

ARTICLE I. DEFINITIONS AND RESOLUTIONS OF LANGUAGE CONFLICTS

- A. "Agreement" or "Contract" means the Standard Agreement (Std. 213), Exhibits A, B, C, D, E, amendments, and any other documents incorporated by reference, unless otherwise provided for 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. General Terms and Conditions, Exhibit C
 - 2. Scope of Work, Exhibit A
 - 3. Special Terms and Conditions, Exhibit D
 - 4. Exhibits B, E
 - 5. All other documents incorporated herein by reference
- C. In the event of conflict between the provisions set forth in this Agreement as defined in Paragraph A, and any other correspondence, the provisions in this Agreement shall prevail.
- D. "State" and "Department" mean the State of California and the California Department of Aging (CDA) interchangeably.
- E. "Health Services" and "DHCS" mean the Department of Health Care Services.
- F. "Contractor" means the governmental, or nonprofit entity contracted with CDA to provide MSSP Waiver Services to eligible Medi-Cal beneficiaries on behalf of DHCS pursuant to an Interagency Agreement between DHCS and CDA.
- G. "Subcontractor" means the legal entity that receives funds from the Contractor to provide waiver services identified in this Agreement.
- H. "Subcontract" means any form of legal agreement between the Contractor and the Subcontractor, including an agreement that the Contractor considers a contract, including vendor type Agreements for providing goods or services under this Agreement.
- I. "Data Universal Numbering System (DUNS) number" means the nine-digit number established and assigned by Dun and Bradstreet, Inc., (D&B) to uniquely identify business entities.
- J. "Reimbursable item" also means "allowable cost" and "compensable item."
- K. "Manual" means the Multipurpose Senior Services Program (MSSP) Site Manual, dated July 1, 1992, and all subsequent amendments and revisions.

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- L. "CFR" means Code of Federal Regulations.
- M. "CCR" means California Code of Regulations.
- N. "Cal. Gov. Code" means Government Code.
- O. "W&I Code" means Welfare and Institutions Code.
- P. "USC" means United States Code.
- Q. "PCC" means Public Contract Code.
- R. "HIPAA" means Health Insurance Portability and Accountability Act.
- S. "Waiver Participant" means any individual who has met MSSP eligibility requirements and been enrolled in the MSSP program.
- T. "OMB" means the federal Office of Management and Budget.
- U. "Wait List" means a list of potential MSSP Participants, established and maintained by the Contractor, when the Contractor has reached its capacity. To ensure compliance with MSSP Waiver requirements and CMS' direction, MSSP sites must develop and implement a wait list policy and procedure. The policy and procedure must include provisions for: prescreening individuals to determine eligibility; managing applicants' placement on and removal from the wait list; periodically reviewing the eligibility and identified needs of applicants on the wait list and assigning priority for enrollment based on identified needs and level of risk. The Contractor determines the priority of enrollment into the MSSP in accordance with CDA and CMS requirements.
- V. "Encounter" means any authorized service consistent with any of the three (3) MSSP service categories (Care Management, Care Management Support, or Purchased Waiver Services) provided to or purchased by the Contractor for an enrolled PLAN(S) Member during a given month. Each MSSP Waiver Participant incurs one encounter per month for care management and care management support. However, each MSSP Waiver Participant may incur more than one purchased waiver service encounter because each unit of purchased waiver service is counted as a separate encounter.
- W. "Eligibility Determination" means a process by which the Contractor determines whether a MSSP Applicant or MSSP Waiver Participant meets eligibility criteria to participate in the MSSP and receive MSSP Waiver Services.

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- X. “Level of Care” (LOC) means a clinical certification by the Contractor that the MSSP Applicant or MSSP Waiver Participant meets the requirement for a nursing facility placement.
- Y. “MSSP Applicant” means a Member who has submitted an application to the Contractor to receive MSSP Waiver Services.
- Z. “Purchased Waiver Services” means goods and services approved for purchase under Title XIX of the Social Security Act, 1915(c) Home and Community Based Waiver authority. The list of MSSP Purchased Waiver Services is included in Exhibit D, Article I., Section W.
- AA. “MSSP Waiver Slot” means a position, whether vacant or filled, which is funded according to a Contractor’s site budget and allocated for a Participant during a given month.
- BB. “Coordinated Care Initiative” (CCI) means Coordinated Care Initiative enacted in California in July 2012 through SB 1036 and SB 1008.
- CC. Additional definitions specific to contractors operating under the CCI model.
 - 1. “Member” means any person who is enrolled with the PLAN(S) and receives benefits from the PLAN(S).
 - 2. “PLAN(S)” is an independent organization contracted directly with the DHCS to implement the CCI. PLAN(S) contract with MSSP providers to provide Medi-Cal covered benefits to Medi-Cal beneficiaries who are enrolled with the PLAN(S).

Multipurpose Senior Services Program Waiver Participants qualify under the following Medi-Cal Aid codes:

1. CASH GRANT

<u>AID</u>	<u>PROGRAM</u>	<u>DEFINITION</u>
<u>CODE</u>		

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 sixty-five (65) or older.
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| 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

<u>AID</u>	<u>PROGRAM</u>	<u>DEFINITION</u>
<u>CODE</u>		

- | | | |
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| **16 | AGED | Aid to the Aged-Pickle Eligibles – Persons age sixty-five (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. |

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

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3. MEDICALLY NEEDED, NO SHARE OF COST

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| 14 | AGED-MN | Aid to the Aged-Medically Needy – Persons age sixty-five (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. |

4. MEDICALLY NEEDED, SHARE OF COST

AID PROGRAM DEFINITION
CODE

- | | | |
|-------|--------------------|---|
| ***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. |
| ***27 | BLIND-MN | Aid to the Blind-Medically Needy, Share of cost – SOC 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 In-Home Supportive Services (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 Waiver Participants 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.

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5. 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.

6. INSTITUTIONAL DEEMING

AID PROGRAM DEFINITION
CODE

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 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.

7. CONTINUED ELIGIBILITY – REDETERMINATION

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.

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DD. 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 Waiver Participants 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
- Need psychological support to prevent institutionalization

Care in adult day support centers will be provided when specific therapeutic goals are stipulated in the Waiver Participant'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 Waiver Participants 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 Waiver Participant'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 eighteen (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 Waiver Participant in his or her physical residence or home setting. As specified in the Waiver Participant's plan of care, services may include provision of physical adaptations and assistive devices, emergency assistance in

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

- a. **Minor Home Repairs and Maintenance (2.2):** Minor Home Repairs do not involve major structural changes or repairs to a dwelling. Maintenance is defined as those services necessary for accessibility (e.g., ramps, grab bars, handrails, items above what is covered by the State Plan, and installation), safety (e.g., electrical wiring, smoke alarms), or security (e.g., locks). Eligible Waiver Participants are those whose health and/or safety or independence are jeopardized because of deficiencies in their place of residence. This service is limited to Waiver Participants 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 Waiver Participant 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 (2.3):** Includes those assistive devices, appliances, and supplies which are necessary to assure the Waiver Participant'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 mattresses, bedding, and emergency supply kits and goods) under the following circumstances:
 - i. The Waiver Participant is receiving Deinstitutionalized Care Management services, and the items are required to facilitate discharge from the institution to a community residence
 - ii. The Waiver Participant's assessment identifies the need for this service including how it is a necessary support if the Waiver Participant is to remain in the community, and the care plan specifies the required item(s)

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- iii. In either circumstance, the following criteria must be met and documented in the case record:
 - (a). The items are unobtainable through other resources, and their purchase would be a financial hardship for the Waiver Participant
 - (b). The items are necessary to preserve the Waiver Participant'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 Waiver Participants 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 Waiver Participant'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 Waiver Participant has no other resources to meet this need. Additionally, the Waiver Participant 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 Waiver Participant in jeopardy.
- e. **Temporary Lodging (2.6):** Allows for payment of hotel or motel lodging for those Waiver Participants, usually from rural areas, who must travel long distances and stay overnight for medical treatments not available in their home area. Temporary lodging is also available in the event of an emergency. Lodging rates shall not exceed State limits in accordance with CalHr rates (<http://www.calhr.ca.gov/employees/Pages/travel-lodging-reimbursement.aspx>)
- 4. **Supplemental Chore (3.1):** Is for purposes of household support and applies to the performance of household tasks rather than to the care of the Waiver Participant. Chore activities are limited to: household cleaning, laundry (including the services of a commercial laundry or dry

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cleaner), shopping, food preparation, and household maintenance, as long as the Waiver Participant does not live in a Residential Care Facility for the Elderly (RCFE). Waiver Participant instruction in performing household tasks and meal preparation may also be provided.

This service is for purposes of household support for those services above and beyond those available through the State Plan. Examples include:

- a. The MSSP Waiver Participant 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. **Supplemental Personal Care (3.2):** This service is provided to individuals whose needs exceed the maximum amount available under the State Plan or who are temporarily without a provider. 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). Waiver Participant 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 personal care supplies may be covered where there are no other resources and the purchase would create a financial hardship. These items include supplies not covered under the State Plan.

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 Waiver Participant-centered care. Thus, if food is spilled, it may be cleaned up, and when bed linen is soiled it may be changed,

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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, 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 Waiver Participant 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. **Supplemental 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. Refer to MSSP Site Manual Chapter 3 for a list of criteria.
7. **Supplemental Protective Supervision (3.7):** Ensures provision of supervision in the absence of the usual care provider to persons residing in their own homes, who are very frail or otherwise may suffer a medical emergency. Such supervision serves 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. This service may also provide a visit to the Waiver Participant's home to assess a medical situation during an emergency (e.g., natural disaster). Waiver 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. **Care Management:** Assists Waiver Participants 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 Waiver Participant's plan of care. Additionally, care managers initiate and oversee the process of assessment and reassessment of Waiver Participant level of care and the monthly review of plans of care.
 - a) **Site-Provided Care Management (50):** The MSSP care management system vests responsibility for assessing, care planning, authorizing, locating, coordinating and monitoring a

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package of long-term care services for community-based Waiver Participants 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 Waiver Participant contact activity each month.

- b) **Purchased Care Management (4.3):** For the vast majority of MSSP Waiver Participants, care management services are provided solely by site care management staff. However, Waiver Participants have the right to request care management by qualified outside subcontractors. In some cases of temporary need, the site may retain an outside subcontractor 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.
9. **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 one hundred eighty (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

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- b. Where an established MSSP Waiver Participant 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.

10. **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 Waiver Participant's informal caregiver and thereby prevent breakdown in the informal support system. Respite service will include the supervision and care of a Waiver Participant, 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 Waiver Participant'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 Waiver Participant's residence shall be trained and experienced in homemaker services, personal care, or home health services, depending on the requirements in the Waiver Participant's plan of care.

11. **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 Waiver Participants 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 Waiver Participants 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.

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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 older adults and adults with disabilities; 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 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 Waiver Participant. Escort services may be authorized for those Waiver Participants 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 Waiver Participant's condition and care plan requirements.

12. **Nutritional Services** (7.1, 7.2, and 7.3): These services may be provided daily, but are not to constitute a full nutritional regimen (three (3) meals a day). [42 CFR 440.180 (b)]
 - a. **Congregate Meals** (7.1): Meals served in congregate meal settings for Waiver Participants 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 Waiver Participants 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): Meals for Waiver Participants 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

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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 Waiver Participant's return home following institutionalization, and to food purchases which are medically required.

If oral nutrition supplements (ONS) are to be purchased using waiver service funds, the following actions must occur and be documented in the Participant record:

- (i) A nutritional screen is conducted by the primary care manager in consultation with the nurse care manager. The Progress Notes must reflect the collaboration between the SWCM and NCM.
- (ii) The use of home-prepared drinks/supplements (instant breakfast, pureed food) has been explored and found not to meet the Participant's needs. All other options for payment of an ONS have been exhausted (Waiver Participant, family, etc.).

If all three criteria have been satisfied, an ONS may be purchased initially for a period of three (3) months. If an ONS needs to be continued beyond the three-month timeframe, a physician order must be obtained.

Since an ONS is no longer a covered Medi-Cal benefit for most Waiver Participants, sites are **not** required to submit a TAR or obtain a denial. The physician order must be renewed on an annual basis or as needed.

13. **Protective Services (8.3, 8.4, and 8.5):** These services include protection for Waiver Participants 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.

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14. **Social Support** (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 Waiver Participant participation in rehabilitation programs; therapeutic classes and exercise classes are also provided. Such services shall be provided based on need, as designated in the Waiver Participant's plan of care. The MSSP has found that isolation and lack of social interaction can seriously impact some Waiver Participants' 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.

- a. **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 Waiver Participant's care plan.

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

This service may be utilized in situations where Waiver Participants 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 Waiver Participant in the community, or allow the Waiver Participant to cope with increasing impairment or loss.

- b. **Money Management** (8.5): This service assists the Waiver Participant 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.

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

15. **Communications Services** (9.1 and 9.2): Waiver Participants 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; and 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 Waiver Participant'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.

For non-English speaking Waiver Participants, 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 monthly telephone charges) for Waiver Participants 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 Waiver Participants 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:

- (i) 24-hour answering/paging
- (ii) Beepers
- (iii) Medic-alert type bracelets/pendants
- (iv) Intercoms
- (v) Life-lines
- (vi) Wander-alerts
- (vii) Monitoring services
- (viii) Light fixture adaptations (blinking lights, etc.)

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

- (ix) Telephone adaptive devices not available from the telephone company
- (x) 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 Waiver Participant has no telephone, or for the isolated Waiver Participant 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 Waiver Participant has a medical/health condition that makes him/her vulnerable to medical emergency (e.g., congestive heart failure or emphysema).

ARTICLE II. ASSURANCES

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

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

B. Subcontracts

The Contractor shall require language in all subcontracts to require all subcontractors to comply with all applicable State and federal laws.

C. Nondiscrimination

The Contractor shall comply with all federal statutes relating to nondiscrimination. These include those statutes and laws contained in the Contractor Certification

ARTICLE II. ASSURANCES (Continued)

Clauses (CCC 307), which is hereby incorporated by reference. In addition, the Contractor shall comply with the following:

1. Equal Access to Federally Funded Benefits, Programs and Activities

The Contractor shall ensure compliance with Title VI of the Civil Rights Act of 1964 [42 USC 2000d; 45 CFR 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

The Contractor shall, unless exempted, ensure compliance with the requirements of Cal. Gov. Code § 11135 to 11139.5 22 CCR 98000 *et seq.*, 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, Statutes of. 2006]

3. The 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 USC 12101 *et seq.*]

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

D. Standards of Work

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

E. Conflict of Interest

1. The Contractor shall prevent employees, consultants, or members of governing bodies from using their positions for purposes including, but not limited to, the selection of subcontractors that are, or give the appearance of being, motivated by a desire for private gain for themselves or others, such as family, business, or other ties.

ARTICLE II. ASSURANCES (Continued)

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 the State 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 a conflict of interest (real or apparent) or increased costs over those associated with the employment of any other equally qualified applicant, and such persons have successfully competed for employment with the other applicants on a merit basis.

F. Covenant Against Contingent Fees

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

G. Payroll Taxes and Deductions

The Contractor shall promptly forward payroll taxes, insurances, and contributions, including State Disability Insurance, Unemployment Insurance, Old Age Survivors Disability Insurance, and federal and State income taxes withheld, to designated governmental agencies 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 and shall include such provisions in any applicable agreements with subcontractors:
 - a. Copeland "Anti-Kickback" Act [18 USC 874, 40 USC 276c] [29 CFR, Part 3]
 - b. Davis-Bacon Act [40 USC 276a to 276a-7] [29 CFR, Part 5]

ARTICLE II. ASSURANCES (Continued)

- c. Contract Work Hours and Safety Standards Act [40 USC 327 to 333] [29 CFR, Parts 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 funding is provided for construction and non-construction activities, the Contractor 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

If all funding provided herein exceeds \$100,000, the Contractor shall comply with all applicable orders or requirements issued under the following laws:

 1. Clean Air Act, as amended [42 USC 7401]
 2. Clean Water Act, as amended [33 USC 1251]
 3. Federal Water Pollution Control Act, as amended [33 USC 1251 *et seq.*]
 4. Environmental Protection Agency Regulations [40 CFR, Part 29], [Executive Order 11738]
 5. Public Contract Code Section 10295.3
- J. Debarment, Suspension, and Other Responsibility Matters
 1. The Contractor certifies to the best of its knowledge and belief, that it and its subcontractors:
 - a. Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency. [45 CFR § 92.35]

ARTICLE II. ASSURANCES (Continued)

- 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
 - 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 shall report immediately to CDA in writing any incidents of alleged fraud and/or abuse by either the Contractor or subcontractor.
 3. The Contractor shall maintain any records, documents, or other evidence of fraud and abuse until otherwise notified by CDA.
 4. The Contractor agrees to timely execute any and all amendments to this Agreement or other required documentation relating to the Subcontractor debarment/suspension status.

K. Agreement Authorization

1. If a public entity, the Contractor shall submit to CDA a copy of an approved resolution, order, or motion referencing this Agreement number authorizing execution of this Agreement. If a private nonprofit entity, the Contractor shall submit to CDA an authorization by the Board of Directors to execute this Agreement, referencing this Agreement number. These documents, including minute orders, must also *identify the action taken*.
2. Documentation in the form of a resolution, order, or motion by the Contractor's Governing Board is required for the original and each subsequent amendment to this Agreement. This requirement may also be met by a single resolution from the Governing Board of the Contractor, authorizing the entity's Director or designee to execute the original and all subsequent amendments to this Agreement.

ARTICLE II. ASSURANCES (Continued)

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. DUNS Number and Related Information

1. The DUNS number must be provided to CDA prior to the execution of this Agreement.
2. The Contractor must keep DUNS number and related updates on the website to be viewed at: <https://www.sam.gov/portal/SAM/#1>
3. The Contractor shall review all DUNS information to ensure it is up to date and the DUNS number status is active.
4. If CDA cannot access the Contractor's DUNS information related to this federal subaward on the Federal Funding Accountability and Transparency Act Subaward Reporting System (SAM.gov) due to errors in the Contractor's data entry for its DUNS number, the Contractor must immediately update the information as required.

N. Corporate Status

1. The Contractor shall be a public entity, private nonprofit entity, or Joint Powers Authority (JPA). If a private nonprofit corporation or JPA, the Contractor shall be in good standing with the Secretary of State of California and shall maintain that status throughout the term of the Agreement.
2. The Contractor shall ensure that any subcontractors providing services under this Agreement shall be of sound financial status. Any subcontracting private entity or JPA shall be in good standing with the Secretary of State of California and shall maintain that status throughout the term of this Agreement.
3. Failure to maintain good standing by the contracting entity shall result in suspension or termination of this Agreement with CDA until satisfactory status is restored. Failure to maintain good standing by a subcontracting

ARTICLE II. ASSURANCES (Continued)

entity shall result in suspension or termination of the subcontract by the Contractor, until satisfactory status is restored.

O. Lobbying Certification

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

1. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement
2. If any funds other than 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 Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions
3. The Contractor shall require that the language of this certification be included in the award documents for all subcontracts at all tiers (including contracts under grants, loans, and cooperative agreements which exceed \$100,000) and that all subcontractors shall certify and disclose accordingly
4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into
5. This certification is a prerequisite for making or entering into this transaction imposed by 31 USC 1352
6. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure

ARTICLE III. AGREEMENT

A copy of this executed 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

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

ARTICLE V. SUBCONTRACTS

- A. The Contractor is responsible for carrying out the terms of this Agreement, including the satisfaction, settlement, and resolution of all administrative, programmatic, and fiscal aspects of the program, including issues that arise out of any subcontracts and shall not delegate or contract these responsibilities to any other entity. This includes, but is not limited to, disputes, claims, protests of award, or other matters of a contractual nature. The Contractor's decision is final and the Subcontractor has no right of appeal to CDA.
- B. In the event any subcontractor is utilized by the Contractor for any portion of this Agreement, the Contractor shall retain the prime responsibility for all the terms and conditions set forth, including but not limited to, the responsibility for preserving the State's copyrights and rights in data in accordance with Article XIX. of this Exhibit, for handling property in accordance with Article VII. of this Exhibit, and ensuring the keeping of, access to, availability, and retention of records of subcontractors in accordance with Article VI. of this Exhibit.
- C. Funds for this Agreement shall not be obligated in any subcontracts for services beyond the ending date of this Agreement.
- D. The Contractor shall have no authority to contract for, or on behalf of, or incur obligations on behalf of the State.
- E. Copies of subcontracts, Memorandums and/or Letters of Understanding shall be on file with the Contractor and shall be made available for review at the request of CDA.
- F. The Contractor shall monitor the insurance requirements of its subcontractors in accordance with Article XI. of this Exhibit.
- G. The Contractor shall require language in all subcontracts to require all subcontractors to indemnify, defend, and save harmless the Contractor, its

ARTICLE V. SUBCONTRACTS (Continued)

officers, agents, and employees from any and all claims and losses accruing to or resulting from any subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with any activities performed for which funds from this Agreement were used and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the Subcontractor(s) in the performance of this Agreement.

- H. The Contractor shall ensure that all potential providers of Waiver Services complete a CDA-approved Vendor Application. The Subcontractors selection process shall be based upon equitable criteria, provide for adequate publicity, screen out potential subcontractors who are not qualified to provide the needed services, and provide for awards to the lowest responsible and responsive bidder(s). Subcontracts for Purchased Waiver Services shall consist of standard format language consistent with this Contract.
- I. Subcontracts shall require all subcontractors to report immediately in writing to the Contractor any incidents of fraud or abuse to Waiver Participants, in the delivery of services, in subcontractors operations.
- J. The Contractor shall require language in all Subcontracts to require all subcontractors 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.
- K. The Contractor shall require all subcontracts to comply with the HIPAA Business Associate requirements as it appropriately relates to services rendered.
- L. If a private nonprofit corporation, the Subcontractor shall be in good standing with the Secretary of State of California and shall maintain that status throughout the term of the Agreement.
- M. The Contractor shall refer to 2 CFR Part 200, Subpart F Audit Requirements [formerly OMB Circular A-133] in making a determination if a subcontractor relationship exists. If such a relationship exists, then the Contractor shall follow the procurement requirements in the applicable OMB Circular.
- N. The Contractor shall make timely payments to its subcontractors under this Agreement.

ARTICLE VI. RECORDS

- A. The Contractor shall maintain complete records, which shall include, but not be limited to, accounting records, contracts, agreements, a reconciliation of the “Final Accounting Reconciliation” report (CDA Closeout) to the audited financial statements, single audit report, and general ledgers, and a summary worksheet identifying the results of performing an audit resolution of its subcontractors in accordance with Article X of this Exhibit. This includes the following: Letters of Agreement, insurance documentation, Memorandums and/or Letters of Understanding Waiver Participant records, and electronic files of its activities and expenditures hereunder in a form satisfactory to CDA. All records pertaining to this Agreement must be made available for inspection and audit by the State or its duly authorized agents, at any time during normal business hours.
- B. All such records, including confidential 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.
- C. 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 Waiver Participant records remain the property of CDA upon termination of this Agreement and are returned to CDA or transferred to another contractor as instructed by CDA.
- D. 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.
- E. 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 guidelines set forth in 2 CFR § 200.302, the expenditures will be questioned in the audit and may be disallowed by the State during the audit resolution process. The Contractor shall keep records relating to performance of this Agreement, in accordance with Article X, Section J.
- F. Waiver Participant records are to be kept as long as the case is open and active. Following termination, Waiver Participant records will be maintained for a period of six (6) years following the year of case closure, or for a longer period if

ARTICLE VI. RECORDS (Continued)

deemed necessary by CDA. A longer period of retention may be established by individual sites.

- G. All records containing confidential information shall be handled in a confidential manner in accordance with the requirements for information integrity and security, and in accordance with guidelines set forth in this Article, and Article XVIII. After the authorized period has expired, confidential records shall be shredded and disposed of in a manner that will maintain confidentiality.

ARTICLE VII. PROPERTY

- A. Unless otherwise provided for in this Article, property refers to all assets, used in operation of this Agreement.
1. Property includes land, buildings, improvements, machinery, vehicles, furniture, tools, and intangibles, etc.
 2. Property does not include consumable office supplies such as paper, pencils, toner cartridges, file folders, etc.
- B. Property meeting all of the following criteria is subject to the reporting requirements:
1. Has a normal useful life of at least one (1) year
 2. Has a unit acquisition cost of at least \$500; a desktop or laptop setup, including all peripherals is considered a unit, if purchased as a unit
 3. Is used to conduct business under this Agreement
- C. Additions, improvements, and betterments to assets meeting all of the conditions in Section B above must also be reported. 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.
- D. Intangibles are property which lack physical substance but give valuable rights to the owner. Examples of intangible property include patents, copyrights, leases, and computer software. By contrast, hardware consists of tangible equipment (e.g., computer, printer, terminal, etc.). Costs include all amounts incurred to acquire and to ready the intangible asset for its intended use. Typical

ARTICLE VII. PROPERTY (Continued)

intangible property costs include the purchase price, legal fees, and other costs incurred to obtain title to the asset.

- E. The Contractor shall keep track of property purchased with funds from this Agreement, and submit to CDA, annually with the Closeout, in electronic form, a cumulative inventory of all property furnished or purchased by either the Contractor or the Subcontractor with funds awarded under the terms of this Agreement or any predecessor agreement for the same purpose. The Contractor shall use the electronic version of the Report of Property Furnished/Purchased with Agreement Funds (CDA 32), to report property to CDA, unless otherwise directed by CDA.

The Contractor shall record the following information when property is acquired:

1. Date acquired
2. Item description (include model number)
3. CDA tag number or other tag identifying it as CDA property
4. Serial number (if applicable)
5. Purchase cost or other basis of valuation
6. Fund source

F. Disposal of Property

1. Prior to disposal of any property purchased by the Contractor or the Subcontractor with funds from this Agreement or any predecessor Agreement, the Contractor must obtain approval from CDA for all items with a unit cost of \$500 or more. Disposition, which includes sale, trade-in, discarding, or transfer to another agency may not occur until approval is received from CDA. The Contractor shall email to CDA the electronic version of the Request to Dispose of Property (CDA 248). CDA will then instruct the Contractor on disposition of the property. Once approval for disposal has been received from CDA, the item(s) shall be removed from the Contractor's inventory report.
2. The Contractor must remove all confidential, sensitive, or personal information from CDA property prior to disposal, including removal or destruction of data on computing devices with digital memory and storage capacity. This includes, but is not limited to, magnetic tapes, flash drives,

ARTICLE VII. PROPERTY (Continued)

personal computers, personal digital assistants, cell or smart phones, multi-function printers, and laptops.

- G. The Contractor shall immediately investigate and within five (5) days fully document the loss, destruction, or theft of such property.
- H. The State reserves title to all State-purchased or financed property not fully consumed in the performance of this Agreement, unless otherwise required by federal law or regulations, or as otherwise agreed by the parties.
- I. 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 or until the Contractor has complied with all written instructions from CDA regarding the final disposition of the property.
- J. In the event of the Contractor's dissolution or upon termination of this Agreement, the Contractor shall provide a final property inventory to the State. The State reserves the right to require the Contractor to transfer such property to another entity, or to the State.
- K. To exercise the above right, no later than one hundred twenty (120) days after termination of the Agreement or notification of the Contractor's dissolution, the State will issue specific written disposition instructions to the Contractor.
- L. The Contractor shall use the property for the purpose for which it was intended under the Agreement. When no longer needed for that use, the Contractor shall use it, if needed, and with written approval of the State for other purposes in this order:
 - 1. For another CDA program providing the same or similar service or
 - 2. For another CDA-funded program
- M. The Contractor may share use of the property and equipment or allow use by other programs, upon written approval from CDA. As a condition of the approval, CDA may require reimbursement under this Agreement for its use.
- N. The Contractor or subcontractors 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.
- O. If purchase of equipment is a reimbursable item, the equipment to be purchased will be specified in the budget.

ARTICLE VII. PROPERTY (Continued)

- P. The Contractor shall include the provisions contained in this Article in all its subcontracts awarded under this Agreement.
- Q. Property, for the purpose of this Agreement, does not include any equipment or supplies acquired utilizing Waived Services funds on behalf of MSSP Waiver Participants.
- R. A physical inventory of the property must be taken and the results reconciled with the property records at least once every two (2) years.

ARTICLE VIII. ACCESS

The Contractor shall provide access to the federal or State contracting agency, the California State Auditor, the Comptroller 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 subcontractor which are directly pertinent to this specific Agreement for the purpose of making an audit, examination, excerpts, and transcriptions. The Contractor shall include this requirement in its subcontracts.

ARTICLE IX. MONITORING, ASSESSMENT, AND EVALUATION

- A. Authorized State representatives shall have the right to monitor, assess, and evaluate the Contractor's administrative, fiscal and program performance pursuant to this Agreement. Said monitoring, assessment, and evaluation may include, but is not limited to, administrative processes, fiscal data, and procurement components. This will include policies, procedures and procurement 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 administrative, program, and fiscal staff available during any scheduled process.
- C. The Contractor shall monitor subcontracts to ensure compliance with laws, regulations, and the provisions of contracts that may have a direct and/or material effect on each of its major programs.
- D. The Contractor is responsible for maintaining supporting documentation including financial and statistical records, contracts, subcontracts, monitoring reports, and all other pertinent records until an audit has occurred and an audit resolution has been issued or unless otherwise authorized in writing by CDA.
- E. The Contractor shall refer to the guidance in 2 CFR § 200.330 in making a determination of whether a subcontractor or contractor relationship exists.

ARTICLE IX. MONITORING, ASSESSMENT, AND EVALUATION (Continued)

If a contractor relationship exists, then the Contractor shall follow the procurement standards in 2 CFR § 200.317 through § 200.326.

ARTICLE X. AUDITS

- A. Contractors that expend \$750,000 or more in federal funds 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 2 CFR 200.501 to 200.521 [formerly OMB Circular A-133]. A copy shall be submitted to the:

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

The copy shall be submitted within thirty (30) days after receipt of the Auditor's report or nine (9) months after the end of the audit period, whichever occurs first, or, unless a longer period is agreed to in advance by the cognizant or oversight agency.

The Contractor shall ensure that State-funded expenditures are displayed discretely along with the related federal expenditures in the single audit report's "Schedule of Expenditures of Federal Awards" (SEFA) under the appropriate Catalog of Federal Domestic Assistance (CFDA) number as referenced in Section L of this Article.

For State contracts that do not have CFDA numbers, the Contractor shall ensure that the State-funded expenditures are discretely identified in the SEFA by the appropriate program name, identifying grant/contract number, and as passed through CDA.

- 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. The 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.

ARTICLE X. AUDITS (Continued)

- 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. The Contractor agrees that CDA, DHCS, the Department of General Services, the California State Auditor, 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 and until after CDA's Audit Branch has completed an audit. The Contractor agrees to provide CDA or its delegate with any relevant information requested and shall permit the awarding agency or its delegate 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.* Further, the Contractor agrees to include a similar right of CDA and DHCS to audit records and interview staff in any subcontract related to performance of this Agreement. [GC 8546.7, PCC 10115 *et seq.*], [CCR Title 2, Section 1896]
- K. The Catalog of Federal Domestic Assistance Number is 93.778, Grantor Medical Assistance Program.

ARTICLE XI. INSURANCE

- A. Prior to commencement of any work under this Agreement, the Contractor shall provide for the term of this Agreement, the following insurance:
 - 1. General liability of not less than \$1,000,000 per occurrence for bodily injury and property damage combined. Higher limits may be required by the State in cases of higher than usual risks.

ARTICLE XI. INSURANCE (Continued)

2. 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.
 3. If applicable, or unless otherwise amended by future regulation the Contractors and subcontractors 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 unless otherwise amended by future regulation:
 - \$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
 4. Professional liability of not less than \$1,000,000 as it appropriately relates to the services rendered. Coverage shall include medical malpractice and/or errors and omissions.
- B. The insurance will be obtained from an insurance company acceptable to the Department of General Services, Office of Risk and Insurance Management (DGS-ORIM), or be provided through partial or total self-insurance acceptable to the Department of General Services (DGS).
- C. Evidence of insurance shall be in a form and content acceptable to DGS-ORIM.
- D. The Contractor shall notify the State within five (5) business days of any cancellation, non-renewal, or material change that affects required insurance coverage.
- E. Insurance obtained through commercial carriers shall meet the following requirements:
1. The Certificate of Insurance shall provide the statement: "The Department of Aging", State of California, its officers, agents, employees, and servants are included as additional insureds, with respect to work performed for the State of California under this Agreement. Professional liability coverage is exempt from this requirement
 2. CDA shall be named the certificate holder and CDA's address must be listed on the certificate
- F. 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

ARTICLE XI. INSURANCE (Continued)

this Agreement, the Contractor agrees to provide CDA, at least thirty (30) days prior to the expiration date, a new Certificate of Insurance evidencing insurance coverage as provided herein for a period not less than the remaining Agreement term or for a period not less than one (1) year. In the event the 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.

- G. The Contractor shall require its subcontractors under this Agreement, other than units of local government which are similarly self-insured, to maintain adequate insurance coverage for general liability, 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 subcontractors to hold the Contractor harmless. The Subcontractors' Certificate of Insurance for general and auto liability 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 subcontractors.
- H. A copy of each appropriate Certificate of Insurance or letter of self-insurance referencing this Agreement number, shall be submitted to CDA with this Agreement.
- I. The 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 under this Agreement. [Labor Code Section 3700]

ARTICLE XII. TERMINATION AND TRANSITION PLAN

A. Termination

1. Termination Without Cause

CDA may terminate performance of work under this Agreement, in whole or in part, without cause if CDA determines that a termination is in the State's best interest. CDA may terminate the Agreement upon ninety (90) days written notice to the Contractor. The Notice of Termination shall specify the extent of the termination and shall be effective ninety (90) days from the delivery of the notice. The parties agree that if the termination of the contract is due to a reduction or deletion of funding by the Department of Finance (DOF), Legislature or Congress, Such the Notice of Termination shall be effective thirty (30) days from the delivery of the Notice. The Contractor shall submit to CDA a Transition Plan as specified in Article XIII(B). The Parties agree that the termination of any portion of

ARTICLE XII. TERMINATION AND TRANSITION PLAN (Continued)

this Agreement shall not affect the validity or enforceability of the remainder of the Agreement, which shall remain in full force and effect.

2. Termination for Cause

a. CDA may terminate in whole or in part, for cause the performance of work under this Agreement. CDA may terminate the Agreement upon thirty (30) days written notice to the Contractor. The notice of termination shall be effective thirty (30) days from the delivery of the Notice of Termination. The Contractor shall submit a transition plan to CDA as specified in Article XIII (B). The grounds for termination for cause shall include, but are not limited to the following:

- (i) In case of threat to life, health or safety of the public (termination of Agreement shall be effective immediately)
- (ii) A violation of the law or failure to comply with any condition of this Agreement
- (iii) Inadequate performance or failure to make progress so as to endanger performance of this Agreement
- (iv) Failure to comply with reporting requirements
- (v) Evidence that the Contractor is in an unsatisfactory financial condition as determined by an audit of the Contractor or evidence of a financial condition that endangers performance of this Agreement and/or the loss of other funding sources
- (vi) Delinquency in payment of taxes or payment of costs for performance of this Agreement in the ordinary course of business
- (vii) 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
- (viii) Service of any writ of attachment, levy of execution, or commencement of garnishment proceedings against the Contractor's assets or income

ARTICLE XII. TERMINATION AND TRANSITION PLAN (Continued)

- (ix) The commission of an act of bankruptcy
- (x) Finding of debarment or suspension
- (xi) The Contractor's organizational structure has materially changed
- (xii) CDA determines that a contractor may be considered a "high risk" agency as described in 45 CFR § 92.12 for local government and 45 CFR § 74.14 for non-profit organizations. If such a determination is made, the Contractor may be subject to special conditions or restrictions

3. Voluntary Termination by Contractor

The Contractor shall give CDA written Notice of Intent to Terminate at least one hundred eighty (180) days prior to the proposed effective date of termination (this is only applicable in cases of voluntary termination). The notice shall include the reason for such action and the anticipated last day of work. Upon receipt of such notice, CDA will work with the Contractor to transition the program and terminate the Agreement. Without such notice, the Contractor does not have the authority to terminate the Agreement.

4. The Contractor's Obligation After Notice of Termination

After CDA's Notice of Termination or the Contractor's Notice of Intent to Terminate, and except as directed by CDA, 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. Take immediate steps to ensure the health and safety of Waiver Participants in MSSP managed by the Contractor. Contractor agrees to refer MSSP Waiver Participants to other local resources.
- b. Maintain staff to provide services to Waiver Participants during the course of Waiver Participant transition.
- c. Deliver updated Waiver Participant records to the subsequent MSSP contractor or as directed by CDA.

ARTICLE XII. TERMINATION AND TRANSITION PLAN (Continued)

- d. With assistance from CDA, develop a written Transition Plan, to locate alternative services for each Waiver Participant through another MSSP site or community agency in accordance with this Agreement.
- e. Be responsible for providing all necessary Waiver Participant 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 Waiver Participants prior to such expiration or termination.
- f. Submit a full accounting and closeout of the Contractor's existing budget.
- g. Place no further subcontracts/vendor agreements for materials, or services, except as necessary to complete the continued portion of the Contract.
- h. 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).
- i. Submit a Transition Plan as specified in Section B of this Agreement.

B. Transition Plan

- 1. The Contractor shall submit a Transition Plan to the State within fifteen (15) days of delivery of the written Notice to Terminate the Contract. The Transition Plan must be approved by CDA and shall, at a minimum, include the following:
 - a. A current Waiver Participant count and identifying Waiver Participant information upon request.
 - b. A description of how Waiver Participants will be notified about the change in their MSSP provider.
 - c. A plan to communicate with other MSSP sites, local agencies and advocacy organizations that can assist in locating alternative services for MSSP Waiver Participants.

ARTICLE XII. TERMINATION AND TRANSITION PLAN (Continued)

- d. A plan to inform community referral sources of the pending termination of this MSSP contract and what alternatives, if any, exist for future referrals.
 - e. A plan to evaluate the health and safety of Waiver Participants in order to assure appropriate placement.
 - f. A plan to transfer confidential Waiver Participant records to a new contractor or care management agency.
 - g. A plan to maintain adequate staff to provide continued care to MSSP Waiver Participants through the term of the Contract.
 - h. A full inventory and plan to dispose or, transfer, or return to CDA all property purchased during the entire operation of the Contract.
 - i. Additional information as necessary to effect a safe transition of Waiver Participants to other MSSP or community care management programs.
2. The 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.
 3. If the Contractor fails to provide and implement a transition plan as required by Section B of this Article, the Contractor agrees to implement a transition plan submitted by CDA to the Contractor following the Contractor's Notice of Termination.
 4. Phase-out Requirements

Phase out for this Contract will:

- a. Consist of the processing, payment and monetary reconciliation necessary to pay claims for Waiver Services.
- b. Consist of the resolution of all financial and reporting obligations of the Contractor. The Contractor shall remain liable for the processing and payment of invoices and other claims for payment for Waived Services and other services provided to Waiver Participants pursuant to this Contract prior to the expiration or termination. The Contractor shall submit to CDA all reports required.

ARTICLE XII. TERMINATION AND TRANSITION PLAN (Continued)

- c. Require all data and information provided by the Contractor to CDA be accompanied by a letter, signed by the responsible authority, certifying, under penalty of perjury, to the accuracy and completeness of the materials supplied.

C. Effective Date

Termination of this Agreement, shall take effect as follows:

- a. Ninety (90) days after CDA's written notice of termination to the Contractor.
- b. Thirty (30) days if CDA's written notice of termination to the Contractor was for cause or due to a reduction or deletion of funding by the Department of Finance, Legislature or Congress.
- c. One hundred eighty (180) days if termination is by 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 identified in Section B of this Article XII.

ARTICLE XIII. REMEDIES

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

ARTICLE XIV. DISSOLUTION OF ENTITY

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

ARTICLE XV. AMENDMENTS, REVISIONS OR MODIFICATIONS

- A. No amendment or variation of the terms of this Agreement shall be valid unless made in writing signed and approved through the State amendment process in accordance with the State Contract Manual. No oral understanding or agreement not incorporated in this Agreement is binding on any of the parties.
- B. The State reserves the right to revise, waive, or modify 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 XVI. NOTICES

- A. Any notice to be given hereunder by either party to the other may be effected by personal delivery in writing or by registered or certified mail, overnight mail, postage prepaid, return receipt requested, provided the Contractor retains receipt, and shall be communicated as of actual receipt.
- B. Any notice given to the CDA for the Contractor's change of legal name, main address, or name of the Director shall be addressed to the Director of CDA on the Contractor's letterhead.
- C. A change in a contractor's Site Director requires that a notice be addressed to the MSSP Branch Manager. This notice shall be on the Contractor's letterhead, 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 in this Article, 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 XVII. DEPARTMENT CONTACT

- A. The name of CDA'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, upon request from CDA, submit the name of its Agency Contract Representative (ACR), for this Agreement by submitting an Agency Contract Representative form to CDA's Contracts and Business Services Section. This form requires the ACR's address, phone number, email address, and FAX number to be included on this form. For any change in this information, the Contractor shall submit an amended Agency Contract Representative form to the same address. This form may be requested from the Contracts and Business Services Section.

ARTICLE XVIII. INFORMATION INTEGRITY AND SECURITY

A. Information Assets

The Contractor shall have in place operational policies, procedures, and practices to protect State information assets, i.e., public, confidential, sensitive

ARTICLE XVIII. INFORMATION INTEGRITY AND SECURITY (Continued)

and/or personal information as specified in the State Administrative Manual, Section 5300 to 5365.3, Cal. Gov. Code § 11019.9, DGS Management Memo 06-12, Department of Finance (DOF) Budget Letter 06-34, and CDA Program Memorandum 07-18 Protection of Information Assets.

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

The Contractor is required to encrypt 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, notebook computers, and backup media) and/or portable electronic storage media (including, but not limited to, discs, thumb, flash drives, portable hard drives, and backup media).

C. Disclosure

1. The Contractor shall ensure that personal, sensitive and confidential information is protected from inappropriate or unauthorized access or disclosure in accordance with applicable laws, regulations and State policies. The requirement to protect information shall remain in force until superseded by laws, regulations, or policies.
2. The Contractor shall protect from unauthorized disclosure names and other identifying information, concerning persons receiving services pursuant to this Agreement, except for statistical information not identifying any participant.
3. “Identifying information” shall include, but not be limited to, name, identifying number, social security number, state driver’s license or state identification number, financial account numbers, and symbol or other identifying characteristic assigned to the individual, such as finger or voice print or a photograph.
4. The Contractor shall not use the identifying information in paragraph 3 above for any purpose other than carrying out the Contractor’s obligations under this Agreement.

ARTICLE XVIII. INFORMATION INTEGRITY AND SECURITY (Continued)

5. The Contractor shall not, except as otherwise specifically authorized or required by this Agreement or court order, disclose any identifying information obtained under the terms of this Agreement to anyone other than CDA without prior written authorization from CDA. The Contractor may be authorized, in writing, by a participant to disclose identifying information specific to the authorizing participant.
6. The Contractor may allow a participant to authorize the release of information to specific entities but shall not request or encourage any participant to give a blanket authorization or sign a blank release, nor shall the Contractor accept such blanket authorization from any participant.

D. Training/Education

1. The Contractor must provide ongoing education and training, at least annually, to all employees and subcontractors who handle personal, sensitive, or confidential information. The Contractor's employees, subcontractors, and volunteers must complete the Security Awareness Training module located on CDA's website, www.aging.ca.gov within thirty (30) days of the start date of this Agreement or within thirty (30) days of the start date of any new employee, subcontractor, or volunteer. The Contractor must maintain certificates of completion on file and provide them to CDA upon request. Training may be provided on an individual basis or in groups. A sign-in sheet is acceptable documentation for group training in lieu of individual certificates. If internet access is not available, a hardcopy of the training module may be provided to employees and/or volunteers for completion.
2. The Contractor may substitute CDA's Security Awareness Training program with its own Security Training provided such training meets or exceeds CDA's training requirement. Contractors shall maintain documentation of training and education provided to their staff and/or subcontractors.
3. All employees, subcontractors, and 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 the contractors are aware of, and agree to comply with, their obligations to protect CDA information assets from unauthorized access and disclosure.

ARTICLE XVIII. INFORMATION INTEGRITY AND SECURITY (Continued)

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. Electronic Backups

The Contractor shall ensure that all electronic information is protected by performing regular backup of automated files and databases, and ensure the availability of information assets for continued business. The Contractor shall ensure that any portable electronic media used for backups is encrypted.

H. 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. CDA and/or 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. 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 under HIPAA and HIPAA regulations, as the same may be amended from time to time.
- d. Under this Agreement, the 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

ARTICLE XVIII. INFORMATION INTEGRITY AND SECURITY (Continued)

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.

2. Permitted Uses and Disclosures of PHI by Business Associate

- a. Except as otherwise indicated in this Article, 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. Except as otherwise indicated in this Article, 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.
- c. 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 to:

- a. Not use or disclose PHI other than as permitted or required by this Agreement or as required by law.

ARTICLE XVIII. INFORMATION INTEGRITY AND SECURITY (Continued)

- b. Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI, including electronic PHI, that it creates, receives, maintains 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. 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. Ensure that any agents, including subcontractors, to whom Business Associate provides PHI received 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 Article into each subcontract or award to such agents or subcontractors.
- e. 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.
- f. 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.
- g. Make Business Associate's internal practices, books, and records relating to the use and disclosure of PHI received from DHCS/CDA,

ARTICLE XVIII. INFORMATION INTEGRITY AND SECURITY (Continued)

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.

- h. 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.
- i. 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.
- j. Train and use reasonable measures to ensure compliance with the requirements of the Article 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 the Article, including termination of employment.
- k. Comply, where applicable, with the DHCS HIPAA Business Associate Addendum, herein incorporated by reference:
<https://www.aging.ca.gov/ProgramsProviders/MSSP/>
- l. Business Associate/MSSP Site will immediately upon discovery of any suspected security incident notify by telephone and email the DHCS and CDA contacts/units identified below:
 - CDA MSSP Operations Manager
 - DHCS Privacy Officer
 - DHCS Information Security Officer
- m. Within twenty-four (24) hours of the discovery, the MSSP Site will submit a DHCS Privacy Incident Report (PIR) form to the below contacts.

ARTICLE XVIII. INFORMATION INTEGRITY AND SECURITY (Continued)

- n. Within seventy-two (72) hours of the discovery, the MSSP Site will submit an updated DHCS PIR form to the below contacts.
- o. Within ten (10) working days of the discovery, the MSSP Site will submit a complete DHCS PIR form to the below contacts:

CDA MSSP Operations Manager
MSSP Branch
1300 National Drive, Suite 200
Sacramento, CA 95834-1992
Email: MSSPService@aging.ca.gov
Telephone: (916) 419-7552
Fax (916) 928-2508

DHCS Privacy Officer
c/o: Office of HIPAA Compliance
Department of Health Care Services
P.O. Box 997413, MS 4722
Sacramento, CA 95899-7413
Email: privacyofficer@dhcs.ca.gov
Telephone: (916) 445-4646
Fax (916) 440-7680

DHCS Information Security Officer
DHCS Information Security Office
P.O. Box 997413, MS 6400
Sacramento, CA 95899-7413
Email: iso@dhcs.ca.gov
Telephone (ITSD Service Desk): (916)440-7000 or (800)579-0874
Fax (916) 440-5537

4. Obligations of DHCS/CDA

DHCS/CDA agrees to:

- a. 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:
<http://www.dhcs.ca.gov/services/ccs/Pages/HIPAA.aspx>
- b. Provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such

ARTICLE XVIII. INFORMATION INTEGRITY AND SECURITY (Continued)

changes affect the Business Associate's permitted or required uses and disclosures.

- c. 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. 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 Article. 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 Article, nor does DHCS/CDA's:

- a. Failure to detect or
- b. Detection, but failure to notify the Business Associate or require Business Associate's remediation of any unsatisfactory practices, constitutes acceptance of such practice or a waiver of DHCS/CDA's enforcement rights under this Agreement.

6. Termination

- a. Upon DHCS/CDA's knowledge of a material breach of this Article 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
 - (ii) Immediately terminate this Agreement if Business Associate has breached a material term of this Article and cure is not possible or

ARTICLE XVIII. INFORMATION INTEGRITY AND SECURITY (Continued)

- (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. 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. 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 Article 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. DHCS/CDA makes no warranty or representation that compliance by Business Associate with this Article, 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. The parties acknowledge that Federal and State laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Agreement 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

ARTICLE XVIII. INFORMATION INTEGRITY AND SECURITY (Continued)

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 Agreement 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 Agreement 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. 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. Nothing express or implied in the terms and conditions of this Article 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. The terms and conditions in this Article 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 Article shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA regulations.

ARTICLE XVIII. INFORMATION INTEGRITY AND SECURITY (Continued)

- f. A reference in the terms and conditions of this to a section in the HIPAA regulations means the section as in effect or as amended.
 - g. The respective rights and obligations of Business Associate under Section 6, C of this Article shall survive the termination or expiration of this Agreement.
 - h. 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.
- I. Provisions of this Article shall be included in all contracts of both the Contractor and the Subcontractors 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 XIX. COPYRIGHTS AND RIGHTS IN DATA

A. Copyrights

- 1. If any material funded by this Agreement is subject to copyright, the State reserves the right to copyright such material, and the Contractor agrees not to copyright such material, except as set forth in Section B of this Article.
- 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, the State reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, prepare derivative works, publish, distribute and use such materials, in whole or in part, and to authorize others to do so, provided written credit is given the author.
- 4. The Contractor certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this contract for the acquisition, operation, or maintenance of computer software in violation of copyright laws.

ARTICLE XIX. COPYRIGHTS AND RIGHTS IN DATA (Continued)

B. Rights in Data

1. The Contractor shall not spend or encumber funds covered by this 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) contain 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 an 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."

ARTICLE XX. REPORTS

- A. The 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 no later than the 30th of the month, following the close of the quarter unless otherwise specified by CDA.
 - b. Reports are a snapshot of each quarter and shall include an overview of significant developments during the report period,

ARTICLE XX. REPORTS (Continued)

identified problems, and solutions. The report narrative should be concise and informative. The subject areas to be addressed are:

- Care Management Staffing – Including the Full Time Equivalent (FTEs) for each position and staffing ratio. Also including staff exemptions and self-certification of staff meeting program requirements
- Care Management Activity – Including staff turnover, training, quality assurance, Waiver Participant grievances and Fair Hearings, Adult Protective Services (APS) reporting, internal/external program reviews and corrective action plans, Waiver Participant satisfaction surveys, policy changes, and contract compliance regarding contracted caseload
- Management Information System – Problems/issues with the Medi-Cal fiscal intermediary billing system and Medi-Cal fiscal intermediary technical support
- Monthly Active Waiver Participant Count
- Staff Roster
- Self-Certified Training
- Wait List – Including the number of potential MSSP Participants waiting for enrollment
- Critical Incident Reporting
- Fiscal Reporting – Expenditure data by budget category and receivables by budget category

2. Ad Hoc Reports

The 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. Waiver Participant satisfaction

ARTICLE XX. REPORTS (Continued)

- f. MIS operations
- g. Administrative procedures
- h. Database
- i. Possible noncompliance with this Agreement
- j. Fiscal year closeout

3. Fiscal Closeout Reports

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

- a. Final Accounting Reconciliation
- b. Closeout Budget
- c. Fiscal Summary Report for the State
- d. Report of Property Furnished/Purchased with Agreement Funds (cumulative CDA 32)
- e. Copy of any Request to Dispose of Property (CDA 248)

CDA will transmit specific closeout instructions, including the Closeout Report due dates.

4. Monthly Active Waiver Participant Count

Reports are due on the 5th of each month, unless otherwise specified by CDA.

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

C. ADDITIONAL REPORTING PROVISIONS SPECIFIC TO CONTRACTORS OPERATING UNDER THE CCI MODEL

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

- a. Payment Detail from PLAN(S) as requested.
- b. Upon request, Contractor agrees to furnish PLAN(S) with the following:
 - (i) Monthly Active Waiver Participant Count
 - (ii) MSSP Encounter Data
 - (iii) MSSP Quarterly Report

ARTICLE XX. REPORTS (Continued)

2. Contractor shall submit monthly zero-cost electronic Encounter Data to PLAN(s).

ARTICLE XXI. BILINGUAL AND LINGUISTIC PROGRAM SERVICES [Cal. Gov. Code § 11135 to-11139.5] [22 CCR 98211, 98310 to-98314, 98324 to-98326, 98340 to-98370]

A. Needs Assessment

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

The group-needs assessment shall take into account the following four (4) factors:

- a. Number or proportion of persons with Limited English Proficiency (LEP) eligible to be served or encountered by the program.
- b. Frequency with which LEP individuals come in contact with the program.
- c. Nature and importance of the services provided.
- d. Local or frequently used resources available to the Contractor.

This group-needs assessment will serve as the basis for the Contractor's determination of "reasonable steps" and provide documentary evidence of compliance with Cal. Gov. Code § 11135 *et seq.*, 22 CCR 98000 to-98382.

2. The Contractor shall prepare and make available a report of the findings of the group-needs assessment that summarizes:
 - a. Methodologies used.
 - b. The linguistic and cultural needs of non-English speaking or LEP groups.
 - c. Services proposed to address the needs identified and a timeline for implementation. [22 CCR 98310]

ARTICLE XXI. BILINGUAL AND LINGUISTIC PROGRAM SERVICES [GC 11135 -1139.5]
[Title 22 CCR Sections 98211, 98310-98314, 98324-98326, 98340, 98370]
(Continued)

3. The Contractor shall maintain a record of the group-needs assessment on file at the Contractor's headquarters at all times during the term of this Agreement. [22 CCR 98310, 98313]

B. Provision of Services

1. The Contractor shall take reasonable steps, based upon the group-needs assessment identified in Section A of this Article, to ensure that "alternative communication services" are available to non-English speaking or LEP beneficiaries of services under this Agreement. [22 CCR 98211]
2. "Alternative communication services" include, but are not limited to, the provision of services and programs by means of the following:
 - a. Interpreters or bilingual providers and provider staff.
 - b. Contracts with interpreter services.
 - c. Use of telephone interpreter lines.
 - d. Sharing of language assistance materials and services with other providers.
 - e. Translated written information materials, including but not limited to, enrollment information and descriptions of available services and programs.
 - f. Referral to culturally and linguistically appropriate community service programs.
3. Based upon the findings of the group-needs assessment, the Contractor shall ensure that reasonable alternative communication services are available to meet the linguistic needs of identified eligible client population groups at key points of contact. Key points of contact include, but are not limited to, telephone contacts, office visits and in-home visits. [22 CCR 98211]

The Contractor shall self-certify to compliance with the requirements of this section and shall maintain the self-certification record on file at the Contractor's office at all times during the term of this Agreement. [22 CCR 98310]

ARTICLE XXI. BILINGUAL AND LINGUISTIC PROGRAM SERVICES [GC 11135-1139.5]
[Title 22 CCR Sections 98211, 98310-98314, 98324-98326, 98340, 98370]
(Continued)

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

C. Compliance Monitoring

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

D. Notice to Eligible Beneficiaries of Contracted Services

1. The Contractor shall designate an employee to whom initial complaints or inquiries regarding national origin can be directed. [22 CCR 98325]
2. The Contractor shall make available to ultimate beneficiaries of contracted services and programs information regarding CDA's procedure for filing a complaint and other information regarding the provisions of Cal. Gov. Code § 11135 *et seq.* [22 CCR 98326]
3. The Contractor shall notify CDA immediately of a complaint alleging discrimination based upon a violation of State or federal law. [22 CCR 98211, 98310, 98340]