

**14-90301 San Francisco CHIM Contract**

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REGISTRATION NUMBER	AGREEMENT NUMBER 14-90301
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- This Agreement is entered into between the State Agency and the Contractor named below:  

STATE AGENCY'S NAME Department of Health Care Services	(Also known as DHCS, CDHS, DHS or the State)
CONTRACTOR'S NAME City and County of San Francisco	(Also referred to as Contractor)
- The term of this Agreement is: January 1, 2015 through June 30, 2015
- The maximum amount of this Agreement is: \$ 397,405  
Three Hundred Ninety-Seven Thousand, Four Hundred Five Dollars.
- The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of this Agreement.

Exhibit A – Scope of Work	25 pages
Exhibit B – Budget Detail and Payment Provisions	11 pages
Exhibit B Attachment I – Confidential Rates of Payment	2 pages
Exhibit C * – General Terms and Conditions	<a href="#">GTC 610</a>
Exhibit D – Special Terms and Conditions (Attached hereto as part of this agreement)	26 pages
Exhibit E – Additional Provisions	6 pages
Exhibit F – HIPAA Business Associate Addendum	14 pages
Exhibit G – 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.**

<b>CONTRACTOR</b>		<i>California Department of General Services Use Only</i>
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.) City and County of San Francisco		
BY (Authorized Signature) 	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING Greg Wagner, Chief Financial Officer		
ADDRESS 101 Grove Street, Rm 308 San Francisco, CA 94104		
<b>STATE OF CALIFORNIA</b>		
AGENCY NAME Department of Health Care Services		
BY (Authorized Signature) 	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING Don Rodriguez, Chief, Contract Management Unit		
ADDRESS 1501 Capitol Avenue, Suite 71.5195, MS 1403, P.O. Box 997413, Sacramento, CA 95899-7413		

Exempt per:  
Insurance Code Section 12699.54

CCC-307

**CERTIFICATION**

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

<i>Contractor/Bidder Firm Name (Printed)</i> City and County of San Francisco		<i>Federal ID Number</i> 94-6000417
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i> Greg Wagner, Chief Financial Officer, San Francisco Department of Public Health, City and County of San Francisco		
<i>Date Executed</i>	<i>Executed in the County of</i>	

**CONTRACTOR CERTIFICATION CLAUSES**

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

2. **DRUG-FREE WORKPLACE REQUIREMENTS:** Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

b. Establish a Drug-Free Awareness Program to inform employees about:

- 1) the dangers of drug abuse in the workplace;
- 2) the person's or organization's policy of maintaining a drug-free workplace;
- 3) any available counseling, rehabilitation and employee assistance programs; and,
- 4) penalties that may be imposed upon employees for drug abuse violations.

c. Every employee who works on the proposed Agreement will:

- 1) receive a copy of the company's drug-free workplace policy statement; and,
- 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the

following has occurred: the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

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

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

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

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

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

6. SWEATFREE CODE OF CONDUCT:

a. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at [www.dir.ca.gov](http://www.dir.ca.gov), and Public Contract Code Section 6108.

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

or the Department of Justice to determine the contractor's compliance with the requirements under paragraph (a).

7. DOMESTIC PARTNERS: For contracts over \$100,000 executed or amended after January 1, 2007, the contractor certifies that contractor is in compliance with Public Contract Code section 10295.3.

## **DOING BUSINESS WITH THE STATE OF CALIFORNIA**

The following laws apply to persons or entities doing business with the State of California.

1. CONFLICT OF INTEREST: Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (Pub. Contract Code §10410):

- 1). No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- 2). No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (Pub. Contract Code §10411):

- 1). For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- 2). For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (Pub. Contract Code §10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Pub. Contract Code §10430 (e))

2. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

3. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

4. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:

a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.

b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.

c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

6. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

7. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

8. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other governmental entity.

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**Exhibit A**  
 Scope of Work

**1. Service Overview**

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

The Contractor is responsible for all aspects of the day-to-day administration and operations of the County Children’s Health Initiative Program. The Contractor may use designees/subcontractors to accomplish the administrative and operational tasks specified in the Agreement. These tasks include maintaining privacy and security of applicant information and subscriber information; initial receipt of applications; mailroom functions; application processing; income screening; eligibility determinations; enrollment; disenrollment; transmission of data to healthcare plans and the State; development and maintenance of data systems; maintaining toll-free telephone line; providing customer service; developing and production of applications and project materials; carrying out project financial administration; conducting re-determination; and conducting project’s appeal process as detailed in this exhibit.

**2. Service Location**

The services shall be performed at applicable facilities in the City and County of San Francisco.

**3. Service Hours**

The services shall be provided during normal Contractor working hours, Monday through Friday, excluding national and State holidays.

**4. Project Representatives**

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

<b>Department of Health Care Services</b>	<b>City and County of San Francisco</b>
Leanne Smith, Assistant Branch Chief	Kathleen Abanilla, Health Program Manager
Telephone: (916) 650-0183	Telephone: (415) 759-2308
Fax: (916) 650-0111	Fax: (415) 759-2350
E-mail: Leanne.Smith@dhcs.ca.gov	E-mail: kathleen.abanilla@sfdph.org

B. Direct all inquiries to:

<b>Department of Health Care Services</b>	<b>City and County of San Francisco</b>
Administration/Program Support Branch Attention: Leanne Smith Mail Station Code 1403 1501 Capitol Avenue, Suite 71-5195 P.O. Box 997413 Sacramento, CA 95899-7413	Laguna Honda Hospital & Rehabilitation Center Attention: Kathleen Abanilla Managed Care Office, Box 16 375 Laguna Honda Blvd. San Francisco, CA 94116
Telephone: (916) 650-0183	Telephone: (415) 759-2308
Fax: (916) 650-0111	Fax: (415) 759-2350
E-mail: Leanne.Smith@dhcs.ca.gov	E-mail: kathleen.abanilla@sfdph.org



**Exhibit A**  
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**

See the following pages for a detailed description of the services to be performed.

**Exhibit A**  
Scope of Work

I. INTRODUCTION

A. Act and Regulation

This Agreement is in accord with and pursuant to Section 12699.50 et. seq., Part 6.4 of Division 2 of the California Insurance Code, which establishes the County Health Initiative Matching Fund, which shall hereinafter be called the County Children's Health Initiative Program (C-CHIP). The Agreement is also in accord and pursuant to Title XXI of the Social Security Act, Public Law 105-33, and its implementing federal regulations, which establishes the State Children's Health Insurance Program (S-CHIP), which provides authorization and federal funding for the Healthy Families Program (HFP), and Title 10, Chapter 5.8 of the California Code of Regulations which is adopted by the Managed Risk Medical Insurance Board to implement the HFP, and shall hereinafter be called the HFP Regulations. Terms and conditions used in the HFP Regulations shall have the same and identical meanings in this Agreement. The C-CHIP develops applications and program materials; receives, processes and screens applications; determines eligibility and conducts eligibility re-determinations; forwards applications; enrolls eligible applicants; and provides health, dental, and vision health coverage to S-CHIP eligible subscribers. Senate Bill 36 (Simitian) (Chapter 416, statues 2011), expands potential coverage to uninsured children with income at or below 400 percent (400%) of the Federal Poverty Level (FPL) from the previous threshold of 300 percent (300%) of FPL. This Agreement is for the purpose of administering the C-CHIP and providing the eligible contractors access to federal funding through the County Health Initiative Matching Fund.

II. DELEGATION

A. Delegation, Delegates and Subcontractors

In Accordance with the Acts and Regulations cited in Exhibit A. Item I of this Agreement and with the federal Centers for Medicare and Medicaid Services' (CMS) approval of California's Title XXI State Plan Amendment the Agreement establish an intergovernmental transfer mechanism for the purpose of using federal and local funding to support C-CHIP. In order to clarify the unique nature and structure of the mechanism and this agreement, the following items are set forth:

1. The State is contracting directly with a local county government and that entity shall be known as the Contractor within this Agreement.
2. The Contractor may delegate to or subcontract with other entities to provide contracted services or meet contract requirements. This may include delegating to or subcontracting with other branches of local county government. The Contractor is responsible to the State for the contracted activities and services provided by any and all delegates and subcontractors.
3. The Contractor shall subcontract with Department of Managed Health Care (DMHC) or Department of Insurance (DOI) licensed health care service plans under the Knox-Keene Health Care Service Plan Act of 1975 for the provision of covered health, dental, and specialized (vision) services and benefit that are required by the Agreement. The Contractor shall monitor and evaluate the performance of its subcontractors to assure the State that services are in compliance with the terms of the Agreement and all applicable statutes. These entities shall be known as the Contractor's plans.

**Exhibit A**  
Scope of Work

4. The Contractor shall provide the State copies of all delegation and subcontract agreements entered into by the Contractor for the provision of services under this Agreement, upon request. The State reserves the right to verify and approve agreements' conformance with the terms of this Agreement.
5. For the purpose of providing county matching funds for the intergovernmental transfer, the Contractor is prohibited from receiving funds from the Contractor's plans and/or the plans' provider networks. Also, the Contractor is prohibited from receiving any State or local obligation reductions based on the intergovernmental transfers and related payments for C-CHIP.

III. CONTRACTOR ADMINISTRATION RESPONSIBILITIES-ELIGIBILITY AND ENROLLMENT OPERATIONS:

The Contractor is responsible for all aspects of the day-to-day administration and operations for the C-CHIP. The Contractor may use designees/subcontractors to accomplish the administrative and operational tasks specified in the Agreement. These tasks include maintaining privacy and security of applicant information and subscriber information; initial receipt of applications; mailroom functions; application processing; income screening; eligibility determinations; enrollment; disenrollment; transmission of data to healthcare plans and the State; development and maintenance of data systems; maintaining toll-free telephone line; providing customer service; developing and production of applications and project materials; carrying out project financial administration; conducting re-determinations; and conducting project's appeal process. The operational requirements are detailed in Exhibit A, Item IV of this Agreement.

A. Initial Application Processing

1. The Contractor shall establish and conduct all application processing, including mailroom functions; record tracking of all applications (e.g., initial application and re-determination form) and supporting documentation received/processed; screening of applications; and eligibility determinations of each application. The record tracking process shall have the ability to identify and track applications by at least the following elements: date received, date processed, applicants name and each person being applied for.
2. The Contractor shall establish and maintain processing procedures for premium payments that accompany any application or are received by the mailroom. The procedures shall include record tracking, banking deposit requirements, account posting requirements and financial reconciliation processes.
3. The Contractor shall establish and maintain procedures for evaluating and processing complete and incomplete applications.
4. The Contractor shall screen each application to determine whether there are persons eligible for full scope no-cost Medi-Cal and/or the Medi-Cal Optional Targeted Low-Income Children's Program (OTLICP). If as a result of the screening, the family income for each child being applied for is determined to meet no-cost Medi-Cal or the Medi-Cal OTLICP requirements, the application and all supporting documentation shall be forwarded to the appropriate State program, if authorized by the applicant.

**Exhibit A**  
Scope of Work

5. The Contractor shall establish and maintain procedures for tracking and forwarding no-cost Medi-Cal and or Medi-Cal OTLICP eligible applications to the appropriate State program.
6. The Contractor shall also screen each application to determine whether any person being applied for is enrolled in no-cost Medi-Cal. If, as a result of the screening, it is determined that the person being applied for already has active health coverage through no-cost Medi-Cal, a full eligibility determination is not required and C-CHIP enrollment is not authorized. The Contractor shall establish and maintain procedures to notify applicants in writing of the finding of active health coverage through a State program.
7. When available, the Contractor shall utilize income screening determinations from the federal hub or through a manual process, as directed by the State and mutually agreed upon by the Contractor, to achieve alignment of eligibility calculations with the Modified Adjusted Gross Income methodology to determine household size and income in order to assess eligibility for C-CHIP and to determine whether the persons applying for coverage qualify pursuant to the statutory requirements specified in Exhibit A, Section 1 of this Agreement (including adjustments as the State may direct). The Contractor and State shall cooperate to maintain and improve the eligibility function in accordance with applicable law.

**B. Eligibility Determination**

1. The Contractor shall review each application for the C-CHIP requirements as specified in Exhibit A, Item I of the Agreement, the Contractor's County eligibility standards and shall determine whether the persons for whom applications are being made are qualified to participate in C-CHIP. The C-CHIP eligibility period shall be twelve (12) consecutive months. This requirement does not apply to children who enrolled with an effective date on or after January 1, 2013, with family income above 300 percent (300%) of the FPL.
2. The Contractor shall establish and maintain procedures to notify applicants in writing of the eligibility determination results for each person being applied for and each application forwarded to no-cost Medi-Cal or the Medi-Cal OTLICP within thirty (30) calendar days. The procedures shall include record tracking of all notifications and shall have the ability to track date notification sent, applicant's name, and eligibility determination for persons being applied for.
3. The Contractor shall establish and maintain refund procedures for premium payments from applications determined to be ineligible.
4. The Contractor shall establish and maintain procedures for analyzing suspected cases of fraudulent eligibility/enrollment and have fraud prevention safeguards. The procedures shall include review, evaluation, and documenting processes for suspected cases of fraud.
5. If a C-CHIP project reaches its enrollment capacity, the Contractor shall maintain a separate data set of names, addresses, and telephone numbers of applicants. The Contractor shall maintain a waiting list.

**Exhibit A**  
Scope of Work

C. Accuracy of Eligibility Determinations

The Contractor is responsible for correct and accurate eligibility determinations based on the complete application. The Contractor shall assure that the State shall be held harmless for any federal disallowance resulting from any Contractor errors in eligibility determinations. The State shall recoup any federal and State disallowances and adjustments from the Contractor including any State costs related to the disallowances.

D. Enrollment and Disenrollment

1. The Contractor shall establish and maintain procedures for enrollment of eligible subscribers and disenrollment of no longer eligible subscribers. The procedures shall be in accordance with the C-CHIP enacting statute, regulations and all other applicable statutes as specified in Exhibit A, Item I of this Agreement.
2. If a person has been determined eligible by the Contractor for the C-CHIP, the Contractor shall enroll the person in the applicant's choice of participating health, dental, and vision plans, if choice of plans is available. In the event that any of the selected plans are not available, the Contractor shall contact the applicant for an alternate choice, if choice of plans is available. The Contractor shall document all attempts to obtain the applicant's alternative choice.
3. The Contractor shall establish the effective date of coverage and shall notify the applicant in writing, and shall notify the participating plans, in accordance with Health Insurance Portability Accountability Act of 1996 (HIPAA) standards, of the languages spoken and written, the enrollment information, and the effective date of coverage for each person determined eligible on the application.
4. The Contractor shall establish and maintain a C-CHIP Welcome Packet which shall include all necessary program information for new subscribers. The Contractor shall send the Welcome Packet out prior to subscribers' effective dates of coverage by postal service in sufficient time to arrive prior to the effective date.
5. If a person has been determined ineligible for continued C-CHIP coverage by the Contractor, the Contractor shall disenroll the person from the plans in which the person is enrolled. The Contractor's reasons for disenrollment shall include the following:
  - a. The subscriber is found to no longer be eligible, or fails to provide the necessary information, during the annual eligibility review period; or
  - b. The subscriber attains an age that is no longer eligible for coverage; or
  - c. The subscriber is determined not to be a citizen, non-citizen national, or a qualified alien eligible for coverage or fails to provide required documentation within established time period; or
  - d. The applicant fails to pay the required family contribution within the established time period; or
  - e. The applicant so requests in writing on behalf of the subscriber(s) for whom the applicant has applied; or

**Exhibit A**  
Scope of Work

- f. The applicant has intentionally made false declarations in order to establish C-CHIP eligibility for any subscriber; or
  - g. The subscriber has died; or
  - h. Any other applicable C-CHIP disenrollment reason such as midyear re-evaluation.
6. Prior to an involuntary disenrollment of a subscriber, the Contractor shall provide written notification to the applicant at least thirty (30) days prior to the effective date of disenrollment. The notification shall include the reason for disenrollment, the effective date of the disenrollment, and an explanation of the appeal process including the need for the applicant to request continued coverage during appeal process.
7. The Contractor shall notify the applicant and the participating plans of the subscriber's disenrollment in accordance with the statutory requirements specified in Exhibit A, Item I of the Agreement. The Contractor shall notify the applicant in writing when the subscriber is disenrolled from the C-CHIP and such notice shall be sent by postal service within the required time period before the effective date of disenrollment. The notification shall include the reason for disenrollment, the effective date of the disenrollment, and an explanation of the appeal process including the need for the applicant to request continued coverage during appeal process.
8. The Contractor shall mail the applicant for any disenrolled subscribers a notice summarizing each subscriber's eligible months of creditable coverage while enrolled in C-CHIP and the notice shall be in accordance with the federal HIPAA requirements.
- E. Change in C-CHIP Enrollment Status**
- 1. The Contractor shall administer and record any changes in enrollment status during any C-CHIP eligibility period. This includes the addition of new subscribers who were not eligible when the applicant applied to C-CHIP, disenrollment of subscribers who are no longer eligible for the C-CHIP, changes in subscribers' plan selections and annual eligibility review evaluations.
  - 2. The Contractor shall recalculate C-CHIP family contribution when adding or disenrolling a subscriber and shall bill the applicant to reflect the revised amounts due. The recalculated family contribution shall not affect the prepaid free month that the family had qualified for prior to the adding or disenrolling a subscriber. The Contractor's data systems shall maintain accessible C-CHIP records including all changes in enrollment of all applicants/subscribers with the date of the enrollment status changes.
- F. Processing Correspondence From Applicants**
- 1. Written correspondence and requests from the applicant, which are not determined to be appeals pursuant to the statutory requirements specified in Exhibit A, Section I of this Agreement, shall be defined as correspondence. The Contractor shall establish and maintain procedures to receive, review, process and respond to all correspondence received from applicants.

**Exhibit A**  
Scope of Work

2. The Contractor shall respond directly to the applicant in writing, in order to inform the applicant about the outcome of the Contractor's review or evaluation of the applicant's inquiry. The written responses shall be completed within thirty (30) calendar days.

G. C-CHIP Annual Eligibility Review (AER)

1. The Contractor shall annually reevaluate each C-CHIP subscriber for eligibility to determine whether the persons applied for continue to qualify for coverage, in accordance with the statutory requirements specified in Exhibit A, Section I of this Agreement.
2. The Contractor shall establish and maintain an annual eligibility review (AER) process. The process shall include an AER package that shall be produced in the same languages in which the Contractor's plans produce their Medi-Cal materials. The AER packet shall include all applicant, subscriber and household information known to the Contractor and shall be sent prior to each subscriber's anniversary date with C-CHIP. The Contractor shall have the ability to re-generate and resend the AER package, if requested by the applicant.
3. If the Contractor has not received a returned completed AER package within thirty (30) calendar days prior to anniversary date, the Contractor shall send out a reminder postcard informing the applicant that failure to respond by the applicant's anniversary date will result in subscriber disenrollment and indicating the disenrollment date.
4. The Contractor shall establish and maintain timelines and procedures for the AER process, including procedures for processing complete (or made complete) AER packages. The Contractor shall prioritize AER package processing based on applicants' anniversary dates and pending disenrollment dates in order to maintain C-CHIP eligibility.
5. The Contractor shall review each complete AER package for compliance with the C-CHIP statutory requirements specified in Exhibit A, Section I of this Agreement, the Contractor's County eligibility standards and shall determine if the persons for whom application is being made qualify for continued coverage through the C-CHIP. If subscribers determined ineligible qualify for no-cost Medi-Cal or Medi-Cal OTLICP, their AER packages shall be forwarded to the appropriate State program.
6. The Contractor shall notify the applicant in writing of the results of the eligibility determination for each person whose eligibility is being re-determined at AER. The notice shall include, for each person eligible, the eligibility determination, the plans the listed subscribers are enrolled in, the recalculated family contribution, and the twelve (12) month time period for the eligibility determination. For those subscribers determined ineligible, the notice shall include the eligibility determination, disenrollment date, and an explanation of the appeal process, including the option for the applicant to request continued coverage during appeal process.
7. The Contractor shall establish and maintain AER appeals procedures with established appeal time periods, including the applicant's ability to request continued coverage during the appeal process.

**Exhibit A**  
Scope of Work

H. Accuracy of C-CHIP AER Eligibility Determinations

The Contractor is responsible for correct and accurate eligibility determinations based on the complete AER package. The Contractor shall assure that the State shall be held harmless for any federal disallowance resulting from any Contractor errors in eligibility determinations. The State shall recoup any federal and state disallowances and adjustments from the Contractor including any state costs related to the disallowances.

I. C-CHIP Appeals

1. The Contractor shall establish and maintain appeal procedures in accordance with the statutory requirements in Exhibit A, Section I of this Agreement. The appeals shall relate to C-CHIP eligibility. The Contractor shall inform applicants of their benefit related appeal rights to the appropriate licensing agency (Department of Managed Health Care or Department of Insurance). All inquiries not meeting the requirements of a formal appeal shall be responded to as a correspondence, as specified in Exhibit A, Item IV.F of this Agreement.
2. The Contractor shall provide notice of appeal rights in all appropriate appeals correspondence with applicants and shall assure compliance with all established timeframes, including the applicant's right to request continuing eligibility in the C-CHIP while the appeal determination is pending.
3. The Contractor shall maintain all business records of written and oral contacts with applicants, enrollees, subscribers, and their representatives in a manner that will enable such records to be introduced as evidence, pursuant to Evidence Code Section 1271. The Contractor shall have the ability to respond directly to an applicant's authorized representative or other third party for whom the applicant has a signed authorization on file with the Contractor.
4. The Contractor shall receive, review, make appeal determination and respond, in writing, to all C-CHIP requests for continued enrollment and appeals within thirty (30) calendar days. The Contractor shall evaluate and determine whether the subscriber is entitled to receive continued enrollment in the C-CHIP and shall respond in writing with its determination. The Contractor shall also respond, in writing, to the applicant with its appeal determination for all appeals submitted.
5. The Contractor shall establish and maintain procedures for paying medical expenses incurred by applicant due to the Contractor inaccurate determination that delayed or prevented health coverage that was subsequently determined through the appeal process.
6. The Contractor shall establish and maintain a C-CHIP appeals tracking system which has the ability to identify, list, track and report all C-CHIP appeals and requests for continued enrollment, including the date on which appeal and request was received; whether or not each subscriber was granted continued enrollment; the beginning and end date of continued enrollment; the date Contractor made a determination; the findings and determination; and the date written notification was sent to the applicant.



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J. Transmission of C-CHIP Enrollment Data

1. The Contractor shall assure the State that it shall transmit enrollment, subscriber data updates, reinstatement and disenrollment information to each participating plan using Electronic Data Interchange (EDI). All EDI transmissions to participating plans shall be in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and any applicable regulations.
2. The Contractor shall establish and maintain a secured EDI transmission process to provide participating plan with enrollment data. The process must use industry standard password protection and encryption procedures to maintain C-CHIP security and integrity of the data.
3. The Contractor shall transmit enrollment and financial data to the State in accordance with Exhibit B of this Agreement.
4. The Contractor acknowledges that all Contractors and its designees/subcontractors must be HIPAA compliant and agrees to conduct all operations, and requires all designees and subcontractors, in compliance with HIPAA.
5. The Contractor shall provide EDI instructions and data mapping formats to participating plans upon request. The Contractor shall provide additional technical assistance, by telephone, by email, or in person at the Contractor's site, to plans new to EDI data transmission as plans establish electronic capabilities.

K. C-CHIP Applications and Program Materials

1. The Contractor shall establish and maintain the C-CHIP application and necessary program materials in order to administer the project, in accordance with the statutory requirements specified in Exhibit A, Item I of this Agreement.
2. The Contractor shall translate the application and necessary program materials into the same languages in which the Contractor's plans produce their Medi-Cal materials. To assure translation accuracy, the Contractor shall retain certified translation service to conduct initial English to non-English translation.
3. The Contractor shall establish and maintain an adequate inventory of the C-CHIP applications and necessary program materials in the appropriate languages to serve the eligible population in the Contractor's county. The Contractor shall have the ability to replenish its inventory of the C-CHIP applications and necessary program materials, whenever the supply is depleted.
4. The Contractor shall assure that all written materials are understandable by low reading level applicants and subscribers, no higher than a sixth grade reading level.

L. C-CHIP Telephone and Customer Service

1. The Contractor shall establish and maintain a toll-free telephone number for C-CHIP applicants and subscribers; the toll-free line shall be available during normal business hours, Monday-Friday 8:00 am to 5:00 pm.

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2. The Contractor shall have sufficient number of trained bilingual staff to provide customer service to the eligible population in the Contractor's county. The Contractor shall also have the capability to provide telephone services via a translation service in any other languages and TDD service for the hearing impaired.
3. The Contractor's toll-free line shall be staffed with personnel trained to:
  - a. Answer application status questions regarding C-CHIP;
  - b. Answer eligibility questions regarding C-CHIP;
  - c. Assist applicants in completing the C-CHIP application;
  - d. Refer callers to Enrollment Entities to assist with the completion of the application, if so requested;
  - e. Refer callers to the appropriate County Social Services Department for Medi-Cal coverage.
  - f. Answer C-CHIP Annual Eligibility Review questions and status questions;
  - g. Answer C-CHIP appeal questions and follow-ups;
  - h. Answer C-CHIP billing questions; and
  - i. Answer other C-CHIP related questions

**M. C-CHIP System Requirements**

1. The Contractor shall establish and maintain data systems that support fully integrated C-CHIP eligibility, enrollment and financial/accounting systems. The systems shall have the ability to track all applications received, application eligibility determinations, and shall include an inventory control process for tracking disposition and aging of all applications received. The systems shall also maintain an eligibility determination record for each application for the initial determination and each subsequent determination for additional eligibility periods. The record shall include the exact calculations used to determine C-CHIP eligibility as a permanent record for auditing purposes.
2. The Contractor's systems shall maintain a family contribution program income accounting subsystem with documented internal controls to track all family contribution activity for each applicant and for each eligible and enrolled subscriber for C-CHIP. The system shall have the ability to track initial and ongoing payments by payment type and source, such as check, cash, credit card, and any other payment source. The Contractor's system shall maintain the family contribution historical payment activity for auditing purposes.
3. The Contractor shall establish and maintain a refund system for the C-CHIP, with documented internal controls that shall ensure timely, complete and accurate processing and payment of both automated and manual refunds of family contributions. The Contractor shall ensure that a family contribution payment is verified for validity of funds prior to issuing any refund.

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4. The Contractor shall have sufficient dedicated systems, operations and maintenance staff whose sole purpose shall be to assure that the Contractor's system is fully functional and complies with all the administrative requirements within this Agreement.

N. C-CHIP Family Contributions

1. The Contractor shall collect C-CHIP family contributions as specified in the statutory requirements in Exhibit A, Section I of this Agreement, the Contractor's County requirements and as approved by CMS in the 7th California State Plan Amendment, Title XXI.
2. The Contractor shall calculate the amount of C-CHIP family contribution, including any rate changes, balances due, and payments made, and shall notify applicants of their required family contributions.
3. The Contractor shall refund, by check to the applicants, family contributions from applications determined to be ineligible for C-CHIP within six (6) weeks. Net adjustments to family contributions that result in overpayment shall be refunded to the applicant, except when the applicant requests a credit to his or her account.
4. The Contractor shall establish and maintain an American Indian/Alaskan Native family contribution exemption in accordance with the statutory and regulatory requirement specified in Exhibit A, Section I of this Agreement.

IV. CONTRACTOR RESPONSIBILITIES-HEALTH CARE COVERED SERVICES AND BENEFITS

The Contractor is responsible for all aspects of the administration and provision of covered health care services including health, dental, and vision benefits as specified in the HFP regulations. The Contractor shall purchase the covered health care services required in Exhibit A, Section V through subcontracted Department of Managed Health Care (DMHC) or Department of Insurance (DOI) licensed health care service plans. These tasks include maintaining privacy and security of applicant information and subscriber information; enrollment of eligible subscribers; disenrollment of ineligible subscribers; receipt of enrollment data from Contractor's administrator; transmission of enrollment data to healthcare providers; assigning primary care providers when applicable; providing plan ID cards, plan provider directories and plan evidence of coverage booklets; administering plan grievance procedures; administering cultural and linguistic services; administering California Children's Services (CCS) and Serious Emotional Disturbance (SED) benefits; administering subscriber co-payments; administering clinical quality measures and management practices; development and maintenance of plan data systems; maintaining plan toll-free telephone line; and providing plan customer service. The operational requirements are detailed in this Section IV of Exhibit A, of this Agreement.

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A. Health Care Service Plan

This Agreement is entered into by the Contractor and the State for the purpose of purchasing and providing health coverage for subscribers determined to be eligible for C-CHIP. The Contractor shall purchase covered health care services from DMHC licensed health care service plans which includes a Local Initiative. The method of delivery of the insured health benefits shall be a health maintenance organization and/or a preferred provider organization. The Contractor, through its subcontracted plan, agrees to utilize the health maintenance organization and/or the preferred provider organization.

B. Dental Care Service Plan

This Agreement is entered into by the Contractor and the State for the purpose of purchasing and providing dental coverage for subscribers determined to be eligible for C-CHIP. The Contractor shall purchase health covered services from DMHC or DOI licensed health care service plans. The method of delivery of the insured dental benefits shall be a dental maintenance organization and/or a preferred provider organization. The Contractor, through its subcontracted plan, agrees to utilize the dental maintenance organization and/or the preferred provider organization.

C. Specialized Health Care Service Plan

This Agreement is entered into by the Contractor and the State for the purpose of purchasing and providing vision coverage for subscribers determined to be eligible for C-CHIP. The Contractor shall purchase health covered services from DMHC or DOI licensed health care service plans. The method of delivery of the insured vision benefits shall be a specialized health care service plan. The Contractor, through its subcontracted plan, agrees to utilize the specialized health care service plan.

D. Geographic Areas Covered

1. The Contractor's plans' participation in the Program is limited to enrollment of Program subscribers who reside in the Contractor's plans' C-CHIP licensed service area accepted by the State. The geographic area is San Francisco County, California.
2. The Contractor shall ensure that the Contractor's plans C-CHIP geographic coverage shall be the same geographic coverage as was provided for the HFP.

E. Changing Health Care Providers

1. The Contractor shall ensure that the Contractor's plans have an adequate network of providers to provide services to C-CHIP subscribers and shall establish a mechanism to ensure adequate access to the providers. These providers (institutional and professional) are listed in the Contractor's plans' Provider Directories. The Contractor agrees to provide copies of the Provider Directories to the State upon request.
2. Health, dental, and specialized (vision) care providers shall be deemed added to or deleted from the Contractor's plans Provider Directories as contracts between the Contractor's plans and health, dental, and specialized (vision) care providers begin or end.

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3. The Contractor agrees to maintain the availability of those providers listed at any time during the benefit year in the Contractor's plans' Provider Directories until the end of the benefit year, if elimination of the provider would impact twenty-five (25) or more subscribers enrolled with the Contractor's plans through C-CHIP. For the purpose of this section, the term "provider" may refer to a solo practitioner, a provider group or a clinic.
4. Item III.E.3 above shall not apply if the withdrawal of a provider from the Contractor's plan's network was done at the request of the provider or is part of the Contractor's plan's activities to obtain or retain National Committee for Quality Assurance/Joint Commission on the Accreditation of Healthcare Organizations (NCQA/JCAHO) accreditation, or is initiated by the Contractor's plan for cause.

F. Eligibility

All subscribers who are determined C-CHIP eligible and not placed on the waiting list by the Contractor in accordance with the C-CHIP statute and all other applicable statutes and regulations are eligible to enroll in a health, dental, and specialized (vision) plan. The Contractor certifies that its enrollment process will not be prejudicial to the participating health, dental, and specialized (vision) plans.

G. Conditions of Enrollment

The Contractor shall ensure that the Contractor's health, dental, and specialized (vision) plans shall enroll all C-CHIP eligible subscribers on the effective date of coverage specified by the Contractor.

H. Disenrollment

1. The Contractor shall ensure that the Contractor's health, dental, and specialized (vision) plans shall disenroll subscribers when notified to do so by the Contractor on the date specified by the Contractor.
2. In no event shall any individual subscriber be entitled to the payment of any benefits with respect to health, dental, and specialized (vision) care services rendered, supplies or drugs received or expense incurred following termination of coverage consistent with state and federal law. For the purposes of this Agreement, a charge shall be considered incurred on the date the service or supply giving rise to the charge is rendered or received.

I. Commencement of Coverage

Coverage shall commence for a subscriber at 12:01 a.m. on the day designated by the Contractor as the effective date of coverage.

J. Identification Cards, Provider Directory, and Evidence of Coverage

1. The Contractor shall ensure that the Contractor's health, dental, and specialized (vision) plans, no later than the effective date of coverage, issue to applicants, on behalf of subscribers, an Identification Card, Provider Directory, and Evidence of Coverage booklet setting forth a statement of the services, benefits, and grievance procedure to which the subscriber is entitled. The Contractor agrees that the materials sent to

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applicants on behalf of subscribers shall also include information to subscribers regarding how to access services. The information shall be in addition to the description provided in the Evidence of Coverage booklet. Examples of acceptable forms of information include, but are not limited to: a brochure on How to Access Services, inclusion in a cover letter of the specific pages in the Evidence of Coverage booklets relating to accessing services, or a magnet listing the telephone numbers to call to schedule an appointment with providers.

2. The Contractor through its subcontracted plans shall ensure that fifteen (15) calendar days prior to the start of a new benefit year each applicant on behalf of the subscribers enrolled in the Contractor's plan shall be issued an updated Evidence of Coverage booklet setting forth a statement of the services and benefits to which the subscriber is entitled in the next benefit year.
3. The Contractor shall ensure that the Contractor's plans' Provider Directories are updated and distributed by the Contractor's plans to applicants on behalf of subscribers whenever there is a material change in the Contractor's plans' provider networks.
4. The Contractor's plans' Provider Directories shall indicate the language capabilities of the providers.
5. The Contractor shall provide copies of the Contractor's plans' Evidence of Coverage booklets and Provider Directories to any person requesting such materials, by telephone or in writing, within ten (10) calendar days of the request.
6. The Contractor shall send the State, upon request; copies of the Contractor's plans updated Evidence of Coverage Booklets and updated Provider Directories.
7. Written informational material provided to subscribers shall be no higher than a sixth grade reading level and that is approved by the State, to the extent that compliance with this provision does not conflict with regulatory agency directives or other legal requirements.

**K. Primary Care Provider Assignment (HMOs and DMOs only)**

1. The Contractor, through its subcontracted plans, agrees to ensure that all subscribers shall be enrolled with a primary care physician within thirty (30) days of the effective date of coverage in the plan. The Contractor shall provide the Contractor's health and dental plans with the name of each subscriber's chosen primary care provider, if the name of the primary care provider is listed on the C-CHIP application. If the Contractor assigns a primary care provider to a subscriber, the Contractor shall use a fair and equitable method of assignment from the Contractor's plans' provider networks and shall promptly notify subscribers of the selection and of the opportunity to change the assigned primary care providers. The method of assignment shall take into account the geographic accessibility and language capabilities of providers. The Contractor shall ensure that the Contractor's plans notify the primary care providers promptly that they have been chosen by the subscriber or assigned by the Contractor.
2. Whenever the Contractor's plans assign a subscriber to a group or clinic, the Contractor shall ensure that the Contractor's plans notify the subscriber of his or her right to select a new primary care provider immediately or at any future time, including such time as the

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selected primary care provider is no longer affiliated with the clinic. The Contractor shall ensure that the Contractor's plans notify the subscriber of his or her rights immediately after the assignment to the clinic has been made.

L. Right to Services

Possession of the Contractor's Plan Identification Cards confers no right to services or other benefits of the C-CHIP. To be entitled to services or benefits, the holder of the card must, in fact, be a subscriber enrolled in the C-CHIP. Therefore, any person receiving services or other benefits to which he or she is not then entitled pursuant to the provisions of this Agreement, including the law specified in Exhibit A, Item I, is personally responsible for the cost of all health care services.

M. Enrollment Data

The State and the Contractor agree to the following regarding the transmission, receipt, and maintenance of enrollment data.

1. The Contractor shall ensure that the Contractor's plans transmit subscriber enrollment and disenrollment information, subscriber data updates, as well as transfer and reinstatement information, to the Contractor's health, dental, and specialized (vision) plans using Electronic Data Interchange (EDI). The Contractor shall ensure that the Contractor's plans accept the information via EDI. The Contractor shall receive the transmitted information, data and file sent through the EDI in a manner and format that comply with HIPAA standards for electronic transactions and code sets.
2. The Contractor shall ensure that the Contractor's plans accept written confirmation of enrollments from the Contractor, in the event that system errors cause enrollment transactions to be delayed. The Contractor agrees that the written confirmations are valid and acceptable alternative notifications to the Contractor's plans until the failed or delayed enrollment transaction can be generated and sent to the Contractor's plans.
3. The Contractor shall ensure that the Contractor's plans provide EDI instructions and data mapping formats to the Contractor's plans upon request. The Contractor shall provide additional technical assistance to Contractor's plans in order to establish electronic capability.

N. Traditional and Safety Net Providers

The Contractor shall ensure that the Contractor's plans establish, with traditional and safety net providers as described in Article 4 of the HFP regulations, network membership and payment policies which are no less favorable than its policies with other providers.

O. Public Awareness

1. The Contractor shall ensure that all public awareness efforts by the Contractor's plans have been approved by the Contractor before being released in public and must be in compliance with the requirements of the Knox-Keene Health Care Service Plan Act of 1975, including amendments and applicable regulations.

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2. The Contractor shall ensure that the Contractor's plans do not directly, indirectly, or through its agents, conducting in person, door to door, mail or telephone solicitation of applicants for enrollment and that the Contractor's plans are prohibited from these activities.
3. The Contractor shall ensure that the Contractor's plans' marketing shall be in compliance with all applicable statutes and regulations as specified in Exhibit A, Item I of this Agreement.

P. Telephone Customer Service for Plan Subscribers

The Contractor shall ensure that the Contractor's plans provide a toll free telephone number for applicant and subscriber plan inquiries. This telephone service shall be available on regular business days from the hours of 8:30 a.m. to 5:00 p.m. Pacific Standard Time. The Contractor's plans shall provide staff bilingual in English and Spanish during all hours of telephone service. The Contractor's plans shall have the capability to provide telephone services via an interpretive service for all limited English proficient (LEP) persons.

Q. Grievance Procedures

1. Department of Managed Health Care Licensees:

- a. The Contractor shall ensure that the Contractor's plans establish grievance procedures to resolve issues arising between themselves and subscribers or applicants acting on behalf of subscribers. The Contractor's plans processes shall provide a written response to subscriber grievances and resolution of subscriber grievances as required by Contractor's plans licensing statute, the Knox-Keene Health Care Service Plan Act of 1975, as amended. These procedures shall be described in the Contractor's plans Evidence of Coverage booklet.
- b. The Contractor shall ensure that the Contractor's plans report to the Contractor and the State by February 1 of each year, in a format determined by the State, the number and types of benefit grievances filed by subscribers and by applicants on behalf of subscribers in the previous calendar year in the C-CHIP. Benefit grievances include, but are not limited to, complaints about waiting time for appointments, timely assignment to a provider, issues related to cultural or linguistic sensitivity, difficulty with accessing specialists and the administration and delivery of health care benefits in the C-CHIP.

2. Department of Insurance Licensees:

- a. The Contractor shall ensure that the Contractor's plans establish grievance procedures to resolve issues arising between themselves and subscribers or applicants acting on behalf of subscribers. The Contractor's plans processes shall include all features required for health care, dental, and/or specialized service plans pursuant to the Knox-Keene Health Care Service Plan Act of 1975, as amended, and shall provide a written response to subscriber grievances and resolution of subscriber grievances as required by the Knox-Keene Act. These procedures shall be described in the Contractor's plans' Certificate of Insurance booklet.



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- b. The Contractor shall ensure that the Contractor's plan report to the Contractor and the State by February 1 of each year, in a format determined by the State, the number and types of benefit grievances filed by subscribers and by applicants on behalf of subscribers in the previous calendar year in the Program. Benefit grievances include, but are not limited to, complaints about waiting time for appointments, timely assignment to a provider, issues related to cultural or linguistic sensitivity, difficulty with accessing specialists and the administration and delivery of health care benefits in the C-CHIP.

R. Cultural and Linguistic Services

1. Linguistic Services

- a. The Contractor shall ensure that the Contractor's plans and their providers comply with Title 6 of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d, and 45 C.F.R. Part 80) which prohibits recipients of federal financial assistance from discriminating against persons based on race, color or national origin. This is interpreted to mean that a limited English proficient (LEP) individual is entitled to equal access and participation in federally funded programs through the provision of bilingual services.
- b. The Contractor shall ensure that the Contractor's plans provide twenty-four (24) hour access to interpreter services for all (LEP) subscribers seeking health services within the Contractor's plans provider networks. The Contractor's plans shall use face-to-face interpreter services, if feasible. If face-to-face interpreter services are not feasible, the Contractor's plans may use telephone language lines for interpreter services. The Contractor shall ensure that the Contractor's plans develop and implement policies and procedures for ensuring access to interpreter services for all LEP subscribers, including, but not limited to, assessing the cultural and linguistic needs of its subscribers, training of staff on the policies and procedures, and monitoring its language assistance program. The Contractor shall ensure that the Contractor's plans' procedures include ensuring compliance of any subcontracted providers with these requirements.
- c. The Contractor shall ensure that when the need for an interpreter has been identified by the provider or requested by a subscriber, the Contractor's plans provide a competent interpreter for scheduled appointments. The Contractor shall ensure that the Contractor's plans avoid unreasonable delays in the delivery of health care services to persons of limited English proficiency. The Contractor shall ensure that the Contractor's plans instruct the providers within the plan's provider networks to record the language needs of subscribers in the medical record.
- d. The Contractor shall ensure that the Contractor's plans and their providers do not require or encourage subscribers to utilize family members or friends as interpreters. After being informed of his or her right to use free interpreter services provided by the Contractor's plan, a subscriber may use an alternative interpreter of his or her choice at his or her cost. The Contractor shall ensure that the Contractor's plans encourage the use of qualified interpreters. Minors shall not be used as interpreters except in the most extraordinary circumstances,

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such as medical emergencies. The Contractor shall ensure that the Contractor's plans document the request or refusal of language or interpreter services in the medical records of providers in the Contractor's plans' provider networks.

- e. The Contractor shall ensure that the Contractor's plan inform subscribers of the availability of linguistic services. Information provided to subscribers regarding interpreter services shall include but not be limited to: the availability of interpreter services to subscribers at no charge; the right not to use family members or friends as interpreters; the right to request an interpreter during discussions of medical information such as diagnoses of medical conditions and proposed treatment options and during explanations of plans of care or other discussions with providers; the right to receive subscriber materials; and the right to file a complaint or grievance if linguistic needs are not met.
- f. The Contractor shall ensure that the Contractor's plans have appropriate bilingual proficiency at medical and non-medical points of contact for providers who list their bilingual capabilities in provider directories. Medical points of contact include advice and urgent care telephone lines and face-to-face encounters with providers who provide medical or health care advice to members. Non-medical points of contact include member/customer service, plan or provider office reception, appointment services, and member orientation sessions.
- g. The Contractor shall ensure that the Contractor's plans identify and report the on-site linguistic capability of providers and provider office staff through the plans provider directories.

2. Translation of Written Materials

- a. The Contractor shall ensure that the Contractor's plans translate written informing materials for subscribers including, but not limited to: the Evidence of Coverage booklet; form letters; notice of action letters; consent forms; letters containing important information regarding participation in the health plan; notices pertaining to the reduction, denial, modification, or termination of services; notices of the right to appeal such actions or that require a response from subscribers; notices advising LEP subscribers of the availability of free language assistance services; other outreach materials; and medical care reminders. Written informing materials for subscribers shall be provided a no higher than a sixth grade reading level, to the extent that compliance with this requirement does not conflict with regulatory agency directives or other legal requirements. Translation of these materials shall be in the same languages in which the Contractor's plans produce their Medi-Cal materials. The Contractor shall ensure that the Contractor's plans that have members who are unable to read the written materials that have been translated into non-English languages have an alternate form of access to the contents of the written materials.
- b. The Contractor shall ensure that the Contractor's plans validate the quality of the translated material. The Contractor shall ensure that the Contractor's plans use different qualified translators during sequential levels of the translation process to ensure accuracy, completeness, and reliability of translated materials. The Contractor shall ensure that the Contractor's plans include in the translation

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process the use of qualified translators for translating and editing, proofreading, and professional review.

- c. Upon request, the Contractor shall ensure that the Contractor's plans submit to the Contractor and the State one copy of all materials routinely provided to new subscribers pursuant to this Agreement for each language in which the materials are translated.

3. Operationalizing Cultural and Linguistic Competency

- a. The Contractor shall ensure that the Contractor's plans develop internal systems that meet the cultural and linguistic needs of its C-CHIP subscribers. The Contractor shall ensure that the Contractor's plans provide initial and continuing training on cultural competency to staff and providers. Ongoing evaluation and feedback on cultural competency training shall include, but not be limited to, feedback from subscriber surveys, staff, providers, and encounter/claims data.
- b. The Contractor shall ensure that the Contractor's plans report to the Contractor and the State upon request, the linguistically and culturally appropriate services provided and proposed to be provided to meet the needs of limited-English proficient C-CHIP applicants and subscribers. This report shall address types of services including, but not limited to, linguistically and culturally appropriate providers and clinics available; interpreters; marketing materials; information packets; translated written materials; referrals to culturally and linguistically appropriate community services and programs; and training and education activities for providers. The Contractor shall ensure that the Contractor's plans also report their efforts to evaluate cultural and linguistic services and outcomes of cultural and linguistic activities as part of the Contractor's plans ongoing quality improvement efforts. Reported information may include member complaints and grievances, results from membership satisfaction surveys, and utilization and other clinical data that may reveal health disparities as a result of cultural and linguistic barriers.

S. Covered and Excluded Benefits

1. Except as required by any provision of applicable law, only those benefits described in Article 3, Sections 2699.6700 through 2699.6709, of the HFP regulations shall be covered benefits under the terms of this Agreement. Except as required by any provision of applicable law, those benefits excluded in Article 3 of the Program regulations shall not be covered benefits. The Contractor shall ensure that the Contractor's plans shall set out the plan of coverage in an Evidence of Coverage booklet.
2. The parties understand that terms of coverage under this Agreement are set forth in the Contractor's plans' Evidence of Coverage booklets. In the case of conflicts, terms of coverage set forth in the Evidence of Coverage booklets shall be binding notwithstanding any provisions in this Agreement which are less favorable to the subscriber.

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3. The Contractor shall ensure that the Contractor's plans make benefit and coverage determinations. All such determinations shall be subject to the Contractor's plans' grievance procedures.
- T. California Children's Services (CCS)
1. The Contractor shall ensure that the Contractor's plans identify subscribers with a suspected CCS condition and shall refer them to the local CCS Program for a full determination of residential, medical, and financial eligibility. Once CCS eligibility is determined as defined in Title 22, CCR, Section 41518, medically necessary services to treat a C-CHIP subscriber for a CCS eligible condition shall be provided by the local CCS Program. The Contractor shall ensure that the Contractor's plans provide all medically necessary services including the treatment of CCS conditions when the C-CHIP subscriber does not meet the CCS eligibility requirements to the extent that they are covered services under the OTLICP. The Contractor shall ensure that the Contractor's plans provide the applicant on behalf of the subscriber referred to CCS with a CCS one page (double sided) informational flyer. The State agrees to provide the Contractor and the Contractor's plans with camera-ready copies of the California Children's Services informational flyer.
  2. The Contractor shall ensure that the Contractor's plans implement written policies and procedures for identifying and referring subscribers with suspected CCS eligible conditions to the local CCS Program. The policies and procedures shall include, but not be limited to:
    - a. Procedures for ensuring that the Contractor's plans' providers are informed of the identity of CCS paneled providers and CCS approved hospitals within the Contractor's plans' entire network.
    - b. Policies and operational controls that ensure that the Contractor's plans providers perform appropriate baseline health assessment and diagnostic evaluations that provide sufficient clinical detail to establish, or raise a reasonable suspicion, that a subscriber has a CCS eligible medical condition.
    - c. Policies and procedures to assure that the Contractor's plans providers refer potentially eligible children to the CCS Program.
    - d. Procedures that provide for continuity of care between the Contractor's plans providers and CCS providers.
  3. The Contractor shall ensure that the Contractor's plans annually report to the State and Contractor the number of C-CHIP subscribers who were referred to the local CCS program. The first report is due thirty (30) calendar days following the end of the first year of C-CHIP implementation.
  4. Until eligibility for the CCS Program is established, the Contractor shall ensure that the Contractor's plans continue to be responsible for arranging for the delivery of all covered medically necessary health care and case management services for a subscriber referred to CCS. Services which are provided by a CCS paneled provider or approved facility on the date of referral, or afterwards, and which are authorized by the CCS

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program for a CCS eligible child, shall be paid through the CCS Program at the CCS reimbursement rate retroactively to the provider of services.

5. Once eligibility for the CCS Program is established for a subscriber:
- a. The Contractor shall ensure that the Contractor's plans continue to provide covered primary care and all other medically necessary covered services other than those provided through the CCS Program for the CCS eligible condition and shall ensure the coordination of services between its primary care providers, the CCS specialty providers, and the local CCS Program.
  - b. The CCS Program shall authorize and pay for the delivery of medically necessary health care services to treat a subscriber's CCS eligible condition. The CCS authorization, on determination of eligibility, shall be to CCS paneled providers and approved facilities, some of which may also be members of the Contractor's plans' network. Authorization normally cannot predate the initial referral to the local CCS Program in accordance with Title 22, CCR, Section 42180. Claims for authorized services shall be submitted to the appropriate CCS office for approval of payment.
  - c. For the purposes of Item V.T.5.b, above, initial referral means referral by a Contractor's plans' network physician, or by any other entity permissible under CCS regulations.

U. Mental Health: Family Members

The Contractor agrees to involve appropriate family members in the mental health and/or substance abuse services provided to a subscriber who has experienced family dysfunction and/or trauma to the extent it is required as a course of treatment for the health and recovery of the child.

V. Mental Health: Services for Subscriber Children

The Contractor shall ensure that the Contractor's health plans provide covered benefits that include mental health services in accordance with Section 1372.74 of the California Health and Safety Code, which include the provision of mental health services for children with Serious Emotional Disturbances (SED) or with a serious mental disorder.

W. Other Public Linkages

The Contractor shall, to the extent feasible, create viable protocols for screening and referring subscribers needing supplemental services outside of the scope of benefits described in Article 3 of the HFP regulations to public programs providing such supplemental services for which they may be eligible, as well as for coordination of care between the Contractor and the public programs. Public programs may include but not be limited to: regional centers, Women, Infants and Children Supplemental Food Program (WIC), lead poisoning prevention, and programs administered by local education agencies.

X. Pre-existing Condition Coverage Exclusion Prohibition

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No pre-existing condition exclusion period or post-enrollment waiting period shall apply to subscribers.

Y. Exercise of Cost Control

The Contractor shall enforce all contractual agreements for price and administer all existing utilization control mechanisms for the purpose of containing and reducing costs.

Z. Co-Payments

1. The Contractor shall ensure that the Contractor's plans impose co-payments for subscribers as described in Article 3 of the HFP regulations. The Contractor agrees that co-payment maximums as described in Article 3 of the HFP regulations shall be applied for each benefit year and shall be renewed on July 1 of each year. The Contractor shall ensure that the Contractor's plans' Evidence of Coverage or Certificate of Insurance document describe the process to be used by applicants on behalf of subscribers to document that the annual two hundred and fifty dollar (\$250) out-of-pocket family maximum has been reached.
2. The Contractor shall ensure that the Contractor's plans' shall work with its provider networks to provide for extended payment plans for subscribers utilizing a significant number of health services for which co-payments are required. When feasible, the Contractor shall ensure that the Contractor's plans instruct its provider network to offer extended payment plans whenever a family's co-payments exceed twenty-five dollars (\$25) in one month.
3. The Contractor shall ensure that the Contractor's plans report the number of subscribers who meet the co-payment maximum in the previous benefit year by October 1 of each year.
4. The Contractor shall ensure that the Contractor's plans implement an administrative process that waives all co-payments for American Indian and Alaska Native subscribers in the Program.

AA. Coordination of Benefits

The Contractor agrees to coordinate benefits with other group health plans or insurance policies for subscribers in the Program. The Contractor shall ensure that the Contractor's plans' agrees to work with other plans or insurers to provide no more than one-hundred percent (100%) of subscribers' covered medical expenses. The Contractor shall coordinate such that coverage provided pursuant to this Agreement is secondary to all other coverage except for Healthy Families, Medicaid (Medi-Cal), and Medi-Cal Access Program.

BB. Acts of Third Parties

If a subscriber is injured through the wrongful act or omission of another person, the Contractor shall provide the benefits of this Agreement and the subscriber or applicant on behalf of a subscriber shall be deemed:

**Exhibit A**  
Scope of Work

1. To have agreed to reimburse the Contractor's plans to the extent of the reasonable value of services allowed by Civil Code Section 3040, immediately upon collection of damages by him or her, whether by action at law, settlement or otherwise, provided that the subscriber is made whole for all other damages resulting from the wrongful act or omission before the Contractor is entitled to reimbursement; and
2. To have provided the Contractor's plans with a lien to the extent of the reasonable value of services provided by the Contractor's plans and allowable under Civil Code Section 3040, provided that the subscriber is made whole for all other damages resulting from the wrongful act or omission before the Contractor is entitled to reimbursement. The lien may be filed with the person whose act caused the injuries, his or her agent, or the court.

CC. Workers' Compensation Insurance

If, pursuant to any Workers' Compensation or Employer's Liability Law or other legislation of similar purpose or import, a third party is responsible for all or part of the cost of health services provided by the Contractor's plans, then the Contractor shall ensure that the Contractor's plans' provide the benefits of this Agreement and the subscriber shall be deemed to have provided the Contractor's plans with a lien on such Workers' Compensation medical benefits to the extent of the reasonable value of the services provided by the Contractor's plans. The lien may be filed with the responsible third party, his or her agency, or the court. For purposes of this subsection, reasonable value shall be determined to be the usual, customary or reasonable charge for services in the geographic area where the services are rendered.

DD. Use of Subcontractors

The Contractor may, in its discretion, use the services of subcontractors to recover on the liens provided for under Items IV.J and IV.K of this Exhibit. The subcontractor's compensation may be paid out of any lien recoveries obtained. The State understands and agrees that lien recoveries are chargeable with a prorata contribution toward the injured person's attorney fees under the Common Fund Doctrine. The Contractor may compromise liens as may be reasonable and appropriately consistent with normal business practices.

EE. Health Insurance Portability and Accountability Act of 1996 Conformity

The State and the Contractor understand that the coverage provided pursuant to this Agreement constitute creditable coverage pursuant to the federal Health Insurance Portability and Accountability Act of 1996. The Contractor shall issue the Certificates of Coverage for disenrolled subscribers.

FF. Interpretation of Coverage

The Contractor shall ensure that the Contractor's plans' Evidence of Coverage booklet provides clear and complete notice of terms of coverage to C-CHIP subscribers. In the event of ambiguity regarding terms of coverage, the Contractor shall ensure that the Contractor's plans interpret those terms in the interest of the subscriber. In the event of ambiguity regarding an exclusion from coverage, the Contractor shall ensure that the Contractor's plans interpret the language of the exclusion in the interest of the subscriber. Nothing in this provision shall supersede the common law rules for interpretation of insurance contracts.

GG. Measuring Consumer Satisfaction

**Exhibit A**  
Scope of Work

To the extent that the Contractor and the Contractor's plans elect to conduct consumer satisfaction surveys, the results of the surveys shall be made available to the State for informational purposes.

HH. Standards Designed to Improve the Quality of Care

1. The Contractor assures the State that the Contractor's plans' providers shall use, and the Contractor's plans shall monitor, the most recent recommendations of the American Academy of Pediatrics (AAP) with regard to Recommendations For Preventative Pediatric Health Care and the most recent version of the Recommended Childhood Immunization Schedule/United States, adopted by the Advisory Committee on Immunization Practices (ACIP).
2. The Contractor shall ensure that the Contractor's plans notify the applicants associated with all subscriber children enrolled in Contractor's plans through the C-CHIP, on an annual basis, of the recommended schedule of preventive care visits.

II. Quality Management Processes

1. The Contractor represents that the Contractor's plans shall maintain a system of accountability for quality improvement activities, including participation of the governing body of the Contractor's plans' organization, the designation of a Quality Improvement Committee, supervision of the activities of the Medical Director, and the inclusion of contracted physicians and other providers in the Contractor's plans' process of Quality Improvement development and performance. Evidence of such activities shall be provided to the State upon request.
2. The Contractor represents that the Contractor's plans' Quality Management processes have been reviewed and found to be satisfactory by one of the following review organizations: The Joint Commission on the Accreditation of Healthcare Organizations (JCAHO), the National Committee for Quality Assurance (NCQA), or the California Department of Managed Health Care.



**Exhibit B**  
Budget Detail and Payment Provisions

I. PAYMENT PROVISIONS

A. General

1. The Contractor agrees to arrange for the provision of medical benefits and case management services for eligible and enrolled child and infant subscribers as described in Exhibit A.
2. Contractor has been responsible for paying the non-federal share of the costs incurred, with the State's responsibility being limited to providing to Contractor the available Title XXI federal reimbursement. Effective January 1, 2015, and notwithstanding any other provision of this Agreement, State will also provide the non-federal share by reimbursing in arrears Contractor's allowable expenditures, in addition to providing the available XXI federal reimbursement.

B. Fees Provided to Contractor

1. As specified in Items I.C and I.D of this Exhibit, the State shall provide Title XXI federal reimbursement to the Contractor based on a flat fee per month for each child subscriber starting in the month of the child's first birthday and ending in the month of the child's eighteenth birthday. This fee is for health, dental, and vision benefit expenses. This fee is set forth in Attachment I, Confidential Attachment, Rates of Payment.
2. As specified in Items I.C and I.D of this Exhibit, the State shall provide Title XXI federal reimbursement to the Contractor based on a flat fee per month for each infant subscriber. This monthly fee shall be paid during the first month of enrollment through twelfth months of the infant's life, but shall not exceed twelve payments. This fee is for health, dental, and vision benefit expenses. This fee is set forth in Attachment I., Confidential Attachment, Rates of Payment.
3. In cases of subscriber eligibility and enrollment appeals which result in liability of health care costs by the Contractor, the Contractor shall require its contracted plans to arrange for payment to the provider who rendered services. The State shall provide Title XXI federal reimbursement to the Contractor the actual costs of services received. However, the Contractor shall reimburse and claim for such services at any discounted rate that the Contractor's plan may have in place with the provider participating in the C-CHIP and that is accepted by the provider as payment in full.

**Exhibit B**

## Budget Detail and Payment Provisions

## 4. Administrative Costs

- a. As specified in Items I.C and I.D of this Exhibit, the State shall provide Title XXI federal reimbursement to the Contractor based on total administrative costs for the month.
- b. For the purposes of this Agreement, Administrative Costs are those related to administering the program which include costs related to eligibility determinations and C-CHIP enrollment services, outreach and state support costs. Administrative costs shall not include those costs of providing or directly administering medical services which are already included in the benefit rates set forth in the Confidential Attachment, Rates of Payment.
- c. Contractor Administrative Costs must be in accordance with 45 CFR, Part 74, Section 74.27, "Allowable Costs" and the provisions of OMB Circular A-87. In accordance with federal law, Title XXI, Sec. 2105 (a), the State is limiting payments of administrative costs to ten percent (10%) of the combined administrative costs and benefit costs reduced by monthly contributions (or net benefits). Benefit costs are defined as a combination of Items I.B.1 through I.B.3.
- d. The State shall receive compensation for State administrative services, based on the non federal share of total State personnel and overhead costs. The State administrative costs shall be equally shared by all contractors currently participating in C-CHIP. The Contractor shall be billed its monthly pro-rata share of total State administrative costs. The Contractor shall pay the applicable non federal share to the CHIM Fund. These funds shall be retained for the draw of Title XXI reimbursement and made available to the State for services provided under the Agreement.
  - i. This paragraph d. shall not apply to State administrative costs incurred on January 1, 2015 and later.
- e. The Contractor shall receive federal Title XXI reimbursement for actual, justifiable, allowable Administrative Costs of no more than ten percent (10%) of net benefit costs.

## 5. Retroactive Payments for Subscriber Services

- a. As allowed by the State Plan Amendment for C-CHIP, the State agrees to pay retroactively from January 1, 2003 (SPA filing date) through December 31, 2013, allowable benefit costs for subscribers with effective dates of coverage for the period of retroactivity. The State shall provide Title XXI federal reimbursement to the Contractor based on actual, allowable benefit costs for the county's existing Healthy Kids

**Exhibit B**

## Budget Detail and Payment Provisions

program enrollment of federally eligible children for the periods of retroactivity. The State reimbursement shall be calculated based on a predetermined flat fee per month for each child and infant subscriber enrolled for each period of retroactivity. This fee is for health, dental, and vision benefit expenses for the retroactive claiming periods. These fees and the periods of retroactivity are set forth in Attachment I, Confidential Attachment, Rates of Payment.

- b. When the Centers for Medicare and Medicaid Services (CMS) approves State Plan Amendment 19 (SPA 19) for C-CHIP regarding changes enacted in Senate Bill 36 (Chapter 416, statutes 2011), then the State agrees to pay retroactively from January 1, 2012, through the end of the federal fiscal quarter following the date of approval of SPA 19 allowable benefit costs for subscribers with effective dates of coverage for the period of retroactivity who are above three hundred percent (300%) up to four hundred percent (400%) of FPL. The State shall provide Title XXI federal reimbursement to the Contractor based on actual, allowable benefit costs for the county's existing Healthy Kids program enrollment of federally eligible children for the periods of retroactivity. The State reimbursement shall be calculated based on a predetermined flat fee per month for each child and infant subscriber enrolled for each period of retroactivity. This fee is for health, dental, and vision benefit expenses for the retroactive claiming periods. These fees and the periods of retroactivity are set forth in Attachment I, Confidential Attachment, Rates of Payment.

Notwithstanding this section I.B.5(b):

- i. The State will not provide Title XXI Federal reimbursement to the Contractor for any such children for services received on or after January 1, 2013.
- ii. The State will not provide Title XXI Federal reimbursement to the Contractor for any such children enrolled with an effective date on or after January 1, 2013.

6. Offset of Subscriber Contributions

- a. As specified in Exhibit A, Item III.N, the Contractor shall collect a subscriber contribution flat fee per month for each subscriber enrolled.
- b. The Contractor shall report to the State the monthly subscriber contributions collected in the Monthly Financial Report as specified in Item I.D of this Exhibit.
- c. The State shall reduce the amount of benefit fees paid to the contractor for expenditures described in Item I.D of this Exhibit by the amount of subscriber contributions collected on a monthly basis.

**Exhibit B**

## Budget Detail and Payment Provisions

Reduction of subscriber contributions shall be based on the actual amount of subscriber contributions collected for the billed month.

**C. Payment Schedule**

1. The State agrees to draw Title XXI federal fund reimbursement for payments incurred in Items I.B.1 through 4 and the retroactive benefit costs as described in Items I.B.5.b of this Exhibit at the federal matching fund rate of sixty-five percent (65%) for children above two hundred fifty percent (250%) up to three hundred percent (300%) of FPL; and at the federal matching fund rate of fifty percent (50%) for children above three hundred percent (300%) up to four hundred percent (400%) of FPL.
  - a. Effective January 1, 2013, this paragraph 1. shall not apply to the federal matching fund rate of fifty percent (50%) for children above three hundred percent (300%) up to four hundred percent (400%) of FPL.
2. The State agrees to draw Title XXI federal fund reimbursement for payments incurred in Items I.B.1 through 4 of this Exhibit, monthly in arrears. Payment is contingent on the State approval of the monthly Financial and Enrollment Reports described in Item I. D. of this Exhibit.
3. The State agrees to draw Title XXI federal fund reimbursement for the retroactive benefit costs as described in Items I.B.5.b of this Exhibit on a one time basis upon submission of an approved Retroactive Benefit Report.

**D. Financial and Enrollment Reports**

1. Monthly Financial Reports
  - a. The Contractor shall also submit to the State a monthly financial report for children above two hundred fifty percent (250%) up to three hundred percent (300%) of FPL for each month within the federal fiscal quarter by the fifteenth (15th) day after the end of the federal fiscal quarter with supporting documentation and a certificate attesting the validity of costs and services provided in an electronic and paper format specified by the State.
  - b. Except as provided in section I.B.5.b, beginning with the end of the federal fiscal quarter following the date SPA 19 is approved, the Contractor shall also submit to the State a monthly financial report for children above three hundred percent (300%) up to four hundred percent (400%) of FPL for each month within the federal fiscal quarter by the fifteenth (15th) day after the end of the federal fiscal quarter with supporting documentation and a certificate attesting the validity of

**Exhibit B**

## Budget Detail and Payment Provisions

costs and services provided in an electronic and paper format specified by the State.

- i. Effective January 1, 2013, paragraph b. shall not apply to the monthly financial report for children above three hundred percent (300%) up to four hundred percent (400%) of FPL.
  - c. The monthly financial reports shall justify and request payment for services provided to program subscribers pursuant to Section I, Items B.1, 2, 3, 4 and 6 of this Exhibit.
  - d.
    - i. Effective January 1, 2015, and notwithstanding any other provision of this agreement, State will provide the non-federal share to be transferred to the CHIM Fund.
    - ii. Effective January 1, 2013, paragraph d. shall not apply to the federal matching fund rate of fifty percent (50%) for children above three hundred percent (300%) up to four hundred percent (400%) of FPL.
2. Monthly Enrollment Report
- a. The Contractor shall submit to the State monthly enrollment reports along with the monthly financial report described in Exhibit B, Section I, Item D.1, by the fifteenth (15th) day after the end of the federal fiscal quarter in a standardized electronic and paper format specified by the State. The monthly enrollment reports shall be submitted with the corresponding HIPAA compliant enrollment files as specified in Exhibit A, Section III, Item J.3. The State shall use the monthly enrollment reports to verify the Contractor's calculations of the applicable monthly Title XXI contribution to be transferred to the CHIM Fund. Because the period of availability of federal funds is limited to two (2) years, the Contractor shall submit the monthly enrollment reports no later than ninety (90) days prior to the end of the time limit contained in 45 C.F.R. 95.7 to ensure availability of the federal funds for reimbursement.
  - b. Beginning with the end of the federal fiscal quarter following approval of SPA 19, the Contractor shall submit to the State two separate monthly enrollment reports. Each enrollment report will be in accordance with the requirements set forth in Section I, Item D.2.a. One enrollment report shall be submitted for children between above two hundred fifty percent (250%) up to three hundred percent (300%) of FPL, and the other shall be submitted for children above three hundred percent (300%) up to four hundred percent (400%) of FPL.

**Exhibit B**

## Budget Detail and Payment Provisions

- i. Effective January 1, 2013, this paragraph b. shall not apply to the monthly enrollment report for children above three hundred percent (300%) up to four hundred percent (400%) of FPL.

3. Retroactive Benefits Payment Report

No later than sixty (60) calendar days after submission of the first set of monthly financial reports, the Contractor shall submit to the State a retroactive benefits payment report covering the periods set forth in Section I, Item B.5 of this Exhibit, along with the supporting enrollment reports in a standardized electronic and paper format specified by the State. The supporting enrollment reports shall be submitted with the corresponding HIPAA compliant enrollment files as specified in Exhibit A, Section III, Item J.3. The State shall use the enrollment reports to verify eligibility for retroactive payments, as well as the Contractor's calculations of the applicable Title XXI contribution to be transferred to the CHIM Fund. The Contractor retroactive benefits payment report submissions shall be in accordance with submission requirements specified in Exhibit B, Section I, Item D.2.

4. Quarterly Budget Report

- a. The Contractor shall submit to the State a quarterly budget report sixty (60) days prior to the start of each federal quarter in a standardized electronic and paper format specified by the State. The quarterly budget report shall include monthly estimates of enrollment and corresponding expenditures in a two-year State fiscal period. A State fiscal period is defined as the twelve-month period beginning July 1 through June 30. This report is a federal requirement, therefore, the State's ability to pay the Contractor is contingent on the timely submission of the quarterly budget report.
- b. Upon approval of SPA 19, the Contractor shall make changes to the Quarterly Budget Report if requested by the State.

**Exhibit B**

## Budget Detail and Payment Provisions

5. Quarterly Statistical Enrollment Report
  - a. The Contractor shall submit to the State a quarterly statistical enrollment report by the tenth (10th) day after the end of the quarter in an electronic and paper format as specified by the State. The quarterly statistical enrollment report shall include actual enrollment for each federal quarter, including statistics on new enrollment, disenrollment and ever-enrolled subscribers. This report is a federal requirement; therefore, the State's ability to pay the Contractor is contingent on the timely submission of the quarterly statistical enrollment report.
  - b. Upon approval of SPA 19, the Contractor shall make changes to the Quarterly Statistical Enrollment Report if requested by the State.
6. Any financial, enrollment, retroactive payment, budget or statistical enrollment report received not completed in accordance with Section I, Items D.1 through 5 of this Exhibit shall be considered unacceptable and returned to the Contractor unprocessed with an explanation of any problems with the financial report. The Contractor may resubmit an acceptable report. The State reserves the right to make minor corrections to the report and process the reports for payment or reporting with the corrections.
7. Any financial, enrollment, and retroactive benefit payment report submitted as described under Section 1, Items D.1 through 3 of this Exhibit after review and approval by the State shall be considered valid and acceptable for processing of payment for benefit and administrative services provided to program subscribers.
8. The State will notify the Contractor when it has approved the monthly financial report and monthly enrollment report or the retroactive benefits payment report and request submission of the applicable county contribution to be submitted by the Contractor electronically to the State Treasurer's Office. Upon receipt of the county contribution, the State will process the payment of the Title XXI federal reimbursement in accordance with State and federal payment procedures.

**II. FISCAL CONTROL PROVISIONS****A. Cost Controls Provided by Contractor**

The Contractor shall ensure that the Contractor's plans provide routine monitoring of the cost, quantity, and quality of benefits provided by participating providers to subscribers, for the purpose of determining whether the level, type, and cost of such benefits are appropriate to the health care needs of the subscribers. The system of monitoring utilization shall include reporting to its providers of the findings of the Contractor's plans' monitoring activity.

**Exhibit B**

## Budget Detail and Payment Provisions

**B. Payment Limitation**

Only eligible subscribers whom the Contractor has enrolled in the program are entitled to health services and benefits provided hereunder and only for services rendered or supplies received during the period for which the eligible subscriber is enrolled.

**C. Availability of Federal Funds**

1. It is mutually understood between the parties that this Agreement may have been written for the mutual benefit of both parties, based on then-existing regulations and federal executive agencies' interpretation and application of relevant regulations and statutes but before ascertaining the availability of Congressional appropriation of funds, in order to avoid program and fiscal delays which would occur if the Agreement were executed after that determination was made.
2. This Agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the purposes of this program for the fiscal years covered by the term of this Agreement. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions made applicable at any time by:
  - a. enactments of Congress
  - b. regulations promulgated or amended by federal executive agencies, or
  - c. the interpretation or application by federal executive agencies of relevant regulations and statutes that may affect the provisions, terms or funding of this Agreement in any manner.
3. The parties mutually agree that, if Congress does not appropriate sufficient funds for the Program or, as described in Items Exhibit B, II.C.2.a, b and c, restrictions, limitations or conditions affect the provisions, terms or funding of this Agreement, this Agreement shall be amended to reflect any reduction in funds and any restrictions, limitations or conditions that affect the Agreement's provisions, terms or funding.
4. The State has the option to invalidate this Agreement under the 30-day termination clause in Exhibit D, Item I.B, or to amend the Agreement to reflect any reduction in funds.



**Exhibit B**

## Budget Detail and Payment Provisions

D. Prior to Fiscal Year/Crossing Fiscal Years

It is mutually agreed between the parties that this Agreement may have been signed and executed prior to the start of the 2014-2015 State fiscal year before ascertaining the availability of federal funds allocated through the State budget for the 2014-2015 State fiscal year. This Agreement has also been written with a term that crosses State fiscal years, and therefore before ascertaining the availability of legislative appropriation of federal funds for the 2014-2015 State fiscal year. This Agreement is valid and enforceable only if sufficient federal funds are made available through the 2014-2015 State budget for the purposes of this program. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted in statute by the State Legislature which may affect the provision, term or funding of this Agreement in any manner. It is mutually agreed that if the State Legislature does not appropriate sufficient funds for this program, the Agreement shall be amended to reflect any reduction in funds.

E. CHIM Fund Encumbrance

There is no specific maximum amount assigned to this Agreement. Rather, the Contractor is paid through a general encumbrance from the CHIM Fund apportioned to the Contractor on an as needed basis. Payments under this Agreement are limited to the provisions of Items I.A. and I.B of this Exhibit.

F. Fiscal Solvency

1. The Contractor warrants that the Contractor's plans licensed by the Department of Managed Health Care shall at all times maintain the reserves required under the Knox-Keene Health Care Service Plan Act of 1975, as amended, and the regulations promulgated there under by the Department of Managed Health Care, including the Tangible Net Equity regulations.

Evidence of above solvency shall be made available to the State upon request.

2. The Contractor warrants that the Contractor's health insurers, licensed by the Department of Insurance, shall at all times comply with all solvency requirements of its licensing statute and regulations and shall at all time maintain one of the following:
  - a. A rating of A+ under Best insurance rating, or
  - b. A surplus capable of paying one month of Contractor's paid claims. The amount of one month of the Contractor's paid claims shall be established by averaging claims paid in each of the previous twelve (12) months.

**Exhibit B**

## Budget Detail and Payment Provisions

Evidence of above solvency shall be made available to the State upon request.

G. Federally Funded Programs (Medicare & Medicaid)

The Contractor shall ensure that the Contractor's plans or insurers who participate in the federal Medicaid or Medicare programs remain in good standing with the State Department of Health Services (DHCS) for services provided to Medicaid (Medi-Cal) subscribers, with the federal Centers for Medicare and Medicaid Services for services provided to Medi-Cal or Medicare subscribers, and with the Office of the Inspector General of the Department of Health and Human Services. On request, the Contractor agrees to ensure that the Contractor's plans provide the State immediately with copies of all correspondence received by the plan(s) or insurer(s) from the DHCS, the Centers for Medicare and Medicaid Services, and the Office of the Inspector General of the Department of Health and Human Services which pertains to the plans or Insurers standing with the respective departments. In addition, the Contractor shall immediately notify the State of any investigations in which there are allegations related to fraud, including but not limited to: 1) the receipt of an administrative subpoena from any state or federal agency, unless the plan or insurer is advised that it is not the target or subject of the investigation; 2) the receipt of a grand jury subpoena from any state or federal court, unless the plan or insurer is advised that it is not the target or subject of the investigation; 3) the execution of a search and seizure warrant at any of the selected plan's or insurer's offices or locations related to such investigations; and 4) the filing of any charges against the selected plan or insurer in any state or federal court related to such investigations. The Contractor shall ensure that the Contractor's plans immediately notify the State if the plan or insurer receives a letter of pending sanction or formal corrective action (such as corrective action addressing audit findings or systemic problems) from the DHCS, the Centers for Medicare and Medicaid Services, or the Office of the Inspector General of the Department of Health and Human Services.

H. Licensure

The Contractor warrants the State that the Contractor's health plan or insurer has a license to provide services under this Agreement from its regulatory agency, the Department of Managed Health Care or the Department of Insurance.

I. Licensing Sanction Notifications

1. The Contractor warrants that the Contractor's plans shall remain in good standing with the Department of Managed Health Care. On request, the Contractor agrees to ensure that the Contractor's plans provide the State with copies of all correspondence from the Department of Managed Health Care that pertains to the plan standing with its regulatory entity. The Contractor shall immediately notify the State if the Contractor's plans receive a letter of pending sanction or formal corrective action (such as corrective action

**Exhibit B**

Budget Detail and Payment Provisions

addressing audit findings or systemic problems) from the Department of Managed Health Care.

2. The Contractor warrants that the Contractor's health insurers shall remain in good standing with the Department of Insurance. The Contractor agrees to ensure that the Contractor's insurers provide the State with copies of all correspondence from the Department of Insurance that pertains to the insurer standing with their regulatory entity. The Contractor shall ensure that the Contractor's insurers immediately notify the State if the insurer receives a letter of pending significant sanction or corrective action from the Department of Insurance.

J. Responsibility for Audit, Investigation and Evaluation Findings

The Contractor shall hold the State harmless for any federal disallowances and adjustments resulting from the Contractor's performance under this Agreement. The State shall recoup any federal and state disallowances and adjustments from the Contractor including any State costs related to the disallowances.

**ATTACHMENT I  
CONFIDENTIAL RATES OF PAYMENT**

This attachment is confidential, and is not open until, at the earliest October 1, 2018. See Exhibit E, Item 8. of this Agreement for the standards governing confidentiality.

<b>City and County of San Francisco</b>		<b>Region 3</b>
<b>Composite Rates for Health, Dental, and Vision</b>		
<b>Current Year Rate:</b>		
	<b>Infant Rate</b>	<b>Child Rate</b>
2014/15 (01/1/15-06/30/15)	253.60	106.57
<b>Prior Years Rates for Retroactive Claims</b>		
	<b>Infant Rate</b>	<b>Child Rate</b>
2014/15 (07/1/14-12/31/14)	253.60	106.57
2013/14 (10/1/13-06/30/14)	253.60	106.57
2012/13 (10/1/12-9/30/13)	253.60	106.57
2011/12 (10/1/11-9/30/12)	253.60	106.57
2010/11 (10/1/10-9/30/11)	253.60	106.57
2010/11 (7/1/10-9/30/10)	253.60	106.57
2009/10 (11/1/09-6/30/10)	253.60	106.57
2009/10 (7/1/09-10/31/09)	261.43	109.51
2008/09 (2/1/09-6/30/09)	241.00	101.98
2007/08	253.59	107.31
2006/07	234.83	100.56
2005/06	221.28	95.51
2004/05	226.46	97.16
2003/04	226.46	97.16
2002/03	217.50	93.53
San Francisco City and County rates for 1-18 years were adjusted to deduct costs for State Supported Services.		

EXHIBIT C

GENERAL TERMS AND CONDITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.



17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

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

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

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

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

20. LOSS LEADER:

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

**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 Human Resources (CalHR), for nonrepresented state employees as stipulated in DHCS' Travel Reimbursement Information Exhibit. If the CalHR 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 CalHR 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 the 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

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><b>Federal Use Only</b></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. Amendment Process**

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

**2. Cancellation / Termination**

- A. This Agreement may be cancelled by DHCS without cause upon 30 calendar days advance written notice to the Contractor.
- B. DHCS reserves the right to cancel or terminate this Agreement immediately for cause. The Contractor may submit a written request to terminate this Agreement only if DHCS substantially fails to perform its responsibilities as provided herein.
- C. The term "for cause" shall mean that the Contractor fails to meet the terms, conditions, and/or responsibilities of this Agreement.
- D. Agreement termination or cancellation shall be effective as of the date indicated in DHCS' notification to the Contractor. The notice shall stipulate any final performance, invoicing or payment requirements.
- E. Upon receipt of a notice of termination or cancellation, the Contractor shall take immediate steps to stop performance and to cancel or reduce subsequent agreement costs.
- F. New enrollments by the Contractor shall cease on a date to be determined by DHCS.
- G. In the event of early termination or cancellation, 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.
- H. Upon the termination of this Agreement, the Contractor shall cooperate fully with the Date in order to effect an orderly transition. This cooperation shall include, without limitation, attending such post-termination meetings as shall be reasonably requested by DHCS.

**3. 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 and directors of the Contractor or subcontractors. 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.

**Exhibit E**  
Additional Provisions

B. Conflicts of interest include, but are not limited to:

- 1) An 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) An 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 the satisfaction of DHCS, the conflict will be grounds for terminating the Agreement. DHCS may, at its discretion upon receipt of a written request from the Contractor, authorize an extension of the timeline indicated herein.

**4. Insurance Requirements**

The Contractor agrees to furnish to DHCS a letter certifying that it possesses and/or will obtain self-insurance in an amount that is sufficient to cover bodily injury and property damage liability combined that might arise under this Agreement. Self insurance coverage shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal injury, and other applicable liability that may arise under this Agreement. The 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.

**5. Notice of Proceedings**

The Contractor shall promptly notify DHCS in writing of any investigation, examination or other proceeding involving the Contractor, commenced by any regulatory agency which proceeding is not conducted in the ordinary course of the Contractor's business.

**6. Reports and Meetings**

- A. The Contractor shall provide oral or written progress reports as requested by the State to determine if the Contractor is performing to expectations or is on schedule, to provide communication of interim findings, and to afford occasions for discussing and resolving problems encountered.
- B. The Contractor shall meet with DHCS upon request to discuss progress on the Agreement or to present findings, conclusions and recommendations.

**7. Changes in Control Organization**

The Contractor shall promptly, and in any case within five (5) calendar days, notify the State in writing: (i) if any of the Contractor's representations and warranties, as set forth in this Agreement,

**Exhibit E**  
Additional Provisions

cease to be true at any time during the term of this Agreement; (ii) of any change in the Contractor's staff who exercise a significant administrative, policy, or consulting role under this Agreement. All written notices from the Contractor under this provision shall contain sufficient information to permit the State to evaluate the changes within the Contractor's personnel or organization under the same criteria as was used by the State in its award of this Agreement to the Contractor. The Contractor agrees to promptly provide the State with such additional information as the State may request.

**8. Disclosure of Contractor Records and Rates of Payment**

- A. As authorized by section 6254 of the Government Code, the State and the Contractor shall protect from public disclosure all program records related to the deliberative process, discussions, communications or negotiations over the development of this Agreement.
- B. This Agreement and its terms shall remain confidential to the full extent permitted by applicable law, including, but not limited to, Government Code section 6254. For the purposes of this Agreement, disclosure shall be as follows:
- 1) This Agreement and any subsequent amendments, with the exception of Attachment I, Confidential Rates of Payment, shall not be open to public inspection and shall be kept confidential until one year after this Agreement or amendment, as applicable, has been fully executed. The term "fully executed" shall mean the effective starting date of this Agreement or amendment, as applicable.
  - 2) The rates of payment for this Agreement as contained in Attachment I, Confidential Rates of Payment, and all documents and reports held by the State which refer to rates of payment, shall not be open to public inspection and shall be kept confidential until three years after this Agreement has been open to public inspection pursuant to Item N.2.a, above.
  - 3) Any rates of payment for this Agreement added through a contract amendment and as contained in Attachment I, Confidential Rates of Payment, and all documents and reports held by the State which refer to rates of payment, shall not be open to public inspection and shall be kept confidential until three years after the contract amendment has been open to public inspection pursuant to Item N.2.a.
  - 4) The entire Agreement, or amendments to this Agreement, or other records pertaining to the rate of payment, shall be open to inspection by the Joint Legislative Audit Committee and its authorized auditors.
  - 5) The records pertaining to the rate of payment, shall be open to federal auditing authorized by the Department of Health and Human Services or the United States Comptroller General and their authorized representatives.
  - 6) As needed, the State shall also allow its own authorized auditors and contractors, including actuarial consultants, whether public or private, to have access to the Agreement, its amendments, the payment rates, and records containing payment rates. The State shall bind its auditors and contractors to the confidentiality requirements contained in this Agreement.

**Exhibit E**  
Additional Provisions

**9. Publicity**

No publicity release or announcement concerning this Agreement or the transactions contemplated herein shall be issued by the Contractor without advance written approval by DHCS.

**10. Representations and Warranties**

A. Power and Authority

- 1) The Contractor represents and warrants that it has the power and authority to enter into this Agreement and to carry out its obligations hereunder. The execution of this Agreement has been duly authorized by the Contractor and no other proceeding on the part of the Contractor is necessary to authorize this Agreement. The Contractor has completed, obtained and performed all registrations, filings, approvals, authorizations, consents or examination required by any government or governmental authority for its acts contemplated by this Agreement.
- 2) The Contractor's subcontracted participating plans and the plans' providers are duly licensed or certified, as required by the laws of this state. The Contractor through its contracted plans routinely monitors its participating providers' licenses to ensure that they are current. The Contractor's subcontracted participating plans and the plans' providers have no Department of Health Services or Medical Board of California licensing restrictions.

B. Legal Proceedings

Except as specifically disclosed in writing to the Program by the Contractor prior to the date hereof, and approved by the State in writing, the Contractor certifies that there are no suits, investigations, or other proceedings pending or threatened against the Contractor which would have an effect on the Contractor's ability to perform under this Agreement.

C. Financial Information

The Contractor certifies that all financial information delivered to the State, including, without limit, audited financial statements and related financial periodic information relating to the Contractor, its parent corporation, its affiliates and subsidiaries, its partners or joint ventures, or any Guarantor, fairly and accurately represents such financial condition and has been prepared in accordance with Generally Accepted Accounting Principles unless otherwise noted in such information. Unless the Contractor so informs the State, the Contractor certifies that no material adverse change in such financial condition has occurred.

D. Reporting Accuracy

The Contractor certifies that all reports, documents, instruments, papers, data, information and forms of evidence delivered to the State with respect to this Agreement are accurate and correct, and complete insofar as completeness may be necessary to give the State true and accurate knowledge of the subject matter thereof, and do not contain any material misrepresentations or omissions.

**Exhibit E**  
Additional Provisions

E. Agreement Does Not Violate Law

Neither the execution of this Agreement nor the acts contemplated hereby nor compliance by the Contractor with any provisions hereof shall:

- 1) Violate any provision of the charter documents of the Contractor;
- 2) Violate any statute or law or ordinance or any judgment, decree, order, regulation or rule of any court or governmental authority applicable to the Contractor; or
- 3) Violate, or be in conflict with, or constitute a default under, or permit the termination of, or require the consent of any person under, any agreement to which the Contractor may be bound, the violation of which in the aggregate would have a material adverse effect on the properties, business, prospects, earnings, assets, liabilities or condition (financial or otherwise) of the Contractor.

F. Signature Authorization

The person signing this Agreement warrants that he/she is an agent of the Contractor and is duly authorized to enter into this Agreement on behalf of the Contractor.

**11. General Provisions**

A. Binding Effect

This Agreement, any instrument or agreement executed pursuant to this Agreement, and the rights, covenants, conditions and obligations of the Contractor and the State contained therein, shall be binding upon the parties and their successors, assignees and legal representatives.

B. Public Assistance Hiring Preference

As the maximum amount of this Agreement exceeds \$200,000 the Contractor shall give priority consideration in filling vacancies for positions funded by this contract to recipients of California public assistance Programs, in accordance with the criteria and exemption set forth in Section 10353 of the Public Contract Code, and Section 11349 of the Welfare and Institutions Code. This requirement shall not interfere with or require a violation of a collective bargaining agreement, a federal affirmative action obligation for hiring disabled veterans of the Vietnam era, or nondiscrimination compliance laws of California and does not require the employment of unqualified recipients of aid.

C. Contractor Federal Employer/Contractor ID Number

The Contractor is hereby notified of its responsibility to use the assigned Contractor Federal Identification Number contained on the front page of the Agreement on each subsequent contract entered into with the State of California.

D. Taxes

The State is exempt from federal excise taxes and shall not make any payment for any personal property taxes levied on the Contractor or any taxes levied on employee wages.



**Exhibit E**  
Additional Provisions

The only taxes the State shall pay on the services rendered pursuant to this Agreement are state and local sales or use taxes.

E. Incorporation of Amendments to Applicable Laws

Any references to sections of federal or state statutes or regulations shall be deemed to include a reference to any amendments thereof and any successor provisions thereto.

F. Ambiguities Not Held Against Drafter

This contract having been freely and voluntarily negotiated by all parties, the rule that ambiguous contractual provisions are construed against the drafter of the provision shall be inapplicable to this contract.

G. Force Majeure

Neither party to this Agreement shall be liable for damages resulting from delayed or defective performance when such delays arise out of causes beyond the control and without the fault or negligence of the offending party. Such causes may include, but are not restricted to, Acts of God or of the public enemy, acts of the State in its sovereign capacity, fires, floods, power failure, disabling strikes, epidemics, quarantine restrictions, and freight embargoes.

H. Entire Agreement/Incorporated Documents/Order of Precedence

- 1) This Agreement contains all representations and the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda, or agreements are replaced in total by this Agreement.
- 2) This Agreement shall consist of the terms of this Agreement, and all attached documents which are expressly incorporated herein:
- 3) In the event there are any inconsistencies or ambiguities among the terms of this Agreement and incorporated documents, the following order of precedence shall be used: (i) applicable laws; (ii) the terms and conditions of this Agreement, including attachments; and (iii) any other provisions, terms, or materials incorporated herein.

**Exhibit F**

## HIPAA Business Associate Addendum

**I. Recitals**

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

**II. Definitions**

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

**Exhibit F**

## HIPAA Business Associate Addendum

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

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

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

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

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

**Exhibit F**

## HIPAA Business Associate Addendum

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

**B. Prohibited Uses and Disclosures**

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

**C. Responsibilities of Business Associate**

Business Associate agrees:

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

**Exhibit F**

## HIPAA Business Associate Addendum

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

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

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

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

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

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

**Exhibit F**

## HIPAA Business Associate Addendum

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

**Exhibit F**

## HIPAA Business Associate Addendum

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

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

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

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

**Exhibit F**

HIPAA Business Associate Addendum

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

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



**Exhibit F**

## HIPAA Business Associate Addendum

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

**IV. Obligations of DHCS**

DHCS agrees to:

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

**V. Audits, Inspection and Enforcement**

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

**Exhibit F**

## HIPAA Business Associate Addendum

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

**VI. Termination**

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

**VII. Miscellaneous Provisions**

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

**Exhibit F**

## HIPAA Business Associate Addendum

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

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

**Exhibit F**

## HIPAA Business Associate Addendum

**Attachment A**  
**Business Associate Data Security Requirements****I. Personnel Controls**

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

**II. Technical Security Controls**

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

**Exhibit F**

## HIPAA Business Associate Addendum

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

**Exhibit F****HIPAA Business Associate Addendum**

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

**III. Audit Controls**

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

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

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

**V. Paper Document Controls**

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

**Exhibit F**

HIPAA Business Associate Addendum

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

**Exhibit G**  
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.



**Exhibit G**  
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.

**Exhibit G**

## Information Confidentiality and Security Requirements

- 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.
- 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.

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## Information Confidentiality and Security Requirements

- 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.
- 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.

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## Information Confidentiality and Security Requirements

- 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**

- 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

**Exhibit G**  
Information Confidentiality and Security Requirements

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](http://www.dhcs.ca.gov), then select "Privacy" in the left column and then "Business Use" near the middle of the page) or use this link: <http://www.dhcs.ca.gov/formsandpubs/laws/priv/Pages/DHCSBusinessAssociatesOnly.aspx> 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
- 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.

**Exhibit G**  
Information Confidentiality and Security Requirements

<b>DHCS Program Contract Manager</b>	<b>DHCS Privacy Officer</b>	<b>DHCS Information Security Officer</b>
See the Scope of Work exhibit for Program Contract Manager information	Privacy Officer c/o Office of Legal Services Department of Health Care Services P.O. Box 997413, MS 0011 Sacramento, CA 95899-7413  Email: <a href="mailto:privacyofficer@dhcs.ca.gov">privacyofficer@dhcs.ca.gov</a>  Telephone: (916) 445-4646	Information Security Officer DHCS Information Security Office P.O. Box 997413, MS 6400 Sacramento, CA 95899-7413  Email: <a href="mailto:iso@dhcs.ca.gov">iso@dhcs.ca.gov</a>  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 the right to inspect, Contractor’s facilities, systems and procedures does not relieve Contractor of its responsibility to comply with this ICSR exhibit.