

ARTICLE I. DEFINITIONS AND RESOLUTIONS OF LANGUAGE CONFLICTS

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

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O. Multipurpose Senior Services Program Medi-Cal Qualified.

	<u>AID</u> <u>CODE</u>	<u>PROGRAM</u>	<u>DEFINITION</u>
1.		CASH GRANT	
	10	AGED	SSI/SSP Aid to the Aged – Cash assistance program administered by the Social Security Administration, pays a cash grant to needy persons age 65 or older.
	20	BLIND	SSI/SSP Aid to the Blind – Cash assistance program administered by the Social Security Administration, pays a cash grant to needy blind persons of any age.
	60	DISABLED	SSI/SSP Aid to the Disabled – Cash assistance program administered by the Social Security Administration, pays a cash grant to needy persons who meet the federal definition of disability.
2.		PICKLE ELIGIBLES/20 PERCENT SOCIAL SECURITY DISREGARDS	
	***16	AGED	Aid to the Aged-Pickle Eligibles – Persons age 65 or older who were eligible for and receiving SSI/SSP and Title II Benefits concurrently in any month since April, 1977, and were subsequently discontinued from SSI/SSP but would be eligible to receive SSI/SSP if their Title II cost-of-living increases were disregarded. These persons are eligible for Medi-Cal benefits as public assistance recipients in accordance with the provisions of the <u>Lynch v. Rank</u> lawsuit.
	***26	BLIND	Aid to the Blind-Pickle Eligibles – Persons who meet the federal criteria for blindness and are covered by the provision of the <u>Lynch v. Rank</u> lawsuit. See aid code 16 for definition of Pickle Eligibles.
	***66	DISABLED	Aid to the Disabled-Pickle Eligibles – Persons who meet the federal definition of disability and are covered by the provision of the <u>Lynch v. Rank</u> lawsuit. See aid code 16 for definition of Pickle Eligibles.

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

3. IN-HOME SUPPORTIVE SERVICES

This section has been revised because codes 18, 28, 68 are no longer valid Medi-Cal codes due to the implementation July 1, 2005 of the IHSS Plus Waiver.

4. MEDICALLY NEEDED, NO SHARE OF COST

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

5. MEDICALLY NEEDED, SHARE OF COST

17	AGED-MN SOC	Aid to the Aged-Medically Needy, Share of cost- See Aid Code 14 for definition of AGED-MN. Share of cost is required of the beneficiaries.
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<u>AID CODE</u>	<u>PROGRAM</u>	<u>DEFINITION</u>
27	BLIND-MN SOC	Aid to the Blind-Medically Needy, Share of cost- See Aid Code 24 for definition of BLIND-MN. Share of cost is required of the beneficiaries.
67	DISABLED MN-SOC	Aid to the Disabled-Medically Needy, Share of Cost – See Aid Code 64 for definition of Disabled-MN. Share of cost is required of the beneficiaries.

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

6. AGED AND DISABLED FEDERAL POVERTY LEVEL PROGRAM

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

7. INSTITUTIONAL DEEMING

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

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

8. CONTINUED ELIGIBILITY – REDETERMINATION

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

9. CONTINUED ELIGIBILITY – REDETERMINATION

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

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P. Definition of Services Provided Under the Waiver

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

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

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

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

In either circumstance, the following criteria must be met and documented in the case record:

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

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This service is for purposes of household support for those services above and beyond those available through the residual In-Home Supportive Services (IHSS) Program. Examples include:

- a. The MSSP client has not yet been assessed for IHSS, and needs services in the interim until IHSS services can be arranged.
 - b. The regular IHSS provider is not available, and IHSS cannot provide a substitute.
 - c. IHSS services are in place; however, MSSP has assessed a greater need. In these cases, every effort will be made to negotiate with IHSS towards an increase in those services before authorizing expenditure of waiver funds.
5. **PERSONAL CARE (3.2):** This service is provided to those clients who are not eligible to receive it under the State Plan. This service provides assistance to maintain bodily hygiene, personal safety, and activities of daily living (ADL). These tasks are limited to nonmedical personal services: feeding, bathing, oral hygiene, grooming, dressing, care of and assistance with prosthetic devices, rubbing skin to promote circulation, turning in bed and other types of repositioning, assisting the individual with walking, and moving the individual from place to place (e.g., transferring). Client instruction in self care may also be provided; may also include assistance with preparation of meals, but does not include the cost of the meals themselves.

Purchase of toiletries and other personal care supplies may be covered where there are no other resources and the purchase would create a financial hardship. These items include: shampoo, soap, lotion, tooth brush and paste, toothettes, shavers, medication assistive devices (e.g., medi-sets, pill crushers), incontinence supplies not covered under the State Plan, disposable gloves and wipes.

When specified in the plan of care, this service may also include such housekeeping chores as bed making, dusting, and vacuuming, which are essential to the health and welfare of the recipient. The household chores which are performed by the worker are essentially ancillary to the provision of the client-centered care. Thus, if food is spilled, it may be

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cleaned up, and when bed linen is soiled it may be changed, washed, and put away. However, at no time would household chores become the central activity furnished by a personal care worker.

When a personal care service is to be performed by an unlicensed health care worker (e.g., Home Health Aide), permissible duties will be limited to those allowed by the worker's employer, or permissible according to the Board of Registered Nursing policy on unlicensed assistive personnel, and as permitted by the individual's certification, if applicable.

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

6. HEALTH CARE (3.3): Addresses the care of health problems by appropriately licensed or certified persons when such care is not otherwise available under the State Plan. These services will be provided based on the following criteria:

The client assessment identifies need for this support and the care plan reflects the required items.

MSSP utilizes all of the health care services available under the State Medicaid Plan prior to purchasing these services as waived services.

MSSP's clients are extremely frail and, on occasion, in need of health-related services that cannot be provided under Medi-Cal, e.g., no Medi-Cal provider in that local area. Such services are especially critical for persons recently discharged from acute hospitals or who are otherwise recovering at home from an acute illness or injury. This MSSP service supplements benefits provided by the existing Medi-Cal program, using providers who meet standards under Provider Qualifications: Licensure and Certification, Appendix 26 of the Site Manual.

- The service is provided by authorized individuals when such care is prescribed or approved by a physician.
- Services may include the following professionals/services:
 - a. Pharmacists: pharmacy consultations.

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- b. Registered nurses or licensed vocational nurses: skilled nursing services.
 - c. Nutritionists/Registered Dietitians: nutritional assessment or counseling.
 - d. Occupational, physical, or speech therapists: consultation, including client assessment, training, and planning.
 - e. Other health professionals specific to the identified need of the client: art, dance, exercise, massage, music, and recreation therapists.
7. PROTECTIVE SUPERVISION (3.7): Ensures provision of supervision in the absence of the usual care provider to persons in their own homes who are very frail or otherwise may suffer a medical emergency, to prevent immediate placement in an acute care hospital, skilled nursing facility, or other 24-hour care facility, e.g., Residential Care Facility for the Elderly (RCFE). Such supervision does not require medical skills and can be performed by an individual trained to summon aid in the event of an emergency. May also provide a visit to the client's home to assess a medical situation during an emergency (e.g., natural disaster). Waived Service funds may not be used to purchase this service until existing county Title XX Social Services and Title XIX Medi-Cal resources have been fully utilized and an unmet need remains.
8. PROFESSIONAL CARE ASSISTANCE (PCA)(3.9): Is provided to those clients who are also receiving services under the Personal Care Services Program (PCSP) (Fund Code 6). PCA is a comprehensive skilled service delivered by a home health aide (HHA). The HHA works under the supervision of a registered nurse employed by a home health agency. The specific tasks provided are the same as listed under Personal Care (3.2) above. However, the special needs and circumstances of Waiver clients are such that they require a provider who can make observations and exercise judgment regarding the execution of specific tasks and the overall provision of care. The training and expertise of a HHA is greater and more specialized than that of a provider working under the State Plan. This higher level of skill is required to meet the needs of the frail elderly clients served under the Waiver. When PCA is performed by an unlicensed health care worker (e.g., Home Health Aide), permissible duties will be limited to those allowed by the worker's employer, or permissible according to the Board of Registered Nursing policy on

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unlicensed assistive personnel, or as permitted by the individual's certification (if applicable).

Purchase of toiletries and other personal care supplies may be covered where there are no other resources and the purchase would create a financial hardship for the client. These items include: shampoo, soap, lotion, tooth brush and paste, toothettes, shavers, medication assistive devices (e.g., medi-sets, pill crushers), incontinence supplies not covered under the State Plan, disposable gloves and wipes.

PCA service providers may be paid while the beneficiary is hospitalized up to seven (7) calendar days per each hospitalization. This payment is necessary to retain the care provider for services when the beneficiary returns home.

9. CARE (CASE) MANAGEMENT: Assists clients in gaining access to needed Waiver and other State Plan services, as well as needed medical, social, and other services, regardless of the funding source. Care managers are responsible for ongoing monitoring of the provision of services included in the client's plan of care. Additionally, care managers initiate and oversee the process of assessment and reassessment of client level of care and the monthly review of plans of care.
 - a. SITE-PROVIDED CARE (CASE) MANAGEMENT (50): The MSSP care management system vests responsibility for assessing, care planning, authorizing, locating, coordinating and monitoring a package of long-term care services for community-based clients with a local MSSP site contractor and specifically with the site care management team. The care management teams at each of the local sites are trained professionals working under the job titles of nurse care manager and social work care manager; these professionals may be assisted by care manager aides. The teams are responsible for care management services including the assessment, care plan development, service authorization/delivery, monitoring, and follow up components of the program. Although the primary care manager will be either a senior services counselor or health practitioner, both professionals will be fully utilized in carrying out the various case management functions. Care records must document all client contact activity each month.

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- b. PURCHASED CARE (CASE) MANAGEMENT (4.3): for the vast majority of MSSP clients, care management services are provided solely by site care management staff. However, clients have the right to request care management by qualified outside vendors. In some cases of temporary need, the site may retain an outside vendor to provide the services of a care manager. If either of these two situations arises, the site must ensure that there is no overlap between Site- Provided Care Management (50) and Purchased Care Management (4.3). Any duplication of these services will be subject to recovery and will be collected through formal channels administered by DHCS Payment Systems Division, Recovery Section. Additional case-specific resources may be purchased from social, legal/ paralegal specialists in the community in order to augment the resources and skills of site-based case managers. Examples include the purchase of more skilled diagnostic and consultant services by social, and legal/paralegal professionals. Fees necessary to procure birth certificates or other legal documents required for establishment of public benefits or assistance are also covered.
10. DEINSTITUTIONAL CARE MANAGEMENT (DCM) (4.6): This service is used ONLY with individuals who are institutionalized. It allows care management and waiver services to begin up to 180 days prior to an individual's discharge from an institution. It may be used in two situations, as follows:
- a. Where MSSP has gone into a facility (nursing facility or acute hospital) to begin working with a resident to facilitate their discharge into the community.
 - b. Where an established MSSP client is institutionalized and MSSP services are necessary for the person to be discharged back into the community.

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

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

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

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

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

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vouchers for trips made via private taxicabs for the elderly and handicapped).

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

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

If oral nutrition supplements (ONS) are to be included in the care plan, efforts must be made to obtain them through a Medi-Cal

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Treatment Authorization Request (TAR). If this is not possible or appropriate, the rationale will be documented.

If ONS are to be purchased with waived services funds, the following must be recorded in the client record:

- The nurse care manager has assessed the client's nutritional needs and concluded that an ONS is advised; AND
- The use of home-prepared drinks/supplements (e.g., instant breakfast, pureed food) has been explored and found not to meet the client's needs.

Following the criteria described above, ONS may be purchased initially for a period of three months. When it is determined that it is desirable to continue beyond that time, the client's personal physician must be notified, and additional supporting documentation must be obtained by either:

1. A nutritional screening recommending this alternative (preferably a consultation or assessment obtained from a nutritionist or dietitian, but if these resources are not available, a screen conducted by the primary care manager in consultation with the nurse care manager; see MSSP Site Manual, Appendix 21, for an example of a nutritional screen), or
2. A prescription obtained from the physician, or
3. Approval (verbal or in writing) for this service from the physician noted in the record.

If the service is to be continued beyond six months, the following criteria will be documented in the client record, and repeated every six months thereafter for as long as an ONS is being purchased with waived services funds:

1. A prescription obtained from the physician, AND
2. A review of the client's nutritional status will be conducted by the nurse care manager. The purpose of the review is to assure the appropriateness of continuing to provide an ONS for an individual client. It is preferred that the review be conducted by obtaining an assessment from a nutritionist or dietitian. If these resources are not available, a member of the care management staff will complete a nutritional screen

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(see MSSP Site Manual, Appendix 21, for an example of a nutritional screen).

When the client or family is purchasing the ONS, the care manager should advise them to notify the client's physician.

14. PROTECTIVE SERVICES (8.3, 8.4, and 8.5): These services include protection for clients who are isolated and homebound due to health conditions; who suffer from depression and other psychological problems; individuals who have been harmed, or threatened with harm (physical or mental) by other persons or by their own actions; or those whose cognitive functioning is impaired to the extent they require assistance and support in making and carrying out decisions regarding personal finances.

- a. SOCIAL REASSURANCE (8.3): Includes periodic telephone contact, visiting or other social and reassurance services to verify that the individual is not in medical, psychological, or social crisis, or to offset isolation; expenses for activities and supplies required for client participation in rehabilitation programs; therapeutic classes and exercise classes are also provided. Such services shall be provided based on need, as designated in the client's plan of care. The MSSP has found that isolation and lack of social interaction can seriously impact some clients' capacity to remain independent. Lack of motivation or incentive or the lack of any meaningful relationships can contribute to diminishing functional capacity and premature institutionalization.

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

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

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

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

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

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

The MSSP has found that assistance with managing day-to-day household finances is often required by frail elderly. These clients may be isolated by geography or by not having a trustworthy other person to rely upon. Failure to meet personal financial obligations frequently results in eviction, disconnection of utilities, or jeopardizes eligibility for maintenance programs such as Supplemental Security Income (SSI) and Medicaid. Money management services ensure a stable living environment and avoid institutionalization.

- 15. COMMUNICATIONS SERVICES (9.1 and 9.2): Clients who receive these services are those with special communication problems such as vision, hearing, or speech impairments and persons with physical impairments likely to result in a medical emergency. Services shall be provided by organizations such as: speech and hearing clinics; organizations serving blind individuals; hospitals; senior citizens centers; providers specializing in communications equipment for disabled or at-risk persons. Services shall be available on a routine or emergency basis as designated in the client's plan of care.
 - a. COMMUNICATION/TRANSLATION/INTERPRETATION (9.1): The provision of translation and interpretive services for purposes of instruction, linkage with social or medical services, and conduct of business is essential to maintaining independence and carrying out the ADL and Instrumental Activities of Daily Living (IADL) functions.

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

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

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

- 1. 24-hour answering/paging.
- 2. Beepers.
- 3. Medic-alert type bracelets/pendants.
- 4. Intercoms
- 5. Life-lines.
- 6. Wander-alerts.
- 7. Monitoring services.
- 8. Light fixture adaptations (blinking lights, etc.)
- 9. Telephone adaptive devices not available from the telephone company.
- 10. Other electronic devices/services designed for emergency assistance.

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

ARTICLE II. ASSURANCES

- A. Nondiscrimination

ARTICLE II. ASSURANCES (Cont)

The Contractor shall comply with all federal statutes relating to nondiscrimination, including but not limited to:

1. Equal Access to Federally-Funded Benefits, Programs and Activities (Title VI of the Civil Rights Act of 1964.) Contractor shall ensure compliance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d; 45 C.F.R. Part 80), which prohibits recipients of federal financial assistance from discriminating against persons based on race, color, religion, or national origin.
2. Equal Access to State-Funded Benefits, Programs and Activities. Contractor shall, unless exempted, ensure compliance with the requirements of Government Code Sections 11135-11139.5, and Section 98000 et seq. of Title 22 of the California Code of Regulations, which prohibit recipients of state financial assistance from discriminating against persons based on race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, or disability. (22 CCR 98323) (Chapter 182, Stats. 2006)
3. Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA (42 U.S.C. Sections 12101 et seq.). Contractor agrees to include this requirement in all vendor agreements it enters into with vendors to provide services pursuant to this Agreement.

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

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

C. Fraud and Abuse

Contractor shall report immediately to CDA in writing any incidents of alleged fraud and/or abuse by either Contractor or Contractor's vendors. Contractor shall maintain any records, documents, or other evidence of fraud and abuse until otherwise notified by CDA.

ARTICLE II. ASSURANCES (Cont)

D. Standards of Work

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

E. Conflict of Interest

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

F. Covenant Against Contingent Fees

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

G. Payroll Taxes and Deductions

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

H. Facility Construction or Repair

1. When applicable for purposes of construction or repair of facilities, the Contractor shall comply with the provisions contained in the following acts

ARTICLE II. ASSURANCES (Cont)

and/or will include such provisions in any applicable agreements with vendors:

- a. Copeland "Anti-Kickback" Act (18 USC 874, 40 USC 276c) (29 CFR, Part 3).
 - b. Davis-Bacon Act (40 USC 276a-7) (29 CFR, Part 5).
 - c. Contract Work Hours and Safety Standards Act (40 USC 327-333) (29 CFR, Part 5, 6, 7, 8).
 - d. Executive Order 11246 of September 14, 1965, entitled "Equal Employment Opportunity" as amended by Executive Order 11375 of October 13, 1967, as supplemented in Department of Labor Regulations (41 CFR, Part 60).
2. Payments are not permitted for construction, renovation, alteration, improvement, or repair of privately-owned property which would enhance the owner's value of such property except where permitted by law and by CDA.
 3. When a Contract or vendor agreement provides funding for both construction and non-construction activities, the Contractor or vendor must obtain prior written approval from CDA before making any fund or budget transfers between construction and non-construction.
- I. Contracts in Excess of \$100,000
- For Contracts in excess of \$100,000, the Contractor shall comply with all applicable orders or requirements issued under the following laws:
1. Clean Air Act, as amended (42 USC 1857).
 2. Clean Water Act, as amended (33 USC 1368).
 3. Federal Water Pollution Control Act, as amended (33 USC 1251 et seq.).
 4. Environmental Protection Agency Regulations (40 CFR, Part 15 and Presidential Executive Order 11738).
- J. Debarment, Suspension, and Other Responsibility Matters
1. The Contractor certifies to the best of its knowledge and belief, that it and its subcontractors/vendors:
 - a. Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;

ARTICLE II. ASSURANCES (Cont)

- b. Have not within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, State, or local) transaction or contract under a public transaction; violation of federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - d. Have not within a three-year period preceding this Agreement had one or more public transactions (federal, State, or local) terminated for cause or default.
2. The Contractor agrees to timely execute any and all amendments to this Agreement or other required documentation relating to their vendors debarment/suspension status.

K. Agreement Authorization

If the Contractor is a public entity or private nonprofit corporation, the Contractor shall submit to CDA an authorization by the Governing Board to execute this Contract, referencing this Contract number.

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

L. Contractor's Staff

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

M. Corporate Status

- 1. The Contractor shall be either a public entity or private non-profit corporation. If a private nonprofit corporation, the Contractor shall be in good standing with the Secretary of State of California and shall maintain that status throughout the term of the Agreement.

ARTICLE II. ASSURANCES (Cont)

2. Failure of a corporation to maintain good standing with the Secretary of the State of California shall result in suspension or termination of this Agreement with CDA until satisfactory status is restored. Failure to maintain good standing by a subcontracting/vendor corporation shall result in suspension or termination of the subcontract/vendor agreement until satisfactory status is restored.

N. Lobbying Certification

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

1. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The Contractor shall require that the language of this certification be included in the award documents for all subcontracts or vendor agreements at all tiers (including subgrants, and contracts under grants, loans, and cooperative agreements which exceed \$100,000) and that all subrecipients shall certify and disclose accordingly.

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

- O. The Contractor shall monitor, evaluate, and take effective action to address any needed improvement in the delivery of culturally and linguistically appropriate services to clients.

ARTICLE III. AGREEMENT

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

ARTICLE IV. COMMENCEMENT OF WORK

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

ARTICLE V. VENDOR AGREEMENTS

- A. The Contractor is responsible for carrying out the terms of the Agreement, including the satisfaction, settlement, and resolution of all administrative, programmatic, and fiscal aspects of the program, including issues that arise out of any vendor agreements. The Contractor shall not delegate or contract these responsibilities to any other entity. This includes, but is not limited to, disputes, claims, protests of award, or other matters of a contractual nature.
- B. Funds for this Agreement shall not be obligated in vendor agreements for services beyond the ending date of this Agreement.
- C. The Contractor shall have no authority to contract for, or on behalf of, or incur obligations on behalf of the State of California.
- D. Copies of vendor agreements, Memorandums and/or Letters of Understanding shall be on file with the Contractor and shall be made available for review at the request of CDA.
- E. The Contractor shall monitor the insurance requirements of its vendors in accordance with Article XII of this Exhibit D, Section E.
- F. The Contractor shall require language in all vendor agreements to require all vendors to indemnify, defend, and save harmless the Contractor, its officers, agents, and employees from any and all claims and losses accruing or resulting to any contractors, vendors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with any activities performed for which funds from this Contract were used and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the vendor in the performance of this Contract.
- G. The Contractor shall ensure that all potential vendors of Waived Services complete a CDA-approved Vendor Application form. The vendor selection process shall be based upon equitable criteria, provide for adequate publicity, screen out potential vendors who are not qualified to provide the needed services, and provide for awards to the lowest responsible and responsive bidder(s).

ARTICLE V. VENDOR AGREEMENTS (Cont)

Vendor Agreements for Waived Services shall consist of standard format language consistent with this Contract.

- H. Vendor Agreements shall require all vendors to report immediately in writing to the Contractor any incidents of fraud or abuse to clients, in the delivery of services, in Vendor operations.
- I. The Contractor shall require language in all vendor agreements to require all vendors to comply with all applicable state and federal laws, including but not limited to the Americans with Disabilities Act (ADA) of 1990 (42 USC 12101 et. seq.) and California Government Code Sections 11135-11139.5.
- J. The Contractor shall require all vendor agreements to comply with the HIPAA Business Associate requirements as it appropriately relates to services rendered.

ARTICLE VI. RECORDS

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

ARTICLE VI. RECORDS (Cont)

be questioned in the audit and may be disallowed during the audit resolution process.

- E. The Contractor agrees that CDA or its delegatee will have the right to review, obtain, and copy all records pertaining to the performance of this Agreement. The Contractor agrees to provide CDA or its delegatee with any relevant information requested and shall permit the awarding agency or its delegatee access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with Government Code, Section 8546.7 et seq. Contractor further agrees to maintain such records for a period of three (3) years or for such a longer period as CDA deems necessary after final payment under the Agreement.
- F. Client records are to be kept as long as the case is open and active. Following termination, client records will be maintained for a period of six (6) years following the year of case closure, or for a longer period if deemed necessary by CDA. A longer period of retention may be established by individual sites. After the authorized period has expired, confidential records shall be shredded and disposed of in a manner that will maintain confidentiality.

ARTICLE VII. REPORTS

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

- 1. Quarterly Status Reports

- a. Reports are due twenty (20) calendar days after the end of the report quarter.
- b. Reports shall include an overview of significant developments during the report period, identified problems, and solutions. The report narrative should be concise and informative. The subject areas to be addressed are:

Care Management Staffing –Including the FTEs for each position and staffing ratio.

Care Management Activity –Including staff turnover, training, quality assurance, client/vendor grievances and Fair Hearings, internal/external program reviews and corrective action plans, client/vendor satisfaction surveys, policy changes, and contract compliance regarding contracted caseload.

Management Information System –Problems/issues with the EDS billing system and EDS technical support.

Fiscal –Quarterly Waived Cost Monitoring Report

ARTICLE VII. REPORTS (Cont)

Caseload Count

Staff Roster

2. Ad Hoc Reports

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

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

3. Fiscal Closeout Reports

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

- a. Final Accounting Reconciliation form,
- b. Closeout Budget,
- c. Fiscal Summary Report for the State
- d. MSSP Site Equipment Inventory Form for the fiscal year.

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

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

ARTICLE VIII. PROPERTY

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

1. Property includes land, buildings, improvements, machinery, vehicles, furniture, tools, and intangibles, etc .
2. Property does not include consumable office supplies such as paper, pencils, typing ribbons, file folders, etc.

ARTICLE VIII. PROPERTY (Cont)

- B. Property meeting all of the following criteria is subject to the capitalization requirements and is referred to as property or equipment. Property that is capitalized must:
 - 1. Have a normal useful life of at least 1 year;
 - 2. Have a unit acquisition cost of at least \$5,000 (e.g., four identical assets which cost \$3,000 each, for a \$12,000 total would not meet this capitalization requirement); and
 - 3. Be used to conduct business under this Agreement.
- C. Noncapitalized property are those items which do not meet all three requirements in this Article VIII, Section B above.
- D. Additions, improvements, and betterments to assets meeting all of the conditions in Section B above must be capitalized. Additions typically involve physical extensions of existing units. Improvements and betterments typically do not increase the physical size of the asset. Instead, improvements and betterments enhance the condition of an asset (e.g., extend life, increase service capacity, and lower operating costs). Examples of assets that might be improved and bettered include roads, bridges, curbs and gutters, tunnels, parking lots, streets and sidewalks, drainage, and lighting systems.
- E. Intangibles are property which lack physical substance but give valuable rights to the owner and can be capitalized or noncapitalized. Examples of intangible property include patents, copyrights, leases, and computer software. By contrast, hardware consists of tangible equipment (e.g., computer, printer, terminal, etc.). Costs include all amounts incurred to acquire and to ready the intangible asset for its intended use. Typical intangible property costs include the purchase price, legal fees, and other costs incurred to obtain title to the asset.
- F. The Contractor shall record the following information when property is acquired:
 - 1. Date acquired;
 - 2. Property description (include model number);
 - 3. Property identification number;
 - 4. Serial number;
 - 5. Cost or other basis of valuation;
 - 6. Fund source; and
 - 7. Rate of depreciation (or depreciation schedule), if applicable.

The Contractor shall keep track of property purchased with State funds, whether capitalized or not. The Contractor shall maintain and submit to CDA, annually

ARTICLE VIII. PROPERTY (Cont)

with the Closeout, a current inventory of property furnished or purchased by either the contractor with funds awarded under the terms of this Agreement or any predecessor agreement for the same purpose. The Contractor shall maintain an annual inventory of property furnished or purchased by the contractor with funds awarded under the terms of this Agreement or any predecessor agreement for the same purpose. The Contractor shall use the Report of Project Property Furnished/Purchased with Agreement Funds (CDA 32), unless otherwise directed by CDA, to report property to the Department.

- G. Prior to disposal of any State-owned property, the Contractor must obtain approval from CDA, regardless of the acquisition value. Disposition, which includes sale, trade-in, discarding, or transfer to another agency may not occur until approval is received from CDA. The Contractor shall use the Request to Dispose of Property (CDA 248) to request disposal.
- H. The Contractor shall immediately investigate and within five (5) days fully document the loss, destruction, or theft of such property.
- I. CDA reserves title to all State-purchased or financed property not fully consumed in the performance of this Agreement, unless otherwise required by federal law or regulations, or as otherwise agreed by the parties.
- J. The Contractor shall exercise due care in the use, maintenance, protection, and preservation of such property during the period of the project, and shall assume responsibility for replacement or repair of such property during the period of the project and until the Contractor has complied with all written instructions from CDA regarding the final disposition of the property.
- K. In the event of the Contractor's dissolution or upon termination of this Agreement, the Contractor shall provide a final property inventory to CDA. CDA reserves the right to require the Contractor to transfer such property to another entity, or to CDA.
- L. To exercise the above right, no later than 120 days after termination of the Agreement or notification of the Contractor's dissolution, CDA will issue specific written disposition instructions to the Contractor.
- M. The Contractor shall use the property for the purpose for which it was intended under the Agreement. When no longer needed for that use, the Contractor shall use it, if needed, and with written approval of CDA for other purposes in this order:
 - 1. Another CDA program providing the same or similar service; or

ARTICLE VIII. PROPERTY (Cont)

2. Another CDA-funded program
- N. The Contractor may share use of the property and equipment or allow use by other programs, upon written approval of CDA. As a condition of the approval, CDA may require reimbursement under this Agreement for its use.
- O. The Contractor or vendor shall not use equipment or supplies acquired under this Agreement with federal and/or State monies for personal gain or to usurp the competitive advantage of a privately-owned business entity.
- P. If purchase of equipment is a reimbursable item, the equipment to be purchased will be specified in the budget.
- Q. Property, for the purpose of this Agreement, does not include any equipment or supplies acquired utilizing Waived Services funds on behalf of MSSP clients.

ARTICLE IX. ACCESS

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

ARTICLE X. MONITORING, ASSESSMENT, AND EVALUATION

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

ARTICLE XI. AUDIT

- A. Contractors that expend \$500,000 or more in Federal Awards shall arrange for an audit to be performed as required by the Single Audit Act of 1984, Public Law 98-502, Single Audit Act Amendments of 1996, Public Law 104-156, and Office of Management and Budget (OMB) Circular A-133, and a copy submitted to the :

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

ARTICLE XI. AUDIT (Cont)

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

- B. The Contractor shall perform a reconciliation of the "Final Accounting Reconciliation" (CDA Closeout) to the audited financial statements. The reconciliation shall be maintained and made available for CDA review.
- C. Unless prohibited by law, the cost of audits completed in accordance with provisions of Single Audit Act Amendments of 1996, are allowable charges to Federal Awards. The costs may be considered a direct cost, or an allocated indirect cost, as determined in accordance with provisions of applicable OMB cost principle circulars.
- D. Contractor may not charge to federal awards the cost of any audit under the Single Audit Act Amendments of 1996, not conducted in accordance with the Act.
- E. CDA and DHCS shall have access to all audit reports of Contractors and have the option to perform audits and/or additional work, as needed.
- F. All audits shall be performed in accordance with and address all issues contained in any federal OMB Compliance Supplement that applies to this program.
- G. The Contractor shall include in its contract with an independent auditor a clause permitting access by the State to the work papers of the independent auditor.
- H. Audits to be performed shall be, minimally, financial and compliance audits, and may include economy and efficiency and/or program results audits.
- I. The Contractor shall cooperate with, and participate in, any further audits which may be required by DHCS.
- J. Contractor agrees that CDA, DHCS, the Department of General Services, the Bureau of State Audits, or their designated representative shall, at all times, have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is required. 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 CDA and DHCS to audit records and interview staff in any subcontract/vendor agreement related to performance of this Agreement (GC 8546.7, PCC 10115 et seq., CCR Title 2, Section 1896).

ARTICLE XII. INSURANCE

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

ARTICLE XII. INSURANCE (Cont)

General liability of not less than \$1,000,000 per occurrence for bodily injury and property damage combined. Higher limits may be required by CDA in cases of higher than usual risks.

Automobile liability including non-owned auto liability, of not less than \$1,000,000 per occurrence for volunteers and paid employees providing services supported by this Agreement.

If applicable, contractors and vendors shall comply with the Public Utilities Commission (PUC) General Order No. 115-E which requires higher levels of insurance for charter-party carriers of passengers and is based on seating capacity as follows:

\$750,000 if seating capacity is under 8;
\$1,500,000 if seating capacity is 8 – 15;
\$5,000,000 if seating capacity is over 15;

unless otherwise amended by future regulation.

Professional liability of not less than \$1,000,000 as it appropriately relates to the services rendered. Coverage shall include medical malpractice and/or errors and omissions.

- B. The insurance will be obtained from an insurance company acceptable to the Department of General Services, Office of Risk and Insurance Management, or be provided through partial or total self-insurance acceptable to the Department of General Services.
- C. Evidence of insurance shall be in a form and content acceptable to the Department of General Services, Office of Risk and Insurance Management. Insurance obtained through commercial carriers shall meet the following requirements:
 - 1. The Certificate of Insurance shall provide that the insurer will not cancel the insured's coverage without thirty (30) days prior written notice to the State, or ten (10) days written notice if the reason for cancellation is for non-payment of insurance premium.
 - 2. The Certificate of Insurance shall provide that the "Department of Aging", State of California, its officers, agents, employees, and servants are included as additional insureds, with respect to work performed for the State of California under this Agreement. Professional liability coverage is exempt from this requirement.
 - 3. CDA shall be named the certificate holder and the address must be listed on the certificate.
- D. The insurance provided herein shall be in effect at all times during the term of this Agreement. In the event the insurance coverage expires during the term of this Agreement, the Contractor agrees to provide CDA, at least thirty (30) days

ARTICLE XII. INSURANCE (Cont)

prior to the expiration date, a new certificate of insurance evidencing insurance coverage as provided herein for a period not less than the remaining Agreement term or for a period not less than one (1) year. In the event the Contractor fails to keep in effect at all times said insurance coverage, CDA may, in addition to any other remedies it may have, terminate this Agreement.

- E. The Contractor shall require its vendors under this Agreement, other than units of local government which are similarly self-insured, to maintain adequate insurance coverage for general liability, workers' compensation liabilities, and if appropriate, auto liability including non-owned auto and/or professional liability, and further, the Contractor shall require all of its vendors to hold the Contractor and CDA harmless. The vendors' Certificate of Insurance shall also have the Contractor, not the State, as the certificate holder and additional insured. The Contractor shall maintain certificates of insurance for all its vendors.
- F. The Contractor shall submit to CDA a copy of each appropriate Certificate of Insurance referencing this Agreement Number, or letter of self-insurance.
- G. Contractor shall be insured against liability for workers' compensation or undertake self-insurance in accordance with the provisions of the Labor Code, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement (Labor Code Section 3700).

ARTICLE XIII. TERMINATION

- A. Termination for Convenience
 - 1. The State may terminate performance of work under this Agreement for its convenience in whole or, from time to time, in part, if the State determines that a termination is in the State's interest. The State shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date thereof. Such termination shall be effective thirty (30) days from the delivery of the Notice of Termination. The Parties agree that, as to the terminated portion of the Agreement, the Agreement shall be deemed to remain in effect until such time as the termination settlement, if any, is concluded and the Agreement shall not be void.
 - 2. After receipt of a Notice of Termination, and except as directed by the State, the Contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any funds due under this clause.

The Contractor shall:

- a. Stop work as specified in the Notice of Termination.
- b. Place no further subcontracts/vendor agreements for materials, or services, except as necessary to complete the continued portion of the contract.

ARTICLE XIII. TERMINATION (Cont)

- c. Terminate all subcontracts/vendor agreements to the extent they relate to the work terminated.
- d. Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts/vendor agreements (the approval or ratification of which will be final for purposes of this clause).
- e. Submit a Transition Plan as specified in paragraph D3 of this Article XIII.

B. Termination for Default

- 1. The State may, by written notice of default to the Contractor, terminate this Agreement, in whole or in part, as a consequence of any of the following events:
 - a. A violation of the law or failure to comply with any condition of this Agreement.
 - b. Inadequate performance or failure to make progress so as to endanger performance of this Agreement.
 - c. Failure to comply with reporting requirements.
 - d. Evidence that the Contractor is in an unsatisfactory financial condition as determined by the Department or evidence of a financial condition that endangers performance of this Agreement and/or the loss of other funding sources.
 - e. Delinquency in payment of taxes or payment of costs for performance of this Agreement in the ordinary course of business.
 - f. Appointment of a trustee, receiver, or liquidator for all or a substantial part of the Contractor's property, or institution of bankruptcy, reorganization or the arrangement of liquidation proceedings by or against the Contractor.
 - g. Service of any writ of attachment, levy of execution, or commencement of garnishment proceedings against the Contractor's assets or income.
 - h. The commission of an act of bankruptcy.
 - i. Finding of debarment or suspension, Article II J.
 - j. The Contractor's organizational structure has materially changed.

ARTICLE XIII. TERMINATION (Cont)

- C. Termination of this Agreement, shall take effect immediately in the case of threat to life, health, or safety of the public or, in all other cases, upon thirty (30) days subsequent to written notice to the Contractor. The notice shall describe the action being taken, the date of termination, the reason for such action and, any conditions of the termination, including the requirement of a transition plan as identified in paragraph D of this Article XIII. The notice shall also inform the Contractor of any right to appeal such decision to the State and of the procedure for doing so.

- D. Termination by Contractor
 - 1. Contractor may terminate this Agreement by giving CDA a written Notice to Terminate at least 180 days prior to the proposed effective date of termination.

 - 2. Contractor's Obligations Upon Termination
 - a. In the event of termination or anticipated termination of this Agreement, in full or in part, Contractor shall take immediate steps to ensure the health and safety of clients in the MSSP program managed by the Contractor. Contractor agrees to cooperate in any and all efforts to refer MSSP clients to other local agencies in order to maintain continuity of services required for each client.

 - b. Contractor shall provide adequate staff and vendor agreements to provide services to clients during the course of client transition to another MSSP site.

 - c. Contractor shall deliver updated client records to the subsequent MSSP contractor or as directed by CDA upon notice by CDA.

 - d. Contractor shall provide a current needs assessment for each of its clients to the subsequent MSSP contractor or as directed by CDA.

 - e. The Contractor shall, with assistance from CDA, develop a written Transition Plan to locate alternative services for each client through another MSSP site or community agency. This Transition Plan shall identify all measures to be taken by the Contractor to minimize any trauma to clients and shall include the elements described in Paragraph C 3 of this Article XIII.

 - f. The Contractor shall be responsible for providing all necessary client services until termination or expiration of the Contract and shall remain liable for the processing and payment of invoices and statements for covered services provided to clients prior to such expiration or termination.

 - g. A full accounting and closeout of the Contractor's existing budget will be required. While it is recognized that Contractor will require funding to continue client services and operations at a reduced

ARTICLE XIII. TERMINATION (Cont)

4. Contractor shall implement the Transition Plan as approved by CDA. CDA will monitor the Contractor's progress in carrying out all elements of the Transition Plan.
5. If the Contractor fails to provide and implement a transition plan as required by Paragraphs D 2 and D 3 of Article XIII of this Agreement, Contractor agrees to implement a transition plan submitted by CDA to the Contractor following the Contractor's Notice of Termination.
6. Phase-out Requirements
 - a. Phase-out for this Contract will consist of the processing, payment and monetary reconciliation necessary to pay claims for Waived Services.
 - b. Phase-out for the Contract will consist of the resolution of all financial and reporting obligations of the Contractor. Contractor shall remain liable for the processing and payment of invoices and other claims for payment for Waived Services and other services provided to clients pursuant to this Contract prior to the expiration or termination. Contractor shall submit to CDA all reports required.
 - c. All data and information provided by the Contractor shall be accompanied by letter, signed by the responsible authority, certifying, under penalty of perjury, to the accuracy and completeness of the materials supplied.

ARTICLE XIV. REMEDIES

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

ARTICLE XV. DISSOLUTION OF ENTITY

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

ARTICLE XVI. REVISIONS OR MODIFICATIONS

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

ARTICLE XVII. NOTICES

- A. Any notice to be given hereunder by either party to the other may be effected by personal delivery in writing or by registered or certified mail, postage prepaid, return receipt requested, or overnight mail, provided Contractor retains receipt, and shall be communicated as of actual receipt.
- B. Any notice given to the CDA for a contractor's change of legal name, main address, or name of Director shall be addressed to the Director of the Department.
- C. A change in a contractor's Site Director requires that a notice be addressed to the MSSP Branch Chief. This notice shall be on the contractor's letter head, and must include the new Director's qualifications, as outlined in the MSSP Site Manual, Chapter 2.
- D. All other notices with the exception of those identified above shall be addressed to the California Department of Aging, Multipurpose Senior Services Program Branch, 1300 National Drive, Suite 200, Sacramento, California 95834. Notices mailed to the Contractor shall be to the address indicated on the coversheet of this Agreement.
- E. Either party may change its address by written notice to the other party in accordance with this Article.

ARTICLE XVIII. APPEAL PROCESS

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

- A. The Contractor should first discuss the problem informally with the designated CDA Program Analyst. If the problem is not resolved, the Contractor must, within fifteen (15) working days of the failed attempt to resolve the dispute with the CDA Program Analyst, submit a written complaint together with any evidence to the Division Deputy Director. The complaint must include a description of the disputed issues, the legal authority/basis for each issue which supports the Contractor's position, and the remedy sought. The Deputy Director shall, within fifteen (15) working days after receipt of the Contractor's written complaint, make a determination on the dispute and issue a written decision and reasons therefor. All written communication shall be pursuant to Article XVII of this Agreement. Should the Contractor disagree with the decision of the Division Deputy Director, the Contractor may appeal the decision to the Chief Deputy Director of the California Department of Aging.
- B. The Contractor's appeal of the Division Deputy Director must be submitted within ten (10) working days from the date of the decision of the Division Deputy Director; be in writing; state the reasons why the decision is unacceptable; and include the original complaint, the decision that is the subject of appeal, and all supporting documents. Within twenty (20) working days from the date of the Contractor's appeal, the Chief Deputy Director or designee shall meet with the Contractor to review the issues raised on appeal. The Chief Deputy Director

ARTICLE XVIII. APPEAL PROCESS (Cont)

shall issue a final written decision within fifteen (15) working days of such meeting.

- C. The Contractor may appeal the final decision of the Chief Deputy Director in accordance with the procedures set forth in Division 25.1 (commencing with Section 38050) of the Health and Safety Code and the regulations adopted thereunder. (Title 1, Subchapter 2.5 commencing with Section 251, or Subchapter 3 commencing with Section 300, whichever is applicable, of the California Code of Regulations.)
- D. The Contractor shall continue to carry out the obligations under this Agreement during any dispute. Costs incurred by the Contractor or vendor for administrative/court review are not reimbursable by the Department.

ARTICLE XIX. DEPARTMENT CONTACT

- A. The name of the Department's contact to request revisions, waivers, or modifications affecting this Agreement, will be provided by the State to the Contractor upon full execution of this Agreement.
- B. The Contractor shall submit the name of its Agency Contract Representative (ACR), for this Agreement by submitting an Agency Contract Representative form to the CDA's Contracts and Business Services Section. This form requires the ACR's address, phone number, e-mail address, and FAX number to be included on this form. For any change in this information, the Contractor shall submit an amended Agency Contract Representative form to the same address. This form may be requested from the Contracts and Business Services Section.

ARTICLE XX. INFORMATION INTEGRITY AND SECURITY (Formerly Confidentiality)

- A. Information Assets

The Contractor shall have in place operational policies, procedures, and practices to protect State information assets, i.e., public, confidential, sensitive and/or personal information as specified in State Administrative Manual, Section 4841.2., GC Section 11019, Department of Finance (DOF) Management Memo 06-12, and DOF Budget Letter 06-34).

Information assets include (but are not limited to):

- 1. Information collected and/or accessed in the administration of the State programs and services.
 - 2. Information stored in any media form, paper or electronic.
- B. Encryption on Portable Computing Devices

ARTICLE XX. INFORMATION INTEGRITY AND SECURITY (Cont)

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

C. Disclosure

The Contractor shall ensure that personal, sensitive and confidential information is protected from inappropriate or unauthorized access or disclosure in accordance with applicable laws, regulations and State policies. The requirement to protect information shall remain in force until superseded by laws, regulations or policies.

The Contractor shall protect from unauthorized disclosure names and other identifying information, concerning persons receiving services pursuant to this Agreement, except for statistical information not identifying any participant.

“Identifying information” shall include, but not be limited to, name, identifying number, social security number, State driver’s license or State identification number, financial account numbers, symbols or other identifying characteristics assigned to the individual, such as finger or voice print or a photograph.

The Contractor shall not use such identifying information for any purpose other than carrying out the Contractor’s obligations under this Agreement.

The Contractor shall not, except as otherwise specifically authorized or required by this Agreement or court order, disclose any identifying information obtained under the terms of this Agreement to anyone other than CDA without prior written authorization from CDA. The Contractor may be authorized, in writing, by a participant to disclose identifying information specific to the authorizing participant.

The Contractor may allow a participant to authorize the release of information to specific entities, but shall not request or encourage any participant to give a blanket authorization or sign a blank release, nor shall the Contractor accept such blanket authorization from any participant.

D. Training/Education

The Contractor agrees to provide ongoing education and training, at least annually, for all employees and subcontractors who handle personal, sensitive or confidential information. Contractor employees and subcontractors will complete the Security Awareness Training module located on the Department’s website, www.aging.ca.gov within 30 days of the state date of this Agreement or within 30 days of the start date of any new employee or subcontractor. Contractor may substitute CDA’s Security Awareness Training program with its own Security Training provided such training meets or exceeds CDA’s training requirement.

ARTICLE XX. INFORMATION INTEGRITY AND SECURITY (Cont)

Contractor shall maintain documentation of training and education provided to their staff and/or subcontractors.

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

E. Contractor Confidentiality Statement

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

F. Software Maintenance

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

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

1. Recitals

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

ARTICLE XX. INFORMATION INTEGRITY AND SECURITY (Cont)

under HIPAA and HIPAA regulations, as the same may be amended from time to time.

- d. Under this Agreement, Contractor is the Business Associate of DHCS/CDA and provides services, arranges, performs or assists in the performance of functions or activities on behalf of DHCS/CDA and uses or discloses PHI.
- e. DHCS/CDA and Business Associate desire to protect the privacy and provide for the security of PHI disclosed pursuant to this Agreement, in compliance with HIPAA and HIPAA regulations and other applicable laws.
- f. The purpose of the Exhibit is to satisfy certain standards and requirements of HIPAA and the HIPAA regulations.
- g. The terms used in this Exhibit, but not otherwise defined, shall have the same meanings as those terms in the HIPAA regulations.

In exchanging information pursuant to this Agreement, the parties agree as follows:

- 2. Permitted Uses and Disclosures of PHI by Business Associate.
 - a. *Permitted Uses and Disclosures.* Except as otherwise indicated in this Exhibit, Business Associate may use or disclose PHI only to perform functions, activities or services specified in this Agreement, for, or on behalf of DHCS/CDA, provided that such use or disclosure would not violate the HIPAA regulations, if done by DHCS/CDA.
 - b. *Specific Use and Disclosure Provisions.* Except as otherwise indicated in this Exhibit, Business Associate may: use and disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are required by law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware that the confidentiality of the information has been breached.

ARTICLE XX. INFORMATION INTEGRITY AND SECURITY (Cont)

- c. *Provision of Data Aggregation Services.* Use PHI to provide data aggregation services to services to DHCS/CDA. Data aggregation means the combining of PHI created or received by the Business Associate on behalf of DHCS/CDA with PHI received by the Business Associate in its capacity as the Business Associate of another covered entity, to permit data analyses that relate to the health care operations of DHCS/CDA.

3. Responsibilities of Business Associate.

Business Associate agrees:

- a. *Nondisclosure.* To not use or disclose Protected Health Information (PHI) other than as permitted or required by this Agreement or as required by law.
- b. *Safeguards.* To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the protected health information, including electronic PHI, that it creates, receives, maintains or transmits on behalf of DHCS/CDA; and to prevent use or disclosure of PHI other than as provided for by this Agreement. Business Associate shall maintain a comprehensive written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Business Associate's operations and the nature and scope of its activities. Business Associate will provide DHCS/CDA with information concerning such safeguards as DHCS/CDA may reasonably request from time to time.
- c. *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 Exhibit.
- d. *Reporting of Improper Disclosures.* To report to DHCS and the CDA MSSP Branch Chief or Operations Manager within twenty-four (24) hours during a work week, of discovery by Business Associate that PHI has been used or disclosed other than as provided for by this Agreement and this Exhibit.
- e. *Business Associate's Agents.* To ensure that any agents, including subcontractors, to whom Business Associate provides PHI received

ARTICLE XX. INFORMATION INTEGRITY AND SECURITY (Cont)

from or created or received by Business Associate on behalf of DHCS/CDA, agree to the same restrictions and conditions that apply to the Business Associate with respect to such PHI; and to incorporate, when applicable, the relevant provisions of this Exhibit into each subcontract or subaward to such agents or subcontractors.

- f. *Availability of Information to DHCS/CDA and Individuals.* To provide access as DHCS/CDA may require, and in the time and manner designated by DHCS/CDA (upon reasonable notice and during Business Associate's normal business hours) to PHI in a Designated Record Set, to DHCS/CDA (or, as directed by DHCS/CDA), to an individual, in accordance with 45 CFR Section 164.524. Designated Record Set means the group of records maintained for DHCS/CDA that includes medical and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for DHCS/CDA health plans; or those records used to make decisions about individuals on behalf of DHCS/CDA.
- g. *Amendment of PHI.* To make any amendment(s) to PHI that DHCS/CDA directs or agrees to pursuant to 45 CFR Section 164.526, in the time and manner designated by DHCS/CDA.
- h. *Internal Practices.* To make Business Associate's internal practices, books and records relating to the use and disclosure of PHI received from DHCS/CDA, or created or received by Business Associate on behalf of DHCS/CDA, available to DHCS/CDA or to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by DHCS/CDA or by the Secretary, for purposes of determining DHCS/CDA's compliance with the HIPAA regulations.
- i. *Documentation of Disclosures.* To document and make available to DHCS/CDA or (at the direction of DHCS/CDA) to an individual such disclosures of PHI, and information related to such disclosures, necessary to respond to a proper request by the subject Individual for an accounting of disclosures of PHI, in accordance with 45 CFR 164.528.
- j. *Notification of Breach.* During the term of this Agreement, to notify DHCS and the CDA MSSP Branch Chief or Operations Manager

ARTICLE XX. INFORMATION INTEGRITY AND SECURITY (Cont)

within twenty-four (24) hours during a work week of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI and/or any actual or suspected use or disclosure of data in violation of any applicable Federal and State laws or regulations. Business Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations. Business Associate shall investigate such breach, or unauthorized use or disclosure of PHI, and provide a written report of the investigation to the DHCS Privacy Officer within fifteen (15) working days of the discovery of the breach or unauthorized use at:

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

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

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

4. Obligations of DHCS/CDA.

DHCS/CDA agrees to:

- a. *Notice of Privacy Practices.* Provide Business Associate with the Notice of Privacy Practices that DHCS produces in accordance with 45 CFR 164.520, as well as any changes to such notice. Visit this Internet address to view the most current Notice of Privacy Practices: <https://www.dhcs.ca.gov/services/ccs/Pages/HIPAA.aspx>

ARTICLE XX. INFORMATION INTEGRITY AND SECURITY (Cont)

- 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/CDA has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of PHI.
 - d. *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/CDA.
5. Audits, Inspection and Enforcement.

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

- a. Failure to detect; or
 - b. 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/CDA's enforcement rights under this Agreement and this Exhibit.
6. Termination.
- a. *Termination for Cause.* Upon DHCS/CDA's knowledge of a material breach of this Exhibit by Business Associate, DHCS/CDA shall either:
 - (i) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by DHCS/CDA;

ARTICLE XX. INFORMATION INTEGRITY AND SECURITY (Cont)

- (ii) Immediately terminate this Agreement if Business Associate has breached a material term of this Exhibit and cure is not possible; or
 - (iii) If neither cure nor termination are feasible, the DHCS/CDA Privacy Officer shall report the violation to the Secretary of the U.S. Department of Health and Human Services.
 - b. *Judicial or Administrative Proceedings.* DHCS/CDA may terminate this Agreement, effective immediately, if (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA or (ii) a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, or other security or privacy laws is made in any administrative or civil proceeding in which the Business Associate has been joined.
 - c. *Effect of Termination.* Upon termination or expiration of this Agreement for any reason, Business Associate shall return or destroy all PHI received from DHCS/CDA (or created or received by Business Associate on behalf of DHCS/CDA) that Business Associate still maintains in any form, and shall retain no copies of such PHI or, if return or destruction is not feasible, it shall continue to extend the protections of this Exhibit to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.
- 7. Miscellaneous Provisions.
 - a. *Disclaimer.* DHCS/CDA makes no warranty or representation that compliance by Business Associate with this Exhibit, HIPAA or the HIPAA regulations will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
 - b. *Amendment.* The parties acknowledge that Federal and State laws relating to electronic data security and privacy are rapidly evolving

ARTICLE XX. INFORMATION INTEGRITY AND SECURITY (Cont)

and that amendment of this Exhibit may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon DHCS/CDA's request, Business Associate agrees to promptly enter into negotiations with DHCS/CDA concerning an amendment to this Exhibit embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA regulations or other applicable laws. DHCS/CDA may terminate this Agreement upon thirty (30) days written notice in the event (i) Business Associate does not promptly enter into negotiations to amend this Exhibit when requested by DHCS/CDA pursuant to this Section or (ii) Business Associate does not enter into an amendment providing assurances regarding the safeguarding of PHI that DHCS/CDA in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA regulations.

- c. *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/CDA at no cost to DHCS/CDA to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against DHCS/CDA, its directors, officers or employees based upon claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy, except where Business Associate or its subcontractor, employee or agent is a named adverse party.
- d. *No Third-Party Beneficiaries.* Nothing express or implied in the terms and conditions of this Exhibit is intended to confer, nor shall anything herein confer, upon any person other than DHCS/CDA or Business Associate and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.
- e. *Interpretation.* The terms and conditions in this Exhibit shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA regulations and applicable State laws. The parties agree that any ambiguity in the terms and conditions of this Exhibit shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA regulations.

ARTICLE XX. INFORMATION INTEGRITY AND SECURITY (Cont)

- f. *Regulatory References.* A reference in the terms and conditions of this Exhibit 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 6.C of this Exhibit 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.

H. Provisions of this Article

Provisions of this Article shall be included in all contracts of both the contractor/vendor and the subcontractors/subvendors where either PHI, confidential, personal, or sensitive information is obtained during the course of carrying out the obligations of this Agreement or any sub-Agreements related to the services required in this Agreement.

ARTICLE XXI. COPYRIGHTS AND RIGHTS IN DATA

A. Copyrights

- 1. If any material funded by this Agreement is subject to copyright, CDA reserves the right to copyright such material, and the Contractor agrees not to copyright such material, except as set forth in subdivisions (b) and (c) of this section.
- 2. The Contractor may request permission to copyright material by writing to the Director of CDA. The Director shall consent to or give the reason for denial to the Contractor in writing within sixty (60) days of receipt of the request.
- 3. If the material is copyrighted with the consent of CDA, CDA reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, prepare derivative works, publish, distribute and use such materials, in whole or in part, and to authorize others to do so, provided written credit is given the author.

B. Rights in Data

- 1. The Contractor shall not spend or encumber funds covered by this

ARTICLE XXI. COPYRIGHTS AND RIGHTS IN DATA (Cont)

Agreement on research or publications; or any activities, staff, products, or materials, including analysis and services, supporting research, and publications, unless expressly authorized by the terms of this Agreement. The Contractor shall not publish any document or materials produced or resulting from activities supported by this Agreement unless the copy of the final draft for publication has been sent to the Director of CDA, for approval, at least sixty (60) days before it is to be printed.

2. As used in this Agreement, the term "subject data" means writings, sound recordings, pictorial reproductions, drawings, designs or graphic representations, procedural manuals, forms, diagrams, workflow charts, equipment descriptions, data files and data processing or computer programs, and works of any similar nature (whether or not copyrighted or copyrightable) which are first produced or developed under this Agreement. The term does not include financial reports, cost analyses, and similar information incidental to contract administration.
3. The State may use, duplicate, or disclose in any manner and have or permit others to do so, subject to State and federal law, all subject data delivered under this Agreement.
4. Materials published by or transferred to the Contractor shall: (a) contract from the California Department of Aging; (b) give the name of the state "The materials or product were a result of a project funded by a entity the address, and telephone number at which the supporting data is available; and (c) include a statement that "The conclusions and opinions expressed may not be those of the California Department of Aging, and that the publication may not be based upon or inclusive of all raw data. "