA and HIPAA regulations, as the same may be amended from time to time.
- d. Under this Agreement, the Contractor is the Business Associate of DHCS/CDA and provides services, arranges, performs or assists in the performance of functions or activities on behalf of DHCS/CDA and uses or discloses PHI.

ARTICLE XX. INFORMATION INTEGRITY AND SECURITY (Continued)

- e. DHCS/CDA and Business Associate desire to protect the privacy and provide for the security of PHI disclosed pursuant to this Agreement, in compliance with HIPAA and HIPAA regulations and other applicable laws.
- f. The purpose of the Exhibit is to satisfy certain standards and requirements of HIPAA and the HIPAA regulations.
- g. The terms used in this Exhibit, but not otherwise defined, shall have the same meanings as those terms in the HIPAA regulations.

2. Permitted Uses and Disclosures of PHI by Business Associate.

- a. Except as otherwise indicated in this Article, Business Associate may use or disclose PHI only to perform functions, activities or services specified in this Agreement, for, or on behalf of DHCS/CDA, provided that such use or disclosure would not violate the HIPAA regulations, if done by DHCS/CDA.
- b. Except as otherwise indicated in this Article, Business Associate may use and disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are required by law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware that the confidentiality of the information has been breached.
- c. Use PHI to provide data aggregation services to services to DHCS/CDA. Data aggregation means the combining of PHI created or received by the Business Associate on behalf of DHCS/CDA with PHI received by the Business Associate in its capacity as the Business Associate of another covered entity, to permit data analyses that relate to the health care operations of DHCS/CDA.

3. Responsibilities of Business Associate.

Business Associate agrees:

ARTICLE XX. INFORMATION INTEGRITY AND SECURITY (Continued)

- a. To not use or disclose Protected Health Information (PHI) other than as permitted or required by this Agreement or as required by law.
- b. To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the protected health information, including electronic PHI, that it creates, receives, maintains or transmits on behalf of DHCS/CDA; and to prevent use or disclosure of PHI other than as provided for by this Agreement. Business Associate shall maintain a comprehensive written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Business Associate's operations and the nature and scope of its activities. Business Associate will provide DHCS/CDA with information concerning such safeguards as DHCS/CDA may reasonably request from time to time.
- c. To mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate or its subcontractors in violation of the requirements of this Exhibit.
- d. To report to DHCS and the CDA MSSP Branch Chief or Operations Manager within 24 hours during a work week, of discovery by Business Associate that PHI has been used or disclosed other than as provided for by this Agreement.
- e. To ensure that any agents, including subcontractors, to whom Business Associate provides PHI received from or created or received by Business Associate on behalf of DHCS/CDA, agree to the same restrictions and conditions that apply to the Business Associate with respect to such PHI; and to incorporate, when applicable, the relevant provisions of this Article into each subcontract or award to such agents or subcontractors.
- f. To provide access as DHCS/CDA may require, and in the time and manner designated by DHCS/CDA (upon reasonable notice and during Business Associate's normal business hours) to PHI in a Designated Record Set, to DHCS/CDA (or, as directed by DHCS/CDA), to an individual, in accordance with 45 CFR Section 164.524. Designated Record Set means the group of records maintained for DHCS/CDA that includes medical and billing records about individuals; enrollment, payment, claims adjudication, and

ARTICLE XX. INFORMATION INTEGRITY AND SECURITY (Continued)

case or medical management systems maintained for DHCS/CDA health plans; or those records used to make decisions about individuals on behalf of DHCS/CDA.

- g. To make any amendment(s) to PHI that DHCS/CDA directs or agrees to pursuant to 45 CFR Section 164.526, in the time and manner designated by DHCS/CDA.
- h. To make Business Associate's internal practices, books and records relating to the use and disclosure of PHI received from DHCS/CDA, or created or received by Business Associate on behalf of DHCS/CDA, available to DHCS/CDA or to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by DHCS/CDA or by the Secretary, for purposes of determining DHCS/CDA's compliance with the HIPAA regulations.
- i. To document and make available to DHCS/CDA or (at the direction of DHCS/CDA) to an individual such disclosures of PHI, and information related to such disclosures, necessary to respond to a proper request by the subject Individual for an accounting of disclosures of PHI, in accordance with 45 CFR 164.528.
- j. During the term of this Agreement, to notify DHCS and the CDA MSSP Branch Chief or Operations Manager within 24 hours during a work week of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI and/or any actual or suspected use or disclosure of data in violation of any applicable Federal and State laws or regulations. Business Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations. Business Associate shall investigate such breach, or unauthorized use or disclosure of PHI, and provide a written report of the investigation to the DHCS Privacy Officer within 15 working days of the discovery of the breach or unauthorized use at:

Privacy Officer  
C/o Office of Legal Services  
California Department of Health Care Services  
P.O. Box 942732  
Sacramento, CA 94234-7320

ARTICLE XX. INFORMATION INTEGRITY AND SECURITY (Continued)

A Security Incident Report form (CDA 1025) must be submitted to the CDA Information Security Officer within five (5) business days of the date the incident was detected.

- k. To train and use reasonable measures to ensure compliance with the requirements of this Article by employees who assist in the performance of functions or activities on behalf of DHCS/CDA under this Agreement and use or disclose PHI; and discipline such employees who intentionally violate any provisions of this Article, including termination of employment.

4. Obligations of DHCS/CDA.

DHCS/CDA agrees to:

- a. Provide Business Associate with the Notice of Privacy Practices that DHCS produces in accordance with 45 CFR 164.520, as well as any changes to such notice. Visit this Internet address to view the most current Notice of Privacy Practices:  
<http://www.DHCS.ca.gov/hipaa>.
- b. Provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate's permitted or required uses and disclosures.
- c. Notify the Business Associate of any restriction to the use or disclosure of PHI that DHCS/CDA has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of PHI.
- d. Not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA regulations if done by DHCS/CDA.

5. Audits, Inspection and Enforcement

From time to time, DHCS/CDA may inspect the facilities, systems, books and records of Business Associate to monitor compliance with this Agreement and this Article. Business Associate shall promptly remedy any violation of any provision of this Exhibit and shall certify the same to the DHCS/CDA Privacy Officer in writing. The fact that DHCS/CDA inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems and procedures does not relieve Business

ARTICLE XX. INFORMATION INTEGRITY AND SECURITY (Continued)

Associate of its responsibility to comply with this Article, nor does DHCS/CDA's:

- a. Failure to detect or
- b. Detection, but failure to notify the Business Associate or require Business Associate's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of DHCS/CDA's enforcement rights under this Agreement.

6. Termination.

- a. Upon DHCS/CDA's knowledge of a material breach of this Article by Business Associate, DHCS/CDA shall either:
  - (i) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by DHCS/CDA
  - (ii) Immediately terminate this Agreement if Business Associate has breached a material term of this Article and cure is not possible or
  - (iii) If neither cure nor termination are feasible, the DHCS/CDA Privacy Officer shall report the violation to the Secretary of the U.S. Department of Health and Human Services
- b. DHCS/CDA may terminate this Agreement, effective immediately, if (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA or (ii) a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, or other security or privacy laws is made in any administrative or civil proceeding in which the Business Associate has been joined.
- c. Upon termination or expiration of this Agreement for any reason, Business Associate shall return or destroy all PHI received from DHCS/CDA (or created or received by Business Associate on behalf of DHCS/CDA) that Business Associate still maintains in any form, and shall retain no copies of such PHI or, if return or destruction is not feasible, it shall continue to extend the protections of this Article to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. This provision shall apply to PHI

ARTICLE XX. INFORMATION INTEGRITY AND SECURITY (Continued)

that is in the possession of subcontractors or agents of Business Associate.

7. Miscellaneous Provisions.

- a. DHCS/CDA makes no warranty or representation that compliance by Business Associate with this Article, HIPAA or the HIPAA regulations will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
- b. The parties acknowledge that Federal and State laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon DHCS/CDA's request, Business Associate agrees to promptly enter into negotiations with DHCS/CDA concerning an amendment to this Agreement embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA regulations or other applicable laws. DHCS/CDA may terminate this Agreement upon 30 days written notice in the event (i) Business Associate does not promptly enter into negotiations to amend this Agreement when requested by DHCS/CDA pursuant to this Section or (ii) Business Associate does not enter into an amendment providing assurances regarding the safeguarding of PHI that DHCS/CDA in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA regulations.
- c. Business Associate shall make itself, and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under this Agreement, available to DHCS/CDA at no cost to DHCS/CDA to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against DHCS/CDA, its directors, officers or

ARTICLE XX. INFORMATION INTEGRITY AND SECURITY (Continued)

- employees based upon claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy, except where Business Associate or its subcontractor, employee or agent is a named adverse party.
- d. Nothing express or implied in the terms and conditions of this Article is intended to confer, nor shall anything herein confer, upon any person other than DHCS/CDA or Business Associate and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.
  - e. The terms and conditions in this Article shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA regulations and applicable State laws. The parties agree that any ambiguity in the terms and conditions of this Article shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA regulations.
  - f. A reference in the terms and conditions of this to a section in the HIPAA regulations means the section as in effect or as amended.
  - g. The respective rights and obligations of Business Associate under Section 6.C of this Article shall survive the termination or expiration of this Agreement.
  - h. No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.
- H. Provisions of this Article shall be included in all contracts of both the contractor/vendor and the subcontractors/vendors where either PHI, confidential, personal, or sensitive information is obtained during the course of carrying out the obligations of this Agreement or any sub-Agreements related to the services required in this Agreement.

ARTICLE XXI. COPYRIGHTS AND RIGHTS IN DATA

A. Copyrights

- 1. If any material funded by this Agreement is subject to copyright, CDA reserves the right to copyright such material, and the Contractor agrees not to copyright such material, except as set forth in subdivisions (b) and (c) of this section.



ARTICLE XXI. COPYRIGHTS AND RIGHTS IN DATA (Continued)

2. The Contractor may request permission to copyright material by writing to the Director of CDA. The Director shall consent to or give the reason for denial to the Contractor in writing within 60 days of receipt of the request.
3. If the material is copyrighted with the consent of CDA, CDA reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, prepare derivative works, publish, distribute and use such materials, in whole or in part, and to authorize others to do so, provided written credit is given the author.

B. Rights in Data

1. The Contractor shall not spend or encumber funds covered by this Agreement on research or publications; or any activities, staff, products, or materials, including analysis and services, supporting research, and publications, unless expressly authorized by the terms of this Agreement. The Contractor shall not publish any document or materials produced or resulting from activities supported by this Agreement unless the copy of the final draft for publication has been sent to the Director of CDA, for approval, at least 60 days before it is to be printed.
2. As used in this Agreement, the term "subject data" means writings, sound recordings, pictorial reproductions, drawings, designs or graphic representations, procedural manuals, forms, diagrams, workflow charts, equipment descriptions, data files and data processing or computer programs, and works of any similar nature (whether or not copyrighted or copyrightable) which are first produced or developed under this Agreement. The term does not include financial reports, cost analyses, and similar information incidental to contract administration.
3. The State may use, duplicate, or disclose in any manner and have or permit others to do so, subject to State and federal law, all subject data delivered under this Agreement.
4. Materials published by or transferred to the Contractor shall: (a) contract from the California Department of Aging; (b) give the name of the state "The materials or product were a result of a project funded by a entity the address, and telephone number at which the supporting data is available; and (c) include a statement that "The conclusions and opinions expressed may not be those of the California Department of Aging, and that the publication may not be based upon or inclusive of all raw data. "

**Exhibit E**  
**Additional Provisions**

**1. Additional Incorporated Exhibits**

A. The following documents and any subsequent updates are not attached, but are incorporated herein and made a part hereof by this reference. Contractors are required to fully comply with the directives in each document incorporated by reference herein and each update thereto. These documents may be updated periodically by DHCS, as required by program directives or changes in law or policy. Unless otherwise indicated, DHCS shall provide the Contractor with copies of said documents at or before the agreement is presented to the Contractor for review, acceptance, and signature and will require acknowledgement of receipt. Periodic updates to the below listed documents that are not electronically accessible via the Internet, an Extranet link or other mechanism will be presented to the Contractor under separate cover and acknowledgement of receipt will be required. DHCS will maintain on file, all documents referenced herein and any subsequent updates.

- 1) Health Administrative Manual Section 6-1000.\*
- 2) Local Government Agency (LGA) MAA Provider Manual.\*
- 3) Policy & Procedure Letters.\*
- 4) MAA Time Survey for Employees Performing Medi-Cal Administrative Activities and/or Targeted Case Management
- 5) Medi-Cal Administrative Activities Summary Invoice.\*
- 6) Medi-Cal Administrative Activities Detailed Invoice.\*

\*View at [www.dhcs.ca.gov/provgovpart/Pages/CMAA.aspx](http://www.dhcs.ca.gov/provgovpart/Pages/CMAA.aspx)

**2. Amendment Process**

Should either party, during the term of this agreement, desire a change or amendment to the terms of this agreement, such changes or amendments shall be proposed in writing to the other party, who will respond in writing as to whether the proposed changes/amendments are accepted or rejected. If accepted after negotiations are concluded, the agreed upon changes shall be made through the State's official agreement amendment process. No amendment will be considered binding on either party until it is formally approved by the State.

**3. Cancellation/Termination**

- A. This agreement may be cancelled or terminated without cause by either party by giving thirty (30) calendar days advance written notice to the other party. Such notification shall state the effective date of termination or cancellation and include any final performance and/or payment/invoicing instructions/requirements.
- B. Upon receipt of a notice of termination or cancellation from DHCS, Contractor shall take immediate steps to stop performance and to cancel or reduce subsequent agreement costs.
- C. Contractor shall be entitled to payment for all allowable costs authorized under this agreement, including authorized non-cancelable obligations incurred up to the date of

**Exhibit E**  
**Additional Provisions**

termination or cancellation, provided such expenses do not exceed the stated maximum amounts payable.

**4. Contractor Responsibilities**

- A. Comply with 42 U.S.C., Section 1396 et seq., 42 Code of Federal Regulations (CFR) Part 400 et seq., and 45 CFR Part 95, California Welfare and Institutions Code, Division 9, Part 3, Chapter 7 (commencing with Section 14000) and Chapter 8 (commencing with Section 14200), and Title 22 California Code of Regulations CCR), Division (3 (commencing with Section 50000), all as periodically amended; State issued policy directives; and Federal Office of Management and Budget (OMB) Circular A-87, as periodically amended.
- B. If the Contractor enters into contracts with other organizations to perform MAA in support of the Contractor claiming administrative reimbursement, the Contractor shall have available for State and/or Federal review, any contract to perform administrative activities under the auspices of the Medi-Cal Program.
- C. The Contractor is responsible for the acts or omissions of its employees and/or subcontractors. Submission of a falsified Summary Invoice or Detailed Invoice by a Contractor shall constitute a breach of contract. Submission of a Summary Invoice or Detailed Invoice for which there is no supporting documentation by a Contractor may constitute a breach of contract.
- D. The conviction of an employee or subcontractor of the Contractor, or of an employee of a subcontractor, of any felony or of a misdemeanor involving fraud, abuse of any Medi-Cal applicant or beneficiary, or abuse of the Medi-Cal Program, shall result in the exclusion of that employee or subcontractor, or employee of a subcontractor, from participation in the Medi-Cal Administrative Claiming process. Failure of a Contractor to exclude a convicted individual from participation in the Medi-Cal Administrative Claiming process shall constitute a breach of contract.
- E. Exclusion after conviction shall result regardless of any subsequent order under Section 1203.4 of the Penal Code allowing a person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.
- F. Suspension or exclusion of an employee or subcontractor, or of an employee of a subcontractor, from participation in the Medi-Cal Program, the Medicaid Program, or the Medicare Program, shall result in the exclusion of that employee or subcontractor, or employee of a subcontractor, from participation in the Medi-Cal Administrative Claiming process. Failure of a Contractor to exclude a suspended or excluded individual from participation in the Medi-Cal Administrative Claiming process shall constitute a breach of contract.
- G. Revocation, suspension, or restriction of the license, certificate, or registration of any employee, subcontractor, or employee of a subcontractor, shall result in exclusion from

**Exhibit E**  
**Additional Provisions**

the Medi-Cal Administrative Claiming process, when such license, certificate, or registration is required for the performance of Medi-Cal administrative activities. Failure of a Contractor to exclude an individual whose license, certificate, or registration has been revoked, suspended, or restricted, from participation in the Medi-Cal Administrative Claiming process, may constitute a breach of contract.

**5. State Responsibilities**

- A. Review, approve, as appropriate, and process Contractor claims for reimbursement of the allowable actual costs of providing administrative activities necessary for the proper and efficient administration of the Medi-Cal Program. Reimbursement shall be made subsequent to the quarter for which a claim for MAA is made. Any claim that cannot be approved shall be returned to the Contractor with a written explanation of the basis for disapproval.
- B. Provide the Contractor with a standardized format for the Summary Invoice, Detailed Invoice and MAA Claiming Plan which will be disseminated through policy directives issued by the State.
- C. Review MAA Claiming Plan and amendment(s) to the MAA Claiming Plan. Any amendment that cannot be approved shall be returned to the Contractor with a written explanation of the basis for disapproval. Any amendment to the MAA Claiming Plan shall not require a formal amendment to the agreement but may instead be effected via written approval of the amended MAA Claiming Plan signed by DHCS.
- D. Provide program monitoring and oversight including periodic site reviews for compliance with State and federal requirements and regulations. DHCS will retain ultimate responsibility for program oversight and policy interpretation.
- E. Submit approved MAA Claiming Plans and amendments to the Centers for Medicare and Medicaid Services (CMS) for review and approval if required.
- F. Make available to Contractors, training and technical support on proper administrative activities to be claimed, identifying costs related to these activities, and billing procedures. Training material is to be developed by and/or approved by DHCS.

**6. Joint Responsibilities**

- A. The State and the Contractor hereby agree to comply with all applicable laws governing the confidentiality of client information for Medi-Cal clients served by the Contractor, or subcontractor, under this agreement. Applicable laws include, but are not limited to, 42 U.S.C. Section 1396a(a)7, 42 CFR Section 431.300, 45 CFR Sections 160, 162, and 164, Welfare and Institutions Code, Section 14100.2, and 22 California Code of Regulations, Section 51009.

**Exhibit E**  
Additional Provisions

**7. Audit**

- A. This provision supersedes Provision #4, entitled "Audit" in General Terms & Conditions (GTC 307). View Exhibit C at the following Internet site:  
<http://www.ols.dgs.ca.gov/Standard+Language>.
- B. Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative, and employees of the California Department of Justice, and the United States Centers for Medicare and Medicaid Services, shall have the right to review, access, examine, monitor, audit, and to copy any records and supporting documentation pertaining to the performance of this agreement. Contractor agrees to allow interviews of any employees, or staff of any subcontractor, who might reasonably have information related to such records by either state and/or federal authorities. Contractor agrees to retain all necessary records for a minimum period of three (3) years after the end of the quarter in which the expenditures were incurred for MAA and, if an audit is in progress, all records relevant to the audit shall be retained until the completion of the audit or the final resolution of all audit exceptions, deferrals, and/or disallowances, whichever is later, and if litigation has been initiated, all necessary records shall be retained until the final resolution of the litigation. The records shall fully disclose the type and extent of administrative activities performed by the appropriate staff. The Contractor shall furnish such documentation and any other information regarding the performance of and payment for MAA, upon request, to the state or federal government.

**8. Definitions**

- A. The following definitions are applicable to this Contract.
- 1) "CFDA number" means the number assigned to a federal program in the Catalog of Federal Domestic Assistance (CFDA).
  - 2) "Federal award" means federal financial assistance and federal cost-reimbursement contracts that non-federal entities receive directly from federal awarding agencies or indirectly from pass-through entities. It does not include procurement contracts, under grants or contracts, used to buy goods or services from vendors.
  - 3) "Federal awarding agency" means the federal agency that provides an award directly to the recipient.
  - 4) "Federal program" means all federal awards to a non-federal entity assigned a single number in the CDFA.
  - 5) "Pass-through entity" means a non-federal entity that provides a federal award to a subrecipient to carry out a federal program.
  - 6) "Recipient" means a non-federal entity that expends federal awards received directly from a federal awarding agency to carry out a federal program.

**Exhibit E**  
Additional Provisions

- 7) "Subrecipient" means a non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency. Guidance on distinguishing between a subrecipient and a vendor is provided in OMB Circular A-133
  - 8) "Vendor" means a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a federal program. These goods or services may be for an organization's own use or for the use of beneficiaries of the federal program. Additional guidance on distinguishing between a subrecipient and a vendor is provided on OMB Circular A-133.
- B. The definitions in Provision 8, Item A, shall be included in all of Contractor's contracts with subrecipients and vendors.

### Contractor's Release

#### Instructions to Contractor:

With final invoice(s) submit one (1) original and one (1) copy. The original must bear the original signature of a person authorized to bind the Contractor. The additional copy may bear photocopied signatures.

#### Submission of Final Invoice

Pursuant to contract number 14-90026 entered into between the Department of Health Care Services (DHCS) and the Contractor (identified below), the Contractor does acknowledge that final payment has been requested via invoice number(s) \_\_\_\_\_, in the amount(s) of \$ \_\_\_\_\_ and dated \_\_\_\_\_  
If necessary, enter "See Attached" in the appropriate blocks and attach a list of invoice numbers, dollar amounts and invoice dates.

#### Release of all Obligations

By signing this form, and upon receipt of the amount specified in the invoice number(s) referenced above, the Contractor does hereby release and discharge the State, its officers, agents and employees of and from any and all liabilities, obligations, claims, and demands whatsoever arising from the above referenced contract.

#### Repayments Due to Audit Exceptions / Record Retention

By signing this form, Contractor acknowledges that expenses authorized for reimbursement does not guarantee final allowability of said expenses. Contractor agrees that the amount of any sustained audit exceptions resulting from any subsequent audit made after final payment will be refunded to the State.

All expense and accounting records related to the above referenced contract must be maintained for audit purposes for no less than three years beyond the date of final payment, unless a longer term is stated in said contract.

#### Recycled Product Use Certification

By signing this form, Contractor certifies under penalty of perjury that a minimum of 0% unless otherwise specified in writing of post consumer material, as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether it meets the requirements of Public Contract Code Section 12209. Contractor specifies that printer or duplication cartridges offered or sold to the State comply with the requirements of Section 12156(e).

#### Reminder to Return State Equipment/Property (If Applicable)

(Applies only if equipment was provided by DHCS or purchased with or reimbursed by contract funds)

Unless DHCS has approved the continued use and possession of State equipment (as defined in the above referenced contract) for use in connection with another DHCS agreement, Contractor agrees to promptly initiate arrangements to account for and return said equipment to DHCS, at DHCS' expense, if said equipment has not passed its useful life expectancy as defined in the above referenced contract.

#### Patents / Other Issues

By signing this form, Contractor further agrees, in connection with patent matters and with any claims that are not specifically released as set forth above, that it will comply with all of the provisions contained in the above referenced contract, including, but not limited to, those provisions relating to notification to the State and related to the defense or prosecution of litigation.

ONLY SIGN AND DATE THIS DOCUMENT WHEN ATTACHING IT TO THE FINAL INVOICE

Contractor's Legal Name (as on contract): County of Riverside

Signature of Contractor or Official Designee: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name/Title of Person Signing: \_\_\_\_\_

Distribution: Accounting (Original) Program



**Exhibit G**  
HIPAA Business Associate Addendum

**I. Recitals**

- A. This Contract (Agreement) has been determined to constitute a business associate relationship under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), 42 U.S.C. section 17921 et seq., and their implementing privacy and security regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations").
- B. The Department of Health Care Services ("DHCS") wishes to disclose to Business Associate certain information pursuant to the terms of this Agreement, some of which may constitute Protected Health Information ("PHI"), including protected health information in electronic media ("ePHI"), under federal law, and personal information ("PI") under state law.
- C. As set forth in this Agreement, Contractor, here and after, is the Business Associate of DHCS acting on DHCS' behalf and provides services, arranges, performs or assists in the performance of functions or activities on behalf of DHCS and creates, receives, maintains, transmits, uses or discloses PHI and PI. DHCS and Business Associate are each a party to this Agreement and are collectively referred to as the "parties."
- D. The purpose of this Addendum is to protect the privacy and security of the PHI and PI that may be created, received, maintained, transmitted, used or disclosed pursuant to this Agreement, and to comply with certain standards and requirements of HIPAA, the HITECH Act and the HIPAA regulations, including, but not limited to, the requirement that DHCS must enter into a contract containing specific requirements with Contractor prior to the disclosure of PHI to Contractor, as set forth in 45 CFR Parts 160 and 164 and the HITECH Act.
- E. The terms used in this Addendum, but not otherwise defined, shall have the same meanings as those terms have in the HIPAA regulations. Any reference to statutory or regulatory language shall be to such language as in effect or as amended.

**II. Definitions**

- A. Breach shall have the meaning given to such term under HIPAA, the HITECH Act, and the HIPAA regulations.
- B. Business Associate shall have the meaning given to such term under HIPAA, the HITECH Act, and the HIPAA regulations.
- C. Covered Entity shall have the meaning given to such term under HIPAA, the HITECH Act, and the HIPAA regulations.
- D. Electronic Health Record shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C Section 17921 and implementing regulations.
- E. Electronic Protected Health Information (ePHI) means individually identifiable health information transmitted by electronic media or maintained in electronic media, including but not limited to electronic media as set forth under 45 CFR section 160.103.
- F. Individually Identifiable Health Information means health information, including demographic information collected from an individual, that is created or received by a health care provider, health plan, employer or health care clearinghouse, and relates to the past, present or future physical or mental health or

**Exhibit G**  
**HIPAA Business Associate Addendum**

condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual, that identifies the individual or where there is a reasonable basis to believe the information can be used to identify the individual, as set forth under 45 CFR section 160.103.

- G. Privacy Rule shall mean the HIPAA Regulation that is found at 45 CFR Parts 160 and 164.
- H. Personal Information shall have the meaning given to such term in California Civil Code section 1798.29.
- I. Protected Health Information means individually identifiable health information that is transmitted by electronic media, maintained in electronic media, or is transmitted or maintained in any other form or medium, as set forth under 45 CFR section 160.103.
- J. Required by law, as set forth under 45 CFR section 164.103, means a mandate contained in law that compels an entity to make a use or disclosure of PHI that is enforceable in a court of law. This includes, but is not limited to, court orders and court-ordered warrants, subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information, and a civil or an authorized investigative demand. It also includes Medicare conditions of participation with respect to health care providers participating in the program, and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.
- K. Secretary means the Secretary of the U.S. Department of Health and Human Services ("HHS") or the Secretary's designee.
- L. Security Incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI or PI, or confidential data that is essential to the ongoing operation of the Business Associate's organization and intended for internal use; or interference with system operations in an information system.
- M. Security Rule shall mean the HIPAA regulation that is found at 45 CFR Parts 160 and 164.
- N. Unsecured PHI shall have the meaning given to such term under the HITECH Act, 42 U.S.C. section 17932(h), any guidance issued pursuant to such Act and the HIPAA regulations.

### III. Terms of Agreement

#### A. Permitted Uses and Disclosures of PHI by Business Associate

**Permitted Uses and Disclosures.** Except as otherwise indicated in this Addendum, Business Associate may use or disclose PHI only to perform functions, activities or services specified in this Agreement, for, or on behalf of DHCS, provided that such use or disclosure would not violate the HIPAA regulations, if done by DHCS. Any such use or disclosure must, to the extent practicable, be limited to the limited data set, as defined in 45 CFR section 164.514(e)(2), or, if needed, to the minimum necessary to accomplish the intended purpose of such use or disclosure, in compliance with the HITECH Act and any guidance issued pursuant to such Act, and the HIPAA regulations.

1. **Specific Use and Disclosure Provisions.** Except as otherwise indicated in this Addendum, Business Associate may:

**Exhibit G**  
**HIPAA Business Associate Addendum**

- a. **Use and disclose for management and administration.** Use and disclose PHI for the proper management and administration of the Business Associate provided that such disclosures are required by law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware that the confidentiality of the information has been breached.
- b. **Provision of Data Aggregation Services.** Use PHI to provide data aggregation services to DHCS. Data aggregation means the combining of PHI created or received by the Business Associate on behalf of DHCS with PHI received by the Business Associate in its capacity as the Business Associate of another covered entity, to permit data analyses that relate to the health care operations of DHCS.

**B. Prohibited Uses and Disclosures**

1. Business Associate shall not disclose PHI about an individual to a health plan for payment or health care operations purposes if the PHI pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full and the individual requests such restriction, in accordance with 42 U.S.C. section 17935(a) and 45 CFR section 164.522(a).
2. Business Associate shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior written consent of DHCS and as permitted by 42 U.S.C. section 17935(d)(2).

**C. Responsibilities of Business Associate**

Business Associate agrees:

1. **Nondisclosure.** Not to use or disclose Protected Health Information (PHI) other than as permitted or required by this Agreement or as required by law.
2. **Safeguards.** To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI, including electronic PHI, that it creates, receives, maintains, uses or transmits on behalf of DHCS, in compliance with 45 CFR sections 164.308, 164.310 and 164.312, and to prevent use or disclosure of PHI other than as provided for by this Agreement. Business Associate shall implement reasonable and appropriate policies and procedures to comply with the standards, implementation specifications and other requirements of 45 CFR section 164, subpart C, in compliance with 45 CFR section 164.316. Business Associate shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Business Associate's operations and the nature and scope of its activities, and which incorporates the requirements of section 3, Security, below. Business Associate will provide DHCS with its current and updated policies.
3. **Security.** To take any and all steps necessary to ensure the continuous security of all computerized data systems containing PHI and/or PI, and to protect paper documents containing PHI and/or PI. These steps shall include, at a minimum:
  - a. Complying with all of the data system security precautions listed in Attachment A, the Business Associate Data Security Requirements;

**Exhibit G**  
**HIPAA Business Associate Addendum**

- b. Achieving and maintaining compliance with the HIPAA Security Rule (45 CFR Parts 160 and 164), as necessary in conducting operations on behalf of DHCS under this Agreement;
- c. Providing a level and scope of security that is at least comparable to the level and scope of security established by the Office of Management and Budget in OMB Circular No. A-130, Appendix III - Security of Federal Automated Information Systems, which sets forth guidelines for automated information systems in Federal agencies; and
- d. In case of a conflict between any of the security standards contained in any of these enumerated sources of security standards, the most stringent shall apply. The most stringent means that safeguard which provides the highest level of protection to PHI from unauthorized disclosure. Further, Business Associate must comply with changes to these standards that occur after the effective date of this Agreement.

Business Associate shall designate a Security Officer to oversee its data security program who shall be responsible for carrying out the requirements of this section and for communicating on security matters with DHCS.

**D. *Mitigation of Harmful Effects.*** To mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate or its subcontractors in violation of the requirements of this Addendum.

**E. *Business Associate's Agents and Subcontractors.***

1. To enter into written agreements with any agents, including subcontractors and vendors, to whom Business Associate provides PHI or PI received from or created or received by Business Associate on behalf of DHCS, that impose the same restrictions and conditions on such agents, subcontractors and vendors that apply to Business Associate with respect to such PHI and PI under this Addendum, and that comply with all applicable provisions of HIPAA, the HITECH Act and the HIPAA regulations, including the requirement that any agents, subcontractors or vendors implement reasonable and appropriate administrative, physical, and technical safeguards to protect such PHI and PI. Business Associate shall incorporate, when applicable, the relevant provisions of this Addendum into each subcontract or subaward to such agents, subcontractors and vendors, including the requirement that any security incidents or breaches of unsecured PHI or PI be reported to Business Associate.
2. In accordance with 45 CFR section 164.504(e)(1)(ii), upon Business Associate's knowledge of a material breach or violation by its subcontractor of the agreement between Business Associate and the subcontractor, Business Associate shall:
  - a. Provide an opportunity for the subcontractor to cure the breach or end the violation and terminate the agreement if the subcontractor does not cure the breach or end the violation within the time specified by DHCS; or
  - b. Immediately terminate the agreement if the subcontractor has breached a material term of the agreement and cure is not possible.

**F. *Availability of Information to DHCS and Individuals.*** To provide access and information:

**Exhibit G**  
**HIPAA Business Associate Addendum**

1. To provide access as DHCS may require, and in the time and manner designated by DHCS (upon reasonable notice and during Business Associate's normal business hours) to PHI in a Designated Record Set, to DHCS (or, as directed by DHCS), to an Individual, in accordance with 45 CFR section 164.524. Designated Record Set means the group of records maintained for DHCS that includes medical, dental and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for DHCS health plans; or those records used to make decisions about individuals on behalf of DHCS. Business Associate shall use the forms and processes developed by DHCS for this purpose and shall respond to requests for access to records transmitted by DHCS within fifteen (15) calendar days of receipt of the request by producing the records or verifying that there are none.
  2. If Business Associate maintains an Electronic Health Record with PHI, and an individual requests a copy of such information in an electronic format, Business Associate shall provide such information in an electronic format to enable DHCS to fulfill its obligations under the HITECH Act, including but not limited to, 42 U.S.C. section 17935(e).
  3. If Business Associate receives data from DHCS that was provided to DHCS by the Social Security Administration, upon request by DHCS, Business Associate shall provide DHCS with a list of all employees, contractors and agents who have access to the Social Security data, including employees, contractors and agents of its subcontractors and agents.
- G. Amendment of PHI.** To make any amendment(s) to PHI that DHCS directs or agrees to pursuant to 45 CFR section 164.526, in the time and manner designated by DHCS.
- H. Internal Practices.** To make Business Associate's internal practices, books and records relating to the use and disclosure of PHI received from DHCS, or created or received by Business Associate on behalf of DHCS, available to DHCS or to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by DHCS or by the Secretary, for purposes of determining DHCS' compliance with the HIPAA regulations. If any information needed for this purpose is in the exclusive possession of any other entity or person and the other entity or person fails or refuses to furnish the information to Business Associate, Business Associate shall so certify to DHCS and shall set forth the efforts it made to obtain the information.
- I. Documentation of Disclosures.** To document and make available to DHCS or (at the direction of DHCS) to an Individual such disclosures of PHI, and information related to such disclosures, necessary to respond to a proper request by the subject Individual for an accounting of disclosures of PHI, in accordance with the HITECH Act and its implementing regulations, including but not limited to 45 CFR section 164.528 and 42 U.S.C. section 17935(c). If Business Associate maintains electronic health records for DHCS as of January 1, 2009, Business Associate must provide an accounting of disclosures, including those disclosures for treatment, payment or health care operations, effective with disclosures on or after January 1, 2014. If Business Associate acquires electronic health records for DHCS after January 1, 2009, Business Associate must provide an accounting of disclosures, including those disclosures for treatment, payment or health care operations, effective with disclosures on or after the date the electronic health record is acquired, or on or after January 1, 2011, whichever date is later. The electronic accounting of disclosures shall be for disclosures during the three years prior to the request for an accounting.
- J. Breaches and Security Incidents.** During the term of this Agreement, Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any breach or security incident, and to take the following steps:



**Exhibit G**  
**HIPAA Business Associate Addendum**

1. **Notice to DHCS.** (1) To notify DHCS **immediately by telephone call plus email or fax** upon the discovery of a breach of unsecured PHI or PI in electronic media or in any other media if the PHI or PI was, or is reasonably believed to have been, accessed or acquired by an unauthorized person, or upon the discovery of a suspected security incident that involves data provided to DHCS by the Social Security Administration. (2) To notify DHCS **within 24 hours by email or fax** of the discovery of any suspected security incident, intrusion or unauthorized access, use or disclosure of PHI or PI in violation of this Agreement and this Addendum, or potential loss of confidential data affecting this Agreement. A breach shall be treated as discovered by Business Associate as of the first day on which the breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the breach) who is an employee, officer or other agent of Business Associate.

Notice shall be provided to the DHCS Program Contract Manager, the DHCS Privacy Officer and the DHCS Information Security Officer. If the incident occurs after business hours or on a weekend or holiday and involves electronic PHI, notice shall be provided by calling the DHCS ITSD Service Desk. Notice shall be made using the "DHCS Privacy Incident Report" form, including all information known at the time. Business Associate shall use the most current version of this form, which is posted on the DHCS Privacy Office website ([www.dhcs.ca.gov](http://www.dhcs.ca.gov)), then select "Privacy" in the left column and then "Business Use" near the middle of the page) or use this link: <http://www.dhcs.ca.gov/formsandpubs/laws/priv/Pages/DHCSBusinessAssociatesOnly.aspx>

Upon discovery of a breach or suspected security incident, intrusion or unauthorized access, use or disclosure of PHI or PI, Business Associate shall take:

- a. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment; and
  - b. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.
2. **Investigation and Investigation Report.** To immediately investigate such security incident, breach, or unauthorized access, use or disclosure of PHI or PI. Within 72 hours of the discovery, Business Associate shall submit an updated "DHCS Privacy Incident Report" containing the information marked with an asterisk and all other applicable information listed on the form, to the extent known at that time, to the DHCS Program Contract Manager, the DHCS Privacy Officer, and the DHCS Information Security Officer:
  3. **Complete Report.** To provide a complete report of the investigation to the DHCS Program Contract Manager, the DHCS Privacy Officer, and the DHCS Information Security Officer within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall be submitted on the "DHCS Privacy Incident Report" form and shall include an assessment of all known factors relevant to a determination of whether a breach occurred under applicable provisions of HIPAA, the HITECH Act, the HIPAA regulations and/or state law. The report shall also include a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure. If DHCS requests information in addition to that listed on the "DHCS Privacy Incident Report" form, Business Associate shall make reasonable efforts to provide DHCS with such information. If necessary, a Supplemental Report may be used to submit revised or additional information after the completed report is submitted, by submitting the revised or additional information on an updated "DHCS Privacy Incident Report" form. DHCS will review and approve the determination of whether a breach occurred and individual notifications are required, and the corrective action plan.

**Exhibit G**  
 HIPAA Business Associate Addendum

4. **Notification of Individuals.** If the cause of a breach of PHI or PI is attributable to Business Associate or its subcontractors, agents or vendors, Business Associate shall notify individuals of the breach or unauthorized use or disclosure when notification is required under state or federal law and shall pay any costs of such notifications, as well as any costs associated with the breach. The notifications shall comply with the requirements set forth in 42 U.S.C. section 17932 and its implementing regulations, including, but not limited to, the requirement that the notifications be made without unreasonable delay and in no event later than 60 calendar days. The DHCS Program Contract Manager, the DHCS Privacy Officer, and the DHCS Information Security Officer shall approve the time, manner and content of any such notifications and their review and approval must be obtained before the notifications are made.
  
5. **Responsibility for Reporting of Breaches.** If the cause of a breach of PHI or PI is attributable to Business Associate or its agents, subcontractors or vendors, Business Associate is responsible for all required reporting of the breach as specified in 42 U.S.C. section 17932 and its implementing regulations, including notification to media outlets and to the Secretary. If a breach of unsecured PHI involves more than 500 residents of the State of California or its jurisdiction, Business Associate shall notify the Secretary of the breach immediately upon discovery of the breach. If Business Associate has reason to believe that duplicate reporting of the same breach or incident may occur because its subcontractors, agents or vendors may report the breach or incident to DHCS in addition to Business Associate, Business Associate shall notify DHCS, and DHCS and Business Associate may take appropriate action to prevent duplicate reporting. The breach reporting requirements of this paragraph are in addition to the reporting requirements set forth in subsection 1, above.
  
6. **DHCS Contact Information.** To direct communications to the above referenced DHCS staff, the Contractor shall initiate contact as indicated herein. DHCS reserves the right to make changes to the contact information below by giving written notice to the Contractor. Said changes shall not require an amendment to this Addendum or the Agreement to which it is incorporated.

<b>DHCS Program Contract Manager</b>	<b>DHCS Privacy Officer</b>	<b>DHCS Information Security Officer</b>
See the Scope of Work exhibit for Program Contract Manager information	Privacy Officer c/o: Office of HIPAA Compliance Department of Health Care Services P.O. Box 997413, MS 4722 Sacramento, CA 95899-7413  Email: <a href="mailto:privacyofficer@dhcs.ca.gov">privacyofficer@dhcs.ca.gov</a>  Telephone: (916) 445-4646  Fax: (916) 440-7680	Information Security Officer DHCS Information Security Office P.O. Box 997413, MS 6400 Sacramento, CA 95899-7413  Email: <a href="mailto:iso@dhcs.ca.gov">iso@dhcs.ca.gov</a> Fax: (916) 440-5537  Telephone: ITSD Service Desk (916) 440-7000 or (800) 579-0874



**Exhibit G**  
HIPAA Business Associate Addendum

- K. Termination of Agreement.** In accordance with Section 13404(b) of the HITECH Act and to the extent required by the HIPAA regulations, if Business Associate knows of a material breach or violation by DHCS of this Addendum, it shall take the following steps:
1. Provide an opportunity for DHCS to cure the breach or end the violation and terminate the Agreement if DHCS does not cure the breach or end the violation within the time specified by Business Associate; or
  2. Immediately terminate the Agreement if DHCS has breached a material term of the Addendum and cure is not possible.
- L. Due Diligence.** Business Associate shall exercise due diligence and shall take reasonable steps to ensure that it remains in compliance with this Addendum and is in compliance with applicable provisions of HIPAA, the HITECH Act and the HIPAA regulations, and that its agents, subcontractors and vendors are in compliance with their obligations as required by this Addendum.
- M. Sanctions and/or Penalties.** Business Associate understands that a failure to comply with the provisions of HIPAA, the HITECH Act and the HIPAA regulations that are applicable to Business Associate may result in the imposition of sanctions and/or penalties on Business Associate under HIPAA, the HITECH Act and the HIPAA regulations.

#### IV. Obligations of DHCS

DHCS agrees to:

- A. Notice of Privacy Practices.** Provide Business Associate with the Notice of Privacy Practices that DHCS produces in accordance with 45 CFR section 164.520, as well as any changes to such notice. Visit the DHCS Privacy Office to view the most current Notice of Privacy Practices at: <http://www.dhcs.ca.gov/formsandpubs/laws/priv/Pages/default.aspx> or the DHCS website at [www.dhcs.ca.gov](http://www.dhcs.ca.gov) (select "Privacy in the left column and "Notice of Privacy Practices" on the right side of the page).
- B. Permission by Individuals for Use and Disclosure of PHI.** Provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate's permitted or required uses and disclosures.
- C. Notification of Restrictions.** Notify the Business Associate of any restriction to the use or disclosure of PHI that DHCS has agreed to in accordance with 45 CFR section 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of PHI.
- D. Requests Conflicting with HIPAA Rules.** Not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA regulations if done by DHCS.

#### V. Audits, Inspection and Enforcement

- A.** From time to time, DHCS may inspect the facilities, systems, books and records of Business Associate to monitor compliance with this Agreement and this Addendum. Business Associate shall promptly remedy any violation of any provision of this Addendum and shall certify the same to the DHCS Privacy Officer in writing. The fact that DHCS inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems and procedures does not relieve Business Associate of its responsibility to comply with this Addendum, nor does DHCS'.

**Exhibit G**  
**HIPAA Business Associate Addendum**

1. Failure to detect or
  2. Detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices constitute acceptance of such practice or a waiver of DHCS' enforcement rights under this Agreement and this Addendum.
- B. If Business Associate is the subject of an audit, compliance review, or complaint investigation by the Secretary or the Office of Civil Rights, U.S. Department of Health and Human Services, that is related to the performance of its obligations pursuant to this HIPAA Business Associate Addendum, Business Associate shall notify DHCS and provide DHCS with a copy of any PHI or PI that Business Associate provides to the Secretary or the Office of Civil Rights concurrently with providing such PHI or PI to the Secretary. Business Associate is responsible for any civil penalties assessed due to an audit or investigation of Business Associate, in accordance with 42 U.S.C. section 17934(c).

**VI. Termination**

- A. **Term.** The Term of this Addendum shall commence as of the effective date of this Addendum and shall extend beyond the termination of the contract and shall terminate when all the PHI provided by DHCS to Business Associate, or created or received by Business Associate on behalf of DHCS, is destroyed or returned to DHCS, in accordance with 45 CFR 164.504(e)(2)(ii)(I).
- B. **Termination for Cause.** In accordance with 45 CFR section 164.504(e)(1)(ii), upon DHCS' knowledge of a material breach or violation of this Addendum by Business Associate, DHCS shall:
1. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by DHCS; or
  2. Immediately terminate this Agreement if Business Associate has breached a material term of this Addendum and cure is not possible.
- C. **Judicial or Administrative Proceedings.** Business Associate will notify DHCS if it is named as a defendant in a criminal proceeding for a violation of HIPAA. DHCS may terminate this Agreement if Business Associate is found guilty of a criminal violation of HIPAA. DHCS may terminate this Agreement if a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, or other security or privacy laws is made in any administrative or civil proceeding in which the Business Associate is a party or has been joined.
- D. **Effect of Termination.** Upon termination or expiration of this Agreement for any reason, Business Associate shall return or destroy all PHI received from DHCS (or created or received by Business Associate on behalf of DHCS) that Business Associate still maintains in any form, and shall retain no copies of such PHI. If return or destruction is not feasible, Business Associate shall notify DHCS of the conditions that make the return or destruction infeasible, and DHCS and Business Associate shall determine the terms and conditions under which Business Associate may retain the PHI. Business Associate shall continue to extend the protections of this Addendum to such PHI, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.

**VII. Miscellaneous Provisions**

- A. **Disclaimer.** DHCS makes no warranty or representation that compliance by Business Associate with this Addendum, HIPAA or the HIPAA regulations will be adequate or satisfactory for Business

**Exhibit G**  
**HIPAA Business Associate Addendum**

Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

- B. Amendment.** The parties acknowledge that federal and state laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon DHCS' request, Business Associate agrees to promptly enter into negotiations with DHCS concerning an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other applicable laws. DHCS may terminate this Agreement upon thirty (30) days written notice in the event:
1. Business Associate does not promptly enter into negotiations to amend this Addendum when requested by DHCS pursuant to this Section; or
  2. Business Associate does not enter into an amendment providing assurances regarding the safeguarding of PHI that DHCS in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA regulations.
- C. Assistance in Litigation or Administrative Proceedings.** Business Associate shall make itself and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under this Agreement, available to DHCS at no cost to DHCS to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against DHCS, its directors, officers or employees based upon claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves inactions or actions by the Business Associate, except where Business Associate or its subcontractor, employee or agent is a named adverse party.
- D. No Third-Party Beneficiaries.** Nothing express or implied in the terms and conditions of this Addendum is intended to confer, nor shall anything herein confer, upon any person other than DHCS or Business Associate and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.
- E. Interpretation.** The terms and conditions in this Addendum shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the HIPAA regulations and applicable state laws. The parties agree that any ambiguity in the terms and conditions of this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act and the HIPAA regulations.
- F. Regulatory References.** A reference in the terms and conditions of this Addendum to a section in the HIPAA regulations means the section as in effect or as amended.
- G. Survival.** The respective rights and obligations of Business Associate under Section VI.D of this Addendum shall survive the termination or expiration of this Agreement.
- H. No Waiver of Obligations.** No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

**Exhibit G**  
HIPAA Business Associate Addendum

**Attachment A**  
Business Associate Data Security Requirements

**I. Personnel Controls**

- A. Employee Training.** All workforce members who assist in the performance of functions or activities on behalf of DHCS, or access or disclose DHCS PHI or PI must complete information privacy and security training, at least annually, at Business Associate's expense. Each workforce member who receives information privacy and security training must sign a certification, indicating the member's name and the date on which the training was completed. These certifications must be retained for a period of six (6) years following contract termination.
- B. Employee Discipline.** Appropriate sanctions must be applied against workforce members who fail to comply with privacy policies and procedures or any provisions of these requirements, including termination of employment where appropriate.
- C. Confidentiality Statement.** All persons that will be working with DHCS PHI or PI must sign a confidentiality statement that includes, at a minimum, General Use, Security and Privacy Safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the workforce member prior to access to DHCS PHI or PI. The statement must be renewed annually. The Contractor shall retain each person's written confidentiality statement for DHCS inspection for a period of six (6) years following contract termination.
- D. Background Check.** Before a member of the workforce may access DHCS PHI or PI, a thorough background check of that worker must be conducted, with evaluation of the results to assure that there is no indication that the worker may present a risk to the security or integrity of confidential data or a risk for theft or misuse of confidential data. The Contractor shall retain each workforce member's background check documentation for a period of three (3) years following contract termination.

**II. Technical Security Controls**

- A. Workstation/Laptop encryption.** All workstations and laptops that process and/or store DHCS PHI or PI must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as Advanced Encryption Standard (AES). The encryption solution must be full disk unless approved by the DHCS Information Security Office.
- B. Server Security.** Servers containing unencrypted DHCS PHI or PI must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.
- C. Minimum Necessary.** Only the minimum necessary amount of DHCS PHI or PI required to perform necessary business functions may be copied, downloaded, or exported.
- D. Removable media devices.** All electronic files that contain DHCS PHI or PI data must be encrypted when stored on any removable media or portable device (i.e. USB thumb drives, floppies, CD/DVD, Blackberry, backup tapes etc.). Encryption must be a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES.

**Exhibit G**  
HIPAA Business Associate Addendum

- E. *Antivirus software.*** All workstations, laptops and other systems that process and/or store DHCS PHI or PI must install and actively use comprehensive anti-virus software solution with automatic updates scheduled at least daily.
- F. *Patch Management.*** All workstations, laptops and other systems that process and/or store DHCS PHI or PI must have critical security patches applied, with system reboot if necessary. There must be a documented patch management process which determines installation timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable patches must be installed within 30 days of vendor release.
- G. *User IDs and Password Controls.*** All users must be issued a unique user name for accessing DHCS PHI or PI. Username must be promptly disabled, deleted, or the password changed upon the transfer or termination of an employee with knowledge of the password, at maximum within 24 hours. Passwords are not to be shared. Passwords must be at least eight characters and must be a non-dictionary word. Passwords must not be stored in readable format on the computer. Passwords must be changed every 90 days, preferably every 60 days. Passwords must be changed if revealed or compromised. Passwords must be composed of characters from at least three of the following four groups from the standard keyboard:
- Upper case letters (A-Z)
  - Lower case letters (a-z)
  - Arabic numerals (0-9)
  - Non-alphanumeric characters (punctuation symbols)
- H. *Data Destruction.*** When no longer needed, all DHCS PHI or PI must be wiped using the Gutmann or US Department of Defense (DoD) 5220.22-M (7 Pass) standard, or by degaussing. Media may also be physically destroyed in accordance with NIST Special Publication 800-88. Other methods require prior written permission of the DHCS Information Security Office.
- I. *System Timeout.*** The system providing access to DHCS PHI or PI must provide an automatic timeout, requiring re-authentication of the user session after no more than 20 minutes of inactivity.
- J. *Warning Banners.*** All systems providing access to DHCS PHI or PI must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only by authorized users. User must be directed to log off the system if they do not agree with these requirements.
- K. *System Logging.*** The system must maintain an automated audit trail which can identify the user or system process which initiates a request for DHCS PHI or PI, or which alters DHCS PHI or PI. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. If DHCS PHI or PI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least 3 years after occurrence.
- L. *Access Controls.*** The system providing access to DHCS PHI or PI must use role based access controls for all user authentications, enforcing the principle of least privilege.

**Exhibit G**  
**HIPAA Business Associate Addendum**

- M. *Transmission encryption.*** All data transmissions of DHCS PHI or PI outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files containing PHI can be encrypted. This requirement pertains to any type of PHI or PI in motion such as website access, file transfer, and E-Mail.
- N. *Intrusion Detection.*** All systems involved in accessing, holding, transporting, and protecting DHCS PHI or PI that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

**III. Audit Controls**

- A. *System Security Review.*** All systems processing and/or storing DHCS PHI or PI must have at least an annual system risk assessment/security review which provides assurance that administrative, physical, and technical controls are functioning effectively and providing adequate levels of protection. Reviews should include vulnerability scanning tools.
- B. *Log Reviews.*** All systems processing and/or storing DHCS PHI or PI must have a routine procedure in place to review system logs for unauthorized access.
- C. *Change Control.*** All systems processing and/or storing DHCS PHI or PI must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.

**IV. Business Continuity / Disaster Recovery Controls**

- A. *Emergency Mode Operation Plan.*** Contractor must establish a documented plan to enable continuation of critical business processes and protection of the security of electronic DHCS PHI or PI in the event of an emergency. Emergency means any circumstance or situation that causes normal computer operations to become unavailable for use in performing the work required under this Agreement for more than 24 hours.
- B. *Data Backup Plan.*** Contractor must have established documented procedures to backup DHCS PHI to maintain retrievable exact copies of DHCS PHI or PI. The plan must include a regular schedule for making backups, storing backups offsite, an inventory of backup media, and an estimate of the amount of time needed to restore DHCS PHI or PI should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of DHCS data.

**V. Paper Document Controls**

- A. *Supervision of Data.*** DHCS PHI or PI in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by an employee authorized to access the information. DHCS PHI or PI in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.
- B. *Escorting Visitors.*** Visitors to areas where DHCS PHI or PI is contained shall be escorted and DHCS PHI or PI shall be kept out of sight while visitors are in the area.

**Exhibit G**  
HIPAA Business Associate Addendum

- C. **Confidential Destruction.** DHCS PHI or PI must be disposed of through confidential means, such as cross cut shredding and pulverizing.
- D. **Removal of Data.** DHCS PHI or PI must not be removed from the premises of the Contractor except with express written permission of DHCS.
- E. **Faxing.** Faxes containing DHCS PHI or PI shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending the fax.
- F. **Mailing.** Mailings of DHCS PHI or PI shall be sealed and secured from damage or inappropriate viewing of PHI or PI to the extent possible. Mailings which include 500 or more individually identifiable records of DHCS PHI or PI in a single package shall be sent using a tracked mailing method which includes verification of delivery and receipt, unless the prior written permission of DHCS to use another method is obtained.