



# LASSEN COUNTY

## Health and Social Services Department

- ☒ **HSS Administration**  
336 Alexander Avenue  
Susanville, CA 96130  
(530) 251-8128
- ☐ **Grant and Loans Division**  
336 Alexander Avenue  
Susanville, CA 96130  
(530) 251-2683
- ☐ **Behavioral Health**  
555 Hospital Lane  
Susanville, CA 96130  
(530) 251-8108/8112  
  
**Chestnut Annex**  
1400-A & B Chestnut Street  
Susanville, CA 96130  
(530) 251-8112
- ☐ **Patients' Rights Advocate**  
1600 Chestnut Street  
Susanville, CA 96130  
(530) 251-8322
- ☐ **Public Health**  
1445 Paul Bunyan Road  
Susanville, CA 96130  
(530) 251-8183
- ☐ **Environmental Health**  
1445 Paul Bunyan Road  
Susanville, CA 96130  
(530) 251-8183
- ☐ **Community Social Services**  
336 Alexander Avenue  
Susanville, CA 96130  
  
**LassenWORKS**  
**Business & Career Network**  
PO Box 1359  
1616 Chestnut Street  
Susanville, CA 96130  
(530) 251-8152  
  
**Child & Family Services**  
1445 Paul Bunyan Road  
Susanville, CA 96130  
(530) 251-8277  
  
**Adult Services**  
**& Public Guardian**  
PO Box 429  
1600 Chestnut Street  
Susanville, CA 96130  
(530) 251-8158
- ☐ **HSS Fiscal**  
PO Box 1180  
Susanville, CA 96130  
(530) 251-2614

**Date:** April 17, 2018

**To:** Chris Gallagher, Chairman  
Lassen County Board of Supervisors

**From:** Barbara Longo, Director  
Health and Social Services

**Subject:** Agreement with Aegis Treatment Centers, LLC – California Hub and Spoke System (CA H&SS) for FY 17/19

### Background:

The California Hub & Spoke System (CA H&SS) is a way to improve, expand, and increase access to Medication Assisted Treatment (MAT) services across the state. The project focuses on populations with limited MAT access (including rural areas, American Indian and Alaskan Native tribal communities) and increasing statewide access to buprenorphine.

Through a Substance Abuse and Mental Health Services Administration (SAMHSA) State Targeted Response to the Opioid Crisis Grant, the California Department of Health Care Services awarded 19 Hubs across the state to partner with community health providers to expand access to care. Aegis Treatment Centers, LLC was one of these 19 recipients.

The MAT Expansion Project aims to serve over 20,000 individuals statewide with Opioid Use Disorders (OUD), prevent drug overdoses, and treat OUD as a chronic disease. The MAT Expansion Project is a two-year project.

### Fiscal Impact:

There is no impact to County General Fund. This is a Revenue Agreement with funding based on the number of patients referred for services.

### Action Requested:

1) Approve the Agreement, and 2) authorize the County Administrative Officer to execute the agreement.

# **AEGIS TREATMENT CENTERS, LLC**

## **CALIFORNIA HUB AND SPOKE SYSTEM (CA H&SS)**

### **SUBCONTRACTOR AGREEMENT**

This Agreement is made and entered into by and between the Contractor, Aegis Treatment Centers, which maintains a central office at located at 7246 Remmet Avenue, Canoga Park, California 91303, and the Subcontractor, Lassen County Health and Social Services, with principal place of business at 336 Alexander Avenue, Susanville, California 96130.

Subcontractor warrants that Subcontractor is:

- ☐ An organization / entity that employs a prescriber with a federal Data 2000 waiver, and is certified for Fee-for-Service and/or Drug Medi-Cal.
- ☐ An independent waived physician with a federal Data 2000 waiver, willing to commit to obtaining Medi-Cal certification for Fee-for-Service and/or Drug Medi-Cal billing within one year of entering this Agreement.
- ☐ Managed Medi-Cal organization that employs a prescriber with a federal Data 2000 waiver.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Subcontractor and the Contractor hereby agree as follows:

1. STATEMENT OF WORK:

The Subcontractor, as an independent contractor, agrees to furnish all of the labor and materials needed to complete the following portions of work required of a Spoke as specified in the agreement between the Contractor and the California State Department of Health Care Services (identified as Attachment 1). Such subcontractor duties are to include, but are not be limited to the following:

- a. Collaborate with a Medication Assisted Treatment Team ("MAT Team"), consisting of:
  - i. **H&SS Manager and H&SS Grant Coordinator**, who oversee the grant including all MAT team personnel and interfaces with H& SS admin staff,

- ii. **Licensed Clinical Social Worker (LCSW/ ASW) or Marriage and Family Therapist (MFT/ MFTi)**, who assists and support the Subcontractor and MAT team in assessing clinically high risk patients, leads inter-team case conferencing, provides clinical training to the Subcontractor and MAT team and assists patient transfers to and from the Hub and Subcontractor / Spoke or a **Registered or certified Substance Abuse Counselor**, who provides opioid use disorder counseling directly to patients in individual and group counseling and provides case-management and referral/ coordination of care services.
- iii. **Nurse**, who assists and support the Subcontractor and MAT team in assessing medically high risk patients. Participates in case conferencing and supports the Spoke physicians work with the patients. Provides medical assistance to Subcontractor / Spoke and MAT team members.
- b. Provide ongoing treatment services for patients with milder addiction as determined by the H&SS supplied Treatment Needs Questionnaire ("TNQ") , identified as Attachment 2;
- c. Transfer clinically complex patients to Contractor operated Hub, as determined by the TNQ.
- d. Prescribe buprenorphine, and manage induction and maintenance of buprenorphine treatment for opioid addiction;
- e. Adhere to standards of care for managing patients on buprenorphine, including utilization of the OBOT Stability Model, identified as Attachment 3;
- a. Provide counseling services, or refer patients to counseling services through Contractor, MAT Team or agreed upon other provider and ensure H&S patients receive a minimum of 50 minutes of individual or group counseling for every H&S patient per month (higher levels recommended)
- f. Monitor adherence to treatment, conduct drug screenings, and coordinate access to recovery support systems;
- g. Collect required data elements, including numbers of patients in care and retention in treatment;
- h. Check the prescription drug monitoring program database (CURES) initially and every four months, documenting these actions in the chart;
- i. Ensure patients have a prescription for naloxone; and

- j. Collaborate with Contractor operated Hub, which:
  - i. Serves as the subject matter expert on opioid dependence and treatment to Subcontractor / Spoke.
  - ii. Prescribes and dispenses methadone.
  - iii. Prescribes and dispense buprenorphine for the clinically complex patients;
  - iv. Provides support to the Subcontractor / Spoke on buprenorphine inductions, and clinical, or programmatic advice; and
  - v. Transfers patients to Subcontractor / Spoke for MAT Expansion Project services.
  - vi. All other CA H&SS treatment services as detailed in Contractor's CA H&SS Agreement with the California DHCS.
- k. Comply with all grant funding limitations and restrictions as defined by Contractor's CA H&SS Agreement with the California DHCS.

2. CONTRACTOR SUPPORT TO SUBCONTRACTOR:

Contractor will provide both administrative and financial support to Subcontractor within the scope of the Contractor's CA H&SS Agreement with the California DHCS (as per Attachment 1). Such support shall include, but not be limited to the following:

- a. Funding for MAT Team Staffing, according to the following criteria:
  - i. Support .2 FTE of the nurse and clinician/ counselor during the implementation phase of the program (e.g. zero to 20 Suboxone patients). After which, Contractor shall support an equivalent of 1 FTE for each 100 clients (e.g. a .6 FTE for the nurse and counselor when there are 60 active Suboxone patients)
  - ii. Mileage will be reimbursed at \$0.55 per mile for MAT Team personnel who live in excess of 50 miles one-way away from the designated Spoke location(s).
- b. Transportation vouchers (e.g., bus tickets and gas cards);
- c. Funding for Naloxone kits for patients and/or patient families;
- d. Financial aid for Buprenorphine for uninsured or underinsured patients;
- e. Reimbursement for Physicians & Mid-Level Data 2000 Waived providers for Suboxone office visits for Uninsured patients and Underinsured patients: \$180 for Suboxone inductions and \$100 for Suboxone follow up visits;
- f. Funding for drug screening or urine toxicology tests for eligible grant patients (e.g., patients who do not have other billable funding sources for drug screening tests) up to 4 UAs per patient per month;

- g. Funding for community outreach (e.g., education classes, production of brochures, educational materials and as necessary room rental etc.);
- h. Funding for Subcontractor participation in Learning Collaborative / Clinical Training / Evaluations;
- i. Stipend for Subcontractor participation in CSAM annual meetings.
- j. Recruitment assistance for MAT Team personnel

Subcontractor shall provide Contractor with supporting documentation of the above-mentioned funded activities and expenses in accordance to Contractor's CA H&SS Agreement with the California DHCS (Attachment 1).

Any additional requests for funding shall be submitted in writing for the review and approval of Contractor in writing.

3. STANDARD OF WORK:

Subcontractor agrees to perform this work according to standard practices, and in a professional manner.

4. ASSIGNMENT:

Subcontractor shall not assign the whole or any part of Subcontract Work or this Agreement without prior written approval of Contractor.

5. REIMBURSEMENT OF ELIGIBLE SUBCONTRACTOR EXPENDITURES:

For subcontractor expenditures that are eligible for reimbursement by the DHCS, Contractor shall submit subcontractor expenditures reports to the Department and the Contractor will render payment to the subcontractor. Such eligible reimbursements are detailed in Contractor's CA H&SS Agreement with the California DHCS, identified as Attachment 1. Contractor shall reimburse subcontractor within 30 days of receipt of subcontractor's invoice for eligible reimbursements.

6. BILLING FOR TREATMENT SERVICES:

Subcontractor shall be responsible for its Subcontractor's billing for treatment services rendered to Subcontractor / Spoke patients, whether for self-pay patients, private health insurance carriers, or Medi-Cal or Drug Medi-Cal. Billing invoices shall be submitted to the Contractor by the 3<sup>rd</sup> of each month for the previous month.

7. TERM:

This Agreement shall be for effective for two (2) years following from the effective date of the Contractor's CA H&SS Agreement with the California DHCS, identified as Attachment 1., subject to continued budgetary approval by the DHCS for year two funding of the H & SS Grant. Any extension of the term of this Agreement will only be effective through a written amendment or extension executed by both parties.

8. MODIFICATION:

No modification of this Agreement will be considered to be valid or in effect unless it is in writing, and has been signed by all parties (Contractor and Subcontractor). This is a binding Agreement, and benefits both parties and any successors. Time is considered of the essence of this Agreement. This Agreement, and any of the previously mentioned documents, comprises the entirety of the agreement between the parties. This Agreement shall be governed by the laws of the State of California.

9. INSURANCE:

Workers' Compensation insurance covering the legal liability of the Subcontractor under the applicable workers' compensation or occupational disease laws for claims for personal injuries and death resulting there from to Subcontractor's employees. The Subcontractor shall also obtain a minimum of \$500,000 of Employers' Liability insurance. Certificates of insurance must include a waiver of subrogation in favor of Contractor.

Commercial General Liability insurance covering the legal liability of the Subcontractor who may be engaged in the services, for claims for personal injuries and property damage resulting there from arising out of the services to be performed by the Subcontractor, in an amount not less than \$1,000,000 for any one occurrence, \$2,000,000 general aggregate.

10. INDEMNIFICATION AND ARBITRATION:

The work performed by the Subcontractor shall be at the risk of the Subcontractor exclusively. Subcontractor hereby indemnifies and holds Contractor, its parent and affiliates and their respective officers, directors, employees and agents, harmless from and against any and all claims, actions, losses, judgments, or expenses, including reasonable attorney's fees, arising from or in any way connected with the work performed, materials furnished, or services provided to Contractor during the term of this Agreement. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by binding arbitration and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The prevailing party in any arbitration concerning this Agreement shall be entitled to reasonable attorneys' fees.


11. MISCELLANEOUS:

Subcontractor is an independent contractor and not an employee of Contractor. This Agreement shall be in full force and effect from the date of signing unless canceled in writing by either party with thirty (30) days' written notice. The cancellation of this Agreement shall not negate any term or condition, such as the indemnity or insurance requirements.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives as per the dates set forth below.

**AEGIS TREATMENT CENTERS, LLC**

Dated: March 16, 2018

By: 

**COUNTY**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Richard Egan  
County Administrative Officer

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Barbara Longo, Director  
Health and Social Services

Approved as to form:

Robert M. Burns  
Lassen County Counsel

Dated: 3/16/18

By: 

Andrew Haut  
Attorney for County Counsel

## H&S Grant Funded Reimbursable Services Guide

1. **Medication Assisted Treatment (MAT) Team:** this will consist of a Nurse (RN or LVN) and a licensed clinician (LCSW/ ASW/ MFT/ MFTi, etc.) or Substance abuse registered or certified counselor. The grant will directly reimburse the Salary and Benefits of 1 FTE Nurse and 1 FTE Clinician/ Counselor per 100 H&S patients (e.g. 0-20 patients= 8 hrs paid per week, 20-40= 16 hrs paid per week, etc.)
2. **Reimbursement for Physicians & Mid-Level Data 2000 Waived providers** for Suboxone office visits for Uninsured patients and Underinsured patients: \$180 for Suboxone inductions and \$100 for Suboxone follow up visits
3. **Reimbursement for Underinsured patients self-pay/ sliding scale treatment fees** (if their insurance doesn't cover MAT/ Suboxone treatment)
4. **Reimbursement for Underinsured patients self-pay or sliding scale fees** until they meet their deductible (if their insurance covers MAT/ Suboxone treatment)
5. **Reimbursement for Underinsured patients private insurance co-pays** (if their insurance covers MAT/ Suboxone treatment)
6. **Reimburse for Uninsured and Underinsured patients urinalysis testing costs** up to four total tests per month.
7. **Directly for Uninsured and Underinsured patients Suboxone and Naloxone prescriptions** at the pharmacy through contracts with local pharmacies
8. **Purchase or reimburse for Patient Transportation:** Bus vouchers, gas cards, taxi services, etc.
9. **Reimburse Physicians and Mid-levels providers for time in trainings:** Includes data waived trainings, CSAM trainings, other MAT/ opioid related treatment trainings and UCLA led Grant Learning Collaborative trainings
10. **Reimburse for Pre-Authorized Telehealth Equipment:** To provide another option for accessing MAT services to improve access to treatment
11. **Directly pay for Education/Training:** Hiring consultants or utilizing UCLA and/or CSAM team for requested trainings (CE and CME units possible)
12. **Reimburse for MAT Training Materials:** Manuals, books, tools for reference
13. **Directly pay or reimburse for Advertisement and Outreach:** Brochures, Pamphlets, Media, Social media
14. **Opioid Coalition funding:** Additionally the H&S Grant can provide funding to support local existing opioid coalitions and their efforts or can provide funding and support to help create an opioid coalition if one does not already exist

### Definitions

**Uninsured patients:** *Patients who do not meet income and dependents eligibility criteria for Medi-Cal. Medi-cal is the payer of first resort. Patients who qualify for Medi-cal must get Medi-Cal and grant funds cannot be utilized for them.*

**Underinsured patients:** *Patients who have Private Insurance that covers MAT/ Suboxone Treatment and have a copay or have not yet met their annual deductibles qualify for grant funding. Patients who have Private Insurance that does not cover MAT/ Suboxone Treatment also qualify for grant funding.*



## Requirements of Spoke Providers for H&S Patients Guide

1. **Assessment:** Ensure all H&S patients complete the TNQ and OBOT Stability Index assessments upon admission and maintain in the patients file/ record
2. **Treatment:**
  - a. Prescribe Suboxone and Naloxone for each H&S patient. Nasal Naloxone kits can be bought by the grant and given directly to the patient at the Spoke location along with basic training on how to use it or Spoke providers can write a prescription for the patient to fill at the pharmacy.
  - b. Ensure a minimum of 50 minutes of individual or group counseling for every H&S patient per month (higher levels recommended)
  - c. Conduct regular urinalysis testing
3. **Referrals & Coordination of Care:**
  - a. Complete a Release of Information for all H&S patients at admit to include: the patients current PCP/ prescribing providers, any collateral counseling providers (if H&S MAT Team counselor does not work for the Spoke agency) and Aegis Treatment Centers.
  - b. If H&S patient does not have a PCP enroll them with the Spoke agency PCP providers (if FQHC/ RHC or outpatient clinic with PCP providers) or refer them to a PCP.
  - c. Refer to other community providers as needed based on patient's needs and ability to treat at the Spoke agency.
  - d. Conduct or refer all H&S patients to complete HIV and HEP C testing.
4. **Monitoring:** Run a CURES/ PAR report at admit for each patient and at least once every 4 months
5. **Learning Collaborative:** Participate in quarterly UCLA Learning Collaborative (video conferencing option available). Additional support trainings are available as well including Project ECHO, CSAM Webinars, etc.
6. **Data Reporting:** Report minimal data each month on the number of current and new H&S patients being treated at the Spoke location.
7. **Invoicing:** Submit monthly invoice form to Aegis by the 3rd of each month for the previous month.

**STANDARD AGREEMENT**

STD 213, DHCS (Rev. 06/16)

REGISTRATION NUMBER

AGREEMENT NUMBER

17-94461

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

STATE AGENCY'S NAME

Department of Health Care Services

(Also known as DHCS, CDHS, DHS or the State)

CONTRACTOR'S NAME

Aegis Treatment Centers, LLC

(Also referred to as Contractor)

2. The term of this Agreement is: August 1, 2017

through June 30, 2019

3. The maximum amount of this Agreement is: \$ 4,560,369.00

Four Million, Five Hundred Sixty Thousand, Three Hundred Sixty-Nine Dollars.

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

Exhibit A – Scope of Work

13 pages

Exhibit A Attachment I – OBOT Stability Index

1 page

Exhibit A Attachment II – Treatment Needs Questionnaire

1 page

Exhibit B – Budget Detail and Payment Provisions

5 pages

Exhibit B Attachment I – Budget (Year 1 and 2)

2 pages

Exhibit B Attachment II – Monthly Claim for Reimbursement

1 page

Exhibit B Attachment III – Itemized Monthly Invoice for Reimbursement

1 page

Exhibit C \* – General Terms and Conditions

GTC 04/2017

Exhibit D(F) – Special Terms and Conditions (Attached hereto as part of this agreement)

26 pages

Exhibit E – Additional Provisions

2 pages

Exhibit F – HIPAA Business Associate Addendum

15 pages

Exhibit G – Contractor's Release

1 page

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

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

**CONTRACTOR**

CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)

Aegis Treatment Centers, LLC

BY (Authorized Signature)



DATE SIGNED (Do not type)

10/11/17

PRINTED NAME AND TITLE OF PERSON SIGNING

Alex Dodd, Executive Director

ADDRESS

7246 Remmet Avenue  
Canoga Park, CA 91303**STATE OF CALIFORNIA**

AGENCY NAME

Department of Health Care Services

BY (Authorized Signature)



DATE SIGNED (Do not type)

11-20-17

PRINTED NAME AND TITLE OF PERSON SIGNING

Don Rodriguez, Chief, Contract Management Unit

ADDRESS

1501 Capitol Avenue, Suite 71.2048, MS 1400, P.O. Box 997413,  
Sacramento, CA 95899-7413**California Department of  
General Services Use Only**☒ Exempt per: WIC 14124.13(a)(b)

**Exhibit A**  
**Scope of Work**

**1. Services Overview**

As described in this Scope of Work, Contractor agrees to provide to the California Department of Health Care Services the services described herein.

1. Outreach
2. Treatment Services
3. Data Collection and Performance Measures
4. Reports
5. Evaluation
6. Training
7. Subcontracting

On April 20, 2017, the Substance Abuse and Mental Health Services Administration (SAMHSA) awarded the State Targeted Response to the Opioid Crisis Grant to California's Department of Health Care Services (Department). The purpose of the grant is to address the opioid crisis by improving access to treatment, reducing unmet treatment need, and reducing opioid overdose related deaths through the provision of prevention, treatment, and recovery activities for opioid use disorder (OUD).

This Agreement implements the California Hub and Spoke System (CA H&SS) of the California Medication Assisted Treatment (MAT) Expansion Project funded by the grant. Each CA H&SS consists of a "Hub" and multiple "Spokes". An existing Narcotic Treatment Program (NTP) or Medication Unit will serve as the Hub while federally approved Data 2000 waived prescribers who prescribe or dispense buprenorphine in office-based settings will serve as the Spokes. Hubs shall serve as a regional resource with a broad public health mission.

**2. Service Location**

The Contractor shall perform all services in the following California counties: Butte, Lassen, Tehama, and Plumas.

**3. Service Hours**

The Contractor shall provide services during the hours specified in its NTP policies and procedures approved by the Department, in accordance with California Code of Regulations (CCR) Title 9, Section 10030. The hours of operation for services to CA H&SS patients shall mirror existing NTP hours.

**4. Project Representatives**

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

**Exhibit A**  
**Scope of Work**

<b>Department of Health Care Services</b>	<b>Contractor's Name</b>
Contract Manager: Kevin Masuda Telephone: (916) 327-3098 Fax: (916) 322-7388 Email: Kevin.Masuda@dhcs.ca.gov	Alex Dodd: Telephone: (818) 206-0360 Fax: (818) 206-0381 Email: alex@aegistreatmentcenters.com

B. Direct all inquiries to:

<b>Department of Health Care Services</b>	<b>Contractor's Name</b>
P.O. Box 997413, MS 2600 Sacramento, CA 95899-7413  Contract Manager: Kevin Masuda Telephone: (916) 327-3098 Fax: (916) 322-7388 Email: Kevin.Masuda@dhcs.ca.gov	Aegis Treatment Centers, LLC Attention: Alex Dodd 7246 Remmet Avenue Canoga Park, CA 91303  Telephone: (818) 206-0360 Fax: (818) 206-0381 Email: alex@aegistreatmentcenters.com

C. Either party may make changes to the information in Section 4 (A) and (B) above by giving written notice to the other party. Said changes shall not require an amendment to this Agreement.

**5. Contractor Designation as a Federal Award Subrecipient**

- A. The State Targeted Response to the Opioid Crisis Grant (STR grant) is a federal award within the meaning of Title 45, Code of Federal Regulations (CFR), Part 75. This Agreement is a subaward of the federal award to the Department. The Contractor is a subrecipient and subject to all applicable provisions of 45 CFR Part 75 addressing administrative requirements, cost principles, and audit requirements.
- B. The Department discloses the following information in accordance with 45 CFR section 75.352:
1. Federal Award Identification: TI080222
  2. Aegis Treatment Centers, LLC
  3. Subrecipient's unique entity identifier: 07-949-3786
  4. Federal Award Identification Number (FAIN): TI080222
  5. Federal Award Date: April 21, 2017
  6. Subaward Period of Performance August 1, 2017 to June 30, 2019
  7. Amount of Federal Funds Obligated by this action by the Department to the Contractor : \$4,560,369
  8. Total Amount of Federal Funds Obligated to the Contractor by the Department including the current obligation: \$4,560,369

**Exhibit A**  
**Scope of Work**

9. Total Amount of the Federal Award committed to the Contractor by the Department : \$4,560,369
10. Federal award project description: The program aims to address the opioid crisis by increasing access to treatment, reducing unmet treatment need, and reducing opioid overdose related deaths through the provision of prevention, treatment and recovery activities for opioid use disorder (OUD) (including prescription opioids as well as illicit drugs such as heroin).
11. Name and contact information of Federal awarding agency:  
Odessa Crocker  
Office of Financial Resources, Division of Grants Management  
Substance Abuse and Mental Health Services Administration  
240-276-1078  
[foacsat@samhsa.hhs.gov](mailto:foacsat@samhsa.hhs.gov)
12. CFDA Number and Name: 93.788

C. As a subrecipient, the Contractor shall:

1. Maintain effective internal control over contract;
2. Comply with federal statutes, regulations, including 45 CFR Part 75, and the terms and conditions of the grant;
3. Evaluate and monitor its activities and the activities of all of its subcontracted spokes for compliance with applicable statutes, regulations, and terms and conditions of the award;
4. Address any instances of noncompliance promptly, including noncompliance identified in audit findings; and
5. Oversee the operations of the federal award supported activities.

D. As a subrecipient, the Contractor shall:

1. Maintain effective internal control over contract funds;
2. Comply with federal statutes, regulations, including 45 CFR Part 75, and the terms and conditions of the grant;
3. Evaluate and monitor its activities and the activities of all of its subcontracted spokes for compliance with applicable statutes, regulations, and terms and conditions of the award;
4. Address any instances of noncompliance promptly, including noncompliance identified in audit findings; and
5. Oversee the operations of the federal award supported activities.

E. The Contractor shall disclose, in writing to the Department, any potential conflict of interest in accordance with Health and Human Services' (HHS) grant policy. (See, <https://www.hhs.gov/sites/default/files/grants/grants/policies-regulations/hhsgps107.pdf>).

F. The Contractor shall timely disclose, in writing to the Department, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the grant. If Contractor fails to make a required disclosure the Department may seek

**Exhibit A**  
Scope of Work

any of the remedies described in Exhibit A, Section 10 of this Agreement "Contractor Non-compliance"

**6. Services to be Performed**

**A. Outreach**

1. The Contractor shall develop a community outreach plan for the purpose of distributing information regarding services available under the MAT Expansion Project with the goal of increasing treatment to individuals in need. The outreach plan must include the following minimum elements:
  - a. **Communication Plan.** A communication plan shall notify local entities and individuals regarding the OUD services available at the CA H&SS. The plan shall include target audiences including the county Behavioral Health Department, local criminal justice entities, local opioid coalitions, and local substance use disorder (SUD) treatment providers.
  - b. **Engagement of Individuals.** A description of efforts to engage individuals with an OUD to seek treatment at the CA H&SS.
  - c. **Timeframes.** A description of timeframes for notifying impacted individuals and entities of services available under the MAT Expansion Project.

The Contractor may include additional elements in the outreach plan to address unique local or regional concerns.

2. The Contractor shall submit to the Department a draft of the outreach plan no later than 30 calendar days following the execution of this Agreement. The outreach plan shall be no longer than 10 typewritten pages. Within 30 calendar days from receipt of the Contractor's outreach plan, the Department shall either approve the plan as submitted or provide the Contractor written notice requiring modifications to the plan. The Contractor shall re-submit the revised outreach plan within 15 days of receiving notice from the Department. Within 15 calendar days from receipt of the Contractor's revised outreach plan, the Department shall either approve the revised plan as submitted or provide the Contractor written notice requiring additional modifications to the plan.
3. The Contractor shall coordinate and participate in the local opioid coalitions in its county.
4. The Contractor shall identify at least one staff member who shall attend all Department CA H&SS Steering Committee meetings.

**Exhibit A**  
Scope of Work

**B. Treatment Services**

1. The Contractor shall provide the following CA H&SS treatment services to CA H&SS patients:
  - a. Assessment and diagnosis of an OUD;
  - b. Counseling;
  - c. HIV and HCV testing and referral to appropriate services;
  - d. Case management, including coordination of referrals for housing, insurance, and entitlements such as food or income assistance, and travel needs;
  - e. Professional medical, social work, and mental health services, offered to patients onsite or by referral;
  - f. Recovery and/or peer support services;
  - g. Local access to maternal addiction treatment, either onsite or by referral, to include, at a minimum, universal prenatal screening for alcohol and drug use, counseling, case management, and MAT. Maternal addiction services may be provided in-person or telehealth providers, and should include collaborative management with a delivery facility capable of treating infants with neonatal abstinence syndrome.
2. In addition to providing the treatment services identified in Section 6(B)(1), the Contractor shall:
  - a. Serve as the subject matter expert on opioid dependence and treatment to the Spokes;
  - b. Utilize the OBOT Stability Index, identified as **Attachment I** and incorporated by reference;
  - c. Utilize the Treatment Needs Questionnaire tool, identified as **Attachment II** and incorporated by reference;
  - d. Prescribe and dispense methadone;
  - e. Prescribe and dispense buprenorphine for the clinically complex patients;
  - f. Ensure patients and family members, if requested, have a prescription and training for naloxone;
  - g. Provide support to the Spokes on buprenorphine inductions, and clinical, or programmatic advice;
  - h. Transfer patients to subcontracted Spokes for MAT Expansion Project services;
  - i. Assist individuals with health insurance applications and enrollment for eligible, uninsured patients; (An eligible individual must obtain Medi-Cal to cover the cost of eligible services. Grant funds made available under this Agreement shall not be utilized to pay for services covered by Medi-Cal for individuals who qualify for Medi-Cal but do not apply.)
  - j. Determine whether an individual may be eligible for other benefits including those available for veterans or seniors.
3. In addition to mandatory requirements described in Section 6(A) and (B), the Contractor may:

**Exhibit A**  
**Scope of Work**

- a. Transfer patients out of CA H&SS if a higher level of care is necessary;
- b. Prescribe and dispense all other FDA approved medications for MAT.

**C. Data Collection and Performance Measures**

1. The Contractor shall collect all data elements for the CA H&SS patients identified below. These data elements shall be collected and reported monthly to the Department on the dates set forth in Section 6(D).
  - a. Number of people who receive OUD treatment;
  - b. Number of people who receive OUD recovery services;
  - c. Number of providers implementing MAT;
  - d. Number of OUD prevention and treatment providers trained, including nurse practitioners, physician assistants, physicians, nurses, counselors, social workers, and case managers.
2. In addition to collecting the data identified in in Section 6(C)(1), the Contractor shall identify and track additional metrics aimed at quality improvements of patient care. The Contractor shall identify quality improvement measures by the fourth month following execution of this Agreement and submit those measures to the Department for approval.
  - a. Examples of appropriate measures include:
    - i. Increasing the number of patient admissions to the Hub and Spokes;
    - ii. Percentage of intakes performed on the same day of a referral; and,
    - iii. Percentage of patients admitted at the Hub who receive confirmed care at a Spoke.
3. The Contractor shall revise the quality improvement measures annually or as needed, in collaboration with the Department, to address current situations and high priority challenges. All revisions to the measures shall be submitted to, and approved by, the Department.
4. The Contractor shall report on the identified measures and the quality improvement activities aimed at improving performance on these measures in the monthly report described in Section 6(D).

**D. Reports and Policies**

1. The Contractor shall submit monthly reports to the Department. The reports shall consist of data outlined in Section 6(C)(1) and performance measures outlined in Section 6(C)(2). The Contractor shall submit monthly reports via email to the Department Contract Manager on the following dates:



**Exhibit A**  
**Scope of Work**

Month	Period	Due Date to DHCS
Initial Month	08/01/2017 - 8/30/2017	09/15/2017
2nd Month	9/01/2017 - 9/30/2017	10/15/2017
3rd Month	10/01/2017 - 10/31/2017	11/15/2017
4th Month	11/01/2017 - 11/30/2017	12/15/2017
5 <sup>th</sup> Month	12/01/2017 - 12/31/2017	01/15/2018
6 <sup>th</sup> Month	01/01/2018 - 01/31/2018	02/15/2018
7 <sup>th</sup> Month	02/01/2018 - 02/28/2018	03/15/2018
8 <sup>th</sup> Month	03/01/2018 - 03/31/2018	04/15/2018
9 <sup>th</sup> Month	04/01/2018 - 04/30/2018	05/15/2018
10 <sup>th</sup> Month	05/01/2018 - 05/31/2018	06/15/2018
11 <sup>th</sup> Month	06/01/2018 - 06/30/2018	07/15/2018
1 <sup>st</sup> Month	07/01/2018 - 07/31/2018	08/15/2018
2nd Month	08/01/2018 - 08/30/2018	09/15/2018
3rd Month	09/01/2018 - 09/30/2018	10/15/2018
4th Month	10/01/2018 - 10/31/2018	11/15/2018
5 <sup>th</sup> Month	11/01/2018 - 11/30/2018	12/15/2018
6 <sup>th</sup> Month	12/01/2018 - 12/31/2018	01/15/2019
7 <sup>th</sup> Month	01/01/2019 - 01/31/2019	02/15/2019
8 <sup>th</sup> Month	02/01/2019 - 02/28/2019	03/15/2019
9 <sup>th</sup> Month	03/01/2019 - 03/31/2019	04/15/2019
10 <sup>th</sup> Month	04/01/2019 - 04/30/2019	05/15/2019
11 <sup>th</sup> Month	05/01/2019 - 05/31/2019	06/15/2019
12 <sup>th</sup> Month	06/01/2019 - 06/30/2019	07/15/2019
1 <sup>st</sup> Month*	07/01/2019 - 07/31/2019	08/15/2019
2 <sup>nd</sup> Month*	08/01/2019 - 08/30/2019	09/15/2019
3 <sup>rd</sup> Month*	09/01/2019 - 09/30/2019	10/15/2019
4 <sup>th</sup> Month*	10/01/2019 - 10/31/2019	11/15/2019
5 <sup>th</sup> Month*	11/01/2019 - 11/30/2019	12/15/2019
6 <sup>th</sup> Month*	12/01/2019 - 12/31/2019	01/15/2020
7 <sup>th</sup> Month*	01/01/2020 - 01/31/2020	02/15/2020

\*These months may be necessary if SAMHSA provides the Department with a no-cost contract extension.

2. The Contractor shall prepare necessary policies to describe what procedures will be in place to ensure other available funding sources are used first before grant funds. The Contractor shall submit these policies to the Department no later than 30 calendar days following the execution of this Agreement.

**E. Evaluation**

1. The Contractor shall participate in an evaluation of the effectiveness of the CA H&SS model conducted by the University of California, Los Angeles (UCLA).

**Exhibit A**  
**Scope of Work**

2. The Contractor shall collaborate with the University of California of Los Angeles, Integrated Substance Abuse Program (UCLA-ISAP) evaluation staff in all evaluation efforts, including the coordination of patient questionnaires and interview questions, Spoke prescriber interviews, and other requirements outlined by UCLA. The Contractor shall be the lead contact for any information and assistance required by UCLA.
3. The Contractor shall provide UCLA with email addresses for Hub and Spoke management and staff. UCLA will email Hub and Spoke management and staff surveys to complete online. The Contractor shall work with UCLA to ensure management and staff complete the online surveys.
4. The Contractor shall identify key members of the Hub and Spoke management and staff to participate in UCLA evaluator interviews. Interviews shall occur annually during the term of this Agreement and will be scheduled by UCLA evaluators.
5. The Contractor shall distribute and collect completed patient release and contact information forms, provided by UCLA, from randomly selected MAT Expansion Project patients. The Contractor shall maintain a count of the number of patients who declined to complete the release and contact information and report the number to UCLA. The Contractor shall scan and upload completed forms to the Department.
6. The Contractor shall participate in annual surveys conducted by UCLA to discuss implementation barriers, facilitators, recommendations, and other topics related to the implementation of the CA H&SS.

**F. Training**

1. The Contractor shall identify staff to participate in the following trainings and meetings:
  - a. Initial Orientation and Learning Collaborative.
    - i. An initial one-day statewide orientation referred to as the CA H&SS Orientation Training is projected to occur during July 2017.
    - ii. Eight Learning Collaborative meetings will be scheduled over the course of the two-year Agreement. These half-day meetings will provide an opportunity for Hubs and Spokes to become familiar with each other and develop collaborative relationships and procedures. Hub & Spoke representation is required at these meetings.
  - b. Statewide Best Practices Training. UCLA will organize and facilitate two statewide daylong trainings for the staff of Hubs and Spokes (including administrators) during each year of this Agreement.

**Exhibit A**  
**Scope of Work**

- c. UCLA Clinical Trainings. A minimum of 20% of the Contractor's clinical staff shall attend UCLA clinical trainings. Two 6-hour trainings shall be offered regionally, twice per year. These trainings are designed to:
  - i. Review the most significant clinical challenges faced in the specific region;
  - ii. Present evidence based/best practices that are known to be useful to address the identified challenges; and
  - iii. Provide skill practice and role-playing of clinical skills to promote use of the techniques presented.
2. The Contractor shall ensure that all Hub staff are trained in Motivational Interviewing (MI) no later than the fourth month following execution of this Agreement.

**G. Subcontracting**

1. The Contractor shall enter into subcontracts with Spokes that meet the following minimum qualifications:
  - a. One waived prescriber with a federal Data 2000 waiver; and
  - b. Any form of Medi-Cal certification including, Fee-for-Service and/or Drug Medi-Cal certification obtained prior to entering a subcontract. Independent waived physicians must have Medi-Cal certification within one year of entering a subcontract.
2. The Contractor's subcontract shall require the Spokes:
  - a. Provide ongoing care for patients with milder addiction as determined by the Treatment Needs Questionnaire;
  - b. Manage induction and maintenance, unless otherwise agreed in the subcontract;
  - c. Monitor adherence to treatment, conduct drug screenings, and coordinate access to recovery supports;
  - d. Collect minimal data elements, including numbers of patients in care and retention in treatment;
  - e. Adhere to standards of care for managing patients on buprenorphine, including utilization of the OBOT Stability Model, identified as **Attachment I**;
  - f. Provide, or refer, patients to counseling services;
  - g. Check the prescription drug monitoring program database (CURES) initially and every four months, documenting these actions in the chart;
  - h. Prescribe buprenorphine;
  - i. Ensure patients have a prescription for naloxone; and
  - j. Comply with all grant funding limitations and restrictions.
3. The Contractor's subcontract with the Spokes may also address the following:

**Exhibit A**  
**Scope of Work**

a. Staffing models.

- i. The Vermont staffing model is one educator/panel manager (typically a nurse) and one case manager (typically a licensed clinical social worker) for every 100 patients. Spokes may, however, propose alternate staffing models to cover its duties with roles filled by advance practice clinicians, pharmacists, licensed vocational nurses, medical assistants, marriage and family therapists, social workers, addiction counselors, and peer providers, so long as each individual only practices within the scope of his or her respective license or certification.
  - ii. Prescribing and dispensing FDA approved medications, in addition to buprenorphine, for MAT.
4. The Contractor shall not subcontract with any party listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

**7. Records and Record Keeping**

- A. The Contractor shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the grant in accordance with 45 CFR section 75.361.
- B. SAMHSA, the Inspector General, the Comptroller General, and the Department, or any of its authorized representatives, have the right to access any documents, papers, or other records of the Contractor which are pertinent to the grant, for the purpose of performing audits, examinations, excerpts, and transcripts. The right to access records also includes timely and reasonable access to the Contractor's personnel for the purpose of interview and discussion related to the requested documents.
- C. The right to access records is not limited to the required retention period but lasts as long as the records are retained by the Contractor.

**8. Monitoring and Audits**

- A. The Contractor shall be subject to monitoring by the Department for compliance with the provisions of this Agreement. Such monitoring activities shall include, but are not limited to, inspection and auditing of the Contractor's treatment services, patient files, management procedures, books, and records, as the Department deems

**Exhibit A**  
**Scope of Work**

appropriate. The Department may conduct monitoring activities at any time during the Contractor's normal business hours.

- B. The Department shall conduct a review of the Contractor's records to determine if any of the claimed expenditures were an improper use of grant funds.
- C. The refusal of the Contractor to permit access to physical facilities and/or inspection of any documents, files, books, or records necessary for the Department to complete its monitoring and auditing activities constitutes an express and immediate material breach of this Agreement and will be a sufficient basis to terminate the Agreement for cause.

**9. Single Audit Requirement**

- A. The Contractor shall have a single audit performed for each year in accordance with the Audit Requirements set forth in 45 CFR Part 75, Subpart F.

**10. Contractor Non-Compliance**

- A. If the Contractor fails to comply with Federal statutes, regulations, or the terms and conditions of the grant, the Department may impose additional conditions on the subaward, including:
  - 1. Withholding authority to proceed to the next phase until receipt of evidence acceptable performance within a given performance period;
  - 2. Requiring additional or more detailed financial reports;
  - 3. Requiring technical or management assistance; and/or
  - 4. Establishing additional prior approvals.
- B. If the Department determines that the Contractor's noncompliance cannot be remedied by imposing additional conditions, the Department may take one or more of the following actions:
  - 1. Temporarily withhold cash payments pending correction of the deficiency by the Contractor.
  - 2. Disallow all or part of the cost of the activity or action not in compliance.
  - 3. Wholly or partly suspend the award activities or terminate the Contractor's subaward.
  - 4. Recommend that suspension or debarment proceedings be initiated by the Federal awarding agency.
  - 5. Withhold further Federal awards.
  - 6. Take other remedies that may be legally available.

**Exhibit A**  
Scope of Work

## 11. Definitions

The following definitions shall apply to this Agreement:

CA H&SS: CA H&SS means a model comprised of NTPs or Medication Units that serve as the Hubs and Data 2000 waived prescribers who prescribe buprenorphine in office-based settings serving as Spokes.

Contractor: Contractor means the lead entity over the CA H&SS. The Contractor may be a NTP, Medication Unit, Federally Qualified Health Center (FQHC), or county.

Counseling: Counseling means individual and group sessions provided by a licensed professional or an individual registered or certified pursuant to Title 9, CCR, Division 4, Chapter 8. Counseling provided at a NTP shall conform to Title 9, CCR, Division 4, Chapter 4.

Grant: Grant means the State Targeted Response to the Opioid Crisis Grant.

Hub: Hub means a Department licensed NTP or Medication Unit.

Medication Assisted Treatment: Medication Assisted Treatment means a combination of medications utilized to treat an OUD in conjunction with counseling services.

Recovery Service: Recovery Service means services provided to a patient to maintain the patient's abstinence from the use of alcohol or drugs, maintain sobriety, or maintain any goal or objective that a patient achieved during treatment for his or her substance use disorder. Recovery Service includes any service designed to initiate, support, and enhance recovery.

Spoke: Spoke means either (1) a federally waived prescriber who prescribes and/or administers buprenorphine, or (2) one or more federally waived prescribers and a MAT team consisting of a licensed health practitioner and/or licensed behavioral health professional to perform duties that do not require a prescribing license. A Spoke may consist of individually waived professionals, FQHCs, or SUD treatment providers. NTPs and Medication Unit cannot be Spokes.

Subcontractor: Subcontractor means the individual or entity that contracts with the Contractor to perform services for the CA H&SS.

Waivered Prescriber: Waivered Prescriber means a physician, nurse practitioner, or physician assistant who obtains a federal Data 2000 waiver from SAMHSA to prescribe buprenorphine. Waivered prescribers who provide services outside of a NTP or Medication Unit must have this federal waiver since buprenorphine is a scheduled narcotic.

**Exhibit A**  
Scope of Work

**12. Federal Requirements**

The Contractor shall comply with the following Federal laws:

- A. Title VI of the Civil Rights Act of 1964, Section 2000d, as amended.
- B. Age Discrimination Act of 1975 (45 CFR Part 90).
- C. Section 1557 of the Affordable Care Act.
- D. Title II of the Americans with Disabilities Act of 1990 (28 CFR Part 35).
  - 1. California Government Code Section 11135 codifies the protections of Title II of the Americans with Disabilities Act.
- E. Section 504 of the Rehabilitation Act of 1973.
- F. Trafficking Victims Protection Act of 2000 (22 USC 7104(G), as amended, and 2 CFR Part 175.
- G. Clean Air Act (42 USC 7401 – 7671q) and the Federal Water Pollution Control Act (33 USC 1251-1387), as amended.
- H. Byrd Anti-Lobbying Amendment (31 USC 1352).
  - 1) The Contractor shall certify to DHCS that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 USC 1352. The Contractor shall also disclose to DHCS any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.
- I. Confidentiality of Alcohol and Drug Abuse Patient Records (42 CFR Part 2, Subparts A – E).
  - 1) The Contractor shall comply with the regulations set forth in 42 CFR Part 2, including the responsibility for assuring the security and confidentiality of all electronically transmitted patient material.

*OBOT Stability Index*

1) Was the patient's previous urine drug screen positive for illicit substances? <input type="checkbox"/> Yes <input type="checkbox"/> No
2) If YES to #1 or if the patient was recently started on buprenorphine, does the patient have fewer than four consecutive weekly drug-free urine drug screens? <input type="checkbox"/> Yes <input type="checkbox"/> No
3) Is the patient using sedative-hypnotic drugs (e.g. benzodiazepines) or admitting to alcohol use? <input type="checkbox"/> Yes <input type="checkbox"/> No
4) Does the patient report drug craving that is difficult to control? <input type="checkbox"/> Yes <input type="checkbox"/> No
5) Does the patient endorse having used illicit substances in the past month? <input type="checkbox"/> Yes <input type="checkbox"/> No
6) Does the query of the Vermont Prescription Monitoring System (VPMS) show evidence of the unexplained, unadmitted, or otherwise concerning provision of controlled substances? <input type="checkbox"/> Yes <input type="checkbox"/> No
7) Did the patient report their last prescription as being lost or stolen? <input type="checkbox"/> Yes <input type="checkbox"/> No
8) Did the patient run out of medication early from his/ her last prescription? <input type="checkbox"/> Yes <input type="checkbox"/> No

**SCORING:**

If NO to all, the patient is "stable" can be seen monthly for prescriptions and urine drug screens.

If YES to any of the above, the patient is "unstable" and needs to be seen weekly for prescriptions and urine drug screens.

Additionally, if YES to 1-6, the patient should be referred for addiction services.



**Exhibit A, Attachment II**

Aegis Treatment Centers, LLC  
17-94461

## TREATMENT NEEDS QUESTIONNAIRE

Patient Name/ID: \_\_\_\_\_ Date: \_\_\_\_\_ Staff Name/ID: \_\_\_\_\_

Ask patient each question, circle answer for each	Yes	No
Have you ever used a drug intravenously?	2	0
If you have ever been on medication-assisted treatment (e.g. methadone, buprenorphine) before, were you successful? (If never in treatment before, leave answer blank)	0	2
Do you have a chronic pain issue that needs treatment?	2	0
Do you have any significant medical problems (e.g. hepatitis, HIV, diabetes)?	1	0
Do you ever use cocaine, even occasionally?	2	0
Do you ever use benzodiazepines, even occasionally?	2	0
Do you have a problem with alcohol, have you ever been told that you have a problem with alcohol or have you ever gotten a DWI/DUI?	2	0
Do you have any psychiatric problems (e.g. major depression, bipolar, severe anxiety, PTSD, schizophrenia, personality subtype of antisocial, borderline, or sociopathy)?	1	0
Are you currently going to any counseling, AA or NA?	0	1
Are you motivated for treatment?	0	1
Do you have a partner that uses drugs or alcohol?	1	0
Do you have 2 or more close friends or family members who do not use alcohol or drugs?	0	1
Is your housing stable?	0	1
Do you have access to reliable transportation?	0	1
Do you have a reliable phone number?	0	1
Did you receive a high school diploma or equivalent (e.g. did you complete > 12 years of education)?	0	1
Are you employed?	0	1
Do you have any legal issues (e.g. charges pending, probation/parole, etc)?	1	0
Are you currently on probation?	1	0
Have you ever been charged (not necessarily convicted) with drug dealing?	1	0

Totals

\_\_\_\_\_ + \_\_\_\_\_

Total possible points is 26

Scores 0-5 excellent candidate for office based treatment

Scores 6-10 good candidate for office based treatment with tightly structured program and on site counseling

Scores 11-15 candidate for office based treatment by board certified addiction physician in a tightly structured program or HUB induction with follow up by office based provider or continued HUB status

Scores above 16 candidate for HUB (Opioid Treatment Program-OTP) only



**Exhibit B**  
Budget Detail and Payment Provisions

**1. Invoicing and Payment**

- A. For services satisfactorily rendered, and upon receipt and approval of the invoices, The Department agrees to compensate the Contractor for actual expenditures incurred in accordance with the budget(s) attached hereto.
- B. Invoices shall include the Agreement Number and shall be submitted in triplicate not more frequently than monthly in arrears to:

Kevin Masuda  
Department of Health Care Services  
Substance Use Disorder Compliance Division  
MS 2600  
P.O. Box 997413  
Sacramento, CA 95899-7413

- C. Invoices shall:
  - 1) Be prepared on the Monthly Claim for Reimbursement - Form A (**Attachment II**) and the Itemized Monthly Invoice for Reimbursement – Form B (**Attachment III**). The invoices shall be signed by an authorized official, employee or agent, certifying that the expenditures claimed represent actual expenses for the service performed under this Agreement.
  - 2) Bear the Contractor's name as shown on the Agreement.
  - 3) Identify the billing and/or performance period covered by the invoice.
  - 4) Itemize costs for the billing period in the same or greater level of detail as indicated in this Agreement. Subject to the terms of this Agreement, reimbursement may only be sought for those costs and/or cost categories expressly identified as allowable in this Agreement and approved by DHCS.

**2. Budget Contingency Clause**

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, DHCS shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.
- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, DHCS shall have the option to either cancel this Agreement with no liability occurring to DHCS, or offer an agreement amendment to Contractor to reflect the reduced amount.
- C. It is mutually agreed that if the Substance Abuse and Mental Health Services Administration (SAMHSA) does not award second year funds under the State Targeted Response to the Opioid Crisis Grant, this Agreement shall be of no further force and

**Exhibit B****Budget Detail and Payment Provisions**

effect. In this event, DHCS shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.

- D. If funding for the State Targeted Response to the Opioid Crisis Grant is reduced or eliminated by SAMHSA, DHCS shall solely have the option to either cancel this Agreement with no liability occurring to DHCS, or offer an agreement amendment to Contractor to reflect the reduced amount.

**3. Prompt Payment Clause**

Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.

**4. Amounts Payable**

- A. The amounts payable under this Agreement shall not exceed:

- 1) \$2,163,634 for the budget period of 08/01/2017 through 06/30/2018.
- 2) \$2,396,735 for the budget period of 07/01/2018 through 06/30/2019.

- B. Reimbursement shall be made for allowable expenses up to the amount annually encumbered commensurate with the state fiscal year in which services are performed and/or goods are received.

**5. Timely Submission of Final Invoice**

- A. A final undisputed invoice shall be submitted for payment no more than ninety (90) calendar days following the expiration or termination date of this Agreement, unless a later or alternate deadline is agreed to in writing by the Program Contract Manager. Said invoice should be clearly marked "Final Invoice", thus indicating that all payment obligations of DHCS under this Agreement have ceased and that no further payments are due or outstanding.
- B. DHCS may, at its discretion, choose not to honor any delinquent final invoice if the Contractor fails to obtain prior written DHCS approval of an alternate final invoice submission deadline. Written DHCS approval shall be sought from the Program Contract Manager prior to the expiration or termination date of this Agreement.
- C. The Contractor is hereby advised of its obligation to submit, with the final invoice, a "**Contractor's Release (Exhibit G)**" acknowledging submission of the final invoice to DHCS and certifying the approximate percentage amount, if any, of recycled products used in performance of this Agreement.

**6. Funding Restrictions**

- A. The Contractor shall not use any grant funds made available under this Agreement to:

**Exhibit B**

**Budget Detail and Payment Provisions**

- 1) Pay for any lease beyond the project period.
  - 2) Provide services to incarcerated populations (defined as those persons in jail, prison, detention facilities, or in custody where they are not free to move about in the community).
  - 3) Pay for purchase or construction of any building or structure to house any part of the program
  - 4) Pay for housing other than residential mental health and/or substance abuse treatment.
  - 5) Provide residential or outpatient treatment services when the facility has not yet been acquired, sited, approved, and met all requirements for human habitation and services provision. (Expansion or enhancement of existing residential services is permissible.)
  - 6) Only allowable costs associated with the use of federal funds are permitted to fund evidence-based practices (EBPs). Other sources of funds may be used for unallowable costs (e.g., meals, sporting events, entertainment). Other support is defined as funds or resources, whether federal, non-federal or institutional, in direct support of activities through fellowships, gifts, prizes, or in-kind contributions.
  - 7) Make direct payments to individuals to induce them to enter prevention or treatment services. However, SAMHSA grant funds may be used for non-clinical support services (e.g. bus tokens, child care) designed to improve access and retention in prevention and treatment programs.
  - 8) Make direct payments to individuals to encourage attendance and/or attainment of prevention or treatment goals. Meals are generally unallowable unless they are an integral part of a conference grant or specifically stated as an allowable expense in the FOA. Grant funds may be used for light snacks, not to exceed \$3.00 per person.
  - 9) Outside individuals or companies that prepare or participate in the preparation of grant applications may not be contractors on those grants per 45 CFR 75.328, which addresses full and open competition.
- B. The Contractor shall first use other sources of funding and revenue available to provide services under the CA H&SS.
- C. Grant funds shall not be used for services that can be paid through other accessible sources of funding such as Title XIX of the Social Security Act, other federal discretionary and formula grant funds, non-federal funds, third party insurance, and sliding scale self-pay, among others.
- D. Grant funds shall not supplant current funding of existing activities.

**7. Expense Allowability / Fiscal Documentation**

- A. Invoices, received from a Contractor and accepted and/or submitted for payment by DHCS, shall not be deemed evidence of allowable agreement costs.
- B. The Contractor shall maintain for review and audit and supply to DHCS upon request, adequate documentation of all expenses claimed pursuant to this Agreement to permit a determination of expense allowability.

**Exhibit B**  
Budget Detail and Payment Provisions

- C. If the allowability or appropriateness of an expense cannot be determined by DHCS because invoice detail, fiscal records, or backup documentation is nonexistent or inadequate according to generally accepted accounting principles or practices, all questionable costs may be disallowed and payment may be withheld by DHCS. Upon receipt of adequate documentation supporting a disallowed or questionable expense, reimbursement may resume for the amount substantiated and deemed allowable.
- D. The Contractor may shift funds between expenditure categories identified on the CA H&SS Budget up to 5% by providing written notice to DHCS in the form of a revised budget. Any proposed shift of funds greater than 5% of the total projected expenditures identified on the CA H&SS Budget requires written approval from DHCS. Actual CA H&SS expenditures shall be submitted to DHCS for the following categories:
  - 1. Personnel
  - 2. Outreach
  - 3. Treatment Services
  - 4. Miscellaneous Services
- E. Costs and expenses deemed unallowable are subject to recovery by DHCS as described in Section 9.

**8. Benefit Eligibility Limitations**

- A. Grant funds made available under this Agreement shall only pay for services: (1) to individuals who are not covered by public or commercial health insurance plans, (2) to individuals whose coverage has been formally determined to be unaffordable, or (3) that are not sufficiently covered by an individual's health insurance plan.

**9. Recovery of Overpayments**

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

**Exhibit B**  
Budget Detail and Payment Provisions

to the Contractor, beginning 30 days after Contractor's receipt of DHCS' demand for repayment.

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

**10. Additional Terms and Conditions**

- A. Grant funds shall be subject to any restrictions, limitations, or requirements set forth in Division A, Title I, Section 1003 of the 21<sup>st</sup> Century Cures Act.
- B. As a result of the decision in United States v. Windsor, the Contractor shall treat as valid the marriages of same-sex couples whose marriage was legal when entered into. This applies regardless of whether the couple now lives in a jurisdiction that recognizes same-sex marriage or a jurisdiction that does not recognize same-sex marriages.
- C. The Contractor shall ensure that services are accessible to persons with limited English proficiency.
- D. The Contractor shall obtain a Data Universal Number System (DUNS) number and register with the System for Award Management (SAM) prior to beginning work under this Agreement. The Contractor shall keep its DUNS number and SAM registration current and up to date at all times during the term of this Agreement.

# Exhibit B, Attachment I

Aegis Treatment Centers, LLC  
17-94461

Page 1

## California Hub and Spoke System Budget

Amended STR-50 Chico  
August 7 2017

Aegis Treatment  
Centers, LLC

### EXPENDITURE CATEGORIES

Year One	Year Two	Total Projected
7/17-6/18	7/18-6/19	Expenditures

### PERSONNEL (INCLUDING ANY BENEFITS)

MAT Spoke Team Staff  
CA H&SS Coordinator  
Staff Member for Academic Detailing  
Prevention Specialist

\$152,256	\$152,256	\$304,512
\$81,415	\$88,816	\$170,231
\$65,132	\$71,053	\$136,185
\$74,435	\$81,203	\$155,638

### Total Personnel Costs

\$373,238	\$393,328	\$766,566
-----------	-----------	-----------

### OUTREACH

Local Opioid Coalitions (5% Max)

\$110,000	\$120,000	\$230,000
-----------	-----------	-----------

### Total Outreach Costs

\$110,000	\$120,000	\$230,000
-----------	-----------	-----------

### TREATMENT SERVICES

Counseling Services  
HIV and Hep C Testing  
Case Management Services  
Recovery and Peer Support Services  
Co-Pays/Under/Uninsured Costs

\$307,895	\$355,264	\$663,159
\$25,000	\$25,000	\$50,000
\$291,824	\$304,512	\$596,336
\$25,000	\$25,000	\$50,000
\$25,000	\$25,000	\$50,000



# Exhibit B, Attachment I

Aegis Treatment Centers, LLC

Page 2

17-94461

Required Medication Costs			
Naloxone (Drug Costs and Training)	\$690,677	\$803,631	\$1,494,307
	\$25,000	\$25,000	\$50,000
<b>Total Treatment Costs</b>	\$1,390,396	\$1,563,407	\$2,953,803
<b>MISCELLANEOUS</b>			
Neonatal Abstinence Syndrome Treatment Program			
Re-entry CA H&SS Services for Patients Leaving Correction Facilities			
Patient Transportation Tokens/Passes (5% Max)	\$70,000	\$80,000	\$150,000
Telehealth Infrastructure Costs and Service Provision (5% Max)	\$110,000	\$120,000	\$230,000
Implementation Infrastructure (5% Max)	\$110,000	\$120,000	\$230,000
<b>Total Miscellaneous Costs</b>	\$290,000	\$320,000	\$610,000
<b>Total Projected Budget Expenditures</b>	\$2,163,634	\$2,396,735	\$4,560,369

## Exhibit B, Attachment II

State of California - Health and Human Services Agency

Department of Health Care Services

Form A

## MAT Expansion Project: California Hub and Spoke System (CA H&amp;SS)

## MONTHLY CLAIM FOR REIMBURSEMENT

<b>Mail Completed Form To:</b>	<b>Contractor:</b>
Department of Health Care Services SUD Compliance Division P.O. Box 997413, MS 2600 Sacramento, CA 95899-7413 Attn: Kevin Masuda	
	<b>Payee:</b>
	<b>Address:</b>
	<b>City/Zip:</b>
	<b>Phone:</b>
	<b>Email Address:</b>
	<b>Billing Period From:</b> ___/___/___ <b>To:</b> ___/___/___

Personnel (salaries and benefits)	
MAT Spoke Team	\$ -
CA H&SS Coordinator	\$ -
Prevention Specialists	\$ -
Academic Detailing	\$ -
<b>Total of Personnel Services</b>	\$ -

Miscellaneous Services	
Neonatal Abstinence Syndrome Treatment	\$ -
Justice Involved Re-Entry CA H&SS Service	\$ -
Patient Transportation Tokens and Passes	\$ -
Telehealth Infrastructure and Services	\$ -
Implementation Infrastructure	\$ -
<b>Total of Treatment Services</b>	\$ -

Treatment Services	
Counseling Services	\$ -
HIV and Hep C Testing	\$ -
Case Management Services	\$ -
Recovery and Peer Support Services	\$ -
Co-Pays/Uninsured Physician Services	\$ -
Drug Testing	\$ -
Required Medication Costs	\$ -
Additional Medication Costs	\$ -
Naloxone	\$ -
<b>Total of Treatment Services</b>	\$ -

Outreach	
Local Opioid Coalitions	\$ -

<b>Total of All Sections</b>	<b>\$ -</b>
------------------------------	-------------

**Backup for all monthly expenditures are to be itemized on an attached sheet (Form B) and submitted with the monthly invoice.**

I hereby certify that all costs are consistent with the award.

X  
Contractor Signature  
(Please use blue ink)

Date: \_\_\_/\_\_\_/\_\_\_

Print name of Contractor Representative

## DHCS SUDCD Use Only

Encumbrance Number:	FY:	Index Code:	PCA Number:
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I hereby certify that the required data reports for the above billing period have been received and payment is authorized.

Date: \_\_\_/\_\_\_/\_\_\_

Michael Freeman

Name of CA H&SS Project Manager

Signature SUDCD CA H&SS Project Manager

**Exhibit B, Attachment III**

State of California - Health and Human Services Agency

Department of Health Care Services

Form B

**MAT Expansion Project: California Hub and Spoke System (CA H&SS)****ITEMIZED MONTHLY INVOICE FOR REIMBURSEMENT**

<b>Mail Completed Form To:</b>	<b>Contractor:</b>
Department of Health Care Services SUD Compliance Division P.O. Box 997413, MS 2600 Sacramento, CA 95899-7413 Attn: Kevin Masuda	<b>Payee:</b>
	<b>Address:</b>
	<b>City/Zip:</b>
	<b>Phone:</b>
	<b>Email Address:</b>
	<b>Billing Period From:</b> ____ / ____ / ____ <b>To:</b> ____ / ____ / ____

**Personnel Services****Example:****MAT Spoke Team**

Three FTE Nurses for Spokes A, B and C at \$9,000 a month each (with benefits) for 3 months = \$81,000

Spoke A is located at XYZ Treatment Provider, 1234 Sunshine Road, Treatment CA

Spoke B is located at Dr. MAT's Practice, 1234 Buprenorphine Way, Rescue, CA

Spoke C is located at FQHC, 4747 Recovery Lane, Mountain City, CA

**Total of Personnel Services** \$**Treatment Services****Example:****Co-Pays/Uninsured Physician Services**

Covered insurance co-pays for 150 patients at \$200 a month for three months = \$90,000

Physician services for uninsured patients at \$2,000 a month for 50 patients for 3 months = \$300,000

**Total of Treatment Services** \$**Outreach Services****Example:****Local Opioid Coalition**

Distributed 200 naloxone kits with training at Mountain City opioid coalition event in August 2017

(200 kits @ \$75 each plus \$1,000 for training = \$16,000)

**Total of Outreach Services** \$**Miscellaneous Services****Example:****Patient Transportation**

Purchased monthly bus passes for 50 patients for three months at \$75 each = \$11,250

**Total of Miscellaneous Services** \$**Total for All Sections** \$

Signature of SUDCD CA H&amp;SS Project Manager

Name of CA H&amp;SS Project Manager

## Special Terms and Conditions

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

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

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

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

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

### Index of Special Terms and Conditions

1. Federal Equal Employment Opportunity Requirements	17. Human Subjects Use Requirements
2. Travel and Per Diem Reimbursement	18. Novation Requirements
3. Procurement Rules	19. Debarment and Suspension Certification
4. Equipment Ownership / Inventory / Disposition	20. Smoke-Free Workplace Certification
5. Subcontract Requirements	21. Covenant Against Contingent Fees
6. Income Restrictions	22. Payment Withholds
7. Audit and Record Retention	23. Performance Evaluation
8. Site Inspection	24. Officials Not to Benefit
9. Federal Contract Funds	25. Four-Digit Date Compliance
10. Intellectual Property Rights	26. Prohibited Use of State Funds for Software
11. Air or Water Pollution Requirements	27. Use of Small, Minority Owned and Women's Businesses
12. Prior Approval of Training Seminars, Workshops or Conferences	28. Alien Ineligibility Certification
13. Confidentiality of Information	29. Union Organizing
14. Documents, Publications, and Written Reports	30. Contract Uniformity (Fringe Benefit Allowability)
15. Dispute Resolution Process	31. Suspension or Stop Work Notification
16. Financial and Compliance Audit Requirements	32. Lobbying Restrictions and Disclosure Certification

## 1. Federal Equal Opportunity Requirements

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

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

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

## 2. Travel and Per Diem Reimbursement

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

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

## 3. Procurement Rules

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

### a. Equipment/Property definitions

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

- (1) **Major equipment/property:** A tangible or intangible item having a base unit cost of \$5,000 or more with a life expectancy of one (1) year or more and is either furnished by DHCS or the cost is reimbursed through this Agreement. Software and videos are examples of intangible items that meet this definition.
- (2) **Minor equipment/property:** A tangible item having a base unit cost of less than \$5,000 with a life expectancy of one (1) year or more and is either furnished by DHCS or the cost is reimbursed through this Agreement.

- b. **Government and public entities** (including state colleges/universities and auxiliary organizations), whether acting as a contractor and/or subcontractor, may secure all commodities, supplies, equipment and services related to such purchases that are required in performance of this Agreement. Said procurements are subject to Paragraphs d through h of Provision 3. Paragraph c of Provision 3 shall also apply, if equipment/property purchases are delegated to subcontractors that are nonprofit organizations or commercial businesses.

- c. **Nonprofit organizations and commercial businesses**, whether acting as a contractor and/or subcontractor, may secure commodities, supplies, equipment/property and services related to such purchases for performance under this Agreement.

- (1) Equipment/property purchases shall not exceed \$50,000 annually.

To secure equipment/property above the annual maximum limit of \$50,000, the Contractor shall

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

- (2) All equipment/property purchases are subject to Paragraphs d through h of Provision 3. Paragraph b of Provision 3 shall also apply, if equipment/property purchases are delegated to subcontractors that are either a government or public entity.
- (3) Nonprofit organizations and commercial businesses shall use a procurement system that meets the following standards:
  - (a) Maintain a code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in awarding procurement contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a procurement, or bid contract in which, to his or her knowledge, he or she has a financial interest.
  - (b) Procurements shall be conducted in a manner that provides, to the maximum extent practical, open, and free competition.
  - (c) Procurements shall be conducted in a manner that provides for all of the following:
    - [1] Avoid purchasing unnecessary or duplicate items.
    - [2] Equipment/property solicitations shall be based upon a clear and accurate description of the technical requirements of the goods to be procured.
    - [3] Take positive steps to utilize small and veteran owned businesses.
- d. Unless waived or otherwise stipulated in writing by DHCS, prior written authorization from the appropriate DHCS Program Contract Manager will be required before the Contractor will be reimbursed for any purchase of \$5,000 or more for commodities, supplies, equipment/property, and services related to such purchases. The Contractor must provide in its request for authorization all particulars necessary, as specified by DHCS, for evaluating the necessity or desirability of incurring such costs. The term "purchase" excludes the purchase of services from a subcontractor and public utility services at rates established for uniform applicability to the general public.
- e. In special circumstances, determined by DHCS (e.g., when DHCS has a need to monitor certain purchases, etc.), DHCS may require prior written authorization and/or the submission of paid vendor receipts for any purchase, regardless of dollar amount. DHCS reserves the right to either deny claims for reimbursement or to request repayment for any Contractor and/or subcontractor purchase that DHCS determines to be unnecessary in carrying out performance under this Agreement.
- f. The Contractor and/or subcontractor must maintain a copy or narrative description of the procurement system, guidelines, rules, or regulations that will be used to make purchases under this Agreement. The State reserves the right to request a copy of these documents and to inspect the purchasing practices of the Contractor and/or subcontractor at any time.
- g. For all purchases, the Contractor and/or subcontractor must maintain copies of all paid vendor invoices, documents, bids and other information used in vendor selection, for inspection or audit. Justifications supporting the absence of bidding (i.e., sole source purchases) shall also be maintained on file by the Contractor and/or subcontractor for inspection or audit.
- h. DHCS may, with cause (e.g., with reasonable suspicion of unnecessary purchases or use of inappropriate purchase practices, etc.), withhold, cancel, modify, or retract the delegated purchase authority granted under Paragraphs b and/or c of Provision 3 by giving the Contractor no less than 30 calendar days written notice.

#### 4. Equipment/Property Ownership / Inventory / Disposition

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

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

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

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

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

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

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



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

g. **Motor Vehicles**

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

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

**Automobile Liability Insurance**

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

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

## 5. Subcontract Requirements

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

- a. DHCS reserves the right to approve or disapprove the selection of subcontractors and with advance written notice, require the substitution of subcontractors and require the Contractor to terminate subcontracts entered into in support of this Agreement.
  - (1) Upon receipt of a written notice from DHCS requiring the substitution and/or termination of a subcontract, the Contractor shall take steps to ensure the completion of any work in progress and select a replacement, if applicable, within 30 calendar days, unless a longer period is agreed to by DHCS.
- b. Contractor shall maintain a copy of each subcontract entered into in support of this Agreement and shall, upon request by DHCS, make copies available for approval, inspection, or audit.
- c. DHCS assumes no responsibility for the payment of subcontractors used in the performance of this Agreement. Contractor accepts sole responsibility for the payment of subcontractors used in the performance of this Agreement.
- d. The Contractor is responsible for all performance requirements under this Agreement even though performance may be carried out through a subcontract.
- e. The Contractor shall ensure that all subcontracts for services include provision(s) requiring compliance with applicable terms and conditions specified in this Agreement.
- f. The Contractor agrees to include the following clause, relevant to record retention, in all subcontracts for services:

"(Subcontractor Name) agrees to maintain and preserve, until three years after termination of (Agreement Number) and final payment from DHCS to the Contractor, to permit DHCS or any duly authorized representative, to have access to, examine or audit any pertinent books, documents, papers and records related to this subcontract and to allow interviews of any employees who might reasonably have information related to such records."

- g. Unless otherwise stipulated in writing by DHCS, the Contractor shall be the subcontractor's sole point of contact for all matters related to performance and payment under this Agreement.
- h. Contractor shall, as applicable, advise all subcontractors of their obligations pursuant to the following numbered provisions of this Exhibit: 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 17, 19, 20, 24, 32 and/or other numbered provisions herein that are deemed applicable.

## 6. Income Restrictions

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

## 7. Audit and Record Retention

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

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

- g. The Contractor shall, if applicable, comply with the Single Audit Act and the audit reporting requirements set forth in OMB Circular A-133.

## 8. Site Inspection

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

## 9. Federal Contract Funds

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

- a. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the Agreement were executed after that determination was made.
- b. This agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the fiscal years covered by the term of this Agreement. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress which may affect the provisions, terms or funding of this Agreement in any manner.
- c. It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.
- d. DHCS has the option to invalidate or cancel the Agreement with 30-days advance written notice or to amend the Agreement to reflect any reduction in funds.

## 10. Intellectual Property Rights

### a. Ownership

- (1) Except where DHCS has agreed in a signed writing to accept a license, DHCS shall be and remain, without additional compensation, the sole owner of any and all rights, title and interest in all Intellectual Property, from the moment of creation, whether or not jointly conceived, that are made, conceived, derived from, or reduced to practice by Contractor or DHCS and which result directly or indirectly from this Agreement.
- (2) For the purposes of this Agreement, Intellectual Property means recognized protectable rights and interest such as: patents, (whether or not issued) copyrights, trademarks, service marks, applications for any of the foregoing, inventions, trade secrets, trade dress, logos, insignia, color combinations, slogans, moral rights, right of publicity, author's rights, contract and licensing rights, works, mask works, industrial design rights, rights of priority, know how, design flows, methodologies, devices, business processes, developments, innovations, good will and all other legal rights protecting intangible proprietary information as may exist now and/or here after come into existence, and all renewals and extensions, regardless of whether those rights arise under the laws of the United States, or any other state, country or jurisdiction.
  - (a) For the purposes of the definition of Intellectual Property, "works" means all literary works, writings and printed matter including the medium by which they are recorded or reproduced, photographs, art work, pictorial and graphic representations and works of a similar nature, film, motion pictures, digital images, animation cells, and other audiovisual works including positives and negatives thereof, sound recordings, tapes, educational materials, interactive videos and any other materials or products created, produced, conceptualized and fixed in a tangible medium of

expression. It includes preliminary and final products and any materials and information developed for the purposes of producing those final products. Works does not include articles submitted to peer review or reference journals or independent research projects.

- (3) In the performance of this Agreement, Contractor will exercise and utilize certain of its Intellectual Property in existence prior to the effective date of this Agreement. In addition, under this Agreement, Contractor may access and utilize certain of DHCS' Intellectual Property in existence prior to the effective date of this Agreement. Except as otherwise set forth herein, Contractor shall not use any of DHCS' Intellectual Property now existing or hereafter existing for any purposes without the prior written permission of DHCS. **Except as otherwise set forth herein, neither the Contractor nor DHCS shall give any ownership interest in or rights to its Intellectual Property to the other Party.** If during the term of this Agreement, Contractor accesses any third-party Intellectual Property that is licensed to DHCS, Contractor agrees to abide by all license and confidentiality restrictions applicable to DHCS in the third-party's license agreement.
- (4) Contractor agrees to cooperate with DHCS in establishing or maintaining DHCS' exclusive rights in the Intellectual Property, and in assuring DHCS' sole rights against third parties with respect to the Intellectual Property. If the Contractor enters into any agreements or subcontracts with other parties in order to perform this Agreement, Contractor shall require the terms of the Agreement(s) to include all Intellectual Property provisions. Such terms must include, but are not limited to, the subcontractor assigning and agreeing to assign to DHCS all rights, title and interest in Intellectual Property made, conceived, derived from, or reduced to practice by the subcontractor, Contractor or DHCS and which result directly or indirectly from this Agreement or any subcontract.
- (5) Contractor further agrees to assist and cooperate with DHCS in all reasonable respects, and execute all documents and, subject to reasonable availability, give testimony and take all further acts reasonably necessary to acquire, transfer, maintain, and enforce DHCS' Intellectual Property rights and interests.

**b. Retained Rights / License Rights**

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

**c. Copyright**

- (1) Contractor agrees that for purposes of copyright law, all works [as defined in Paragraph a, subparagraph (2)(a) of this provision] of authorship made by or on behalf of Contractor in connection with Contractor's performance of this Agreement shall be deemed "works made for hire". Contractor further agrees that the work of each person utilized by Contractor in connection with the performance of this Agreement will be a "work made for hire," whether that person is an employee of Contractor or that person has entered into an agreement with Contractor to perform the work. Contractor shall enter into a written agreement with any such person that: (i) all work performed for Contractor shall be deemed a "work made for hire" under the Copyright Act and (ii) that person shall assign all right, title, and interest to DHCS to any work product made, conceived, derived from, or reduced to practice by Contractor or DHCS and which result directly or indirectly from this Agreement.

- (2) All materials, including, but not limited to, visual works or text, reproduced or distributed pursuant to this Agreement that include Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or DHCS and which result directly or indirectly from this Agreement, shall include DHCS' notice of copyright, which shall read in 3mm or larger typeface: "© [Enter Current Year e.g., 2010, etc.], California Department of Health Care Services. This material may not be reproduced or disseminated without prior written permission from the California Department of Health Care Services." This notice should be placed prominently on the materials and set apart from other matter on the page where it appears. Audio productions shall contain a similar audio notice of copyright.

**d. Patent Rights**

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

**e. Third-Party Intellectual Property**

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

**f. Warranties**

- (1) Contractor represents and warrants that:

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

- (g) It has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
- (h) It has no knowledge of any outstanding claims, licenses or other charges, liens, or encumbrances of any kind or nature whatsoever that could affect in any way Contractor's performance of this Agreement.

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

**g. Intellectual Property Indemnity**

- (1) Contractor shall indemnify, defend and hold harmless DHCS and its licensees and assignees, and its officers, directors, employees, agents, representatives, successors, and users of its products, ("Indemnitees") from and against all claims, actions, damages, losses, liabilities (or actions or proceedings with respect to any thereof), whether or not rightful, arising from any and all actions or claims by any third party or expenses related thereto (including, but not limited to, all legal expenses, court costs, and attorney's fees incurred in investigating, preparing, serving as a witness in, or defending against, any such claim, action, or proceeding, commenced or threatened) to which any of the Indemnitees may be subject, whether or not Contractor is a party to any pending or threatened litigation, which arise out of or are related to (i) the incorrectness or breach of any of the representations, warranties, covenants or agreements of Contractor pertaining to Intellectual Property; or (ii) any Intellectual Property infringement, or any other type of actual or alleged infringement claim, arising out of DHCS' use, reproduction, manufacture, sale, offer to sell, distribution, import, export, modification, public and private performance/display, license, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or DHCS and which result directly or indirectly from this Agreement. This indemnity obligation shall apply irrespective of whether the infringement claim is based on a patent, trademark or copyright registration that issued after the effective date of this Agreement. DHCS reserves the right to participate in and/or control, at Contractor's expense, any such infringement action brought against DHCS.
- (2) Should any Intellectual Property licensed by the Contractor to DHCS under this Agreement become the subject of an Intellectual Property infringement claim, Contractor will exercise its authority reasonably and in good faith to preserve DHCS' right to use the licensed Intellectual Property in accordance with this Agreement at no expense to DHCS. DHCS shall have the right to monitor and appear through its own counsel (at Contractor's expense) in any such claim or action. In the defense or settlement of the claim, Contractor may obtain the right for DHCS to continue using the licensed Intellectual Property; or, replace or modify the licensed Intellectual Property so that the replaced or modified Intellectual Property becomes non-infringing provided that such replacement or modification is functionally equivalent to the original licensed Intellectual Property. If such remedies are not reasonably available, DHCS shall be entitled to a refund of all monies paid under this Agreement, without restriction or limitation of any other rights and remedies available at law or in equity.
- (3) Contractor agrees that damages alone would be inadequate to compensate DHCS for breach of any term of this Intellectual Property Exhibit by Contractor. Contractor acknowledges DHCS would suffer irreparable harm in the event of such breach and agrees DHCS shall be entitled to obtain equitable relief, including without limitation an injunction, from a court of competent jurisdiction, without restriction or limitation of any other rights and remedies available at law or in equity.

**h. Federal Funding**

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



**i. Survival**

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

**11. Air or Water Pollution Requirements**

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

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

**12. Prior Approval of Training Seminars, Workshops or Conferences**

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

**13. Confidentiality of Information**

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

**14. Documents, Publications and Written Reports**



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

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

## 15. Dispute Resolution Process

- a. A Contractor grievance exists whenever there is a dispute arising from DHCS' action in the administration of an agreement. If there is a dispute or grievance between the Contractor and DHCS, the Contractor must seek resolution using the procedure outlined below.
  - (1) The Contractor should first informally discuss the problem with the DHCS Program Contract Manager. If the problem cannot be resolved informally, the Contractor shall direct its grievance together with any evidence, in writing, to the program Branch Chief. The grievance shall state the issues in dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Branch Chief shall render a decision within ten (10) working days after receipt of the written grievance from the Contractor. The Branch Chief shall respond in writing to the Contractor indicating the decision and reasons therefore. If the Contractor disagrees with the Branch Chief's decision, the Contractor may appeal to the second level.
  - (2) When appealing to the second level, the Contractor must prepare an appeal indicating the reasons for disagreement with Branch Chief's decision. The Contractor shall include with the appeal a copy of the Contractor's original statement of dispute along with any supporting evidence and a copy of the Branch Chief's decision. The appeal shall be addressed to the Deputy Director of the division in which the branch is organized within ten (10) working days from receipt of the Branch Chief's decision. The Deputy Director of the division in which the branch is organized or his/her designee shall meet with the Contractor to review the issues raised. A written decision signed by the Deputy Director of the division in which the branch is organized or his/her designee shall be directed to the Contractor within twenty (20) working days of receipt of the Contractor's second level appeal.
- b. If the Contractor wishes to appeal the decision of the Deputy Director of the division in which the branch is organized or his/her designee, the Contractor shall follow the procedures set forth in Health and Safety Code Section 100171.
- c. Unless otherwise stipulated in writing by DHCS, all dispute, grievance and/or appeal correspondence shall be directed to the DHCS Program Contract Manager.
- d. There are organizational differences within DHCS' funding programs and the management levels identified in this dispute resolution provision may not apply in every contractual situation. When a grievance is received and organizational differences exist, the Contractor shall be notified in writing by the DHCS Program Contract Manager of the level, name, and/or title of the appropriate management official that is responsible for issuing a decision at a given level.

## 16. Financial and Compliance Audit Requirements

- a. The definitions used in this provision are contained in Section 38040 of the Health and Safety Code, which by this reference is made a part hereof.
- b. Direct service contract means a contract or agreement for services contained in local assistance or subvention programs or both (see Health and Safety [H&S] Code Section 38020). Direct service contracts shall not include contracts, agreements, grants, or subventions to other governmental agencies or units of government nor contracts or agreements with regional centers or area agencies on aging (H&S Code Section 38030).
- c. The Contractor, as indicated below, agrees to obtain one of the following audits:

(1) *If the Contractor is a nonprofit organization (as defined in H&S Code Section 38040) and*

receives \$25,000 or more from any State agency under a direct service contract or agreement; the Contractor agrees to obtain an annual single, organization wide, financial and compliance audit. Said audit shall be conducted according to Generally Accepted Auditing Standards. This audit does not fulfill the audit requirements of Paragraph c(3) below. The audit shall be completed by the 15th day of the fifth month following the end of the Contractor's fiscal year, **and/or**

- (2) ***If the Contractor is a nonprofit organization (as defined in H&S Code Section 38040) and receives less than \$25,000 per year from any State agency under a direct service contract or agreement***, the Contractor agrees to obtain a biennial single, organization wide financial and compliance audit, unless there is evidence of fraud or other violation of state law in connection with this Agreement. This audit does not fulfill the audit requirements of Paragraph c(3) below. The audit shall be completed by the 15th day of the fifth month following the end of the Contractor's fiscal year, **and/or**
- (3) ***If the Contractor is a State or Local Government entity or Nonprofit organization (as defined by the Federal Office of Management and Budget [OMB] Circular A-133) and expends \$500,000 or more in Federal awards***, the Contractor agrees to obtain an annual single, organization wide, financial and compliance audit according to the requirements specified in OMB Circular A-133 entitled "Audits of States, Local Governments, and Non-Profit Organizations". An audit conducted pursuant to this provision will fulfill the audit requirements outlined in Paragraphs c(1) and c(2) above. The audit shall be completed by the end of the ninth month following the end of the audit period. The requirements of this provision apply if:
- (a) The Contractor is a recipient expending Federal awards received directly from Federal awarding agencies, or
  - (b) The Contractor is a subrecipient expending Federal awards received from a pass-through entity such as the State, County or community based organization.
- (4) If the Contractor submits to DHCS a report of an audit other than an OMB A-133 audit, the Contractor must also submit a certification indicating the Contractor has not expended \$500,000 or more in federal funds for the year covered by the audit report.
- d. Two copies of the audit report shall be delivered to the DHCS program funding this Agreement. The audit report must identify the Contractor's legal name and the number assigned to this Agreement. The audit report shall be due within 30 days after the completion of the audit. Upon receipt of said audit report, the DHCS Program Contract Manager shall forward the audit report to DHCS' Audits and Investigations Unit if the audit report was submitted under Section 16.c(3), unless the audit report is from a City, County, or Special District within the State of California whereby the report will be retained by the funding program.
  - e. The cost of the audits described herein may be included in the funding for this Agreement up to the proportionate amount this Agreement represents of the Contractor's total revenue. The DHCS program funding this Agreement must provide advance written approval of the specific amount allowed for said audit expenses.
  - f. The State or its authorized designee, including the Bureau of State Audits, is responsible for conducting agreement performance audits which are not financial and compliance audits. Performance audits are defined by Generally Accepted Government Auditing Standards.
  - g. Nothing in this Agreement limits the State's responsibility or authority to enforce State law or regulations, procedures, or reporting requirements arising thereto.
  - h. Nothing in this provision limits the authority of the State to make audits of this Agreement, provided however, that if independent audits arranged for by the Contractor meet Generally Accepted Governmental Auditing Standards, the State shall rely on those audits and any additional audit work and shall build upon the work already done.
  - i. The State may, at its option, direct its own auditors to perform either of the audits described above. The Contractor will be given advance written notification, if the State chooses to exercise its option to perform said audits.

- j. The Contractor shall include a clause in any agreement the Contractor enters into with the audit firm doing the single organization wide audit to provide access by the State or Federal Government to the working papers of the independent auditor who prepares the single organization wide audit for the Contractor.
- k. Federal or state auditors shall have "expanded scope auditing" authority to conduct specific program audits during the same period in which a single organization wide audit is being performed, but the audit report has not been issued. The federal or state auditors shall review and have access to the current audit work being conducted and will not apply any testing or review procedures which have not been satisfied by previous audit work that has been completed.

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

#### **17. Human Subjects Use Requirements**

(Applicable only to federally funded agreements/grants in which performance, directly or through a subcontract/subaward, includes any tests or examination of materials derived from the human body.)

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

**18. Novation Requirements**

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

**19. Debarment and Suspension Certification**

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

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

**20. Smoke-Free Workplace Certification**

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

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

**21. Covenant Against Contingent Fees**

(Applicable only to federally funded agreements.)

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

**22. Payment Withholds**

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

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

**23. Performance Evaluation**

(Not applicable to grant agreements.)

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

**24. Officials Not to Benefit**

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

**25. Four-Digit Date Compliance**

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

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

**26. Prohibited Use of State Funds for Software**

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

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

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

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

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

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

**28. Alien Ineligibility Certification**

(Applicable to sole proprietors entering federally funded agreements.)

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

**29. Union Organizing**

(Applicable only to grant agreements.)

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

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

**30. Contract Uniformity (Fringe Benefit Allowability)**

(Applicable only to nonprofit organizations.)

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

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

## f. Earned/Accrued Compensation

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

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

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

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

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

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

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

**31. Suspension or Stop Work Notification**

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



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

### **32. Lobbying Restrictions and Disclosure Certification**

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

#### **a. Certification and Disclosure Requirements**

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

## b. Prohibition

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

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

**CERTIFICATION REGARDING LOBBYING**

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

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

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

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

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

\_\_\_\_\_  
Name of Contractor

\_\_\_\_\_  
Printed Name of Person Signing for Contractor

\_\_\_\_\_  
Contract / Grant Number

\_\_\_\_\_  
Signature of Person Signing for Contractor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

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

California Department of Health Care Services

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

## Attachment 2

**CERTIFICATION REGARDING LOBBYING**

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

Approved by OMB  
C348-0046

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

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

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

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

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

**Exhibit E**  
**Additional Provisions**

**1. Amendment Process**

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

**2. Cancellation / Termination**

- A. This Agreement may be cancelled by DHCS without cause upon 30 calendar days advance written notice to the Contractor.
- B. DHCS reserves the right to cancel or terminate this Agreement immediately for cause. The Contractor may submit a written request to terminate this Agreement only if DHCS substantially fails to perform its responsibilities as provided herein.
- C. The term "for cause" shall mean that the Contractor fails to meet the terms, conditions, and/or responsibilities of this Agreement.
- D. Agreement termination or cancellation shall be effective as of the date indicated in DHCS' notification to the Contractor. The notice shall stipulate any final performance, invoicing or payment requirements.
- E. Upon receipt of a notice of termination or cancellation, the Contractor shall take immediate steps to stop performance and to cancel or reduce subsequent agreement costs.
- F. In the event of early termination or cancellation, the Contractor shall be entitled to payment for all allowable costs authorized under this Agreement and incurred up to the date of termination or cancellation, including authorized non-cancelable obligations, provided such expenses do not exceed the stated maximum amounts payable.

**3. Avoidance of Conflicts of Interest by Contractor**

- A. DHCS intends to avoid any real or apparent conflict of interest on the part of the Contractor, subcontractors, or employees, officers and directors of the Contractor or subcontractors. Thus, DHCS reserves the right to determine, at its sole discretion, whether any information, assertion or claim received from any source indicates the existence of Contractor to submit additional information or a plan for resolving the conflict, subject to DHCS review and prior approval.
- B. Conflicts of interest include, but are not limited to:
  - 1) An instance where the Contractor or any of its subcontractors, or any employee, officer, or director of the Contractor or any subcontractors, has an interest, financial or otherwise, whereby the use or disclosure of information obtained while performing services under the Agreement would allow for private or personal benefit or for any purpose that is contrary to the goals and objectives of the Agreement.
  - 2) An instance where the Contractor's or any subcontractors' employees, officers, or directors use their positions for purposes that are, or give the appearance of being, motivated by a

**Exhibit E**  
Additional Provisions

desire for private gain for themselves or others, such as those with whom they have family, business or other ties.

- C. If DHCS is or becomes aware of a known or suspected conflict of interest, the Contractor will be given an opportunity to submit additional information or to resolve the conflict. A Contractor with a suspected conflict of interest will have five (5) working days from the date of notification of the conflict by DHCS to provide complete information regarding the suspected conflict. If a conflict of interest is determined to exist by DHCS and cannot be resolved to the satisfaction of DHCS, the conflict will be grounds for terminating the Agreement. DHCS may, at its discretion upon receipt of a written request from the Contractor, authorize an extension of the timeline indicated herein.

**4. Domestic Partners**

This provision supersedes and replaces Provision 7 (Domestic Partners) in the Department of General Services' Contractor Certification Clauses incorporated by reference within the General Terms and Conditions (GTC) cited on the face of the Agreement. Based upon an existing program exemption from Chapter 2 of Part 2 of Division 2 of the Public Contract Code that applies to this Agreement, DHCS concludes that this Agreement is not subject to the requirements of Public Contract Code Section 10295.3 governing domestic partners.

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

**I. Recitals**

- A. This Contract (Agreement) has been determined to constitute a business associate relationship under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), 42 U.S.C. section 17921 et seq., and their implementing privacy and security regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations").
- B. The Department of Health Care Services ("DHCS") wishes to disclose to Business Associate certain information pursuant to the terms of this Agreement, some of which may constitute Protected Health Information ("PHI"), including protected health information in electronic media ("ePHI"), under federal law, and personal information ("PI") under state law.
- C. As set forth in this Agreement, Contractor, here and after, is the Business Associate of DHCS acting on DHCS' behalf and provides services, arranges, performs or assists in the performance of functions or activities on behalf of DHCS and creates, receives, maintains, transmits, uses or discloses PHI and PI. DHCS and Business Associate are each a party to this Agreement and are collectively referred to as the "parties."
- D. The purpose of this Addendum is to protect the privacy and security of the PHI and PI that may be created, received, maintained, transmitted, used or disclosed pursuant to this Agreement, and to comply with certain standards and requirements of HIPAA, the HITECH Act and the HIPAA regulations, including, but not limited to, the requirement that DHCS must enter into a contract containing specific requirements with Contractor prior to the disclosure of PHI to Contractor, as set forth in 45 CFR Parts 160 and 164 and the HITECH Act, and the Final Omnibus Rule as well as the Alcohol and Drug Abuse patient records confidentiality law 42 CFR Part 2, and any other applicable state or federal law or regulation. 42 CFR section 2.1(b)(2)(B) allows for the disclosure of such records to qualified personnel for the purpose of conducting management or financial audits, or program evaluation. 42 CFR Section 2.53(d) provides that patient identifying information disclosed under this section may be disclosed only back to the program from which it was obtained and used only to carry out an audit or evaluation purpose or to investigate or prosecute criminal or other activities, as authorized by an appropriate court order.
- E. The terms used in this Addendum, but not otherwise defined, shall have the same meanings as those terms have in the HIPAA regulations. Any reference to statutory or regulatory language shall be to such language as in effect or as amended.

**II. Definitions**

- A. Breach shall have the meaning given to such term under HIPAA, the HITECH Act, the HIPAA regulations, and the Final Omnibus Rule.
- B. Business Associate shall have the meaning given to such term under HIPAA, the HITECH Act, the HIPAA regulations, and the final Omnibus Rule.
- C. Covered Entity shall have the meaning given to such term under HIPAA, the HITECH Act, the HIPAA regulations, and Final Omnibus Rule.
- D. Electronic Health Record shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C Section 17921 and implementing regulations.



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

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

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

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

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

the intended purpose of such use or disclosure, in compliance with the HITECH Act and any guidance issued pursuant to such Act, the HIPAA regulations, the Final Omnibus Rule and 42 CFR Part 2.

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

**B. Prohibited Uses and Disclosures**

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

**C. Responsibilities of Business Associate**

Business Associate agrees:

1. **Nondisclosure.** Not to use or disclose Protected Health Information (PHI) other than as permitted or required by this Agreement or as required by law.
2. **Safeguards.** To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI, including electronic PHI, that it creates, receives, maintains, uses or transmits on behalf of DHCS, in compliance with 45 CFR sections 164.308, 164.310 and 164.312, and to prevent use or disclosure of PHI other than as provided for by this Agreement. Business Associate shall implement reasonable and appropriate policies and procedures to comply with the standards, implementation specifications and other requirements of 45 CFR section 164, subpart C, in compliance with 45 CFR section 164.316. Business Associate shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Business Associate's operations and the nature and scope of its activities, and which incorporates the requirements of section 3, Security, below. Business Associate will provide DHCS with its current and updated policies.

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

3. **Security.** To take any and all steps necessary to ensure the continuous security of all computerized data systems containing PHI and/or PI, and to protect paper documents containing PHI and/or PI. These steps shall include, at a minimum:
- a. Complying with all of the data system security precautions listed in Attachment A, the Business Associate Data Security Requirements;
  - b. Achieving and maintaining compliance with the HIPAA Security Rule (45 CFR Parts 160 and 164), as necessary in conducting operations on behalf of DHCS under this Agreement;
  - c. Providing a level and scope of security that is at least comparable to the level and scope of security established by the Office of Management and Budget in OMB Circular No. A-130, Appendix III - Security of Federal Automated Information Systems, which sets forth guidelines for automated information systems in Federal agencies; and
  - d. In case of a conflict between any of the security standards contained in any of these enumerated sources of security standards, the most stringent shall apply. The most stringent means that safeguard which provides the highest level of protection to PHI from unauthorized disclosure. Further, Business Associate must comply with changes to these standards that occur after the effective date of this Agreement.

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

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

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

1. To enter into written agreements with any agents, including subcontractors and vendors, to whom Business Associate provides PHI or PI received from or created or received by Business Associate on behalf of DHCS, that impose the same restrictions and conditions on such agents, subcontractors and vendors that apply to Business Associate with respect to such PHI and PI under this Addendum, and that comply with all applicable provisions of HIPAA, the HITECH Act the HIPAA regulations, and the Final Omnibus Rule, including the requirement that any agents, subcontractors or vendors implement reasonable and appropriate administrative, physical, and technical safeguards to protect such PHI and PI. Business associates are directly liable under the HIPAA Rules and subject to civil and, in some cases, criminal penalties for making uses and disclosures of protected health information that are not authorized by its contract or required by law. A business associate also is directly liable and subject to civil penalties for failing to safeguard electronic protected health information in accordance with the HIPAA Security Rule. A "business associate" also is a subcontractor that creates, receives, maintains, or transmits protected health information on behalf of another business associate. Business Associate shall incorporate, when applicable, the relevant provisions of this Addendum into each subcontract or subaward to such agents, subcontractors and vendors, including the requirement that any security incidents or breaches of unsecured PHI or PI be reported to Business Associate.

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

2. In accordance with 45 CFR section 164.504(e)(1)(ii), upon Business Associate's knowledge of a material breach or violation by its subcontractor of the agreement between Business Associate and the subcontractor, Business Associate shall:
  - a. Provide an opportunity for the subcontractor to cure the breach or end the violation and terminate the agreement if the subcontractor does not cure the breach or end the violation within the time specified by DHCS; or
  - b. Immediately terminate the agreement if the subcontractor has breached a material term of the agreement and cure is not possible.

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

1. To provide access as DHCS may require, and in the time and manner designated by DHCS (upon reasonable notice and during Business Associate's normal business hours) to PHI in a Designated Record Set, to DHCS (or, as directed by DHCS), to an Individual, in accordance with 45 CFR section 164.524. Designated Record Set means the group of records maintained for DHCS that includes medical, dental and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for DHCS health plans; or those records used to make decisions about individuals on behalf of DHCS. Business Associate shall use the forms and processes developed by DHCS for this purpose and shall respond to requests for access to records transmitted by DHCS within fifteen (15) calendar days of receipt of the request by producing the records or verifying that there are none.
2. If Business Associate maintains an Electronic Health Record with PHI, and an individual requests a copy of such information in an electronic format, Business Associate shall provide such information in an electronic format to enable DHCS to fulfill its obligations under the HITECH Act, including but not limited to, 42 U.S.C. section 17935(e).
3. If Business Associate receives data from DHCS that was provided to DHCS by the Social Security Administration, upon request by DHCS, Business Associate shall provide DHCS with a list of all employees, contractors and agents who have access to the Social Security data, including employees, contractors and agents of its subcontractors and agents.

**G. Amendment of PHI.** To make any amendment(s) to PHI that DHCS directs or agrees to pursuant to 45 CFR section 164.526, in the time and manner designated by DHCS.**H. Internal Practices.** To make Business Associate's internal practices, books and records relating to the use and disclosure of PHI received from DHCS, or created or received by Business Associate on behalf of DHCS, available to DHCS or to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by DHCS or by the Secretary, for purposes of determining DHCS' compliance with the HIPAA regulations. If any information needed for this purpose is in the exclusive possession of any other entity or person and the other entity or person fails or refuses to furnish the information to Business Associate, Business Associate shall so certify to DHCS and shall set forth the efforts it made to obtain the information.

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

- I. **Documentation of Disclosures.** To document and make available to DHCS or (at the direction of DHCS) to an Individual such disclosures of PHI, and information related to such disclosures, necessary to respond to a proper request by the subject Individual for an accounting of disclosures of PHI, in accordance with the HITECH Act and its implementing regulations, including but not limited to 45 CFR section 164.528 and 42 U.S.C. section 17935(c). If Business Associate maintains electronic health records for DHCS as of January 1, 2009, Business Associate must provide an accounting of disclosures, including those disclosures for treatment, payment or health care operations, effective with disclosures on or after January 1, 2014. If Business Associate acquires electronic health records for DHCS after January 1, 2009, Business Associate must provide an accounting of disclosures, including those disclosures for treatment, payment or health care operations, effective with disclosures on or after the date the electronic health record is acquired, or on or after January 1, 2011, whichever date is later. The electronic accounting of disclosures shall be for disclosures during the three years prior to the request for an accounting.
- J. **Breaches and Security Incidents.** During the term of this Agreement, Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any breach or security incident, and to take the following steps:

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

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

<http://www.dhcs.ca.gov/formsandpubs/laws/priv/Pages/DHCSBusinessAssociatesOnly.aspx>

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

- a. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment; and
- b. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.

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

2. **Investigation and Investigation Report.** To immediately investigate such security incident, breach, or unauthorized access, use or disclosure of PHI or PI. If the initial report did not include all of the requested information marked with an asterisk, then within 72 hours of the discovery, Business Associate shall submit an updated "DHCS Privacy Incident Report" containing the information marked with an asterisk and all other applicable information listed on the form, to the extent known at that time, to the DHCS Program Contract Manager, the DHCS Privacy Officer, and the DHCS Information Security Officer:
3. **Complete Report.** To provide a complete report of the investigation to the DHCS Program Contract Manager, the DHCS Privacy Officer, and the DHCS Information Security Officer within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. If all of the required information was not included in either the initial report, or the Investigation Report, then a separate Complete Report must be submitted. The report shall be submitted on the "DHCS Privacy Incident Report" form and shall include an assessment of all known factors relevant to a determination of whether a breach occurred under applicable provisions of HIPAA, the HITECH Act, the HIPAA regulations and/or state law. The report shall also include a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure. If DHCS requests information in addition to that listed on the "DHCS Privacy Incident Report" form, Business Associate shall make reasonable efforts to provide DHCS with such information. If necessary, a Supplemental Report may be used to submit revised or additional information after the completed report is submitted, by submitting the revised or additional information on an updated "DHCS Privacy Incident Report" form. DHCS will review and approve or disapprove the determination of whether a breach occurred, is reportable to the appropriate entities, if individual notifications are required, and the corrective action plan.
4. **Notification of Individuals.** If the cause of a breach of PHI or PI is attributable to Business Associate or its subcontractors, agents or vendors, Business Associate shall notify individuals of the breach or unauthorized use or disclosure when notification is required under state or federal law and shall pay any costs of such notifications, as well as any costs associated with the breach. The notifications shall comply with the requirements set forth in 42 U.S.C. section 17932 and its implementing regulations, including, but not limited to, the requirement that the notifications be made without unreasonable delay and in no event later than 60 calendar days. The DHCS Program Contract Manager, the DHCS Privacy Officer, and the DHCS Information Security Officer shall approve the time, manner and content of any such notifications and their review and approval must be obtained before the notifications are made.
5. **Responsibility for Reporting of Breaches.** If the cause of a breach of PHI or PI is attributable to Business Associate or its agents, subcontractors or vendors, Business Associate is responsible for all required reporting of the breach as specified in 42 U.S.C. section 17932 and its implementing regulations, including notification to media outlets and to the Secretary. If a breach of unsecured PHI involves more than 500 residents of the State of California or its jurisdiction, Business Associate shall notify the Secretary of the breach immediately upon discovery of the breach. If Business Associate has reason to believe that duplicate reporting of the same breach or incident may occur because its subcontractors, agents or vendors may report the breach or incident to DHCS in addition to Business Associate, Business Associate shall notify DHCS, and DHCS and Business Associate may take appropriate action to prevent duplicate reporting. The breach reporting requirements of this paragraph are in addition to the reporting requirements set forth in subsection 1, above.
6. **DHCS Contact Information.** To direct communications to the above referenced DHCS staff, the Contractor shall initiate contact as indicated herein. DHCS reserves the right to make changes to the

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

contact information below by giving written notice to the Contractor. Said changes shall not require an amendment to this Addendum or the Agreement to which it is incorporated.

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

**K. Termination of Agreement.** In accordance with Section 13404(b) of the HITECH Act and to the extent required by the HIPAA regulations, if Business Associate knows of a material breach or violation by DHCS of this Addendum, it shall take the following steps:

1. Provide an opportunity for DHCS to cure the breach or end the violation and terminate the Agreement if DHCS does not cure the breach or end the violation within the time specified by Business Associate; or
2. Immediately terminate the Agreement if DHCS has breached a material term of the Addendum and cure is not possible.

**L. Due Diligence.** Business Associate shall exercise due diligence and shall take reasonable steps to ensure that it remains in compliance with this Addendum and is in compliance with applicable provisions of HIPAA, the HITECH Act and the HIPAA regulations, and that its agents, subcontractors and vendors are in compliance with their obligations as required by this Addendum.

**M. Sanctions and/or Penalties.** Business Associate understands that a failure to comply with the provisions of HIPAA, the HITECH Act and the HIPAA regulations that are applicable to Business Associate may result in the imposition of sanctions and/or penalties on Business Associate under HIPAA, the HITECH Act and the HIPAA regulations.

#### **IV. Obligations of DHCS**

DHCS agrees to:

**A. Notice of Privacy Practices.** Provide Business Associate with the Notice of Privacy Practices that DHCS produces in accordance with 45 CFR section 164.520, as well as any changes to such notice. Visit the DHCS Privacy Office to view the most current Notice of Privacy Practices at: <http://www.dhcs.ca.gov/formsandpubs/laws/priv/Pages/default.aspx> or the DHCS website at [www.dhcs.ca.gov](http://www.dhcs.ca.gov) (select "Privacy in the left column and "Notice of Privacy Practices" on the right side of the page).

**B. Permission by Individuals for Use and Disclosure of PHI.** Provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate's permitted or required uses and disclosures.

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

**C. *Notification of Restrictions.*** Notify the Business Associate of any restriction to the use or disclosure of PHI that DHCS has agreed to in accordance with 45 CFR section 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of PHI.

**D. *Requests Conflicting with HIPAA Rules.*** Not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA regulations if done by DHCS.

**V. Audits, Inspection and Enforcement**

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

1. Failure to detect or
2. Detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices constitute acceptance of such practice or a waiver of DHCS' enforcement rights under this Agreement and this Addendum.

**B.** If Business Associate is the subject of an audit, compliance review, or complaint investigation by the Secretary or the Office of Civil Rights, U.S. Department of Health and Human Services, that is related to the performance of its obligations pursuant to this HIPAA Business Associate Addendum, Business Associate shall notify DHCS and provide DHCS with a copy of any PHI or PI that Business Associate provides to the Secretary or the Office of Civil Rights concurrently with providing such PHI or PI to the Secretary. Business Associate is responsible for any civil penalties assessed due to an audit or investigation of Business Associate, in accordance with 42 U.S.C. section 17934(c).

**VI. Termination**

**A. *Term.*** The Term of this Addendum shall commence as of the effective date of this Addendum and shall extend beyond the termination of the contract and shall terminate when all the PHI provided by DHCS to Business Associate, or created or received by Business Associate on behalf of DHCS, is destroyed or returned to DHCS, in accordance with 45 CFR 164.504(e)(2)(ii)(I).

**B. *Termination for Cause.*** In accordance with 45 CFR section 164.504(e)(1)(ii), upon DHCS' knowledge of a material breach or violation of this Addendum by Business Associate, DHCS shall:

1. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by DHCS; or
2. Immediately terminate this Agreement if Business Associate has breached a material term of this Addendum and cure is not possible.



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

- C. *Judicial or Administrative Proceedings.*** Business Associate will notify DHCS if it is named as a defendant in a criminal proceeding for a violation of HIPAA. DHCS may terminate this Agreement if Business Associate is found guilty of a criminal violation of HIPAA. DHCS may terminate this Agreement if a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, or other security or privacy laws is made in any administrative or civil proceeding in which the Business Associate is a party or has been joined.
- D. *Effect of Termination.*** Upon termination or expiration of this Agreement for any reason, Business Associate shall return or destroy all PHI received from DHCS (or created or received by Business Associate on behalf of DHCS) that Business Associate still maintains in any form, and shall retain no copies of such PHI. If return or destruction is not feasible, Business Associate shall notify DHCS of the conditions that make the return or destruction infeasible, and DHCS and Business Associate shall determine the terms and conditions under which Business Associate may retain the PHI. Business Associate shall continue to extend the protections of this Addendum to such PHI, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.

**VII. Miscellaneous Provisions**

- A. *Disclaimer.*** DHCS makes no warranty or representation that compliance by Business Associate with this Addendum, HIPAA or the HIPAA regulations will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
- B. *Amendment.*** The parties acknowledge that federal and state laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon DHCS' request, Business Associate agrees to promptly enter into negotiations with DHCS concerning an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other applicable laws. DHCS may terminate this Agreement upon thirty (30) days written notice in the event:
1. Business Associate does not promptly enter into negotiations to amend this Addendum when requested by DHCS pursuant to this Section; or
  2. Business Associate does not enter into an amendment providing assurances regarding the safeguarding of PHI that DHCS in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA regulations.
- C. *Assistance in Litigation or Administrative Proceedings.*** Business Associate shall make itself and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under this Agreement, available to DHCS at no cost to DHCS to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against DHCS, its directors, officers or employees based upon claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves inactions or actions by the Business Associate, except where Business Associate or its subcontractor, employee or agent is a named adverse party.

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

- D. *No Third-Party Beneficiaries.*** Nothing express or implied in the terms and conditions of this Addendum is intended to confer, nor shall anything herein confer, upon any person other than DHCS or Business Associate and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.
- E. *Interpretation.*** The terms and conditions in this Addendum shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the HIPAA regulations and applicable state laws. The parties agree that any ambiguity in the terms and conditions of this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act and the HIPAA regulations.
- F. *Regulatory References.*** A reference in the terms and conditions of this Addendum to a section in the HIPAA regulations means the section as in effect or as amended.
- G. *Survival.*** The respective rights and obligations of Business Associate under Section VI.D of this Addendum shall survive the termination or expiration of this Agreement.
- H. *No Waiver of Obligations.*** No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

**Exhibit F****HIPAA Business Associate Addendum****Attachment A****Business Associate Data Security Requirements****I. Personnel Controls**

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

**II. Technical Security Controls**

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

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

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

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

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

**III. Audit Controls**

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

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

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

**V. Paper Document Controls**

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

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

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

## Contractor's Release

### Instructions to Contractor:

With final invoice(s) submit one (1) original and one (1) copy. The original must bear the original signature of a person authorized to bind the Contractor. The additional copy may bear photocopied signatures.

### Submission of Final Invoice

Pursuant to contract number 17-94461 entered into between the Department of Health Care Services (DHCS) and the Contractor (identified below), the Contractor does acknowledge that final payment has been requested via invoice number(s) \_\_\_\_\_, in the amount(s) of \$ \_\_\_\_\_ and dated \_\_\_\_\_.  
If necessary, enter "See Attached" in the appropriate blocks and attach a list of invoice numbers, dollar amounts and invoice dates.

### Release of all Obligations

By signing this form, and upon receipt of the amount specified in the invoice number(s) referenced above, the Contractor does hereby release and discharge the State, its officers, agents and employees of and from any and all liabilities, obligations, claims, and demands whatsoever arising from the above referenced contract.

### Repayments Due to Audit Exceptions / Record Retention

By signing this form, Contractor acknowledges that expenses authorized for reimbursement does not guarantee final allowability of said expenses. Contractor agrees that the amount of any sustained audit exceptions resulting from any subsequent audit made after final payment will be refunded to the State.

All expense and accounting records related to the above referenced contract must be maintained for audit purposes for no less than three years beyond the date of final payment, unless a longer term is stated in said contract.

### Recycled Product Use Certification

By signing this form, Contractor certifies under penalty of perjury that a minimum of 0% unless otherwise specified in writing of post consumer material, as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether it meets the requirements of Public Contract Code Section 12209. Contractor specifies that printer or duplication cartridges offered or sold to the State comply with the requirements of Section 12156(e).

### Reminder to Return State Equipment/Property (If Applicable)

(Applies only if equipment was provided by DHCS or purchased with or reimbursed by contract funds)

Unless DHCS has approved the continued use and possession of State equipment (as defined in the above referenced contract) for use in connection with another DHCS agreement, Contractor agrees to promptly initiate arrangements to account for and return said equipment to DHCS, at DHCS' expense, if said equipment has not passed its useful life expectancy as defined in the above referenced contract.

### Patents / Other Issues

By signing this form, Contractor further agrees, in connection with patent matters and with any claims that are not specifically released as set forth above, that it will comply with all of the provisions contained in the above referenced contract, including, but not limited to, those provisions relating to notification to the State and related to the defense or prosecution of litigation.

**ONLY SIGN AND DATE THIS DOCUMENT WHEN ATTACHING IT TO THE FINAL INVOICE**

Contractor's Legal Name (as on contract): \_\_\_\_\_

Signature of Contractor or Official Designee: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name/Title of Person Signing: \_\_\_\_\_

Distribution:      Accounting (Original)      Program