

**Exhibit E**  
Additional Provisions

The use of headings or titles throughout this Exhibit is for convenience only and shall not be used to interpret or govern the meaning of any special Provision.

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**1. Additional Incorporated Exhibits**

- a. For purposes of this Provision, Additional Incorporated Exhibits, in the event there are inconsistencies or ambiguities between the Contractor's Narrative Proposal and/or Cost Proposal and the Contract, or if the Narrative Proposal and/or Cost Proposal does not address Contract Requirements, the Contract will govern the Contractor's Narrative Proposal and/or Cost Proposal. Only in those instances where the Narrative Proposal and/or Cost Proposal has offered to meet more stringent requirements than those required in the Contract and the Department has indicated, in writing, its approval of the more stringent requirements, shall the Narrative Proposal and/or Cost Proposal prevail.
- b. The following documents are not attached, but are incorporated herein and made a part hereof by this reference. The Department of Health Care Services (DHCS) shall provide the Contractor with copies of said documents under separate cover. DHCS will maintain on file all documents referenced herein.
  - 1) The Contractor's Narrative Proposal
  - 2) The Contractor's Cost Proposal
- c. Unless otherwise stated, all Provisions of this Exhibit apply to the Contract as a whole, including but not limited to, all Interval time periods, including Takeover, Operations Change Requirements, Operations Extensions and Turnover.

**2. Access Requirements**

a. State's Right to Monitor

The State shall have the right to monitor all aspects of the Contractor's performance of the Contract.

Wherever a duty of access is imposed on the Contractor or its subcontractors in the Contract, the Contractor shall have a duty to cooperate, which shall not be withheld, with Department staff, authorized federal and/or State representatives, or the Contracting Officer's designees.

b. Access to Premises

To assure compliance with the Contract and for any other reasonable purpose, the State and its authorized representatives and designees, as authorized by the Contracting Officer, shall at all times have the right of access, with or without notice to the Contractor, the Contractor's premises or its parent corporation's premises. Such premises shall include the California Dental Medicaid Management Information System (CD-MMIS) Operations site and such other places where duties under the Contract are being performed, including, but not limited to, the Contractor's data center, to inspect, monitor or otherwise evaluate the work performed or being performed therein, or to elicit information concerning the operation of the CD-MMIS or any related work.

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- 1) The Contractor shall promptly honor federal and State personnel temporary badge requests. Permanent badges, including picture badges, must be supplied in five State work days of written request, as authorized by the Contracting Officer. The Contractor shall provide a badge system consisting of:
  - a) A badge requiring an escort.
  - b) A badge requiring no escort for all secured areas.
  - c) Such other security identification as may be approved by the Contracting Officer.
- 2) The Contracting Officer shall designate which federal and State staff shall have each category of badge.
- 3) All security areas shall be accessible to staff designated by the Contracting Officer. For any instances of access in any area by the Department, the Contractor shall provide, and shall require any subcontractor to provide, all reasonable facilities, cooperation and assistance to such federal and State representatives in the performance of their duties. All such instances of access shall be undertaken in such a manner as will not unduly delay work. The right of access referred to herein shall include on-site visits by authorized designees of the Department, including potential Proposer's for the purpose of procurement of a successor contractor.
- 4) If the above-stated Contracting Officer's authorized designees include the Contractor's competitors during the procurement of the Contract, the Contracting Officer will give the Contractor at least forty-eight (48)-hour notice prior to the visit. If the above-stated Contracting Officer's authorized designees include the Contractor's successor, the Department will attempt to give twenty-four (24) hour prior notification to the Contractor. Should circumstances not permit such twenty-four (24) hour prior notification, the Contractor, upon proper identification of the authorized designees of the Contracting Officer, shall make required escorted access available immediately. This Provision shall continue through Contract transition. Such access shall be for the purpose of facilitating required Takeover activities.
- 5) The successor contractor's designated staff shall be issued visitor badges which require the staff be escorted at all times within the Contractor's facilities, except when in Department/State locations, or any cost-reimbursed locations on the Contractor's premises. Badging and escorting responsibilities of the Contractor shall not be unduly withheld or delayed. Such access shall not interfere with the Contractor's ongoing Operations. During the period of time access is allowed to the successor contractor, should any dispute between the Contractor and the successor contractor arise as to any issue concerning this access, either party may request the assistance of the Contracting Officer. A mutually agreeable resolution will be sought between the Contractor, the successor Contractor and the Contracting Officer. If a mutually agreeable resolution is not reached within five State work days, the Contracting Officer shall make a final decision, subject to Exhibit E, Additional Provision, Disputes and Appeals.

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- 6) Department of Health and Human Services (DHHS), the Centers for Medicare and Medicaid Services (CMS) and General Accounting Office (GAO) officials and other authorized federal and/or State personnel shall have the right to independent access to the Contractor's premises, upon the Contracting Officer providing the Contractor with a list of persons named by DHHS, CMS, GAO or other federal and/or State agencies as authorized to enter all Contractor premises engaged in Contract activities, and upon a showing of proper credentials to the Contractor. The Contractor shall permit access to premises according to such a list that the Contracting Officer shall keep current.
- c. Access to CD-MMIS Information
- 1) The Contractor shall provide on-line, read-only access to the entire CD-MMIS libraries to authorized federal and State representatives.
  - 2) The Contractor shall provide the Administrative Services Organization (ASO) Contractor full online access including update capability to CD-MMIS for the purpose of Contract Operations. This includes update capability to necessary reference files and tables so Administrative Services staff can fulfill their contracted functions.
  - 3) Documentation for the CD-MMIS shall be maintained separately, including, but not limited to, program documentation and procedures when staff, resources, facilities and/or equipment are shared with other accounts of the Contractor.
  - 4) The Contractor shall provide immediate access to State and CMS personnel upon written and/or verbal notification request (subsequently followed in writing) of the Contracting Officer, or his/her designee, for examination and review of all libraries and titles pertaining to the CD-MMIS maintained on magnetic or electronic storage media; program listings; computer logs; data element dictionaries; procedure manuals; narratives; specifications; report libraries; or any other material as described in the Request for Proposal (RFP), including program documentation and claims payment records required for the Department's on-site monitoring, in a form and manner specified by the Department.
  - 5) The Contractor shall maintain a library containing all updated procedure manuals and information related to Dental Operating Instruction Letters (DOIL) and Systems Development Notices (SDN) that shall be immediately accessible to the current ASO Contractor, State and CMS staff. Also, the Contractor shall provide access to the Contractor's internal reports and to its employees with knowledge of documentation, program specification and/or manual processes.
  - 6) During the Turnover Phase of the Contract and based on the deliverables, milestones and dates contained in the Department-approved Turnover Project Plan, the Contractor shall provide a successor contractor with access for examination, review and/or duplication of materials, to all libraries and titles pertaining to the CD-MMIS that are contained in procedure manuals, program listings, narratives or specifications. Also, the Contractor shall provide access to its employees with knowledge of documentation, program specification and/or manual processes. Such access will not interfere with the Contractor's ongoing Operations.

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**3. Accounting Requirements**

The Contractor shall establish accounting policies and procedures, maintain records and supply reports as specified throughout the RFP and as requested by the Department. Accounting policies and practices shall be in accordance with Generally Accepted Accounting Principles (GAAP), CMS federal accounting regulations and the State Administrative Manual (SAM). The Contractor shall be responsible for establishing and maintaining additional accounting policies, processes, procedures and records as required to control and document its fiscal activities. These accounting procedures shall remain the same for the entire Contract period, unless prior written approval of changes is received from the Contracting Officer.

The Department encourages the Contractor to employ new technology whenever possible, utilizing best-practice characteristics in order to provide an efficient, streamlined accounting/document processing solution versus manual processes.

**a. Accounting Process and Procedure Inclusions**

The accounting policies, processes, procedures and records shall classify expenses by the contractual areas defined in Exhibit B, Attachment I, Special Payment Provisions. Each of these major classifications of expenses shall be further broken down to include, but not be limited to, the following:

- 1) A definition of accounting relationships with other government contracts, related business organizations and subcontractors.
- 2) A procedure for personnel time reporting.
- 3) A procedure for reporting travel expenses.
- 4) A procedure to order and pay for goods and services.
- 5) A cost accounting system in conformance with Title 48, Code of Federal Regulations (CFR), Part 31. Cost incurred for the operation of the CD-MMIS printing function shall be segregated into direct and indirect cost categories. And, the indirect cost associated with printing shall be allocated according to the methodology stated in the Cost Allocation Plan submitted to the Department, and approved by the Contracting Officer.
- 6) Allocation of expenses not totally dedicated to this Contract.
- 7) Accounting ledgers.
- 8) Allocation (internal and external) methodologies for Cost Reimbursement.

Note: Title 48, CFR, Part 31 applies to all areas of the Contract to include the Escrow Bid Documents that support the Cost Proposal.

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DHCS reiterates all prices contained in the Cost Proposals are fixed and are not negotiable. However, unforeseen circumstances, such as changes in law or policy, may warrant the need to negotiate Change Orders and/or Contract Amendments.

b. Accounting Records Supplied to the Department

- 1) Specific accounting records and practices shall be subject to federal and State acceptance. The Contractor shall supply to the State fiscal records and records of Contract expenses. These records shall include, but not be limited to, the following information:
  - a) The Contract accounts receivable and accounts payable items on the balance sheet disclosing transactions with related organizations. In addition, a list detailing all debtors and creditors with their outstanding balances shall be included with the financial statements. Balance sheets shall be submitted quarterly, or as defined by the Department.
  - b) The statement of changes in financial position disclosing all significant transactions affecting the Contractor's financial position during the year.
  - c) Inventories of all fixed assets and equipment, in accordance with Exhibit E, Additional Provisions, Inventory and Treatment of Department Property, and under Exhibit B, Attachment I, Special Payment Provisions, at Assumption of Operations (AOO) and at the end of each Operations phase, as required in Exhibit A, Attachment 1, Takeover.
  - d) A summary of total operating revenue by source.
  - e) All requirements listed in Exhibit E, Additional Provisions, Financial Reporting Requirements.

2) Invoices to the Department

The Contractor shall submit separate invoices to the Department. The invoicing procedure shall be as described in Exhibit B, Attachment I, Special Payment Provisions. All invoices shall be sent to the Contracting Officer or his/her designee.

3) Accounting Ledgers

- a) The Contractor shall maintain separate sets of accounting ledgers exclusively for the Contract, and in connection therewith, identify, collect and separate cost by the following:
  - i. Takeover Task Expenses
  - ii. Operations – Base Volume Method of Payment (BVMP) Task Expenses
  - iii. Operations – Other Fixed Price Task Expenses
  - iv. Hourly Reimbursements Task Expenses

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- v. Cost Reimbursement Expense by Category
- vi. Turnover/Runout Task Expenses
- vii. Change Order Expenses

The Contractor shall provide the Department access to these accounting ledgers, via desktop computer, as requested by the Department. The site where the desktop computers will be available to access these accounting ledgers will be determined by the Department.

- b) Separate records shall be maintained for postage incurred for all items as defined by the Department in Exhibit B, Attachment I, Special Payment Provisions, Cost Reimbursement.

c. Estimated Expenses

The Contractor shall submit to the Department a projected Statement of Total Expenses associated with the Contract for each State fiscal year and the next State fiscal year broken down by the contractual areas defined in Exhibit B, Attachment I, Special Payment Provisions, by the fifteenth (15<sup>th</sup>) calendar day of the first month of each State fiscal year. A revised estimate shall be furnished by the fifteenth (15<sup>th</sup>) calendar day of the seventh month of the current fiscal year. The projected Statement of Total Expenses shall be delineated as follows:

1) Staff expenses

- a) Individual projections shall be made for each contractual area defined in Exhibit B, Attachment I, Special Payment Provisions. Such projections shall include numbers of staff by classification.
- b) Separate projections shall be made for each subcontract.

2) All other expenses

- a) Separate projections shall be made for all other major categories of expenses as listed on the Bid Price Forms (Attachments 13-1 through 13-15) or defined by the Department during the term of the Contract.
- b) Separate projections shall be made for each subcontract.

d. Actual Expenses

At the Contracting Officer's request, the Contractor shall submit quarterly fiscal progress reports relating the actual expenses to estimated expenses for the contractual areas defined in Exhibit B, Attachment I, Special Payment Provisions, including all items specified in the projected Statement of Total Expenses. The report shall indicate, for each category:

- 1) Current quarterly estimated and actual expenditures

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- 2) Year-to-date estimated and actual expenditures
- 3) Commencement of CED-to-date estimated and actual expenditures
- e. Financial Management Manual

The Contractor shall, in conjunction with the Administrative Services Organization (ASO) Contractor, maintain and update, as necessary, a Financial Management Manual during the term of the Contract that shall include:

- 1) All the data specified in the California Dental – Medicaid Management Information System (CD-MMIS) Financial Management Manual, available during the procurement of the Contract in the Data Library.
- 2) All requirements specified in Takeover.

**4. Affiliates**

For purposes of this Provision, business concerns are affiliates of each other when, either directly or indirectly, one of the following applies:

- a. One concern controls or has the power to control the other.
- b. A third-party controls or has the power to control both.
- c. Senior management, as defined in Exhibit E, Additional Provisions, Contractor and Subcontractor Employees, has the power to control both.

Information regarding affiliates of the Contractor as defined above, shall be submitted to the Contracting Officer as part of their Narrative Proposal and no less often thereafter than annually, at the end of each State fiscal year, unless a change to previously submitted information occurs, in which case the Contractor shall have eight State work days to notify the Contracting Officer in writing. The information submitted shall include the names and addresses of all affiliates of the Contractor, the names and addresses of all persons and concerns exercising control or ownership of the Contractor and any or all of its affiliates, and whether they exercise such control or ownership as common officers, directors, stockholders holding controlling interest or otherwise.

**5. Amendment Process**

Should either party, during the term of this Contract, desire a change or amendment to the terms of this Contract, such changes or amendments shall be proposed in writing to the other party, who will respond in writing as to whether the proposed changes or amendments are accepted or rejected. If accepted and after negotiations are concluded, the agreed upon changes shall be made through the State's official Contract Amendment process, unless otherwise stipulated within this Contract. No amendment will be considered binding on either party until it is formally approved by both parties and the Department of General Services (DGS), if DGS approval is required. All amendments shall be subject to CMS review and approval.

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**6. Annual Plans**

- a. The Contractor is required to submit various plans, and/or updates to plans, annually during the course of Operations. These plans include the following:
- 1) Quality Management Plan (Exhibit A, Attachment II, Section H.5);
  - 2) Quality Assurance Plan (Exhibit A, Attachment II, Section H.7);
  - 3) Security and Confidentiality Plan (Exhibit A, Attachment II, Section Q);
  - 4) Business Continuity Plan (Exhibit A, Attachment II, Section Q.10);
  - 5) Training Plan (Exhibit A, Attachment II, Section S.5);
  - 6) Systems Group Training Plan (Exhibit A, Attachment II, Section S.8);
  - 7) Cost Reimbursement Plan (Exhibit B, Attachment I, Section 5.G; and
  - 8) System Strategic Plan (Exhibit E, Provision 57).

Unless otherwise stated in the Contract, these plans, and/or updates to these plans, shall be submitted to DHCS by December 31<sup>st</sup> of each year of Operations.

**7. Application to Parent Entities, Corporations and Subcontractors**

The application of access, audit and accounting requirements in the RFP to any parent entities, corporation(s) and subcontractor(s) is set forth below.

a. Application to Parent Entities and Corporations

The Contractor shall be responsible for ensuring Exhibit E, Additional Provisions, Insurance and Bonding, and Exhibit E, Additional Provisions, Notice of Delay, shall apply to any parent entity(s) and/or corporation(s) which provide(s) funds or services to the Contractor to meet its obligations under the Contract or whose resources are utilized by the Contractor to meet the minimum financial criteria described in the RFP Main, Section Minimum Financial Criteria.

b. Application to Subcontractors

The Contractor shall include the provisions of all applicable Sections contained in Exhibit D(F), Special Terms and Conditions and this exhibit in all subcontracts under the Contract.

**8. Assignments**

The Contractor shall not assign the Contract in whole or in part or any payment arising there from without the prior written approval of the Department. It is the policy of the Department to withhold consent from proposed assignments, subcontracts, or novations

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when such transfer of responsibility would operate to decrease the Department's likelihood of receiving sufficient performance under the Contract.

The Department will consider the granting of assignments for financial purposes, such as the payment of rent and other charges to third parties, provided the original Contractor retains all of its responsibilities and obligations under the Contract. Accordingly, the Department agrees it will not unreasonably withhold approval where: 1) a requested assignment is only of the right to receive payments, and 2) none of the Contractor's duties, responsibilities and obligations under the Contract are affected by the assignment.

All DHCS-approved subcontracts to the prime Contract shall contain a provision holding that further assignments shall not be made to any third or subsequent subcontractor without additional written consent from DHCS.

**9. Audit Requirements**

a. General

- 1) The Contractor shall maintain current books of account, records, documents and other evidence pertaining to its managerial, financial and operational policies, procedures, functions and processes.
- 2) All records, books of account, papers and supporting documents of the Contractor, any affiliates or parent entities or companies which may allocate or share expenses or assist or provide for the Contractor's meeting Minimum Financial Criteria (see the RFP Main, Section Minimum Financial Criteria), or any subcontractor providing services to the Contractor shall be open to inspection during normal business hours by the Department, its authorized representatives, or by other federal or State agencies with statutory or regulatory audit authority.
- 3) The books of account, records, documents and other evidence pertaining to the Contractor's managerial, financial and operational policies, procedures, functions and processes shall not be removed from the State of California without prior written consent of the Contracting Officer.
- 4) All records, books of account, papers and supporting documents of the Contractor, any subcontractor, any affiliates, parent entities and corporations shall be available for review in the State of California within five State work days of request or as authorized by the Contracting Officer. Any cost incurred by the Contractor to retrieve all records, books of account, papers and supporting documents of the Contract shall not be payable by the Department.
- 5) The Department may, upon reasonable notice, require such records, books of account, supporting documents and papers, or a specified portion thereof, be made available for examination in this State or that with a certification statement, a true and accurate copy of such records, books of account, documents and papers, or a specified portion thereof, be furnished to the Department within five State work days of receipt of request.

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- 6) The Contractor's accounting procedures and practices shall conform to GAAP. Cost applicable to the Contract shall be separately identifiable and readily ascertainable there from. Revenue and expense records pertaining to the Contract shall be in sufficient detail to readily identify revenue source and all direct and indirect cost under the Provisions of the Contract.
  - 7) All books of account, records and documents shall be maintained separately for the CD-MMIS.
  - 8) The requirements of Title 48, CFR Part 31, Contract Cost Principles and Procedures, shall be applied in determining the allowable direct and indirect cost incurred by the Contractor for Cost Reimbursable work performed on the Contract or work ordered by a Change Order or Contract Amendment.
  - 9) This Provision shall be incorporated in any subcontract of ten thousand dollars (\$10,000) or more. It shall also be incorporated in all subcontracts entered into with one entity or affiliate where the total dollar value of all such subcontracts exceeds ten thousand dollars (\$10,000).
  - 10) If a parent entity or corporation(s) is utilized by the Contractor in meeting the requirements of RFP Main, Section Minimum Financial Criteria, the Audit Requirements Provisions shall be applicable to that parent entity or corporation(s) as well.
  - 11) The Contractor shall promptly notify the Contracting Officer in writing of any request for access to any CD-MMIS records by any governmental agency.
- b. Audit of Electronic Data Processing (EDP) Application Systems

The Department will procure an audit contractor annually to perform an EDP audit. The contract shall be with an independent Certified Public Accounting (CPA) firm that has experience in conducting electronic data processing and Statement on Standards for Attestation Engagements (SSAE16) including Service Organization Control (SOC) reporting framework audits in accordance with auditing standards provided by the American Institute of Certified Public Accountants (AICPA) for applications comparable with the scope of this CD-MMIS application. The contract shall require the CPA firm to perform an EDP audit in accordance with SSAE16 requirements to audit the general and application controls on the CD-MMIS and the Contractor's quality control efforts.

- 1) The audit shall include a number of processing functions. The Contracting Officer will specify the functions to be audited. The audit shall report control weaknesses and the effects to their respective functions. An audit shall be conducted eight months after AOO and at twelve (12)-month intervals thereafter. The CPA firm shall deliver to the Contractor and to the Department a report of findings and recommendations within three months of the close of each review period. The audit shall be conducted in accordance with generally accepted auditing standards for EDP application reviews and shall conform to the Codification of Statement on Standards for Attestation Engagements (SSAE16) as amended.

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- 2) The Department shall use the findings and recommendations of the resulting report as part of its ongoing CD-MMIS monitoring process. The CPA firm shall be required to abide by the security and confidentiality requirements of the Contract as these relate to the protection of data, material and information received as a result of these audits. All data, material and information received as a result of these audits shall not be disclosed to any third-party without the prior written approval of the Contracting Officer.
- 3) The scope of the EDP audit, as defined by the Contracting Officer, shall be to test services provided to the Department and/or State for compliance with Contract requirements and may include, but not be limited to, the following:
  - a) Inter-department Organizational Controls.
  - b) Intra-department Organizational Controls.
  - c) Input and Output Controls.
  - d) The User Operations Manual.
  - e) User and Systems Contingency Plans.
  - f) Controls over Program Modification, including, but not limited to, verification all deliverables were approved prior to any system modification.
  - g) Adequacy of Manuals and Systems Documentation, including, but not limited to, verification all manuals and systems documentation are clear and concise.
  - h) Back-up, Recovery and Access Controls.
  - i) Review of Subsystems.
  - j) Review of Automated Controls.
  - k) Review of Security and Confidentiality Procedures including, but not limited to, verification that reporting of security access violations has been transmitted to the Department as set forth in the Exhibit A, Attachment II, Scope of Work, Security and Confidentiality Section of the Contract.
  - l) Data Processing Back-up and Recovery including, but not limited to, ensuring Disaster Recovery was performed the previous year and review of the Contractor's compliance with the Disaster Recovery Provisions set forth in this Contract. If no Disaster Recovery Drill was performed, review of the justification as to why the drill was not performed and include in the audit. Review prior year's drill for compliance with the Disaster Recovery Provisions set forth in Exhibit A, Attachment II, Scope of Work and ensure all issues experienced with the previous year's Disaster Recovery Drill have been resolved.

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- m) Data Security and Integrity Review including, but not limited to, ensuring all Contractor employees have appropriate level CD-MMIS access in accordance with their position.
  - n) Definition of Computer Audit Software.
  - o) Updating of Manuals and System Documentation to ensure updates of manuals are timely, in accordance with their Cyclical Updates or as system modifications warrant.
  - p) Adequacy of Risk Analysis.
  - q) Completeness and Accuracy of Data Generated for Reports to the Department, including, but not limited to, reports generated to support the accuracy of payment invoices referred to in Exhibit B-Attachment I, Special Payment Provisions, Invoicing. These reports include, but are not limited to, the general CD-MMIS billing reports.
  - r) Controls to ensure Contractor employees are not inappropriately or fraudulently paying claims and whether these controls are being used.
  - s) Controls to ensure the Contractor is abiding by Department-established policy
  - t) Controls to ensure the Contractor is not operating or utilizing programs not approved by the State and whether these controls are being used.
- 4) The Department shall be the third-party beneficiary of any auditing contract between the Contractor and the CPA firm that will be conducting the EDP audit. Further, prior to the beginning of required audits, the CPA firm shall confer with the Department to discuss the scope, breadth and depth of the audit. The CPA firm shall present its proposed audit plan to the Contractor, which shall, in turn, present this plan to the Department for review and written approval prior to its execution.
- 5) The Department shall at its discretion Contract directly with an independent CPA firm to complete the required EDP audit, in which case the findings and recommendations of the resulting report as part of its ongoing CD-MMIS monitoring process.
- 6) The Department has the option to direct the Contractor to contract for this audit. If this option is exercised, the Department shall receive copies, concurrent with the Contractor, of any and all audit reports, both draft and final. The Department shall also have access to all related working papers. The Department shall have the ultimate right to accept or reject any audit report submitted to it by the Contractor. Should an audit report be rejected, in whole or in part, the Contractor shall have the audit and/or report repeated within time constraints imposed by the Contracting Officer, at no additional cost to the Department. If the Contractor fails to obtain an audit as required above, the Department may, after notice, and at its option, employ an independent CPA firm to complete the required audit, in which case, no payment to the Contractor for the original audit shall be made.

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- 7) The actual scope of work (SOW) in the above audit(s) will be determined by the Department, in writing, prior to commencement of the work. Should the Department direct the Contractor to contract for this audit, the audit shall be Cost Reimbursed by the Department.
  - 8) Any problems identified in the reports shall be handled in accordance with Exhibit A, Attachment II, Operations, Administrative Support of Contract Changes, Problem Correction System.
  - 9) The requirements of this Provision shall apply to subcontracts. Subcontractors shall be required to assist the independent CPA firm in performing the audit of EDP application systems of the Contractor as this audit relates to work performed under the subcontract(s).
- c. Access to and Audit of Contract Records
- 1) In addition to the requirements found in Exhibit D(F), Special Terms and Conditions, Provision 7, Audit and Record Retention, the Contractor and subcontractor shall:
    - a) Preserve and make available their records for an additional period of four years from the date of final payment under this Contract; thus, total record preservation and availability will be at least seven years.
    - b) Promptly notify the Contracting Officer of any request for access to any CD-MMIS records by any governmental agency.
  - 2) Should the Department direct the Contractor to contract for the audit, and should the audit or examination find the Contractor is not fulfilling its responsibilities according to the terms of the Contract or that reports furnished in compliance with the Provisions of the Contract are not true and correct, the Department shall have the right to invoke any remedy available under the Contract or under law or equity. Should an audit or examination described above find that the Contractor has received payment to which it is not entitled under the Contract, such payments may be recouped by the Department. Such recoupments are subject to the Contractor's right to dispute as set forth in Exhibit E, Additional Provisions, Disputes and Appeals. Based on an audit or examination, the Department may seek recoupment through offset or legal action following termination or expiration of the Contract.

d. Cost Reasonableness Audit

The Department may procure a Cost Reasonableness (CR) contractor to review any SDN, Change Order or system modification cost estimate submitted by the Contractor to determine reasonableness and accuracy of the cost estimate.

The CR contractor shall be used at the discretion of the Department with written direction to the Contractor. In preparation of the audit the Contractor shall submit all working papers used in developing each cost estimate to be reviewed. All findings and working papers developed by the CR contractor shall be submitted to the Department for review. At the written direction of the Department, the Contractor

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shall implement and abide by the findings of the audit conducted by the CR contractor and utilize any recommendations made.

If the Contractor disagrees with the audit findings and recommendations and is able to provide documentation which unequivocally explains why the audit findings and recommendations are invalid, the Contractor shall provide said documentation to the Contracting Officer within fifteen (15) State work days of the Contractor receiving the audit findings and recommendations.

**10. Authority of the State**

Sole authority shall reside with the Department to establish, define and/or determine the reasonableness, the medical necessity and the level and scope of covered benefits under the dental programs administered in the Contract, the coverage for such benefits, the eligibility of beneficiaries or providers to participate in the dental program, all aspects of reimbursement to providers and the operation of the CD-MMIS.

Sole authority shall reside with the Department to establish or interpret policy and its application related to the above areas.

The Contractor may not make any enhancements, limitations or changes in the benefits or coverage for benefits, any changes in definition or interpretation of benefits, any manual or automated actions which change the resolution of claims failing edits and/or audits other than that approved by the Department, or any changes in any other aspect of the administration of the dental program related to the scope of benefits, allowable coverage for those benefits, the eligibility of beneficiaries or providers to participate in the dental program, the reimbursement of providers or the operation of the CD-MMIS, except for emergency fixes, without written direction or written approval of the Contracting Officer.

**11. CD-MMIS Hardware, Equipment and Software**

The Contractor shall ensure all CD-MMIS hardware, equipment and software operations and supportive services meet all performance requirements in the Contract.

The Contractor shall be responsible for the ownership, acquisition, maintenance and necessary upgrades of all hardware, equipment and system software used for CD-MMIS Mainframe systems, non-Mainframe systems and all telecommunications and network infrastructure, including but not limited to those identified in Exhibit A, Attachment II, Operations Requirements.

At AOO, DHCS will not own or lease any hardware or equipment for the operation and supportive services of the Contract unless approved in writing by the Contracting Officer.

DHCS shall own all desktop computers for State employees and shall Cost Reimburse for any supplied by the Contractor during this Contract. Cost Reimbursement shall be covered under the payment provisions described in Exhibit B, Attachment 1, Special Payment Provisions, Cost Reimbursement.

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All hardware and equipment used for operations of the CD-MMIS shall have equivalent capabilities available for disaster recovery that meets requirements and timelines described in Exhibit A, Attachment II, Operations, Security and Confidentiality.

a. Hardware and Equipment Redundant Requirements

All redundant configuration information is defined in the Hardware/Software Configuration Manual.

All data and telecommunications network infrastructure shall be one hundred percent (100%) redundant with automatic failover including connections between State and Contractor data centers and Contractor-supplied network in support of Providers and Denti-Cal stakeholders.

b. Hardware and Equipment Refresh

DHCS requires all hardware and equipment being used for Operations, administration of the Contract or support of the CD-MMIS must adhere to the following, unless a written waiver is approved in advance by the Contracting Officer:

- 1) All maintenance and release upgrades shall be kept current (within six months of current date).
- 2) All desktops shall be refreshed every three years from date of purchase.
- 3) All servers shall be refreshed every four years from date of purchase or prior to the start of the first possible Contract extension, if applicable.
- 4) All appliances are refreshed every four years from date of purchase or prior to the start of the first possible Contract extension, if applicable.
- 5) All other equipment is refreshed every four years from date of purchase or prior to the start of the first possible Contract extension, if applicable.
- 6) All communication equipment including, but not limited to, routers, firewalls and/or switches are refreshed every five years from date of purchase.

All DHCS-owned hardware and equipment assumed by the Contractor in Takeover that is used exclusively on this Contract for primary or backup Operations shall not be required to adhere to the refresh requirements described in this Section. All maintenance and replacement of the DHCS-owned hardware and equipment assumed by the Contractor in Takeover shall be the responsibility of the Contractor to meet all Operations' requirements of the Contract and shall no longer be cost reimbursed by the Department.

c. Software Refresh

DHCS requires all software being used for Operations, administration or support of the CD-MMIS, must adhere to the following requirements, unless a waiver is approved in writing in advance by the Contracting Officer:

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- 1) All software used by the Contractor must remain within one version of the latest available version unless incompatible with DHCS-mandated standards, including, but not limited to, server, application, telecommunications, desktops and automation office software.
- 2) All software must be replaced that is identified as no longer supported by the software vendor either through sunset or end-of-life support. The Contractor must provide DHCS with a written replacement plan within twenty-five (25) State work days of identification of sunset or end-of-life support. The Contractor shall abide by the replacement plan that is approved in writing by the Contracting Officer.

As the hardware / software approach sunset or end-of-life, the Contractor shall be responsible for maintaining and/or replacing all required hardware and software. Any cost associated with end-of-life maintenance and/or replacement is the responsibility of the Contractor. Annually, or more frequently at the State's discretion, provide a report to the State regarding the status of the hardware and software configuration.

This Provision does not apply to systems and/or hardware or equipment that relate solely to the Contractor's internal personnel, budget or accounting processes, or other internal Contractor processes that do not directly or indirectly impact the Contractor's ability to fulfill its obligations under this Contract.

- d. Throughout this Contract, in an effort to provide optimal technical and operational solutions, the Contractor may propose new hardware and/or software or use the existing tools utilized in the prior contract. The Contractor shall also consider and/or propose the use of the Department's enterprise tool solutions. This information can be found in the Data Library. Proposed hardware and software solutions must, at a minimum meet or exceed the prior contract's implemented solution capabilities.

In deciding whether to grant approval, the Department will evaluate the compatibility and integration of this technology with the application program and equipment hardware existing in the current CD-MMIS operating environment. Consideration will also be given to ease and cost of program maintenance by the subsequent FI contractor.

## **12. Change Orders**

This Provision shall apply in cases where the Department alters the work required or reallocates functions within the general scope of the Contract, resulting in a change in Contractor's responsibilities as defined in Provision 11.a. below. Change Orders shall be utilized in cases where an adjustment is needed to the Contract's SOW and/or payment. The Department shall pay for additional cost associated with a Change Order when there is a direct change to the Contract's SOW and the cost have been approved in writing by the Department, all State control agencies and CMS.

- a. Change in Contractor Responsibilities

The Contractor's bid prices will remain in effect for required work through the end of the Contract. In the event the Department alters the work required or reallocates functions within the general SOW within the Contract, which the Department in its

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sole discretion may do at any time during the term of the Contract, and thereby causes a documentable increase or decrease in the cost for the Contractor, such action by the Department shall be processed through a Change Order. (As used in this Provision, "documentable" means there is quantitative evidence available (beyond mere speculation) to support the proposition that there is an "increase or decrease.")

- 1) The following conditions will not be justification for adjustment to the bid prices:
  - a) The change in status (OFF/ON/TEST) of CD-MMIS edits and/or audits.
  - b) Implementation of new edits and/or audits or refinement to existing edits and/or audits which enhances or clarifies the application of Medi-Cal policy or billing procedures in existence on the date of issuance of the RFP.
  - c) Implementation of Dental Operating Instruction Letters (DOILs) or other changes which would normally be made as part of the Contractor's responsibility.
  - d) Maintenance resulting from systems changes performed by the Systems Group, unless specifically identified during the Change Process assessment as stated in Exhibit A, Attachment III, Change Requirements and approved in writing by the Contracting Officer.
  - e) Execution of a Contract responsibility for which the Contractor is already receiving reimbursement.
  - f) Changes in Claims and/or Treatment Authorization Request (TAR) volumes or other applicable volumes that fall within the Contract projected volume ranges.
  - g) Design, development, installation, maintenance or other activities defined in the Contract as part of contractual responsibilities..
  - h) Implementation of Expansion Items as required in the RFP.
  - i) The Contractor was not aware of any aspect of the current Contract in which details were available in the Data Library provided in the RFP.
  - j) The Contractor did not inform the Department of any contradiction in language, or any language they did not understand, where details were available in the Data Library which caused inappropriate pricing or lack of understanding of responsibilities.
  - k) Increases in cost by subcontractors which were included as part of the Contractor's Narrative Proposal.
  - l) Reallocation of Contractor staff from one functional area to perform the increased SOW functions for another area.

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- 2) In determining whether a price revision is necessary, consideration shall first be given to:
  - a) Whether this effort has been offset by the implementation of cost reduction changes initiated by either the Contractor or the Department as described in Exhibit E, Additional Provisions, Opportunities for Reduction in Operations Cost.
  - b) Whether there are alternate means for implementing the change or whether there are resources being used elsewhere that can be made available for the change.
- 3) If the total cost for the adjustment exceeds the savings of the actions listed in 2) a) and b), above, the Change Order process shall be utilized to compensate for the increased cost, plus overhead and profit.

b. Change Order Implementation

This Provision is intended for use in the case of a change in Contractor responsibilities that fall within the SOW. If a change in Contractor responsibilities is proposed, the Contracting Officer shall issue a written Change Order and specify the date of implementation, subject to Exhibit E, Additional Provisions, Change Orders, Change Order Contractor Requirements.

c. Change Order - Contractor Requirements

All terms and conditions of the Contract shall apply to each Change Order, unless specifically modified by that Change Order.

The Contractor shall provide to the Contracting Officer within twenty-five (25) State work days of receipt of the Change Order, a written statement that:

- 1) The change has no price impact on the Contractor; or
- 2) There is a price impact, in which case the statement shall include a completed cost pricing form (see Exhibit E - Attachment II for the sample Change Order Cost Proposal Form) for each phase of the change including design and development, if not performed by the Systems Group and/or Operations. In addition, the Contractor shall submit with this form all information required to explain the Contractor's estimating process, including all of the following:
  - a) The judgmental factors applied and the mathematical or other methods used in the cost estimate, including those used in projecting from known data.
  - b) The assumptions used by the Contractor in developing the cost estimate.
  - c) The methodology and justification for the calculation for general and administrative expenses, overhead cost and allocations, and profits, including the date of the data used for this calculation.
  - d) A work plan meeting the contracted requirements for work plans.

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- e) A separate itemization of items to be paid by Cost Reimbursement.

The Department shall negotiate with the Contractor to reach agreement on Change Orders. In cases where additional information is required, the Contractor shall provide needed information within eight State work days of request. After the parties reach an agreement, an official letter, including any written correspondence reflecting an agreement in the change of the fixed bid price, shall be incorporated into the Contract. If the parties are unable to reach an agreement, the Contracting Officer shall order, in writing, the implementation of the Change Order and make a determination of the revised prices. The Contractor shall proceed with the implementation of the Change Order as approved in writing by the Contracting Officer, subject to the Contractor's right to dispute the Contracting Officer's determination of the price pursuant to Exhibit E, Additional Provisions, Disputes and Appeals.

- d. Contractor - Initiated Change Orders

The Contractor shall not institute any modification to its procedures, Operations or organization that would directly or indirectly increase the cost to the Department without first:

- 1) Submitting a written statement of the type described in Exhibit E, Additional Provisions, Change Orders, Change Order – Contractor Requirements.
- 2) Receiving approval in writing from the Contracting Officer to institute the modification.

- e. Change Order Approvals

- 1) All increased cost of performance attributable to said modification incurred prior to receipt of such written approval as set forth above shall be unallowable.
- 2) Each Change Order must be approved by DGS, if DGS approval is required, and the Department of Finance (DOF) if the Change Order:
  - a) Cost the State in excess of two hundred fifty thousand dollars (\$250,000) for design, development and implementation (DDI) (excluding Systems Group changes); or
  - b) Increases Operations' one-time cost by greater than two hundred fifty thousand dollars (\$250,000).
- 3) DOF review may also require a thirty (30)-day notice to the Legislature before approval.
- 4) If the Change Order causes a one-time cost to the State greater than two hundred fifty thousand dollars (\$250,000), then it shall be subject to review by the California State Legislature.
- 5) Change Orders shall be subject to CMS review and approval requirements.

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**13. Electronic Data Interchange (EDI) Equipment**

The Department owns the equipment and redundant backup equipment currently being used for EDI. The Contractor may use this equipment or propose another solution that meets Contract requirements. If the Contractor chooses to use the existing equipment, the Contractor shall be responsible for the maintenance and necessary upgrades to meet the contractual requirements.

In the event the Contractor proposes another solution, the Contractor shall include in its Proposal one hundred percent (100%) redundant lines and hardware as part of the bid price for Takeover.

**14. Conflict of Interest, Incompatible Activity of Contractor and Employees**

a. Definition(s)

- 1) For purposes of this Provision "Contractor" means the Contractor, any parent entities or corporations, subcontractors or any of the above parties' employees, directors, consultants or officers.
- 2) For purposes of this Contract, indirect interest and indirect income shall be defined as any interest owned or income received by the spouse, parent(s) or dependent(s) of the Contractor.

b. Contractor Responsibilities – General

DHCS intends to avoid any real or apparent conflicts of interest on the part of the Contractor, subcontractors, or employees, officers and directors of the Contractor or subcontractor. Hence, the Department reserves the right to determine, at its sole discretion, whether any information, assertion or claim received from any source indicates the existence of a real or apparent conflict of interest and to require the Contractor to submit a Conflict of Interest Avoidance Plan for solving the conflict problem subject to prior Departmental review and written approval. While it is desirable the Contractor not have any contractual or financial relationships with providers, such relationships may be permissible so long as prompt, full disclosure is made and adequate protective Conflict of Interest Avoidance Plans and procedures are developed, and reviewed and accepted by the Department in writing.

DHCS requires the annual completion and submission of a Statement of Economic Interests, Form 700 by the Contractor. Forms must be completed and submitted for all employees, officers and directors of the Contractor who are in any way involved in the administration or performance of work under the Contract or who have access to files (electronic or paper) related to the Contract and related work, or are located in shared facilities with employees, officers or directors who are involved in the administration or work or do have access to files. The Contractor shall require all its employees, officers, and directors to file the completed Form 700 with the Contractor's personnel office within twenty-five (25) State work days of assuming or leaving employment and not later than March first of each year of continued employment. The Contractor must also submit a Disclosure Statement identifying

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any and all employees who have a conflict of interest, and must submit copies of all Forms 700 to the Contracting Officer.

Additionally, all Statement of Economic Interests, Forms 700 must be accompanied by a Supervisor Review Transmittal Form. This form requires two levels of review: the employee's immediate supervisor and the Contracting Officer.

Failure to submit all Statement of Economic Interests, Forms 700 and/or Disclosure Statements in a timely manner as instructed by DHCS will result in withholding of administrative payments due under the Contract until compliance is met.

- c. Conflicts of interest include, but are not limited to:
- 1) An instance where the Contractor has an interest, financial or otherwise, whereby the use or disclosure of information obtained while performing services under the Contract would allow for private or personal benefit or for any purpose that is contrary to the goals and objectives of the Contract.
  - 2) An instance where the Contractor's employees, officers, or directors use their positions for purposes that are, or give the appearance of being, motivated by a desire for private gain for themselves or others, such as those with whom they have family, business or other ties.
- d. Conflict of interest instructions
- 1) The Contractor shall submit for State review and approval, if acceptable, a "Conflict of Interest Disclosure Statement" (Disclosure Statement) using the following timetable:
    - a) An initial Disclosure Statement shall be submitted two weeks after the Contract Effective Date (CED).
    - b) An update shall be submitted on the first day of month ten (10).
    - c) A yearly update shall be submitted thereafter.
    - d) At any time a change occurs which affects the previously submitted and approved statement, a new Disclosure Statement, together with a Conflict of Interest Avoidance Plan, shall be sent to the Contracting Officer for prior review and approval, if acceptable, within ten (10) State work days of the change.
  - 2) If DHCS is or becomes aware of a known or suspected conflict of interest, the Contractor shall be given an opportunity to submit additional information or to resolve the conflict. A Contractor with a suspected conflict of interest will have five State work days from the date of notification of the conflict by DHCS to provide complete information regarding the suspected conflict. If a conflict of interest is determined to exist by DHCS and cannot be resolved to the satisfaction of DHCS, the conflict will be grounds for terminating the Contract. DHCS may, at its discretion, upon receipt of a written request from the Contractor, authorize in writing an extension of the timeline indicated herein.

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- 3) The Disclosure Statement shall fully describe any direct or indirect interest the Contractor, parent or subcontractor has in any provider of Medi-Cal services (as defined in Title 22, CCR, Division 3, Subdivision 1, Chapter 3, Article 2, Section 51051) or in any billing agent(s) for Medi-Cal services, together with the name and position description of the Contractor, any parent, or subcontractor employee, director, consultant or officer about whom the disclosure is being made.
- 4) At a minimum, the Contractor's Disclosure Statement shall disclose the name and address of any and all providers or billing agent(s) for Medi-Cal services in which:
  - a) The Contractor, any parent corporation, subcontractor or any of the above parties' employees, directors, consultants or officers assigned to the Contract has a direct or indirect interest of more than one thousand dollars (\$1,000).
  - b) The Contractor, any parent corporation, subcontractor or any of the above parties' employees, directors, independent consultants, or officers assigned to the Contract is a director, officer, partner, trustee, employee or holder of a management position, or is self-employed.
  - c) The Contractor, any parent corporation, subcontractor or any of the above parties' employees, directors, independent consultants or officers assigned to the Contract has derived more than two hundred fifty dollars (\$250) in direct or indirect income within the twelve (12) months immediately prior to the submittal of a Proposal.
- 5) The Contractor shall disclose the name of any proposed subcontractor, independent consultant, officer, director or employee who was employed by the State of California in DHCS, the Governor's Office, Health and Human Services Agency, State Controller's Office (SCO), Office of the Attorney General (AG) and/or the Legislature within the past two years, in accordance with Welfare and Institutions (W&I) Code, Section 14104.6.
- 6) If a real or apparent conflict exists, the Contractor shall, together with the Disclosure Statement and at the time of that document's submittal, submit a Conflict of Interest Avoidance Plan and procedures to hold separate such relationships and/or to safeguard against conflicts. If the Contractor has nothing to disclose under this Provision, it shall so certify in its Disclosure Statement.
- 7) The successful bidder shall furnish in writing to the Department the ownership and control information required by Title 42, CFR, Chapter 4, Subpart 455.104 prior to CED.
- 8) The Contractor Representative, or his/her designee, shall certify under penalty of perjury that such reports and updates to such reports are accurate, complete and current to the best of that individual's knowledge and belief, unless the Contracting Officer, in writing, expressly waives the requirement.

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e. Conflict of Interest Avoidance Plan

The Contractor shall submit a Conflict of Interest Avoidance Plan, with the required Disclosure Statement, to safeguard against conflict of interest. This plan shall include procedures to:

- 1) Guard against conflict of interest.
- 2) Hold separate any disclosed relationships or any potential conflict of interest relationships that could arise during the term of the Contract including, but not limited to, such problematic matters as financial interactions, reporting, sharing of office space, staff interactions or Contractor fulfillment of Contract responsibilities.
- 3) Ensure the Contractor shall discharge its responsibilities and duties with disinterested skill, zeal and diligence, and that no Contractor's, parent corporation's or subcontractor's employee, officer, director or independent consultant will be in a position to exploit that position for private benefit or for other Contractor, or parent corporation or subcontractor interests which are or may be in conflict with Department or State interests.

f. Current State Officers and Employees

- 1) The Contractor shall not utilize in the performance of the Contract any State officer or employee in the State civil service or other appointed State official unless the employment, activity or enterprise is required as a condition of the officer or employee's regular State employment. An employee in the State civil service is defined to be any person legally holding a permanent or intermittent position in the State civil service.
- 2) If any State officer or employee is utilized or employed in the performance of the Contract, the Contractor shall first obtain written verification from the State that the employment, activity or enterprise is required as a condition of the officer's, employee's or official's regular State employment and shall keep said verification on file for three years after the termination of the Contract.
- 3) The Contractor shall not accept occasional work from any currently employed State officer, employee or official.
- 4) If the Contractor accepts volunteer work from any currently employed State officer, employee or official, Contractor shall not reimburse, or otherwise pay or compensate, such person for expenses incurred, including, without limitation, travel expenses, per diem or other compensation in connection with volunteer work for the Contractor.
- 5) The Contractor shall not employ any State officers, employees or officials who are on paid or unpaid leave of absence from their regular State employment.
- 6) The Contractor or anyone having a financial interest in the Contract shall not become a State officer, employee or official during the term of the Contract. The Contractor shall notify each of its employees, and any other person having a

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financial interest in the Contract, that it is unlawful under Public Contract Code (PCC), Section 10410, for such person to become a State officer, employee or official during the term of the Contract unless any relationship with the Contractor giving rise to a financial interest, as an employee or otherwise, is first terminated.

- 7) Occasional or one time reimbursement of a State employee's travel expenses is not acceptable under PCC Section 10410.
- g) Former State Officers and Employees
- 1) The Contractor shall not utilize in the performance of the Contract any formerly employed person of any State agency or department that was employed under the State civil service, or otherwise appointed to serve in the State government, if that person was engaged in any negotiations, transactions, planning, arrangement, or any part of the decision-making process relevant to the Contract while employed in any capacity by any State agency or department. This prohibition shall apply for a two-year period beginning on the date the person left State employment.
  - 2) The Contractor shall not utilize within twelve (12) months from the date of separation of services a former employee of the Contracting State agency or department if that former employee was employed in a policy-making position in the same general subject area as the proposed Contract within the twelve (12)-month period prior to the employee leaving State service under PCC Section 10411.
  - 3) If the Contractor violates any Provision of Exhibit E, Additional Provisions, Conflict of Interest, Incompatible Activity of Contractor and Employees, d.1) or 2) above, such action by the Contractor shall render the Contract void, unless the violation is technical or non-substantive. (Citation: PCC Section 10420.) Determination and acceptance of technical or non-substantive violations shall only be allowable with written approval of the Contracting Officer.

**15. Conformance with Federal and State Statutes and Regulations**

- a. This RFP is subject to Title XIX of the federal Social Security Act (42 U.S.C.1396 et seq.) and, accordingly, the Contractor agrees to conform to such requirements and related regulations on the date the Contract becomes effective, to include the most current and future amendments to the law, regulations or guidelines, provided:
  - 1) Changes which would materially affect cost of performance shall only be implemented with written approval of the Contracting Officer pursuant to the Contract.
  - 2) That no confidential data is to be released without prior written approval from the Department or prior written approval from the beneficiary concerned.
- b. The Contractor shall comply with the requirements of federal and California law, to include related regulations and published guidelines, to the extent that these authorities contain requirements applicable to Contractor's performance under the Contract. These authorities include, without limitation, the California W&I Code, the

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California Government Code (CGC), the California PCC, the CFR, Title II and Title XXII of the California Code of Regulations (CCR), and the Health Insurance Portability and Accountability Act (HIPAA) of 1996 (Public Law 104-191, dated August 21, 1996). (See Exhibit H, HIPAA Business Associate Addendum (BAA).)

**16. Consultant Conduct and Filing Requirements**

- a. When a Consultant or representative of a DHCS Contractor performs work on DHCS premises, the Consultant or representative shall follow and adhere to all DHCS policies and procedures including, but not limited to, those governing health and safety, nondiscrimination, appropriate vehicle use, travel reimbursement, security and confidentiality of information, incompatible activities, acceptable employee conduct, information technology (IT) protocols and requirements, workplace violence prevention, and conflict of interest filing instructions (if applicable). Consultants and representatives may not access DHCS confidential, personal or sensitive information until they have been trained on the DHCS policies and procedures for information privacy and security, and have a signed Confidentiality Statement on file with the Contracting Officer. This training may be accomplished through the on-line Privacy and Security Training on the DHCS intranet.
- b. Certain independent consultants designated by the DHCS' Conflict of Interest Code are required to complete and file a Statement of Economic Interests, Form 700. Independent consultants to whom this requirement applies are described in Exhibit E, Additional Provisions, Conflict of Interest, Incompatible Activity of Contractor and Employees. The Contractor agrees such independent consultants shall obtain a Form 700 and filing instructions from the Fair Political Practices Commission at <http://www.fppc.ca.gov>. They shall fully complete the Form 700; and file it in a timely manner as specified in Exhibit E, Additional Provisions, Contract Communication. The Consultant shall file the completed Form 700 in a timely manner with the Contractor Representative and shall submit a copy to the DHCS Program Contract Manager. This form requires three levels of review: the Consultant's immediate supervisor; the Consultant's second-level manager, and the DHCS Contracting Officer. Failure to obtain, complete or file a Form 700 in a timely manner may result in independent consultant substitution and/or replacement.

**17. Contract Communication**

- a. Any notice required by the Contract shall be written and sent by registered or certified mail, return receipt requested, or shall be delivered in hand and a receipt given by the recipient, and shall be effective upon receipt by the Contracting Officer or the Contractor, whichever is the addressee.
- b. Notwithstanding any other Provision of the Contract, any Contracting Officer's approvals must be received in writing by the Contractor prior to the Contractor taking any action requiring such approval, unless the Contracting Officer specifically exempts, in writing, the Contractor from this requirement.
- c. The Department shall be bound only by Fiscal Intermediary (FI) letters, unless otherwise specified in this Contract. These FI letters represent the Department's direction to the Contractor, are issued by the Contracting Officer, or representative, over the Contracting Officer's signature block and are sequentially numbered. The

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- Contractor shall respond with its own set of sequentially numbered letters issued by the Contractor Representative or designee, which shall bind the Contractor.
- d. The Contractor shall provide twice daily courier service between the Contractor and the Contracting Officer and between the Contractor and Department on-site staff. The Contractor shall provide daily courier service between the Contractor and all report users, who will be designated by the Contracting Officer, within a twenty-five (25)-mile radius of the State Capitol. The Contractor must use a traceable bonded courier service when delivering documents or reports that contain Personal Health Information (PHI) or Personal Confidential Information (PCI) for multiple persons, unless an exemption to this requirement is granted by the Contracting Officer. Reports for users outside the twenty-five (25)-mile radius shall be mailed to them in accordance with requirements of Exhibit A, Attachment II, Operations. However, documents and reports containing PHI or PCI for multiple persons must be sent by traceable bonded courier, regardless of the recipient's proximity to the State Capitol, unless an exemption to this requirement is granted by the Contracting Officer. The Contractor shall be cost reimbursed for postage only. All Contractor reports shall be in hardcopy or via such other media as may be prior-approved by the Contracting Officer. The Contractor and the Department shall respond to each other in five State work days, or a time period which may be shorter or longer, designated by the Contracting Officer.
  - e. All written correspondence received by DHCS after 2:00 PM Pacific Time (PT) will be date-stamped as received the next State work day.

**18. Contractor and Subcontractor Employees**

- a. During the term of the Contract, the Department reserves the right to approve, in advance and in writing, any personnel changes made by the Contractor that address the Contractor Representative, Dental Consultant staff and all other individuals assigned as senior management. Senior management shall be those individuals having direct managerial and administrative responsibility and control for the functional areas described in Exhibit A, Attachments I through IV, Operations. These individuals shall report to the Contractor's Representative. One additional management level may occur between these individuals and the Contractor's Representative. This intermediate manager must report directly to the Contractor's Representative, and be designated as senior management. All additional staff who directly report to the Contractor Representative shall be considered senior management and subject to this Section.
- b. Senior management staff shall be stationed within a twenty-five (25) mile radius of the Contractor facility and the Contractor shall assign these management personnel to work on the Contract full-time. The Contractor shall commit to having those persons named as Contractor Representative or as senior management at time of submission of the Narrative Proposal to remain assigned to the Contract for a period not less than two years, and the Contractor Representative not less than three years, from CED, unless that person leaves the employment of the Contractor, any affiliates and any subcontractors. The Department may waive this requirement if approval is granted in writing to transfer him/her sooner. The Contractor shall replace managers in these positions only upon twenty-five (25) State work days' notice to the

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Department, or such other time interval as may be agreed to in writing by the Contracting Officer.

- c. Any person assigned as a replacement to the Contractor Representative shall be assigned to the Contract for at least two years, with the following exceptions:
  - 1) The person leaves the employment of the Contractor, any affiliates and any subcontractors.
  - 2) There is less than two years remaining in the Contract, in which case the assignment will be until the end of the Contract.
  - 3) The Contracting Officer grants approval in writing.
- d. The Department may disapprove the assignment of an individual to a senior management position in the Contract or demand a person be transferred from a senior management position. The Department will not unreasonably exercise this authority.
- e. Further, the Department shall have the same rights as specified above as to individuals for whom the Department pays hourly reimbursement (i.e. SG staff).
- f. A Contractor or subcontractor employee that has been convicted of a felony or misdemeanor involving fraud or abuse in any governmental program or in connection with the interference with or obstruction of any investigation into health care-related fraud or abuse may, at the Contracting Officer's discretion, be disqualified from work under the Contract. If it is discovered a Contractor or subcontractor employee is under investigation by DHCS or any federal, State or local government law enforcement agency for fraud or abuse, that employee shall be subject to temporary suspension from work under the Contract. An employee who has been temporarily suspended from work may return to work only after receiving written approval from the Contracting Officer.
- g. The Department, at its discretion and consistent with any federal or State laws concerning civil rights, may require the Contractor to submit fingerprints for its employees.

**19. Contractor Certifications**

With respect to any report, invoice, record, paper, document, book of account or other Contract-required data submitted to the Contracting Officer in support of an invoice or document submitted to meet Contract requirements, including, but not limited to, proof of insurance and bonding, Lobbying Certifications and Disclosures, Conflict of Interest Disclosure Statements and/or Conflict of Interest Avoidance Plans, pursuant to the requirements of the Contract, the Contractor Representative or his/her designee shall certify that the report, invoice, record, paper, document, book of account or other Contract-required data is current, accurate, complete and in full compliance with legal and contractual requirements to the best of that individual's knowledge and belief, unless the requirement for such certification is expressly waived by the Contracting Officer in writing.

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Where in the Contract there is a requirement that the Contractor "certify" or submit a "certification", such certification shall be in the form of an affidavit or declaration under penalty of perjury, dated and signed by the Contractor Representative or his/her designee.

**20. Contractor Resource Levels**

During the term of the Contract the State may mandate or experience budgetary constraints which may impact the Contractor and its staff, such as State employee furloughs. The Contractor shall be held to achieving performance-based deliverable requirements during such interruptions.

The Contract requires the Contractor meet all the contractual requirements and responsibilities listed herein. The Contractor shall provide sufficient resources including staff and staff support to fully execute all responsibilities required by the Contract. All Contractor Management staff shall be available between the core hours of 9:00 AM PT to 4:00 PM PT, Monday through Friday, excluding State holidays.

a. Employee Time Reporting

This Provision applies to the Contractor employees invoiced on a fixed price basis. DHCS requires the Contractor to ensure all Contractor staff positions are fully staffed for the term of the Contract, according to the Organizational and Personnel Acquisition Plan approved by the Contracting Officer.

Under no circumstance will the Contractor be paid for vacant Contractor fixed price staff positions listed in Exhibit I, Staffing Qualifications, Exhibit A, Attachments I through IV, SOW, or positions detailed and required elsewhere in the Contract. In all instances where positions are vacant during the term of the Contract, deductions shall be made from appropriate fixed price invoice payments.

The Contractor is required to fill all vacant Contractor fixed price staff positions listed in Exhibit I, Staffing Qualifications, with Department-approved staff in a timely manner. In all instances during the term of the Contract where Contractor fixed price staff positions listed in Exhibit I, Staffing Qualifications, Exhibit A, Attachments I through IV, and elsewhere are vacant greater than thirty (30) calendar days, except during portions of Takeover and Turnover, deductions from the Combined Claim and TAR Document invoice payments (Exhibit B, Attachment 1, Special Payment Provisions) shall be made, pursuant to Exhibit E, Additional Provisions, DHCS Right to Equitable Adjustment, and shall not be less than seventeen thousand five hundred dollars (\$17,500) per month, or portion of a month, for each vacant position.

During Takeover, prior to AOO, where Contractor fixed price staff positions are vacant greater than thirty (30) calendar days, deductions from the Takeover invoice payments shall be made for all vacant Contractor fixed price staff positions following the same process outlined in the paragraph above.

During Turnover, after the transfer of Contractor Operations, where Contractor fixed price staff positions are vacant greater than thirty (30) calendar days, deductions from the final forty-five percent (45%) Turnover invoice payment shall be made for all

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vacant Contractor fixed price staff positions following the same process outlined in this Section above.

Such deductions may include the above-described invoice payment deductions and any proximately-caused damages incurred by the State for work not completed due to the vacant Contractor fixed price staff positions.

b. Hourly Reimbursable Systems Group (SG) Contractor Employees

This Provision applies to SG Contractor employees paid on an hourly reimbursable basis.

- 1) Those Contractor employees designated as hourly reimbursable employees and their supervisors shall work solely on Department-identified and -prioritized work under the Contract, except with the prior written approval of the Contracting Officer. These staff shall not be assigned to any Contractor business proposals, including the re-bid of the Contract, unless authorized in advance by the Contracting Officer in writing. In requesting authorization, the Contractor shall address how the existing workload will be completed during the redirection of staff's time. There shall be no negative impact to the ongoing Contract Operations as a result of the staff's re-direction. The Contractor shall submit the names, resumes and other required identifying information on each hourly reimbursable employee and their supervisors in the form and manner required by the Department. The Contractor must have the Contracting Officer's written approval prior to that individual's assumption of his/her designated duties. Should any change occur in those individuals designated as hourly reimbursable employees due to the re-assignment or transfer of the individual by the Contractor, the Contractor shall provide written notification to the Department twenty-five (25) State work days prior to the change and shall submit all required information on a new, qualified nominee to assume the designated duties at the time of notification, unless the Department grants, in writing, additional time. Should the employee separate his/her employment with the Contractor without advance notice, the Contractor shall provide written notification to the Department of the change within three State work days of notice from the employee to the Contractor. Any time worked by an employee without prior Department approval shall not be payable by the State.
- 2) Under no circumstances shall the Contractor be paid for vacant positions, any leaves of absence including sick leave and vacation or for work performed on functions not specifically authorized in the Contract, except as authorized by the Contracting Officer in writing. Further, the Contractor shall utilize, and make available to the Department, an automated system that records all time each hourly-reimbursed employee works specified by assigned activity as defined in Exhibit B, Attachment I, Special Payment Provisions. This data shall be automatically collected into the automated system and shall have the capability to generate reports and provide electronic access to the Department, to view in a screen format, all hourly-reimbursed positions and employees. For each employee, the system shall automatically gather all billable and non-billable hours by activity, as well as the employee's regular hours worked, leave of absence hours and overtime hours. This automated system shall also provide the capability to allow the Department to download the data and use this data by

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a commercial personal computer (PC) database and/or spreadsheet application. This automated system must be linked to the Contractor's payroll accounting system and to each employee's hours, billable and non-billable hours must reconcile to the Contractor's payroll accounting system. By the tenth (10<sup>th</sup>) State work day of the month following the month worked, the Contractor shall utilize this system to provide the Department with monthly summary reports which summarize the number of hours by employee and overall time spent on each Contract.

- 3) Should the Contracting Officer find an hourly reimbursable employee is failing to provide or perform the designated duties of his/her position in a manner that is acceptable to the Department, the Contracting Officer may, at his/her sole discretion, require the Contractor to provide the employee with specialized training to improve performance or production, transfer the employee from the SG or simply not allow payment for those hours. Should training be required, the Contractor shall submit to the Department a plan to provide such training within ten (10) State work days of the formal written request for review and approval. Under no circumstances shall this "On the Job Training" or "shadowing" be hourly reimbursable under this Contract. All equipment, networks, training facilities, training materials and trainers are to be provided and included as part of Contractor responsibilities and included as part of the fixed price. Should transfer be required, the Contractor shall comply within ten (10) State work days of the request and, also, during that time, shall submit all required information on a new, qualified nominee to assume the designated duties. The Department's discretionary power to require additional training or to require transfer of an hourly reimbursable employee shall not be unreasonably exercised nor shall approval be unreasonably withheld.

c. Published List of Key Personnel

The Contractor shall provide the Department by the fifth State work day of each month an updated list of direct business line phone numbers and business e-mail addresses for senior management and key personnel. The phone list shall include, but not be limited to, the employees in all functional areas described in Exhibit A, Attachments I through IV, Operations. This list shall correlate with the Organization Charts required each month, per Exhibit E, Additional Provisions, Contractor Resource Levels, d., below.

d. Organization Charts

By the fifth State work day of each month, the Contractor shall provide the Contracting Officer with updated organization charts and descriptions showing the location of the CD-MMIS in the Contractor's firm, and organization charts and descriptions for all CD-MMIS Operations areas. The functional responsibilities of each organizational unit, the delegation of responsibilities to CD-MMIS organizational units, organizational decision-making points and unit staffing by classification shall be provided. This list shall correlate with the Published List of Key Personnel required each month, per Exhibit E, Additional Provisions, Contractor Resource Levels, c., above.

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e. Staffing Requirements

The Contractor shall demonstrate its ability to recruit and retain skilled and highly qualified staff and to provide adequate staffing in every phase and/or time period of the Contract. The Contractor shall assure that staffing levels are sufficient to implement all aspects of the work required in the Contract, within timeframes specified within the Contract; and in accordance with the required deliverables and quality and performance standards and measures defined within the Contract.

Any proposed changes to Contractor staff after the first day of Takeover, including, but not limited to, reducing staffing levels, modifying minimum qualifications for a position or modifying position responsibilities must have prior written approval by the Contracting Officer.

f. Definition of Staff

The Contractor shall have described its plan and commitment for fully staffing each phase and/or time period of the Contract as part of its Narrative Proposal response. Included in its Narrative Proposal response the Contractor shall supply a certain minimum number of staff in categories specifically described in the Contract. The Contractor shall assure that all staff meet the minimum qualification requirements, and shall assure that all staff performs the duties required under the Contract as bid.

The Department retains the right to reject any staff scheduling or staff assignments proposed by the Contractor are inconsistent with the requirements set forth in the Contract.

**21. Contractor Responsibilities - General**

a. Cooperation

The Contractor shall cooperate fully with any other contractors that may be engaged by the Department to work on CD-MMIS-related activities.

The Contractor shall cooperate with the Department and any law enforcement authorities in the investigation and documentation of possible fraud and abuse cases or any other possible misconduct related to the Contractor's responsibilities and performance under the Contract.

The Contractor shall cooperate and work collaboratively with DHCS and the successor contractor, to the extent required by the Contracting Officer, during the procurement process for the future CD-MMIS Contract and the transferring of CD-MMIS Operations during the Contracts' Turnover and Takeover periods.

Two weeks after CED, the Contractor shall provide to the Contracting Officer additional sets (one or more volumes) of the Narrative Proposal in printed format and in electronic storage media (one or more volumes), as specified by the Contracting Officer. Each set of the Narrative Proposal shall be submitted as a complete unit.

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The Contractor shall cooperate with the Department, to the extent required by the Contracting Officer, in reproducing the Contract.

b. New Contract Requirements Established by the Narrative Proposal

The Contractor may offer in its Narrative Proposal requirements which exceed general Contract requirements. The more specific requirements contained in the Contractor's Narrative Proposal shall supersede, when approved in writing by DHCS, the Contract requirements for the purpose of measurement of the Contractor's performance and for the use of any legal recourse available to DHCS. Under no circumstances shall requirements that are less specific than Contract requirements be accepted or become a part of the Contract, even if included in the Narrative Proposal.

In the event there are inconsistencies or ambiguities between the Contractor's Narrative Proposal and the Contract, or if the Narrative Proposal does not address Contract requirements, the Contract shall govern over the Contractor's Narrative Proposal.

c. Confidential Information

The Contractor represents and warrants that no program, process, composition, writing, equipment, appliance or device, trade-mark, service mark, logo, idea or any other work or invention of any nature or any other tangible or intangible property whatsoever developed, provided or used by the Contractor or their subcontractors in connection with its performance under this Contract will be considered proprietary and/or confidential in nature to the Contractor without first obtaining the written approval of DHCS.

Public access to any confidential, proprietary, or trade secret information (hereinafter "proprietary information"), which is submitted to DHCS after the award of the Contract shall be governed by the California Public Records Act (PRA) (Government Contract Code (GCC) Section 6250, et seq.).

DHCS will withhold from public disclosure, to the extent permitted by law, any bona fide proprietary information pursuant to the Provisions of GCC Section 6255.

DHCS defines proprietary information for purposes of this Contract as: "Data or materials that the Contractor has identified in a satisfactory manner as being under the Contractor's control and which the Contractor has demonstrated as being of a proprietary nature by reason of copyright, patent or trade secret under the laws of the State of California that are in effect at CED".

Proprietary information submitted to DHCS must be clearly labeled as "confidential" and must be submitted separately. Accompanying the pages designated confidential, the Contractor shall provide full and complete justification indicating the basis on which the claim of confidentiality is based.

DHCS will notify the Contractor in the event a request is made under the California PRA for the release of proprietary information held by DHCS. DHCS will ascertain whether the Contractor's claim the information is proprietary is bona fide and may

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request additional justification from the Contractor. If DHCS determines the claim is bona fide, DHCS shall notify the requester that the information will not be released. If DHCS determines the claim is not bona fide, DHCS shall give the Contractor ten (10) State work day's prior written notice of its intent to release the information. The Contractor shall be solely responsible for seeking judicial relief to protect such information from disclosure and for defending against any attempt by the requester to compel release of the information in court. The Contractor understands and agrees DHCS is not required to take any action in court to protect the information, this being the Contractor's sole responsibility. Further, the Contractor shall be solely responsible for any cost or attorney's fees it or DHCS incurs in connection with litigation related to protection of Contractor's proprietary information. Further, the Contractor shall indemnify and hold harmless the DHCS from any claim or expense whatsoever which may occur as a result of DHCS initially accepting the submitted information as proprietary or of its handling of such information after a request is made for its disclosure.

d. Priority Hiring Considerations

The Contractor agrees it shall give priority consideration in filling vacancies in positions funded by this Contract to qualified recipients of aid under Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the W&I Code, in accordance with Article 3.9 (commencing with Section 11349) of Chapter 2 of Part 3 of Division 9 of the W&I Code.

This Provision shall not be construed to do any of the following:

- 1) Interfere with or create a violation of the terms of valid collective bargaining agreements.
- 2) Require the Contractor to hire an unqualified recipient of aid.
- 3) Interfere with or create a violation of any federal affirmative action obligation of the Contractor for hiring disabled veterans or veterans of the Vietnam era.
- 4) Interfere with or create a violation of the requirements of GCC, Title 2, Division 3, Part 2.8, Chapter 8, Section 12990, implementing the DHCS of California's nondiscrimination laws.

**22. Cost or Pricing**

Notwithstanding the Provisions in the Federal Acquisition Regulation (FAR) dealing with dollar limitations for cost and pricing data, the Contractor shall submit, and shall require subcontractors to submit, cost or pricing data in accordance with CFR, Title 48, Subpart 15.4. Such cost or pricing data shall be submitted on the Change Order Pricing Proposal Form, Exhibit E, Additional Provisions, Attachment I.

- a. Except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public or the price is set by law or regulation as these terms are defined in CFR, Title 48, Subpart 15.4 and in the Contract, cost or pricing data shall be submitted under the following circumstances:

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- 1) Prior to the award of any subcontract the total amount of which is expected to exceed one hundred thousand dollars (\$100,000) when entered into.
  - 2) Prior to the execution of any modification, extension or renewal of any contract, subcontract or Change Order which involves aggregate increases or decreases in cost plus applicable profits which are expected to exceed one hundred thousand dollars (\$100,000) over the contract or subcontract term.
  - 3) Prior to the approval of any Change Order or cost reimbursable subcontract in excess of ten thousand dollars (\$10,000).
- b. Notwithstanding the exceptions set forth above, the Contracting Officer may at his/her option require cost or pricing data should it be his/her determination that to do so is in the best interests of the State.
  - c. The Contractor shall maintain records of purchases made which identify the actual cost paid for items and/or services. In all cost reimbursable areas, the Contractor shall conduct itself as a prudent purchaser in a competitive marketplace.
  - d. The Contractor shall certify (and shall require subcontractors to certify) to the State that to the best of its knowledge and belief, the cost or pricing data submitted under this Provision is accurate, complete and current as of the date of its submittal.
  - e. The Contractor shall insert the substance of this Provision, including this paragraph, in each subcontract hereunder, be it cost reimbursable or non-cost reimbursable, which is expected when entered into to exceed ten thousand dollars (\$10,000) over its term, except when the price thereof is based on adequate price competition, established catalog or market prices on commercial items sold in substantial quantities to the general public or prices as set by law or regulation. These exemptions will apply subject to the discretion of the Contracting Officer based on the individual circumstances involved in a given subcontract.
  - f. If the Contracting Officer determines that any price, including profit or fee, in any contract, including, but not limited to, the Contract, any subcontract to the Contract and/or any Change Order or waiver to the Contract, established or negotiated in connection with the Contract, or any cost reimbursable purchase, item, service or subcontract under this Contract was increased by any significant sums because the Contractor or any subcontractor furnished incomplete or inaccurate cost or pricing data not current as certified in the Contractor's or subcontractor's certification of current cost or pricing data, then such price or cost shall be reduced accordingly by the amount of any excess cost.
  - g. Further, the given pricing agreement, including the Contract, any subcontract to the Contract, and/or any Change Order or waiver to the Contract, shall be modified in writing to reflect the reduction described in the preceding paragraph. Failure to agree on a reduction shall be a dispute concerning a question of fact within the meaning of disputes as defined in Exhibit D(F), Special Terms and Conditions, Provision 15, Dispute Resolution Process (Revised 2/2012).

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- h. Because any given pricing agreement may be subject to reduction under this Provision by reason of incomplete or inaccurate cost or pricing data submitted in connection with certain subcontracts, the Contractor shall include a clause in each subcontract requiring the subcontractor to indemnify the Contractor as appropriate. Failure of the subcontractor to so indemnify the Contractor shall be grounds for DHCS to disapprove the proposed subcontract. It is expected any subcontractor subject to such indemnification will require similar indemnification for incomplete or inaccurate cost or pricing data required to be submitted by its lower tier subcontractors.

**23. Definition of Terms**

Where there is a conflict in terminology, the parties shall first rely on the definitions provided within the Glossary of Terms (see Appendix 4). In the absence of a definition in the Glossary of Terms and/or within the body of the Contract, the parties agree to use the usual and customary meaning of a terminology.

**24. Delegation of Authority**

- a. The Department intends to implement the Contract through a single administrator, herein called the "Contracting Officer," who the Director of DHCS shall appoint. The Contracting Officer may delegate his/her authority to act to an authorized representative through written notice to the Contractor.
- b. The Contractor shall designate a single administrator, herein called the Contractor Representative, who shall be located in the Contractor's Sacramento area facility. The Contractor Representative shall be the Contractor's official responsible for managing the Contractor's Operations. The Contractor Representative shall be empowered to legally bind the Contractor to all agreements reached with the Department, including but not limited to, those related to the data processing center and services.
- c. The Contractor shall designate the Contractor Representative in writing five State work days prior to CED. This delegation is also subject to written approval by DHCS. During the course of the Contract, DHCS reserves the right to approve or disapprove, within twenty-five (25) State work days, any replacement of the Contractor's Representative or an addition of a Contractor Representative delegate. DHCS approval or disapproval shall be conveyed to the Contractor in writing. Such designation shall be submitted to the Department in accordance with Exhibit E, Additional Provisions, Contract Communication.

**25. DHCS Approval of Deliverables**

The Contractor shall submit all deliverables to the DHCS for review as required by the Contract. Acceptance of a deliverable by DHCS does not constitute approval of said deliverable. For those deliverables that require approval pursuant to the Contract, DHCS shall provide its approval or disapproval in writing within ten (10) State work days. For each day the Contractor is late submitting a specific deliverable, or revised deliverable, the Department shall be permitted two additional State work days to review the deliverable. The Department may extend the deliverable review period(s) if there are staffing constraints, or the complexity or size of the deliverable warrants an extension.

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The Contractor shall allow for these turnaround times in its Project Management Plans for implementing or performing required activities and shall assume that the Department shall require corrections or revisions to each deliverable. The Contractor shall have ten (10) State work days to make corrections or revisions to unapproved deliverables. If the Department rejects a deliverable as unacceptable, it shall provide written notification to the Contractor detailing reasons for its disapproval and specifying those items that, if added or modified, will cause the deliverable to be approved and specifying a time period for the Contractor to make corrections. The Contractor shall make required corrections within the time period required by the Contracting Officer.

- a. All written deliverables, as defined in the Glossary, Appendix 4, including Contractor correspondence, received by DHCS after 2:00 PM PT will be date-stamped as received the next State work day.
  - 1) The Contractor shall not be relieved from its obligation to provide deliverables, products or services that meet the specifications of the Contract, FI Letters, Change Orders, Amendments, SDNs, DOILs or any other official letter or other request of DHCS.
  - 2) If the Department's basis for disapproval is a deliverable is determined not to meet the designated specifications, and the Contracting Officer has not otherwise specifically and formally agreed to the variation from the designated specifications in writing by way of an FI Letter or DOIL, the Contractor shall remedy the discrepancy at no expense to the Department. The Contracting Officer's approval of a deliverable shall not be viewed as constituting an agreement to vary specifications unless accompanied by an FI Letter or DOIL, signed by the Contracting Officer, to this effect approving the variation.
- b. Failure of the Contractor to obtain written DHCS approval shall not relieve the Contractor of its obligation to perform Contract responsibilities or to provide required deliverables to the Department.

**26. DHCS Ownership**

The Provisions of this article shall be incorporated in any subcontract which relate to the subject matter of this article.

- a. DHCS owns the CD-MMIS that is used by the FI Contractor and all FI subcontractors under the Contract. The Department's ownership rights shall extend, but not be limited to:
  - 1) All computer software, except as noted below, that have been or will be designed, developed or installed for use in the Contract by the Contractor or any other third-party, including but not limited to, any and all object codes and source codes; any programs developed for claims or TAR processing; data editing and auditing; creating and/or maintaining program and/or data history; report generation; manual data entry; Optical Character Recognition (OCR); computer media billing; status reporting; resource management, including assessment of employee accuracy; and quality control. The Provisions of this paragraph do not apply to systems that relate solely to the Contractor's internal processes, including, but not limited to, personnel, budget or accounting processes;

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- 2) All data files and form designs.
  - 3) All user and Operation manuals and all other documentation, including, but not limited to, examiner manuals, claims processing manuals, reports generated by the Contractor, Medi-Cal policy manuals and financial accounts manuals.
  - 4) All software and hardware were purchased by the Department through Cost Reimbursement.
- b. All Contractor-proposed computer software for the performance of the Contract wherein the Contractor is unable to transfer proprietary rights to the State because it does not hold such proprietary rights, must meet one of the following conditions:
- 1) Be available in the public domain.
  - 2) Be available at established catalog or market prices and licensed or sold to the general public in substantial quantities. An “established catalog or market price” must be printed, published, regularly maintained, current and readily available to a wide number of commercial customers with a large number of the listed items actually being sold at the listed prices. “Sold to the general public in substantial quantities” means the items in the commercial catalog or price list must actually be sold in large enough quantities to show customers are actually paying those prices. To verify this, the Contractor shall assure the company has a reasonable sales volume for its size and prices listed are comparable to those shown in the price lists of other companies in the same business. The sales to the general public shall account for at least fifty percent (50%) of the company’s total sales and at least seventy-five percent (75%) of the sales to the general public shall be at the catalog prices.
  - 3) Be otherwise approved in writing by the Contracting Officer prior to its use under the Contract.
- c. All licenses are to be obtained in the Contractor’s name but must include an option for transferability either to a subsequent Contractor or to the State. This transferability must be demonstrated in writing to the Contracting Officer within twenty-five (25) State work days after AOO. Where a license cannot be re-licensed or transferred, the Contractor shall, if requested by the Contracting Officer, assist the Department in obtaining a license of its own.
- d. All software shall be designed to run on hardware that is sold to the general public in substantial quantities (as defined in Exhibit E, Additional Provisions, DHCS Ownership, b.2).
- e. The Contractor shall not contract with any outside organization for the purpose of processing claims, TARs or any of the activities listed in Exhibit E, Additional Provisions, Waiver of Contract Provisions, using the CD-MMIS without prior written approval of the Contracting Officer. If the Department agrees to license the CD-MMIS for such purposes, the Contractor shall pay an appropriate license fee to the State for such use. The Contracting Officer shall set the fee at a reasonable market price. If such license is approved, the cost associated with integrating the process

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- into the CD-MMIS shall be borne one hundred percent (100%) by the Contractor and shall follow all SDN documentation and approval processes unless the Contracting Officer has previously approved alternative documentation and approval processes in writing.
- f. The State of California owns all documents, communication and materials received by the Contractor from providers and beneficiaries; all documents, materials and reports generated through CD-MMIS processing; and all documents, materials and reports produced by the Contractor from any information, communication or material received from the Department. The Contractor is not permitted to use program data for independent projects without prior written permission from the Contract Officer.
- g. Any Contractor-proposed open source software shall use third-party commercially supported products by more than one supplier having an integrated package with compact disc-read only memory (CD-ROM), documentation and support contracts. Any proposed open source software must be developed with the source code freely available, which allows anyone to use the software and make changes to it as necessary. Any changes to the open source commercially-supported software product shall be made available to the open source community and to the Department using a common methodology for change control unless otherwise approved by the Contracting Officer in writing. All open source solutions must adhere to Exhibit E, Additional Provisions, Inventory and Treatment of Department Property, and Exhibit D(F), Special Terms and Conditions, Provision 10, Intellectual Property Rights.

**27. DHCS Right to Equitable Adjustment**

Whenever the Department is to obtain services, goods, equipment, facilities or capabilities under the Contract, the cost for which is included in the bid price(s) or is cost reimbursable, and the Contractor fails to perform or provide the services, goods, equipment, facilities or capabilities, or substitutes other services, goods, equipment, facilities or capabilities which are not fully equal to those required under the Contract and which are not acceptable to the Contracting Officer, the Department may require the Contractor to correct its performance within a period of twenty-five (25) State work days after written notice by the Contracting Officer to the Contractor specifying the deficiency, or such longer period as may be granted by the Contracting Officer. If the Contractor has failed to correct its performance during this period, the Contracting Officer, at his/her option, may make an immediate and equitable adjustment to recover the cost of services, goods, equipment, facilities or capabilities not provided or performed from administrative payments due the Contractor which stem from the bid price(s), or may implement a cost-savings Change Order. Upon notification from the Contracting Officer, the Contractor shall fully document the change and submit this documentation in writing together with certified cost and pricing data to the Contracting Officer in the time period requested.

This remedy shall be in addition to, and not in lieu of, any other remedy provided to the Department in this Contract or by law.

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**28. Disputes and Appeals**

## a. Notification of Dispute

The Contractor shall meet all time requirements as set forth in Exhibit D(F), Special Terms and Conditions, of this Contract, to notify the Department of any dispute, describing the conduct (including actions, inactions and written or oral communications) which it regards as directing or requiring a change in the Contract terms and conditions. The Notice of Dispute must be filed promptly, but in no event is the filing to exceed sixty (60) State work days from the date of the decision which the Contractor is disputing.

Notwithstanding the submission of a Notification of Dispute, the Contractor shall diligently continue performance of the Contract, including matters identified in the Notification of Dispute, to the maximum extent possible.

The Contractor's written notification shall state, on the basis of the most accurate information then available to the Contractor, all of the following:

- 1) It is a dispute pursuant to Exhibit E, Additional Provisions, Disputes and Appeals.
- 2) The date, nature and circumstances of the conduct which is the subject of the dispute.
- 3) The names, phone numbers, function, and activity of each Contractor, subcontractor, Department/State official or employee involved in or knowledgeable about such conduct.
- 4) The identification of all documents, and the substance of all oral communications involved in such conduct. Photocopies of all identified documents shall be attached.
- 5) The reasons why the Contractor is disputing the conduct.
- 6) The cost impact to the Contractor directly attributable to the alleged conduct, if any, including:
  - a) What Contract line item(s) have been or may be affected by the alleged conduct.
  - b) What labor and/or materials have been or may be added and/or deleted by the alleged conduct.
  - c) To the extent practicable, what delay and disruption in the manner and sequence of performance and effect on continued performance have been or may be caused by the alleged conduct.
  - d) What adjustments to Contract price, delivery schedule and other Provisions are required or have been or may be affected by the alleged conduct.
- 7) If no cost impact is involved, the Contractor's desired remedy.

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b. Waiver of Claims

If the Contractor fails to submit a Notification of Dispute, supporting and substantiating documentation and/or any additionally required information in the manner and within the time specified in this Provision, Disputes and Appeals, such failure shall constitute a waiver by the Contractor of all claims arising out of said conduct, whether direct or consequential in nature, and the Contractor shall not have any further appeal rights, either under this Contract or at law or equity on such claims.

**29. Escrow Bid Documents**

a. Scope

- 1) The winning Proposer shall notify the Contracting Officer with the name and location of an escrow account, within six calendar days after the posting of the Notice of Intent to Award the Contract, or, if a protest to the Notice of Intent to Award is filed, within six calendar days after the protest finding has been declared. The escrow account shall hold a copy of all documentary information developed in preparation of bid prices for this procurement. A meeting between the Contracting Officer or his/her representative, the winning Proposer and the escrow agent shall be held within ten (10) business days following the notification of the escrow name and location. At the meeting the Escrow Bid Documents, in a sealed container, will be provided by the winning Proposer to the escrow agent in the presence of the Contracting Officer or his/her representative. The signed Escrow Bid Documents Certification form, Exhibit E, Attachment II and the Escrow Bid Document Index will, at the same meeting, be provided to the Contracting Officer or his/her representative. This material, known as the Escrow Bid Documents, shall meet the requirements of the RFP Main and Exhibit E, Additional Provisions, Escrow Bid Documents.
- 2) The Escrow Bid Documents of the apparent successful bidder will be held in escrow for the duration of the Contract. All other Proposers not identified in the Notice of Intent to Award shall be prepared to submit Escrow Bid Documents upon request of the Department in the event the Contract is not awarded to the Contractor identified in the Notice of Intent to Award.
- 3) Escrow Bid Documents shall be available for the Department to review, validate and assist in the following circumstances:
  - a) The negotiation for the settlement of claims.
  - b) The resolution of disputes.
  - c) Contract Amendments and Change Order negotiations.
  - d) In the event additional Contract services required of the Contractor are at a level unanticipated by the original RFP.

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- e) In the event that fewer Contract services are required (e.g., a significant reduction in the Medi-Cal program).
  - f) To support the pricing structure in the event of a regulatory agency finding where examination of the pricing structure is required.
  - g) To verify the pricing structure in the Contractor's bid price.
- 4) Escrow Bid Documents will not be used for pre-award evaluation of the bidder's anticipated method of Operations or to assess the Proposer's qualifications for performing the work.
  - 5) The Contractor agrees, as a condition of award of the Contract, that the Escrow Bid Documents constitute all of the information used in preparation of the procurement bid, and that no other procurement bid preparation information will be considered in resolving claims. Nothing in the Escrow Bid Documents shall change or modify the terms or conditions of the Contract.
  - 6) If the Bidder's Proposal is based on subcontracting any part of the work, each subcontractor whose total subcontract price exceeds the lesser of five percent of the total Contract price proposed by the Bidder or two hundred thousand dollars (\$200,000), shall provide separate Escrow Bid Documents to be submitted with those of the Bidder. These Escrow Bid Documents are subject to the same requirements and same examination criteria as the apparent successful bidder.
- b. Ownership and Confidentiality
    - 1) The Escrow Bid Documents are, and will always remain, the property of the Contractor, subject only to joint review by the Department and the Contractor.
    - 2) The Department agrees to safeguard the Escrow Bid Documents, and all information contained therein, against disclosure to the fullest extent permitted by law.
  - c. Format and Contents

Contractors may submit Escrow Bid Documents in their usual cost-estimating format. Escrow Bid Documents shall be adequate to enable complete understanding and proper interpretation for their intended use. Escrow Bid Documents shall clearly itemize the estimated cost of performing the work for each level of work specified in the RFP (e.g., all Takeover activities, Hourly Reimbursed SG, etc.). Items shall be separated into sub-items as required to present a complete and detailed cost estimate and allow a detailed cost review. The Escrow Bid Documents shall include all labor (including monthly salary rate or wage range for each position title), equipment, calculations of rate of production and progress, copies of quotations from subcontractors and suppliers, and memoranda, narratives, consultant's reports, add/deduct sheets and all other information and elements used by the Contractor to arrive at the prices contained in the price proposal. Estimated cost shall be broken down into the Contractor's usual estimate categories such as direct labor, repair labor, material, equipment, equipment operations, expendable materials, materials and subcontract cost as appropriate. Plant and equipment, direct material cost and

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any fixed cost, mixed cost, variable cost and overhead/indirect cost shall be detailed in the Contractor's usual format. The Contractor's allocation of plant and equipment, indirect cost contingencies, markup and other items shall be included.

- 1) All cost shall be identified. For items and sub-items amounting to less than ten thousand dollars (\$10,000), estimated unit cost are acceptable without a detailed cost estimate, providing that labor, equipment, materials and subcontracts, as applicable, are included, and provided that indirect cost, contingencies and markup, as applicable, are allocated.

The breakdown of each cost element shall be appropriate to the element being identified. The price/cost of each element shall be clearly stated, and each cost identified as either a variable, fixed or mixed cost.

- 2) Fixed cost shall identify the asset(s) and state the percentage of usage that applies to the cost element. For example, if the building for the telephone center contains both the telephone center and offices for the management staff of the project, with the telephone center using seventy percent (70%) of the floor space and the management staff using thirty percent (30%) of the floor space, then the fixed cost element of the bid price for the telephone center should show seventy percent (70%) of the building as a fixed price element. Additionally, in the example, the remaining thirty percent (30%) of the building cost would be shown in the overhead cost of the organization.
- 3) All major fixed assets shall include discussion of what effect either the contraction or expansion of the Contract would have on fixed assets, a discussion of how fixed cost might be reduced in the event of a contraction and should identify what volume of expansion might require additional fixed asset(s).
- 4) Any significant asset identified by the Contractor that is shared by or with any project outside the SOW of this Contract shall be clearly documented and shall demonstrate the cost apportioned to the CD-MMIS is appropriate. "Significant asset" shall include any shared asset where the cost represents twenty-five percent (25%) or more of the cost of the total Contract amount for the year or if the total cost to the Contract is greater than one hundred thousand dollars (\$100,000).
- 5) Fixed assets would normally be classified as part of corporate overhead cost shall not be reported. For example, the fixed cost associated with corporate payroll billing might have expenses that would meet the greater than one hundred thousand dollars (\$100,000) clause, however, as a normal and customary expense of overhead this expense shall not be identified separately.
- 6) Corporate overhead shall be based on a rational distribution of corporate overhead expenses, and shall not be disproportional to the Contract.
- 7) Allocated expenses shall not exceed the total actual expense of the allocated expense (allowing for immaterial rounding issues).
- 8) All assumptions shall be clearly stated. The level of detail used to establish all cost elements shown shall be relevant to the significance of the cost identified

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and reflective of the Contractor's estimated cost. A narrative of facts and information shall be included in the Escrow Bid Documents as required cost justification. The narrative shall include an explanation of the general structure, business practices and assumptions made for each cost and shall include or identify any source documentation required to support the narrative.

- 9) Procurement bidding materials provided by the Department shall not be included in the Escrow Bid Documents unless needed to comply with the requirements of this Provision.

d. Submittal

- 1) The Escrow Bid Documents shall be submitted to the escrow agent by the Contractor in a sealed container in the presence of the Contracting Officer or his/her representative. The container shall be clearly labeled on the outside with the Contractor's name, date of submittal, RFP/Contract name and number and the words "Escrow Bid Documents."
- 2) The Escrow Bid Documents shall be accompanied with an Index of the contents of the Escrow Bid Documents. The Index and Exhibit E, Additional Provisions, Attachment II shall be opened and reviewed by the Contracting Officer or his/her representative at the escrow location. If the review of the Index raises concerns with the Contracting Officer or his/her representative, regarding either the contents identified or the degree of disclosure, the Contracting Officer or his/her representative, and the Contractor shall discuss those concerns. Upon joint acceptance that modification is required to the Escrow Bid Documents based on the evaluation and review of the Index, the Contractor shall submit to the escrow agent, in the presence of the Contracting Officer or his/her representative, replacement Escrow Bid Documents containing the required documentation. This modification, if required, shall occur within forty-five (45) calendar days of Contract award.
- 3) The Escrow Bid Documentation Certification (Exhibit E, Additional Provisions, Attachment II) must be signed by an individual authorized by the Contractor to execute the Cost Proposal.

e. Storage

The Escrow Bid Documents shall be placed in escrow for the term of the Contract in an institution acceptable to both the Department and the Contractor. The cost of storage shall be the responsibility of the Contractor.

f. Examination after Award of the Contract

DHCS requires a narrative of facts and information to be included in the Escrow Bid Documents as required cost justification. While these issues may be explained in the normal course of preparing the Escrow Bid Documents, DHCS requires that these points are discussed and explained in writing. In addition to any other information already supplied, the narrative is to explain the general structure, business practices and assumptions made in preparing the Cost Proposal, as

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applicable. Include or identify all source documentation required to support the narrative.

The Escrow Bid Documents shall be examined by both the Department and the Contractor at any time deemed necessary by either the Department or the Contractor to assist in the actions defined in this Provision or as may be mutually agreed. Examination of the Escrow Bid Documents is subject to all of the following stipulations:

- 1) As trade secrets, the Escrow Bid Documents are proprietary and confidential.
- 2) The Contracting Officer and the Contractor shall each designate, in writing to the other party and within a minimum of five State work days prior to examination, representatives who are authorized to examine the Escrow Bid Documents. No other person shall have access to the Escrow Bid Documents.
- 3) Access to the Escrow Bid Documents shall take place only in the presence of duly designated representatives of both the Contracting Officer and the Contractor.

g. Final Disposition

The Escrow Bid Documents shall be returned to the Contractor upon termination of the Contract or at the conclusion of any dispute between the Contractor and the Department, whichever date is later.

**30. Federal Financial Participation and Time Study**

a. Federal Financial Participation

- 1) The CD-MMIS shall comply with the federal MMIS system requirements as described in United States Code, Title 42, Chapter 7, Subchapter 19, Section 1396b(r), and regulations adopted pursuant thereto. Section 1396b(r), its associated regulations and the guidelines to these regulations are made a part of the Contract by this reference. In addition to the federal requirements referenced above, the CD-MMIS also provides enhancements to the federal MMIS. The Contractor is required to support these enhancements, as provided in the Contract.
- 2) The Contractor shall also comply with the State Medicaid Manual (SMM), Chapter 11, Section 1396b(a)(3) which provides increased Federal Financial Participation (FFP) to the Department for the development and operation of a system such as the CD-MMIS. If, through the negligence, error or omission of the Contractor or any subcontractor(s), federal approval is not granted or maintained because of failure to meet federal requirements, the Contractor shall be liable to the State for the difference between the amount of FFP which would have been provided under Section 1396b(a)(3) and Section 1396b(r). For example, the difference between FFP paid at ninety percent (90%)/ten percent (10%) split for DDI and FFP paid at seventy-five percent (75%)/twenty-five percent (25%) split for operating cost and the matching FFP actually provided.

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The Department will determine in writing if the reduction of FFP was caused by the Contractor, or by the State, or was caused by both the Contractor and the State. In the event that the cause of the loss of FFP is shared, the Contracting Officer shall apportion the degree of Contractor fault (stated as a percentage), and the Contractor shall be liable to the State for that percentage of FFP lost, as described in the preceding paragraph. Any such Contractor liability will be offset from payments to the Contractor from the State.

- 3) The Contractor may be required to develop various types of Advanced Planning Documents (APD) for purposes of modifications to the system for increased FFP. If CMS does not approve the maximum allowable FFP due to problems with any APD written by the Contractor or supporting documents supplied by the Contractor (e.g., information is not complete, the APD was not submitted timely, etc.), the Contractor shall be liable for the monetary difference between the maximum allowable FFP and the actual amount of FFP allowed. The Department shall ascertain if the cause for the reduced funding is the responsibility of the Contractor. If determined to be Contractor-caused, the Contractor's payment for system modifications shall be reduced by the dollar amount of FFP reduced by CMS.

b. Time Study

- 1) The Contractor shall perform time studies of all personnel working on enhanced FFP claimable functions, unless waived by the Department. The Contractor will be required to complete two-week time studies (covering a complete pay period) on a quarterly basis. In order to maintain statistical integrity, it is necessary to ensure different two-week time periods are selected throughout the fiscal quarters of each fiscal year. The Contractor shall perform the first time study nine months after the date of Assumption of Claims Processing and quarterly thereafter.
- 2) The purpose of the time study is to determine which, if any, activities being performed by the Contractor's personnel qualify for seventy-five percent (75%) or fifty percent (50%) FFP. The Contractor shall develop a matrix showing each employee classification, listing all activities performed and a time survey document that emulates the matrix. The time study may be in increments of minutes or as agreed upon by the Contractor and the Department for the particular activities being performed by the staff being studied. The Department shall be responsible for attributing seventy-five percent (75%) or fifty percent (50%) FFP to each classification.

**31. Financial Reporting Requirements**

The Contractor shall provide the Contracting Officer with the information described below throughout the term of the Contract.

- 1) A signed statement by the Contractor's Chief Financial Officer certifying the data provided is current, accurate and complete, in accordance with GAAP and in compliance with the established financial criteria and reporting requirements under the Contract.

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2) Annual Accounting Year Information

Annually the Contractor shall submit all of the following:

- a) Annual financial statements, prepared in accordance with GAAP or other industry-appropriate reporting basis, consistent with the prior year or years.
  - b) While financial reports are required of any contractor, independent audited financials are not required of privately held corporations, partnerships or individually owned companies but are preferred.
  - c) Independent audited financials are required for any publicly traded company or parent company if a subsidiary.
  - d) The auditor's letter to management on internal controls, accompanied by the report, certificate or opinion of an independent CPA.
- 3) Copies of proxy notices, financial statements and reports the Contractor may make or has made available to any of its security or policyholders or has been required to file with the Securities and Exchange Commission or similar institutions.

4) Other Information

The Contractor shall provide other such financial information at the request of the Contracting Officer.

5) Required Copies

The Contractor shall provide the Department with two copies of each financial report required by this Provision. If required additional copies may be requested.

6) Requests for Extension

Approval, from the Contracting Officer, of Contractor requests for extension of time limits for the submission of Contractor financial reports required under the Contract shall be requested by the Contractor in writing. Oral requests shall not be approved by DHCS.

7) Center for Medicare and Medicaid Services (CMS) Audits

For the fixed-price portions of the Contract, the Contractor shall provide to the Department and to CMS, for review during CMS audits, a report that includes an annual breakdown of direct labor expenses by position, summarized by Contractor organization (e.g., Provider Relations) and total cost. To assist in these audits, the Contractor shall also provide duty statements for those positions requested by the auditor.

8) Additional Requirements

- a) Whenever, pursuant to the Contract, a financial statement or other report is required to be certified or to be accompanied by the opinion of a CPA, such

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accountant shall be independent of the Contractor and shall be qualified in accordance with the CFR, Title 17, Chapter 2, Section 210.2-01 et. Seq.

- b) Pursuant to the California CFR, Title 28, Article 2, Section 1300.45 (q), the term "generally accepted accounting principles," when used in regard to financial statements, assets, liabilities and other accounting items, means generally accepted accounting principles as used in business enterprises organized for profit. Accordingly, Financial Accounting Standards Board Statements, Accounting Principles Board Opinions, accounting research bulletins and other authoritative pronouncements of the accounting profession shall be applied in determining generally accepted accounting principles unless such statements, opinions, bulletins and pronouncements are inapplicable. Section 501 of the AICPA Professional Standards, in and of itself, shall not be sufficient reason for determining inapplicability of statements, opinions, bulletins and pronouncements.
- c) Whenever the financial statements or reports required pursuant to the Contract are to be reported upon or certified by an accountant other than the accountant certifying the Contractor's most recent filing, the Contractor shall furnish the Department with a separate letter stating whether in the eighteen (18) months preceding the engagement of the new accountant there was any disagreement with the former accountant on any matter of accounting principles or practices, financial statement disclosure or auditing procedure, which such disagreement, if not resolved to the satisfaction of the former accountant, would have caused the accountant to make reference to the subject matter of such disagreement in his/her opinion or report. A principal officer of the Contractor must verify this letter. The Contractor shall also request the former accountant to furnish them with a letter addressed to the Department stating whether the accountant agrees with the statements contained in the letter of the Contractor and, if not, stating the respects in which he/she do not agree. The notification by the Contractor along with the former accountant's letter, if necessary, must be furnished to the Department within thirty-five (35) State work days of the engagement of the new accountant.
- d) The Department may reject any financial statement, report, certificate or opinion (other than certified financial reports) submitted to the Department under the Contract by notifying the Contractor of its rejection and the cause thereof. Within twenty-five (25) State work days after the receipt of such written notice, or such other period as the Contracting Officer may allow, the Contractor shall correct the case of the Department's rejection and submit an amended report.
- e) If any report(s) required under the Contract indicates noncompliance with established financial criteria, a written corrective action plan (CAP) to correct such noncompliance shall be submitted by the Contractor with the report. The plan shall be accompanied by a specified time schedule for the corrective activities and/or actions to be completed.
- f) The Contracting Officer shall have the authority to accept or reject the CAP and/or its time schedule for its implementation and completion, as proposed by the Contractor, as unreasonable or unacceptable. Where the Contracting Officer rejects the CAP and/or the proposed time schedule, the Contracting

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Officer shall notify the Contractor in writing of the reason(s) for such rejection. The Contractor shall have five State work days from receipt of such notice to submit an amended CAP and/or time schedule to the Contracting Officer.

**32. Guaranty Provisions**

If the Contractor is a subsidiary of a corporation or other legal entity, the full and prompt performance of all covenants, additional provisions, terms and conditions, and agreements resulting from this RFP for the term of the Contract shall be guaranteed by that entity in the Contractor's chain of ownership which is publicly traded. This entity shall be known as the Contractor's parent corporation for purposes of the Contract.

The Guaranty shall, at a minimum, include all of the following:

- a. Be made to the Department, in writing, by CED.
- b. Be signed by an official (corporate officer) authorized to bind the guarantor organization.
- c. Accept unconditional responsibility for all performance, financial requirements and obligations of the Contract including, but not limited to, payment of liquidated damages.
- d. Recite "for good and valuable consideration, receipt of which is hereby acknowledged," the GUARANTOR is making the Guaranty.
- e. State the guarantor stipulates that if the Contract is ultimately awarded to the subsidiary, the Department will do so in reliance upon the Guaranty.
- f. State the undersigned corporate officer warrants:
  - 1) That he or she has personally reviewed all pertinent corporate documents, including, but not limited to, articles of incorporation, bylaws and agreements between the parent and subsidiary.
  - 2) That nothing in these documents in any way limits the capacity of the parent corporation to enter into the instant Contract of Guaranty.
- g. Include the following provisions:
  - 1) "The Department need not take any action against the Contractor, any other Guarantor, or any other person, firm or corporation or resort to any security held by it at any time before proceeding against the GUARANTOR.
  - 2) Further, GUARANTOR hereby waives any and all notices and demands which may be required to be given by any other statute or rule of law and agrees that its liability hereunder shall be in no way affected, diminished, or released by any extension of time, forbearance or waiver which may be granted to \_\_\_\_\_, its successor or assignee, and that this Guaranty shall extend to and include all future Amendments, modifications and extensions of the Contract and all future supplemental and other agreements with respect to matters covered by the Contract which the Department and \_\_\_\_\_

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may enter into, with or without notice to or knowledge of GUARANTOR, but GUARANTOR shall have the benefit of any such extension, forbearance, waiver, Amendment, modification, supplemental or other agreement; it being the purpose and intent of the parties hereto that the obligations of GUARANTOR hereunder shall be coextensive with, but not in the excess of, the obligations of \_\_\_\_\_, its successor or assignee, under the Contract."

- 3) "Guarantor agrees that the guaranty shall continue in full force and effect despite any change in the legal or corporate status of the subsidiary, including, but not limited to, its sale, reorganization, dissolution or bankruptcy."
- h. Be presented in terms which the Department, in its discretion, determines will, as a whole, adequately establish the Contractor's financial responsibility.

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

- a. While performing the requirements set forth in this Contract, the Contractor and subcontractor(s) shall be responsible for taking into account the most current requirements of HIPAA of 1996 (reference Public Law 104-191, dated August 21, 1996), as described in Exhibit H, HIPAA BAA.
- b. The Contractor must compensate fully the State the actual damages incurred by the State in the form of administrative penalties applied by Federal authorities for failure of the Contractor to implement and administer the operation of the CD-MMIS and any other Deliverables under the Contract in compliance with HIPAA and other Federal and State confidentiality law requirements. The Contractor must also compensate the State for the actual damages incurred by the State in the form of damages and other costs of litigation awarded through the courts against the State based on legal actions brought in tort for violations of confidentiality arising out of the implementation and administration by the Contractor of the CD-MMIS and any other Deliverables under the Contract. The Contractor must also compensate the State for any payments the State must make under any formal settlement agreed to by the State in settlement of legal actions brought in tort for violations of confidentiality arising out of the implementation and administration by the Contractor of the CD-MMIS and any other Deliverables under the Contract.

**34. Indemnification by Contractor**

This Additional Provision is in addition to Exhibit C, subsection 5 (Indemnification).

The Contractor shall indemnify the State for any claims and losses experienced by the Department, including the payment of claims resulting from a court order in which the Contractor has failed to perform its contractual obligation to provide an expert witness in court as specified in this Contract.

The Contractor shall reimburse the State for any Contractor-caused penalty assessments against the State pursuant to GCC, Title 1, Division 3.6, Part 3, Chapter 4.5, Section 927 and for any Contractor-caused interest payment assessments against the State pursuant to W&I Code, Section 14171.

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**35. Insurance and Bonding**

This Provision sets forth the requirements for insurance and fidelity bonding under the Contract.

As used in this Provision, a third-party carrier means an insurance company and/or bonding company licensed to provide the required insurance lines in the State of California and in the amounts required by the Contract.

**a. Insurance**

- 1) Evidence of the insurance coverage required by this Provision, 3), below, must be submitted to the Contracting Officer prior to CED.
- 2) If the required insurance is not to be provided by a third-party carrier, the Contracting Officer must approve, in writing, any proposed alternative coverage prior to its use under the Contract. Any request to use coverage other than standard insurance from a third-party carrier must be submitted to the Contracting Officer in writing within eight State work days after the Notice of Intent to Award the Contract has been posted, or, if a protest to the Notice of Intent to Award is filed, within eight State work days after the protest finding has been declared. The request shall clearly and fully set out the arrangements proposed and how such arrangements will fully comply with Contract requirements. If this request is not approved by the Contracting Officer, required insurance and bonding from a third-party carrier must be obtained and evidence of coverage submitted to the Department within ten (10) State work days of the denial of approval.
- 3) The Contractor shall provide and maintain, and shall require its subcontractors to provide and maintain, the following insurance during the term of the Contract:
  - a) Worker's Compensation Insurance in accordance with the statutory requirements of the state where work is performed.
  - b) Comprehensive General and Automobile Liability insurance with minimum limits of five million dollars (\$5,000,000) per occurrence for bodily injury and property damage liability combined.
- 4) The State of California shall be named as an additional insured on the policy of insurance, with the exception of the Worker's Compensation Insurance, but only insofar as the activities of the Contract are concerned. The Department will not be responsible for any premiums or assessments on the policy or policies.
- 5) The certificate of insurance must include all of the following provisions:
  - a) The insurer will not cancel the insured's coverage without twenty-five (25) State work days prior written notice to the Department.
  - b) The State of California, its officers, agents, employees and servants are included as additional insured, but only insofar as the Operations under this Contract are concerned.

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- c) The Department will be notified of any failure by the Contractor to pay premiums or any other change in the status or scope of the required coverage.
  - 6) Contractor agrees the above insurance shall be in effect at all times during the term of this Contract. In the event said insurance coverage expires at any time during the term of the Contract, Contractor agrees to provide to the Department within twenty-five (25) State work days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the Contract, or for a period of not less than one year.
  - 7) New certificates of insurance are subject to the written approval of the Department. In the event the performance of the Contract is deemed unacceptable by the State for any reason, the State may, in addition to any other remedies it may have, terminate the Contract in whole or in part.
- b. Bonding
- 1) Evidence of the fidelity bond or other security required by Exhibit E, Additional Provisions, Insurance and Bonding, b.3), below, must be submitted to the Contracting Officer prior to CED.
  - 2) If the required fidelity bonding is not to be provided by a third-party carrier, the Contracting Officer must approve, in writing, any proposed alternative coverage prior to its use under the Contract. Any request to use coverage other than a standard fidelity bond from a third-party carrier must be submitted to the Contracting Officer in writing within eight State work days after the Notice of Intent to Award the Contract has been posted, or, if a protest to the Notice of Intent to Award is filed, within eight State work days after the protest finding has been declared. The request shall clearly and fully set out the arrangements proposed and how such arrangements will fully comply with the RFP requirements. If this request is not approved by the Contracting Officer, required fidelity bonding from a third-party carrier must be obtained and evidence of coverage submitted to the Department within ten (10) State work days of the denial of approval.
  - 3) A fidelity bond or other security shall be maintained by the Contractor and subcontractors for at least five million dollars (\$5,000,000) per loss covering every employee except those classifications of employees as the Contracting Officer may exempt upon proper justification and request by the Contractor. The fidelity bond or other security shall be maintained by the Contractor and subcontractors in a form satisfactory to the Department and must include all of the following conditions:
    - a) Loss, if any, under the bond shall be payable to DHCS.
    - b) All bonds shall provide for twenty-five (25) State work days prior written notice to the Department of the intent to cancel or to make any other change, including, but not limited to, the status, coverage or scope of the required bond or of the Contractor's failure to pay premiums.

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- c) The Department shall not be responsible for any premiums or assessments on the policy.
- d) The policy shall not provide exclusions for the acts of officers.

**36. Inventory and Treatment of Department Property**

In addition to the Provisions regarding Department property set forth in Exhibit D(F), Special Terms and Conditions, Provision 4, Equipment Ownership/Inventory/Disposition, the Contractor shall ensure:

- a. Title to all property furnished by the Department or furnished under the Cost Reimbursement provisions of the Contract shall remain with the Department.
- b. Any property of the Department furnished to the Contractor or any subcontractor shall, unless provided herein or approved by the Contracting Officer, be used only for the performance of the Contract.
- c. The Contractor shall maintain an ongoing inventory of all Department-owned equipment, whether it is intended for Department use or Contractor use, acquired through the Takeover phase of this Contract or purchased through Cost Reimbursement. The Contractor shall utilize a commercial off the shelf (COTS) electronic inventory bar-coding system, which shall identify, log and track all assets by equipment type. The electronic bar-coding system shall be directly connected to the system from all locations where Department-owned equipment is located. All features of the COTS system shall be enabled for use by the Department.
  - 1) The system shall record all of the following information for each piece of equipment:
    - a) Asset Tag Number
    - b) Asset type
    - c) Model
    - d) Manufacturer
    - e) Serial Number
    - f) Site
    - g) Location
    - h) If equipment is owned or leased
    - i) If leased, the lease expiration date and terms
    - j) Owner/lessee (DHCS or Contractor)

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- k) CD-MMIS subsystem(s) or business function it supports
  - l) Quantity
  - m) New or used (age)
  - n) Responsible contact for information
  - o) Date of last audit
  - p) Purchase price
  - q) Useful life expectancy
  - r) Equipment specifications
  - s) Application subsystem where equipment is provisioned
- 2) As required, a legend shall be included with the inventory deliverable. The legend shall define all aliases for the site, location and any other areas where aliases are used.
- 3) The system shall have the capability of tracking transfers of inventory between all office locations involved with the Medi-Cal Dental FI Contract, to include the Contractor's and subcontractor(s)' facilities and all Department offices. The system shall also have the capability of developing reports, sortable by type of equipment, location and date acquired. The system shall have the capability of comparing previous inventory reports with current inventory reports. If discrepancies are determined, the Contractor shall report to the Department the specific reason for the discrepancies. Contractor staff shall have the ability to export all recorded information for each piece of equipment into an Excel spreadsheet. Complete inventory reports shall be provided to DHCS within twenty (20) State work days of the close of each quarter of the State fiscal year.
- d. The Contractor shall be responsible for any loss or damage to property of the Department which results from the negligence or willful acts of the Contractor or any subcontractor or which results from the failure on the part of the Contractor or any subcontractor to maintain and administer that property in accordance with sound management practices. Additionally, the Contractor shall be responsible for any consequential damage to the Department stemming from the loss or destruction of Department property which is caused, in whole or in part, by the Contractor's (or a subcontractor's) willful act(s) or gross negligence. Further, the Contractor shall provide for alternative services/equipment/facilities to fully meet its contractual obligations should Department-owned property be lost or destroyed through the actions or inactions of the Contractor or its agents. Provision of the alternative resources of services/equipment/facilities shall be made by the Contractor with no additional reimbursement or forgiveness from the State in terms of money or time.
- e. Upon the Contractor becoming aware, while exercising reasonable diligence, of the happening of loss of, destruction of or damage to any Department property, held or used either by it or by a subcontractor, the Contractor shall promptly, within twenty-

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- four (24) hours of knowledge of such loss, destruction or damage, notify the Department and shall take all reasonable steps to protect that property from further damage.
- f. The Contractor shall surrender to the Department all property of the Department held either by it or by a subcontractor prior to settlement, or upon completion or termination of the Contract.
  - g. The Contractor shall keep all Contractor-housed equipment in the system in good condition and repair, and shall not commit any waste thereof or permit anything to be done may materially impair the value thereof. The Contractor shall use such equipment only in the ordinary course of its performance hereunder and shall not permit such equipment to be used in violation of any applicable law, regulation or policy of insurance. The Contractor shall ensure that all subcontractors also meet these requirements.

**37. Letter of Credit**

The Contractor shall procure and maintain for the term of the Contract, a five million dollar (\$5,000,000) irrevocable and unconditional Letter of Credit to secure the State against nonperformance by the Contractor. Said Letter of Credit shall be available to the Department two weeks after CED. The Contractor shall notify the Contracting Officer in advance if it is contemplating changing the financial institution that issued the Letter of Credit. The new and all subsequent Letters of Credit, which shall meet all required conditions applied to the first, shall be transmitted to the Contracting Officer before the existing Letter of Credit expires and be effective on or before the date of expiration of the existing Letter of Credit.

**38. Liability for Overpayment**

The Contractor is liable to the Department for unrecoverable overpayments and any associated administrative expenses occurring in any fiscal year up to a maximum amount of ten percent (10%) of the annual Operations price paid to the Contractor under the Contract during the same fiscal year. Unrecoverable overpayments shall be defined as:

- a. Erroneous payments where the collection has been delayed one hundred twenty (120) calendar days because of negligence or inaction by the Contractor.
- b. Erroneous payment for claims paid to a provider who was inappropriately enrolled in the Medi-Cal Dental Program due to system related problems.
- c. Erroneous payments caused by the Contractor where the Department and the Contractor are unable to collect from the provider.
- d. Erroneous payments for claims processed when a beneficiary's eligibility would preclude reimbursement for services through CD-MMIS, e.g., the beneficiary is enrolled in a dental managed care plan.

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**39. Limitation of Liability**

- a. Contractor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to two times the Purchase Price. For purposes of this sub-section a), "Purchase Price" will mean the aggregate Contract price.
- b. The foregoing limitation of liability shall not apply (i) to any liability under Exhibit E, Additional Provisions, Provision 14 entitled "Conformance with Federal and State Statutes and Regulations;" (ii) to liability under Exhibit D(F), Special Terms and Conditions, Section 10, entitled "Intellectual Property Rights" or to any other liability (including without limitation indemnification obligations) for infringement of third party intellectual property rights; (iii) to claims covered by any specific provision herein calling for liquidated damages; (iv) to claims arising under provisions herein calling for indemnification for third party claims against the State for bodily injury to persons or damage to real or tangible personal property caused by Contractor's negligence or willful misconduct; (v) to costs or attorney's fees that the State becomes entitled to recover as a prevailing party in any action; (v) to any liability under Exhibit E, Additional Provisions, Provision 33 entitled "Indemnification by Contractor;" or (vi) to any liability under Exhibit E, Additional Provisions, Provision 37 entitled "Liability for Overpayment."
- c. The State's liability for damages for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to the Purchase Price, as that term is defined in subsection a) above. Nothing herein shall be construed to waive or limit the State's sovereign immunity or any other immunity from suit provided by law.
- d. In no event will either the Contractor or the State be liable for consequential, incidental, indirect, special, or punitive damages, even if notification has been given as to the possibility of such damages, except (i) to the extent that Contractor's liability for such damages is specifically set forth in the Statement of Work or (ii) to the extent that Contractor's liability for such damages arises out of sub-section b)(i), b)(ii), b)(v) or b)(vi) above."

**40. Liquidated Damages**

- a. General
  - 1) It is the policy of the California Legislature to use the liquidated damage provisions in State contracts, as shown by Civil Code, Division 3, Part 2, Title 4.5, Chapter 1, Section 1671(b), Public Contract Code, Division 2, Part 2, Chapter 1, Article 7, Section 10226, and 13 California Law Revision Commission Reports 1740 and 1741. The parties agree that if the Contractor does not provide or perform the requirements referred to or listed in this Contract, damage and harm to the State will result.

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- 2) The maximum amount of liquidated damages payable by the Contractor over any twelve (12) month period is seven million, three hundred thousand dollars (\$7,300,000).
  - 3) The Department will notify the Contractor in writing of its intent to assess liquidated damages five calendar days before taking action.
  - 4) In the event of cascading Contractor failures resulting from a single failure subject to liquidated damages, the Department will be entitled to assess the highest single liquidated damage only.
  - 5) The Department may, at its discretion, offset liquidated damages from payments due under this Contract to the Contractor or require direct payment from the Contractor to the Department. The parties agree the damages provided for under this Provision are difficult to establish and the Contractor shall pay the amounts set forth in this Provision of the Contract as liquidated damages and not as a penalty.
  - 6) Liquidated damages shall not be assessed if the Contractor's delay or failure to timely perform its obligations was caused by factors beyond the reasonable control and without any material error or negligence of the Contractor, its staff or subcontractors.
  - 7) If a Contractor delay or failure to timely perform an obligation under the Contract was caused, in part, by a DHCS failure to perform an obligation under the Contract, liquidated damages will be apportioned in an amount proportionate with the Contractor's culpability, as determined by the Contract Officer, for the delay or failure to timely perform.
  - 8) If a Contractor delay or failure to timely perform an obligation under the Contract was caused, in part, by the ASO Contractor's failure to perform an obligation under the Contract, liquidated damages will be apportioned in an amount proportionate with each Contractor's culpability, as determined by the Contract Officer, for the delay or failure to timely perform.
  - 9) Nothing in this Provision shall be construed as relieving the Contractor from performing any other Contract duty not listed herein, nor is the Department's right to enforce or seek other remedies for failure to perform any other Contract duty hereby diminished.
- b. Liquidated Damages Categories
- 1) Takeover

The Contractor shall complete in a timely manner all Takeover preparations; install the CD-MMIS, complete system testing and pass acceptance testing as required in Exhibit A, Attachment I, Takeover, Section 37.

Liquidated Damages: If the Contractor fails to timely start Operations as required in Exhibit A, Attachment I, Takeover, Section 37, the Contracting Officer may impose liquidated damages of twenty thousand dollars (\$20,000) per calendar

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day for each calendar day the Contractor delays the start of CD-MMIS Operations.

2) Turnover Responsibilities

Beginning with Turnover, the Contractor shall provide or perform the Turnover requirements as set forth in Exhibit A, Attachment IV, Turnover/Runout Requirements.

Liquidated Damages: If the Contractor does not provide or perform the above Turnover requirements, the Contracting Officer may impose liquidated damages of five thousand dollars (\$5,000) per calendar day for each requirement the Contractor fails to provide or perform.

3) Claims, NOA's and TAR's Cycle Times

Contractor is responsible for timely adjudication of all Claims, Treatment Authorization Requests (TAR's) and Notice of Authorizations (NOA's) pursuant to Exhibit A, Attachment II, Section D.19 (Cycle Time Requirements).

Liquidated Damages: If the Contractor does not comply with the above Cycle Time Requirements, the Contracting Officer may impose liquidated damages of twenty-thousand dollars (\$20,000) per month for each month the Contractor is not compliant with Cycle Time Requirements.

4) Claims, TAR and CIF Document Scanning

All claims, TARS, CIFS, and contract related documents must be scanned into the system, assigned control numbers, and forwarded to the ASO Contractor within twenty-four (24) hours of receipt of the document.

Liquidated Damages: If the Contractor does not scan, assign control numbers and forward one hundred (100%) of the total documents received to the ASO Contractor, the Contracting Officer may impose liquidated damages of twenty thousand dollars (\$20,000) per calendar day for each instance where one hundred percent (100%) of the documents are not entered within twenty-four (24) hours.

5) Main Frame System Capacity Requirements

The contractor must maintain at all times the system capacity to operate CD-MMIS in its entirety without interruption, except for scheduled down-time, and meet all operational requirements and process all claims and transactions in a timely manner. The following are indications that the system is operating outside acceptable performance boundaries:

- a) Delays or interruptions in the operation of CD-MMIS and related services caused by inadequate equipment or processing capacity.
- b) CD-MMIS system components not available for use by State or Contractor staff as required except for scheduled maintenance.

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- c) Inability to adjudicate to a paid, denied, or suspended status, all claims received by the Contractor within one business day of receipt.
- d) Screen response time in excess of three seconds.
- e) Web Portal not available for use at all times except for scheduled downtime.

The Contractor shall be required to notify the State immediately upon identification of an error.

Liquidated Damages: The Contracting Officer may impose liquidated damages of twenty thousand dollars (\$20,000) per calendar day per system. The Contractor must maintain the system capacity to complete all jobs in a scheduled cycle. The processing cycle must be completed each night to allow the system to be available each morning by 7:00 AM Pacific Time, for inquiry and update.

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6) Timely Payment Requirement

The Contractor is responsible for producing, printing and distributing weekly payment to Medi-Cal dental providers in a timely manner. This includes Direct Deposit transactions Via Electronic Funds Transfer (EFT) and producing and mailing paper checks as required by Exhibit A, Attachment II, Claims Processing Subsystem. The Contractor is required to mail checks and process EFT transactions within twenty-four (24) hours after the State provides the Contractor funds for the weekly check write process, or such longer period as authorized by the Contracting Officer.

Liquidated Damages: The Contracting Officer may impose liquidated damages of twenty thousand dollars (\$20,000) per calendar day for each calendar day provider payment(s) are delayed. This includes failure to process EFT transactions or a delay in producing and mailing checks.

~~6)7)~~ Timely Payment File transmission to State Controller Office Requirement

The Department intends to transfer responsibility for issuing provider payments to the State Controllers Office (SCO). When the transfer of responsibilities is complete, the Contractor will be responsible for the electronic transfer to the SCO of all files necessary for the SCO to produce and issue provider payment as required by Exhibit A, attachment II, Claims Processing. The Contractor is also required to correct within twenty-four (24) hours, or such longer period as authorized by the Contracting Officer, all errors in payment files that result in the SCO's inability to use the files to pay claims.

Liquidated Damages: The Contracting Officer may impose liquidated damages of twenty thousand dollars (\$20,000) per calendar day for each calendar day a payment file is undelivered to the SCO or for each calendar day a payment file remains uncorrected or the corrected payment file is not delivered to the SCO.

~~7)8)~~ Document Management System Availability.

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Pursuant to Exhibit A, Attachment II, Section J.4.e, Contractor must ensure that the Document Management System is available seven days per week, twenty-two (22) hours per day, and has a maximum unscheduled downtime of one-half hour per week.

Liquidated Damages: If the Contractor does not provide the above system availability requirements, the Contracting Officer may assess liquidated damages of five hundred dollars (\$500) for each hour the Contractor fails to provide the required availability.

#### ~~8)9)~~ 9) Reports

During the Contractor's Operations Phase, reports must be produced in the format and type of media approved by DHCS. The Contractor shall be responsible for the accuracy of all reports, including calculations and completeness of data used as input. The data definitions and report requirements will be defined during Takeover. Descriptions, timing, and reconciliation of on-line and Data Warehouse reports will also be finalized. The State shall notify the Contractor, in writing, of any inaccuracies or discrepancies.

The Contractor shall deliver a notification specifying a new report's availability for users defined within the report distribution list. The report distribution list will be further defined by the State during Takeover. The Contractor shall be required to update and maintain the report distribution list during the Operations Phase to incorporate any changes to existing reports as part of its contracted services to DHCS. At a minimum, the Contractor shall be required to produce reports and publish them to their appropriate server or on-line location according to the following schedule:

Liquidated Damages: The Contracting Officer may assess liquidated damages of two-hundred fifty dollars (\$250) for each State work day, or part thereof that any report is delivered late. If a report containing incorrect information is not corrected within ten (10) State work days of DHCS' notice of failure to meet the reporting accuracy requirements, then up to two hundred fifty dollars (\$250) per State work day damages may be assessed for each report that has been identified as inaccurate from the date of the notification until the date the corrected report is delivered. These damages are cumulative, such that a late and inaccurate report will be subject to an assessment for lateness and an assessment for inaccuracy.

#### ~~9)10)~~ 10) Documentation Requirements

Pursuant to Exhibit A, Attachment II, Section N, the Contractor is responsible for providing to DHCS complete, accurate, and timely system, user and provider documentation of the operational CD-MMIS. Such documentation must be produced according to the specifications described in Exhibit A, Attachment II, Section N. In addition to the required hard copies, the CD-MMIS documentation will be maintained on the Contractor's Web Portal.

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One copy of updated documentation and on-line documentation must be provided to the State in final form within sixty (60) calendar days prior to the Assumption of Operations.

The Contractor must update documentation with all modification and modernizations that are made to the system after the initial delivery of the documentation. One copy of the updated documentation must be provided to DHCS in final form with within thirty (30) calendar days of the Contracting Officer's approval of the implementation of the change. Online documentation must be posted within three State work days of the Contracting Officer's approval of the documentation.

Liquidated Damages: The Contracting Officer may assess liquidated damages of two hundred fifty dollars (\$250) for each State work day that complete documentation is not submitted or is unacceptable to DHCS.

~~10)~~11) Operations Invoicing

Pursuant to Exhibit B, Attachment I, Section 3.I., the Contractor shall submit Operation invoices to DHCS on or before the seventeenth (17<sup>th</sup>) State work day of each month.

Liquidated Damages: The Contracting Officer may assess liquidated damages of two hundred fifty dollars (\$250) for each State work day that any of the invoices described above are delivered late.

~~11)~~12) Annual Plan Requirements

Pursuant to Exhibit E, Additional Provision 6, the Contractor is required to submit various plans, and/or updates to plans, annually during the course of Operations. These plans include, but are not limited to, the following: (i) Quality Management Plan, (ii) Quality Assurance Plan, (iii) Security and Confidentiality Plan, (iv) Business Continuity Plan, (v) Training Plan, (vi) Systems Group Training Plan, (vii) Cost Reimbursement Plan and (viii) System Strategic Plan. Unless otherwise stated in the contract, these plans, and updates to these plans, shall be submitted to DHCS by December 31<sup>st</sup> of each year of Operations.

Liquidated Damages: The Contracting Officer may assess liquidated damages of five hundred dollars (\$500) for each State work day that any of the Annual Plans, and/or updates to the Plans, described above are delivered late.

~~12)~~13) Change Requirements \*\*

- a) Liquidated damages as set forth in the following payment reduction factor will be assessed to Contractor upon failure to meet the functions associated with the Change Requirements as specified in Exhibit A, Attachment III. The following schedules will be used to assess liquidated damages and shall be cumulative unless otherwise indicated:

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- i. Failure to correct a system problem or complete a system change within the agreed upon completion date, where failure to complete was not due to the action or inaction on the part of DHCS:
  - a. Greater than one and less than thirty-one (31) calendar days late, five hundred dollars (\$500) per calendar day.
  - bi. Greater than thirty (30) and less than sixty-one (61) calendar days late, one thousand dollars (\$1000) per calendar day.
  - c. Greater than sixty (60) calendar days late, two thousand dollars (\$2,000) per calendar day.
- ii. Failure to implement a system change within the agreed upon completion date, where the failure to complete was not due to the action or inaction on the part of DHCS:
  - a. Greater than one and less than thirty-one (31) calendar days late, five hundred dollars (\$500) per calendar day.
  - b. Greater than thirty (30) and less than sixty-one (61) calendar days late, one thousand dollars (\$1000) per calendar day.
  - c. Greater than sixty (60) calendar days late, two thousand dollars (\$2,000) per calendar day.
- iii. Failure to submit a project deliverable within the agreed upon due date, where the failure to submit was not due to the action or inaction on the part of DHCS:
  - a. Greater than one and less than thirty-one (31) calendar days late, two hundred and fifty dollars (\$250) per calendar day.
  - b. Greater than thirty (30) and less than sixty-one (61) calendar days late, five hundred dollars (\$500) per calendar day.
  - c. Greater than sixty (60) calendar days late, one thousand dollars (\$1000) per calendar day.

The Contractor's performance will be measured by the Contracting Officer and CO reports and by direct measurement by OHCA.

c. Interest on Pending Liquidated Damages

- 1) Once the Department has determined liquidated damages are to be assessed, the Contracting Officer shall notify the Contractor in writing of the reason for and the amount of the assessment(s). The assessment notice shall be sent to the Contractor by certified mail, return receipt requested, or by any other method which provides evidence of receipt. At the Contracting Officer's discretion, the assessment notice may direct payment of the assessment by the Contractor. If payment is thus directed, the Contractor shall pay the assessment within twenty-five (25) State work days of receipt of the assessment notice

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- 2) Any liquidated damages assessment may also be collected, at the Contracting Officer's discretion, by offsetting the funds from payment(s) due the Contractor after the date of assessment.
  - 3) If it should later be determined in the disputes process that funds collected by the State to pay liquidated damages assessment should be refunded, the State shall pay interest accruing from the date of offset or collection. The interest rate paid shall be the average rate for investment in the Pooled Money Investment Fund (PMIF) in effect for the month in which the assessment was offset or otherwise collected. When a liquidated damages assessment is offset or otherwise collected over a period of two or more months, the interest rate paid by the State shall be the average rate for investment in the PMIF in effect for the first month in which the assessment was offset or otherwise collected, revised quarterly for the period of time the assessment was retained by the State.
  - 4) The Contractor shall pay interest to the State on all liquidated damages assessments which are not either paid or offset against payment due the Contractor within twenty-five (25) State work days of the date of receipt of the assessment notice. The interest rate paid shall be the average rate for investment in the PMIF in effect for the month of assessment. If the Contractor's continuing liability for one particular liquidated damages assessment extends over a period of two or more months, the interest rate shall be the average for investment in the PMIF for the first month in which liquidated damages were assessed, revised quarterly over the period the assessment remained uncollected.
  - 5) Interest accrues during all periods of time in which the liquidated damages assessment is unpaid or otherwise uncollected. For instance, interest accrues during periods in which collection of the assessment has been suspended, pending the outcome of the dispute or appeal.
  - 6) If a reduction in the final amount of liquidated damages is finally determined, the interest shall be prorated unless impractical to do so.
- d. Conditions for Termination of Liquidated Damages
- 1) Except as waived in writing by the Contracting Officer, no liquidated damages imposed on the Contractor shall be terminated or suspended until the Contractor issues a written notice of correction to the Contracting Officer certifying the correction of condition(s) for which liquidated damages were imposed, and until all Contractor corrections have been subjected to adequate system testing or other verification at the written approval of the Contracting Officer. Liquidated damages shall cease on the day of the Contractor's certification only if subsequent testing of the correction establishes that, indeed, the correction has been made in the manner and at the time certified by the Contractor.
  - 2) The Contracting Officer shall determine whether the necessary level of documentation has been submitted to verify corrections. The Contracting Officer shall be the sole judge of the sufficiency and accuracy of any documentation. Corrections shall be sustained for a reasonable period of at least sixty-five (65)

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State work days from DHCS acceptance; otherwise, liquidated damages may be re-imposed. The Contractor's use of resources to correct deficiencies will not be allowed to cause other Contract compliance problems.

e. Severability of Individual Liquidated Damages Clauses

If any portion of these liquidated damages Provisions is determined to be unenforceable, the other portions shall remain in full force and effect.

**41. Location of Contractor's Facilities**

- a. At no time shall any activities relating to this Contract be performed outside the continental United States. The Contractor is required to perform all work specified in the Contract and to acquire facilities in accordance with contractual requirements, within a twenty-five (25) mile radius of the State Capitol building in the Sacramento area. This twenty-five (25) mile radius shall be calculated not by direct line miles but by actual miles to be driven in a car. Exempt from the twenty-five (25) mile radius requirement are the Contractor's computer data center and data center help desk, which can be located within the continental United States. The Contractor shall be required to have this facility fully installed within the timeframe specified in Exhibit A, Attachment I, Takeover. However, beginning with Contract CED, all required CD-MMIS Takeover activities shall take place within the twenty-five (25) mile radius, except for the following exclusions:
- 1) Activities of system analysts and programmers actually related to the installation of the CD-MMIS during Takeover. All of the Contractor's Department/State liaison activities shall take place in Sacramento. Further, Contractor employees with first-hand knowledge of the system design, development, installation or modification, system documentation, program specifications, manual processes, deliverable development, and/or system testing, shall be made available to the Department for liaison activities in Sacramento. Once Contractor systems testing or Department acceptance testing begins, all further work on systems transfer of the CD-MMIS shall be performed at the Sacramento facility.
  - 2) The Contracting Officer may grant further exemptions with prior written approval.
- b. The Department shall have the irrevocable right to lease the processing facilities utilized in performance by the Contractor under the Contract beginning at the end of Contract Operations, or in the event of termination under Exhibit E, Additional Provisions, Termination, and Exhibit E, Additional Provisions, Term of the Contract, for a term of up to six years. The Department and the Contractor agree to negotiate in good faith to develop and agree to lease terms and conditions. The rental for the facilities shall not exceed the fair market rent for comparable facilities in the same geographic area as determined by DGS.
- c. No other uses are to be allowed within the Program Operations facilities and/or space without the Department's prior written approval. The Operations space can be on separate floors as long as the floors are connected by a stairwell and elevator (e.g., first and third floors). In the event any Contractor facility and/or space within the facility used for this Contract is no longer needed and/or DHCS has granted prior

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written approval by the Contracting Officer to utilize this space for work outside the scope of this Contract, the Contractor shall provide equitable adjustment to DHCS.

- d. The Contractor shall assure the State that the Contractor complies with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. Chapter 126, 12101 et seq). The website for the State of California access requirements for individuals with disabilities is based on Title 24 of the CCR.
- e. The Contractor's facilities shall comply with existing State and local building codes. Facilities shall comply with equipment vendor requirements for temperature, humidity and cleanliness. Any identified sources of potential equipment malfunction shall be eliminated.
- f. The Contractor shall maintain a current certificate of occupancy for each facility housing State employees and/or equipment necessary to fulfill Contract requirements. This certificate of occupancy shall be issued at least annually by the local fire department or a contractor licensed to issue such a certificate. The Contractor shall provide DHCS a copy of the certificate upon request.
- g. All Contractor facilities utilized under the Contract shall adhere to the requirements found in Exhibit A, Attachment II, Operations, Security and Confidentiality. \*

**42. ~~Force~~\* Majeure**

Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from causes beyond the control and without the fault or negligence of the Contractor.

Examples of such causes include, but are not limited to:

- a. Acts of God or of the public enemy; and
- b. Acts of the federal or State government in either its sovereign or contractual capacity.

If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform.

**43. Media Releases**

The Contractor shall make a detailed and thorough review of any information, promotional materials, media release or advertising proposed to be released by it, or any subcontractor, prior to release. The Contractor's review shall insure at least, but not be limited to, the accuracy of terminology, numerical totals and statistical conclusions. The Contractor or any subcontractor shall make no release without the prior written approval of the Contracting Officer. This Provision shall apply to any release that relates to the Contract and Contractor's performance under the Contract, any aspect of dental services or payment by the Department, or any DHCS program.

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**44. Non-Restrictive Employment Practices**

Subject to Exhibit E, Additional Provisions, Conflict of Interest, Incompatible Activity of Contractor and Employees, the Contractor shall not prevent any Contractor employee, other than those designated as senior management, from being employed by DHCS or any successor contractor. The Contractor shall fully cooperate with DHCS and the successor contractor in placing employees assigned to the Contract with the successor Contractor.

The Contractor shall include the requirements of this subsection in all subcontracts.

**45. Notice of Delay**

Whenever the Contractor has knowledge of an actual or potential issue that threatens to delay timely, accurate or required performance of the work under the Contract (including, although not limited to, labor disputes), the Contractor shall immediately, upon awareness, verbally notify the Contracting Officer within twenty-four (24) hours. Additionally, notice of such an issue shall be provided to the Contracting Officer in writing, detailing all known information. A CAP must be provided to the State within ten (10) State work days of the initial notice. The Contractor shall require such notice from all subcontractors and the requirement shall be placed into the language of each subcontract. Such notice does not relieve Contractor of its contractual obligations.

**46. Notification of Claims**

The purpose of this Provision is to obtain prompt reporting of Department conduct that the Contractor believes will result in or require a change to the Contract.

**a. Contractor's Notice**

Except for Change Orders issued by the Contracting Officer in accordance with Exhibit E, Additional Provisions, Change Orders, the Contractor shall promptly notify the Contracting Officer in writing of Department conduct (including actions, inactions and written or oral communications) which it regards as directing or requiring a change in the Contract terms and conditions.

Notification must be made within forty (40) State work days from the date the Contractor is issued a SDN or other change instrument. In all other cases the notification date shall not exceed eleven (11) State work days from the date the Contractor is informed or otherwise becomes aware, of such conduct.

**b. Notice Information**

The Contractor's notice shall be in a form prescribed by the Contracting Officer and shall state, on the basis of the most accurate information then available to the Contractor, the following:

- 1) The claim is made pursuant to this Provision.
- 2) The date, nature and circumstances of the conduct regarded as a change.

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- 3) The names, function, and activity of each individual, Contractor, subcontractor, Department official, or employee involved in or knowledgeable about such conduct.
- 4) The identification of all documents and the substance of all oral communications involved in such conduct. Copies of all identified documents shall be attached.
- 5) The reason why the Contractor believes that the conduct justifies an adjustment to price or performance schedule elements of the Contract.
- 6) The particular elements of Contract performance for which the Contractor may seek an equitable adjustment under this clause, including:
  - a) The Contract line item(s) have been or may be affected by the alleged change.
  - b) The labor or materials or both that have been or may be added and/or deleted by the alleged change.
  - c) To the extent practicable, the delay and disruption in the manner and sequence of performance and effect on continued performance that have been or may be caused by the alleged change.
  - d) The adjustments to Contract price, delivery schedule and other Provisions affected by the alleged change as estimated.
  - e) The Contractor's estimate as to the date by which the Department must respond to the Contractor's notice in order to minimize cost, delay or disruption of performance.

Following submission of the required notice, the Contractor shall continue performance of the Contract (including matters identified in the notice).

c. Contracting Officer Decision

The Contracting Officer shall promptly and in any case within twenty-five (25) State work days after the receipt of notice from the Contractor as provided for in this Provision, respond in writing. The Contracting Officer's response shall include one or more of the following:

- 1) Indicate whether the conduct of which the Contractor gave notice constitutes a basis for adjustment to the price or performance schedule of the Contract, and where necessary, direct the manner of further performance.
- 2) Countermand any action or communication given earlier relating to the conduct of which the Contractor gave notice.
- 3) Deny the conduct of which the Contractor gave notice constitutes a basis for adjustment to the price and/or performance schedule of the Contract, and where necessary, direct the manner of further performance.

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- 4) If the information in the Contractor's notice is inadequate to permit a decision to be made under Notification of Claim, Sections C.1), C.2), or C.3) above, advise the Contractor as to what additional information is required and establish how that information should be furnished. The Contractor shall have twenty-five (25) State work days to respond in writing to the Contracting Officer's request for further information. Upon receipt of this additional information, the Contracting Officer shall have twenty-five (25) State work days to respond in writing with a decision.
- d. Notice Confirmation
- 1) If the Contracting Officer confirms that the conduct provides a basis for an adjustment in the Contract price or performance schedule of the Contract, or both, the Contracting Officer shall issue a Change Order, or negotiate a Contract Amendment, and the parties shall proceed in accordance with Exhibit E, Additional Provisions, Change Orders, or Exhibit E, Additional Provisions, Amendment Process, as applicable. Any payment adjustment shall be computed as of the date of the Notification of Claim or upon date of delivery of additional information pursuant to Notification of Claim, Section C.4) above.
  - 2) If the Contracting Officer denies that the conduct constitutes a basis for an adjustment in price and/or performance schedule, the Contracting Officer shall issue a final decision to this effect and the Contractor may proceed in accordance with the Exhibit E, Additional Provisions, Disputes and Appeals. The above "final decision" is final and conclusive, unless a Notice of Appeal is timely filed.
- e. Contractor Waiver
- If the Contractor fails to submit a notice in the manner and within the time frame specified above, such failure shall constitute a waiver by the Contractor of all claims arising out of said conduct, whether direct or consequential in nature, and the Contractor shall not have any appeal rights, either under this Contract or at law or equity, on such claims.
- f. Unsupported Claims
- If the Contractor is unable to support any part of its claim and it is determined that such inability is attributable to misrepresentation of fact or fraud, including failure to provide sufficient information known to the Contractor, the Contractor shall be liable to the State for all cost attributable to the cost of reviewing said part of the claim.

**47. On-Site Audit and Monitoring Staff**

The Contractor shall provide, through the term of the Contract, adequate facilities for federal and State staff at the Contractor's place(s) of business, including the following, no later than the Contract timeframe specified in Exhibit A, Attachment I, Takeover.

- a. Facility must confirm to all applicable most current federal, State and local laws.

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- b. Separate space for Department monitoring and change management staff, not to exceed thirty five (35) people.
- c. Sufficient square footage to accommodate the above staff and necessary equipment. This space shall be in a contiguous location adjacent to the main CD-MMIS processing area and on the same floor as the Contractor Representative. This shall include space for up to five private offices, one conference room with the ability to conduct teleconferencing and videoconferencing, a break-room area of at least two-hundred (200) square feet, a two hundred (200)-square foot room for a PC and equipment, with appropriate cooling facilities, a four hundred (400)-square foot room for storage and supplies and a sixty (60)-square foot "quiet room." All these rooms shall be equipped with locks and all entrance doors to this area shall be equipped with keycard locks.
- d. A keycard system is required for entrance to all Department staff-designated areas. All entrance doors to the Department-designated areas shall have a keycard system that does not require the use of the keycard during normal business hours (as determined by the Department), but will restrict and/or record access of staff entering before and after hours. Access information shall be maintained for a minimum of twenty (20) State work days and shall be provided to DHCS upon request within one State work day.
- e. Private offices which shall have a method for providing natural lighting from the outside.
- f. Space for up to five additional federal and/or State audit staff on a temporary, as-needed basis. Equipment necessary to perform these audit activities, such as desks, chairs, telephones, use of duplicating equipment, etc., shall be provided as well.
- g. Access to available Contractor parking space to provide free parking space for all federal and State monitoring and auditing staff, as well as four designated State visitor spaces, and one designated DHCS-only parking space. If the Contractor has designated parking for its managers, then designated parking must be available for Department on-site managers, adjacent to the space provided for Contractor management staff. Additionally, reasonable accommodation shall be made for parking for disabled federal and State staff as the need arises. Department employees shall have the same access to parking facilities as the Contractor employees.
- h. Access to and provision of required support services for State Operations such as:
  - 1) Electric outlets, two for each Department staff desk location and sufficient others as are required by the State, including dedicated lines for Department equipment; data lines, both power and communication, one for each Department desk location; printer cables at the Department's option; connect printers to the Contractor's computer data center, PC hookups for each Department staff person, and access to Contractor duplication equipment (the use of duplication equipment to be cost reimbursable).

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- 2) The Contractor shall provide janitorial and maintenance services and restroom availability for on-site accommodations and for the staff.
  - 3) At least two restrooms (one designated for men, and one for women) to include adequate showers, a locker room and changing facilities to accommodate at least ten (10) staff each. Ensure all restrooms are to be sufficiently heated and cooled, and have at least four electric outlets in each area for use by staff.
- i. In addition to the above items, which are part of the fixed price, the Department may require the Contractor to provide modifications to this facility through the Cost Reimbursement provisions, such as the addition and/or installation of walls, partitions, modular furniture, any telecommunication links to the State data centers, and other equipment, services and monitoring tools for the Department to use for monitoring the Contract.
- j. The Contractor shall meet the requirements of the Contract for ten (10) temporary on-site Department staff during the Takeover Period of the Contract, commencing two weeks after CED (or at a date to be determined by both the Contracting Officer and the Contractor).
- 1) The Takeover on-site staff shall be housed immediately adjacent to Contractor staff working on transition activities. These staff shall be provided with the following: desks, chairs, storage cabinets (e.g., bookcases); access to duplication equipment and lunch/break/restroom facilities; tables; two locking file cabinets; at least two private offices; one conference room; multiple electrical outlets; telephone hookups to the Contractor's telephone system (at least one for each Department staff workstation and one for each private office); PC network cabling (one for each Department staff workstation and one for a network printer) and four dedicated electrical lines; and partitions sufficient to create staff workstations for each two Department staff. At least eighty (80) square feet of space shall be allotted for each Department staff person.
  - 2) Janitorial and maintenance service shall be provided in the Department work area during this time period.
  - 3) This temporary space shall be available within two weeks of CED and shall remain available for the remaining duration of Takeover, either in the Contractor's temporary facilities, if and when the Contractor uses a temporary facility, or in the Contractor's permanent facilities. When permanent facilities are available, the Contractor shall move the Takeover staff to these facilities. This move will be paid by Cost Reimbursement. Further, any verifiable long distance calls made by Department staff on the Contractor's telephone system shall be cost reimbursed.
  - 4) Free parking for all ten (10) temporary Department staff shall also be made available during the entire time of their occupancy
- k. Contractor shall comply with the ADA of 1990 (United States Code Title 42, Chapter 126, Section 12101 et seq).

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**48. On-Site Department Monitoring and Auditing**

- a. The Department shall conduct random reviews and audits of all CD-MMIS Contract functions and/or Operations performed by the Contractor and its subcontractors, as appropriate, to ensure the Contractor is adequately performing all requirements and/or performance measures set forth by the Contract. These reviews and audits by State staff may occur at any time permitted by this Contract, including during the Turnover period and thereafter.
- b. Audit Findings
  - 1) Department staff shall present their findings in writing to Contractor-designated staff within fifteen (15) State work days of the completion of a review period. Once presented with the Department's findings, the Contractor shall have fifteen (15) State work days to respond with a formal statement and CAP(s). Final determination of an appropriate CAP(s) shall reside with the Department.
  - 2) Additionally, more selective and specific audits may be conducted by the State to establish the extent of the problem(s).
  - 3) Audits related to any aspect of adjudication and/or processing of TARs, Notices of Actions (NOAs) Claims
    - a) Underpayments (inappropriate Contractor denials or approved payments at less than the Medi-Cal allowable amount) shall not be considered in establishing erroneous Contractor payment levels nor shall they be used to offset overpayments (see Exhibit E, Additional Provisions, Liability for Overpayment) for purposes of establishing a "net" error rate or amount in discrepancy. Underpayments shall, however, count as errors in establishing the error rate.
    - b) At the Contracting Officer's discretion, findings of underpayments can lead to more extensive, directed and specialized auditing and monitoring by Department staff and the potential imposition of liquidated damages.
    - c) The Department will periodically establish an error rate encompassing both adjudication and processing activities. These rates will be used to assess Contractor performance.
  - 4) All error(s), discrepancy(ies) or inaccuracy(ies), determined by any audit performed by the Department, that are found to be the fault of the Contractor shall be corrected/revised/addressed as directed by State staff at no cost to the Department.

**49. Opportunities for Reduction in Operations' Cost**

The Contractor is encouraged to submit proposals that reduce the Operations cost of the FI Contract. These proposals shall be known as Cost Reduction Change Proposals. If approved by the Department, the Contractor-initiated proposal will result in a shared Net Contract Savings between the Contractor and the Department.

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a. General

- 1) The Contractor is encouraged to develop, prepare and submit Cost Reduction Change Proposals voluntarily. As provided in this Provision, the Contractor shall share in Net Contract Savings realized from Department-accepted Cost Reduction Change Proposals.
- 2) Cost Reduction Change Proposals related to services under the fixed price portion of the Contract must be approved in writing by the Contracting Officer prior to implementation under the Change Order process set forth in Exhibit E, Additional Provisions, Change Orders. The Contractor shall not implement any cost reduction action that would constitute a change in Contractor responsibilities under Exhibit E, Additional Provisions, Change Orders without first having complied with the provisions of this Provision. (See also Exhibit E, Additional Provisions, Notification of Claims.)
- 3) Notwithstanding the provisions of Exhibit B, Attachment I, Special Payment Provisions relating to payment of Cost Reimbursement services under the Contract, the State will share the savings resulting from the implementation of Cost Reduction Change Proposals relating to Cost Reimbursement services with the Contractor. The purpose of this Provision is to provide an incentive for the Contractor to make changes that will reduce cost, even in activities where its cost are reimbursed.

b. Definitions

- 1) **Cost Reduction Change Proposal**, as used in this Provision, means a proposal that:
  - a) In connection with services under the fixed price portion of the Contract, requires a Change Order under the Contract to implement; or
  - b) In connection with services subject to Cost Reimbursement, has been approved in writing by the Contracting Officer; and, in either case
  - c) Results in reducing the overall projected cost to the State without impairing the Contractor's performance of its duties and responsibilities under the Contract.
- 2) **Net Contract Savings**, as used in this Provision, means Contract savings less State cost.
- 3) **Contract Savings**, as used in this Provision, are the net cost reductions to the Contract, and are equal to cost reductions effected by the Cost Reduction Change Proposal (calculated in accordance with this Provision) less the allowable Contractor's development and implementation (CD&I) cost.
- 4) **State Cost**, as used in this Provision, means those State cost that result directly from developing and implementing the Cost Reduction Change Proposal, such as any net increases in the cost of testing, Operations, maintenance and logistics

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support. The term does not include the normal administrative cost of processing the Cost Reduction Change Proposal.

- 5) **Contractor's Development and Implementation Cost**, as used in this Provision, means those cost the Contractor incurs on a Cost Reduction Change Proposal specifically in developing, testing, preparing and submitting the Cost Reduction Change Proposal, as well as those cost the Contractor incurs to make the Contractual changes required by the Department's acceptance of a Cost Reduction Change Proposal.
  - 6) **Sharing Period**, as used in this Provision, means the period beginning with acceptance of the Cost Reduction Change Proposal and ending when the term of the Contract ends pursuant to Exhibit E, Additional Provisions, Term of the Contract, or termination of the Contract pursuant to Exhibit E, Additional Provisions, Termination.
- c. Cost Reduction Change Proposal Preparation

At a minimum, the Contractor shall include in each Cost Reduction Change Proposal all of the information described below:

- 1) Identification of the specific cost that are reduced as a result of the Cost Reduction Change Proposal. This will require the Contractor document the current cost incurred by the State and the savings resulting from implementation of the Cost Reduction Change Proposal.
- 2) A description of the difference between the existing Contract requirement and the proposed requirement, the comparative advantages and disadvantages of each, a justification when a function or characteristic under the Contract is being altered and the effect of the change on the Contractor's performance.
- 3) A list and analysis of the Contract requirements that must be changed if the Cost Reduction Change Proposal is accepted, including any suggested specification revisions.
- 4) Identification of the Contract services to which the Cost Reduction Change Proposal applies.
- 5) A separate, detailed cost estimate for 1) the affected portions of the existing Contract requirement, and 2) the Cost Reduction Change Proposal. The cost reduction associated with the Cost Reduction Change Proposal shall take into account the allowable CD&I cost, including any amount attributable to subcontracts.
- 6) A description and estimate of cost the State may incur in implementing the Cost Reduction Change Proposal, such as testing, evaluation, operating and support cost.
- 7) A statement of the time by which a Contract modification accepting the Cost Reduction Change Proposal must be issued in order to achieve the maximum

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cost reduction, noting any effect on the Contract compliance times for performance specified in the Contract (cycle times, systems, etc.).

- 8) Identification of any previous submissions of the Cost Reduction Change Proposal, including the dates submitted, and, if known, previous actions by the Department.

d. Submission

The Contractor shall submit Cost Reduction Change Proposals to the Contracting Officer pursuant to Exhibit E, Additional Provisions, Contract Communication.

e. Action by the Department

- 1) The Contracting Officer shall notify the Contractor in writing of the status of the Cost Reduction Change Proposal within thirty-five (35) State work days after the Contracting Officer receives it. If additional time is required, the Contracting Officer shall notify the Contractor in writing within the thirty-five (35) State work day period and provide the reason for the delay and the expected date of the decision. The Department will process Cost Reduction Change Proposals expeditiously; however, it shall not be liable for any delay in acting upon a Cost Reduction Change Proposal. The Contracting Officer may request additional information that is necessary in evaluating the proposal.
- 2) If the Cost Reduction Change Proposal is not accepted, the Contracting Officer shall notify the Contractor in writing, explaining the reasons for rejection. The Contractor may withdraw any Cost Reduction Change Proposal, in whole or in part, at any time before the Department accepts it. Prior to acceptance, the Contracting Officer may require that the Contractor provide written notification before it undertakes significant expenditures for the Cost Reduction Change Proposal development effort.
- 3) Any Cost Reduction Change Proposal related to services under the fixed price portion of the Contract may be accepted, in whole or in part, by the Contracting Officer's approval of a Change Order under Exhibit E, Additional Provisions, Change Orders, citing this Provision. Until such a Change Order applies a Cost Reduction Change Proposal to the Contract, the Contractor shall perform in accordance with the existing Contract.
- 4) Any Cost Reduction Change Proposal related to services subject to Cost Reimbursement may be accepted, in whole or in part, by the Contractor's written approval in accordance with Exhibit E, Additional Provisions, Contract Communication.
- 5) The Contracting Officer's decision to accept or reject all or part of any Cost Reduction Change Proposal, and the decision as to which of the sharing rates applies, shall be final and not subject to Exhibit E, Additional Provisions, Disputes and Appeals, or otherwise subject to litigation.

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f. Sharing rates

If a Cost Reduction Change Proposal is accepted, the Contractor shall share in Net Contract Savings according to the percentages set forth below.

1) Cost Reduction Change Proposals under the fixed price portion of the Contract:

- a) If a Cost Reduction Change Proposal is Contractor initiated, Net Contract Savings shall be apportioned seventy-five percent (75%) to the Contractor and twenty-five percent (25%) to the Department. The twenty-five percent (25%) savings shall be applied under Exhibit E, Additional Provisions, Change Orders, or, if there are no offsetting changes, the apportioned savings will result in a reduction in Contract prices.
- b) If a Cost Reduction Change Proposal results from joint efforts on the part of the Department and the Contractor, Net Contract Savings shall be proportionately shared between the parties, the proportioned shares to be determined through an agreement of the parties. In the event that an agreement on proportioned shares cannot be reached within six months of the date the Department authorizes the change, the Department and the Contractor shall each share fifty percent (50%) of the cost savings.

2) Cost Reduction Change Proposal initiated by the Contractor under the Cost Reimbursement portion of the Contract:

Net Contract Savings shall be apportioned between the State and the Contractor as follows:

Cumulative Savings	State Share	Contractor Share
\$5,000 - \$250,000	50%	50%
\$250,001 and above	Percent apportionment negotiable, but shall not exceed fifty percent (50%) to the Contractor and shall not exceed a maximum of two hundred fifty thousand dollars (\$250,000) per improvement.	

3) Cost Reduction Change Proposals originated and paid for by the State:

For system improvements originated and paid for by the State which decrease the operating expenses or cost, or result in one-time decreased expenses or cost, and which are not utilized to offset changes under Exhibit E, Additional Provisions, Change Orders, the financial benefits of those changes shall be one hundred percent (100%) to the State and will result in a reduction of the cost or price of the Contract.

g. Calculating and documenting Contract savings

- 1) State cost shall be offset against Contract savings generated by the Cost Reduction Change Proposal each time such savings are realized, until they are fully offset. Then, the Contractor's share is calculated by multiplying Net Contract

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Savings by the appropriate Contractor's percentage-sharing rate (see Opportunities for Reduction in Operations' Cost, f. above). Additional Contractor shares of Net Contract Savings shall be paid to the Contractor at the time savings are realized, subject to Opportunities for Reduction in Operations' Cost, f. above.

- 2) Documentation of Contract savings is the responsibility of the Contractor and is subject to Contracting Officer review and written approval prior to payment of the share-of-cost savings apportioned to the Contractor through the apportionment methodology described above. The Contractor shall submit a monthly invoice with appropriate documentation to the Department. The Contracting Officer must approve the documentation submitted before payment of the invoice is made. For one-time cost savings, the Contractor shall submit a single invoice and appropriate documentation for review and approval by the Contracting Officer before payment of the invoice will be made.
- h. Paying the Net Contract Savings
- The allowable CD&I cost shall be paid by the State as specified in this paragraph. The State shall initially pay those allowable CD&I cost which are cost reimbursable under Exhibit B, Attachment I, Special Payment Provisions, for Cost Reduction Change Proposals which have been accepted in writing by the Contracting Officer. Such cost are then amortized over a twelve (12)-month period and shall offset the Contractor's monthly share of savings for the first twelve (12) months following implementation of the proposal. Allowable CD&I cost for Cost Reduction Change Proposals resulting in one-time cost savings are not amortized. The Contractor's share of the one time savings is billable at the time they are achieved, less those reimbursable cost that are required to implement the proposal.
- i. Confidentiality
- Confidential trade secret information submitted by the Contactor in support of a Cost Reduction Change Proposal shall be subject to Exhibit E, Additional Provisions, Contractor Responsibilities – General.
- j. Disputes and notification of proposal development
- 1) Disagreements regarding the calculation or payment of the Contractor's saving share, or other matters (except as provided in Opportunities for Reduction in Operations' Cost, e. above) shall be subject to the provisions of Exhibit E, Additional Provisions, Disputes and Appeals, as appropriate.
  - 2) Disputes over whether or not a Cost Reduction Change Proposal is Contractor-initiated or Department-initiated shall be based on the date the Contracting Officer first receives written notification of the proposed change from either the Contractor or from Department sources. For purposes of this Section, "notification" must consist, at a minimum, of a description of the proposal, the steps necessary to implement the proposal and an estimate of the cost and savings that are anticipated. General recommendations as to changes or improvements that could result in cost savings will not constitute notification. Notification from the Contractor shall be in accordance with the requirements of

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Exhibit E, Additional Provisions, Contract Communication. Notification from State sources shall be transmitted to the Contracting Officer on official Department letterhead that has been dated and signed. In the event that the Contracting Officer received notification from both DHCS staff and the Contractor on the same date, he or she shall reach a determination as to which party originated the proposal, subject to the dispute resolution provisions contained in Exhibit E, Additional Provisions, Notification of Claims.

k. Other provisions

- 1) At the sole option of the Contracting Officer, the Department may assume part of the allowable CD&I cost.
- 2) In the event the Contractor initiates the development and/or design, or implements changes or improvements in Operations under the Contract that do not fall within the scope of this Provision, the Contractor shall bear all cost.
- 3) Without limitation, this Provision does not apply to Contractor implementation of Change Orders issued by the Contracting Officer in direct response to changes in federal or State statutes, regulations or decisional law subsequent to Contract award. Any savings from these actions shall accrue one hundred percent (100%) to the State.
- 4) The United States Postal Service (USPS) and other vendors whom the Contractor utilizes for pass-through expenses may enact rate changes that reduce Cost Reimbursement expenses. This Provision does not apply to such reductions and the Contractor shall not claim a share of the savings resulting from reduced rates from these utilities. Any savings from these rate reductions shall accrue one hundred percent (100%) to the State.

**50. Ownership and Control Disclosures**

The Contractor shall disclose information regarding the ownership and control of the Contractor to DHCS as required by 42 C.F.R. Section 455.104. Such disclosure shall be updated as required by 42 C.F.R. Section 455.104, including within thirty-five (35) State work days after any change in ownership of the Contractor.

**51. Patent or Copyright Trademark and Trade Secret Infringement**

The Contractor represents and warrants that no program, process, composition, writing, equipment, appliance or device, trade-mark, service mark, logo, idea, configuration parameters to all systems, all data stored on any media, all operational parameters and codes that run any system (batch instructions, etc.), scripts or any other work or invention of any nature or any other tangible or intangible property whatsoever developed, provided or used by the Contractor (other than provided or used by DHCS or another contractor at the Department's request) in connection with its performance under this Contract, infringes or will infringe any patent, copyright, trademark or other service mark of any other person or entity, or is or will be a trade secret of any other person or entity.

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In the event a claim of infringement is brought against DHCS because of the work performed by the Contractor, this Provision will apply. DHCS will inform the Contractor as soon as practicable of the claim or action alleging such infringement and shall give the Contractor the full opportunity to participate in the response thereto and the defense thereof, including without limitation, any agreement relating to the settlement thereof pertaining only to the rights of the Contractor.

**52. Performance Evaluation**

- a. This Provision is in addition to Exhibit D(F), Performance Evaluation.
- b. The Contractor's performance under this Agreement shall be evaluated at the conclusion of the term of this Contract. The evaluation shall include, but not be limited to:
  - 1) Whether the contracted work or services were completed as specified in the Contract and reasons for and amount of any cost overruns.
  - 2) Whether the contracted work or services met the quality standards specified in the Contract.
  - 3) Whether the Contractor fulfilled all requirements of the Contract. Factors outside the control of the Contractor shall not be included in the Performance Evaluation.
- c. At the Contracting Officer's discretion, DHCS may share a draft of the evaluation with the Contractor and may consider the Contractor's comments in finalizing the evaluation.
- d. The performance evaluation of the Contractor shall not be a public record. However, performance evaluations may be considered by DHCS prior to making future contract awards for any service.

**53. Prior Department Approval Requirements: Communication between the Contractor and Providers and Beneficiaries**

- a. Prior Department review and written approval shall be received by the Contractor for use of all types of forms and authorizations, relevant or necessary documents and/or correspondence to providers or beneficiaries. All changes to documents and/or correspondence shall also receive written Department approval prior to use.
- b. For each and every occurrence where the Contractor fails to meet any of these requirements, the Contracting Officer may notify the Contractor in writing that the requirement was not met. The Contractor shall have five State work days to present to the Department for approval a written retraction or correction of previously released, unapproved material in publishable form, as well as the exact and itemized cost of developing, printing/imaging or the like, producing and mailing the unapproved material. With written Department approval, this retraction or correction shall be printed, produced and mailed to all providers receiving the original document(s) solely at the Contractor's expense within six State work days of Department approval of the retraction/correction. Further, the cost of developing, printing/imaging or the like, producing and mailing the original unapproved

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documents shall be borne solely by the Contractor and shall be deducted from the next administrative payment made to the Contractor by the Department.

**54. Progress Reports or Meetings**

- a. The Contractor shall submit Progress Reports and attend meetings with DHCS personnel at intervals determined by DHCS. Progress Reports are used to determine if the Contractor is fulfilling its requirements under the Contract, whether specified projects are on schedule for completion, to provide communication of interim findings and afford the Contractor the opportunity to communicate difficulties or special problems encountered so remedies can be developed quickly.
- b. Upon direction of the Contracting Officer, at the conclusion of this Contract, the Contractor shall hold a final meeting at which the Contractor shall present any findings, conclusions and recommendations, for Contract improvements and knowledge transfer. If required by this Contract, the Contractor shall submit a comprehensive final report.

**55. Prohibited Follow-on Contracts**

- a. No person, firm or subsidiary thereof who has been awarded a consulting services contract may submit a bid for, nor be awarded a contract for, the provision of services, procurement of goods or supplies, or any other related action that is required, suggested or otherwise deemed appropriate in the end product of the consulting services contract.
- b. Exhibit E, Additional Provisions, 52.a. does not apply to any person, firm or subsidiary thereof who is awarded a subcontract of a consulting services contract which totals no more than ten percent (10%) of the total monetary value of the consulting services contract.
- c. Paragraphs a. and b. do not apply to consulting services contracts subject to GCC, Title 1, Division 5, Chapter 10, (commencing with Section 4525).

**56. Project Management Plan**

All Project Management Plans shall conform to the Institute of Electrical and Electronics Engineers (IEEE ) Standards # 1058-1998, best Practices for Project Management, Office of the State Chief Information Officer (CIO), State Integration Division (SID), and/or other standards acceptable to the State.

The following is a list of items and criteria which shall be included in every Project Management Plan submitted to the State. The list of items is not all-inclusive. Items may be waived by the Contracting Officer in writing for Project Plans as they relate to specific phases of the Contract.

The Contractor shall prepare plan templates for DHCS upon request. The Contractor shall work with DHCS to confirm the schedule and content for the respective plans. All Contractor Project Plans completed and approved shall be implemented and used throughout ongoing Operations. The Contractor must receive written approval for all Project Plans from DHCS prior to beginning any activities for the applicable task.

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If requested by DHCS, each Project Plan shall contain, at a minimum, the following components:

a. **Integration Management** consisting of:

- 1) A Change Control Management Plan
- 2) An Issue Management Plan
- 3) A Decommissioning Plan

b. **Scope Management** consisting of:

- 1) A Scope Management Plan
- 2) Work Breakdown Structure (WBS)

Each WBS must include

- a) Description
- b) Identifiable product
- c) Skill/resource categories
- d) Estimated resource
- e) Overall duration of the activity

c. **Time Management** consisting of:

- 1) A Schedule Management Plan
- 2) A Project Schedule (Gantt Chart) including
  - a) Activity sequences
  - b) Dependencies
  - c) Durations
  - d) Resource assignments
  - e) Schedule constraints

Each Project Schedule must indicate:

- i. Title and Contract number
- ii. Start date

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- iii. Implementation date
- iv. Milestones
- v. Phase completion dates and corresponding hours
- vi. Resources required
- vii. Predecessor and successor activities
- viii. Internal training
- ix. CD-MMIS stakeholder education
- x. Contingency plan

All deliverables and/or tasks requiring Department approvals shall be identified with the date approved.

All Project Schedules must sequence and schedule all subtasks logically, and obtainable time frames shall be provided for task completion.

- d. **Cost Management** consisting of:
  - 1) A Cost Management Plan
  - 2) A Resource Breakdown Structure
  - 3) A Project Budget
- e. **Quality Management** consisting of a Quality Management Plan conforming to IEEE standards. This plan shall include:
  - 1) Quality metrics
  - 2) Quality checklists
- f. **Human Resources Management** consisting of:
  - 1) A Human Resources Management Plan
  - 2) Roles and Responsibilities
  - 3) Project Organization Charts
  - 4) Staffing Management Plan
- g. **Communications Management** consisting of a Communications Management Plan
- h. **Risk Management** consisting of a Risk Management Plan

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- i. **Procurement Management** consisting of:
- 1) Procurement Management Plan
  - 2) Contract Statement of Work
  - 3) Make-or-buy Decisions

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**57. Provider Claims Payment, Check Write, and Check Distribution**

The Contractor, on behalf of the State of California, is responsible for executing the CD-MMIS programs and jobs associated with the weekly provider payment. This includes executing, in a time sensitive manner, the steps necessary to receive approval to distribute State funds to Medi-Cal providers for the payment of claims on Contractor produced checks and Electronic Fund Transfers for providers enrolled in Direct Deposit.

The Contractor is responsible for the following:

- a. Completing the check write process according to the Department's check write schedule.
- b. The development and/or acquisition of check stock for use in the production and distribution of provider checks.
- c. Establishing a Contractor owned bank account to deposit State funds, provided to the Contractor on a weekly basis by the State Controllers Office (SCO), to fund the weekly check write.
- d. Providing MDSD a weekly invoice and reports detailing the amount of the check write. MDSD will use this documentation to receive DHCS and SCO approval to obtain funds for the Contractor's account in order to issue the weeks corresponding provider checks.
- e. Printing the checks generated during check cycle and distributing them to the providers.
- f. Developing with MDSD, SCO and the Contractor a reconciliation process to insure the account is not over or under funded and to return unclaimed funds to the State.

The Department intends to transfer responsibility for issuing provider payments to the State Controller's Office (SCO). When the transfer of responsibilities is complete, the Contractor will be responsible for the electronic transfer to the SCO of all files necessary for the SCO to produce and issue provider payment as required by Exhibit A, attachment II, Claims Processing. The steps referenced above, physically producing the checks and issuing payment directly to providers, will no longer be applicable.\*\*

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**57-58. Subcontracts and Cost Reimbursable Purchases**

In addition to Exhibit D(F), Special Terms and Conditions, Subcontracts, the Contractor shall abide by the following requirements:

- a. As used in the Contract, the term "subcontractor" shall include any individual or entity, whether or not affiliated with the Contractor, which enters into a subcontract with the Contractor or any other subcontractor.
- b. A subcontract as used in the Contract means any contract which is a mutually binding legal relationship, obligating the seller to furnish supplies, funds or services (including construction) to the Contractor in exchange for consideration. It also includes any type of commitment that may obligate the Department or the State to an expenditure of appropriated funds and that, except as otherwise authorized, is in writing. In addition to bilateral agreements, subcontracts for purposes of this Provision include, but are not limited to: awards and notices of award; job orders; ordering agreements; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance, including changes and/or modifications to purchase orders; and bilateral contract modifications entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.
- c. Unless precluded by other provisions of the Contract, the Contractor may enter into subcontract(s) for performance of various functions under the Contract. All subcontracts pursuant to the Contract shall be in writing.
- d. The Department shall approve, in writing, all subcontracts prior to execution, unless the need for such approval is specifically waived by the Contracting Officer in advance and in writing. In the event of a waiver, the Department shall continue to have access, within two State work days of the Contracting Officer's request, to all related documentation, including the subcontract itself. Existing subcontracts that the Contractor proposes to use for performance of any of its functions under the Contract shall be subject to the prior approval provisions of this paragraph.
- e. No subcontract that the Contractor enters into shall in any way relieve the Contractor of any responsibility for performance of its Contract duties.
- f. The Contractor shall be held responsible for all subcontractors' actions, or for its failure to take required actions, in regards to fulfilling the requirements of the Contract. Should the Department or the State suffer damages due to the actions, or to the inactions, of a subcontractor, the Department shall be entitled to seek remedy from the Contractor for the situation either through the liquidated damages provisions of the Contract or through any other recourse available to it under the Contract or under the law. Furthermore, the Department may require that the Contractor review selected subcontractors and/or require that the Contractor add conditions to the subcontractor's contract.
- g. For any subcontractor accepted as a part of the Contractor's Narrative Proposal, the subcontract shall specify that the subcontractor may not terminate or change its relationship to the Contractor without prior and express written approval of the Contractor. Such approval by the Contractor shall not be granted unless the

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Contractor receives prior written approval of the Contracting Officer regarding the termination or change in relationship. The Contractor shall not terminate a subcontract or alter the working relationship between the Contractor and a subcontractor accepted as a part of the Contractor's Narrative Proposal without the prior written approval of the Contracting Officer.

- h. The Contractor shall develop and maintain backup plans that shall be put into effect at the Contracting Officer's direction in the event of a default on the part of a subcontractor designated to perform work as a part of the Contractor's Narrative Proposal. The Contracting Officer may require that such plans be periodically updated so as to ensure a smooth transition to designated backup resources with no disruption of contractually required activities.
- i. The Contractor shall provide verbal notice to the Contracting Officer upon awareness of any action or lawsuit filed, and/or, notice of any claim made against the Contractor by any subcontractor or vendor that may result in litigation related in any way to the Contract or to the Contractor's performance under it. Written notice containing all available information shall be provided to the State with one State work day.
- j. The Contractor shall secure at least three written, competitive quotations for all subcontracts and purchases of five thousand dollars (\$5,000) or more that are subject to the Cost Reimbursement and/or Change Order Provisions of the Contract. In the case of purchases or subcontracts in excess of one thousand dollars (\$1,000) but less than five thousand dollars (\$5,000), the Contractor may seek Contracting Officer approval to purchase or subcontract without obtaining three competitive quotations. The Contractor must obtain the Contracting Officer's approval in writing prior to finalizing the subcontract or the purchase; otherwise, three quotations shall be obtained as provided above. Purchases or subcontracts for less than one thousand dollars (\$1,000) are exempt from the provisions of this paragraph. For audit purposes, all information associated with the competitive quotation/procurement for a subcontract or purchase must be maintained for the term of the Contract by the Contractor. This includes, but is not limited to, the method of solicitation, evaluation criteria and any scoring process used. Additionally, the Department may, at its sole option, process the subcontracts or purchases described in this paragraph through the State's procurement procedures.
- k. If competitive quotations are received and the Contractor decides to enter into the subcontract or the purchase with an entity other than the one that submitted the quotation for the least amount of money, the Contracting Officer must approve such decision prior to finalization of the subcontract or the purchase.
- l. In all instances where the Contractor has received written competitive quotations, these shall be made available to the Contracting Officer upon his/her request. Purchase orders for public utility services and postage, at rates established for the general public, are not included in this requirement. Subcontracts subject to the Cost Reimbursement provisions of the Contract shall not provide for payment on a cost-plus-a-percentage-of-cost basis.
- m. Subcontracts or purchases subject to Cost Reimbursement by the Department shall be payable at reasonable cost. A cost is reasonable if, by its nature and amount, it

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does not exceed that which would be incurred by a prudent person in the conduct of a competitive business.

- n. No changes shall be made to subcontracts wherein services are provided directly or indirectly to the State without prior written approval from the Contracting Officer.
- o. The Contractor shall provide to the Department, within three State work days of request, a complete copy of any subcontract, including addenda, Amendments and attachments.
- p. When entering into a consulting service agreement with the Department, the Contractor shall be required to supply budget detail for each subcontractor and/or each major subcontracted activity under this Contract.
  - 1) Budget detail format and submission requirements will be determined by DHCS.
  - 2) Methods of including budget detail in this Contract, if applicable, will be determined by DHCS.
  - 3) Any subcontractor budget detail displayed in this Contract, or incorporated by reference, is included for information purposes only. Changes to a subcontractor's identity or budget detail shall not require the processing of a formal Amendment to this Contract.

**58.59. System Strategic Plan**

The Contractor shall provide a System Strategic Plan on an annual basis. The plan shall include, but is not limited to, CD-MMIS, MMIS consolidation, Surveillance and Utilization Review Subsystem (S/URs), State Hearing, document management system and project management system. The planning meetings for the Strategic Plan for the following year shall start by July first and be concluded by September first. The Strategic Plan document is due by December first. The System Strategic Plan shall include, but is not limited to, the following:

- a. Planning
  - 1) Establish overarching Strategic Management Plan

Establish the Strategic Management Plan to communicate and coordinate strategic planning activities and results
  - 2) Analyze the current situation

What is happening (or not) in the current environment that requires improvement and/or upgrade for upcoming projects during the next State fiscal year. This may include items such as increased storage space, increasing table size, etc.
  - 3) Formulate IT Strategic Direction
    - a) Identify system goals and needs for the upcoming year

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- b) Identify critical factors to the successful implementation of initiatives to achieve goals
- c) Identify measures of goals
- d) Conduct a gap analysis
- 4) Identify IT Initiatives
  - a) Define ongoing initiatives
  - b) Define new initiatives
  - c) Determine system modifications necessary to bring the CD-MMIS system into alignment to support the changes with the projects planned for the upcoming year
- 5) Consolidate and publish the plan
  - a) Prioritize initiatives
  - b) Coordinate and publish the plan by December first
- b. Implement the Strategic Plan starting January first as agreed upon by the Contractor and the Department.
- c. Monitor Operations and measure effectiveness of the Strategic Plan. Communicate the effectiveness of the Strategic Plan on a monthly basis.
- d. Adjust the direction of the Strategic Plan as required by business needs based on collaborative decision-making between the Contractor and the Department.

**59.60. Technical Standards and/or Guidelines**

The Contractor is required to meet or exceed the technical standards and/or guidelines for the various components, where appropriate, including, but not limited to, those listed in the chart below. This applies to all updates, revisions or superseding standards and/or guidelines subsequently available. The technical standards and/or guidelines are current as of November 2014.

**Table 1: State of California Technical Standards and/or Guidelines**  
Technical Standards, Policies and/or Guidelines current as of November 2014.

Requirement	References
Architecture Frameworks and Guidelines	1. Medicaid Information Technology Architecture 3.0 (MITA 3.0), Centers for Medicare and Medicaid Services, February 2012 <a href="http://medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Data-and-Systems/MITA/Medicaid-">http://medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Data-and-Systems/MITA/Medicaid-</a>

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Requirement	References
	<p><a href="#">Information-Technology-Architecture-MITA-30.html</a></p> <p>2. California Department of Technology (, California Enterprise Architecture Framework (CEAF), Version 2.0, August 1, 2013 <a href="http://www.cio.ca.gov/ea/documents.asp">http://www.cio.ca.gov/ea/documents.asp</a></p> <p>3. CEAF 2.0 Reference Architecture Documents (BI thru SOA) <a href="http://www.cio.ca.gov/ea/documents.asp">http://www.cio.ca.gov/ea/documents.asp</a></p> <p>4. State Administrative Manual (SAM) 4906, Enterprise Architecture, Revised 9/2014 <a href="http://www.documents.dgs.ca.gov/sam/SamPrint/new/sam_master/rev427sept14/chap4900/4906.pdf">http://www.documents.dgs.ca.gov/sam/SamPrint/new/sam_master/rev427sept14/chap4900/4906.pdf</a></p>
Business Process Management / Workflow	<p>1. Web Services Business Process Execution Language (WS-BPEL), Version 2.0, April 11, 2007 <a href="http://docs.oasis-open.org/wsbpel/2.0/OS/wsbpel-v2.0-OS.html">http://docs.oasis-open.org/wsbpel/2.0/OS/wsbpel-v2.0-OS.html</a></p>
California Dental – Medicaid Management Information System (CD-MMIS) Legacy Naming Conventions	<p>1. Exhibit A, Attachment II, Data Processing and Documentation Responsibilities</p>
Certification Standards	<p>1. Medicaid Enterprise Certification Toolkit (MECT), Centers for Medicare and Medicaid Services (CMS), September 28, 2007 <a href="http://www.cms.gov/Research-Statistics-Data-and-Systems/Computer-Data-and-Systems/MMIS/MECT.html">http://www.cms.gov/Research-Statistics-Data-and-Systems/Computer-Data-and-Systems/MMIS/MECT.html</a></p>
Cloud Computing	<p>1. Cloud Computing Policy, TL 14-04, August 2014. <a href="http://www.cio.ca.gov/Government/IT_Policy/pdf/TechnologyLetters/TL-14-04-Cloud-Computing-Policy.pdf">http://www.cio.ca.gov/Government/IT_Policy/pdf/TechnologyLetters/TL-14-04-Cloud-Computing-Policy.pdf</a></p>
Code Set	<p>1. American Dental Association (ADA), Current Dental Terminology (CDT) <a href="http://www.ada.org/en">http://www.ada.org/en</a></p>
Communication and Identity Management Guidelines	<p>1. California Service Oriented Architecture (SOA)</p> <p>2. Federal Identity Management Guidelines</p> <p>3. W3C</p> <p>4. OASIS</p> <p>5. SAML/Liberty Alliance</p> <p>6. Web Services Interoperability (WS-1) Organization standards for Basic Profile and Basic Security Profile</p>

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Requirement	References
Development / Risk Management / Software Design	<ol style="list-style-type: none"> <li>1. Capability Maturity Model Integration (CMMI) For Development (CMMI-DEV), V 1.3 – Level 3, November 2010 <a href="http://cmminstitute.com/resource/cmmi-for-development-version-1-3/">http://cmminstitute.com/resource/cmmi-for-development-version-1-3/</a></li> <li>2. Institute of Electrical and Electronics Engineers (IEEE) 16085-2004 – Standard for Software Engineering - Software Life Cycle Processes - Risk Management, October 1, 2004</li> <li>3. IEEE 1016-2009 – IEEE Standard for Information Technology--Systems Design--Software Design Descriptions, July 20, 2009</li> </ol>
Department of Health Care Services (DHCS) Information Technology Hardware and Software Standards / CalTech Application Standards	<ol style="list-style-type: none"> <li>1. DHCS Hardware and Software Standards: Contractor shall use DHCS standards for desktop and office automation integration. The standards are available upon request from DHCS at: <a href="http://itsd/standards/TAC/SitePages/Home.aspx">http://itsd/standards/TAC/SitePages/Home.aspx</a></li> <li>2. All application software standards shall reference the CEAF and CEAF Reference Architecture Documents, and not be limited to .Net internally managed DHCS limitations:  DTS, California Enterprise Architecture Framework (CEAF), Version 2.0, August 1, 2013 <a href="http://www.cio.ca.gov/ea/documents.asp">http://www.cio.ca.gov/ea/documents.asp</a>  CEAF 2.0 Reference Architecture Documents (BI thru SOA) <a href="http://www.cio.ca.gov/ea/documents.asp">http://www.cio.ca.gov/ea/documents.asp</a></li> </ol>
DHCS MITA State Self-Assessment	<ol style="list-style-type: none"> <li>1. DHCS MITA State Self-Assessment (SS-A) . Contractor shall use the SS-A for guidance and improvement of MITA maturity levels. The SS-A can be found in the Data Library at index 26.1 (2015 Medi-Cal State Self-Assessment).</li> </ol>
Federal Medicaid Guidance / Seven Conditions and Standards / Guidance for Information Technology (IT) Systems	<ol style="list-style-type: none"> <li>1. The State Medicaid Manual (2000) <a href="http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Paper-Based-Manuals-Items/CMS021927.html">http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Paper-Based-Manuals-Items/CMS021927.html</a></li> <li>2. Enhanced Funding Requirements: Seven Conditions and Standards (MITS-11-02-v1.0), V 1.0, April 2011 <a href="http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Data-and-Systems/Downloads/EFR-Seven-Conditions-and-Standards.pdf">http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Data-and-Systems/Downloads/EFR-Seven-Conditions-and-Standards.pdf</a></li> <li>3. Guidance for Exchange and Medicaid Information Technology (IT) Systems, V 2.0, May 2011 <a href="http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Data-and-">http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Data-and-</a></li> </ol>

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Requirement	References
	<a href="#">Systems/downloads/exchangemedicaiditguidance.pdf</a>
Health Information Exchange (HIE)	1. National Information Exchange Model (NIEM), NIEM Health domain – monitor Emerging Communities (Health), pending development <a href="http://www.niem.gov">http://www.niem.gov</a>
Open Source Software	1. Open Source Software Policy, ITPL 10-01, January 7, 2010 <a href="http://www.cio.ca.gov/Government/IT_Policy/pdf/IT_Policy_Letter_10-01_Open_Source_Software.pdf">http://www.cio.ca.gov/Government/IT_Policy/pdf/IT_Policy_Letter_10-01_Open_Source_Software.pdf</a>
Operational Recovery Plans	1. SAM Chapter 5355.2 ‘Agency Operational Recovery Plan’ <ul style="list-style-type: none"> <li>• <a href="http://www.cio.ca.gov/ea/documents.asp">http://www.cio.ca.gov/ea/documents.asp</a></li> <li>• <a href="http://www.cio.ca.gov/Government/IT_Policy/pdf/SAM_Chapter_5300.pdf">http://www.cio.ca.gov/Government/IT_Policy/pdf/SAM_Chapter_5300.pdf</a></li> <li>• <a href="http://www.documents.dgs.ca.gov/sam/samprint/new/entire_sam/entiresam.pdf">http://www.documents.dgs.ca.gov/sam/samprint/new/entire_sam/entiresam.pdf</a></li> <li>• <a href="http://www.cio.ca.gov/Government/IT_Policy/SIMM.html">http://www.cio.ca.gov/Government/IT_Policy/SIMM.html</a></li> </ul> 2. National Institute of Standards and Technology (NIST) 3. DHCS Health Administrative Manual (HAM) – ‘Operational Recovery’ CD-MMIS/Fiscal Intermediary (FI) Procurement Data Library/Supporting CD-MMIS Information/References – Standards/ DHCSHealthAdminMan_SecurPol.pdf 4. Continuity of Operations – Continuity of Government (COOP-COG)
Personal Health Information (PHI)	Adhere to Federal and State privacy standards.
Policy / Web Content for the Disabled / Disabled Access / Secure Web Services	1. SAM 4833, Information Technology Accessibility Policy, June 2011 <a href="http://www.documents.dgs.ca.gov/sam/SamPrint/new/sam_master/rev427sept14/chap4800/4833.pdf">http://www.documents.dgs.ca.gov/sam/SamPrint/new/sam_master/rev427sept14/chap4800/4833.pdf</a> 2. Rehabilitation Act of 1973, Section 508 (Federal Electronic and Information Technology) – US Department of Health and Human Services <a href="http://www.hhs.gov/web/508/index.html">http://www.hhs.gov/web/508/index.html</a> 3. Rehabilitation Act of 1973, Section 508 (Federal Electronic and Information Technology) – US General Services Administration <a href="http://www.section508.gov/">http://www.section508.gov/</a> 4. Web service standards (Oasis and W3C) NIST 800-95 Guide to Secure Web Services
Problem Resolution Process	1. IEEE 12207-2008, Paragraph 6.8, Systems and software engineering – Software life cycle processes, March 18, 2008

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Requirement	References
Project Management	<ol style="list-style-type: none"> <li>1. California Department of Technology, California Project Management Methodology (CA-PMM), Statewide Information Management Manual (SIMM) Section 17A, July 2013 <a href="http://www.cio.ca.gov/Government/IT_Policy/SIMM_17/07-2013/SIMM17-ACA-PMM-Reference-Manual.pdf">http://www.cio.ca.gov/Government/IT_Policy/SIMM_17/07-2013/SIMM17-ACA-PMM-Reference-Manual.pdf</a></li> <li>2. SAM 4910, CA-PMM, 3/2011 <a href="http://www.documents.dgs.ca.gov/sam/SamPrint/new/sam_master/rev427sept14/chap4900/4910.pdf">http://www.documents.dgs.ca.gov/sam/SamPrint/new/sam_master/rev427sept14/chap4900/4910.pdf</a></li> <li>3. Project Management Body of Knowledge (PMBOK), Fifth Edition, 2013, Project Management Institute <a href="http://www.pmi.org/default.aspx">http://www.pmi.org/default.aspx</a></li> </ol>
Quality Assurance Process	<ol style="list-style-type: none"> <li>1. IEEE 12207-2008, Systems and software Engineering – Software life cycle processes, March 18, 2008</li> <li>2. IEEE 730-2002, IEEE Standard for Software Quality Assurance Plans, September 23, 2002</li> <li>3. IEEE 1044-2009, IEEE Standard Classification for Software Anomalies, January 7, 2010</li> <li>4. IEEE 1061-1998, IEEE Standard for a Software Quality Metrics Methodology, January 1, 1998</li> </ol>
Risk Management Planning	<ol style="list-style-type: none"> <li>1. DTS, CA-PMM, SIMM Section 17A, July 2013 – Section 3.1.6, Risk Management Plan <a href="http://www.cio.ca.gov/Government/IT_Policy/SIMM_17/07-2013/SIMM17-ACA-PMM-Reference-Manual.pdf">http://www.cio.ca.gov/Government/IT_Policy/SIMM_17/07-2013/SIMM17-ACA-PMM-Reference-Manual.pdf</a></li> </ol>

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Security	<ol style="list-style-type: none"> <li>1. DHCS Health Administrative Manual (HAM) - Security Policy - CD-MMIS/FI Procurement Data Library/Supporting CD-MMIS Information/References – Standards/</li> <li>2. DHCS Information Technology Security Standards - Information Systems Security Requirements for Projects (ISO/SR1) - CD-MMIS/FI Procurement Data Library/Supporting CD-MMIS Information/References - Standards/SR1 DHCS-ISO Project Requirements v3.2.doc</li> <li>3. SAM Chapter 5335.1 'Information Integrity and Security' – <a href="http://www.cio.ca.gov/Government/IT_Policy/pdf/SAM_Chapter_5300.pdf">http://www.cio.ca.gov/Government/IT_Policy/pdf/SAM_Chapter_5300.pdf</a></li> <li>4. Department of Technology Services (DTS) Security Requirements - <a href="http://www.servicecatalog.dts.ca.gov/services/professional/security/overview.html">http://www.servicecatalog.dts.ca.gov/services/professional/security/overview.html</a></li> <li>5. Security Requirements for Systems Hosted in Managed Care or Customer Managed Environments - CD-MMIS/FI Procurement Data Library/Supporting CD-MMIS Information/References - Standards/DTS Security Requirements.pdf</li> <li>6. Health Insurance Portability and Accountability Act (HIPAA)</li> <li>7. State Medicaid Manual</li> <li>8. Office of Management and Budgets (OMB) Circular A-130</li> <li>9. Federal Information Security Management Act (FISMA) Compliance</li> <li>10. Applicable International Organization for Standardization (ISO) Standards</li> <li>11. Sarbanes Oxley Act of 2002</li> <li>12. California Civil Code Section 1798.29 &amp; 1798.82</li> <li>13. California Assembly Bill (AB) 1298 (California Civil Code Sections 56.06, 1785.11.2, 1798.29, and 1798.82, relating to personal information)</li> <li>14. DHCS Health Administrative Manual (HAM) – 'System Security' - CD-MMIS/FI Procurement Data Library/Supporting CD-MMIS Information/References - Standards/DHCSHealthAdminMan_SecurPol.pdf</li> <li>15. National Institute of Standards and Technology (NIST) Standards</li> <li>16. Medi-Cal Eligibility Data System (MEDS) &amp; Social Security Administration (SSA)</li> <li>17. Federal Information Processing Standards (FIPS) Publications</li> </ol>

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Software Plan Management	<ol style="list-style-type: none"> <li>1. 16326-2009 - ISO/IEC/IEEE Systems and Software Engineering--Life Cycle Processes--Project Management, December 31, 2009</li> <li>2. DTS, SIMM Section 120, Software Management Plan Guidelines, April 2011 <a href="http://www.cio.ca.gov/Government/IT_Policy/SIMM.html">http://www.cio.ca.gov/Government/IT_Policy/SIMM.html</a></li> </ol>
State of California IT Policy	<ol style="list-style-type: none"> <li>1. SIMM. Contains standards, instructions, forms, and templates that State agencies <b>must use</b> to comply with Information Technology (IT) policy. <a href="http://www.cio.ca.gov/Government/IT_Policy/SIMM.html">http://www.cio.ca.gov/Government/IT_Policy/SIMM.html</a></li> </ol>
Strategic Plans	<ol style="list-style-type: none"> <li>1. Health Care Innovation Strategy: A 2020 Vision, Strategic Plan for the Information Technology Services Division, Release 1.0, August 20, 2014. The plan is available upon request from DHCS at: <a href="http://dhcsintranet/technology/Pages/CIOsmessages.aspx">http://dhcsintranet/technology/Pages/CIOsmessages.aspx</a></li> <li>2. DHCS Strategic Plan 2013-2017 <a href="http://www.dhcs.ca.gov/Pages/AboutUs.aspx">http://www.dhcs.ca.gov/Pages/AboutUs.aspx</a></li> <li>3. 2014 California IT Strategic Plan <a href="http://www.cio.ca.gov/Government/Publications/pub.html">http://www.cio.ca.gov/Government/Publications/pub.html</a></li> </ol>
Testing	<ol style="list-style-type: none"> <li>1. IEEE Standard for Software and System Test Documentation 829-2008, July 18, 2008</li> </ol>

**60.61. Term of the Contract**

- a. The resulting Contract will be of no force or effect until it is signed by both parties, approved by CMS and approved by DGS, if required. The approval by DGS is accompanied by a date stamp on the State of California Standard Agreement, STD 213, said date stamp becoming the CED. The Contractor is hereby advised not to commence performance until all approvals have been obtained in writing. Should performance commence before all approvals are obtained, said services may be considered to have been volunteered.
- b. The Contract term may change if the Department makes a selection earlier than expected or if the Department cannot execute the Contract in a timely manner due to unforeseen delays. Phase 1 of Interval 2 – Operations may be less or more than twelve (12) months.
- c. The Contract term is governed by time intervals. The time intervals when combined together make up the Contract term.
- d. The four intervals of the Contract term consist of:
  - 1) Interval 1 – Takeover: The first interval of the Contract shall begin on CED. Takeover shall include the twelve (12) month time period prior to the Assumption of Claims Processing. Takeover is considered complete once all deliverables are

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accepted and approved in writing, plans are approved in writing and implemented, and upon completion of six months of successful Operations of CD-MMIS by the Contractor.

- 2) Interval 2 – Operations: The second interval of the term of the Contract shall begin on the first day of month thirteen (13) after CED with the Assumption of Claims Processing. The Contract term of Interval 2 – Operations consists of four phases as follows:
- a) Phase 1: Starts the first day of month thirteen (13), and ends June 30, 2018
  - b) Phase 2: Starts July 1, 2018, and ends June 30, 2019
  - c) Phase 3: Starts July 1, 2019, and ends June 30, 2020
  - d) Phase 4: Starts July 1, 2020, and ends June 30, 2021

Phase 1 of Interval 2 – Operations can start on any date but will end to coincide with the State fiscal year end.

If Phase 1 of Interval 2 – Operations is less than twelve (12) months, the Contractor's annual bid prices for that Phase will be adjusted accordingly. (i.e., if Phase 1 begins August 1 instead of July 1, the prices bid for that Phase will be adjusted to eleven-twelfths (11/12ths) of the annual bid price.

The four year Operations Interval will commence the first day of month thirteen (13) after CED, subject to the Department's acceptance of the Contractor's readiness to perform claims and TAR processing functions. If claims and/or TAR processing functions are delayed, the Department may, at its option, either 1) shorten the Operations Interval by the amount of the delay (the Contractor's annual bid prices for that Phase will be adjusted accordingly), or 2) require the Contractor to adhere to the first twelve (12) month year and subsequent three full years Operations Interval. In the event the Department selects option 2), all timeframes related to the Turnover Interval will be delayed by the same amount of time as the delay of claims and/or TAR processing.

- 3) Interval 3 – Operations Extensions: The third interval of the Contract would begin July 1, 2021, if desired by the Department, and may end as late as June 30, 2026, for a possible total Operations Extensions Contract term of sixty (60) additional months.
- a) DHCS may extend the Contract using up to five, one year optional Operations Extensions:
    - i. Extension Year 1: starts July 1, 2021, ends June 30, 2022
    - ii. Extension Year 2: starts July 1, 2022, ends June 30, 2023
    - iii. Extension Year 3: starts July 1, 2023, ends June 30, 2024
    - iv. Extension Year 4: starts July 1, 2024, ends June 30, 2025

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- v. Extension Year 5: starts July 1, 2025, ends June 30, 2026
  - b) The Contracting Officer shall have the exclusive option to extend the term of the Contractor's Operations. The Contracting Officer may extend the Contract up to five times for one year each, and may exercise a subsequent one-time extension of no less than six months and no more than twelve (12) months, termed the Extended Operations Period, subject to DGS approval, if DGS approval is required. Interval 4 – Turnover will be adjusted accordingly. The Contractor shall be given at least sixty-five (65) State work day's prior written notice if the Department chooses to extend the Contract.
  - c) If the Contracting Officer chooses to exercise one of more of these extensions, the extension executed could be any combination of consecutive extensions at any one time (e.g., the Contracting Officer may exercise extensions for Time Periods d.3)a)i and ii at the same time, effectively extending the Contract for two years).
  - d) Regardless of whether the Contracting Officer chooses to exercise any of the optional Operations Extension years (listed in this Provision, 3)a) above), there may be a one-time optional Extended Operations period of the Contract for a time frame of no less than six months and no more than twelve (12) months.
  - e) During any of the Extension Year time periods addressed above and during any period of Extended Operations, the Contractor's responsibilities shall remain the same as are defined in the Contract. Unless the Department elects an Extended Operations Period, the Operations Period shall terminate the first Friday following the start of the State fiscal year (July 1 through June 30).
- 4) Interval 4 – Turnover activities will commence prior to the end of operations as described in Exhibit A, Attachment IV, Turnover and Runout.

**62. Termination**

- a. Immediate Termination for Cause
  - 1) The Department reserves the right to immediately terminate this Contract in whole or in part by providing written notice to the Contractor after the occurrence of any of the following:
    - a) If the Contractor knowingly furnished any statement, representation, warranty or certification in connection with the Request for Proposal of this Contract, which representation is materially false, deceptive, incorrect or incomplete.
    - b) If the Contractor fails to perform any material requirement of the Contract or defaults in the performance of this Contract.

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- c) If the Department determines satisfactory performance of the Contract is substantially endangered by the action or inaction by Contractor, or can reasonably anticipate such occurrence of default.
  - d) If the Contractor files for bankruptcy or, if in the judgment of the Department, the Contractor becomes financially incapable of completing this Contract.
- 2) The Department's right to terminate this Contract under paragraphs a.1) b) and/or a.1) c) above, may be exercised only if the Contractor does not cure such action or inaction within the time frame stated in the Department's notice, which in no event will be less than fifteen (15) calendar days, unless the Statement of Work calls for a different period.
- 3) If the State terminates the Contract for any of the causes stated in paragraphs a.1) a) through a.1) d) above, the State shall not be liable for any cost incurred by the Contractor exceeding previously approved commitments. In the event the Department terminates this Contract in full or in part as provided in this clause, the Department may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies or services similar to those terminated, and the Contractor shall be liable to the State for any excess cost reasonably incurred for supplies or services.

In addition, the Contractor shall be liable to the State for administrative cost incurred by the Department in procuring such similar supplies or services. The above cost shall be drawn from the Contractor's credit provided for in Exhibit E, Additional Provisions, Letter of Credit. However, the Contractor shall not be liable for any excess cost or administrative cost if the failure to perform the Contract arises out of causes beyond the control and without fault or negligence of the Contractor or any of its subcontractors.

**b. Termination for Convenience**

The Department retains the option to terminate this Contract, in whole or in part, without cause at the Department's convenience, provided that written notice has been delivered to the Contractor at least twenty-five (25) State work days prior to such termination date. If the Department terminates this Contract at its convenience, the Contractor will be entitled to compensation upon submission of an invoice and proper proof of claim, in that proportion which its services and products were satisfactorily rendered or provided and its expenses necessarily incurred pursuant to this Contract, up to the date of termination. In such event, at the request of the Department, the Contractor shall furnish copies of all proposals, specifications, designs, procedures, layouts, copy and other materials related to the services or deliverables provided under this Contract, whether finished or works in progress on the termination date. The Contractor will not be entitled to reimbursement for any expenses incurred for services and deliverables pursuant to the Contract after the termination date, unless the Contractor receives written advance approval from the Department. Any services or deliverables for which the Contractor is paid which are provided according to the procedures in this paragraph shall become the property of the Department.

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c. Procedures on Termination

After receipt of notification of termination of this Contract, and except as otherwise specified by the Department, the Contractor shall stop work under this Contract on the termination date and to the extent they relate to the performance of work that is specified in the notice of termination. The Contractor shall do all of the following:

- 1) 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 this Contract that is not terminated.
- 2) Assign to the Department, effective on the date of termination, in the manner and to the extent specified by DHCS, all of the rights, titles and interests for the Contractor under the orders and subcontracts terminated, in which case the Department has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts and reduce any settlement amount determined by the amount paid for such orders or subcontracts.
- 3) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the State to the extent the State may require. The Department's approval or ratification shall be in writing and be final for the purposes of this Section.
- 4) Upon the effective date of termination of the Contract and the payment by DHCS of all items properly chargeable to DHCS hereunder, transfer, assign and make available to DHCS all property and materials belonging to DHCS, all rights and claims to any and all reservations, contracts and arrangements with subcontractors, and make available to DHCS all written and electronic information and materials related to work under this Contract. No extra compensation is to be paid to the Contractor for its services in connection with any such transfer or assignment.
- 5) Take such action as may be necessary, or as the Department may specify, to protect and preserve all property related to this Contract which is in the possession of the Contractor or its subcontractors and in which the Department has or may acquire an interest.

d. Termination for Non-Compliance with Financial Criteria

The Department may terminate performance of work under this Contract in whole or in part whenever the Contractor fails to meet, in whole or in part, the financial criteria in this Contract. In the event of a termination for non-compliance with financial criteria, the rights and obligations of the Department and the Contractor shall be specified in this Provision.

**63. Travel**

In addition to the travel provisions of Exhibit D(F), Special Terms and Conditions, Provision 2, Travel and Per Diem Reimbursement, the Department may, at its option, obtain airline tickets or other travel arrangements on behalf of the Contractor in lieu of

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paying the Contractor for travel expenses. The Contractor shall not be reimbursed for any mileage or travel related to required or necessary functions of the Contract, such as trainings (excluding the instructor/teacher) and meetings with DHCS, Stakeholders or the ASO Contractor unless prior written approval has been received from the Contracting Officer.

**64. Use of Disabled Veteran Business Enterprises (DVBE)**

- a. The State Legislature has declared that a fair portion of the total purchases and contracts or subcontracts for property and services for the State be placed with disabled veteran business enterprises (DVBE).
- b. All DVBE participation attachments, however labeled, completed as a condition of bidding, contracting or amending a subject agreement, are incorporated herein and made a part of this Contract by this reference.
- c. The Contractor agrees to use the proposed DVBEs as identified in previously submitted DVBE participation attachments, unless the Contractor submits a written request for substitution of a like or alternate subcontractor. All requests for substitution must be approved by DHCS, in writing, prior to using a substituted subcontractor.
- d. Requests for substitution must be approved by the Contracting Officer in writing and must include:
  - 1) A written explanation of the reason for the substitution.
  - 2) A written description of the business enterprise will be substituted, including its DVBE certification status.
  - 3) If applicable, the reason a non-DVBE subcontractor is proposed for use.
  - 4) A written description of the work to be performed by the substituted subcontractor identified by both task (if applicable) and dollar amount or percentage of the overall Contract that the substituted subcontractor will perform.
- e. If requested by DHCS, the Contractor agrees to provide verification, in a form agreed to by DHCS, that DVBE subcontractor participation under this Contract is in compliance with the goals specified at the time of Contract award or with any subsequent Amendment.

**65. Use of Numerical Estimates**

Numerical estimates are used throughout the Contract to provide further illustration of certain narrative material. These estimates are not represented by the Department as future workload the Contractor can expect nor as actual projections of expected activity or volumes. The Contractor must develop its own estimates and projections for purposes of submitting the Narrative Proposal, the Cost Proposal and the various price bids. The exception to this is the Claim and TAR volume ranges, for which the Contractor shall provide prices for processing the volumes specified in the ranges.

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**66. Use of Small Business Subcontractors**

- a. All Non-Small Business Subcontractor Preference Request attachments and Small Business Subcontractor/Supplier Acknowledgment attachments, however labeled, completed as a condition of bidding, are incorporated herein and made a part of this Contract by this reference.
- b. The Contractor agrees to use each small business subcontractor/supplier, as identified in previously submitted Non-Small Business Subcontractor Preference Request attachments with the Contractor's Narrative Proposal, unless the Contractor submits a written request for substitution of a like or alternate subcontractor. All requests for substitution must be approved by DHCS, in writing, prior to using a proposed substitute subcontractor.
- c. Requests for substitution must be approved in writing by the Contracting Officer and must include, at a minimum:
  - 1) An explanation of the reason for the substitution.
  - 2) A written description of the business enterprise that will be substituted, including its small business certification status.
  - 3) If substitution of an alternate small business does not occur, include a written justification and description of the steps taken to try to acquire a new small business and how that portion of the Contract will be fulfilled.
  - 4) A written description of the work to be performed by the substituted subcontractor identified by both task (if applicable) and dollar amount or percentage of the overall Contract that the substituted subcontractor will perform. The substituted business, if approved, must perform a commercially useful function in the Contract pursuant to Title 2, CRR, Division 2, Chapter 3, Subchapter 10.5, Section 1896.6.
- d. DHCS may consent to the substitution in any of the situations set forth in PCC, Division 2, Part 1, Chapter 4, Section 4107 of the Subletting and Subcontracting Fair Practices Act.
- e. Prior to the approval of the Contractor's request for the substitution, DHCS shall give notice in writing to the listed subcontractor of Contractor's request to substitute and the reasons for the request to substitute. The notice shall be served by certified or registered mail to the last known address of the subcontractor. The listed subcontractor has been so notified shall have five State work days after the receipt of the notice to submit written objections to the substitution to the funding program. Failure to file these written objections shall constitute the listed subcontractor's consent to the substitution. If written objections are filed, DHCS shall give notice in writing of at least five State work days to the listed subcontractor of a hearing by DHCS on the Contractor's request for substitution.
- f. Failure of the Contractor to subcontract with the small businesses listed in its bid or proposal to DHCS, or failure to follow applicable substitution rules and regulations,

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may be grounds for DGS to impose sanctions pursuant to GCC, Title 2, Division 3, Part 5.5, Chapter 6.5, Article 1, Section 14842.5 and Title 2, CCR, Division 2, Chapter 3, Subchapter 8, Article 3, Section 1896.16. In the event such sanctions are to be imposed, the Contractor shall be notified in writing and entitled to a hearing pursuant to Title 2, California Code of Regulations, Division 2, Chapter 3, Subchapter 8, Article 4, Section 1896.18 and 1896.20.

- g. If requested by DHCS, the Contractor agrees to provide documentation and/or verification, in a form agreed to by DHCS, that small business subcontractor usage under this Contract complies with the commitments specified during the Contractor selection process.

**67. Waiver of Contract Provisions**

- a. No covenant, condition, duty, obligation or undertaking contained in or made a part of the Contract shall be waived except by written agreement of the parties, or by the explicit language found in the Contract. Forbearance or indulgence in any other form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation or undertaking to be kept, performed or discharged by the party to which the same may apply; and until complete performance or satisfaction is achieved for all such covenants, conditions, duties, obligations and undertakings, the other party shall have the right to invoke any remedy available under the Contract or under law or equity, notwithstanding any such forbearance or indulgence.
- b. Proposed waivers must be initiated by the Contractor in a written Contract Waiver Request signed by the Contractor Representative. A Contract Waiver Request shall contain either:
- 1) Certified cost and pricing data covering either the cost or cost savings attributable to the requested waiver; or
  - 2) A certified statement that this waiver results in neither an increase in cost nor any cost savings; or
  - 3) A certified statement that the cost or cost savings attributable to the change are less than the cost involved in preparing cost and pricing data in response to a Change Order where the Change Order does not exceed ten thousand dollars (\$10,000).
- c. The Contracting Officer's approval of the Contract Waiver Request shall be in the form of a Contract Waiver Letter signed by the Contracting Officer and shall define the scope of the change. The Contracting Officer may require the Contractor submit full documentation, including certified cost and pricing data, in support of any waiver authorized pursuant to this Provision. If there is a cost or cost savings to the State, that cost or cost savings shall be processed in a Change Order or utilized as an offset pursuant to Exhibit E, Additional Provisions, Liability for Overpayment. A Waiver shall not exist unless approved by a Contract Waiver Letter.

**68. Warranty**

- a. Coverage

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- 1) The Contractor's warranty is applicable to all items included in the Contract. The Contractor's warranty shall cover any failures, omissions, defects or deficiencies (Warranty Items) discovered or known in any of the project deliverables or services.
- 2) The Contractor will promptly notify DHCS within one State work day of any failures, omissions, defects or deficiencies as they are discovered or known.
- 3) The Contractor shall, within five State work days of notification to the Department of such a failure, omission, defect or deficiency, provide DHCS with written details concerning the Warranty Item.
- 4) The Contractor shall collaborate with DHCS to thoroughly test and implement Contractor mitigation and remediation solutions to software defects discovered during any Warranty Period.
- 5) DHCS will approve, in writing, all warranty problem resolution items before implementation of corrections to Warranty Items.
- 6) The Contractor's warranty on deferred Warranty Items shall not commence until after formal written acceptance of the deferred Warranty Items.

b. Services Warranty

Notwithstanding inspection and written approval for the acceptance by DHCS or any provision concerning the conclusiveness thereof, Contractor represents and warrants to DHCS that all services performed under this Contract will, at the time of written DHCS approval, be free from defects in workmanship and conform to the requirements of this Contract.

The Contractor shall immediately correct or re-perform services which are not in compliance with this Contract. If the Contractor is required to correct or re-perform, it shall be at no cost to DHCS, and any services corrected or re-performed by the Contractor shall be subject to this Warranty Section to the same extent as work initially performed. If the Contractor fails or refuses to correct or re-perform, the Contracting Officer may, by Contract or otherwise, correct or replace with equivalent services and charge to the Contractor the cost incurred by DHCS, or make an equitable adjustment in the Contract price.

c. Systems Warranty

- 1) Notwithstanding prior acceptance by DHCS of any Contractor deliverable, the Contractor shall expressly warrant that during the term of this Contract, all systems covered by this Contract, including development, modifications and upgrades, shall be properly functioning, and all documentation shall be current and accurate and in compliance with the terms of the Contract. The Contractor must correct all Warranty Items in the systems and replace incorrect or defective documentation within ten (10) State work days or as agreed, in writing, between the Contracting Officer and the Contractor. If the Contractor fails to repair an identified Warranty Item within such period, DHCS may, at its sole discretion, act

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to repair, and the Contractor expressly agrees to reimburse DHCS for all reasonable cost incurred thereby. Warranty Items properly documented before expiration of the warranty shall be covered regardless of such expiration. The Contractor must expressly warrant all Contractor-provided and -supported hardware and software as part of the CD-MMIS to be defect free, properly functioning and compliant with the terms of the Contract and/or Change Order request.

- 2) If systems fail to meet performance commitments during the Warranty Period and while the Contractor is providing FI services, the Contractor shall modify, reconfigure, upgrade or replace Contractor-provided software or hardware and equipment at no additional cost to DHCS in order to provide a system solution that complies with such performance standards.
- 3) Systems Warranty Period

The Contractor's warranty shall begin from the date of formal written acceptance and approval by DHCS of CD-MMIS or upon CED, whichever is later, and will be considered completed after six consecutive months of system Operations without a defect. If a defect is found and/or determined during the six month consecutive Warranty Period, the Contract must restart the six month consecutive month Warranty Period again. This six-consecutive-month Warranty Period applies to all components comprising CD-MMIS. The Contractor's Warranty is limited to defects attributable to the Contractor. In the event the Contractor is the same as the prior contractor (Contract 04-35745), all properly documented defects are covered by this Warranty.

**69. Warranty Against Payment of a Broker's Fee**

The Contractor (or any of its officers, director or employees) agrees it has not employed any broker or finder or incurred any liability for any brokerage fee, commission or finder's fee (or similar fees, commission or reimbursement expenses) in connection with the transactions contemplated by this Contract.