

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

M. Contract Provisions

The SERVICE PROVIDER shall ensure compliance with any and all provisions as specified in CFR 45 CFR 92.36(i). These provisions include all regulations specified in this Agreement, as well as any additional regulations that are hereby incorporated by reference. The SERVICE PROVIDER understands that Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy under 45 CFR 92.36(i), and that they will be in compliance with all applicable modifications.

M. Contract Agreement Authorization

- 1) **If a public entity, the SERVICE PROVIDER shall submit to RCOoA a copy of the resolution, order, or motion referencing the Contract Agreement number authorizing execution of this Contract Agreement. If a private nonprofit entity, the SERVICE PROVIDER shall submit to RCOoA an authorization by the board of directors to execute this Contract Agreement, referencing this Contract Agreement number.**
- 2) Documentation in the form of a resolution, order, motion, or authorization by the Board of the Service Provider is required for the original and each subsequent amendment to this Contract

Agreement. This requirement may also be met by a single resolution, order, motion, or authorization from the Board of the Service Provider authorizing the Service Provider Director or designee to execute the original and all subsequent amendments to this Agreement.

N. Drug-Free Workplace Act

The SERVICE PROVIDER shall comply with the requirements of the Drug-Free Workplace Act of 1990 (Government code, Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- 1) 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, as required by Government Code, Section 8355(a).
- 2) Establish a Drug-Free Awareness Program as required by Government Code, Section 8355(b) to inform employees about all of the following:
  - a. The dangers of drug abuse in the workplace;
  - b. The person's or organization's policy of maintaining a drug-free workplace;
  - c. Any available counseling, rehabilitation and employee assistance programs; and
  - d. Penalties that may be imposed upon employees for drug abuse violations.
- 3) Provide, as required by Government code, Section 8355 (c), that every employee who works under this Contract Agreement:
  - a. Will receive a copy of the SERVICE PROVIDER'S drug-free policy statement; and
  - b. Will agree to abide by the terms of the SERVICE PROVIDER'S statement as a condition of employment on the contract.
- 4) Failure to comply with these requirements may result in suspension of payments under the Contract Agreement or termination of the Contract Agreement or both, and the SERVICE PROVIDER may be ineligible for award of any future State funded Contract Agreements if RCOoA determines that any of the following has occurred: (1) the SERVICE PROVIDER has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

O. Provision of Services

The SERVICE PROVIDER shall ensure the provision of services under this Contract Agreement, as specified by the Program Exhibit or the Scope of Service which are hereby incorporated by reference.

P. Availability of Staff

- 1) The SERVICE PROVIDER shall maintain adequate staff to meet all obligations under this Contract Agreement.

- 2) This staff shall be available to the RCOoA or the State for training and meetings which RCOoA may find necessary from time to time.

Q. Administration

- 1) The SERVICE PROVIDER shall be a public or private nonprofit entity. RCOoA must secure a waiver from CDA to award a Contract Agreement to a for-profit entity, should there be no equally competent applicant. If a private nonprofit entity, the SERVICE PROVIDER shall be in good standing with the Secretary of State of California and shall maintain that status throughout the term of this Contract Agreement.
- 2) The SERVICE PROVIDER shall ensure that any subcontractors providing services under this Contract Agreement shall be of sound financial status. Any private, subcontracting corporation shall be in good standing with the Secretary of State of California and shall maintain that status throughout the term of the Contract Agreement.
- 3) Failure to maintain good standing by the SERVICE PROVIDER shall result in any of the sanctions listed under the Contract Agreement Sanction Policy, Attachment B, until satisfactory status is restored.

### ARTICLE III. CONTRACT AGREEMENT REFERENCING

- A. All elements of this Contract Agreement, as defined in Article I., Section A., and as approved by RCOoA in making this award, are hereby incorporated by reference, and is fully set forth herein.
- B. A copy of this Contract Agreement is on file, portions are available for inspection by appointment, at Riverside County Office on Aging, 6296 River Crest Drive, Suite K, Riverside, CA 92507.

### ARTICLE IV. TERM OF CONTRACT AGREEMENT

- A. The term of this Contract Agreement is **July 1, 2013 through September 30, 2013**, at which time the Contract Agreement expires, subject, however, to earlier termination or cancellation as herein provided. Commencement of Work: should the SERVICE PROVIDER or subcontractor begin work in advance of receiving notice that the Contract Agreement is approved, that work may be considered as having been performed at risk as a mere volunteer and may not be reimbursed or compensated.

The final date to submit a signed Contract Agreement is July 31<sup>st</sup>. A Service Provider who fails to comply with this requirement will be deemed non-responsive and a Contract Agreement will not be executed.

- B. This Contract Agreement may be canceled by either party at any time upon thirty (30) days written notice to the other party, with or without cause. In the event of cancellation notice, RCOoA will present written notice to the SERVICE PROVIDER of any conditions, such as care of clients, return of unspent funds, and disposition of property, which must be met prior to cancellation. Cancellation is effective only upon the written determination of RCOoA that the SERVICE PROVIDER has met those conditions.

- C. RCOoA reserves the right to non-renew Contract Agreements for years subsequent to the term of this Contract Agreement.

## ARTICLE V. FUNDS

Funding awarded under this Contract Agreement is made available under provisions of the Older Americans Act Amendments, Title III and/or Title VII, and California State appropriations, and has been approved by the RCOoA Governing Board. Funding awarded to SERVICE PROVIDERS represents allocations after deduction of program administrative service charges.

### A. Expenditure of Funds

- 1) The SERVICE PROVIDER shall expend all funds received hereunder in accordance with this Contract Agreement.
- 2) Any reimbursement for authorized travel and per diem (i.e. travel, lodging, meals, and other incidentals) shall be at rates not to exceed those amounts paid by the State in accordance with Department of Personnel Administration's rules and regulations. Rates may be accessed on the State's website:

- **Mileage**

<http://www.dpa.ca.gov/personnel-policies/travel/personal-vehicle-mileage-reimbursement.htm>

- **Per Diem (meals and incidentals)**

<http://www.dpa.ca.gov/personnel-policies/travel/meals-and-incidentals.htm>

- **Lodging**

<http://www.dpa.ca.gov/personnel-policies/travel/short-term-travel.htm>

This is not to be construed as limiting the SERVICE PROVIDER from paying any differences in costs, from funds other than those provided by RCOoA, between State rates and any rates the SERVICE PROVIDER is obligated to pay under other contractual agreements. No travel outside the State of California shall be reimbursed unless prior written authorization is obtained from RCOoA. (CCR, Title 2 Section 599.615 et. seq.)

- 3) RCOoA reserves the right to refuse payment to the SERVICE PROVIDER or disallow costs for any expenditure, as determined by RCOoA to be: out of compliance with this Contract Agreement, unrelated or inappropriate to Contract Agreement activities, when adequate supporting documentation is not presented, or where prior approval was required but was either not requested or not granted.

### B. Accountability of Funds

The SERVICE PROVIDER shall maintain accounting records for funds received under the terms and conditions of this Contract Agreement. These records shall be separate from those for any other funds administered by the SERVICE PROVIDER, and shall be maintained in accordance with

Generally Accepted Accounting Principles and Procedures and the Office of Management and Budget Cost Principles.

C. Unexpended Funds

Upon termination, cancellation, or expiration of this Contract Agreement, or dissolution of the entity, the SERVICE PROVIDER shall return to RCOoA immediately upon written demand, any funds provided under this Contract Agreement, which are not payable for goods or services delivered prior to the termination, cancellation, or expiration of this Contract Agreement, or the dissolution of the entity.

D. Availability of Funds

- 1) For the mutual benefit of both parties, and in order to avoid program and fiscal delays that would occur if this Contract Agreement were executed after that determination was made, it is understood between the parties that this Contract Agreement may have been written before ascertaining, the availability of appropriation of State and/or federal funds.
- 2) This Contract Agreement is valid and enforceable only if sufficient funds are made available to CDA by the United States Government or by the Budget Acts of the appropriate fiscal years for the purposes of these programs. In addition, this Contract Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or to any statute enacted by the Congress that may affect the provisions, terms, or funding of this Contract Agreement in any manner.
- 3) In the event that insufficient funds are appropriated by the Legislature and/or Congress for any of these programs, this Contract Agreement may be terminated or amended to reflect any reduction in funds.
- 4) RCOoA reserves the right to increase and/or decrease funds available under this Contract Agreement to reflect, any restrictions, limitations, or conditions as directed by the California Department of Aging.

E. Reduction of Funds

- 1) If funding for any State fiscal year is reduced or deleted by the Department of Finance, Legislature, or Congress for the purposes of this Contract Agreement, RCOoA has the option to either:
  - a. Terminate the Contract Agreement pursuant to Article XVI. Termination, Section A.
  - b. Offer a Contract Amendment to reflect the reduced funding for this Contract Agreement.
- 2) In the event that RCOoA elects to offer a Contract Amendment, RCOoA reserves the right to determine (1) which Contract Agreements, if any, under this program shall be reduced and (2) some Contract Agreements may be reduced by a greater amount than others, and (3) the amount that any and or all of the Contract Agreements shall be reduced for the fiscal year.

- 3) RCOoA may reduce the amount of awarded funding if the SERVICE PROVIDER is not meeting service objectives as listed in the scope(s) of services or if spending pattern indicates that the SERVICE PROVIDER will have unexpended funding at the end of the Agreement period. RCOoA will be the sole determinant of all reduction of RCOoA funding and will be reasonable in its determination.
- 4) The SERVICE PROVIDER hereby expressly waives any and all claims against RCOoA for damages arising from the termination, suspension, or reduction of the funds provided by RCOoA.
- 5) In the event of termination of this Contract Agreement for reduction, suspension or termination of funds to RCOoA, the SERVICE PROVIDER shall be compensated by RCOoA for completed services rendered prior to termination, subject to availability of funds, allowability of costs and audit verification.

F. Increase of Awarded Funds

RCOoA may increase the amount of awarded funding, subsequent to execution of this Contract Agreement, if additional RCOoA funding becomes available. The SERVICE PROVIDER may be required to increase the service objectives as listed in the scope(s) of service(s) to qualify for additional funding. Any such increase in funding will not be subject to a competitive process.

G. Supplantment

RCOoA funds cannot be used to supplant (replace) funds from non-Federal funding sources.

H. Acknowledging RCOoA Funding

The SERVICE PROVIDER shall acknowledge funding by RCOoA when resources are explained verbally or in writing, specifically in brochures, press releases, etc., and shall acknowledge RCOoA by the use of signs on funded vehicle(s).

I. Interest Earned

- 1) SERVICE PROVIDER may keep interest amounts up to \$100 per fiscal year for Local Government Agencies [45CFR 92.21(i)] and \$250 for Non-Profit Organizations [45CFR 74.22 (l)], for administrative expenses. Interest earned on advanced contract funds shall be identified as Program Income on Fiscal budgets.

Nonprofits shall maintain advances of federal funds in interest bearing accounts, unless (a), (b), or (c) apply:

- a. The SERVICE PROVIDER receives less than \$120,000 in federal awards per year.
- b. The best reasonably available interest bearing account would not be expected to earn interest in excess of \$250 per year on federal cash balances.

- c. The depository would require an average or minimum balance so high that it would not be feasible within the expected federal and non-federal cash resources.

J. Program Income

- 1) Program Income must be reported and expended under the same terms and conditions as the program funds from which it is generated.
- 2) Program Income must be used to pay for current allowable costs of the program in the same fiscal year that the income was earned (except as noted in 4).
- 3) For Title III-B, III-C, III-D, III-E, VII Ombudsman, and VII Elder Abuse Prevention Programs: Program Income must be spent before the Contract Agreement funds (except as noted in 4) and may reduce the total amount of Contract Agreement funds payable to the SERVICE PROVIDER.
- 4) For Title III-B, III-C, III-D, III-E, VII Ombudsman, and VII Elder Abuse Prevention Programs, if Program Income is earned in excess **of the amount approved by RCOoA in the Contract Agreement budget**, the excess amount may be deferred for use in the first quarter of the following Contract Agreement period, which is the last quarter of the federal fiscal year: July, August, and September.
- 5) If Program Income is deferred for use it must be used by the last day of the federal fiscal year and reported when used.
- 6) **Program Income may not be used to meet the matching requirements of this Agreement.**
- 7) Program Income must be used to expand baseline services.

K. One-Time-Only (OTO) Funding

- 1) OTO funds are non-transferable between funding sources. This means that OTO funds can only be used in the program in which it was accrued. Only a Service Provider with existing contracts, funded by the same funding source as the OTO funds, is eligible to receive the OTO funds. All contracts shall be procured either through an open competitive procurement process pursuant to Title 22 CCR Section 7532 or through a non-competitive award pursuant to Title 22 CCR Section 7360.
- 2) Title IIIs and Title VII Program One-Time-Only funds shall be used for the following purposes:
  - a. The purchase of equipment which enhances the delivery of services to the eligible service population and is an allowable cost of the program.
  - b. Home and community-based projects which assist families and/or caregiver to maintain the eligible service population in a home environment, as approved by RCOoA.

- c. Innovative pilot projects that approved by CDA/RCOoA, and are designed for the development or enhancement of a comprehensive and coordinated system of services as defined in [45 CFR 1321.53 (a) & (b)].
  - d. Baseline services – OTO funds, with prior RCOoA approval, may be used to maintain or increase baseline services. However, programs funded with OTO funds shall not expect OTO funding beyond the current contract period in which OTO funds are awarded.
- 3) Nutrition Services Incentive Program (NSIP) One-Time-Only funds shall be used to purchase food in the Elderly Nutrition Programs.

L. Matching Contributions

- 1) Matching means cash on the value of in-kind contributions and that portion of program and administrative costs funded (cash or in-kind) by the SERVICE PROVIDER from other resources;
- 2) In-kind contributions are property or services provided which benefit a Contract Agreement-supported project or program and which are contributed by non-federal parties without charge to SERVICE PROVIDER;
- 3) In-kind contributions count towards satisfying a matching requirement only where the payments would be otherwise allowable costs if SERVICE PROVIDER were to pay for the costs;
- 4) Costs incurred by the SERVICE PROVIDER must be verifiable from the records of the Service Provider;
- 5) Costs must be allowable as outlined in the Office of Management and Budget (OMB) cost principles and may be cash or in-kind contributions.
- 6) Other local resources include cash donations (not including program income) and cash generated from fundraising activities.
- 7) Non-matching contributions are local funding that does not qualify as matching contributions and/or is not being budgeted as matching contributions (e.g., Title V, Title XX, overmatch, etc.)

M. Matching Requirements

- 1) The required minimum matching contributions for Title III-B, III-C, III-D, VII Ombudsman, and VII Elder Abuse Prevention Programs is ten percent (10%) of the combined total of Federal share and matching contribution OR 11.11% of the Federal share alone. Program matching contributions for Title III-B, III-C, and III-D can be pooled to meet the minimum requirement of ten percent (10%).
  - a. Minimum matching requirements are calculated on net costs, which are total costs less program income, non-matching contributions, and State funds.



- b. Matching contributions generated in excess of the minimum required are considered overmatch;
- 2) The required minimum program matching contributions for Title III-E is twenty-five percent (25%) of the combined total of Federal share and matching contribution OR 33.33% of the Federal share alone. Program overmatch from Title III-B, III-C, or III-D cannot be used to meet the program match requirement for III-E;
  - a. Minimum matching requirements are calculated on net costs, which are total costs less program income, non-matching contributions, and State funds. Title III-E programs have no State funds.
- 3) No minimum program matching contribution is required for the Health Insurance Counseling Advocacy Program (HICAP).

Minimum match required above is subject to change at any time.

N. Indirect Costs

- 1) The maximum reimbursement amount allowable for indirect costs is 8 percent of Service Providers direct costs (excluding in-kind contributions and nonexpendable equipment). Indirect costs exceeding the 8 percent maximum may be budgeted and used to meet the minimum matching requirements.
- 2) Service Provider requesting reimbursement for indirect costs shall retain on file an approved indirect cost rate or an allocation plan documenting the methodology used to determine the indirect costs.

O. Financial Management Systems

The SERVICE PROVIDER shall meet the following standards for its financial management systems, as stipulated in 45 CFR 92.20 (governmental) or 45 CFR, or Section 74.21 (non-profits):

- 1) Financial Reporting
- 2) Accounting Records
- 3) Internal Control
- 4) Budgetary Control
- 5) Allowable Costs
- 6) Source Documentation
- 7) Cash Management

RCOoA may require financial reports more frequently or with more detail (or both), upon written notice to the Service Provider, until such time as RCOoA determines that the financial management standards are met.

**ARTICLE VI. BUDGET AND BUDGET REVISION**

- A. The SERVICE PROVIDER will be reimbursed for expenses only as itemized in the budget approved by RCOoA which is attached and hereby incorporated by reference.
- B. The Budget Summary must set forth in detail the reimbursable items, unit rates and extended total amounts for each line item. The SERVICE PROVIDER'S budget shall include, at a minimum, the following items when reimbursable under this Contract Agreement.
- 1) Direct and overhead costs;
  - 2) Monthly, weekly, or hourly rates, as appropriate, and personnel classifications together with the percentage of personnel time to be charged to this Contract Agreement, as well as fringe benefits;
  - 3) Rental reimbursement items should specify the unit rate, such as the rate per square foot;
  - 4) If purchase of equipment is a reimbursable item, the equipment to be purchased should be specified;
  - 5) Any travel outside the State of California; and
  - 6) A detailed list of other operating expenses.

RCOoA shall ensure that the SERVICE PROVIDER shall submit a budget which shall be incorporated by reference into the Contract Agreement and will have, at a minimum, the categories listed in Section B above.

- C. The SERVICE PROVIDER may make changes in budget allocations, subject to the following conditions:
- 1) The SERVICE PROVIDER may transfer Contract Agreement funds from each line item within the approved program budget, without prior approval of RCOoA, providing the amount of the change in that Cost Category is BOTH less than 20% AND less than \$1,500.
    - a. For Titles III-B, C, D, and E those six (6) Cost Categories are: 1.) Personnel Costs; 2.) Travel/Training; 3.) Equipment; 4.) Consultants; 5.) Other Costs; and 6.) Indirect Costs. Title C has two additional Cost Categories: 7.) Catered Food and 8.) Raw Food.
  - 2) The SERVICE PROVIDER shall request prior approval from RCOoA for any Total change in a Cost Category that is BOTH 20% or greater AND \$1,500 or more.
  - 3) The SERVICE PROVIDER shall maintain a written record of all budget changes and clearly document Cost Category changes. The record shall include the date of the transfer, the amount, and the purpose and shall be submitted to RCOoA on form A1: Narrative Justification for Budget Revisions for approval.

- D. The SERVICE PROVIDER shall submit a proposed Budget Summary to RCOoA with this Contract Agreement or any other time as indicated and requested by RCOoA.
- E. The final date to submit budget revisions is July 11<sup>th</sup> for this Contract Agreement period unless otherwise specified by RCOoA.

#### ARTICLE VII. PAYMENT

##### A. Advance Payments

- 1) RCOoA shall allow the SERVICE PROVIDER, funded under the Older Americans Act Amendments, Title III and Title VII, and HICAP, upon execution of this Contract Agreement and availability of funds, to request and receive, in a timely manner, one advance payment per fiscal year which shall not exceed one-twelfth of the Contract Agreement amount.
  - a. Beginning with the September Monthly Financial Report/Request for Funds (MFR), one-tenth of the advance payment shall be deducted each month from amounts due the SERVICE PROVIDER, until the advance is fully liquidated.
- 2) If, at the time of the final Monthly Financial Report, or upon completion or termination of this Contract Agreement, the advance payment has not been fully liquidated, the SERVICE PROVIDER agrees to pay the balance to RCOoA upon demand.

##### B. Monthly Reimbursement Payments

- 1) The SERVICE PROVIDER shall request payment monthly, on a reimbursement basis, and in arrears for actual expenses incurred, less any amount applied against the advance, beginning with the July expenditure report.
- 2) The SERVICE PROVIDER shall submit a Monthly Financial Report/Request for Funds (MFR) **to be received at RCOoA by the 5<sup>th</sup> working day of each subsequent month.**

##### C. Accruals

Any accruals for any unpaid obligations at the end of the fiscal year is to be paid within 30 days.

#### ARTICLE VIII. SUBCONTRACTS OR VENDOR AGREEMENTS

- A. SERVICE PROVIDER shall satisfy, settle, and resolve all administrative, programmatic, and fiscal aspects of the program(s), including issues that arise out of any subcontracts, and shall not delegate or 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 subcontract is utilized by the SERVICE PROVIDER for any portion of this Contract Agreement, the SERVICE PROVIDER shall retain the prime responsibility to ensure: compliance with laws, regulations and the provisions of contract agreements that may have a direct or material effect on each of its major programs, 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 II Section D of this Contract Agreement, for handling property in accordance with Article XI of this Contract Agreement and ensuring the keeping of, access to, availability and retention of records of subcontractors in accordance with Article IX.

- C. SERVICE PROVIDER shall provide RCOoA with a copy of the Subcontract Agreement and/or vendor agreements and budget to be made a part of this Contract Agreement.
- D. Funds for this Contract Agreement shall not be obligated in subcontracts and/or vendor agreements for services beyond the ending date of this Contract Agreement, unless all funding under this Contract Agreement is appropriated without regard for fiscal year, and RCOoA has agreed in writing to permit the specific expenditure for a specified period of time.
- E. The SERVICE PROVIDER shall have no authority to contract for, or on behalf of, or incur obligations on behalf of RCOoA.
- F. Copies of subcontracts, vendor agreements, Memorandums and/or Letters of Understanding shall be on file with the SERVICE PROVIDER and shall be made available to RCOoA for review upon request.
- G. The SERVICE PROVIDER shall monitor the insurance requirements of its subcontractors, in accordance with Article XV.
- H. The SERVICE PROVIDER shall require all its subcontractors and or vendor agreements to indemnify, defend and save harmless the SERVICE PROVIDER, its officers, agents and employees from any and all claims and losses accruing to or resulting from any subcontractors, 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 Agreement 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 in the performance of this Contract Agreement.
- I. The SERVICE PROVIDER shall ensure that the subcontractor and/or vendor agreements will complete all reporting and expenditure documents requested by RCOoA. These reporting and expenditure documents shall be sent to the SERVICE PROVIDER by the 10<sup>th</sup> working day of each month.
- J. Where a program may be subcontracted to a for-profit organization, the SERVICE PROVIDER should include in its contract with the for-profit entity a requirement for performance of a program specific audit of the sub-contracted program by an independent audit firm.
- K. The SERVICE PROVIDER shall require the subcontractor to maintain adequate staff to meet the subcontractor's agreement with the Service Provider. This staff shall be available for trainings and meetings which RCOoA may find necessary from time to time.
- L. If a private nonprofit corporation, the subcontractor shall be in good standing with the Secretary of the State of California and shall maintain that status throughout the term of the agreement.

- M. The SERVICE PROVIDER shall immediately notify RCOoA of any changes to subcontractors or subcontracted services, described in W&I Code Sections 9541 through 9547, within the term of this Contract Agreement. SERVICE PROVIDER shall also notify RCOoA if subcontracted services are different than those services approved and contracted for in the prior fiscal year.
- N. SERVICE PROVIDER shall refer to the guidance in OMB Circular A-133 Section 210 in making a determination of whether a subcontractor and/or vendor relationship exists. If a vendor relationship exists then the SERVICE PROVIDER shall follow the Procurement requirements in the applicable OMB Circular.

#### ARTICLE IX. RECORDS

- A. The SERVICE PROVIDER shall maintain complete records (which shall include, but not be limited to, accounting records and tax returns, Contract Agreements, letters of agreement, insurance documentation in accordance with Article XV, Memorandums and/or Letters of Understanding, patient or client records, electronic files and non-profit board minutes) of its activities and expenditures hereunder in a form satisfactory to RCOoA and shall make all records pertaining to this Contract Agreement available for inspection and audit by RCOoA and 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 SERVICE PROVIDER: (a) until an audit has occurred and an audit resolution has been issued or unless otherwise authorized in writing by RCOoA Fiscal Branch; (b) for such longer period, if any, as is required by applicable statute, by any other clause of this Contract Agreement, or by sections (B) and (C) of this Article, and (c) for such longer period as RCOoA deems necessary.
- B. If this Contract 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) above. The SERVICE PROVIDER shall ensure that any resource directories and all client records remain the property of RCOoA upon termination of this Contract Agreement, and are returned to RCOoA or transferred to another SERVICE PROVIDER as instructed by RCOoA.
- 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 RCOoA and so stated in writing to the SERVICE PROVIDER.
- D. Adequate source documentation of each transaction shall be maintained relative to the allowability of expenditures reimbursed by RCOoA under this Contract Agreement. If the allowability of expenditures cannot be determined because records or documentation of the SERVICE PROVIDER are non-existent or inadequate according to Generally Accepted Accounting Principles and Procedures, the expenditures will be questioned in the audit and may be disallowed by RCOoA during the audit resolution process.
- E. The SERVICE PROVIDER agrees that RCOoA or its delegates will have the right to review, obtain and copy all records pertaining to the performance of this Contract Agreement which shall include, but not be limited to, accounting records and tax returns, Contract Agreements, letters of agreement, insurance documentation in accordance with Article XV, Memorandums and/or Letters

of Understanding, patient or client records, electronic files and non-profit board minutes. The SERVICE PROVIDER agrees to provide RCOoA or its delegates with any relevant information requested within 10 working days of date of request. The SERVICE PROVIDER shall permit RCOoA or its delegate's access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts and other material that may be relevant to a matter under investigation for the purpose of determining compliance with (GC 8546.7 et seq.). SERVICE PROVIDER further agrees to maintain such records until a California Department of Aging audit of RCOoA has been completed and an audit resolution has been issued.

- F. After the authorized period has expired, confidential records shall be shredded and disposed of in a manner that will maintain confidentiality.

#### ARTICLE X. REPORTS

- A. SERVICE PROVIDER must have at least one computer with Windows 8, Windows 7, Windows Vista, or XP operating system; a processor of 1.75GHz or faster, 2G Ram, 160GB hard drive, a continuous working DSL Internet connection or better; Internet Explorer 7.0 or higher (or equivalent), and staff capacity to meet Monthly, Quarterly, and/or Annual reporting requirements.
- B. SERVICE PROVIDER shall develop and implement a process for ensuring quality control. Reporting forms shall be reviewed for timeliness, completeness and accuracy of the information submitted by the Program Director or his/her designee prior to submission to RCOoA. Incomplete forms shall be returned to the SERVICE PROVIDER for completion. (In the event of changes in these forms, RCOoA shall advise the SERVICE PROVIDER via written notice).
- C. **Failure to comply with Fiscal and Program reporting requirements will exclude SERVICE PROVIDER from eligibility for One-Time-Only funding.**
- D. Monthly performance reports shall be submitted to RCOoA by the 5<sup>th</sup> working day of each month. **For those SERVICE PROVIDERS required to submit electronically, reports must be submitted in the prescribed NAPIS reporting format.**
- E. RCOoA and SERVICE PROVIDER shall keep these reports on file, unless otherwise specified, in accordance with the program manual(s) or until the Department deems the retention no longer necessary.
- F. Fiscal Closeout Report

The SERVICE PROVIDER shall submit a year-end fiscal closeout report. The fiscal closeout report shall be signed by a designated authorized signatory certifying the accuracy of the report. Final fiscal closeout report shall include actual accruals for any unpaid obligations; any corrections or adjustments necessary to bring report into agreement with balanced general ledger; adjustments for prepaid expenses to be partially credited to the current fiscal year and charged to the following fiscal year, such as insurance premiums. **The fiscal closeout report must be received by RCOoA as soon as possible, following the end of the fiscal year, but no later than October**

**31, 2013. Any additional costs submitted after October 31<sup>st</sup> may not be reimbursed by RCOoA.**

- G. Nutrition Programs Only: The SERVICE PROVIDER shall annually assess Title III-C-2 client's nutrition risk using the Determine Your Nutritional Risk checklist published by the Nutrition Screening Initiative.

**ARTICLE XI. PROPERTY**

- A. Unless otherwise provided for in this Article, property refers to all assets, used in operation of this Contract Agreement.

- 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, printer cartridges, file folders, etc.

- B. Property meeting all of the following criteria are subject to the reporting requirements:

- 1) Has a normal useful life of at least one (1) year
- 2) Has a unit acquisition cost of at least \$500 (e.g., 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 Contract Agreement.

As used in this Contract Agreement, the term "equipment" shall refer only to capitalized property.

- C. 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.

- D. The SERVICE PROVIDER shall keep track of all property furnished or purchased with RCOoA funds and submit to RCOoA annually with the Closeout, in electronic form, a cumulative inventory of all property furnished or purchased with funds awarded under the terms of this Contract Agreement or any predecessor Contract Agreement for the same purpose. The Service Provider shall use the electronic version of the Report of Project Property Furnished/Purchased with Agreement Funds (CDA32), unless otherwise directed by RCOoA.

- E. Acquisition and/or disposition of RCOoA property, during the year, are to be reported on forms provided by RCOoA.

- 1) SERVICE PROVIDER shall use the electronic version of form CDA 32 Report of Property Furnished Purchased with Agreement Funds to report inventory with the following information when RCOoA property is acquired:
  1. Date acquired
  2. Property description (include model number)
  3. CDA Tag Number
  4. Serial Number (if applicable)
  5. Cost of basis of Value
  6. Fund Source

RCOoA requires the CDA 32 to be updated as property is acquired to reflect the current status of property.

F. Disposal of Property

- 1) SERVICE PROVIDER shall use the electronic form Request to Dispose of Property (CDA 248) prior to disposal of any RCOoA property purchased by the SERVICE PROVIDER with funds from this Contract Agreement or any predecessor Agreement, the SERVICE PROVIDER must obtain written approval from RCOoA 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 written approval is received from the State via RCOoA. Once approval for disposal has been received from the State via RCOoA, the item(s) shall be removed from the Contractor's inventory report.
  - 2) SERVICE PROVIDER must remove all confidential, sensitive, or personal information from RCOoA property prior to disposal, including removal or destruction of data on computing 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, and laptops.
- G. CDA 32 listing must be available for periodic review and submitted annually to RCOoA at fiscal year-end or as RCOoA property is acquired. **Failure to comply with updating inventory list will prevent SERVICE PROVIDER from eligibility for One-Time-Only funding.**
- H. RCOoA reserves the title to all RCOoA purchased or financed property not fully consumed in the performance of this Contract Agreement, unless otherwise required by federal law or regulations, or as otherwise agreed by parties.
- I. SERVICE PROVIDER 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, until SERVICE PROVIDER has complied with all written instructions from RCOoA regarding the final disposition of the property.
- J. **SERVICE PROVIDER shall notify RCOoA within twenty-four (24) hours, by telephone, followed by written report, of any loss, destruction, or theft of such property to RCOoA (if**



such damage has been a result of a crime, please notify the Police Department immediately). The SERVICE PROVIDER shall prepare a written report to RCOoA, with the following information:

- a. Form CDA 32, with the damaged property highlighted.
- b. Date and description of the incident and/or copy of the Police Report.
- c. Description of disposal of damaged property, if applicable;
- d. Description of how property will be replaced and cost of replacement, if known.

With respect to all equipment utilized in conjunction with the Contract Agreement where RCOoA retains title as legal owner, the SERVICE PROVIDER shall procure and maintain sufficient Property Insurance policy limits against any loss such as fire, theft, etc. as outlined in Article XV of this Contract Agreement. (2 CFR. Ch. 11 Section 215.31)

At least annually, SERVICE PROVIDER shall inform their insurance company of all newly acquired property purchased with RCOoA funds. In the event of a loss, if Property Insurance policy limits are insufficient, SERVICE PROVIDER will be held accountable for the replacement of the RCOoA property.

- K. In the event SERVICE PROVIDER'S dissolution or upon termination of this Contract Agreement, SERVICE PROVIDER shall provide a final property inventory to RCOoA. RCOoA reserves the right to require SERVICE PROVIDER to transfer such property back to RCOoA or to another entity with the approval of CDA.

To exercise the above right, no later than 120 days after termination of the Contract Agreement or notification of the Service Provider's dissolution, the State via RCOoA will issue specific written dissolution instructions to the Service Provider.

- L. SERVICE PROVIDER shall use the property for the purpose for which it was intended under the Contract Agreement. When no longer needed for that use, SERVICE PROVIDER shall return it to RCOoA.
- M. SERVICE PROVIDER may share use of the property and equipment or allow use by other programs, upon written approval of RCOoA.
- N. SERVICE PROVIDER shall not use equipment or supplies acquired under this Contract Agreement with RCOoA monies for personal gain or to usurp the competitive advantage of a privately-owned business entity.
- O. If purchase of equipment is a reimbursable item, the equipment to be purchased will be specified in the budget.
- P. SERVICE PROVIDER shall include the provisions contained in Article XI in all its subcontracts awarded under this Contract Agreement.

## ARTICLE XII. ACCESS

The SERVICE PROVIDER shall provide access to RCOoA, the Bureau of State Audits, the Comptroller General of the United States, or any of their duly authorized federal and State representatives to any books, documents, papers, records and electronic files of the SERVICE PROVIDER or subcontractor which are directly pertinent to this specific Contract Agreement for the purpose of audit, examination, excerpts, and transcriptions. The SERVICE PROVIDER shall include this requirement in its subcontracts.

### ARTICLE XIII. MONITORING, ASSESSMENT AND EVALUATION

- A. Authorized RCOoA representatives shall have the right to monitor, assess, and evaluate the SERVICE PROVIDER'S administrative, fiscal, and program performance pursuant to this Contract Agreement. Said monitoring, assessment, and evaluation may include, but is not limited to, administrative processes, policies and procurement, audits, inspections of project premises, inspection of food preparation sites, interviews of project staff, and participants, and review of administrative documentation including nonprofit board minutes.
- B. The SERVICE PROVIDER shall cooperate with RCOoA in the monitoring, assessment, and evaluation processes, which includes making any administrative program and fiscal staff, available during any scheduled process.
- C. The SERVICE PROVIDER shall, upon request, make available client participation records and fiscal records which confirm all data contained in monthly performance and monthly financial report (MFR). The information shall be maintained in a neat and orderly manner. SERVICE PROVIDER is responsible for maintaining supporting documentation including financial and statistical records, contracts, subcontracts or grant agreements, monitoring reports, and all other pertinent records until a California Department of Aging audit of RCOoA has been completed and an audit resolution has been issued.
- D. The SERVICE PROVIDER shall demonstrate an ongoing mechanism for internal monitoring and evaluation of the program.
- E. The SERVICE PROVIDER shall maintain formal procedures for obtaining the views of participants regarding service operations. Suggestions relative to program changes/modifications must receive appropriate consideration by SERVICE PROVIDER. Acceptable methods for soliciting consumer input include, but are not limited to: suggestion box, project council/advisory group, client questionnaires, and interviews.

### ARTICLE XIV. AUDIT

- A. The SERVICE PROVIDER expending more than \$500,000 in federal funds within the Contract Agreement year shall arrange for and provide RCOoA with an audit as required by the Single Audit Act of 1984, Public Law 98-502, Single Audits Act Amendments of 1996, Public Law 104-156, and Office of Management and Budget (OMB) Circular A-133. To meet the requirements of OMB Circular A-133 the audit shall be: 1. Performed timely—within 30 days after the receipt of the auditor's report or nine months after the end of the audit period, whichever occurs first; 2. Properly

procured—use procurement standards provided for in OMB Circular 133 and provide maximum opportunities to small and minority audit firms; 3. Performed in accordance with Government Auditing Standards—shall be performed by an independent auditor and be organization-wide; 4. All inclusive—includes an opinion (or disclaimer of opinion) of the financial statements; a report on internal control related to the financial statements and major programs; an opinion (or disclaimer of opinion) on compliance with laws, regulations, and the provisions of the contract agreements; and the schedule of findings and questioned costs; and 5. All audits shall be performed in accordance with provisions applicable to this program as identified in OMB Circular A-133 Compliance Supplement. All audits must be performed by either: (1) the appropriate audit branch for a governmental agency; or (2) an independent Certified Public Accountant. The cost of this audit may be charged against federal grants. A copy of the Audit Report must be submitted to the:

Riverside County Office on Aging  
Attn: Fiscal Department  
6296 River Crest Drive, Suite K  
Riverside, CA 92507

- B. A SERVICE PROVIDER expending less than \$500,000 in federal funds is not required to obtain an audit and is thereby exempted from filing under OMB Circular A-133, Subsection. 200(d), and should obtain a standard financial audit. The cost of this audit cannot be charged to the grant awarded by RCOoA. This audit shall be received at RCOoA within 90 days after the end of the audit period. Should a SERVICE PROVIDER not be able to submit its audit in a timely manner, an extension must be obtained in advance from RCOoA.

Specified in HHS' Title 45, Code of Federal Regulations (CFR), Part 74.26 a For-Profit entity is subject to the same audit requirements of a Non-Profit entity.

- C. The SERVICE PROVIDER assures RCOoA that all subcontractors are audited as required by State and federal law. These requirements shall be included in subcontractor Agreements. Further, subcontractor shall be required to include in its contracts with the auditors selected by subcontractors that the auditors will comply with all applicable audit requirements/standards. The SERVICE PROVIDER shall prepare a summary worksheet of results from the contract resolutions performed of all subcontractors. The summary worksheet shall include, but not be limited to, contract amount; amount resolved; variances; whether an audit was relied upon or the SERVICE PROVIDER performed an independent expense verification review (alternative procedures) of the subcontractor in making a determination; whether audit findings were issued; and, if applicable, issuance date of the management letter; and any communication or follow-up performed to resolve the findings.
- D. Audit reports shall include the entire term of the Contract Agreement. If SERVICE PROVIDER is not on the same fiscal year as RCOoA, SERVICE PROVIDER shall provide RCOoA with a reconciliation and supplementary information, prepared by the certified public accountant performing the audit, which would be necessary/sufficient to tie audit reports to the Contract Agreement term. SERVICE PROVIDER further agrees to allow RCOoA the right to review and to copy any records with supporting documentation pertaining to the Performance of this Contract Agreement and to maintain such records for a period of three (3) years after final payment under the Contract Agreement or until a California Department of Aging audit of RCOoA has been

- completed, whichever is longer. **Audit reports must include any One-Time-Only (OTO) as additional funding to the grant award.**
- E. RCOoA shall have access to all audit reports and supporting work papers of the SERVICE PROVIDER and subcontractors and the option to perform additional work, as needed.
  - F. All audits submitted to RCOoA shall include the Management Letter.
  - G. Where the SERVICE PROVIDER engages an independent auditor, the SERVICE PROVIDER shall provide a clause for: 1.) permitting access by allowing RCOoA the right to review and to copy any records with supporting documentation pertaining to the Performance of this Contract Agreement; and 2.) maintaining such records for a period of three (3) years after final payment under the Contract Agreement or until a California Department of Aging audit of RCOoA has been completed, whichever is longer.
  - 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 SERVICE PROVIDER shall cooperate with and participate in any further audits which may be required by RCOoA.
  - J. **Failure to comply with Audit requirements will exclude SERVICE PROVIDER from eligibility for One-Time-Only (OTO) funding, and other sanctions may also be imposed.**

#### ARTICLE XV. INSURANCE AND HOLD HARMLESS

- A. Prior to commencement of any work under this Contract Agreement and by July 1<sup>st</sup>, the SERVICE PROVIDER shall provide for the term of this Contract Agreement, the following certificates of insurance. If coverage is not in place by July 1<sup>st</sup> any services provided will not be reimbursed for the period when coverage is not in place.
  - 1) **Commercial 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. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal and advertising injury, and liability assumed under an insured contract—at a minimum, coverage must be extended to all volunteers. Other policies that cover volunteers include Worker's Compensation and Volunteer Accident Insurance. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to SERVICE PROVIDER'S limit of liability. If the policy contains an annual aggregate, this shall be at least double the per occurrence limit.
  - 2) **Automobile Liability** with limits of not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of an automobile including owned, hired, and non-owned autos (including non-owned auto liability for volunteers and paid employees providing services supported by this Contract Agreement). If applicable, or unless otherwise amended by future regulation, SERVICE PROVIDER or subcontractors shall comply with the Public Utilities Commission (PUC) General Order No. 115-F which requires higher levels of insurance for charter-party carriers of passengers and is based on seating capacity as follows:

- (a) \$750,000 if seating capacity is under 8
  - (b) \$1,500,000 if seating capacity is 8-15
  - (c) \$5,000,000 if seating capacity is over 15
- 3) **Workers' Compensation and Employer's Liability** coverage for all its employees who will be engaged in the performance of the Contract Agreement, including special coverage extensions where applicable (Labor Code Section 3700).
  - 4) **Errors and Omissions** of not less than \$1,000,000 Combined Single Limit per occurrence is required as it appropriately relates to the services rendered. The entity providing Ombudsman services must be insured for activities including, but not limited to, investigation of patient complaints.
  - 5) **Fidelity Bond/Crime Coverage**, if SERVICE PROVIDER is not a governmental agency, in an amount of not less than \$25,000 covering all paid and volunteer employees, officers and other persons holding positions of trust, indemnifying RCOoA against all losses resulting from fraud or lack of integrity, honesty or fidelity.
  - 6) **Business Contents/Business Personal Property (BPP)/All Risk Property Insurance** coverage of property purchased in whole or in part with RCOoA funds, and thus owned by the California Department of Aging and utilized by SERVICE PROVIDER. Property should be covered against any loss such as fire, theft, etc., policy limits shall be at sufficient amounts to ensure replacement value.
- B. The insurance will be obtained from an insurance company acceptable to the California 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 RCOoA. 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 thirty (30) days prior written notice to RCOoA, or ten (10) days written notice if the reason for cancellation is for non-payment of insurance premium.
  - 2) The Certificate of Insurance shall provide that RCOoA is included as additional insured, but only insofar as the operation under this Contract Agreement is concerned. Errors and Omissions coverage is exempt from this requirement.
  - 3) RCOoA shall be named the certificate holder and RCOoA's address must be listed on the certificate.
  - 4) Each certificate must reference the correct Contract Agreement number as it relates to the appropriate fiscal year.

- D. The insurance provided herein shall be in effect at all times during the term of this Contract Agreement. In the event the insurance coverage expires during the term of this Contract Agreement the SERVICE PROVIDER agrees to provide RCOoA, at least thirty (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 Contract Agreement term or for a period not less than one (1) year. **In the event SERVICE PROVIDER fails to keep in effect at all times said insurance coverage, RCOoA may, in addition to any other remedies it may have, terminate this Contract Agreement.**
- E. A copy of each appropriate certificate of insurance, referencing this Contract Agreement number, or letter of self insurance, shall be submitted to RCOoA with this Contract Agreement.
- F. The SERVICE PROVIDER shall indemnify, defend and save harmless RCOoA and the California Department of Aging, their officers, agents and employees from any and all claims and losses accruing or resulting to any contractors, subcontractors, material men, laborers and any other person, firm or corporation furnishing or supplying work services, materials or supplies in connection with the performance of this Contract 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 the SERVICE PROVIDER in the performance of this Contract Agreement.

#### ARTICLE XVI. TERMINATION

- A. RCOoA may terminate the SERVICE PROVIDER or project operations hereunder and be relieved of the payment of any consideration to the SERVICE PROVIDER in the event of: (1) a violation of the law or failure to comply with any condition of this Contract Agreement; (2) inadequate program performance or failure to make progress so as to endanger performance of this Contract Agreement; (3) failure to comply with Fiscal and Program reporting requirements including audits; (4) evidence that the SERVICE PROVIDER is in such an unsatisfactory financial condition as determined by RCOoA, which includes the loss of other funding sources, as to endanger performance of this Contract Agreement; (5) delinquency in payment of taxes or the costs of performance of this Contract Agreement in the ordinary course of business; (6) appointment of a trustee, receiver, or liquidator for all or a substantial part of the SERVICE PROVIDER'S property, or institution of bankruptcy, reorganization, arrangement of liquidation proceedings by or against the SERVICE PROVIDER; (7) service of any writ of attachment, levy of execution, or commencement of garnishment proceedings against the SERVICE PROVIDER'S assets or income; (8) the commission of an act of bankruptcy; (9) finding of debarment or suspension, Article II Section M; (10) that the SERVICE PROVIDER'S organizational structure has materially changed; (11) failure to comply with RCOoA insurance requirements, Article XV; and/or (12) suspended program operations for more than (3) consecutive months in any budgeted year, unless permission has been granted in writing by RCOoA.
- B. Termination shall be effective immediately in the case of threat to life, health or safety of the public. The effective date for Termination with Cause or for funding reductions is 30 days and Termination without Cause is 90 days subsequent to written notice to RCOoA. Upon thirty (30) days written notice to the SERVICE PROVIDER of the action being taken, the reason for such action, any conditions (such as, but not limited to, transfer of clients, care of clients, disposition of property, return of unspent funds, etc.), the date upon which termination becomes effective, and a final date

for which a claim for payment may be submitted to RCOoA. Said notice shall also inform the SERVICE PROVIDER of its right to appeal such decision to RCOoA and of the procedure for doing so. After notice of termination has been given and except as otherwise directed by RCOoA, SERVICE PROVIDER shall:

- 1) Stop service provision under this Contract Agreement on the date and to the extent specified in the notice of termination. RCOoA may assure continuation of services directly or through subcontract.
  - 2) Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the Contract Agreement;
  - 3) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination;
  - 4) Deliver to RCOoA, in the manner, at the time, and to the extent directed by RCOoA, the rights, titles and interests of the SERVICE PROVIDER as applicable to this Contract Agreement;
  - 5) Transfer title to RCOoA and deliver in the manner, at the times and to the extent directed by RCOoA; 1) the fabricated or non-fabricated parts, work in process, completed work and supplies, equipment and other materials produced as a part of or acquired in connection with the performance of the work terminated by the notice of terminations, and 2) the completed or partially completed plans, drawings, information and other property which, if the Contract Agreement had been completed, would have been required to be furnished; and
  - 6) After receipt of a notice of termination, submit to RCOoA a termination claim, in the form and with certification described by RCOoA. All costs to RCOoA shall be deducted from any sum due the SERVICE PROVIDER, under this Contract Agreement, and the balance, if any, shall be paid to the SERVICE PROVIDER. Upon failure of the SERVICE PROVIDER to submit a termination claim within the time allowed in the notice of termination, RCOoA may, on the basis of information available, pay the amount, if any, which it determines due to the SERVICE PROVIDER.
- C. RCOoA may determine that a SERVICE PROVIDER may be considered "high risk" as described in 45 CFR, Part 92.12 for local governments and 45 CFR 74.14 for non-profits. If such a determination is made, the SERVICE PROVIDER may be subject to special conditions or restrictions.
- D. At RCOoA's discretion sanctions may be imposed, leading up to or in lieu of Termination, refer to the Sanction Policy, Attachment B, for further clarification.

#### ARTICLE XVII. REMEDIES

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

**ARTICLE XVIII. DISSOLUTION OF ENTITY**

The SERVICE PROVIDER shall notify RCOoA immediately of any intention to discontinue existence of the entity or to bring an action for dissolution.

**ARTICLE XIX. REVISIONS, WAIVERS OR MODIFICATIONS**

- A. No revisions, waivers or modifications of any of the provisions of this Contract Agreement shall be valid unless in writing, and approved as required. No oral understanding or agreement not incorporated in this Contract Agreement is binding on any of the parties.
- B. Should either party during the term of this Contract Agreement desire a revision, waiver or modification in this Contract Agreement, such revision, waiver or modification shall be proposed in writing to the other party. The other party shall accept in writing within thirty (30) days of receipt of request or it shall be considered rejected, except those revisions, waivers or modifications put into effect under section (C), below. Once accepted, such revisions, waivers, or modifications shall require a Contract Agreement amendment through RCOoA's amendment process to provide for the change mutually agreed to by the parties. The revision, waiver, or modification is not effective until the appropriate RCOoA processes have been completed.
- C. RCOoA reserves the right to revise, waive, or modify the Contract Agreement to reflect any restrictions, limitations, or conditions enacted by Congress or the Legislature or as directed by the Department of Aging.
- D. An amendment is required to change the SERVICE PROVIDER'S name as listed on this Contract Agreement. Upon receipt of legal documentation of the name change RCOoA will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

**ARTICLE XX. NOTICING**

- 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, overnight mail, postage prepaid, return receipt requested, or overnight mail, provided SERVICE PROVIDER retains receipt, and shall be communicated as of actual receipt.
- B. Notices mailed to RCOoA shall be addressed to: Riverside County Office on Aging, 6296 River Crest Drive, Suite K, Riverside, CA 92507. Notices mailed to the SERVICE PROVIDER shall be to the address indicated on the coversheet of this Contract Agreement.
- C. The name of the RCOoA contact to request revisions, waiver or modifications affecting this Contract Agreement will be provided by RCOoA to the SERVICE PROVIDER upon full execution of this Contract Agreement.



- D. The SERVICE PROVIDER shall present the name of its contact for this Contract Agreement to RCOoA. The SERVICE PROVIDER shall immediately notify RCOoA, in writing, of any change of its contact or address.
- E. Either party may change its address by written notice to the other party in accordance with this Article.
- F. An Amendment is required to change the SERVICE PROVIDER'S name as listed on this Contract Agreement. Upon receipt of legal documentation of the name change, to the address above, RCOoA will process the amendment. Monthly Financial Reimbursements (MFR's) with a new name cannot be paid prior to approval of said amendment.

#### ARTICLE XXI. APPEAL PROCESS

- A. In the event of a Contract Agreement dispute or grievance regarding the terms and conditions of this Contract Agreement both parties shall abide by the following procedures:
  - 1) The SERVICE PROVIDER shall first discuss the problem informally with the appropriate Program Manager or Fiscal staff. If the problem is not resolved, the SERVICE PROVIDER may, within fifteen (15) working days of the failed attempt to resolve the dispute with RCOoA, submit a written complaint together with any evidence to the RCOoA Executive Director. The complaint must include the disputed issues, the legal authority/basis for each issue which supports the SERVICE PROVIDER'S position and remedy sought. The Executive Director shall, within fifteen (15) working days after receipt of the SERVICE PROVIDER'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 XX of this Contract Agreement. Should the SERVICE PROVIDER disagree with the decision of the Executive Director, the SERVICE PROVIDER may appeal the decision to the Deputy Director of the Department of Aging. (Title 22 CCR, Sections 7700 through 7710)
  - 2) The SERVICE PROVIDER'S appeal must be submitted within ten (10) working days from the date of receipt of the decision of the RCOoA Executive 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.
  - 3) Appeal costs of the SERVICE PROVIDER or subcontractor for administrative/court review are not reimbursable.
- B. The SERVICE PROVIDER shall continue with the responsibilities under this Contract Agreement during any dispute.

#### ARTICLE XXII. GRIEVANCES

SERVICE PROVIDER must establish a written grievance process for reviewing and attempting to resolve complaints of older individuals. At a minimum, the process shall include all of the following:

- A. Time frames within which a complaint will be acted upon;
- B. Written notification to the complainant of the results of the review, including a statement that the complainant may appeal to RCOoA if dissatisfied with the results of the SERVICE PROVIDER'S review;
- C. Confidentiality provisions to protect the complainant's right to privacy. Only information relevant to the complaint may be released to the responding party without the individual's consent.
- D. SERVICE PROVIDER shall post notification of the grievance process in visible and accessible areas and in the primary languages of non-English speaking participants if more than 5% or 100 participants speak a language other than English. Homebound older individuals shall be informed of the grievance process either verbally or in writing.

### ARTICLE XXIII. INTERAGENCY COORDINATION/COOPERATION

SERVICE PROVIDER shall demonstrate efforts to initiate cooperative working agreements with other community agencies providing services to older persons to establish a comprehensive, coordinated system of services that will facilitate access to, and utilization of, all existing services while reducing the incidence of service duplication. Acceptable methods of cooperation include, but are not limited to, letters of agreement, co-location and membership in interagency organizations. Services, whenever possible, must be provided at/or coordinated with focal points. At the minimum, the SERVICE PROVIDER shall assure that the community focal points and senior community centers have information pertaining to the services provided.

### ARTICLE XXIV. DISASTER ASSISTANCE PLANNING

As part of the area-wide disaster assistance planning, SERVICE PROVIDER shall:

- 1) Designate an Emergency Services Coordinator and Alternate and submit a Disaster Assistance Form/CDA 42, available on our website at <http://www.RCOoA.com>.
- 2) Develop and maintain an Agency Disaster Plan (ADP). A template for a plan is available at <http://www.preparenow.org/srplan.html>. The plan should be reviewed annually, revised as needed, and submitted to RCOoA as revisions are made.

For a complete list of items that need to be covered within the ADP, please refer to the Disaster Assistance Policy, Attachment C.

### ARTICLE XXV. PERSONNEL

RCOoA will not reimburse salary costs associated with one staff member who is being supervised by, or subordinate to, a family member. In the event that family members are co-equal within an agency, or when one family member is paid and one is not, sufficient internal controls must exist in order to prevent possible conflict of interest or financial improprieties.

## Scope of Work - Exhibit A

### Health Insurance Counseling and Advocacy Program (HICAP) - FY 2013-2014

#### ARTICLE I. DEFINITIONS SPECIFIC TO HICAP PROGRAM

- A. **Health Insurance Counseling and Advocacy Program (HICAP)**, is defined in State law, Welfare and Institutions Code (W&I), Section 9541.
- B. **State Health Insurance Assistance Program (SHIP)**, is defined by the Centers for Medicare and Medicaid Services (CMS). This term may be used interchangeably with **HICAP**.
- C. **Eligible Service Population** means (a) Medicare Beneficiaries, including Medicare Beneficiaries by virtue of a disability, and those persons imminent of Medicare eligibility [W&I Code, Section 9541 (a) and (c)(2)], (b) the public at large for HICAP community education services [W&I Code, Section 9541, (c)(1),(4),(5), and (6)].

#### ARTICLE II. SCOPE OF WORK

The Contractor shall perform the following if operating as a direct HICAP program; for a HICAP contracted program the Contractor shall ensure that the subcontractor shall perform the following:

- A. Ensure statutory provisions of the HICAP (W&I Code, Section 9541) are met and services provided in accordance with all applicable laws, regulations, and the HICAP Program Manual as issued by the CDA and in any other subsequent program memos, provider bulletins or similar instructions issued during the term of this Agreement.
- B. Maintain and if applicable distribute an up-to-date HICAP Program Manual and related CDA requirements so that all HICAP Counselors and responsible persons have ready access to standards, policies, and procedures. Additionally, all Counselors shall be provided the latest HICAP Counselor Handbook. [W&I Code, Section 9100 (c) & (d); Section 9541 (b)(1) & (2)].
- C. Provide timely notice to CDA or to the Contractor of any changes to the program or changes in the status of the Contractor or subcontractor that could restrict the operations of, or access to, HICAP services including, but not limited to, personnel changes, program or project phone number changes, headquarters office address changes and mailing address changes. If subcontracted, the Contractor will forward this information to CDA.
- D. Submit the name of the HICAP Program Manager to CDA and to the Contractor within 30 days of initial employment.
- E. Recruit and maintain a strong, well-trained, cadre of volunteer Counselors, Long-Term Care Counselors, Long Term Care Community Educators and General Community Educators [W&I Code Section 9541 (c)(7)]. New Counselors shall

**Scope of Work - Exhibit A**

**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2013-2014**

**ARTICLE II. SCOPE OF WORK (Continued)**

be recruited, trained, apprenticed, and registered as needed to adjust for attrition and to maintain the agreed upon performance levels in the latest Area Plan Service Unit Plans.

- F. Standard HICAP work week business hours, open to the public, shall be five days a week, Monday through Friday, at least 9 a.m. to 4 p.m., except holidays.
- G. Telephone access by the public shall be during normal business hours, Monday through Friday, 9 a.m. through 4 p.m. In the event clients cannot receive personal assistance immediately, they shall be offered an opportunity to leave their name, a message, and return telephone number with an answering service or answering machine. Calls from clients leaving messages shall be returned within two business days.
- H. Provide a disclosure statement to counseling clients prior to counseling, as prescribed by CDA in the HICAP Program Manual [W&I Code, Section 9541 (f)(4)].
- I. Provide a community education campaign designed to inform the public about Medicare, Medicare supplement and long-term care insurance options, Medicare Advantage plans, related health care plans, and insurance topics [W&I Code Section 9541(c)(1),(4),(5), &, (6)].
- J. Refer instances of suspected misrepresentation in advertising or sales of services provided by Medicare, managed health care plans, and life and disability insurers and agents, in accordance with the HICAP Manual [W&I Code, Section 9541 (e)].
- K. The Program Manager and/or designated representative shall attend all CDA required HICAP training sessions or conferences conducted during each fiscal year, in order to maintain program knowledge, efficiency, and competency [W&I Code Section 9541, (f)(7)].
- L. Maintain a program data collection and reporting system as specified in Exhibit E.
- M. Meet the minimum performance requirements in the Service Unit Plan. Programs will be notified of the new measures in a Program Memorandum. The measures will also be available on the Statewide HICAP Automated Reporting Program (SHARP) portal.

**Scope of Work - Exhibit A**

**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2013-2014**

ARTICLE II. SCOPE OF WORK (Continued)

- N. Provide timely input to the State HICAP Office (upon request) of any SHIP or CMS required reports, including, but not limited to, the SHIP Grant Application, Supplemental Grant Funding Applications, and the SHIP Grant Mid-term Report.
- O. If the Contractor is directly providing or subcontracting legal services, which is funded by the HICAP program, the Contractor or subcontractor shall perform the following
1. Provide HICAP legal representation and technical program support by or under the direction of a Supervising Attorney who is trained in Medicare law and who is in good standing with the California Bar.
  2. Legal representation services shall be limited to Medicare, Medicare Part D issues, Medicare savings programs, low-income subsidy issues, long-term care insurance, managed care, and related health care coverage plans.
  3. HICAP legal representation shall be subject to the understanding that the legal representation and legal advocacy shall not include the filing of lawsuits against private insurers or managed health care plans.
  4. Contracted legal representation services shall not commence without a formal referral from the HICAP Program Manager to the Supervising Attorney, and only after a preliminary counseling session determines the need for referral.
  5. The Supervising Attorney shall report the performance of legal services in accordance with the HICAP Reporting Instructions available at [www.aging.ca.gov](http://www.aging.ca.gov).
- P. ~~In addition to the conditions above, the Contractor shall perform the following if subcontracting for HICAP program services:—~~
- ~~1. Enter into contracts with subcontractors to operate the HICAP and provide HICAP counseling, informal advocacy, education and legal representation to Medicare beneficiaries within the contracted service area pursuant to W&I Code, Chapters 7 and 7.5, the HICAP Program Manual as issued by CDA and in any other subsequent program memos, provider bulletins or similar instructions issued during the term of this Agreement.~~
  - ~~2. Ensure all applicable provisions required within this Agreement are included in any subcontract entered into by the Contractor to carry out the terms of this Agreement.~~

**Scope of Work - Exhibit A**

**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2013-2014**

**ARTICLE II. SCOPE OF WORK (Continued)**

- ~~3. Review, approve, and monitor subcontractor budgets and expenditures and any subsequent amendments and revisions to budgets. Contractor shall, to the extent feasible, ensure that all budgeted funds are expended by the end of each fiscal year.~~
- ~~4. Annually conduct onsite monitoring, evaluate and document subcontractor performance and compliance with this Agreement. [45 CFR Part 1321.11]~~
- ~~5. Provide training, support and technical assistance to the subcontractor as needed and respond in writing to all written requests from subcontractors for guidance, and interpretation of instructions.~~

**ARTICLE III. BILINGUAL AND LINGUISTIC PROGRAM SERVICES (GC 11135**

~~11139.5; Title 22 CCR Sections 98211, 98310-98314, 98324-98326, 98340, 98370)~~

**A. Needs Assessment**

- ~~1. Contractor shall conduct a cultural and linguistic group needs assessment of the eligible client population in the Contractor's service area to assess the language needs of the population and determine what reasonable steps are necessary to ensure meaningful access to services and activities to eligible individuals. (Title 22 CCR 98310, 98314)~~

~~The group needs assessment shall take into account the following four factors:~~

  - ~~a. Number or proportion of limited English speaking (LEP) persons eligible to be served or likely to be encountered by the program.~~
  - ~~b. Frequency with which LEP individuals come in contact with the program.~~
  - ~~c. Nature and importance of the services provided to people's lives.~~
  - ~~d. Resources available to the Contractor.~~

~~This group needs assessment will serve as the basis for Contractor's determination of "reasonable steps" and provide documentary evidence of compliance with GC Section 11135 et seq., and Sections 98000-98382 of Title 22 of the CCR.~~
- ~~2. Contractor shall prepare and make available a report of the findings of the group needs assessment that summarizes the items listed below:~~
  - ~~a. Methodologies used.~~

**Scope of Work - Exhibit A**

**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2013-2014**

**ARTICLE III. BILINGUAL AND LINGUISTIC PROGRAM SERVICES (Continued)**

- ~~b. Findings regarding linguistic and cultural needs of non-English or LEP groups.~~
- ~~c. Services proposed to address the needs identified and a timeline for implementation. (Title 22 CCR 98310)~~
- ~~3. Contractor shall maintain a record of the group needs assessment on file at the Contractor's headquarters at all times during the term of this Agreement. (Title 22 CCR 98310, 98313)~~

**B. Provision of Services**

- ~~1. Contractor shall take reasonable steps, based upon the group needs assessment identified in subdivision A of this section, to ensure that "alternative communication services" are available to non-English speaking or LEP beneficiaries of services under this Agreement. (Title 22 CCR 98211)~~
- ~~2. "Alternative communication services" include, but are not limited to, the provision of services and programs by means of the following:
  - ~~a. Interpreters or bilingual providers and provider staff.~~
  - ~~b. Contracts with interpreter services.~~
  - ~~c. Use of telephone interpreter lines.~~
  - ~~d. Sharing of language assistance materials and services with other providers.~~
  - ~~e. Translated written information materials, including but not limited to, enrollment information and descriptions of available services and programs.~~
  - ~~f. Referral to culturally and linguistically appropriate community service programs.~~~~
- ~~3. Based upon the findings of the group needs assessment, Contractor shall ensure that reasonable alternative communication services are available to meet the linguistic needs of identified eligible client population groups at key points of contact. Key points of contact include, but are not limited to, telephone contacts, office visits and in-home visits. (Title 22 CCR 98211)~~
- ~~4. Contractor shall self-certify to compliance with the requirements of this section and shall maintain the self-certification record on file at Contractor's office at all times during the term of this Agreement.~~

**Scope of Work - Exhibit A**

**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2013-2014**

**ARTICLE III. ~~BILINGUAL AND LINGUISTIC PROGRAM SERVICES (Continued)~~**

~~(Title 22 CCR 98310)~~

- ~~5. Contractor shall notify its employees of clients' rights regarding language access and Contractor's obligation to ensure access to alternative communication services where determined appropriate based upon the needs assessment conducted by Contractor. (Title 22 CCR 98324)~~
- ~~6. Noncompliance with this section may result in suspension or termination of funds and/or termination of this Agreement. (Title 22 CCR 98370)~~

~~C. Compliance Monitoring~~

- ~~1. Contractor shall develop and implement policies and procedures for assessing and monitoring the performance of individuals and entities that provide alternative communication services to non-English and LEP clients. (Title 22 CCR 98310)~~
- ~~2. Contractor shall monitor, evaluate, and take effective action to address any needed improvement in the delivery of culturally and linguistically appropriate services. (Title 22 CCR 98310)~~
- ~~3. Contractor shall permit timely access to all records of compliance with this section. Failure to provide access to such records may result in appropriate sanctions. (Title 22 CCR 98314)~~

~~D. Notice to Eligible Beneficiaries of Contracted Services~~

- ~~1. Contractor shall designate an employee to whom initial complaints or inquiries regarding national origin can be directed. (Title 22 CCR 98325)~~
- ~~2. Contractor shall make available to ultimate beneficiaries of contracted services and programs information regarding the Department's procedure for filing a complaint and other information regarding the provisions of GC Section 11135 et seq. (Title 22 CCR 98326)~~
- ~~3. Contractor shall notify the Department immediately of a complaint alleging discrimination based upon a violation of State or federal law. (Title 22 CCR 98211, 98310, 98340)~~



**Budget Detail, Payment Provisions, and Closeout – Exhibit B**  
**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2013-2014**

**ARTICLE I. FUNDS**

**A. Expenditure of Funds**

1. The Contractor shall expend all funds received hereunder in accordance with this Agreement.
2. Any reimbursement for authorized travel and per diem shall be at rates not to exceed those amounts paid by the State in accordance with Department of Personnel Administration's rules and regulations.
  - Mileage- <http://www.dpa.ca.gov/personnel-policies/travel/personal-vehicle-mileage-reimbursement.htm>
  - Per Diem (meals and incidentals) - <http://www.dpa.ca.gov/personnel-policies/travel/meals-and-incidentals.htm>
  - Lodging – <http://www.dpa.ca.gov/personnel-policies/travel/short-term-travel.htm>

This is not to be construed as limiting the Contractor from paying any differences in costs, from funds other than those provided by this Department, between the Department of Personnel Administration rates and any rates the Contractor is obligated to pay under other contractual agreements. No travel outside the State of California shall be reimbursed unless prior written authorization is obtained from the State. (CCR, Title 2 Section 599.615 et seq.)

Contractor agrees to include these requirements in all contracts it enters into with subcontractors/vendors to provide services pursuant to this Agreement.

3. The Department reserves the right to refuse payment to the Contractor or later disallow costs for any expenditure, as determined by the Department not to be in compliance with this Agreement, unrelated or inappropriate to contract activities, or when inadequate supporting documentation is presented, or where prior approval was required but was either not requested or not granted.

**B. Accountability for Funds**

1. The Contractor shall maintain accounting records for funds received under the terms and conditions of this Agreement. These records shall be separate from those for any other funds administered by the Contractor, and shall be kept in accordance with Generally Accepted Accounting Principles and Procedures and the Office of Management and Budget's Cost Principles.

**Budget Detail, Payment Provisions, and Closeout – Exhibit B  
Health Insurance Counseling and Advocacy Program (HICAP) - FY 2013-2014**

**ARTICLE I. FUNDS (Continued)**

**2. Financial Management Systems**

The Contractor shall meet the following standards for its financial management systems, as stipulated in 45 CFR Section 92.20 (governmental) or 45 CFR, Section 74.21 (non-profits):

1. Financial Reporting
2. Accounting Records
3. Internal Control
4. Budgetary Control
5. Allowable Costs
6. Source Documentation
7. Cash Management

**C. Unexpended Funds**

Upon termination, cancellation, or expiration of this Agreement, or dissolution of the entity, the Contractor shall return to the State immediately upon written demand, any funds provided under this Agreement, which are not payable for goods or services delivered prior to the termination, cancellation, or expiration of this Agreement, or the dissolution of the entity.

**D. Availability of Funds**

1. It is understood between the parties that this Agreement may have been written before ascertaining the availability or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if this Agreement were executed after that determination was made.
2. This Agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government and the Budget Act of the appropriate fiscal years for the purpose of this program. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions imposed by the Congress or the Legislature that may affect the provisions, terms or funding of this Agreement in any manner.
3. **Limitation of State Liability**  
  
Payment for performance by the Contractor is contingent upon appropriation by the Legislature or Congress for the purposes of this contract and approval of an itemized HICAP Budget (CDA 229). No legal liability on the part of the State for any payment may arise under this contract until funds are made available, the itemized budget is received and approved by the State, and the Contractor has received an executed contract.
4. **Funding Reduction(s)**

**Budget Detail, Payment Provisions, and Closeout – Exhibit B  
Health Insurance Counseling and Advocacy Program (HICAP) - FY 2013-2014**

**ARTICLE I. FUNDS (Continued)**

- a. If funding for any State fiscal year is reduced or deleted by the Department of Finance, Legislature or Congress for the purpose of this program, the State shall have the option to either:
  - Terminate the Contractor pursuant to Exhibit D, Article XII, A.
  - Offer a contract amendment to the Contractor to reflect the reduced funding for this contract.
- b. In the event that the State elects to offer an amendment, it shall be mutually understood by both parties that (1) the State reserves the right to determine which contracts, if any, under this program shall be reduced (2) some contracts may be reduced by a greater amount than others, and (3) that the State shall determine at its sole discretion the amount that any or all of the contracts shall be reduced for the fiscal year.

**E. Interest Earned**

1. Contractor may keep interest amounts earned on advances of federal funds up to \$100 per year for Local Government Agencies or \$250 for non-profit organizations for administrative expenses. Interest earned above the stated limit shall be remitted at least quarterly to the Department's Accounting Section. [45CFR 92.21(i); 45CFR 74.22(l)]
2. Interest earned on advances of federal and non-federal funds shall be identified as non-match cash.
3. Contractor may retain interest on non-federal funds if it reasonably demonstrates that such interest was earned on non-federal funds. If the Contractor fails to adequately demonstrate the source of the interest, then such interest will be considered earned on federal funds and shall be remitted, at least quarterly, to the Department's Accounting Section.
4. Nonprofit entities shall maintain advances of federal funds in interest bearing accounts, unless (a), (b), or (c) apply.
  - a. The recipient receives less than \$120,000 in federal awards per year.
  - b. The best reasonably available interest bearing account would not be expected to earn interest in excess of \$250 per year on federal cash balances.
  - c. The depository would require an average or minimum balance so high that it would not be feasible within the expected federal and non-federal cash resources.

**Budget Detail, Payment Provisions, and Closeout – Exhibit B  
Health Insurance Counseling and Advocacy Program (HICAP) - FY 2013-2014**

**ARTICLE I. FUNDS (Continued)**

**F. One-Time-Only Funds**

One-Time-Only funds are to be used for the purposes for which they were originally allocated.

**ARTICLE II. BUDGET AND BUDGET REVISION**

- A. The Contractor shall be compensated for expenses only as itemized in the approved HICAP Budget (CDA-229), with the exception of line item transfers as noted in D.1.(a) below, and shall not be entitled to payment for these expenses until the HICAP Budget (CDA-229) is reviewed and approved by the Department. The approved HICAP Budget is hereby incorporated by reference into this Agreement as a part of Exhibit B.
- B. The HICAP Budget must set forth in detail the reimbursable items, unit rates and extended total amounts for each line item. The Contractor's budget shall include, at a minimum, the following items when reimbursable under this Agreement:
1. Direct and overhead costs.
  2. Monthly, weekly, or hourly rates, as appropriate and personnel classifications together with the percentage of personnel time to be charged to this Agreement, as well as fringe benefits.
  3. Rental reimbursement items should specify the unit rate, such as the rate per square foot.
  4. If purchase of equipment is a reimbursable item, the equipment to be purchased should be specified.
  5. Any travel outside the State of California.
  6. A detailed list of other operating expenses.
- C. The Contractor shall ensure that the subcontractor shall submit a budget, which shall be incorporated by reference into the subcontract and will have, at a minimum, the categories listed in Section B, above.
- D. **Line Item Transfers**
1. The Contractor may transfer contract funds between line items under the following terms and conditions:
    - a. The Contractor shall submit a revised budget to the Department for any line item transfer of funds that is 10 percent or more of the total budget.
    - b. The Contractor shall maintain a written record of all budget changes and clearly document line item changes. The record shall include the date of the transfer, the amount, and the purpose. This

**Budget Detail, Payment Provisions, and Closeout – Exhibit B  
Health Insurance Counseling and Advocacy Program (HICAP) - FY 2013-2014**

**ARTICLE II. BUDGET AND BUDGET REVISION (Continued)**

record shall be available to the Department upon request and shall be maintained in the same manner as all other financial records.

**E. Allocation Transfers**

1. Contractors requesting allocation transfers shall submit a revised CDA 229 budget to the Department for approval.
  - a) Administration Allocations for HICAP SHIP, HICAP FUND and HICAP Reimbursement may be transferred to the corresponding HICAP Program allocation.
  - b) Allocations for HICAP Program may not be transferred to HICAP Administration.
- ~~2. In the event that programs are changed from DIRECT to CONTRACTED or CONTRACTED to DIRECT, the Contractor shall submit a revised budget to the Department, prior to implementation of said change. An amendment to this Agreement shall be required in accordance with Exhibit D, Article XV.~~

- F. The final date to submit budget revisions is March 1 of the contract period unless otherwise specified by the Department. The Department will not accept any budget revision after the contract period has expired.

**ARTICLE III. PAYMENT**

- A. The Contractor shall prepare and submit a monthly expenditure report and a request for funds by the 5<sup>th</sup> working day of each month to the OoA-Based Team, in electronic format unless otherwise specified by the Department.
- B. During the contract period, the Department shall advance funds based on an analysis of current cash needs.
- C. The Department shall pay the Contractor a total not to exceed the amount shown on the Budget Display, which is hereby incorporated by reference.

**ARTICLE IV. CLOSEOUT**

The HICAP Financial Closeout Report (CDA 230) shall be submitted annually, to the OoA-Based Team, within forty (40) calendar days following the end of the fiscal year, or within 30 days following termination prior to the end of the contract period.

**Special Terms and Conditions - Exhibit D**

**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2013-2014**

**ARTICLE I. DEFINITIONS AND RESOLUTIONS OF LANGUAGE CONFLICTS**

**A. Definitions**

1. The term "Agreement" or "Contract" shall mean the Standard Agreement, (~~Std. 213~~), exhibits A,B,C,D, and E, an approved Health Insurance Counseling Advocacy Program (HICAP) Budget, which is hereby incorporated by reference , and amendments, unless otherwise provided in this Article.
2. "State" and "Department," mean the State of California and the California Department of Aging (CDA) interchangeably.
3. "Contractor" means the Area Agency on Aging to which funds are awarded under this Agreement and which is accountable to the State and/or federal government for use of these funds and is responsible for executing its provisions and services.
4. "Subcontractor" or "vendor" means the legal entity that receives funds from the Contractor to provide direct services identified in the Agreement. Subcontract and/or vendor Agreement means a subcontract and/or vendor agreement supported by funds from this Agreement
5. "Reimbursable item" also means "allowable cost" and "compensable item."
6. "CFR" means Code of Federal Regulations. "CCR" means California Code of Regulations. "GC" means Government Code. "W & I" means Welfare and Institutions Code. "USC" means United States Code. "PCC" means the Public Contract Code.
7. "Program income" means revenue generated by the Contractor or subcontractor from contract-supported activities. Program income is:
  - a. Voluntary contributions received from a participant or responsible party as a result of the service.
  - b. Income from usage or rental fees of real or personal property acquired with grant funds or funds provided under this Agreement.
  - c. Royalties received on patents and copyrights from contract-supported activities.
  - d. Proceeds from the sale of items fabricated under a contract agreement.

**Special Terms and Conditions - Exhibit D**

**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2013-2014**

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

**B. Resolution of Language Conflicts**

The terms and conditions of this federal Award and other funding sources have the following order of precedence if there is any conflict in what they require:

1. The State Health Insurance Assistance Program (SHIP) Grant Terms and Conditions;
2. Other applicable Federal statutes and their implementing regulations;
3. Older Californians Act provisions;
4. Standard Agreement (~~Std. 213~~), all Exhibits and any amendments thereto;
5. Any other documents incorporated herein by reference;
6. Program memos and other guidance issued by the Department.

**ARTICLE II. ASSURANCES**

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

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.

- B.** 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 (CCC307) which is hereby incorporated by reference. In addition, Contractor shall comply with the following:

**Special Terms and Conditions - Exhibit D**

**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2013-2014**

**ARTICLE II. ASSURANCES (Continued)**

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

Contractor shall ensure compliance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d; 45 C.F.R. 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

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

3. 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. Contractor agrees to include these requirements in all contracts it enters into with 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, 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. In the event that the State determines that a conflict of interest exists, funds may be disallowed by the State and such conflict may constitute grounds for termination of the Agreement.
2. This provision shall not be construed to prohibit employment of persons with whom the Contractor's officers, agents, or employees have family,



**Special Terms and Conditions - Exhibit D**  
**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2013-2014**

ARTICLE II. ASSURANCES (Continued)

business, or other ties, so long as the employment of such persons does not result in a conflict of interest (real or apparent) or 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, the State shall have the right to terminate this Agreement without liability or at its discretion to deduct from the 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.

H. Facility Construction or Repair

Funds from this Agreement are not allowed to be used for facility construction or repair.

I. Contracts in Excess of \$100,000

If all funding provided herein exceeds \$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).
3. Federal Water Pollution Control Act, as amended (33 USC 1251, et seq.).
4. Environmental Protection Agency Regulations (40 CFR, Part 15 and Executive Order 11738).

**Special Terms and Conditions - Exhibit D**  
**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2013-2014**

ARTICLE II. ASSURANCES (Continued)

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: [45 CFR 92.35]
  - 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; and
  - 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;
  - e. Contractor shall report immediately to the Department in writing any incidents of alleged fraud and/or abuse by either Contractor or
  - f. Contractor's subcontractor. Contractor shall maintain any records, documents, or other evidence of fraud and abuse until otherwise notified by the Department.
2. The Contractor agrees to timely execute any and all amendments to this Agreement or other required documentation relating to their subcontractors debarment/suspension status.

K. Agreement Authorization

1. If a public entity, the Contractor shall submit to the Department a copy of the resolution, order, or motion referencing this Agreement number authorizing execution of this Agreement. If a private nonprofit entity, the

**Special Terms and Conditions - Exhibit D**  
**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2013-2014**

ARTICLE II. ASSURANCES (Continued)

Contractor shall submit to the Department an authorization by the board of directors to execute this Agreement, referencing this Agreement number.

2. These documents must also identify the action taken.
3. Documentation in the form of a resolution, order, or motion by the Governing Board of the Area Agency on Aging 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 Area Agency on Aging 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. This 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 a public or private nonprofit entity or Joint Powers Agreement (JPA). If a private nonprofit corporation or JPA, 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 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 to maintain good standing by the contracting corporation or JPA shall result in suspension or termination of this Agreement with the Department until satisfactory status is restored. Failure to maintain good standing by a subcontracting corporation or JPA shall result in suspension or termination of the subcontract by the Contractor 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:

**Special Terms and Conditions - Exhibit D**  
**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2013-2014**

**ARTICLE II. ASSURANCES (Continued)**

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, 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 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 federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any 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 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 31 USC 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.

**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, California 95834.

**ARTICLE IV. COMMENCEMENT OF WORK**

Should the Contractor or subcontractor begin work in advance of receiving notice that this Agreement is approved, that work may be considered as having been performed at risk as a mere volunteer and may not be reimbursed or compensated.

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**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2013-2014**

**ARTICLE V. SUBCONTRACTS**

- A. The Contractor shall satisfy, settle, and resolve all administrative, programmatic, and fiscal aspects of the program(s), including issues that arise out of any subcontracts, and shall not delegate or contract these responsibilities to any other entity. This includes, but is not limited to, disputes, claims, protests of award, or other manners of a contractual nature.
- B. In the event any subcontractor 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 XIX, 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 subcontracts for services beyond the ending date of this Agreement, unless all funding under this Agreement is appropriated without regard for fiscal year, and the Department has agreed in writing to permit the specific expenditure for a specified period of time.
- D. The Contractor shall have no authority to contract for, or on behalf of, or incur obligations on behalf of the State.
- E. Copies of subcontracts, Memorandums and/or Letters of Understanding shall be on file with the Contractor and shall be made available for review at the request of the Department.
- F. The Contractor shall monitor the insurance requirements of its subcontractors in accordance with Article XI, Section E of this exhibit.
- G. The Contractor shall require all its subcontractors to indemnify, defend, and save harmless the Contractor, its officers, agents, and employees from any and all claims and losses accruing to or resulting from any subcontractors, 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 Agreement 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 in the performance of this Agreement.
- H. The Contractor shall ensure that the subcontractor will complete all reporting and expenditure documents requested by the Department. These reporting and expenditure documents shall be sent to the Contractor in a timely manner and at intervals as determined by the Department.

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**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2013-2014**

**ARTICLE V. SUBCONTRACTS (Continued)**

- I. ~~Prior to the awarding of a subcontract to any for-profit entity, the Contractor shall submit the following to the Department for review and approval (per CCR, Title 22, Division 1.8, Section 7362):~~
- ~~1. The RFP or IFB.~~
  - ~~2. All bid proposals received.~~
  - ~~3. The proposal or bid evaluation documentation, along with the Contractor's rationale for awarding the subcontract to a for-profit entity.~~

~~Where a program may be subcontracted to a for-profit organization, the Contractor should include in its contract with the for-profit entity a requirement for performance of a program specific audit of the sub-contracted program by an independent audit firm.~~

- J. The Contractor shall require the subcontractor to maintain adequate staff to meet the subcontractor's Agreement with the Contractor. This staff shall be available to the State for training and meetings which the State may find necessary from time to time.
- K. If a private nonprofit corporation, the subcontractor shall be in good standing with the Secretary of State of California and shall maintain that status throughout the term of the Agreement.

**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 "Financial Closeout Report" to the audited financial statements, a summary worksheet of results from the audit resolutions performed for all subcontractors with supporting documentation, letters of agreement, insurance documentation in accordance with this Article, Memorandums and/or Letters of Understanding, patient or client records, and electronic files) of its activities and expenditures hereunder in a form satisfactory to the State 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; (a) until an audit has occurred and an audit resolution has been issued or unless otherwise authorized in writing by the Department's Audit Branch, (b) 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, and (c) for such longer period as the Department deems necessary.
- B. If this Agreement is completely or partially terminated, the records relating to

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**ARTICLE VI. RECORDS (Continued)**

the work terminated shall be preserved and made available for the same periods as specified in Section A above. The Contractor shall ensure that any resource directories and all client records remain the property of the Department upon termination of this Agreement, and are returned to the Department or transferred to another Contractor as instructed by the Department.

- 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 the State 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 the State 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 by the State during the audit resolution process.
- E. After the authorized period has expired, confidential records shall be destroyed by shredding and disposed of in a manner that will maintain confidentiality.

**ARTICLE VII. PROPERTY**

- A. Unless otherwise provided for in this Article, property refers to all assets, capitalized or noncapitalized, used in operation of this Agreement.
  - 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, typing ribbons, file folders, etc.
- B. Property meeting all of the following criteria are subject to the capitalization requirements. Such property must:
  - 1. Have a normal useful life of at least 1 year;
  - 2. Have a unit acquisition cost of at least \$5000 (e.g., four identical assets which cost \$3000 each, for a \$12,000 total would not meet this capitalization requirement); and
  - 3. Be used to conduct business under this Agreement.
- C. Noncapitalized property are those items which do not meet all three requirements in this Article, Section B above.

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**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2013-2014**

**ARTICLE VII. PROPERTY (Continued)**

- D. Additions, improvements, and betterments to assets meeting all of the conditions in Section B above must be capitalized. 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.
- E. Intangibles are property which lack physical substance but give valuable rights to the owner and can be capitalized or noncapitalized. 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.

- F. The Contractor shall record the following information when property is acquired:
1. Date acquired;
  2. Property description (include model number);
  3. Property identification number;
  4. Serial number;
  5. Cost or other basis of valuation;
  6. Fund source; and
  7. Rate of depreciation (or depreciation schedule), if applicable.

The Contractor shall keep track of property purchased with Contract funds, whether capitalized or not. The Contractor shall maintain and submit to the Department annually with the Closeout, a current inventory of property furnished or purchased by either the Contractor or the subcontractor with funds awarded under the terms of this Agreement or any predecessor agreement for the same purpose. The Contractor shall use the Report of Project Property Furnished/Purchased with Agreement Funds (CDA 32) to report property to the Department, unless otherwise directed by the Department,

- G. Prior to disposal of any property purchased by the Contractor or the subcontractor with funds from this Agreement, the Contractor must obtain



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**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2013-2014**

**ARTICLE VII. PROPERTY (Continued)**

approval from the Department regardless of the acquisition value. 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 use the Request to Dispose of Property (CDA 248) to dispose of property.

- H. The Contractor shall immediately investigate and within five (5) days fully document the loss, destruction, or theft of such property.
- I. The State 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. 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, until the Contractor has complied with all written instructions from the Department 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 the State. The State reserves the right to require the Contractor to transfer such property to another entity, or to the State.
- L. To exercise the above right, no later than 120 days after termination of the Agreement or notification of the Contractor's dissolution the State 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 the State for other purposes in this order:
  - 1. Another Department program providing the same or similar service; or
  - 2. Another Department-funded program.
- N. The Contractor may share use of the property and equipment or allow use by other programs, upon written approval of the Department. As a condition of the approval, the Department may require reimbursement under this Agreement for its use.
- O. The Contractor or subcontractor 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.

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**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2013-2014**

**ARTICLE VII. PROPERTY (Continued)**

- 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 subcontracts awarded under this Agreement.

**ARTICLE VIII. ACCESS**

The Contractor shall provide access to the federal or State agency, Bureau of State Audits, the Controller General of the United States, or any of their duly authorized federal or State representatives to any books, documents, papers, records, and electronic files of the Contractor or subcontractor which are directly pertinent to this specific Agreement for the purpose of audit, examination, excerpts, and transcriptions. The Contractor shall include this requirement in its subcontracts.

**ARTICLE IX. MONITORING AND EVALUATION**

- A. Authorized State representatives shall have the right to monitor and evaluate the Contractor's administrative, fiscal and program performance pursuant to this Agreement. Said monitoring and evaluation may include, but is not limited to, administrative processes, policies and procurement, audits, inspections of project premises, inspection of food preparation sites, and interviews of project staff and participants.
- B. The Contractor shall cooperate with the State in the monitoring and evaluation processes, which include making any Administrative program and fiscal staff available during any scheduled process.
- C. Contractor shall monitor contracts, subcontracts or grant agreements to ensure compliance with laws, regulations, and the provisions of contracts or grant agreements that may have a direct and material effect on each of its major programs.
- D. Contractor is responsible for maintaining supporting documentation including financial and statistical records, contracts, subcontracts, or grant agreements monitoring reports, and all other pertinent records until an audit has occurred and an audit resolution has been issued or unless otherwise authorized in writing by the Department.

**ARTICLE X. AUDITS**

- A. The Contractor will arrange for an audit to be performed in accordance with requirements of the Single Audit Act of 1984, Public Law 98-502; the Single Audit Act Amendments of 1996, Public Law 104-156; and Office of Management and Budget (OMB) Circular A-133. A copy shall be submitted to the:

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**ARTICLE X. AUDITS (Continued)**

California Department of Aging  
Attn: Audit Branch  
1300 National Drive, Suite 200  
Sacramento, California 95834

The copy shall be submitted within the earlier of 30 days after receipt of the auditor's report or nine months after the end of the audit period, unless a longer period is agreed to in advance by the cognizant or oversight agency.

For purposes of reporting in the Schedule of Expenditures of Federal Awards in the audit, the federal grantor is U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services. The Catalog of Federal Domestic Assistance Number is 93.779. The pass-through grantor is CDA.

Contractor will ensure that State-Funded expenditures shall be separated out and specifically displayed along with the related federal expenditures in the single audit report's "Schedule of Expenditures of Federal Awards" under the Catalog of Federal Domestic Assistance number 93.779.

- B. The Contractor shall perform a reconciliation of the "Financial Closeout Report" to the audited financial statements. The reconciliation shall be maintained and made available for CDA review.
- C. The Contractor shall have the responsibility of resolving its contracts with subcontractors to determine whether funds provided under this Agreement are expended in accordance with applicable laws, regulations, and provisions of contracts or agreements.

Contract resolution includes:

1. Ensuring that subcontractors expending \$500,000 or more in Federal Awards during the subcontractor's fiscal year have met the audit requirements of OMB Circular A-133 as summarized in D;
2. Issuing a management decision on audit findings within six months after receipt of the subcontractor's single audit report and ensuring that the subcontractor takes appropriate and timely corrective action;
3. Reconciling expenditures reported to CDA to the amounts identified in the single audit or other type of audit if the subcontractor is not subject to the single audit requirements. For a subcontractor that is not required to have a single audit and did not obtain another type of audit, the reconciliation of expenditures reported to CDA must be accomplished through performing alternative procedures (e.g., expense verification reviews/monitoring assessments);

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**ARTICLE X. AUDITS (Continued)**

4. When alternative procedures are used, the Contractor shall perform financial management system testing per existing federal requirements (45 CFR, Subpart C, Part 92.20 and 45 CFR, Part 74.21) which state in part that financial reporting must be accurate, current, and complete; and, accounting records must adequately identify the source and application of funds and must be supported by source documentation. The Contractor shall document system and expense testing to show an acceptable level of reliability, including a review of actual source documents; and
  5. Determining whether the results of the reconciliations performed necessitate adjustment of the Contractor's own records.
- D. The Contractor shall ensure that subcontractor single audit reports meet OMB Circular A-133 requirements:
1. Performed timely – not less frequently than annually and a report submitted timely. The audit is required to 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.
  2. Properly procured – use procurement standards provided for in OMB Circular A-133 and provide maximum opportunities to small and minority audit firms.
  3. Performed in accordance with Generally Accepted Government Auditing Standards – shall be performed by an independent auditor and be organization-wide.
  4. All inclusive – includes an opinion (or disclaimer of opinion) of the financial statements; a report on internal control related to the financial statements and major program; an opinion (or disclaimer of opinion) on compliance with laws, regulations, and the provisions of contracts or grant agreements; and the schedule of findings and questioned costs.
  5. Performed in accordance with provisions applicable to this program as identified in OMB Circular A-133 Compliance Supplement.
- E. Requirements identified in D shall be included in contracts/agreements with the subcontractors. Further, subcontractors shall be required to include in its contract with the independent auditor that the auditor will comply with all applicable audit requirements, the Department shall have access to all audit reports and supporting work papers, and the Department has the option to perform additional work, as needed.

**Special Terms and Conditions - Exhibit D**

**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2013-2014**

**ARTICLE X. AUDITS (Continued)**

- F. The Contractor shall prepare a summary worksheet of results from the contract resolutions performed of all subcontractors. The summary worksheet shall include, but not be limited to, contract amount; amount resolved; variances; whether an audit was relied upon or the Contractor performed an independent expense verification review of the subcontractor in making the determination; whether audit findings were issued; and, if applicable, issuance date of the management letter; and any communication or follow-up performed to resolve the findings.
- G. Unless prohibited by law, the cost of audits made in accordance with provisions of the 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.
- H. 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. Contractor may not charge to Federal Awards the cost of auditing a non-federal entity which has Federal Awards expended of less than \$500,000 per year, and is thereby exempted under OMB Circular A-133, Subsection \_\_.200(d). However, this does not prohibit the Contractor from charging Federal Awards for the cost of conducting a limited-scope audit to monitor its subcontractor to address compliance requirements provided the subcontractor is not required to obtain a single audit. These costs must be charged as an Administration expense.
- I. The Contractor shall cooperate with and participate in any further audits which may be required by the State.

**ARTICLE XI. 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 the Department in cases of higher than usual risks.
  - 2. Automobile liability including non-owned auto liability, of not less than \$1,000,000 for volunteers and paid employees providing services supported by this Agreement.
  - 3. If applicable, contractors and subcontractors shall comply with the Public

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**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2013-2014**

**ARTICLE XI. INSURANCE (Continued)**

Utilities Commission (PUC) General Order No. 115-F which requires higher levels of insurance for charter-party carriers of passengers and is based on seating capacity as follows:

\$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

unless otherwise amended by future regulation.

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 thirty (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.
  2. The Certificate of Insurance shall provide the statement: "The Department of Aging, State of California, its officers, agents, employees, and servants are included as additional insureds, with respect to work performed for the State of California under this Agreement." Professional liability coverage is exempt from this requirement.
  3. The Department 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 the Department, at least thirty (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

**Special Terms and Conditions - Exhibit D**

**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2013-2014**

**ARTICLE XI. INSURANCE (Continued)**

Contractor fails to keep in effect at all times said insurance coverage, the Department may, in addition to any other remedies it may have, terminate this Agreement.

- E. The Contractor shall require its subcontractors under this Agreement, other than units of local government which are similarly self-insured, to maintain adequate insurance coverage for general liability, worker's compensation liabilities, and if appropriate, auto liability including non-owned auto and professional liability, and further, the Contractor shall require all of its subcontractors to hold the Contractor harmless. The subcontractor's Certificate of Insurance excluding professional liability shall also name the Contractor, not the State, as the certificate holder and additional insured. The Contractor shall maintain certificates of insurance for all its subcontractors.
- F. A copy of each appropriate Certificate of Insurance or letter of self-insurance, referencing this Agreement Number shall be submitted to the Department with this Agreement.
- G. The Contractor shall be insured against liability for Worker's 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 XII. TERMINATION**

**A. Termination Without Cause**

The Department may terminate performance of work under this Agreement without cause in whole or in part, if the Department determines that a termination is in the State's best interest. The Department may terminate the Agreement upon 90 days written notice to the Contractor. The Notice of Termination shall specify the extent of the termination and shall be effective 90 days from the delivery of the notice. The parties agree that if the termination of the contract is due to a reduction or deletion of funding by the Department of Finance, Legislature or Congress, the Notice of Termination shall be effective 30 days from the delivery of the notice. The parties agree that for the terminated portion of the Agreement, the remainder of Agreement shall be deemed to remain in effect and is not void. Upon termination of the Agreement, the Contractor shall submit to the Department a Transition Plan as specified in Exhibit E.

**B. Termination for Cause**

The Department may terminate for cause the performance of work under this Agreement. The Department may terminate the Agreement upon 30 days written

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**ARTICLE XII. TERMINATION (Continued)**

notice to the Contractor. The Notice of Termination shall be effective 30 days from the delivery of the Notice of Termination unless the ground for termination is due to threat to life, health or safety of the public and in that case the termination shall take effect immediately. The grounds for termination for cause shall include but not limited to the following:

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 an audit of the Department or evidence of a 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.
12. The Department determines that a Contractor may be considered a "high risk" agency as described in 45 CFR 92.12 local government and 45 CFR 74.14 for non-profit organizations. If such a determination is made, the Contractor may be subject to special conditions or restrictions.

**C. Contractor's Obligation After Notice of Termination**



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**ARTICLE XII. TERMINATION (Continued)**

After receipt of a Notice of Termination, and except as directed by the Department, 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 for materials, or services, except as necessary to complete the continued portion of the contract.
3. Terminate all subcontracts to the extent they relate to the work terminated.
4. Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts (the approval or ratification of which will be final for purposes of this clause).

**D. Effective Date**

Termination of this Agreement, shall take effect immediately in the case of an emergency such as threat to life, health, or safety of the public. In all other cases, the termination shall take effect 30 days subsequent to written notice to the Contractor. The notice shall describe the action being taken by the Department, the reason for such action and, any conditions of the termination, including the date of termination. Said notice shall also inform the Contractor of its right to appeal such decision to the Department and the procedure for doing so.

**E. Notice of Intent to Terminate by Contractor**

Contractor may give the Department 30 days written Notice of Intent to Terminate. In such instance, Contractor shall allow the Department up to 180 days to transition services. Unless mutually agreed upon, the Contractor does not have the authority to terminate the Agreement. The notice of intent to terminate 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.

**F. In the event of a termination notice, the Department will present written notice to the Contractor of any condition, such as, but not limited to, transfer of clients, care of clients, return of unspent funds, and disposition of property, which must be met prior to termination.**

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**ARTICLE XIII. 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 XIV. DISSOLUTION OF ENTITY**

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

**ARTICLE XV. 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, waive, or modify the 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 XVI. 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, overnight mail, postage prepaid, return receipt requested, or overnight mail, provided 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. All other notices with the exception of those identified in Article VII. B. shall be addressed to the California Department of Aging, AAA Based Teams, 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.
- D. Either party may change its address by written notice to the other party in accordance with this Article.

**ARTICLE XVII. 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.

**Special Terms and Conditions - Exhibit D**

**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2013-2014**

**ARTICLE XVII. 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 XVIII. 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 4841.2., 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):

- Information collected and/or accessed in the administration of the State programs and services.
- 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 and thumb/flash drives, 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.

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**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2013-2014**

**ARTICLE XVIII. Information Integrity and Security (Continued)**

3. "Identifying information" shall include, but not be limited to, name, identifying number, social security number, state driver's license or state identification number, financial account numbers, symbol or other identifying characteristic assigned to the individual, such as finger or voice print or a photograph.
4. The Contractor shall not use such identifying information 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 must provide ongoing education and training, at least annually, to all employees and subcontractors who handle personal, sensitive or confidential information. Contractor employees, subcontractors, and volunteers must complete the required Security Awareness Training module located at [www.aging.ca.gov](http://www.aging.ca.gov) within 30 days of the start date of the Contract/Agreement or within 30 days of the start date of any new employee, subcontractor or volunteer. 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. Contractor may substitute CDA's Security Awareness Training program with its own Security Training provided such training meets or exceeds CDA's training requirement. Contractors/Vendors shall maintain documentation of training and education provided to their staff, volunteers, and/or subcontractors.

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**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2013-2014**

**ARTICLE XVIII. Information Integrity and Security (Continued)**

3. All employees and volunteers who handle personal, sensitive or confidential information relating to CDA's programs must participate in Security Awareness Training.

**E. Health Insurance Portability and Accountability Act (HIPAA)**

The Contractor agrees to comply with the privacy and security requirements of the HIPAA to the extent applicable and to take all reasonable efforts to implement HIPAA requirements. Contractor will make reasonable efforts to ensure that subcontractors comply with the privacy and security requirements of HIPAA.

**F. 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 Contractor/Vendors are aware of, and agree to comply with, their obligations to protect CDA information assets from unauthorized access and disclosure.

**G. Security Incident Reporting**

A security incident occurs when CDA information assets are accessed, modified, destroyed, or disclosed without proper authorization, or are lost, or stolen. The Contractor must report all security incidents to the appropriate CDA Program Manager immediately upon detection. 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.

**H. Notification of Security Breach to Data Subjects**

1. Notice must be given by the contractor or subcontractor to any data subject whose personal information could have been breached.
2. Notice must be given in the most expedient time possible and without unreasonable delay except when notification would impede a criminal investigation, or when necessary measures to restore system integrity are required.
3. Notice may be provided in writing, electronically, or by substitute notice in accordance with State law, regulation, or policy.

**I. 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.

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**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2013-2014**

**ARTICLE XVIII. Information Integrity and Security (Continued)**

**J. Provisions of this Article**

The provisions contained in this Article shall be included in all contracts of both the contractor and its subcontractors.

**ARTICLE XIX. COPYRIGHTS AND RIGHTS IN DATA**

**A. Copyrights**

1. If any material funded by this Agreement is subject to copyright, the State reserves the right to copyright such material and the Contractor agrees not to copyright such material, except as set forth in subdivisions (2) and (3) of this section.
2. The Contractor may request permission to copyright material by writing to the Director of the Department. 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 the Department, the State 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.
4. The Contractor certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this contract for the acquisition, operation, or maintenance of computer software in violation of copyright laws.

**B. Rights in Data**

1. The Contractor shall not publish or transfer any materials, as defined in item 2 below, produced or resulting from activities supported by this Agreement without the express written consent of the Director of the Department. Consent shall be given or the reasons for denial shall be given and any conditions under which it is given or denied within 30 days after the written request is received by the Department. The Department may request a copy of the material for review prior to approval of the request. This subsection is not intended to prohibit contractors from sharing identifying client information authorized by the participant or summary program information which is not client-specific.
2. As used in this Agreement, the term "subject data" means writings, sound recordings, pictorial reproductions, drawings, designs or graphic

**Special Terms and Conditions - Exhibit D**

**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2013-2014**

**ARTICLE XIX. COPYRIGHTS AND RIGHTS IN DATA (Continued)**

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, or the exchange of that information between Area Agencies on Aging to facilitate uniformity of contract and program administration on a statewide basis.

3. Subject only to the provisions of Article XVIII and Article XIX of this Exhibit, 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 or transferred by Contractor shall: (a) state "The materials or product were a result of a project funded by a contract with the California Department of Aging"; (b) give the name of the 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."

## **Additional Provisions—Exhibit E**

### **Health Insurance Counseling and Advocacy Program (HICAP) - FY 2013-2014**

#### **ARTICLE I. ASSURANCES SPECIFIC TO HICAP**

- A. The Contractor shall assure, either as a direct or contracted HICAP, that the following conditions are met:
1. Services are provided only to the defined Eligible Service Population.
  2. Contributions. No fees may be charged for services although contributions or donations may be requested. Signs and literature about the HICAP services may indicate that donations are welcome and may suggest donation amounts. HICAP clients are not to be pressured to make donations. All contributions or donations, either in cash or in goods and services, provided specifically to the HICAP, shall be spent on activities related to HICAP. Voluntary contributions received from a client or responsible party for services rendered by HICAP shall be reported as HICAP Program Income.
  3. Management Capacity. Staffing shall be adequate to cover all contract requirements and timelines of the Program. The Program Manager shall manage the program at least 32 hours per week. The equivalent of at least one half-time paid Volunteer Coordinator shall assist the Program Manager in coordinating the activities of volunteers.
  4. Program Manager Authority. Assure that the Program Manager for HICAP has general oversight of the HICAP services and sole authority to recommend persons for HICAP Counselor registration, to file industry complaints and, to refer HICAP clients to legal services.
  5. Registered Counselors. Provide that all persons affiliated with the program and who are counseling, including paid personnel and volunteers, are trained and registered with the State as HICAP Counselors in accordance with law, regulation, and Section 106 of the HICAP Program Manual.
  6. Confidential Records. All records containing confidential client information shall be handled in a confidential manner, in accordance with the requirements for monitoring, audits and confidentiality, Exhibit D, Articles IX and X. Confidential records shall be collected no less than annually from the field. This includes individual Intake/Counseling Forms of persons being counseled exceeding the maximum counseling period of twelve (12) months as defined in the HICAP Program Manual, Section 4, subsection 4.1. Maintain confidential records until an audit has occurred and an audit resolution has been issued, unless a longer retention period is otherwise authorized in writing by the Department's Audit Branch or



## **Additional Provisions—Exhibit E**

### **Health Insurance Counseling and Advocacy Program (HICAP) - FY 2013-2014**

#### **ARTICLE I. ASSURANCES SPECIFIC TO HICAP (Continued)**

required by law. After that period of authorization, confidential records shall be destroyed by shredding and disposed of in a manner that will maintain confidentiality.

- B. The Contractor shall assure, either as a direct or contracted HICAP, compliance with the State Conflict of Interest Requirements as follows:
1. The Contractor shall assure that project staff and volunteers do not engage in the solicitation of insurance, nor endorse any Medicare supplement, long-term care, or other insurance policies or plans, nor endorse the services of any insurer or managed care plan, claims processing organization, or other enterprise that could benefit from activities conducted by the HICAP. All project staff and volunteers shall provide HICAP educational services in a manner that is objective and impartial and provide counseling consistent with the best interests of the clients and which preserves the independent decision-making responsibilities of the client.
  2. The Contractor shall assure that the project, project staff, and volunteers shall not have a conflict of interest such as, but not limited to, a business relationship with insurers, health plans, or organizations posing a conflict of interest. The Contractor shall assure that project staff and volunteers do not accept money or gifts from the clientele in exchange for services in accordance with Department guidance on conflict of interest and the HICAP Program Manual.
  3. The Contractor shall take all reasonable and necessary measures to assure that advisors, employees, and volunteers associated with the operation of HICAP agree to act in a manner so as to prevent the appearance of impropriety, or any other act which would place in jeopardy HICAP's reputation as an independent and impartial program. The Contractor shall assure that advisors and governing board members shall recuse themselves from HICAP business if they are employed by, or receive compensation from, the health insurance or managed health care industries. This shall not preclude the Contractor from soliciting program contributions from entities that do not pose a conflict of interest.

#### **ARTICLE II. REPORTING PROVISIONS**

- A. The Contractor shall, either as a direct or contracted HICAP, have written reporting procedures specific to the HICAP program which include:
1. Collection and reporting of program data for the Contractor;

**Additional Provisions—Exhibit E  
Health Insurance Counseling and Advocacy Program (HICAP) - FY 2013-2014**

**ARTICLE II. REPORTING PROVISIONS (Continued)**

2. Ensuring accuracy of data from the Contractor and subcontractor intake/assessment process;
  3. Verification of Contractor and subcontractor data prior to use by CDA for the federal National Performance Report (NPR).
- B. The Contractor shall ensure, either as a direct or contracted HICAP, program performance data is entered into the State HICAP Automated Reporting Program (SHARP) in accordance with Department requirements [(W & I Code, Section 9541(c)(8)]. Data entered must be timely, complete, accurate, and verifiable.
1. Contractor shall review and approve program performance data entered into the State HICAP Automated Reporting Program (SHARP).
  2. The Contractor, either as a direct or contracted HICAP, shall review and approve program performance data in the following manner:
    - a. By the 15<sup>th</sup> day of the month in which the quarterly report is due, Contractor will certify by email that they have reviewed and approved the data for their AAA on October 15, January 15, April 15 and July 15. Emails must be sent to:  
[Datateam.reports@aging.ca.gov](mailto:Datateam.reports@aging.ca.gov)
    - b. If the Contractor fails to send an email to the CDA HICAP Team verifying they have reviewed and approved program data by the due date, CDA must assume the AAA has reviewed and approved the data and will use the AAA data for submission to the federal National Performance Report (NPR).
- C. Contractor, either as a direct or contracted HICAP, shall train and orient staff and subcontractor's staff regarding program data collection and reporting requirements. The Contractor shall have MIS cross-trained staff in the event of planned or unplanned prolonged absences to ensure timely and accurate submission of data. [45 CFR 1321.55(b)]

**ARTICLE III. CONTINUITY OF SERVICE AND TRANSITION PLAN**

**A. Continuity of Service**

In the event of a change in HICAP subcontractors, the Contractor shall assure that a subsequent HICAP subcontractor is available to complete any open cases or transactions during the transition period. This shall include Medicare appeals and timelines with CMS or hearing officers.

## **Additional Provisions—Exhibit E**

### **Health Insurance Counseling and Advocacy Program (HICAP) - FY 2013-2014**

#### **ARTICLE III. CONTINUITY OF SERVICE AND TRANSITION PLAN (Continued)**

##### **B. Transition Plan**

In the event there is a change in the HICAP service provider, either as a result of a routine procurement process or a termination by the service provider, the Contractor shall submit a transition plan to the Department within 20 days of a written Notice of Termination to the outgoing service provider or within 20 days of a written Notice of Termination from the outgoing service provider. The transition plan must be approved by the Department and shall at a minimum include the following:

1. A description of how open or active counseling and legal cases (if applicable) shall be transitioned from the out-going service provider to the incoming service provider.
2. A description of how names, addresses, and telephone numbers of current clients will be handled and transferred to the new subcontractor.
3. A description of how clients will be notified about the change in their HICAP service provider.
4. Description of how the new subcontractor will communicate with other HICAP sites, local agencies and advocacy organizations that can assist in locating alternative services.
5. A description of how the new subcontractor will inform community referral sources of the pending termination of this HICAP contract and the transition to the in-coming HICAP service provider.
6. A description of how to transfer sensitive and confidential records to a new subcontractor.
7. A description of adequate staff to provide continued service through the term of the existing subcontract.
8. A full inventory and a plan to dispose of, transfer, or return to the Department all equipment purchased during the entire operation of the Contract.
9. Additional information as necessary to effect a safe transition of clients from the outgoing service provider to the new service provider.

- C. Contractor shall implement the transition plan as approved by the Department. The Department will monitor the Contractor's progress in carrying out all elements of the transition plan.