

REGISTRATION NUMBER	AGREEMENT NUMBER
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1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME (Also known as DHCS, CDHS, DHS or the State)
 Department of Health Care Services

CONTRACTOR'S NAME (Also referred to as Contractor)

2. The term of this Agreement is: July 1, 2014
 through December 31, 2016

3. The maximum amount of this Agreement is: \$ 0
 Zero Dollars

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of this Agreement.

Exhibit A – Scope of Work	7 pages
Exhibit B – Budget Detail and Payment Provisions	2 pages
Exhibit C * – General Terms and Conditions	<u>GTC 610</u>
Exhibit D (F) – Special Terms and Conditions (Attached hereto as part of this agreement)	26 pages
Exhibit E – Additional Provisions	9 pages
Exhibit F – Definitions	6 pages
Exhibit G – Acronyms	2 pages
Exhibit H – HIPAA Business Associate Addendum	14 pages
Exhibit I – Information Confidentiality and Security Requirements	7 pages

See Exhibit E, Provision 1 for additional incorporated exhibits.

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

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

CONTRACTOR		California Department of General Services Use Only
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)		
BY (Authorized Signature)	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING		
ADDRESS		
STATE OF CALIFORNIA		<input type="checkbox"/> Exempt per:
AGENCY NAME		
Department of Health Care Services		
BY (Authorized Signature)	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING		
Christina Soares, Chief, Contract Management Unit		
ADDRESS		
1501 Capitol Avenue, Suite 71.5195, MS 1403, P.O. Box 997413, Sacramento, CA 95899-7413		

Exhibit A

Scope of Work

1. Service Overview

Contractor agrees to provide to the California Department of Health Care Services (DHCS) the services in accordance with the MFP Rebalancing Demonstration (Demonstration), initially authorized by Section 6071 of the Deficit Reduction Act of 2005 (Pub. L. 109-171), and extended by Section 2403 of the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111-148); Centers for Medicare and Medicaid Services (CMS) grant number 1LICMS300149; the CCT Operational Protocol approved by the U.S. Department of Health and Human Services – CMS; the California Code of Regulations (CCR) §51003 pertaining to Treatment Authorization Requests (TARs); and the terms of this Agreement.

Contractor will assist Medi-Cal beneficiaries living in qualified inpatient facilities to transition to living and receiving medically-appropriate home- and community-based services (HCBS) in the most integrated setting of their choice, consistent with the U.S. Supreme Court ruling in *Olmstead v. L.C.*, 527 U.S. 581 (1999). Qualified inpatient facilities include hospitals, nursing homes, intermediate care facilities (ICF) for individuals with intellectual disabilities, and inpatient psychiatric hospitals/institutions for mental diseases (IMD).

2. Service Location

The services shall be performed at applicable facilities in the County/ies of _____.

3. Service Hours

The services shall be provided during normal Contractor working days and hours, excluding national holidays.

4. Project Representatives

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

Department of Health Care Services	Contractor's/Grantee's Name
Contract Manager: Nichole Kessel Telephone: (916) 445-8910 Fax: (916) 552-9150 Email: Nichole.Kessel@dhcs.ca.gov	Contract Manager: [Enter Name] Telephone: (XXX) XXX-XXXX Fax: (XXX) XXX-XXXX Email: XXXXXXX@XXXXXXX

B. Direct all inquiries to:

Department of Health Care Services	Contractor's/Grantee's Name
Long-Term Care Projects Unit Attention: John Malhotra, Unit Chief 1501 Capitol Avenue, M.S. Code 0018 P.O. Box 997437 Sacramento, CA, 95899-7437 Telephone: (916) 322-5253 Fax: (916) 552-9150 Email: John.Malhotra@dhcs.ca.gov	Section or Unit Name (as applicable) Attention: [Enter name & Title] Street address & room number, if applicable P.O. Box Number (if applicable) City, State, Zip Code Telephone: (XXX) XXX-XXXX Fax: (XXX) XXX-XXXX Email: XXXXXXX@XXXXXXX

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Scope of Work

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

5. Services to be Performed

- A. The Contractor must only enroll beneficiaries who meet all four (4) of the federal MFP eligibility criteria. To be eligible for enrollment into CCT, a beneficiary must:
- 1) Have continuously resided in an inpatient facility for at least 90 days or longer, not including days a beneficiary was residing in the institution for the sole purpose of receiving short-term rehabilitation services that are reimbursed under Medicare;
 - 2) Be receiving Medi-Cal benefits for inpatient services furnished by an institution, for at least one (1) day;
 - 3) Continue to require the level of care provided in an institution, if not for the provision of HCBS Waiver and/or CA State Plan Long-Term Services and Supports (LTSS); and
 - 4) Want to leave the institution to receive HCBS Waiver and/or CA State Plan services at home or in the community.
- B. The Contractor shall designate a CCT project lead who shall assume, but not be limited to, the following responsibilities:
- 1) Act as Department of Health Care Services' (DHCS) primary contact for this Agreement;
 - 2) Provide oversight of the day-to-day operations of the Contractor's CCT program;
 - 3) Ensure appropriate personnel perform their functions within the organization; and
 - 4) Inform employees and contracted providers of applicable organization policies and procedures.
- C. The Contractor shall maintain employees and contracted providers assigned specifically to the CCT project and shall ensure they meet minimum qualifications, are licensed and certified, if applicable, and participate in ongoing and continuous training. Such staff shall include trained transition coordinators or case managers, personnel with degrees in social work, licensed vocation nurses, and/or registered nurses to perform the following CCT functions and services:
- 1) Work with inpatient facility personnel to identify Medi-Cal beneficiaries who have either expressed interest in returning to the community through MDS 3.0, Section Q, or are identified by DHCS or the facilities as beneficiaries who meet MFP eligibility criteria and are potential CCT Participants for transition to a community setting;
 - 2) Conduct exploratory interviews with potential CCT Enrollees and/or significant others, guardians, or conservators about returning home or to the community;
 - 3) Review clinical charts to document potential CCT Enrollees prior and current medical conditions, functional impairments, cognitive and behavioral status, ability to perform activities and instrumental activities of daily living, and family support;

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Scope of Work

- 4) Conduct independent assessments of potential CCT Enrollees' abilities to return to the community, and identify associated risks community living may have on their health and welfare. Such assessments shall include, but are not limited to, review of the following:
 - a) The level of medical supervision and nursing care the beneficiary would need to maintain his/her health status in the community;
 - b) The amount of habilitation the beneficiary would need to regain independence in the community;
 - c) The level of assistance in activities and instrumental activities of daily living the beneficiary would need to maintain his/her health, welfare, and independence in the community;
 - d) The level of supervision by family, significant others, or hired providers the beneficiary would need to maintain his/her safety in the community; and
 - e) The preferences the beneficiary would pursue in returning to the community.
- 5) Discuss options with the beneficiary, his/her significant others, family members, guardian, or conservator, to develop an *Initial CCT Transition and Care Plan* to support the beneficiary in the community. The *Initial CCT Transition and Care Plan* shall include, but is not limited to:
 - a) Preferred, qualified housing option: home, independent living, or assisted living facilities;
 - b) Necessary medical services, including: Medi-Cal health plan enrollment, primary care, specialty care, mental health care, substance abuse services, durable medical equipment, pharmacy services, and other services required to maintain continuation of care in the community;
 - c) Supervision of and/or assistance with activities and instrumental activities of daily living provided by family, significant others, or Medi-Cal providers through the State Plan or an HCBS Waiver, as well as other non-Medi-Cal community resources; and
 - d) Plans for managing identified risks and challenges the beneficiary may experience upon returning to the community; and
 - e) A targeted transition date.
- 6) Prepare an *Initial CCT Transition and Care Plan*, secure the agreement of the beneficiary or his/her guardian or conservator to enroll and participate in CCT, and secure the approval of the Contractor's assigned DHCS Nurse Evaluator to enroll the beneficiary in CCT;
- 7) Prepare a *Final CCT Transition and Care Plan* and secure the approval of the DHCS Nurse Evaluator and the individual's primary care physician, which must include:
 - a) An actual transition date;
 - b) Reinstatement of Supplemental Security Income (SSI);
 - c) Lease Agreements (if applicable);

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- d) Household setup (if applicable);
 - e) Home modifications (as appropriate);
 - f) Enrollment into Medi-Cal managed care plans and/or HCBS Waivers (as appropriate);
 - g) All arrangements for home- and community-based LTSS, including but not limited to, requests for Medi-Cal State Plan services and/or HCBS Waiver programs required to meet the beneficiary's specific needs outside of a facility; and
 - h) Post-transition care coordination and follow-up plans to monitor the health and welfare of the beneficiary.
- 8) Follow up with the beneficiary per post-transition care plan to ensure needed services are arranged and provided, and to conduct the Quality of Life assessments. If the beneficiary is enrolled in a 1915(c) HCBS waiver program, coordinate post-transition follow up with the waiver program care manager assigned to the beneficiary.

6. Administrative Requirements

- A. The Contractor must be an active Medi-Cal provider and enrolled as a provider type authorized to provide CCT services and receive reimbursement for those services.
- B. The Contractor shall be designated as a Local Contact Agency (LCA) by the State Medicaid Agency (SMA), and shall respond to MDS 3.0, Section Q referrals received from qualified inpatient facilities on behalf of beneficiaries who have indicated they would like additional information on returning to live and receive services in the community, regardless of the beneficiaries' insurance coverage.
- C. The Contractor must ensure all staff who conducts *Initial CCT Interviews* have attended designated state and/or federal training (as it becomes available). DHCS will inform the Contractor when such state and/or federal training become available.
- D. The Contractor shall establish and maintain its own policies and procedures (P&Ps) on the ways in which the organization implements the local CCT program. The Contractor's P&Ps must include, but are not limited to, how the Contractor will provide training on the local CCT P&Ps to its staff.
 - 1) The Contractor's P&Ps must remain current, through ongoing updates and revisions based on DHCS-CCT Policy Letters and/or contract amendments. The Contractor's P&Ps shall be available to DHCS upon request.
 - 2) The Contractor shall maintain a record of all employees or contracted personnel assigned to CCT who receive training on the local CCT P&Ps. The record of local CCT P&Ps training shall be available to DHCS upon request.
- E. The Contractor shall develop and implement CCT P&Ps that must, at a minimum:
 - 1) Address CCT Participant and Enrollee complaints and grievances;
 - 2) Report incidents, including injuries, or events to DHCS that threaten the welfare, safety, or health of any CCT Participant or Enrollee, and are not consistent with the Contractor's

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- routine operation or service practices. Examples of reportable incidents include: injuries, abuse, neglect, exploitation, and medication errors;
- a) When events/issues occur in the community within the 365-day Demonstration period, the Contractor shall:
- i. Act as a mandated reporter and report all events/issues to the appropriate governing entity;
 - ii. Ensure/confirm that the CCT Participant is safe;
 - iii. Report the event/issue to the appropriate authority(ies), if necessary;
 - iv. Document the occurrence; and
 - v. Report all events/issues using the *CCT Monthly Event/Issue Report*, available on the CCT website: <http://www.dhcs.ca.gov/services/ltc/Pages/CCT.aspx>.
- b) Establish a contingency service plan to provide services to CCT Participants or Enrollees in case of a disaster or emergency where the scheduled staff is not available.
- F. The Contractor must maintain records for every CCT Participant and Enrollee. CCT records shall include standard program forms, completed assessments, the *Initial* and *Final CCT Transition and Care Plans*, transition planning / case management notes, and any other applicable information.
- G. The Contractor must develop, implement, and maintain written procedures pertaining to the maintenance and securing of CCT records. Such procedures must include, but are not limited to:
- 1) Storing and securing records containing protected health information (PHI) and personal confidential information (PCI),
 - 2) Release of information and obtaining consent, and
 - 3) Maintenance of current and accurate files.
- H. The Contractor will be monitored for compliance with state and federal regulations, directives, and policies. CCT compliance monitoring and project evaluation includes:
- 1) Written notification of a site review at least 30 days in advance of an onsite visit and/or document review;
 - 2) Onsite review and observation by state CCT staff;
 - 3) An exit conference in which state CCT staff review their findings with the Contractor's staff;
 - 4) A post-review written report of finding(s), if applicable, will be sent to the Contractor to summarize any findings and to initiate corrective action planning no later than 30 days after the on-site review;
 - 5) A corrective action plan (CAP) prepared by the Contractor and submitted to DHCS no later

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Scope of Work

- than 60 days after the date on the letter of finding; and
- 6) DHCS shall monitor the Contractor's execution of the CAP until identified corrections are made.
- I. The Contractor shall monitor, evaluate, and take effective action to address any needed improvements in the quality of CCT services provided under this Agreement. The Contractor shall be accountable for the quality of all CCT services regardless of the number of contracting and subcontracting layers between Contractor and the direct provider.
- J. The Contractor shall secure local information technology support services and infrastructure that includes but is not limited to, the following:
- 1) Management Information System (MIS) capability; the Contractor's MIS shall have the capability to capture, edit, and utilize various data elements for internal management use as well as to meet CCT data reporting requirements by the dates they are due.
 - a) All data related to this Agreement shall be available to DHCS and CMS upon request.
 - b) The Contractor shall have and maintain an MIS that provides, at a minimum:
 - i. Information on CCT Participants and Enrollees;
 - ii. The Contractor's claims status and payment data; and
 - iii. Tracking of CCT service provision claims data.
 - c) The Contractor's MIS shall have processes that support the interactions between financial, beneficiary, provider, claims tracking, quality assurance, privacy/information confidentiality, and report generation subsystems. The interactions between the subsystems must be compatible, efficient, and successful.
 - 2) Office software that is compatible with Microsoft Office version 2010, software compatible to open and read portable document format (PDF) documents, and encryption software to ensure PHI/PCI is secure when transferring electronic information to, or receiving electronic information from, DHCS via e-mail.
 - 3) Telecommunications, hardware, and network security; including, but not limited to, the ability to send and receive zipped, secure, and encrypted communication and data, which may contain PHI/PCI.
 - 4) Security patches and upgrades as they become available to keep virus software up-to-date on all systems on which data related to the CCT program may be utilized or stored.
- K. The Contractor must have the fiscal capacity to cover at least three (3) months of encumbered costs to insure against a disruption in reimbursement and services. Proof of the appropriate fiscal capacity must be available to DHCS upon request.
- L. The Contractor is solely responsible for ensuring it does not employ individuals or contract with organizations or individuals:
- 1) Who have been excluded from participation in the Medicare or Medicaid programs;

Exhibit A Scope of Work

- 2) Who have been convicted of criminal offenses related to their involvement in Medicaid, Medicare, other health insurance, health care, or social service programs; or
- 3) Who could be determined to pose a risk to potential CCT Participants or Enrollees based on convictions of physical, sexual, drug, or alcohol abuse.

2. Reporting Requirements

- A. The Contractor shall furnish to DHCS such reports concerning the Contractor's performance, on such timetable, in such uniform format, and containing such information as DHCS may require. All DHCS-required reports, forms, and tracking tools are available on the CCT website: <http://www.dhcs.ca.gov/services/ltc/Pages/CCT.aspx>.
- B. The Contractor shall monitor and report on services and outcomes that include, but are not limited to the following:
 - 1) The tracking of MDS referrals received from inpatient facilities and quarterly submission of the Contractor's data to the SectionQPOC@dhcs.ca.gov mailbox.
 - 2) The completion and submittal of CCT Participants and Enrollees Quality of Life (QOL) surveys, which are required two (2) weeks before the transition, in the 11th month after the date of transition, and in the 24th month after the date of transition.
 - 3) The completion and submittal of the *CCT Monthly Data Report*, *CCT Monthly Event/Issue Report*, and *CCT Monthly Report Summary* on the 15th day of the following month, or on the next business day after the 15th day of the month if the 15th falls on a weekend or state holiday.
 - 4) Records of the Contractor's provision of on-going follow-up services to all CCT Participants for the duration of the 365-day Demonstration period.

3. Administrative Authority

- A. DHCS maintains overall authority and responsibility for the operation of the Demonstration by exercising oversight of the performance of the Contractor under CMS grant number 1LICMS300149.
- B. DHCS manages and oversees the performance of the Contractor via monthly reports, complaints/grievances, performance indicators, and quality assurance/quality improvement reviews. If DHCS determines there is a deficiency in the quality of service provision, corrective actions shall be initiated.
- C. DHCS has the final authority regarding acceptance/denial of a potential CCT Enrollee and discontinuance of a transition.
- D. DHCS has the final authority regarding approval and termination of transition providers.

Exhibit B
Budget Detail and Payment Provisions

1. Invoicing and Payment

- A. To receive payment for providing CCT services, the Contractor shall prepare and submit electronic claims through the California Medicaid Management Information System (CA-MMIS), administered by the Medi-Cal fiscal intermediary (FI), as set forth in the Medi-Cal Provider Manual. There is no compensation payable to either party in connection with this Agreement.
- B. The Contractor must submit, and obtain approval of, an electronic Treatment Authorization Request (e-TAR) using existing Medi-Cal HCBS codes approved for CCT prior to submitting an invoice for the reimbursement of CCT services.
- C. Services must be provided prior to receiving reimbursement.
- D. Reimbursements for goods or contracted services provided to CCT Participants and Enrollees shall be reimbursed based on actual costs, up to a maximum amount, as outlined in the CCT Operational Protocol.

2. Expense Allowability / Fiscal Documentation

- A. Invoices, received from a Contractor and accepted and/or submitted for payment by the FI, shall not be deemed evidence of allowable agreement costs.
- B. Contractor shall maintain for review and audit and supply to DHCS upon request, adequate documentation of all expenses claimed pursuant to this Agreement to permit a determination of expense allowability.
- C. If the allowability or appropriateness of an expense cannot be determined by DHCS because invoice detail, fiscal records, or backup documentation is nonexistent or inadequate according to generally accepted accounting principles or practices, all questionable costs may be disallowed and payment may be withheld by DHCS via written request to the FI. Upon receipt of adequate documentation supporting a disallowed or questionable expense, reimbursement may resume for the amount substantiated and deemed allowable.
- D. Costs and/or expenses deemed unallowable are subject to recovery by DHCS. See provision 6 in this exhibit entitled, "Recovery of Overpayments" for more information. [Delete this subparagraph if the Agreement does not contain a provision entitled, "Recovery of Overpayments".]

3. Recovery of Overpayments

- A. Contractor agrees that claims based upon a contractual agreement or an audit finding and/or an audit finding that is appealed and upheld, will be recovered by DHCS by one of the following options:
 - 1) Contractor's remittance to DHCS of the full amount of the audit exception within 30 days following DHCS' request for repayment;
 - 2) A repayment schedule which is agreeable to the both DHCS and the Contractor.
- B. DHCS reserves the right to select which option will be employed and the Contractor will be notified by DHCS in writing of the claim procedure to be utilized.
- C. Interest on the unpaid balance of the audit finding or debt will accrue at a rate equal to the monthly average of the rate received on investments in the Pooled Money Investment Fund

Exhibit B

Budget Detail and Payment Provisions

commencing on the date that an audit or examination finding is mailed to the Contractor, beginning 30 days after Contractor's receipt of DHCS' demand for repayment.

- D. If the Contractor has filed a valid appeal regarding the report of audit findings, recovery of the overpayments will be deferred until a final administrative decision on the appeal has been reached. If the Contractor loses the final administrative appeal, Contractor shall repay, to DHCS, the over-claimed or disallowed expenses, plus accrued interest. Interest accrues from the Contractor's first receipt of DHCS' notice requesting reimbursement of questioned audit costs or disallowed expenses.

Special Terms and Conditions

(For federally funded service contracts or agreements and grant agreements)

The use of headings or titles throughout this exhibit is for convenience only and shall not be used to interpret or to govern the meaning of any specific term or condition.

The terms "contract", "Contractor" and "Subcontractor" shall also mean, "agreement", "grant", "grant agreement", "Grantee" and "Subgrantee" respectively.

The terms "California Department of Health Care Services", "California Department of Health Services", "Department of Health Care Services", "Department of Health Services", "CDHCS", "DHCS", "CDHS", and "DHS" shall all have the same meaning and refer to the California State agency that is a party to this Agreement.

This exhibit contains provisions that require strict adherence to various contracting laws and policies. Some provisions herein are conditional and only apply if specified conditions exist (i.e., agreement total exceeds a certain amount; agreement is federally funded, etc.). The provisions herein apply to this Agreement unless the provisions are removed by reference on the face of this Agreement, the provisions are superseded by an alternate provision appearing elsewhere in this Agreement, or the applicable conditions do not exist.

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1. Federal Equal Opportunity Requirements

(Applicable to all federally funded agreements entered into by the Department of Health Care Services)

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. The Contractor will take affirmative action to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and career development opportunities and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Federal Government or DHCS, setting forth the provisions of the Equal Opportunity clause, Section 503 of the Rehabilitation Act of 1973 and the affirmative action clause required by the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212). Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified applicants without discrimination based on their race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era and the rights of applicants and employees.
- b. The Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era.
- c. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, to be provided by the Federal Government or the State, advising the labor union or workers' representative of the Contractor's commitments under the provisions herein and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The Contractor will comply with all provisions of and furnish all information and reports required by Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212) and of the Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and of the rules, regulations, and relevant orders of the Secretary of Labor.
- e. The Contractor will furnish all information and reports required by Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and the Rehabilitation Act of 1973, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the State and its designated representatives and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- f. In the event of the Contractor's noncompliance with the requirements of the provisions herein or with any federal rules, regulations, or orders which are referenced herein, this Agreement may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further federal and state contracts in accordance with procedures authorized in Federal Executive Order No. 11246 as amended and such other sanctions may be imposed and remedies invoked as provided in Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- g. The Contractor will include the provisions of Paragraphs a through g in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or Section 503 of the Rehabilitation Act of 1973 or (38 U.S.C. 4212) of the Vietnam Era Veteran's Readjustment Assistance Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs or DHCS may direct as a means of enforcing such provisions including sanctions for noncompliance provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation by a subcontractor or vendor as a result of such direction by DHCS, the Contractor may request in writing to DHCS, who, in turn, may request the United States to enter into such litigation to protect the interests of the State and of the United States.

2. Travel and Per Diem Reimbursement

(Applicable if travel and/or per diem expenses are reimbursed with agreement funds.)

Reimbursement for travel and per diem expenses from DHCS under this Agreement shall, unless otherwise specified in this Agreement, be at the rates currently in effect, as established by the California Department of Personnel Administration (DPA), for nonrepresented state employees as stipulated in DHCS' Travel Reimbursement Information Exhibit. If the DPA rates change during the term of the Agreement, the new rates shall apply upon their effective date and no amendment to this Agreement shall be necessary. Exceptions to DPA rates may be approved by DHCS upon the submission of a statement by the Contractor indicating that such rates are not available to the Contractor. No travel outside the State of California shall be reimbursed without prior authorization from DHCS. Verbal authorization should be confirmed in writing. Written authorization may be in a form including fax or email confirmation.

3. Procurement Rules

(Applicable to agreements in which equipment/property, commodities and/or supplies are furnished by DHCS or expenses for said items are reimbursed by DHCS with state or federal funds provided under the Agreement.)

a. Equipment/Property definitions

Wherever the term equipment and/or property is used, the following definitions shall apply:

- (1) **Major equipment/property:** A tangible or intangible item having a base unit cost of **\$5,000 or more** with a life expectancy of one (1) year or more and is either furnished by DHCS or the cost is reimbursed through this Agreement. Software and videos are examples of intangible items that meet this definition.
 - (2) **Minor equipment/property:** A tangible item having a base unit cost of **less than \$5,000** with a life expectancy of one (1) year or more and is either furnished by DHCS or the cost is reimbursed through this Agreement.
- b. **Government and public entities** (including state colleges/universities and auxiliary organizations), whether acting as a contractor and/or subcontractor, may secure all commodities, supplies, equipment and services related to such purchases that are required in performance of this Agreement. Said procurements are subject to Paragraphs d through h of Provision 3. Paragraph c of Provision 3 shall also apply, if equipment/property purchases are delegated to subcontractors that are nonprofit organizations or commercial businesses.
- c. **Nonprofit organizations and commercial businesses**, whether acting as a contractor and/or subcontractor, may secure commodities, supplies, equipment/property and services related to such purchases for performance under this Agreement.
- (1) Equipment/property purchases shall not exceed \$50,000 annually.

To secure equipment/property above the annual maximum limit of \$50,000, the Contractor shall make arrangements through the appropriate DHCS Program Contract Manager, to have all remaining equipment/property purchased through DHCS' Purchasing Unit. The cost of equipment/property purchased by or through DHCS shall be deducted from the funds available in this Agreement. Contractor shall submit to the DHCS Program Contract Manager a list of equipment/property specifications for those items that the State must procure. DHCS may pay the vendor directly for such arranged equipment/property purchases and title to the equipment/property will remain with DHCS. The equipment/property will be delivered to the Contractor's address, as stated on the face of the Agreement, unless the Contractor notifies the DHCS Program Contract Manager, in writing, of an alternate delivery address.

- (2) All equipment/property purchases are subject to Paragraphs d through h of Provision 3. Paragraph b of Provision 3 shall also apply, if equipment/property purchases are delegated to subcontractors that are either a government or public entity.
- (3) Nonprofit organizations and commercial businesses shall use a procurement system that meets the following standards:
 - (a) Maintain a code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in awarding procurement contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a procurement, or bid contract in which, to his or her knowledge, he or she has a financial interest.
 - (b) Procurements shall be conducted in a manner that provides, to the maximum extent practical, open, and free competition.
 - (c) Procurements shall be conducted in a manner that provides for all of the following:
 - [1] Avoid purchasing unnecessary or duplicate items.
 - [2] Equipment/property solicitations shall be based upon a clear and accurate description of the technical requirements of the goods to be procured.
 - [3] Take positive steps to utilize small and veteran owned businesses.
- d. Unless waived or otherwise stipulated in writing by DHCS, prior written authorization from the appropriate DHCS Program Contract Manager will be required before the Contractor will be reimbursed for any purchase of \$5,000 or more for commodities, supplies, equipment/property, and services related to such purchases. The Contractor must provide in its request for authorization all particulars necessary, as specified by DHCS, for evaluating the necessity or desirability of incurring such costs. The term "purchase" excludes the purchase of services from a subcontractor and public utility services at rates established for uniform applicability to the general public.
- e. In special circumstances, determined by DHCS (e.g., when DHCS has a need to monitor certain purchases, etc.), DHCS may require prior written authorization and/or the submission of paid vendor receipts for any purchase, regardless of dollar amount. DHCS reserves the right to either deny claims for reimbursement or to request repayment for any Contractor and/or subcontractor purchase that DHCS determines to be unnecessary in carrying out performance under this Agreement.
- f. The Contractor and/or subcontractor must maintain a copy or narrative description of the procurement system, guidelines, rules, or regulations that will be used to make purchases under this Agreement. The State reserves the right to request a copy of these documents and to inspect the purchasing practices of the Contractor and/or subcontractor at any time.
- g. For all purchases, the Contractor and/or subcontractor must maintain copies of all paid vendor invoices, documents, bids and other information used in vendor selection, for inspection or audit. Justifications supporting the absence of bidding (i.e., sole source purchases) shall also be maintained on file by the Contractor and/or subcontractor for inspection or audit.
- h. DHCS may, with cause (e.g., with reasonable suspicion of unnecessary purchases or use of inappropriate purchase practices, etc.), withhold, cancel, modify, or retract the delegated purchase

authority granted under Paragraphs b and/or c of Provision 3 by giving the Contractor no less than 30 calendar days written notice.

4. Equipment/Property Ownership / Inventory / Disposition

(Applicable to agreements in which equipment/property is furnished by DHCS and/or when said items are purchased or reimbursed by DHCS with state or federal funds provided under the Agreement.)

- a. Wherever the term equipment and/or property is used in Provision 4, the definitions in Paragraph a of Provision 3 shall apply.

Unless otherwise stipulated in this Agreement, all equipment and/or property that is purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement shall be considered state equipment and the property of DHCS.

- (1) **Reporting of Equipment/Property Receipt** - DHCS requires the reporting, tagging and annual inventorying of all equipment and/or property that is furnished by DHCS or purchased/reimbursed with funds provided through this Agreement.

Upon receipt of equipment and/or property, the Contractor shall report the receipt to the DHCS Program Contract Manager. To report the receipt of said items and to receive property tags, Contractor shall use a form or format designated by DHCS' Asset Management Unit. If the appropriate form (i.e., Contractor Equipment Purchased with DHCS Funds) does not accompany this Agreement, Contractor shall request a copy from the DHCS Program Contract Manager.

- (2) **Annual Equipment/Property Inventory** - If the Contractor enters into an agreement with a term of more than twelve months, the Contractor shall submit an annual inventory of state equipment and/or property to the DHCS Program Contract Manager using a form or format designated by DHCS' Asset Management Unit. If an inventory report form (i.e., Inventory/Disposition of DHCS-Funded Equipment) does not accompany this Agreement, Contractor shall request a copy from the DHCS Program Contract Manager. Contractor shall:

- (a) Include in the inventory report, equipment and/or property in the Contractor's possession and/or in the possession of a subcontractor (including independent consultants).
- (b) Submit the inventory report to DHCS according to the instructions appearing on the inventory form or issued by the DHCS Program Contract Manager.
- (c) Contact the DHCS Program Contract Manager to learn how to remove, trade-in, sell, transfer or survey off, from the inventory report, expired equipment and/or property that is no longer wanted, usable or has passed its life expectancy. Instructions will be supplied by either the DHCS Program Contract Manager or DHCS' Asset Management Unit.
- b. Title to state equipment and/or property shall not be affected by its incorporation or attachment to any property not owned by the State.
- c. Unless otherwise stipulated, DHCS shall be under no obligation to pay the cost of restoration, or rehabilitation of the Contractor's and/or Subcontractor's facility which may be affected by the removal of any state equipment and/or property.
- d. The Contractor and/or Subcontractor shall maintain and administer a sound business program for ensuring the proper use, maintenance, repair, protection, insurance and preservation of state equipment and/or property.
- (1) In administering this provision, DHCS may require the Contractor and/or Subcontractor to repair or replace, to DHCS' satisfaction, any damaged, lost or stolen state equipment and/or property. In the event of state equipment and/or miscellaneous property theft, Contractor and/or Subcontractor shall immediately file a theft report with the appropriate police agency or the California Highway Patrol and Contractor shall promptly submit one copy of the theft report to the DHCS Program Contract Manager.

- e. Unless otherwise stipulated by the Program funding this Agreement, equipment and/or property purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement, shall only be used for performance of this Agreement or another DHCS agreement.
- f. Within sixty (60) calendar days prior to the termination or end of this Agreement, the Contractor shall provide a final inventory report of equipment and/or property to the DHCS Program Contract Manager and shall, at that time, query DHCS as to the requirements, including the manner and method, of returning state equipment and/or property to DHCS. Final disposition of equipment and/or property shall be at DHCS expense and according to DHCS instructions. Equipment and/or property disposition instructions shall be issued by DHCS immediately after receipt of the final inventory report. At the termination or conclusion of this Agreement, DHCS may at its discretion, authorize the continued use of state equipment and/or property for performance of work under a different DHCS agreement.

g. **Motor Vehicles**

(Applicable only if motor vehicles are purchased/reimbursed with agreement funds or furnished by DHCS under this Agreement.)

- (1) If motor vehicles are purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement, within thirty (30) calendar days prior to the termination or end of this Agreement, the Contractor and/or Subcontractor shall return such vehicles to DHCS and shall deliver all necessary documents of title or registration to enable the proper transfer of a marketable title to DHCS.
- (2) If motor vehicles are purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement, the State of California shall be the legal owner of said motor vehicles and the Contractor shall be the registered owner. The Contractor and/or a subcontractor may only use said vehicles for performance and under the terms of this Agreement.
- (3) The Contractor and/or Subcontractor agree that all operators of motor vehicles, purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement, shall hold a valid State of California driver's license. In the event that ten or more passengers are to be transported in any one vehicle, the operator shall also hold a State of California Class B driver's license.
- (4) If any motor vehicle is purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement, the Contractor and/or Subcontractor, as applicable, shall provide, maintain, and certify that, at a minimum, the following type and amount of automobile liability insurance is in effect during the term of this Agreement or any extension period during which any vehicle remains in the Contractor's and/or Subcontractor's possession:

Automobile Liability Insurance

- (a) The Contractor, by signing this Agreement, hereby certifies that it possesses or will obtain automobile liability insurance in the amount of \$1,000,000 per occurrence for bodily injury and property damage combined. Said insurance must be obtained and made effective upon the delivery date of any motor vehicle, purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement, to the Contractor and/or Subcontractor.
- (b) The Contractor and/or Subcontractor shall, as soon as practical, furnish a copy of the certificate of insurance to the DHCS Program Contract Manager. The certificate of insurance shall identify the DHCS contract or agreement number for which the insurance applies.
- (c) The Contractor and/or Subcontractor agree that bodily injury and property damage liability insurance, as required herein, shall remain in effect at all times during the term of this Agreement or until such time as the motor vehicle is returned to DHCS.
- (d) The Contractor and/or Subcontractor agree to provide, at least thirty (30) days prior to the expiration date of said insurance coverage, a copy of a new certificate of insurance evidencing continued coverage, as indicated herein, for not less than the remainder of the term of this Agreement, the term of any extension or continuation thereof, or for a period of not less than one (1) year.

- (e) The Contractor and/or Subcontractor, if not a self-insured government and/or public entity, must provide evidence, that any required certificates of insurance contain the following provisions:
- [1] The insurer will not cancel the insured's coverage without giving thirty (30) calendar days prior written notice to the State (California Department of Health Care Services).
 - [2] The State of California, its officers, agents, employees, and servants are included as additional insureds, but only with respect to work performed for the State under this Agreement and any extension or continuation of this Agreement.
 - [3] The insurance carrier shall notify the California Department of Health Care Services (DHCS), in writing, of the Contractor's failure to pay premiums; its cancellation of such policies; or any other substantial change, including, but not limited to, the status, coverage, or scope of the required insurance. Such notices shall contain a reference to each agreement number for which the insurance was obtained.
- (f) The Contractor and/or Subcontractor is hereby advised that copies of certificates of insurance may be subject to review and approval by the Department of General Services (DGS), Office of Risk and Insurance Management. The Contractor shall be notified by DHCS, in writing, if this provision is applicable to this Agreement. If DGS approval of the certificate of insurance is required, the Contractor agrees that no work or services shall be performed prior to obtaining said approval.
- (g) In the event the Contractor and/or Subcontractor fails to keep insurance coverage, as required herein, in effect at all times during vehicle possession, DHCS may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

5. Subcontract Requirements

(Applicable to agreements under which services are to be performed by subcontractors including independent consultants.)

- a. Prior written authorization will be required before the Contractor enters into or is reimbursed for any subcontract for services costing \$5,000 or more. Except as indicated in Paragraph a(3) herein, when securing subcontracts for services exceeding \$5,000, the Contractor shall obtain at least three bids or justify a sole source award.
- (1) The Contractor must provide in its request for authorization, all information necessary for evaluating the necessity or desirability of incurring such cost.
 - (2) DHCS may identify the information needed to fulfill this requirement.
 - (3) Subcontracts performed by the following entities or for the service types listed below are exempt from the bidding and sole source justification requirements:
 - (a) A local governmental entity or the federal government,
 - (b) A State college or State university from any State,
 - (c) A Joint Powers Authority,
 - (d) An auxiliary organization of a California State University or a California community college,
 - (e) A foundation organized to support the Board of Governors of the California Community Colleges,
 - (f) An auxiliary organization of the Student Aid Commission established under Education Code § 69522,
 - (g) Firms or individuals proposed for use and approved by DHCS' funding Program via acceptance of an application or proposal for funding or pre/post contract award negotiations,

- (h) Entities and/or service types identified as exempt from advertising and competitive bidding in State Contracting Manual Chapter 5 Section 5.80 Subsection B.3. View this publication at the following Internet address: <http://www.dgs.ca.gov/ols/Resources/StateContractManual.aspx>.
- b. DHCS reserves the right to approve or disapprove the selection of subcontractors and with advance written notice, require the substitution of subcontractors and require the Contractor to terminate subcontracts entered into in support of this Agreement.
- (1) Upon receipt of a written notice from DHCS requiring the substitution and/or termination of a subcontract, the Contractor shall take steps to ensure the completion of any work in progress and select a replacement, if applicable, within 30 calendar days, unless a longer period is agreed to by DHCS.
- c. Actual subcontracts (i.e., written agreement between the Contractor and a subcontractor) of \$5,000 or more are subject to the prior review and written approval of DHCS. DHCS may, at its discretion, elect to waive this right. All such waivers shall be confirmed in writing by DHCS.
- d. Contractor shall maintain a copy of each subcontract entered into in support of this Agreement and shall, upon request by DHCS, make copies available for approval, inspection, or audit.
- e. DHCS assumes no responsibility for the payment of subcontractors used in the performance of this Agreement. Contractor accepts sole responsibility for the payment of subcontractors used in the performance of this Agreement.
- f. The Contractor is responsible for all performance requirements under this Agreement even though performance may be carried out through a subcontract.
- g. The Contractor shall ensure that all subcontracts for services include provision(s) requiring compliance with applicable terms and conditions specified in this Agreement.
- h. The Contractor agrees to include the following clause, relevant to record retention, in all subcontracts for services:
- "(Subcontractor Name) agrees to maintain and preserve, until three years after termination of (Agreement Number) and final payment from DHCS to the Contractor, to permit DHCS or any duly authorized representative, to have access to, examine or audit any pertinent books, documents, papers and records related to this subcontract and to allow interviews of any employees who might reasonably have information related to such records."
- i. Unless otherwise stipulated in writing by DHCS, the Contractor shall be the subcontractor's sole point of contact for all matters related to performance and payment under this Agreement.
- j. Contractor shall, as applicable, advise all subcontractors of their obligations pursuant to the following numbered provisions of this Exhibit: 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 17, 19, 20, 24, 32 and/or other numbered provisions herein that are deemed applicable.

6. Income Restrictions

Unless otherwise stipulated in this Agreement, the Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor under this Agreement shall be paid by the Contractor to DHCS, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by DHCS under this Agreement.

7. Audit and Record Retention

(Applicable to agreements in excess of \$10,000.)

- a. The Contractor and/or Subcontractor shall maintain books, records, documents, and other evidence, accounting procedures and practices, sufficient to properly reflect all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this Agreement, including any matching costs and expenses. The foregoing constitutes "records" for the purpose of this provision.

- b. The Contractor's and/or subcontractor's facility or office or such part thereof as may be engaged in the performance of this Agreement and his/her records shall be subject at all reasonable times to inspection, audit, and reproduction.
- c. Contractor agrees that DHCS, the Department of General Services, the Bureau of State Audits, or their designated representatives including the Comptroller General of the United States shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (GC 8546.7, CCR Title 2, Section 1896).
- d. The Contractor and/or Subcontractor shall preserve and make available his/her records (1) for a period of three years from the date of final payment under this Agreement, and (2) for such longer period, if any, as is required by applicable statute, by any other provision of this Agreement, or by subparagraphs (1) or (2) below.
 - (1) If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any resulting final settlement.
 - (2) If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later.
- e. The Contractor and/or Subcontractor shall comply with the above requirements and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in Public Contract Code § 10115.10, if applicable.
- f. The Contractor and/or Subcontractor may, at its discretion, following receipt of final payment under this Agreement, reduce its accounts, books and records related to this Agreement to microfilm, computer disk, CD ROM, DVD, or other data storage medium. Upon request by an authorized representative to inspect, audit or obtain copies of said records, the Contractor and/or Subcontractor must supply or make available applicable devices, hardware, and/or software necessary to view, copy and/or print said records. Applicable devices may include, but are not limited to, microfilm readers and microfilm printers, etc.
- g. The Contractor shall, if applicable, comply with the Single Audit Act and the audit reporting requirements set forth in OMB Circular A-133.

8. Site Inspection

The State, through any authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder including subcontract supported activities and the premises in which it is being performed. If any inspection or evaluation is made of the premises of the Contractor or Subcontractor, the Contractor shall provide and shall require Subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the authorized representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

9. Federal Contract Funds

(Applicable only to that portion of an agreement funded in part or whole with federal funds.)

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

- b. This agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the fiscal years covered by the term of this Agreement. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress which may affect the provisions, terms or funding of this Agreement in any manner.
- c. It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.
- d. DHCS has the option to invalidate or cancel the Agreement with 30-days advance written notice or to amend the Agreement to reflect any reduction in funds.

10. Intellectual Property Rights

a. Ownership

- (1) Except where DHCS has agreed in a signed writing to accept a license, DHCS shall be and remain, without additional compensation, the sole owner of any and all rights, title and interest in all Intellectual Property, from the moment of creation, whether or not jointly conceived, that are made, conceived, derived from, or reduced to practice by Contractor or DHCS and which result directly or indirectly from this Agreement.
- (2) For the purposes of this Agreement, Intellectual Property means recognized protectable rights and interest such as: patents, (whether or not issued) copyrights, trademarks, service marks, applications for any of the foregoing, inventions, trade secrets, trade dress, logos, insignia, color combinations, slogans, moral rights, right of publicity, author's rights, contract and licensing rights, works, mask works, industrial design rights, rights of priority, know how, design flows, methodologies, devices, business processes, developments, innovations, good will and all other legal rights protecting intangible proprietary information as may exist now and/or here after come into existence, and all renewals and extensions, regardless of whether those rights arise under the laws of the United States, or any other state, country or jurisdiction.
 - (a) For the purposes of the definition of Intellectual Property, "works" means all literary works, writings and printed matter including the medium by which they are recorded or reproduced, photographs, art work, pictorial and graphic representations and works of a similar nature, film, motion pictures, digital images, animation cells, and other audiovisual works including positives and negatives thereof, sound recordings, tapes, educational materials, interactive videos and any other materials or products created, produced, conceptualized and fixed in a tangible medium of expression. It includes preliminary and final products and any materials and information developed for the purposes of producing those final products. Works does not include articles submitted to peer review or reference journals or independent research projects.
- (3) In the performance of this Agreement, Contractor will exercise and utilize certain of its Intellectual Property in existence prior to the effective date of this Agreement. In addition, under this Agreement, Contractor may access and utilize certain of DHCS' Intellectual Property in existence prior to the effective date of this Agreement. Except as otherwise set forth herein, Contractor shall not use any of DHCS' Intellectual Property now existing or hereafter existing for any purposes without the prior written permission of DHCS. **Except as otherwise set forth herein, neither the Contractor nor DHCS shall give any ownership interest in or rights to its Intellectual Property to the other Party.** If during the term of this Agreement, Contractor accesses any third-party Intellectual Property that is licensed to DHCS, Contractor agrees to abide by all license and confidentiality restrictions applicable to DHCS in the third-party's license agreement.
- (4) Contractor agrees to cooperate with DHCS in establishing or maintaining DHCS' exclusive rights in the Intellectual Property, and in assuring DHCS' sole rights against third parties with respect to the Intellectual Property. If the Contractor enters into any agreements or subcontracts with other parties in order to perform this Agreement, Contractor shall require the terms of the Agreement(s) to include all Intellectual Property provisions. Such terms must include, but are not limited to, the subcontractor assigning and agreeing to assign to DHCS all rights, title and interest in Intellectual

Property made, conceived, derived from, or reduced to practice by the subcontractor, Contractor or DHCS and which result directly or indirectly from this Agreement or any subcontract.

- (5) Contractor further agrees to assist and cooperate with DHCS in all reasonable respects, and execute all documents and, subject to reasonable availability, give testimony and take all further acts reasonably necessary to acquire, transfer, maintain, and enforce DHCS' Intellectual Property rights and interests.

b. Retained Rights / License Rights

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

c. Copyright

- (1) Contractor agrees that for purposes of copyright law, all works [as defined in Paragraph a, subparagraph (2)(a) of this provision] of authorship made by or on behalf of Contractor in connection with Contractor's performance of this Agreement shall be deemed "works made for hire". Contractor further agrees that the work of each person utilized by Contractor in connection with the performance of this Agreement will be a "work made for hire," whether that person is an employee of Contractor or that person has entered into an agreement with Contractor to perform the work. Contractor shall enter into a written agreement with any such person that: (i) all work performed for Contractor shall be deemed a "work made for hire" under the Copyright Act and (ii) that person shall assign all right, title, and interest to DHCS to any work product made, conceived, derived from, or reduced to practice by Contractor or DHCS and which result directly or indirectly from this Agreement.
- (2) All materials, including, but not limited to, visual works or text, reproduced or distributed pursuant to this Agreement that include Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or DHCS and which result directly or indirectly from this Agreement, shall include DHCS' notice of copyright, which shall read in 3mm or larger typeface: "© [Enter Current Year e.g., 2010, etc.], California Department of Health Care Services. This material may not be reproduced or disseminated without prior written permission from the California Department of Health Care Services." This notice should be placed prominently on the materials and set apart from other matter on the page where it appears. Audio productions shall contain a similar audio notice of copyright.

d. Patent Rights

With respect to inventions made by Contractor in the performance of this Agreement, which did not result from research and development specifically included in the Agreement's scope of work, Contractor hereby grants to DHCS a license as described under Section b of this provision for devices or material incorporating, or made through the use of such inventions. If such inventions result from research and development work specifically included within the Agreement's scope of work, then Contractor agrees to assign to DHCS, without additional compensation, all its right, title and interest in and to such inventions and to assist DHCS in securing United States and foreign patents with respect thereto.

e. Third-Party Intellectual Property

Except as provided herein, Contractor agrees that its performance of this Agreement shall not be dependent upon or include any Intellectual Property of Contractor or third party without first: (i) obtaining DHCS' prior written approval; and (ii) granting to or obtaining for DHCS, without additional compensation, a license, as described in Section b of this provision, for any of Contractor's or third-party's Intellectual Property in existence prior to the effective date of this Agreement. If such a license upon these terms is unattainable, and DHCS determines that the Intellectual Property should be included in or is required for Contractor's performance of this Agreement, Contractor shall obtain a license under terms acceptable to DHCS.

f. Warranties

(1) Contractor represents and warrants that:

- (a) It is free to enter into and fully perform this Agreement.
- (b) It has secured and will secure all rights and licenses necessary for its performance of this Agreement.
- (c) Neither Contractor's performance of this Agreement, nor the exercise by either Party of the rights granted in this Agreement, nor any use, reproduction, manufacture, sale, offer to sell, import, export, modification, public and private display/performance, distribution, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or DHCS and which result directly or indirectly from this Agreement will infringe upon or violate any Intellectual Property right, non-disclosure obligation, or other proprietary right or interest of any third-party or entity now existing under the laws of, or hereafter existing or issued by, any state, the United States, or any foreign country. There is currently no actual or threatened claim by any such third party based on an alleged violation of any such right by Contractor.
- (d) Neither Contractor's performance nor any part of its performance will violate the right of privacy of, or constitute a libel or slander against any person or entity.
- (e) It has secured and will secure all rights and licenses necessary for Intellectual Property including, but not limited to, consents, waivers or releases from all authors of music or performances used, and talent (radio, television and motion picture talent), owners of any interest in and to real estate, sites, locations, property or props that may be used or shown.
- (f) It has not granted and shall not grant to any person or entity any right that would or might derogate, encumber, or interfere with any of the rights granted to DHCS in this Agreement.
- (g) It has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
- (h) It has no knowledge of any outstanding claims, licenses or other charges, liens, or encumbrances of any kind or nature whatsoever that could affect in any way Contractor's performance of this Agreement.

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

g. Intellectual Property Indemnity

- (1) Contractor shall indemnify, defend and hold harmless DHCS and its licensees and assignees, and its officers, directors, employees, agents, representatives, successors, and users of its products, ("Indemnitees") from and against all claims, actions, damages, losses, liabilities (or actions or proceedings with respect to any thereof), whether or not rightful, arising from any and all actions or claims by any third party or expenses related thereto (including, but not limited to, all legal expenses,

court costs, and attorney's fees incurred in investigating, preparing, serving as a witness in, or defending against, any such claim, action, or proceeding, commenced or threatened) to which any of the Indemnitees may be subject, whether or not Contractor is a party to any pending or threatened litigation, which arise out of or are related to (i) the incorrectness or breach of any of the representations, warranties, covenants or agreements of Contractor pertaining to Intellectual Property; or (ii) any Intellectual Property infringement, or any other type of actual or alleged infringement claim, arising out of DHCS' use, reproduction, manufacture, sale, offer to sell, distribution, import, export, modification, public and private performance/display, license, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or DHCS and which result directly or indirectly from this Agreement. This indemnity obligation shall apply irrespective of whether the infringement claim is based on a patent, trademark or copyright registration that issued after the effective date of this Agreement. DHCS reserves the right to participate in and/or control, at Contractor's expense, any such infringement action brought against DHCS.

- (2) Should any Intellectual Property licensed by the Contractor to DHCS under this Agreement become the subject of an Intellectual Property infringement claim, Contractor will exercise its authority reasonably and in good faith to preserve DHCS' right to use the licensed Intellectual Property in accordance with this Agreement at no expense to DHCS. DHCS shall have the right to monitor and appear through its own counsel (at Contractor's expense) in any such claim or action. In the defense or settlement of the claim, Contractor may obtain the right for DHCS to continue using the licensed Intellectual Property; or, replace or modify the licensed Intellectual Property so that the replaced or modified Intellectual Property becomes non-infringing provided that such replacement or modification is functionally equivalent to the original licensed Intellectual Property. If such remedies are not reasonably available, DHCS shall be entitled to a refund of all monies paid under this Agreement, without restriction or limitation of any other rights and remedies available at law or in equity.
- (3) Contractor agrees that damages alone would be inadequate to compensate DHCS for breach of any term of this Intellectual Property Exhibit by Contractor. Contractor acknowledges DHCS would suffer irreparable harm in the event of such breach and agrees DHCS shall be entitled to obtain equitable relief, including without limitation an injunction, from a court of competent jurisdiction, without restriction or limitation of any other rights and remedies available at law or in equity.

h. Federal Funding

In any agreement funded in whole or in part by the federal government, DHCS may acquire and maintain the Intellectual Property rights, title, and ownership, which results directly or indirectly from the Agreement; except as provided in 37 Code of Federal Regulations part 401.14; however, the federal government shall have a non-exclusive, nontransferable, irrevocable, paid-up license throughout the world to use, duplicate, or dispose of such Intellectual Property throughout the world in any manner for governmental purposes and to have and permit others to do so.

i. Survival

The provisions set forth herein shall survive any termination or expiration of this Agreement or any project schedule.

11. Air or Water Pollution Requirements

Any federally funded agreement and/or subcontract in excess of \$100,000 must comply with the following provisions unless said agreement is exempt under 40 CFR 15.5.

- a. Government contractors agree to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act [42 U.S.C. 1857(h)], section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).
- b. Institutions of higher education, hospitals, nonprofit organizations and commercial businesses agree to comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 7401 et seq.), as amended, and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as

amended.

12. Prior Approval of Training Seminars, Workshops or Conferences

Contractor shall obtain prior DHCS approval of the location, costs, dates, agenda, instructors, instructional materials, and attendees at any reimbursable training seminar, workshop, or conference conducted pursuant to this Agreement and of any reimbursable publicity or educational materials to be made available for distribution. The Contractor shall acknowledge the support of the State whenever publicizing the work under this Agreement in any media. This provision does not apply to necessary staff meetings or training sessions held for the staff of the Contractor or Subcontractor to conduct routine business matters.

13. Confidentiality of Information

- a. The Contractor and its employees, agents, or subcontractors shall protect from unauthorized disclosure names and other identifying information concerning persons either receiving services pursuant to this Agreement or persons whose names or identifying information become available or are disclosed to the Contractor, its employees, agents, or subcontractors as a result of services performed under this Agreement, except for statistical information not identifying any such person.
- b. The Contractor and its employees, agents, or subcontractors shall not use such identifying information for any purpose other than carrying out the Contractor's obligations under this Agreement.
- c. The Contractor and its employees, agents, or subcontractors shall promptly transmit to the DHCS Program Contract Manager all requests for disclosure of such identifying information not emanating from the client or person.
- d. The Contractor shall not disclose, except as otherwise specifically permitted by this Agreement or authorized by the client, any such identifying information to anyone other than DHCS without prior written authorization from the DHCS Program Contract Manager, except if disclosure is required by State or Federal law.
- e. For purposes of this provision, identity shall include, but not be limited to name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.
- f. As deemed applicable by DHCS, this provision may be supplemented by additional terms and conditions covering personal health information (PHI) or personal, sensitive, and/or confidential information (PSCI). Said terms and conditions will be outlined in one or more exhibits that will either be attached to this Agreement or incorporated into this Agreement by reference.

14. Documents, Publications and Written Reports

(Applicable to agreements over \$5,000 under which publications, written reports and documents are developed or produced. Government Code Section 7550.)

Any document, publication or written report (excluding progress reports, financial reports and normal contractual communications) prepared as a requirement of this Agreement shall contain, in a separate section preceding the main body of the document, the number and dollar amounts of all contracts or agreements and subcontracts relating to the preparation of such document or report, if the total cost for work by nonemployees of the State exceeds \$5,000.

15. Dispute Resolution Process

- a. A Contractor grievance exists whenever there is a dispute arising from DHCS' action in the administration of an agreement. If there is a dispute or grievance between the Contractor and DHCS, the Contractor must seek resolution using the procedure outlined below.
 - (1) The Contractor should first informally discuss the problem with the DHCS Program Contract Manager. If the problem cannot be resolved informally, the Contractor shall direct its grievance together with any evidence, in writing, to the program Branch Chief. The grievance shall state the issues in dispute, the legal authority or other basis for the Contractor's position and the remedy

sought. The Branch Chief shall render a decision within ten (10) working days after receipt of the written grievance from the Contractor. The Branch Chief shall respond in writing to the Contractor indicating the decision and reasons therefore. If the Contractor disagrees with the Branch Chief's decision, the Contractor may appeal to the second level.

- (2) When appealing to the second level, the Contractor must prepare an appeal indicating the reasons for disagreement with Branch Chief's decision. The Contractor shall include with the appeal a copy of the Contractor's original statement of dispute along with any supporting evidence and a copy of the Branch Chief's decision. The appeal shall be addressed to the Deputy Director of the division in which the branch is organized within ten (10) working days from receipt of the Branch Chief's decision. The Deputy Director of the division in which the branch is organized or his/her designee shall meet with the Contractor to review the issues raised. A written decision signed by the Deputy Director of the division in which the branch is organized or his/her designee shall be directed to the Contractor within twenty (20) working days of receipt of the Contractor's second level appeal.
- b. If the Contractor wishes to appeal the decision of the Deputy Director of the division in which the branch is organized or his/her designee, the Contractor shall follow the procedures set forth in Health and Safety Code Section 100171.
- c. Unless otherwise stipulated in writing by DHCS, all dispute, grievance and/or appeal correspondence shall be directed to the DHCS Program Contract Manager.
- d. There are organizational differences within DHCS' funding programs and the management levels identified in this dispute resolution provision may not apply in every contractual situation. When a grievance is received and organizational differences exist, the Contractor shall be notified in writing by the DHCS Program Contract Manager of the level, name, and/or title of the appropriate management official that is responsible for issuing a decision at a given level.

16. Financial and Compliance Audit Requirements

- a. The definitions used in this provision are contained in Section 38040 of the Health and Safety Code, which by this reference is made a part hereof.
- b. Direct service contract means a contract or agreement for services contained in local assistance or subvention programs or both (see Health and Safety [H&S] Code Section 38020). Direct service contracts shall not include contracts, agreements, grants, or subventions to other governmental agencies or units of government nor contracts or agreements with regional centers or area agencies on aging (H&S Code Section 38030).
- c. The Contractor, as indicated below, agrees to obtain one of the following audits:
 - (1) ***If the Contractor is a nonprofit organization (as defined in H&S Code Section 38040) and receives \$25,000 or more from any State agency under a direct service contract or agreement;*** the Contractor agrees to obtain an annual single, organization wide, financial and compliance audit. Said audit shall be conducted according to Generally Accepted Auditing Standards. This audit does not fulfill the audit requirements of Paragraph c(3) below. The audit shall be completed by the 15th day of the fifth month following the end of the Contractor's fiscal year, **and/or**
 - (2) ***If the Contractor is a nonprofit organization (as defined in H&S Code Section 38040) and receives less than \$25,000 per year from any State agency under a direct service contract or agreement,*** the Contractor agrees to obtain a biennial single, organization wide financial and compliance audit, unless there is evidence of fraud or other violation of state law in connection with this Agreement. This audit does not fulfill the audit requirements of Paragraph c(3) below. The audit shall be completed by the 15th day of the fifth month following the end of the Contractor's fiscal year, **and/or**
 - (3) ***If the Contractor is a State or Local Government entity or Nonprofit organization (as defined by the Federal Office of Management and Budget [OMB] Circular A-133) and expends \$500,000 or more in Federal awards,*** the Contractor agrees to obtain an annual single, organization wide, financial and compliance audit according to the requirements specified in OMB Circular A-133 entitled "Audits of States, Local Governments, and Non-Profit Organizations". An audit conducted

pursuant to this provision will fulfill the audit requirements outlined in Paragraphs c(1) and c(2) above. The audit shall be completed by the end of the ninth month following the end of the audit period. The requirements of this provision apply if:

- (a) The Contractor is a recipient expending Federal awards received directly from Federal awarding agencies, or
 - (b) The Contractor is a subrecipient expending Federal awards received from a pass-through entity such as the State, County or community based organization.
- (4) If the Contractor submits to DHCS a report of an audit other than an OMB A-133 audit, the Contractor must also submit a certification indicating the Contractor has not expended \$500,000 or more in federal funds for the year covered by the audit report.
- d. Two copies of the audit report shall be delivered to the DHCS program funding this Agreement. The audit report must identify the Contractor's legal name and the number assigned to this Agreement. The audit report shall be due within 30 days after the completion of the audit. Upon receipt of said audit report, the DHCS Program Contract Manager shall forward the audit report to DHCS' Audits and Investigations Unit if the audit report was submitted under Section 16.c(3), unless the audit report is from a City, County, or Special District within the State of California whereby the report will be retained by the funding program.
 - e. The cost of the audits described herein may be included in the funding for this Agreement up to the proportionate amount this Agreement represents of the Contractor's total revenue. The DHCS program funding this Agreement must provide advance written approval of the specific amount allowed for said audit expenses.
 - f. The State or its authorized designee, including the Bureau of State Audits, is responsible for conducting agreement performance audits which are not financial and compliance audits. Performance audits are defined by Generally Accepted Government Auditing Standards.
 - g. Nothing in this Agreement limits the State's responsibility or authority to enforce State law or regulations, procedures, or reporting requirements arising thereto.
 - h. Nothing in this provision limits the authority of the State to make audits of this Agreement, provided however, that if independent audits arranged for by the Contractor meet Generally Accepted Governmental Auditing Standards, the State shall rely on those audits and any additional audit work and shall build upon the work already done.
 - i. The State may, at its option, direct its own auditors to perform either of the audits described above. The Contractor will be given advance written notification, if the State chooses to exercise its option to perform said audits.
 - j. The Contractor shall include a clause in any agreement the Contractor enters into with the audit firm doing the single organization wide audit to provide access by the State or Federal Government to the working papers of the independent auditor who prepares the single organization wide audit for the Contractor.
 - k. Federal or state auditors shall have "expanded scope auditing" authority to conduct specific program audits during the same period in which a single organization wide audit is being performed, but the audit report has not been issued. The federal or state auditors shall review and have access to the current audit work being conducted and will not apply any testing or review procedures which have not been satisfied by previous audit work that has been completed.

The term "expanded scope auditing" is applied and defined in the U.S. General Accounting Office (GAO) issued Standards for *Audit of Government Organizations, Programs, Activities and Functions*, better known as the "yellow book".

17. Human Subjects Use Requirements

(Applicable only to federally funded agreements/grants in which performance, directly or through a

subcontract/subaward, includes any tests or examination of materials derived from the human body.)

By signing this Agreement, Contractor agrees that if any performance under this Agreement or any subcontract or subagreement includes any tests or examination of materials derived from the human body for the purpose of providing information, diagnosis, prevention, treatment or assessment of disease, impairment, or health of a human being, all locations at which such examinations are performed shall meet the requirements of 42 U.S.C. Section 263a (CLIA) and the regulations thereunder.

18. Novation Requirements

If the Contractor proposes any novation agreement, DHCS shall act upon the proposal within 60 days after receipt of the written proposal. DHCS may review and consider the proposal, consult and negotiate with the Contractor, and accept or reject all or part of the proposal. Acceptance or rejection of the proposal may be made orally within the 60-day period and confirmed in writing within five days of said decision. Upon written acceptance of the proposal, DHCS will initiate an amendment to this Agreement to formally implement the approved proposal.

19. Debarment and Suspension Certification

(Applicable to all agreements funded in part or whole with federal funds.)

- a. By signing this Agreement, the Contractor/Grantee agrees to comply with applicable federal suspension and debarment regulations including, but not limited to 7 CFR Part 3017, 45 CFR 76, 40 CFR 32 or 34 CFR 85.
- b. By signing this Agreement, the Contractor certifies to the best of its knowledge and belief, that it and its principals:
 - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
 - (2) Have not within a three-year period preceding this application/proposal/agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph b(2) herein; and
 - (4) Have not within a three-year period preceding this application/proposal/agreement had one or more public transactions (Federal, State or local) terminated for cause or default.
 - (5) Shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under federal regulations (i.e., 48 CFR part 9, subpart 9.4), debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction, unless authorized by the State.
 - (6) Will include a clause entitled, "Debarment and Suspension Certification" that essentially sets forth the provisions herein, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- c. If the Contractor is unable to certify to any of the statements in this certification, the Contractor shall submit an explanation to the DHCS Program Contract Manager.
- d. The terms and definitions herein have the meanings set out in the Definitions and Coverage sections of the rules implementing Federal Executive Order 12549.
- e. If the Contractor knowingly violates this certification, in addition to other remedies available to the Federal Government, the DHCS may terminate this Agreement for cause or default.

20. Smoke-Free Workplace Certification

(Applicable to federally funded agreements/grants and subcontracts/subawards, that provide health, day care, early childhood development services, education or library services to children under 18 directly or through local governments.)

- a. Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed.
- b. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible party.
- c. By signing this Agreement, Contractor or Grantee certifies that it will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act. The prohibitions herein are effective December 26, 1994.
- d. Contractor or Grantee further agrees that it will insert this certification into any subawards (subcontracts or subgrants) entered into that provide for children's services as described in the Act.

21. Covenant Against Contingent Fees

(Applicable only to federally funded agreements.)

The Contractor warrants that no person or selling agency has been employed or retained to solicit/secure this Agreement upon an agreement of understanding for a commission, percentage, brokerage, or contingent fee, except *bona fide* employees or *bona fide* established commercial or selling agencies retained by the Contractor for the purpose of securing business. For breach or violation of this warranty, DHCS shall have the right to annul this Agreement without liability or in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, and brokerage or contingent fee.

22. Payment Withholds

(Applicable only if a final report is required by this Agreement. Not applicable to government entities.)

Unless waived or otherwise stipulated in this Agreement, DHCS may, at its discretion, withhold 10 percent (10%) of the face amount of the Agreement, 50 percent (50%) of the final invoice, or \$3,000 whichever is greater, until DHCS receives a final report that meets the terms, conditions and/or scope of work requirements of this Agreement.

23. Performance Evaluation

(Not applicable to grant agreements.)

DHCS may, at its discretion, evaluate the performance of the Contractor at the conclusion of this Agreement. If performance is evaluated, the evaluation shall not be a public record and shall remain on file with DHCS. Negative performance evaluations may be considered by DHCS prior to making future contract awards.

24. Officials Not to Benefit

No members of or delegate of Congress or the State Legislature shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom. This provision shall not be construed to extend to this Agreement if made with a corporation for its general benefits.

25. Four-Digit Date Compliance

(Applicable to agreements in which Information Technology (IT) services are provided to DHCS or if IT equipment is procured.)

Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.

26. Prohibited Use of State Funds for Software

(Applicable to agreements in which computer software is used in performance of the work.)

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

27. Use of Small, Minority Owned and Women's Businesses

(Applicable to that portion of an agreement that is federally funded and entered into with institutions of higher education, hospitals, nonprofit organizations or commercial businesses.)

Positive efforts shall be made to use small businesses, minority-owned firms and women's business enterprises, whenever possible (i.e., procurement of goods and/or services). Contractors shall take all of the following steps to further this goal.

- (1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.
- (2) Make information on forthcoming purchasing and contracting opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.
- (3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.
- (4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.
- (5) Use the services and assistance, as appropriate, of such organizations as the Federal Small Business Administration and the U.S. Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

28. Alien Ineligibility Certification

(Applicable to sole proprietors entering federally funded agreements.)

By signing this Agreement, the Contractor certifies that he/she is not an alien that is ineligible for state and local benefits, as defined in Subtitle B of the Personal Responsibility and Work Opportunity Act. (8 U.S.C. 1601, et seq.)

29. Union Organizing

(Applicable only to grant agreements.)

Grantee, by signing this Agreement, hereby acknowledges the applicability of Government Code Sections 16645 through 16649 to this Agreement. Furthermore, Grantee, by signing this Agreement, hereby certifies that:

- a. No state funds disbursed by this grant will be used to assist, promote or deter union organizing.
- b. Grantee shall account for state funds disbursed for a specific expenditure by this grant, to show those funds were allocated to that expenditure.
- c. Grantee shall, where state funds are not designated as described in b herein, allocate, on a pro-rata basis, all disbursements that support the grant program.
- d. If Grantee makes expenditures to assist, promote or deter union organizing, Grantee will maintain records sufficient to show that no state funds were used for those expenditures, and that Grantee shall provide those records to the Attorney General upon request.

30. Contract Uniformity (Fringe Benefit Allowability)

(Applicable only to nonprofit organizations.)

Pursuant to the provisions of Article 7 (commencing with Section 100525) of Chapter 3 of Part 1 of Division 101 of the Health and Safety Code, DHCS sets forth the following policies, procedures, and guidelines regarding the reimbursement of fringe benefits.

- a. As used herein fringe benefits shall mean an employment benefit given by one's employer to an employee in addition to one's regular or normal wages or salary.
- b. As used herein, fringe benefits do not include:
 - (1) Compensation for personal services paid currently or accrued by the Contractor for services of employees rendered during the term of this Agreement, which is identified as regular or normal salaries and wages, annual leave, vacation, sick leave, holidays, jury duty and/or military leave/training.
 - (2) Director's and executive committee member's fees.
 - (3) Incentive awards and/or bonus incentive pay.
 - (4) Allowances for off-site pay.
 - (5) Location allowances.
 - (6) Hardship pay.
 - (7) Cost-of-living differentials
- c. Specific allowable fringe benefits include:
 - (1) Fringe benefits in the form of employer contributions for the employer's portion of payroll taxes (i.e., FICA, SUI, SDI), employee health plans (i.e., health, dental and vision), unemployment insurance, worker's compensation insurance, and the employer's share of pension/retirement plans, provided they are granted in accordance with established written organization policies and meet all legal and Internal Revenue Service requirements.
- d. To be an allowable fringe benefit, the cost must meet the following criteria:
 - (1) Be necessary and reasonable for the performance of the Agreement.
 - (2) Be determined in accordance with generally accepted accounting principles.
 - (3) Be consistent with policies that apply uniformly to all activities of the Contractor.
- e. Contractor agrees that all fringe benefits shall be at actual cost.

f. Earned/Accrued Compensation

- (1) Compensation for vacation, sick leave and holidays is limited to that amount earned/accrued within the agreement term. Unused vacation, sick leave and holidays earned from periods prior to the agreement term cannot be claimed as allowable costs. See Provision f (3)(a) for an example.
- (2) For multiple year agreements, vacation and sick leave compensation, which is earned/accrued but not paid, due to employee(s) not taking time off may be carried over and claimed within the overall term of the multiple years of the Agreement. Holidays cannot be carried over from one agreement year to the next. See Provision f (3)(b) for an example.
- (3) For single year agreements, vacation, sick leave and holiday compensation that is earned/accrued but not paid, due to employee(s) not taking time off within the term of the Agreement, cannot be claimed as an allowable cost. See Provision f (3)(c) for an example.

(a) **Example No. 1:**

If an employee, John Doe, earns/accrues three weeks of vacation and twelve days of sick leave each year, then that is the maximum amount that may be claimed during a one year agreement. If John Doe has five weeks of vacation and eighteen days of sick leave at the beginning of an agreement, the Contractor during a one-year budget period may only claim up to three weeks of vacation and twelve days of sick leave as actually used by the employee. Amounts earned/accrued in periods prior to the beginning of the Agreement are not an allowable cost.

(b) **Example No. 2:**

If during a three-year (multiple year) agreement, John Doe does not use his three weeks of vacation in year one, or his three weeks in year two, but he does actually use nine weeks in year three; the Contractor would be allowed to claim all nine weeks paid for in year three. The total compensation over the three-year period cannot exceed 156 weeks (3 x 52 weeks).

(c) **Example No. 3:**

If during a single year agreement, John Doe works fifty weeks and used one week of vacation and one week of sick leave and all fifty-two weeks have been billed to DHCS, the remaining unused two weeks of vacation and seven days of sick leave may not be claimed as an allowable cost.

31. Suspension or Stop Work Notification

- a. DHCS may, at any time, issue a notice to suspend performance or stop work under this Agreement. The initial notification may be a verbal or written directive issued by the funding Program's Contract Manager. Upon receipt of said notice, the Contractor is to suspend and/or stop all, or any part, of the work called for by this Agreement.
- b. Written confirmation of the suspension or stop work notification with directions as to what work (if not all) is to be suspended and how to proceed will be provided within 30 working days of the verbal notification. The suspension or stop work notification shall remain in effect until further written notice is received from DHCS. The resumption of work (in whole or part) will be at DHCS' discretion and upon receipt of written confirmation.
 - (1) Upon receipt of a suspension or stop work notification, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize or halt the incurrence of costs allocable to the performance covered by the notification during the period of work suspension or stoppage.
 - (2) Within 90 days of the issuance of a suspension or stop work notification, DHCS shall either:
 - (a) Cancel, extend, or modify the suspension or stop work notification; or

- (b) Terminate the Agreement as provided for in the Cancellation / Termination clause of the Agreement.
- c. If a suspension or stop work notification issued under this clause is canceled or the period of suspension or any extension thereof is modified or expires, the Contractor may resume work only upon written concurrence of funding Program's Contract Manager.
- d. If the suspension or stop work notification is cancelled and the Agreement resumes, changes to the services, deliverables, performance dates, and/or contract terms resulting from the suspension or stop work notification shall require an amendment to the Agreement.
- e. If a suspension or stop work notification is not canceled and the Agreement is cancelled or terminated pursuant to the provision entitled Cancellation / Termination, DHCS shall allow reasonable costs resulting from the suspension or stop work notification in arriving at the settlement costs.
- f. DHCS shall not be liable to the Contractor for loss of profits because of any suspension or stop work notification issued under this clause.

32. Lobbying Restrictions and Disclosure Certification

(Applicable to federally funded agreements in excess of \$100,000 per Section 1352 of the 31, U.S.C.)

a. Certification and Disclosure Requirements

- (1) Each person (or recipient) who requests or receives a contract or agreement, subcontract, grant, or subgrant, which is subject to Section 1352 of the 31, U.S.C., and which exceeds \$100,000 at any tier, shall file a certification (in the form set forth in Attachment 1, consisting of one page, entitled "Certification Regarding Lobbying") that the recipient has not made, and will not make, any payment prohibited by Paragraph b of this provision.
- (2) Each recipient shall file a disclosure (in the form set forth in Attachment 2, entitled "Standard Form-LLL 'disclosure of Lobbying Activities'") if such recipient has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered federal action) in connection with a contract, or grant or any extension or amendment of that contract, or grant, which would be prohibited under Paragraph b of this provision if paid for with appropriated funds.
- (3) Each recipient shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affect the accuracy of the information contained in any disclosure form previously filed by such person under Paragraph a(2) herein. An event that materially affects the accuracy of the information reported includes:
 - (a) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered federal action;
 - (b) A change in the person(s) or individuals(s) influencing or attempting to influence a covered federal action; or
 - (c) A change in the officer(s), employee(s), or member(s) contacted for the purpose of influencing or attempting to influence a covered federal action.
- (4) Each person (or recipient) who requests or receives from a person referred to in Paragraph a(1) of this provision a contract or agreement, subcontract, grant or subgrant exceeding \$100,000 at any tier under a contract or agreement, or grant shall file a certification, and a disclosure form, if required, to the next tier above.
- (5) All disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the person referred to in Paragraph a(1) of this provision. That person shall forward all disclosure forms to DHCS Program Contract Manager.

b. Prohibition

Section 1352 of Title 31, U.S.C., provides in part that no appropriated funds may be expended by the recipient of a federal contract or agreement, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered federal actions: the awarding of any federal contract or agreement, the making of any federal grant, the making of any federal loan, entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract or agreement, grant, loan, or cooperative agreement.

**Attachment 1
State of California
Department of Health Care Services**

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making, awarding or entering into of this Federal contract, Federal grant, or cooperative agreement, and the extension, continuation, renewal, amendment, or modification of this Federal contract, grant, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency of the United States Government, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying Activities" in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants and cooperative agreements) of \$100,000 or more, and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C., any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Name of Contractor	Printed Name of Person Signing for Contractor
Contract / Grant Number	Signature of Person Signing for Contractor
Date	Title

After execution by or on behalf of Contractor, please return to:

California Department of Health Care Services
 Long-Term Care Division
 California Community Transitions (CCT)
 1501 Capitol Avenue, M.S. Code 0018
 P.O. Box 997437
 Sacramento, CA, 95899-7437

DHCS reserves the right to notify the contractor in writing of an alternate submission address.

Attachment 2

CERTIFICATION REGARDING LOBBYING

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure)

Approved by OMB
0348-0046

<p>1. Type of Federal Action:</p> <p><input type="checkbox"/> a. contract</p> <p><input type="checkbox"/> b. grant</p> <p><input type="checkbox"/> c. cooperative agreement</p> <p><input type="checkbox"/> d. loan</p> <p><input type="checkbox"/> e. loan guarantee</p> <p><input type="checkbox"/> f. loan insurance</p>	<p>2. Status of Federal Action:</p> <p><input type="checkbox"/> a. bid/offer/application</p> <p><input type="checkbox"/> b. initial award</p> <p><input type="checkbox"/> c. post-award</p>	<p>3. Report Type:</p> <p><input type="checkbox"/> a. initial filing</p> <p><input type="checkbox"/> b. material change</p> <p>For Material Change Only:</p> <p>Year ____ quarter ____</p> <p>date of last report ____.</p>
<p>4. Name and Address of Reporting Entity:</p> <p><input type="checkbox"/> Prime <input type="checkbox"/> Subawardee</p> <p>Tier ____, if known:</p> <p>Congressional District, If known:</p>	<p>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</p> <p>Congressional District, If known:</p>	
<p>6. Federal Department/Agency</p>	<p>7. Federal Program Name/Description:</p> <p>CDFA Number, if applicable: ____</p>	
<p>8. Federal Action Number, if known:</p>	<p>9. Award Amount, if known:</p> <p>\$</p>	
<p>10.a. Name and Address of Lobbying Registrant (If individual, last name, first name, MI):</p>	<p>b. Individuals Performing Services (including address if different from 10a. (Last name, First name, MI):</p>	
<p>11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person that fails to file the required disclosure shall be subject to a not more than \$100,000 for each such failure.</p>	<p>Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p> <p>Telephone No.: _____ Date: _____</p>	
<p>Federal Use Only</p>		<p>Authorized for Local Reproduction Standard Form-LLL (Rev. 7-97)</p>

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001".
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.
 (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

Exhibit E
Additional Provisions

1. Additional Incorporated Exhibits

- A. The following documents and any subsequent updates are not attached, but are incorporated herein and made a part hereof by this reference. The Contractor is required to fully comply with the directives in each document incorporated by reference herein and each update thereto. These documents may be updated periodically by DHCS, as required by program directives, or changes in law or policy. Unless otherwise indicated, DHCS shall provide the Contractor with copies of said documents at or before the agreement is presented to the Contractor for review, acceptance, and signature and will require acknowledgement of receipt. Periodic updates to the below listed documents that are not electronically accessible via the Internet, an Extranet link or other mechanism will be presented to the Contractor under separate cover and acknowledgement of receipt will be required. DHCS will maintain on file, all documents referenced herein and any subsequent updates.
- 1) The California's State Medicaid Plan and Approved State Plan Amendments; available online at: <http://www.dhcs.ca.gov/formsandpubs/laws/Pages/SPdocs.aspx>, and <http://www.dhcs.ca.gov/formsandpubs/laws/Pages/RecentAmendments.aspx>.
 - 2) The CCT Operational Protocol, available at: <http://www.dhcs.ca.gov/services/lrc/Pages/CCTOperationalProtocol.aspx>. The CCT Operational Protocol includes detailed policies and procedures on each Demonstration requirement.
 - 3) Policy Letters issued by DHCS to the Contractor.
 - 4) The Medi-Cal Provider Manual; available online at: http://files.medi-cal.ca.gov/pubsdoco/Manuals_menu.asp
 - 5) The Medi-Cal Provider Application
 - 6) DHCS Data Use Agreement (DUA)

2. Amendment Process

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

3. Cancellation/Termination

- A. This Agreement may be cancelled or terminated without cause by either party by giving thirty (30) calendar days advance written notice to the other party. Such notification shall state the effective date of termination or cancellation and include any final performance and/or payment/invoicing instructions/requirements.
- B. Upon receipt of a notice of termination or cancellation from DHCS, Contractor shall take immediate steps to stop performance and to cancel or reduce subsequent contract costs.
- C. The Contractor shall be entitled to payment for all allowable costs authorized under this Agreement and incurred up to the date of termination or cancellation, including authorized non-cancelable obligations, provided such expenses do not exceed the stated maximum amounts payable.

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4. Notice of Termination

A. If federal funding of the Demonstration is reduced or deleted prior to the end date of this Agreement, DHCS shall have the option to terminate this Agreement.

B. Termination without Cause

- 1) DHCS may terminate performance of work under this Agreement, in whole or in part, without cause if the Department determines that a termination is in the State's interest. DHCS shall terminate by delivering to the Contractor a *Notice of Termination* specifying the extent of termination and the effective date thereof. Such termination shall be effective 30 days from the delivery of the *Notice of Termination*.
- 2) After receipt of a *Notice of Termination*, and except as directed by DHCS, the Contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting reimbursements.

The Contractor shall:

- a) Stop work as specified in the *Notice of Termination*;
- b) Terminate all Subcontracts to the extent they relate to the work terminated; and
- c) Submit a transition plan as specified in Provision 9., subparagraph F. of this Exhibit.

C. Termination for Cause

- 1) DHCS may, by written *Notice of Termination* to the Contractor, terminate this Agreement, in whole or in part, as a consequence of any of the following events:
 - a) In case of threat of life, health, or safety of the public (termination of Agreement shall be effective immediately);
 - b) A violation of the law or failure to comply with any condition of this Agreement;
 - c) Inadequate performance or failure to make progress so as to endanger performance of this Agreement;
 - d) Failure to comply with reporting requirements;
 - e) Evidence that the Contractor is in an unsatisfactory financial condition as determined by DHCS or evidence of a financial condition that endangers performance of this Agreement;
 - f) Delinquency in payment of taxes or payment of costs for performance of this Agreement in the ordinary course of business;
 - g) Appointment of a trustee, receiver, or liquidator for all or a substantial part of the Contractor's property, or institution of bankruptcy, reorganization or the arrangement of liquidation proceedings by or against the Contractor;
 - h) Service of any writ of attachment, levy of execution, or commencement of garnishment proceedings against the Contractor's assets or income;

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Additional Provisions

- i) The commission of an act of bankruptcy;
 - j) Finding of debarment or suspension; or
 - k) The Contractor's organizational structure has materially changed.
- 2) Termination of this Agreement shall take effect immediately in the case of a threat to life, health, or safety of the public; or in all other cases, upon 30 days subsequent to written notice to the Contractor.
- 3) The *Notice of Termination* shall describe the action being taken, the date of termination, the reason for such action, and any conditions of the termination. The *Notice of Termination* shall also include the requirement to submit a transition plan, as identified in Provision 9., subparagraph F. of this Exhibit; and will inform the Contractor of any right to appeal such decision to DHCS and of the procedure for doing so.

D. Notice of Intent to Termination by Contractor

The Contractor shall give DHCS written *Notice of Intent to Terminate* at least 180 days prior to the proposed effective date of termination. The notice shall include the reason for such action and the anticipated last day of work. Upon receipt of such notice, DHCS will work with the Contractor to terminate the Agreement. Without such notice, the Contractor does not have the authority to terminate the Agreement.

E. Contractor Obligations upon Notice of Termination

- 1) In the event of termination or anticipated termination of this Agreement, in full or in part, the Contractor shall take immediate steps to ensure the health and welfare of CCT Participants transitioned to the community by the Contractor who are within the 365-day Demonstration period.
- 2) To maintain the continuity of services provided to CCT Participants and Enrollees in the event of termination or anticipated termination of this Agreement, the Contractor shall:
 - a) Develop a written Transition Plan, with assistance from DHCS, to identify alternative CCT services for each CCT Participant and Enrollee;
 - b) Cooperate with any and all efforts to refer CCT Participants and Enrollees to other CCT service providers;
 - c) Make available copies of CCT Participants and Enrollees files and other pertinent information necessary for the provision of efficient follow up, continuity of care and transition coordination services by another CCT service provider; and
 - d) Provide adequate staff to provide services to beneficiaries during the course of transitioning CCT Participants and Enrollees to another CCT service provider.

F. Transition Plan

- 1) The Contractor shall submit the written *Notice to Terminate* the Agreement to DHCS within 15 days of delivery. The transition plan must be approved by DHCS and shall, at a minimum, include the following:
 - a) Current count of CCT Participants and Enrollees;

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- b) Description of how CCT Participants and Enrollees will be notified about the change in their CCT service provider;
 - c) Plan to communicate with other CCT service providers, local agencies, and advocacy organizations that can assist in locating alternative services;
 - d) Plan to inform community referral sources of the pending termination of this CCT Agreement and what alternatives, if any, exist for future referrals;
 - e) Plan to transfer confidential CCT Participant and Enrollee files to a new Contractor;
 - f) Plan for adequate staff to beneficiaries during the course of transitioning CCT Participants and Enrollees to another CCT service provider; and
 - g) Additional information, as necessary, to ensure a safe transition of CCT Participants and Enrollees to another CCT service provider.
- 2) The Contractor shall implement the Transition Plan as approved by DHCS. DHCS shall monitor the Contractor's progress in carrying out all elements of the Transition Plan.

5. Subcontract Requirements

- A. This provision replaces and supersedes provision 5 of Exhibit D(F).
- B. The Contractor may elect to enter into Subcontracts with other entities to fulfill the obligations of the Agreement. In doing so, the Contractor shall meet the subcontracting requirements outlined in this Agreement.
- C. Each Subcontract shall contain:
 - 1) Specification of the services to be provided by the Subcontractor.
 - 2) Specification that the Subcontract shall be governed by and construed in accordance with all laws and applicable regulations governing this Agreement.
 - 3) Specification of the term of the Subcontract, including the beginning and ending dates as well as methods of extension, renegotiation, and termination.
 - 4) Subcontractor's agreement to submit reports as required by the Contractor.
 - 5) Subcontractor's agreement to make all of its books and records pertaining to the goods and services furnished under the terms of the Subcontract, available for inspection, examination, or copying:
 - a) By DHCS and the Department of Justice (DOJ);
 - b) At all reasonable times at the subcontractor's place of business or at such other mutually agreeable location in California;
 - c) In a form maintained in accordance with the general standards applicable to such book or record keeping;
 - d) Comply with generally accepted accounting principles; and

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- e) For a term of at least three (3) years from the close of DHCS' fiscal year in which the Subcontract was in effect;
- 6) Full disclosure of the method and amount of compensation or other consideration to be received by the subcontractor from Contractor.
- 7) Subcontractor's agreement to hold harmless both the State and its members in the event the Contractor cannot or shall not pay for services performed by the Subcontractor pursuant to the Subcontract.

D. Public Records

Subcontracts entered into by the Contractor and all information received in accordance with this subsection will be public records on file with DHCS, except as specifically exempted by statute. DHCS shall ensure the confidentiality of information and contractual provisions filed with DHCS to the extent they are specifically exempted by statute from disclosure, in accordance with the statutes providing the exemption.

6. Access to Records and Record Retention

- A. This provision replaces and supersedes provision 7 of Exhibit D(F).
- B. The Contractor shall maintain books, records, documents, and other evidence of service performance, procedures, and practices sufficient to reflect all requirements related to performance of this Agreement. The foregoing constitutes "records" for the purpose of this provision.
- C. The Contractor agrees that DHCS, the Department of General Services, the Bureau of State Audits, or their designated representatives shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. The Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Contractor agrees to include a similar right of DHCS to audit records and interview staff in any subcontract related to performance of this Agreement. (GC 8546.7, CCR Title 2, Section 1896).
- D. The Contractor shall make all administrative, general program, and fiscal records available to representatives of DHCS, State Controller's Office, CMS, and other authorized state or federal representatives designated by federal CMS regulations/statutes, during normal business hours, for the purpose of inspecting, auditing, and/or photocopying such records. The Contractor is required to promptly transmit to DHCS, all requests for administrative, general program, and fiscal records.
- E. The Contractor shall comply with the above requirements and, by signing this Agreement, is deemed to be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in Public Contract Code § 10115.10, if applicable.
- F. CCT Participant and Enrollee records are to be kept onsite as long as the case is open and active. Following termination, CCT Participant and Enrollee records will be maintained onsite for a period of three (3) years following the year of case closure, or for a longer period if deemed necessary by DHCS. A longer period of retention may be established by the Contractor. After the authorized period has expired, confidential records shall be shredded and disposed of in a manner that will maintain confidentiality.
- G. The Contractor may, at its discretion, following the last day included within the term of this Agreement, reduce its accounts, books and records related to this Agreement to microfilm, computer disk, CD ROM, or other data storage medium. Upon request by an authorized representative to

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inspect, audit or obtain copies of said records, the Contractor must supply or make available applicable devices, hardware, and/or software necessary to view, copy and/or print said records. Applicable devices may include, but are not limited to, microfilm readers and microfilm printers, etc.

7. Avoidance of Conflicts of Interest by Contractor

- A. DHCS intends to avoid any real or apparent conflict of interest on the part of the Contractor, subcontractors, or employees, officers, or directors of the Contractor. Thus, DHCS 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, if a conflict is found to exist, to require the Contractor to submit additional information or a plan for resolving the conflict, subject to DHCS review and prior approval.
- B. Conflicts of interest include, but are not limited to:
- 1) Any instance where the Contractor or any of its subcontractors, or any employee, officer, or director of the Contractor or any Subcontractor has an interest, financial or otherwise, whereby the use or disclosure of information obtained while performing services under the Agreement would allow for private or personal benefit or for any purpose that is contrary to the goals and objectives of the Agreement.
 - 2) Any instance where the Contractor's or any subcontractor'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.
- C. If DHCS is or becomes aware of a known or suspected conflict of interest, the Contractor will be given an opportunity to submit additional information or to resolve the conflict. A Contractor with a suspected conflict of interest will have five (5) working 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 DHCS's satisfaction, the conflict will be grounds for the termination of this Agreement. DHCS may, at its discretion upon receipt of a written request from the Contractor, authorize an extension of the timeline indicated herein.
- D. Any costs (including legal costs) incurred as a result of a conflict of interest determined by DHCS or by a court of law shall be the responsibility of the Contractor.

8. Dispute Resolution

- A. This provision replaces and supersedes provision 15 of Exhibit D(F).
- B. A Contractor grievance exists whenever there is a dispute arising from DHCS' action in the administration of this Agreement. If there is a dispute or grievance between the Contractor and DHCS, the Contractor must seek resolution using the procedure outlined below:
- 1) Filing a dispute will not preclude DHCS from recouping the value of the amount in dispute from the Contractor or from offsetting this amount from subsequent reimbursements until it is fully recouped.
 - 2) DHCS and Contractor agree to try to resolve all contractual issues by negotiation and mutual agreement at the State Program Contract Manager level without litigation. The parties recognize that the implementation of this policy depends on open-mindedness, and the need for both sides to present adequate supporting information on matters in question.

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- 3) Within 15 calendar days of the date of the dispute concerning performance of this Agreement arises or otherwise becomes known to the Contractor, the Contractor will notify the State Program Contract Manager in writing of the dispute by submitting a Notification of Dispute, describing the conduct (including actions, inactions, and written or oral communications) which it is disputing. The Contractor's Notification of Dispute will state, on the basis of the most accurate information then available to the Contractor, the following:
 - a) That it is a dispute pursuant to this section;
 - b) The date, nature, and circumstances of the conduct which is subject of the dispute;
 - c) The names, phone numbers, function, and activity of each Contractor, subcontractor, DHCS/State official or employee involved in or knowledgeable about the conduct;
 - d) The identification of any documents and the substances of any oral communications involved in the conduct. Copies of all identified documents will be attached;
 - e) The reason the Contractor is disputing the conduct;
 - f) The cost impact to the Contractor directly attributable to the alleged conduct, if any; and
 - g) The Contractor's desired remedy.
- B. The required documentation, including cost impact data, will be carefully prepared and submitted with substantiating documentation by the Contractor. This documentation will serve as the basis for any subsequent appeal.
- C. Following submission of the required notification, with supporting documentation, the Contractor will diligently comply with the requirements of this Agreement, including matters identified in the Notification of Dispute, to the maximum extent possible.
- D. Pursuant to a request by the Contractor, the State Program Contract Manager may provide for a dispute to be decided by an alternate dispute officer designated by DHCS, who is not the State Program Contract Manager and who is not directly involved with the CCT program. Any disputes concerning performance of this Agreement shall be decided by the State Program Contract Manager or the alternate dispute officer in a written decision stating the factual basis for the decision. Within 30 calendar days of receipt of a Notification of Dispute, the State Program Contract Manager or the alternate dispute officer, shall either:
 - 1) Find in favor of Contractor, in which case the State Program Contract Manager or alternate dispute officer may:
 - a) Countermand the earlier conduct which caused Contractor to file a dispute; or
 - b) Reaffirm the conduct and direct DHCS to comply with that Exhibit; or
 - 2) Deny Contractor's dispute and, where necessary, direct the manner of future performance; or
 - 3) Request additional substantiating documentation in the event the information in the Contractor's notification is inadequate to permit a decision to be made under 1) or 2) above, and shall advise the Contractor as to what additional information is required, and establish how that information shall be furnished. The Contractor shall have 30 calendar days to respond to the State Program Contract Manager's or alternate dispute officer's request for further information. Upon receipt of this additional, requested information, the State Program Contract Manager or alternate dispute

Exhibit E Additional Provisions

- officer shall have 30 calendar days to respond with a decision. Failure to supply additional information required by the State Program Contract Manager or alternate dispute officer within the time period specified above shall constitute a waiver by the Contractor of all claims.
- E. A copy of the decision shall be served to the Contractor.
- F. Appeal of State Program Contract Manager's or Alternate Dispute Officer's Decision
- 1) Contractor shall have 30 calendar days following the receipt of the decision to file an appeal of the decision to the Director. All appeals shall be governed by Health and Safety Code Section 100171, except for those provisions of Section 100171(d)(1) relating to accusations, statements of issues, statement to respondent, and notice of defense. All appeals shall be in writing and shall be filed with DHCS' Office of Administrative Hearings and Appeals. An appeal shall be deemed filed on the date it is received by the Office of Administrative Hearings and Appeals. An appeal shall specifically set forth each issue in dispute, and include Contractor's contentions as to those issues. However, Contractor's appeal shall be limited to those issues raised in its Notification of Dispute filed pursuant to Paragraph A(3) above. Failure to timely appeal the decision shall constitute a waiver by the Contractor of all claims arising out of that conduct, the Contractor shall exhaust all procedures provided for in this Provision 10, Dispute Resolution, prior to initiating any other action to enforce this Agreement.
 - 2) Contractor's Duty to Perform; pending final determination of any dispute hereunder, the Contractor shall perform according to the terms of this agreement, and in accordance with the State Program Contract Manager's or alternate dispute officer's decision.
 - 3) If pursuant to an appeal under Paragraph B. Appeal of State Program Contract Manager's or Alternate Dispute Officer's Decision above, the State Program Contract Manager's or alternate dispute officer's decision is reversed, the effect of the decision pursuant to Paragraph B. shall be retroactive to the date of the State Program Contract Manager's or alternate dispute officer's decision, and the Contractor shall promptly receive any benefits of such decision. DHCS shall not pay interest on any amounts paid pursuant to a State Program Contract Manager's or alternate dispute officer's decision or any appeal of such decision.

9. Insurance Requirements

- A. General Liability Insurance - Government Entities and Nonprofit Organizations must obtain Proof of Insurance that shall comply with the following insurance requirements:
- 1) The Contractor must furnish to DHCS a certificate of insurance stating that commercial general liability insurance of not less than \$1,000,000 per occurrence for bodily injury and property damage liability combined is presently in effect for the Contractor. The commercial general liability insurance policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal and advertising injury, and liability assumed under an insured agreement. The commercial general liability insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the Contractor's limit of liability.
 - 2) The certificate of insurance must identify the Agreement number for which the certificate of insurance applies and include the following provisions:
 - a) The insurer will not cancel the insured's coverage without giving 30 days prior written notice to DHCS, and

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- b) The State of California, its officers, agents, employees, and servants are included as additional insureds, but only with respect to work performed for the State of California under this Agreement.

- B. Automobile Liability Insurance - The Contractor shall maintain motor vehicle liability with limits of not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of a motor vehicle including owned, hired, and non-owned motor vehicles being used to provide CCT services, or to comply with requirements included under this Agreement.

- C. Appropriate Professional Liability Insurance - The Contractor shall maintain appropriate professional liability insurance of not less than \$1,000,000 as it appropriately relates to the services rendered under this Agreement. Coverage shall include errors and omissions.

- D. The Contractor agrees that the insurance required herein will remain in effect at all times during the term of the Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, the Contractor agrees to provide, at least 30 calendar days before 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 Agreement or for a period of not less than one year. DHCS may, in addition to any other remedies it may have, terminate this Agreement on the occurrence of such event.

- E. DHCS will not be responsible for any premiums, deductibles, or assessments on the insurance policy.

Exhibit F
Agreement Definitions

1. **Definitions.** For purposes of this Agreement, the following definitions shall apply:
- A. **365-Day Demonstration Period:** 365-days of Home- and Community-Based Services (HCBS), beginning on the date of transition to community living from a qualified in-patient facility. The 365-days within the Demonstration Period are not counted consecutively, which allows for inpatient admittance up to 29 days at a time.
 - B. **Active Medi-Cal Provider:** Enrolled health care &/or service provider in good-standing with the State Medicaid Agency.
 - C. **California Community Transitions (CCT):** California's Money Follows the Person Rebalancing Demonstration Grant Project.
 - D. **California Medicaid Management Information System (CA-MMIS):** California's Medicaid Management Information System (CA-MMIS) processes and pays over four million Medi-Cal provider health care claims each week; and processes and pays approximately \$19 billion a year in Medi-Cal fee-for-service (FFS) health care claims, and claims for other DHCS health care programs provided to 10 million Medi-Cal beneficiaries in the state.
 - E. **CCT Enrollee:** Under the MFP/CCT Demonstration Grant, CMS defines "Enrollee" as an individual in a qualified institution [who] signs a consent form to become an MFP participant, the individual is enrolled in the MFP program, and pre-discharge administrative activities/services may be provided.
 - F. **CCT Monthly Data Report:** Complete lists of current CCT Enrollees and Participants produced by CCT Lead Organizations and submitted to designated State CCT staff on a monthly basis.
 - G. **CCT Monthly Event/Issue Report:** Monthly account of reportable events/issues completed by CCT Lead Organizations and submitted to designated State CCT staff.
 - H. **CCT Monthly Report Summary:** One page summary of the Demographic totals included in the CCT Monthly Data Report and CCT Monthly Event/Issue Report.
 - I. **Operational Protocol:** States receiving MFP grants are required to develop and maintain an Operational Protocol. These Operational Protocols must contain measurable benchmarks of state progress towards program goals, and provide a step-by-step guide to program implementation. State MFP program features could change as the projects develop specific plans for transitioning individuals from institutions to qualified homes or other community-based residences; and for rebalancing long-term care systems to enhance the ability of people with disabilities to receive services and support in the setting of their choice.
 - J. **CCT Participant:** Under the MFP/CCT Demonstration Grant, CMS defines "Participant" as an enrollee who becomes a participant in the MFP program who meets the statutory requirements for a qualified individual and may, commencing on discharge, begin a 365-day period of participation in which the State can receive an enhanced FMAP for the provision of qualified HCBS and demonstration services.
 - K. **CCT Lead Organization (LO):** Designated local organizations who are experts on the services and supports available to Medi-Cal beneficiaries transitioning from a qualified

inpatient facility to the community. All CCT LOs must be enrolled in Medi-Cal to provide CCT services, and must have an executed Agreement with DHCS prior to providing CCT services.

- L. **CCT Services:** Assisting Medi-Cal beneficiaries living in qualified inpatient facilities to transition to living and receiving medically-appropriate home- and community-based services in the most integrated setting of their choice. CCT services include: collaborative coordination of transitioning to living and receiving services in the community, risk assessment and mitigation, transition implementation, and post-transition follow-up services.
- M. **Centers for Medicare and Medicaid Services (CMS):** The Centers for Medicare & Medicaid Services (CMS) is an agency within the US Department of Health & Human Services responsible for administration of several federal health care programs, including: Medicare (the federal health insurance program for seniors) Medicaid (the federal needs-based program), the Children's Health Insurance Program (CHIP), the Health Insurance Portability and Accountability Act (HIPAA), and the Clinical Laboratory Improvement Amendments (CLIA), among other services.
- N. **Corrective Action Plan (CAP):** A document describing exactly how a specific situation will be changed to better meet, or align with, the goals of the CCT Project &/or contract deliverables.
- O. **Department of Health Care Services (DHCS):** California's Department of Health Care Services is California's single State Medicaid Agency administering the State Medicaid Plan.
- P. **DHCS-CCT Policy Letters:** CCT Policy Letters are incorporated into the CCT Provider Agreement and are used to establish new or revised program policies.
- Q. **electronic Treatment Authorization Request (e-TAR):** Medi-Cal beneficiaries receive health care services from medical, pharmacy, or dental providers enrolled in the Medi-Cal Program. Providers must receive authorization from Medi-Cal to provide and/or be paid for some of these services. The electronic form a provider uses to request authorization is called an electronic Treatment Authorization Request (e-TAR). TARs are used by Medi-Cal to help ensure that necessary medical, pharmacy, or dental services are provided to Medi-Cal recipients and that providers are reimbursed appropriately.
- R. **Final CCT Transition and Care Plan:** The Final CCT Transition and Care Plan presents the final plans for the beneficiary's transition to the community. The Final CCT Transition and Care Plan includes the secured housing option, medical/other services required to maintain continuation of care in the community; supervision of and/or assistance with activities and instrumental activities of daily living; finalized plans for managing identified risks and challenges the beneficiary may experience upon returning to the community; and the final transition date.
- S. **Government Entities:** Government entities include the entire State, local, or federally recognized Indian tribal government, including any component thereof.
 - 1) "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments.
 - 2) "Local government" means a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (whether or not incorporated as a non-profit corporation under State law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

- T. **Grant Number 1LICMS300149:** California's Money Follows the Person Demonstration grant award #1LICMS300149.
- U. **Home- and Community-Based Services (HCBS):** Any, or a combination of, the following services provided to a Medicaid-eligible individual:
- 1) **HCBS Waiver services:** Waiver of certain Federal requirements to enable a state to provide home- and community-based services (other than room and board) to individuals who would otherwise require institutional care services reimbursable by Medicaid. The waiver programs are called 1915(c) waivers, named after the section of the Social Security Act that authorized them. Under 1915(c) waiver authority, states can provide services not usually covered by the Medicaid program, as long as these services are required to keep a person from being institutionalized. Services covered under waiver programs include: case management, homemaker, home health aide, personal care, adult day health, habilitation, respite care, "such other services requested by the state as the Secretary may approve," and "day treatment or other partial hospitalization services, psychosocial rehabilitation services, and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness."
 - 2) **Personal Care Services:** Personal Care Services are services prescribed by a physician, supervised by a registered nurse, and delivered in accordance with a care plan. Personal Care Services are provided only in the person's place of residence. Generally, personal care services include assisting individuals in activities of daily living (ADLs)--bathing, dressing, eating, toileting, and transferring from a bed to a chair. Personal care workers can provide other forms of assistance (e.g., housekeeping and laundry) only on a limited basis and only if they were incidental to delivery of personal care services.
 - 3) **Targeted Case Management:** Targeted Case Management is to assist Medicaid recipients in "gaining access to needed medical, social, educational and other services." This option is unique among services afforded under the state plan, in that states are exempt from the comparability requirement to make such services available to all recipients. A state is permitted to amend its state plan to cover case management services for *specified groups of Medicaid recipients* (hence the term targeted). It may also offer these services on a less-than-statewide basis (again via state plan amendment instead of securing a waiver); and
 - 4) **Home Health Services:** Home Health Services include nursing care; home health aides; and medical supplies, equipment, and appliances suitable for use in the home.
- V. **Initial CCT Transition and Care Plan:** The initial CCT Transition and Care plan includes the beneficiary's preferred, qualified housing option; anticipated need for medical services and other services required to maintain continuation of care in the community, based on medical necessity; anticipated need for supervision of and/or assistance with activities and instrumental activities of daily living; plans for managing identified risks and challenges the beneficiary may experience upon returning to the community; and a targeted transition date.
- W. **Local Contact Agency (LCA):** DHCS has designated one or more LCA in each county. The LCAs are responsible for keeping data on nursing facility referrals, and providing information / education to individuals who have indicated the desire to speak with someone about home- and community-based living options. LCAs may be one of several agency types: Aging and Disability Resource Connection (ADRC) programs, California Community Transitions Lead Organizations, Independent Living Centers (ILCs), or Area Agencies on Aging. LCAs are required to provide information/education to all interested individuals in nursing facilities regardless of payer source.

- X. **Long-Term Services and Supports (LTSS):** LTSS are defined as the broad range of services and supports used by individuals of all ages with functional limitations and chronic illnesses who need assistance to perform routine daily activities such as bathing, dressing, preparing meals, and administering medications. Home- and community-based LTSS include home health care, personal care assistance, adult day health care and homemaker services that help meet peoples' needs without institutional placement.
- Y. **Management Information System (MIS):** A Management Information System is a computerized information-processing system designed to support the activities and functions of company management.
- Z. **MDS 3.0, Section Q referrals:** The Minimum Data Set (MDS) is a core set of screening, clinical, and functional status elements, which forms the foundation of a comprehensive assessment for all residents of nursing homes certified to participate in Medicaid. Section Q, "Participation in Assessment and Goal Setting," of the MDS is intended to record the participation and expectations of the resident, family members, or significant other(s), and to understand the resident's overall goals. Section Q of the MDS uses a person-centered approach to insure all individuals have the opportunity to learn about HCBS and have an opportunity to receive long term care in the least restrictive setting possible by requiring inpatient facilities to refer beneficiaries who indicate they would like more information about returning to and receiving services in the community to state-designated Local Contact Agencies (LCA) to receive information on HCB long-term services and supports.
- AA. **Medi-Cal: California's Medicaid Program:** Medicaid is an entitlement program, which is designed to help states meet the costs of necessary health care for low-income and medically needy populations.
- BB. **Medi-Cal Fiscal Intermediary (FI):** The DHCS fiscal intermediary (FI) contractor, currently Xerox State Healthcare, LLC, operates and maintains California's Medicaid Management Information System (CA-MMIS). FI services include the operation of a telephone service center and provider relations functions (publications, outreach and training); system operations, updates and enhancements; processing eligibility inquiry transactions, treatment authorization requests and service authority requests; and processing more than four million claims per week.
- CC. **Medi-Cal Managed Care Plans:** Medi-Cal Managed Care plans are established capitated networks of organized systems of care that have contracted with DHCS to provide primary, preventive, and long-term care to Medi-Cal beneficiaries at reduced costs via service contracts with health care providers and medical facilities.
- DD. **Medi-Cal Provider Manual:** The Medi-Cal Provider Manual offers Medi-Cal service providers with an orientation to Medi-Cal services, programs, claim reimbursement and complete information about recipient eligibility and provider participation. There are two parts to the Medi-Cal Provider Manual. Part 1 offers general overviews of individual topics relating to the Medi-Cal Program and Part 2 offers much more detailed information for day-to-day use, including: specific program policies, code lists, and claim form and follow-up instructions.
- EE. **Money Follows the Person (MFP) Rebalancing Demonstration:** The Money Follows the Person (MFP) Rebalancing Demonstration, authorized by section 6071 of the Deficit Reduction Act of 2005 (P.L. 109-171), was designed to assist States to balance their long-term care systems and help Medicaid enrollees with disabling and chronic conditions transition from institutions to the community.

- FF. **Nonprofit Organizations:** Non-profit organization means any corporation, trust, association, cooperative, or other organization which:
- 1) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
 - 2) Is not organized primarily for profit; and
 - 3) Uses its net proceeds to maintain, improve, and/or expand its operations. For this purpose, the term "non-profit organization" excludes colleges and universities; hospitals; State, local, and federally-recognized Indian tribal governments; and those non-profit organizations which are excluded from coverage of this part in accordance with §230.20(c).
- GG. **Notice of Termination:** Written notification of the complete or partial termination of a contract for the convenience of the Government or for default. It prescribes contract clauses relating to termination and excusable delay and includes instructions for using termination and settlement forms.
- HH. **Personal Confidential Information (PCI):** Personal Confidential Information is defined as a person's name in combination with any one or more of the following: Social Security Number, driver's license number, or California identification card number.
- II. **Protected Health Information (PHI):** Protected Health Information means individually identifiable health information that can be linked to a particular person. This information can relate to the individual's past, present or future physical or mental health or condition, the provision of health care to the individual, or, the past, present, or future payment for the provision of health care to the individual. Common identifiers of health information include names, social security numbers, addresses, and birth dates.
- JJ. **Qualified Inpatient Facility:** Qualified inpatient facilities include Medi-Cal-Certified hospitals, nursing homes, intermediate care facilities (ICF) for individuals with intellectual disabilities, and inpatient psychiatric hospitals/institutions for mental diseases (IMD).
- KK. **Money Follows the Person Quality of Life (QOL) Survey:** A survey developed to measure MFP participants' satisfaction with their quality of life before transitioning to the community, after one year of living in the community, and again after 2 years of living in the community. The survey was developed by Mathematica Policy Research, Inc., in 2007, under a grant from the Centers for Medicare and Medicaid Services (CMS) and measures seven domains: living situation, choice and control, access to personal care services, respect/dignity, community integration/inclusion, overall life satisfaction, and health status. The questionnaire is based on the Participant Experiences Survey (PES), which is widely used for assessing quality of life.
- LL. **State Medicaid Agency (SMA):** The single State agency administering a State Medicaid Plan.
- MM. **Subcontract:** A Subcontract is a contract subordinate to another contract. For example, when an individual or organization has contracted for the performance of certain work; and in turn, engages a third party to perform the whole or a part of that which is included in the original contract.
- NN. **Subcontractor:** A Subcontractor is an individual or organization awarded a portion of an existing contract by a principal/primary contractor.

- OO. **Supplemental Security Income (SSI):** Supplemental Security Income (SSI) is a Federal income supplement program funded by general tax revenues (not Social Security taxes). It is designated to help aged, blind, and people with a disability who have little or no income; and, it provides cash to meet basic needs for food, clothing, and shelter.

Exhibit G
List of Acronyms

1. Acronyms. For purposes of this Agreement, the following acronyms shall apply:

A.	AES	Advanced Encryption Standard
B.	CA-MMIS	California Medicaid Management Information Systems
C.	CAP	Corrective Action Plan
D.	CCR	California Code of Regulations
E.	CCT	California Community Transitions
F.	CFR	Code of Federal Regulation
G.	CMS	Centers for Medicare and Medicaid Services
H.	DHCS	Department of Health Care Services
I.	DME	Durable Medical Equipment
J.	ePHI	Electronic Protected Health Information
K.	eTAR	Electronic Treatment Authorization Request
L.	FI	Fiscal Intermediary
M.	HCBS	Home- and Community-based Services
N.	HIPAA	Health Insurance Portability and Accountability Act
O.	LCA	Local Contact Agency
P.	LOC	Level of Care
Q.	LOF	Letter of Finding
R.	LTC	Long-term Care
S.	LTSS	Long-term Services and Supports
T.	MDS	Minimum Data Set
U.	MFP	Money Follows the Person
V.	NE	Nurse Evaluator
W.	OP	Operational Protocol
X.	OT	Occupational Therapist
Y.	PCI	Personal Confidential Information

Z.	PHI	Protected Health Information
AA.	PI	Personal Information
BB.	PSCI	Personal Information, Sensitive Information, or Confidential Information
CC.	PT	Physical Therapist
DD.	QOL	Quality of Life
EE.	RN	Registered Nurse
FF.	ST	Speech Therapist
GG.	TAR	Treatment Authorization Request

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HIPAA Business Associate Addendum

I. Recitals

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

II. Definitions

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

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

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

III. Terms of Agreement**A. Permitted Uses and Disclosures of PHI by Business Associate**

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

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

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

B. Prohibited Uses and Disclosures

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

C. Responsibilities of Business Associate

Business Associate agrees:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IV. Obligations of DHCS

DHCS agrees to:

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

V. Audits, Inspection and Enforcement

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

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

VI. Termination

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

VII. Miscellaneous Provisions

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

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

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

Exhibit H
HIPAA Business Associate Addendum

Attachment A
Business Associate Data Security Requirements

I. Personnel Controls

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

II. Technical Security Controls

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

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

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

III. Audit Controls

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

IV. Business Continuity / Disaster Recovery Controls

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

V. Paper Document Controls

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

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

Exhibit I
Information Confidentiality and Security Requirements

1. **Definitions.** For purposes of this Exhibit, the following definitions shall apply:
 - A. **Public Information:** Information that is not exempt from disclosure under the provisions of the California Public Records Act (Government Code sections 6250-6265) or other applicable state or federal laws.
 - B. **Confidential Information:** Information that is exempt from disclosure under the provisions of the California Public Records Act (Government Code sections 6250-6265) or other applicable state or federal laws.
 - C. **Sensitive Information:** Information that requires special precautions to protect from unauthorized use, access, disclosure, modification, loss, or deletion. Sensitive Information may be either Public Information or Confidential Information. It is information that requires a higher than normal assurance of accuracy and completeness. Thus, the key factor for Sensitive Information is that of integrity. Typically, Sensitive Information includes records of agency financial transactions and regulatory actions.
 - D. **Personal Information:** Information that identifies or describes an individual, including, but not limited to, their name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history. **It is DHCS' policy to consider all information about individuals private unless such information is determined to be a public record.** This information must be protected from inappropriate access, use, or disclosure and must be made accessible to data subjects upon request. Personal Information includes the following:

Notice-triggering Personal Information: Specific items of personal information (name plus Social Security number, driver license/California identification card number, or financial account number) that may trigger a requirement to notify individuals if it is acquired by an unauthorized person. For purposes of this provision, identity shall include, but not be limited to name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph. See Civil Code sections 1798.29 and 1798.82.
2. **Nondisclosure.** The Contractor and its employees, agents, or subcontractors shall protect from unauthorized disclosure any Personal Information, Sensitive Information, or Confidential Information (hereinafter identified as PSCI).
3. The Contractor and its employees, agents, or subcontractors shall not use any PSCI for any purpose other than carrying out the Contractor's obligations under this Agreement.
4. The Contractor and its employees, agents, or subcontractors shall promptly transmit to the DHCS Program Contract Manager all requests for disclosure of any PSCI not emanating from the person who is the subject of PSCI.
5. The Contractor shall not disclose, except as otherwise specifically permitted by this Agreement or authorized by the person who is the subject of PSCI, any PSCI to anyone other than DHCS without prior written authorization from the DHCS Program Contract Manager, except if disclosure is required by State or Federal law.

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Information Confidentiality and Security Requirements

6. The Contractor shall observe the following requirements:

A. Safeguards. The Contractor shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PSCI, including electronic PSCI that it creates, receives, maintains, uses, or transmits on behalf of DHCS. Contractor shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Contractor's operations and the nature and scope of its activities, including at a minimum the following safeguards:

1) Personnel Controls

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

2) Technical Security Controls

- a. Workstation/Laptop encryption.** All workstations and laptops that process and/or store DHCS PHI or PI must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as Advanced Encryption Standard (AES). The encryption solution must be full disk unless approved by the DHCS Information Security Office.
- b. Server Security.** Servers containing unencrypted DHCS PHI or PI must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.

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- c. **Minimum Necessary.** Only the minimum necessary amount of DHCS PHI or PI required to perform necessary business functions may be copied, downloaded, or exported.
- d. **Removable media devices.** All electronic files that contain DHCS PHI or PI data must be encrypted when stored on any removable media or portable device (i.e. USB thumb drives, floppies, CD/DVD, Blackberry, backup tapes etc.). Encryption must be a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES.
- e. **Antivirus software.** All workstations, laptops and other systems that process and/or store DHCS PHI or PI must install and actively use comprehensive anti-virus software solution with automatic updates scheduled at least daily.
- f. **Patch Management.** All workstations, laptops and other systems that process and/or store DHCS PHI or PI must have critical security patches applied, with system reboot if necessary. There must be a documented patch management process which determines installation timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable patches must be installed within 30 days of vendor release.
- g. **User IDs and Password Controls.** All users must be issued a unique user name for accessing DHCS PHI or PI. Username must be promptly disabled, deleted, or the password changed upon the transfer or termination of an employee with knowledge of the password, at maximum within 24 hours. Passwords are not to be shared. Passwords must be at least eight characters and must be a non-dictionary word. Passwords must not be stored in readable format on the computer. Passwords must be changed every 90 days, preferably every 60 days. Passwords must be changed if revealed or compromised. Passwords must be composed of characters from at least three of the following four groups from the standard keyboard:
- Upper case letters (A-Z)
 - Lower case letters (a-z)
 - Arabic numerals (0-9)
 - Non-alphanumeric characters (punctuation symbols)
- h. **Data Destruction.** When no longer needed, all DHCS PHI or PI must be wiped using the Gutmann or US Department of Defense (DoD) 5220.22-M (7 Pass) standard, or by degaussing. Media may also be physically destroyed in accordance with NIST Special Publication 800-88. Other methods require prior written permission of the DHCS Information Security Office.
- i. **System Timeout.** The system providing access to DHCS PHI or PI must provide an automatic timeout, requiring re-authentication of the user session after no more than 20 minutes of inactivity.
- j. **Warning Banners.** All systems providing access to DHCS PHI or PI must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only by authorized users. User must be directed to log off the system if they do not agree with these requirements.
- k. **System Logging.** The system must maintain an automated audit trail which can identify the user or system process which initiates a request for DHCS PHI or PI, or which alters

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DHCS PHI or PI. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. If DHCS PHI or PI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least 3 years after occurrence.

- I. Access Controls.** The system providing access to DHCS PHI or PI must use role based access controls for all user authentications, enforcing the principle of least privilege.
- m. Transmission encryption.** All data transmissions of DHCS PHI or PI outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files containing PHI can be encrypted. This requirement pertains to any type of PHI or PI in motion such as website access, file transfer, and E-Mail.
- n. Intrusion Detection.** All systems involved in accessing, holding, transporting, and protecting DHCS PHI or PI that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

3) Audit Controls

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

4) Business Continuity / Disaster Recovery Controls

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

5) Paper Document Controls

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- a. **Supervision of Data.** DHCS PHI or PI in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by an employee authorized to access the information. DHCS PHI or PI in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.
 - b. **Escorting Visitors.** Visitors to areas where DHCS PHI or PI is contained shall be escorted and DHCS PHI or PI shall be kept out of sight while visitors are in the area.
 - c. **Confidential Destruction.** DHCS PHI or PI must be disposed of through confidential means, such as cross cut shredding and pulverizing.
 - d. **Removal of Data.** DHCS PHI or PI must not be removed from the premises of the Contractor except with express written permission of DHCS.
 - e. **Faxing.** Faxes containing DHCS PHI or PI shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending the fax.
 - f. **Mailing.** Mailings of DHCS PHI or PI shall be sealed and secured from damage or inappropriate viewing of PHI or PI to the extent possible. Mailings which include 500 or more individually identifiable records of DHCS PHI or PI in a single package shall be sent using a tracked mailing method which includes verification of delivery and receipt, unless the prior written permission of DHCS to use another method is obtained.
- B. Security Officer.** The Contractor shall designate a Security Officer to oversee its data security program who will be responsible for carrying out its privacy and security programs and for communicating on security matters with DHCS.
- C. Discovery and Notification of Breach.** The Contractor shall notify DHCS **immediately by telephone call plus email or fax** upon the discovery of breach of security of PSCI in computerized form if the PSCI was, or is reasonably believed to have been, acquired by an unauthorized person, or upon the discovery of a suspected security incident that involves data provided to DHCS by the Social Security Administration **or within twenty-four (24) hours by email or fax** of the discovery of any suspected security incident, intrusion or unauthorized use or disclosure of PSCI in violation of this Agreement, or potential loss of confidential data affecting this Agreement. Notification shall be provided to the DHCS Program Contract Manager, the DHCS Privacy Officer and the DHCS Information Security Officer. Notice shall be made using the "DHCS Privacy Incident Report" form, including all information known at the time. The Contractor shall use the most current version of this form, which is posted on the DHCS Privacy Office website (www.dhcs.ca.gov, then select "Privacy" in the left column and then "Business Use" near the middle of the page) or use this link: <http://www.dhcs.ca.gov/formsandpubs/laws/priv/Pages/DHCSBusinessAssociatesOnly.aspx> If the incident occurs after business hours or on a weekend or holiday and involves electronic PSCI, notification shall be provided by calling the DHCS Information Technology Services Division (ITSD) Help Desk. Contractor shall take:
- 1) Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment and

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Information Confidentiality and Security Requirements

- 2) Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.

D. Investigation of Breach. The Contractor shall immediately investigate such security incident, breach, or unauthorized use or disclosure of PSCI and within seventy-two (72) hours of the discovery, The Contractor shall submit an updated "DHCS Privacy Incident Report" containing the information marked with an asterisk and all other applicable information listed on the form, to the extent known at that time, to the DHCS Program Contract Manager, the DHCS Privacy Officer, and the DHCS Information Security Officer:

E. Written Report. The Contractor shall provide a written report of the investigation to the DHCS Program Contract Manager, the DHCS Privacy Officer, and the DHCS Information Security Officer within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall include, but not be limited to, the information specified above, as well as a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure.

F. Notification of Individuals. The Contractor shall notify individuals of the breach or unauthorized use or disclosure when notification is required under state or federal law and shall pay any costs of such notifications, as well as any costs associated with the breach. The DHCS Program Contract Manager, the DHCS Privacy Officer, and the DHCS Information Security Officer shall approve the time, manner and content of any such notifications.

7. **Affect on lower tier transactions.** The terms of this Exhibit shall apply to all contracts, subcontracts, and subawards, regardless of whether they are for the acquisition of services, goods, or commodities. The Contractor shall incorporate the contents of this Exhibit into each subcontract or subaward to its agents, subcontractors, or independent consultants.
8. **Contact Information.** To direct communications to the above referenced DHCS staff, the Contractor shall initiate contact as indicated herein. DHCS reserves the right to make changes to the contact information below by giving written notice to the Contractor. Said changes shall not require an amendment to this Exhibit or the Agreement to which it is incorporated.

DHCS Program Contract Manager	DHCS Privacy Officer	DHCS Information Security Officer
See the Scope of Work exhibit for Program Contract Manager information	Privacy Officer c/o Office of Legal Services Department of Health Care Services P.O. Box 997413, MS 0011 Sacramento, CA 95899-7413 Email: privacyofficer@dhcs.ca.gov Telephone: (916) 445-4646	Information Security Officer DHCS Information Security Office P.O. Box 997413, MS 6400 Sacramento, CA 95899-7413 Email: iso@dhcs.ca.gov Telephone: ITSD Help Desk (916) 440-7000 or (800) 579-0874

9. **Audits and Inspections.** From time to time, DHCS may inspect the facilities, systems, books and records of the Contractor to monitor compliance with the safeguards required in the Information Confidentiality and Security Requirements (ICSR) exhibit. Contractor shall promptly remedy any violation of any provision of this ICSR exhibit. The fact that DHCS inspects, or fails to inspect, or has

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the right to inspect, Contractor's facilities, systems and procedures does not relieve Contractor of its responsibility to comply with this ICSR exhibit.