

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

**STANDARD AGREEMENT**

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER

23-30104

PURCHASING AUTHORITY NUMBER (If Applicable)

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

CONTRACTING AGENCY NAME

Department of Health Care Services

CONTRACTOR NAME

County of Sutter

2. The term of this Agreement is:

START DATE

July 1, 2023

THROUGH END DATE

June 30, 2027

3. The maximum amount of this Agreement is:

\$20,908,000.00 (Twenty Million, Nine Hundred Eight Thousand 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 the Agreement.

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*Items shown with an asterisk (\*), are hereby incorporated by reference and made part of this agreement as if attached hereto.**These documents can be viewed at <https://www.dgs.ca.gov/OLS/Resources>***IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.****CONTRACTOR**

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

County of Sutter

CONTRACTOR BUSINESS ADDRESS

545 Garden Hwy, Suite B

CITY

Yuba City

STATE

CA

ZIP

95991

PRINTED NAME OF PERSON SIGNING

Rick Bingham

TITLE

Director, Sutter-Yuba Behavioral Health

CONTRACTOR AUTHORIZED SIGNATURE

DATE SIGNED

10.2.23

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**STATE OF CALIFORNIA**

CONTRACTING AGENCY NAME

Department of Health Care Services

CONTRACTING AGENCY ADDRESS

1501 Capitol Avenue, MS 4200

CITY

Sacramento

STATE

CA

ZIP

95814

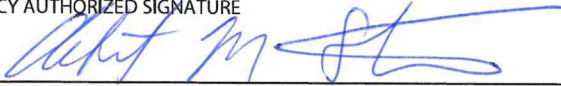
PRINTED NAME OF PERSON SIGNING

**Robert M. Strom**

TITLE

**Staff Services Manager II**

CONTRACTING AGENCY AUTHORIZED SIGNATURE



DATE SIGNED

**OCT 03 2023**

CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL

EXEMPTION (If Applicable)

W&amp;I Code 14087.4

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

**1. Service Overview**

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

DHCS and the Contractor enter into this contract pursuant to Section 14124.21 of the Welfare and Institutions Code (hereinafter referred to as W&I Code), and section 11772 of the Health and Safety Code (hereinafter referred to as HSC), DHCS and the Contractor identified in the Standard Agreement are the only parties to this Contract. This Contract is not intended, nor shall it be construed, to confer rights on any third party.

DHCS and the Contractor enter into this contract for the purpose of identifying and providing for covered Drug Medi-Cal services for substance use treatment in the Contractor's service area pursuant to Sections 11848.5(a) and (b) of the HSC, Sections 14021.51 – 14021.53, and 14124.20 – 14124.25 of the W&I Code, and Title 22 of the California Code of Regulations (hereinafter referred to as Title 22), Sections 51341.1, 51490.1, and 51516.1.

The objective is to make substance use treatment services available to Medi-Cal beneficiaries through utilization of federal and state funds available pursuant to Title XIX and Title XXI of the Social Security Act for reimbursable covered services rendered by certified DMC providers.

**2. Service Location**

The services must be performed at applicable Drug Medi-Cal certified facilities in the County of Sutter-Yuba.

**3. Service Hours**

The services must be provided during the working hours and days as defined by the Contractor.

**4. Project Representatives**

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

<b>Department of Health Care Services</b>	<b>County of Sutter</b>
Contract/Grant Manager: Scott Oros	Rick Bingham, Assistant Director of
Telephone: (916) 713-8887	Health and Human Services
Fax: (916) 322-1176	Telephone: (530) 822-7327
Email: <a href="mailto:scott.oros@dhcs.ca.gov">scott.oros@dhcs.ca.gov</a>	Fax: (530) 822-9417
	Email: <a href="mailto:rbingham@co.sutter.ca.us">rbingham@co.sutter.ca.us</a>

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

B. Direct all inquiries to:

<b>Department of Health Care Services</b>	<b>County of Sutter</b>
Department of Health Care Services MCBHD – Program Policy Section Attention: Scott Oros 1500 Capitol Avenue, MS 2702 Sacramento, CA 95814  Telephone: (916) 713-8887 Fax: (916) 322-1176 Email: <a href="mailto:scott.oros@dhcs.ca.gov">scott.oros@dhcs.ca.gov</a>	Sutter Behavioral Health Services Attention: Rick Bingham, Assistant Director of Health and Human Services 446 Second Street Yuba City, CA 95991  Telephone: (530) 822-7327 Fax: (530) 822-9417 Email: <a href="mailto:rbingham@co.sutter.ca.us">rbingham@co.sutter.ca.us</a>

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

**5. Americans with Disabilities Act**

Contractor agrees to ensure that deliverables developed and produced, pursuant to this Agreement must comply with the accessibility requirements of Sections 7405 and 11135 of the California Government Code, Section 508 of the Rehabilitation Act of 1973 as amended (29 U.S.C. § 794d), regulations implementing the Rehabilitation Act of 1973 as set forth in Part 1194 of Title 36 of the Code of Federal Regulations, and the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.). In 1998, Congress amended the Rehabilitation Act of 1973 to require Federal agencies to make their electronic and information technology (EIT) accessible to people with disabilities. California Government Code Sections 7405 and 11135 codifies Section 508 of the Rehabilitation Act of 1973 requiring accessibility of EIT.

**6. Executive Order N-6-22 – Russia Sanctions**

On March 4, 2022, Governor Gavin Newsom issued [Executive Order N-6-22](#) (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. “Economic Sanctions” refers to sanctions imposed by the U.S. government in response to Russia’s actions in Ukraine, as well as any sanctions imposed under state law. The EO directs state agencies to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should the State determine Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that will be grounds for

**Exhibit A**  
Scope of Work

termination of this agreement. The State must provide Contractor advance written notice of such termination, allowing Contractor at least 30 calendar days to provide a written response. Termination will be at the sole discretion of the State.

7. See Exhibit A, Attachment I, for a detailed description of the services to be performed.

**Exhibit A, Attachment I**  
**Program Specifications**

**Part I: Drug Medi-Cal Treatment Program Substance Use Disorder Services**

**Section 1: Formation and Purpose**

This Exhibit A, Attachment I, Part I of the Contract is entered into by and between the Department of Health Care Services (DHCS) and the Contractor for the purpose of identifying and providing for covered Drug Medi-Cal (DMC) services for Substance Use Disorder (SUD) treatment to beneficiaries residing in the Contractor's service area pursuant to Sections 11848.5(a) and (b) of the Health and Safety Code (hereinafter referred to as HSC), Sections 14059.5, and 14124.20 – 14124.25, 14184.402, and 14184.403 of the Welfare & Institution Code (hereinafter referred to as W&I Code), and Title 22 of the California Code of Regulations (hereinafter referred to as Title 22), Sections 51341.1, 51490.1, and 51516.1; and the behavioral health payment reform provisions approved in the CalAIM Terms and Conditions and associated instruction issued by the department pursuant to subdivision (d) of W&I Code Section 14184.102.

- A. It is further agreed this Contract is controlled by applicable provisions of: (a) the W&I Code, Division 9, Part 3, Chapter 7, sections 14000, *et seq.*, in particular, but not limited to, Sections 14100.2, 14021, 14021.5, 14021.6, and Article 1.3, Sections 14043, *et seq.*, (b) Title 22, including but not limited to Sections 51490.1, 51341.1 (with the exception of the provisions superseded by W&I Code, Division 9, Part 3, Chapter 7, Article 5.51 as set forth in this contract and/or Behavioral Health Information Notice (BHIN) related to medical necessity (BHIN 21-071), documentation requirements (BHIN 22-019), and payment reform); and (c) Division 4 of Title 9 of the California Code Regulations (hereinafter referred to as Title 9).
- B. The Contractor shall comply with all State and federal statutes and regulations, the terms of this Agreement, BHINs, and any other applicable authorities. In the event of a conflict between the terms of this Agreement and a State or federal statute or regulation, or a BHIN, the Contractor shall adhere to the applicable statute, regulation or BHIN.
- C. It is understood and agreed that nothing contained in this Contract shall be construed to impair the single state agency authority of DHCS.
- D. The objective of this Contract is to make SUD treatment services available to Medi-Cal beneficiaries through utilization of federal and state funds available pursuant to Title XIX or Title XXI of the Social Security Act for reimbursable covered services rendered by enrolled DMC providers, including but not limited to Contractor-operated or subcontracted providers.

**Exhibit A, Attachment I**  
**Program Specifications**

**Section 2: Standard Requirements**

**A. Medical Necessity**

Pursuant to W&I Code section 14184.402(a), the Contractor shall make all medical necessity determinations for covered SUD treatment services provided to DMC beneficiaries in accordance with W&I Code section 14059.5, regulations and guidance, including Behavioral Health Information Notice (BHIN) 21-071, issued by the Department pursuant to W&I Code section 14184.402(a), and the requirements set forth below.

**B. Initial Assessment and Services Provided During the Assessment Process**

1. The Contractor shall conduct DMC initial assessments via face-to-face, by telehealth or by telephone (synchronous audio-only) by a Licensed Practitioner of the Healing Arts (LPHA) or registered or certified counselor and may be done in the community or the home. If the initial assessment of the beneficiary is completed by a registered or certified counselor, then the LPHA shall evaluate that initial assessment with the counselor and the LPHA shall make and document the initial diagnosis. The consultation between the LPHA and the registered or certified counselor can be conducted in person, by video conference or by telephone.
  - a) Covered and clinically appropriate DMC services are reimbursable for up to 30 days following the first visit with an LPHA, registered/certified counselor, or Peer Support Specialist, whether or not a Diagnostic and Statistical Manual (DSM) diagnosis for Substance-Related and Addictive Disorders is established, or up to 60 days for beneficiaries under age 21, or if a provider documents that the beneficiary is experiencing homelessness and therefore requires additional time to complete the assessment.
  - b) All SUD treatment services provided to a DMC beneficiary during the initial assessment process must be clinically appropriate to address that beneficiary's presenting condition.
2. Consistent with W&I Code 14184.402(f), clinically appropriate and covered SUD prevention, screening, assessment, and treatment services are covered and reimbursable Medi-Cal services even when: 1) services are provided prior to determination of a diagnosis or prior to determination of whether DMC criteria are met, as described above; 2) the prevention, screening, assessment, treatment, or recovery services were not included in an individual treatment plan; or 3) the beneficiary has a co-occurring mental health condition.
  - a) The Contractor shall not disallow reimbursement for DMC services provided during the assessment process if the assessment later determines that the beneficiary does not meet criteria for DMC.

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- b) The Contractor shall not disallow reimbursement for DMC provided to a beneficiary who meets DMC criteria and has a co-occurring mental health condition.

**C. Services Provided After the Assessment Process**

1. To qualify for DMC services after the initial assessment process, beneficiaries 21 years of age and older must meet one of the following criteria:
  - a) Have at least one diagnosis from the Diagnostic and Statistical Manual of Mental Disorders (DSM) for Substance-Related and Addictive Disorders, with the exception of Tobacco-Related Disorders and Non-Substance-Related Disorders (the diagnosis shall be made and documented by an LPHA), or
  - b) Have had at least one diagnosis from the DSM for Substance Related and Addictive Disorders, with the exception of Tobacco Related Disorders and Non-Substance-Related Disorders, prior to being incarcerated or during incarceration, determined by substance use history.
2. For beneficiaries under the age of 21, covered services provided under DMC shall include all medically necessary SUD services as required pursuant to Section 1396d(r) of Title 42 of the United States Code. Federal EPSDT statutes and regulations require States to furnish all Medicaid-coverable, appropriate, and medically necessary services needed to correct and ameliorate health conditions.

**D. Placement into the Appropriate Level of Care**

1. In accordance with W&I Code 14184.402(e), the Contractor and DMC providers shall utilize the criteria adopted by the American Society of Addiction Medicine (ASAM) to determine the appropriate level of SUD treatment service for DMC beneficiaries.
  - a) A full assessment utilizing the ASAM criteria is not required for a DMC beneficiary to begin receiving covered and reimbursable SUD treatment services; an abbreviated ASAM screening tool may be used for initial screening, referral, and access to clinically appropriate services.
  - b) For DMC beneficiaries 21 and over, a full assessment using the ASAM Criteria shall be completed within 30 days of the beneficiary's first visit with an LPHA or registered/certified counselor.
  - c) DMC beneficiaries under 21, or for adults experiencing homelessness, a full assessment using the ASAM criteria shall be completed within 60 days of the DMC beneficiary's first visit with an LPHA or registered/certified counselor.
  - d) If a DMC beneficiary withdraws from treatment prior completing the ASAM assessment and later returns, the time periods above start over.



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2. The Contractor shall ensure that DMC providers are utilizing the ASAM criteria to determine the appropriate level of care.

**E. Services Provided via Telehealth or Telephone**

1. All DMC services, including initial assessments and medical necessity determinations, delivered via telehealth or telephone shall be provided in accordance with the telehealth requirements set forth in BHIN 23-018, and any subsequently issued BHINs that supersede BHIN 23-018

**Section 3: Covered Services**

**A. Covered Services**

1. The Contractor shall establish assessment, placement determination and referral procedures and shall arrange, provide, or subcontract for covered services in the Contractor's service area. Covered services include:

**a) Outpatient Treatment Services**

Outpatient Treatment Services (also known as Outpatient Drug Free or ODF) are provided to beneficiaries as medically necessary. Outpatient Treatment Services include the following components:

- i. Assessment
- ii. Individual Counseling
- iii. Group Counseling
- iv. Patient Education
- v. Medication Services
- vi. Medication Assisted Treatment (MAT) for Opioid Use Disorders (OUD)
- vii. SUD Crisis Intervention Services

**b) Narcotic Treatment Program Services**

Narcotic Treatment Program (NTP) Services is an outpatient program that provides FDA-approved drugs to treat SUDs when ordered by a physician as medically necessary. NTPs are required to offer and prescribe medications including methadone, buprenorphine, naloxone and disulfiram. NTPs shall offer adequate counseling services to each beneficiary as clinically necessary. Narcotic Treatment Program include the following components:

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**Program Specifications**

- i. Assessment
- ii. Individual Counseling
- iii. Group Counseling
- iv. Patient Education
- v. Medical Psychotherapy
- vi. Medication Services
- vii. MAT for OUD
- viii. SUD Crisis Intervention Services

c) Intensive Outpatient Treatment Services

Intensive Outpatient Treatment services are provided to beneficiaries when medically necessary in a structured programming environment. Intensive Outpatient Treatment includes the following components:

- i. Assessment
- ii. Individual Counseling
- iii. Group Counseling
- iv. Patient Education
- v. Medication Services
- vi. MAT for OUD
- vii. SUD Crisis Intervention Services

d) Perinatal Residential Substance Use Disorder Treatment

Perinatal Residential Substance Use Disorder Treatment is a non-institutional, non-medical, residential program which provides rehabilitation services to pregnant and postpartum women with a substance use disorder diagnosis. Each beneficiary shall live on the premises and shall be supported in their efforts to restore and apply interpersonal and independent living skills and access community support systems. Perinatal Residential Substance Use Disorder Treatment programs shall provide a range of activities and services for pregnant and postpartum beneficiaries. Supervision shall be available day and night, seven days a week. Medically

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necessary rehabilitative services are provided in accordance with individualized beneficiary needs. The cost of room and board is not reimbursable under the Medi-Cal program. Facilities shall store and safeguard all residents' medications, and facility staff members may assist with resident's self-administration of medication. Perinatal Residential Substance Use Disorder Treatment include the following components:

- i. Assessment
- ii. Individual Counseling
- iii. Group Counseling
- iv. MAT for OUD
- v. Patient Education
- vi. SUD Crisis Intervention Services

**e) Medication Assisted Treatment**

Medication Assisted Treatment (also known as medication assisted treatment (MAT)) for Opioid Use Disorders (OUD) includes all medications approved under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and all biological products licensed under section 351 of the Public Health Service Act (42 U.S.C. 262) to treat opioid use disorders as authorized by the Social Security Act Section 1905(a)(29). MAT for OUD include the following components:

- i. Assessment for MAT for OUD.
- ii. Individual Counseling for MAT for OUD.
- iii. Group Counseling for MAT for OUD.
- iv. Patient Education for MAT for OUD.
- v. Medical Psychotherapy for MAT for OUD.
- vi. Medication Services for MAT for OUD.
- vii. SUD Crisis Intervention Services for MAT for OUD.
- viii. Prescribing and monitoring of MAT for OUD.

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- f) Peer Support Services. If the Contractor has opted to provide Peer Support Services and has been approved by DHCS, the Contractor shall comply with the peer support services provisions in Exhibit A, Attachment 1. a. Medi-Cal Peer Support Services.
2. Medi-Cal Substance Use Disorder (SUD) treatment services for beneficiaries under age 21.
- a) The EPSDT mandate entitles beneficiaries under the age of 21 to all appropriate and medically necessary services coverable under a Medicaid State Plan (as described in 42 U.S.C. § 1396d(a)) that are needed to correct or ameliorate discovered health conditions, regardless of whether those services are covered in the state's Medicaid State Plan.
  - b) Under the EPSDT mandate and in accordance with BHIN 22-003, the Contractor shall provide all SUD treatment services that are coverable under 42 U.S.C. § 1396d(a)) whether or not it is covered under the Medicaid State Plan, including but not limited to covered DMC and Drug Medi-Cal – Organized Delivery Services (DMC-ODS) (referred to as Expanded SUD Treatment Services in the State Plan). The array of SUD treatment services covered in the State Plan are described in the “Substance Use Disorder Treatment Services” and the “Expanded Substance Use Disorder Treatment Services” sections of Supplement 3 to Attachment 3.1-A in the Medi-Cal State Plan.
  - c) The Contractor shall provide screening and early intervention services to beneficiaries under the age of 21 at risk of developing an SUD regardless of whether they meet diagnosis criteria for a behavioral health disorder. Any beneficiary under the age of 21 who is screened and determined to be at risk of developing an SUD may receive any service component covered under the outpatient level of care as early intervention services. A diagnosis from the Diagnostic and Statistical Manual or International Classification of Diseases, Tenth Edition (ICD-10) for Substance-Related and Addictive Disorders is not required for early intervention services. Early intervention services are provided under the outpatient treatment modality and must be made available by counties based on individual clinical need, even if the beneficiary under age 21 is not participating in the full array of outpatient treatment services.
3. Conflicts in the definition of “services”:
- a) In the event of a conflict between the definition of services contained in this Section of the Contract, and the definition of services in Title 22, Sections 51341.1, 51490.1, and 51516.1 the definition of services contained in the Contract shall prevail.

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- b) In the event of a conflict between the definition of services in Title 22, Sections 51341.1, 51490.1, and 51516.1, and the definition of services in the California Medicaid State Plan, the definitions contained in the Medicaid State Plan shall prevail.
- 4. The Contractor, to the extent applicable, shall comply with "Sobky v. Smoley" (Document 2A), 855 F. Supp. 1123 (E.D. Cal 1994), incorporated by this reference.
- 5. Subject to DHCS provider enrollment requirements, the Contractor shall maintain continuous availability and accessibility of covered services and facilities, service sites, and personnel to provide the covered services through use of DMC enrolled providers. Such services shall not be limited due to budgetary constraints.
  - a) When a request for covered services is made by a beneficiary, the Contractor shall require services to be initiated with the timely access standards outlined below. The Contractor shall have a documented system for monitoring and evaluating accessibility of care, including a system for addressing problems that develop regarding waiting times and appointments.
  - b) The Contractor shall ensure residential services are provided in accordance with W&I Code section 14059.5 the coverage provisions of the approved Medicaid State Plan, and W&I Code section 14184.402 and any guidance and regulations issued by the Department pursuant to that section. Room and board are not reimbursable DMC services. If services are denied, the provider shall inform the beneficiary in accordance with Title 22, Section 513411.1(p), until the Notice of Adverse Benefit Determination (NOABD) requirements in effect. After the effective date of the NOABD requirements, providers shall inform the Beneficiary if services are denied in accordance with NOABD requirements.
  - c) The Contractor shall require that treatment programs are accessible to people with disabilities in accordance with Title 45, Code of Federal Regulations (hereinafter referred to as CFR), Part 84, the Americans with Disabilities Act, and other State and federal regulations and laws.
  - d) The Contractor shall not unlawfully discriminate against beneficiaries and potential beneficiaries on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, gender, gender identity, or sexual orientation (45 C.F.R. § 92.8; Gov. Code § 11135).
  - e) The failure of the Contractor, or its subcontractors, to comply with Section 2 of this Part will be deemed a breach of this Contract sufficient to terminate this Contract for cause.
- 7. Timely Access Standards

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Effective January 1, 2023, the Contractor shall establish and comply with Timely Access Standards, and Alternative Access Standards (AAS) and Telehealth Services in accordance with requirements set forth in BHIN 22-070.

6. Covered services, whether provided directly by the Contractor or through subcontractors with DMC certified and enrolled programs, shall be provided to beneficiaries without regard to the beneficiaries' county of residence.
7. The Contractor is financially responsible for all covered services provided to beneficiaries that reside in the Contractor's county.
8. The Contractor shall accept claims from any DMC enrolled provider, regardless of the location of the provider, for any covered services provided to beneficiaries residing in the Contractor's county. The Contractor shall reimburse the provider through a contract or other agreement.
9. The Contractor shall require all subcontractors to inform the Contractor when a beneficiary that resides in the Contractor's county is referred to, and served by, an out-of-county provider.

**B. Payment for Services**

1. DHCS shall make the appropriate payments set forth in Exhibit B and take all available steps to secure and pay Federal Financial Participation (FFP) Funds and State General Funds (SGF) to the Contractor, once DHCS receives FFP and SGF, for claims submitted by the Contractor. DHCS shall notify the Contractor and allow the Contractor an opportunity to comment to DHCS when questions are posed by Centers for Medicare and Medicaid Services (CMS), or when there is a federal deferral, withholding, or disallowance with respect to claims made by the Contractor.
2. The Contractor shall amend its subcontracts for covered services in order to provide sufficient funds to match allowable Federal Medicaid reimbursements for any increase in DMC services to beneficiaries.
3. In the event that the Contractor fails to provide covered services in accordance with the provisions of this Contract, in addition to terminating this Contract, DHCS may, pursuant to Government Code, section 30027.10, seek to divert funds necessary to provide DMC services in the Contractor's services area from the Contractor's Behavioral Health Subaccount.

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4. In the event that DHCS determines the Contractor's provision of DMC services are disallowed by the federal government or by state or federal audit or review, the Contractor shall be responsible for repayment of all disallowed claims. In addition to any other recovery methods available, including, but not limited to, offset of Medicaid federal financial participation funds owed to the impacted Contractor, DHCS may offset these amounts in accordance with Government Code, section 12419.5.
5. The Contractor shall require all subcontractors and any subpart of the subcontractor that would be a covered health care provider if it were a separate legal entity to comply with 45 CFR 162.410(a)(1). For purposes of this paragraph, a covered health care provider shall have the same definition as a covered entity set forth in 45 CFR 160.103. DHCS shall make payments for covered services only if the Contractor is in compliance with federal regulations.

**Section 4: Drug Medi-Cal Certification and Provider Credentialing**

**A. DMC Certification and Enrollment**

1. DHCS shall certify eligible providers to participate in the DMC program.
2. The Contractor shall ensure that its providers are DMC certified prior to the Contractor delivering services under this Contract at the provider sites.
3. The Contractor shall require that providers of perinatal DMC services comply with the requirements contained in Title 22, Section 51341.1, Services for Pregnant and Postpartum Women.
4. The Contractor shall require all the subcontracted providers of covered services to be licensed, registered, DMC enrolled, and/or approved in accordance with applicable laws and regulations. The Contractor's subcontracts shall require that providers comply with the following regulations and guidelines, including, but not limited to:
  - a) Title 21, CFR Part 1300, *et seq.*, Title 42, CFR, Part 8.
  - b) Title 22, California Code Regulations (Cal. Code Regs.), Sections 51341.1, 51490.1, and 51516.1, (Document 2C).
  - c) Minimum Quality Treatment Standards, (Document 2F(a)).
  - d) Title 9, Cal. Code Regs., Div. 4, Chapter 4, Subchapter 1, Sections 10000, *et seq.*
  - e) Title 22, Cal. Code Regs., Div. 3, Chapter 3, Sections 51000, *et seq.*

In the event of conflicts, the provisions of Title 22 shall control if they are more stringent.

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- f) All federal and State civil rights laws prohibiting the unlawful discrimination of individuals on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, gender, gender identity, or sexual orientation.
  - 5. The Contractor shall notify Provider Enrollment Division (PED) of an addition or change of information in a provider's pending DMC certification application within 35 days of receiving notification from the provider. The Contractor shall ensure that a new DMC certification application is submitted to PED reflecting the change.
  - 6. The Contractor is responsible for ensuring that any reduction of covered services or relocations by DMC providers are not implemented until approval is issued by DHCS. Within 35 days of receiving notification of a DMC provider's intent to reduce covered services or relocate, the Contractor shall submit, or require the DMC provider to submit, a DMC certification application to PED. The DMC certification application shall be submitted to PED 60 days prior to the desired effective date of the reduction of covered services or relocation.
  - 7. If, at any time, a subcontractor's license, registration, certification, or approval to operate a substance use treatment program or provide a covered service is revoked, suspended, modified, or not renewed by entities other than DHCS, the Contractor shall notify DHCS' Data Management, Reporting, and Evaluation Section by e-mail at [DHCSMPF@dhcs.ca.gov](mailto:DHCSMPF@dhcs.ca.gov) within five business days of learning of the revocation, suspension, modification, or non-renewal.
    - a) A DMC provider's certification to participate in the DMC program shall automatically terminate in the event that the DMC provider or its owners, officers, or directors are convicted of Medi-Cal fraud, abuse, or malfeasance. For purposes of this section, a conviction shall include a plea of guilty or nolo contendere.
- B. Continued Certification**
- 1. All DMC enrolled providers shall be subject to continuing certification requirements at least once every five years.
  - 2. DHCS may allow the DMC provider to continue delivering covered services to beneficiaries at a site subject to an on-site review by DHCS as part of the recertification process prior to the date of the on-site review, provided the site is operational, the certification remains valid, and has all required fire clearances.
  - 3. DHCS will conduct recertification on-site visits at clinics for circumstances identified in W&I Code sections 14043.37, 14043.4, and 14043.7.



**Exhibit A, Attachment I**  
**Program Specifications**

**C. Credentialing and Re-credentialing**

Effective January 1, 2023, the Contractor shall establish and comply with provider credentialing, re-credentialing and attestation provisions in accordance with the requirements set forth in BHIN 22-070.

**Section 5: Provider Directory**

Effective January 1, 2023, the Contractor shall establish a Provider Directory that meets the requirements set forth in BHIN 22-070.

**Section 6: Monitoring**

**A. State Monitoring**

**1. DHCS Postservice Postpayment Utilization Reviews**

- a) After DMC services are rendered and paid, DHCS shall conduct DMC Postservice Postpayment (PSPP) Utilization Reviews of the Contractor's subcontracted DMC provider or Contractor-operated provider, referred to in Section 6(A) as a subcontractor. DHCS shall monitor the subcontractor for compliance with the provisions of this Contract and in accordance with Title 22, Section 51341.1. Any claimed DMC service may be reviewed for compliance with all applicable standards, regulations, and program coverage after services are rendered and the claim is paid.
- b) DHCS shall issue the DMC PSPP reports to the Contractor with a copy to the subcontractor. The Contractor shall be responsible for ensuring the subcontractor's deficiencies are remediated pursuant to Section 6(A)(1)(b)(i)(1) and (2) herein. The Contractor shall attest the deficiencies have been remediated and are complete, pursuant to Section 6(A)(1)(c) herein.
  - i. If programmatic deficiencies are identified, the subcontractor shall be required to submit a CAP to the Contractor for review and approval. The Contractor shall submit a Contractor-approved CAP to DHCS within 60 days of the date of the PSPP report.
    - 1) The CAP shall:
      - a) Be documented on the DHCS CAP template
      - b) Provide a specific description of how the deficiency shall be corrected
      - c) Identify the title of the individual(s) responsible for:
        - i. Correcting the deficiency

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ii. Ensuring on-going compliance

d) Provide a specific description of how the provider will ensure on-going compliance.

e) Specify the target date of implementation of the corrective action.

- 2) DHCS shall provide written approval of the CAP to the Contractor with a copy to the subcontractor. If DHCS does not approve the CAP, DHCS will provide guidance on the deficient areas and request an updated CAP. The subcontractor shall revise the CAP and submit it to the Contractor for review and approval. The Contractor shall submit a revised Contractor-approved CAP to DHCS within 30 days of the DHCS notification.

If the subcontractor does not submit an initial or revised CAP to the Contractor, or does not implement the approved CAP provisions within the designated timeline, then DHCS may withhold funds from the Contractor until the subcontractor is in compliance. DHCS shall inform the Contractor when funds will be withheld.

- c) The Contractor shall monitor and attest compliance and/or completion by subcontractors with CAP requirements detailed in Section 4(A)(2)(c) of this Exhibit as required by any PSPP review. The Contractor shall attest to DHCS, using the form developed by DHCS, that the requirements in the CAP have been completed by subcontractor. Submission of DHCS Form 8049, as identified in this section, by the Contractor shall be accomplished within the timeline specified in the approved CAP, as noted by DHCS.
- d) DHCS shall take appropriate steps in accordance with Title 22, Section 51341.1, to recover payments made if subsequent investigation uncovers evidence that the claim(s) should not have been paid or that DMC services have been improperly utilized.
- e) The Contractor and/or subcontractor may appeal DMC dispositions concerning demands for recovery of payment and/or programmatic deficiencies of specific claims. Such appeals shall be handled pursuant to Title 22, Cal Code Regs., Section 51341.1(q). This section shall not apply to those grievances or complaints arising from the financial findings of an audit or examination made by or on behalf of DHCS pursuant to Exhibit B, Part III, Section 2, of this Contract.
- f) DHCS shall monitor the subcontractor's compliance with PSPP utilization review requirements in accordance with Title 22. The Contractor shall also monitor the subcontractor's compliance in accordance with Section 4, Paragraph (A)(2), of this Contract. The federal government may also review the existence and effectiveness of DHCS's utilization review system.

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- g) The Contractor shall implement and maintain compliance with the system of review described in Title 22, Section 51341.1(k), for the purposes of reviewing the utilization, quality, and appropriateness of covered services and ensuring that all applicable Medi-Cal requirements are met.
- h) The Contractor shall ensure that the subcontractor sites keep a record of the beneficiaries being treated at each location. The Contractor shall retain beneficiary records for either ten years from the final date of a contract period, the completion of any audit, or the date a service was rendered, whichever occurs later.

**B. Contractor Monitoring**

- 1. Program Integrity: The Contractor is responsible for ensuring program integrity of its services and its subcontractors through a system of oversight, which shall include at least the following:
  - a) Compliance with state and federal law and regulations, including, but not limited to, 42 CFR 433.51, 42 CFR 431.800 *et seq.*, 42 CFR 440.230, 42 CFR 440.260, 42 CFR 455 *et seq.*, 42 CFR 456 *et seq.*, 42 CFR 456.23, 22 Cal. Code Regs. 51490, 22 Cal. Code Regs. 51490.1, 22 Cal. Code Regs. 51159, WIC 14124.1, WIC 14124.2, 42 CFR 438.320, 42 CFR 438.416, 42 CFR 438.10, and 42 CFR 438.206.
  - b) The Contractor shall conduct, at least annually (i.e., every 12-months), a programmatic and utilization review of DMC providers to assure covered services are being appropriately rendered. The annual review shall include an on-site visit of the DMC provider. Reports of the annual review shall be provided to DHCS' County/Provider Operations and Monitoring Branch at:

DHCS  
Medi-Cal Behavioral Health Division  
1501 Capitol Avenue, MS# 2621  
Sacramento, CA 95814

Or by using a Secure Managed File Transfer system specified by DHCS.

The review reports shall be provided to DHCS within 14 calendar days of completion by the Contractor.

- c) The Contractor shall ensure that Drug and Alcohol Treatment Access Report (DATAR) submissions, detailed in Part III, Paragraph E of this contract are complied with by all treatment providers and subcontracted treatment providers. The Contractor shall attest that each subcontractor is enrolled in DATAR at the time of execution of the subcontract.

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- d) The Contractor shall certify the DMC claims submitted to DHCS represent claims eligible for FFP and attest that the submitted claims have been subject to review and verification process for accuracy and legitimacy (42 CFR 430.30, 433.32, and 433.51). The Contractor shall not knowingly submit claims for services rendered to any beneficiary after the beneficiary's date of death, or from unenrolled or disenrolled providers.

**2. Monthly Monitoring**

- a) The Contractor shall, on a monthly basis, monitor the status of all subcontractors to ensure they maintain active enrollment in the DMC program. Any subcontractor that surrenders its certification or closes its facility shall be reported by the Contractor to DHCS' Provider Enrollment Division at [DHCSDMCRECERT@dhcs.ca.gov](mailto:DHCSDMCRECERT@dhcs.ca.gov) within five business days of notification or discovery.
- b) During the monthly status check, the Contractor shall monitor for a triggering recertification event (including but not limited to; change in ownership, change in scope of services, remodeling of facility, or change in location) and report any triggering events to DHCS' Provider Enrollment Division at [DHCSDMCRECERT@dhcs.ca.gov](mailto:DHCSDMCRECERT@dhcs.ca.gov) within five business days of notification or discovery.

**3. Program Complaints**

- a) Report suspected Medi-Cal Fraud online:  
<https://www.dhcs.ca.gov/individuals/Pages/StopMedi-CalFraud.aspx>  
By email: [fraud@dhcs.ca.gov](mailto:fraud@dhcs.ca.gov)  
By phone: 1-800-822-6222
- b) All complaints received by the Contractor regarding a DMC provider shall be forwarded to MCBHD within two business days as follows:  
  
DMC provider complaints are to be submitted to:  
DHCS  
Medi-Cal Behavioral Health Division  
1501 Capitol Avenue, MS# 2621  
Sacramento, CA 95814
- c) Complaints for licensed, adult alcoholism or drug abuse recovery or treatment facilities, or Alcohol and/or Other Drug (AOD) Certified Treatment Facilities shall be addressed to:

Department of Health Care Services  
Licensing and Certification Division  
P.O Box 997413., MS# 2601  
Sacramento, CA 95899-7413

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Email: [SUDcomplaints@dhcs.ca.gov](mailto:SUDcomplaints@dhcs.ca.gov)

Public Number: (916) 322-2911

Toll Free Number: (877) 685-8333

The Complaint Form is available and can be submitted online at:

<http://www.dhcs.ca.gov/individuals/Pages/Sud-Complaints.aspx>.

- d) The Contractor shall be responsible for investigating complaints and providing the results of all investigations to DHCS using a Secure Managed File Transfer system specified by DHCS within two business days of completion.

**4. Record Retention**

- a) The Contractor shall include instructions on record retention in any subcontract with providers and mandate all providers to keep and maintain records for each service rendered, to whom it was rendered, and the date of service, pursuant to W&I Code section 14124.1.

**5. Subcontract Termination**

- a) The Contractor shall notify DHCS' Data Management, Reporting, and Evaluation Section by email at [DHCSMPF@dhcs.ca.gov](mailto:DHCSMPF@dhcs.ca.gov) of the termination of any contract with a subcontractor, and the basis for termination of the contract, within five business days of the termination.

**6. Corrective Action Plan**

- a) If the Contractor fails to ensure any of the foregoing oversight through an adequate system of monitoring, utilization review, and fiscal and programmatic controls, DHCS may request a CAP from the Contractor to address these deficiencies and a timeline for implementation. Failure to submit a CAP or adhere to the provisions in the CAP may result in a withholding of funds allocated to the Contractor for the provision of services, impose monetary sanctions, and/or termination of this Contract for cause.
- b) Failure to comply with monitoring requirements shall result in:
  - i. DHCS shall issue a report to the Contractor after conducting monitoring, utilization, or fiscal auditing reviews of the Contractor. When the DHCS report identifies non-compliant services or processes, it shall require a CAP. The Contractor shall submit a CAP to DHCS within the timeframes required by DHCS.

- 1) The CAP shall:

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- a. Be documented on the DHCS CAP template.
  - b. Provide a specific description of how the deficiency shall be corrected.
  - c. Identify the title of the individual(s) responsible for:
    - i. Correcting the deficiency
    - ii. Ensuring on-going compliance
  - d. Provide a specific description of how the provider will ensure on-going compliance.
  - e. Specify the target date of implementation of the corrective action.
- ii. DHCS will provide written approval of the CAP to the Contractor. If DHCS does not approve the CAP submitted by the Contractor, DHCS will provide guidance on the deficient areas and request an updated CAP from the Contractor with a new deadline for submission.
  - iii. If the Contractor does not submit a CAP, or does not implement the approved CAP provisions within the designated timeline, DHCS may withhold funds or impose monetary sanctions until the Contractor is in compliance. DHCS shall inform the Contractor 30 calendar days in advance of when funds will be withheld.

**Section 7: Investigations and Confidentiality of Administrative Actions**

- A. The Contractor acknowledges that if a DMC subcontractor is under investigation by DHCS or any other state, local, or federal law enforcement agency for fraud or abuse, DHCS may temporarily suspend the subcontractor from the DMC program, pursuant to W&I Code section 14043.36(a). Information about a subcontractor's administrative sanction status is confidential until such time as the action is either completed or resolved. DHCS may also issue a Payment Suspension to a subcontractor pursuant to W&I Code section 14107.11 and 42 CFR section 455.23. The Contractor is to withhold payments from a DMC subcontractor during the time a Payment Suspension is in effect.

The Contractor shall execute the Confidentiality Agreement, attached as Document 5A. The Confidentiality Agreement permits DHCS to communicate with the Contractor concerning subcontractors that are subject to administrative sanctions, as listed in BHIN 22-045.

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**Part II - General**

**A. Additional Contract Restrictions**

This Contract is subject to any additional restrictions, limitations, or conditions enacted by Congress, or any statute enacted by Congress, which may affect the provisions, terms, or funding of this Contract in any manner.

**B. No Unlawful Use or Unlawful Use Messages Regarding Drugs**

The Contractor agrees that information produced through these funds, and which pertains to drug- and alcohol-related programs, shall contain a clearly written statement that there shall be no unlawful use of drugs or alcohol associated with the program. Additionally, no aspect of a drug- and alcohol-related program shall include any message on the responsible use, if the use is unlawful, of drugs or alcohol (HSC Section 11999-11999.3). By signing this Contract, the Contractor agrees that it will enforce, and will require its subcontractors to enforce, these requirements.

**C. Noncompliance with Reporting Requirements**

The Contractor agrees that DHCS has the right to withhold payments until the Contractor has submitted any required data and reports to DHCS, as identified in Exhibit A, Attachment I, Part III – Reporting Requirements, or as identified in Document 1F(a), Reporting Requirements Matrix for Counties.

**D. Health Insurance Portability and Accountability Act (HIPAA) of 1996**

If any of the work performed under this Contract is subject to HIPAA, the Contractor shall perform the work in compliance with all applicable provisions of HIPAA. As identified in Exhibit F, DHCS and the Contractor shall cooperate to assure mutual agreement as to those transactions between them, to which this provision applies. Refer to Exhibit F for additional information.

**1. Trading Partner Requirements**

- a) No Changes. The Contractor hereby agrees that for the personal health information (Information), it will not change any definition, data condition or use of a data element or segment as proscribed in the Federal Department of Health and Human Services (HHS) Transaction Standard Regulation (45 CFR 162.915 (a)).
- b) No Additions. The Contractor hereby agrees that for the Information, it will not add any data elements or segments to the maximum data set as proscribed in the HHS Transaction Standard Regulation (45 CFR 162.915 (b)).

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- c) No Unauthorized Uses. The Contractor hereby agrees that for the Information, it will not use any code or data elements that either are marked “not used” in the HHS Transaction’s Implementation specification or are not in the HHS Transaction Standard’s implementation specifications (45 CFR 162.915 (c)).
- d) No Changes to Meaning or Intent. The Contractor hereby agrees that for the Information, it will not change the meaning or intent of any of the HHS Transaction Standard’s implementation specification (45 CFR 162.915 (d)).

2. Concurrence for Test Modifications to HHS Transaction Standards

The Contractor agrees and understands that there exists the possibility that DHCS or others may request an extension from the uses of a standard in the HHS Transaction Standards. If this occurs, The Contractor agrees that it will participate in such test modifications.

3. Adequate Testing

The Contractor is responsible to adequately test all business rules appropriate to their types and specialties. If the Contractor is acting as a clearinghouse for enrolled providers, the Contractor has obligations to adequately test all business rules appropriate to each and every provider type and specialty for which they provide clearinghouse services.

4. Deficiencies

The Contractor agrees to correct transactions, errors, or deficiencies identified by DHCS, and transactions errors or deficiencies identified by an enrolled provider if the Contractor is acting as a clearinghouse for that provider. When County is a clearinghouse, then the Contractor agrees to properly communicate deficiencies and other pertinent information regarding electronic transactions to enrolled providers for which they provide clearinghouse services.

5. Code Set Retention

Both parties understand and agree to keep open code sets being processed or used in this Contract for at least the current billing period or any appeal period, whichever is longer.



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**6. Data Transmission Log**

Both parties shall establish and maintain a Data Transmission Log, which shall record any and all Data Transmissions taking place between the Parties during the term of this Contract. Each party will take necessary and reasonable steps to ensure that such Data Transmission Logs constitute a current, accurate, complete, and unaltered record of any and all Data Transmissions between the parties, and shall be retained by each party for no less than twenty-four (24) months following the date of the Data Transmission. The Data Transmission Log may be maintained on computer media or other suitable means provided that, if it is necessary to do so, the information contained in the Data Transmission Log may be retrieved in a timely manner and presented in readable form.

**E. Counselor Certification**

Any counselor or registrant providing intake, assessment of need for services, treatment or recovery planning, individual or group counseling to participants, patients, or residents in a DHCS licensed or certified program is required to be registered or certified as defined in Title 9, Division 4, Chapter 8 (Document 3H).

**F. Cultural and Linguistic Proficiency**

To ensure equal access to quality care by diverse populations, each DMC provider receiving funds from this Contract shall adopt the Federal Office of Minority Health Culturally and Linguistically Appropriate Service (CLAS) national standards (Document 3V).

**G. Trafficking Victims Protection Act of 2000**

Contractor and its subcontractors that provide services covered by this Contract shall comply with the Trafficking Victims Protection Act of 2000 (22 USC 7104(g)), as amended by section 1702 of Pub. L. 112-239.

**H. Tribal Communities and Organizations**

The Contractor shall regularly assess (e.g. review population information available through Census Bureau, compare to information obtained in CalOMS Treatment to determine whether population is being reached, survey Tribal representatives for insight in potential barriers) the substance use service needs of the American Indian/Alaskan Native (AI/AN) population within the Contractor's geographic area and shall engage in regular and meaningful consultation and collaboration with elected officials of the tribe, Rancheria, or their designee for the purpose of identifying issues/barriers to service delivery and improvement of the quality, effectiveness, and accessibility of services available to AI/AN communities within the County.

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**I. Perinatal Practice Guidelines**

The Contractor will follow the guidelines in Document 1G, "Perinatal Practice Guidelines," in developing and implementing perinatal treatment and recovery programs funded under this Exhibit, until new Perinatal Practice Guidelines are established and adopted. No formal amendment of this Contract is required for new guidelines to be incorporated into this Contract.

**J. Adolescent Substance Use Disorder Best Practices\_Guidelines**

The Contractor will follow the guidelines in Document 1V, "Adolescent Substance Use Disorder Best Practice Guidelines," in developing and implementing youth treatment programs funded under this Exhibit. No formal amendment of this Contract is required for new guidelines to be incorporated into this Contract.

**K. Nondiscrimination in Employment and Services**

By signing this Contract, the Contractor certifies that under the laws of the United States and the State of California, incorporated into this Contract by reference and made a part hereof as if set forth in full, the Contractor will not unlawfully discriminate against any person.

**L. Federal Law Requirements:**

1. Title VI of the Civil Rights Act of 1964, Section 2000d, as amended, prohibiting discrimination based on race, color, or national origin in federally funded programs.
2. Title VIII of the Civil Rights Act of 1968 (42 USC 3601 *et seq.*) prohibiting discrimination in the sale or rental of housing.
3. Age Discrimination Act of 1975 (45 CFR Part 90), as amended (42 USC Sections 6101 – 6107), which prohibits discrimination on the basis of age.
4. Age Discrimination in Employment Act (29 CFR Part 1625).
5. Title I of the Americans with Disabilities Act (29 CFR Part 1630) prohibiting discrimination against the disabled in employment.
6. Title II of the Americans with Disabilities Act of 1990 (28 CFR Part 35) prohibiting discrimination against the disabled by public entities.
7. Title III of the Americans with Disabilities Act of 1990 (28 CFR Part 36) regarding access.
8. Section 504 of the Rehabilitation Act of 1973, as amended (29 USC Section 794), prohibiting discrimination on the basis of individuals with disabilities.

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9. Executive Order 11246, 42 USC 2000e *et seq.*, and 41 CFR Part 60 regarding nondiscrimination in employment under federal contracts and construction contracts greater than \$10,000 funded by federal financial assistance.
10. Executive Order 13166 (67 FR 41455) to improve access to federal services for those with limited English proficiency.
11. The Drug Abuse Office and Treatment Act of 1972, as amended, relating to nondiscrimination on the basis of drug abuse.
12. Confidentiality of Alcohol and Drug Abuse Patient Records (42 CFR Part 2, Subparts A – E).

**M. State Law Requirements:**

1. Fair Employment and Housing Act (Government Code, section 12900 *et seq.*) and the applicable regulations promulgated thereunder (2 Cal. Code Regs. 10000 *et seq.*).
2. Title 2, Division 3, Part 1, Chapter 1, Article 9.5 of the Government Code, commencing with section 11135.
3. Title 9, Division 4, Chapter 8 of the Cal. Code Regs., commencing with Section 13060.
4. No state, federal, or County Realignment funds shall be used by the Contractor or its subcontractors for sectarian worship, instruction, or proselytization. No state funds shall be used by the Contractor or its subcontractors to provide direct, immediate, or substantial support to any religious activity.
5. Noncompliance with the requirements of nondiscrimination in services shall constitute grounds for DHCS to withhold payments under this Contract or terminate all, or any type, of funding provided hereunder.
6. Welfare & Institution Code sections 14184.402, 14184.403 and 14059.5.

**O. Additional Contract Restrictions**

This Contract is subject to any additional restrictions, limitations, or conditions enacted by the federal or state governments that affect the provisions, terms, or funding of this Contract in any manner.

- P. Other services approved by a State Plan amendment or waiver authorizing federal financial participation.**

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**Q. Subcontract Provisions**

The Contractor shall include the foregoing Part II general provisions in all of its subcontracts.

**R. Participation of County Behavioral Health Director's Association of California.**

The County AOD Program Administrator shall participate and represent the County in meetings of the County Behavioral Health Director's Association of California for the purposes of representing the counties in their relationship with DHCS with respect to policies, standards, and administration for alcohol and other drug abuse services.

The County AOD Program Administrator shall attend any special meetings called by the Director of DHCS. Participation and representation shall also be provided by the County Behavioral Health Director's Association of California.

**S. Nondiscrimination Requirements, Language Assistance, and Information Access for Individuals with Limited English Proficiency and/or Disabilities**

1. The Contractor shall comply with all applicable state and federal requirements regarding nondiscrimination, language assistance, information access, including but not limited to, the Dymally-Alatorre Bilingual Services Act, Section 1557 of the Patient Protection and Affordable Care Act, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act.
2. The Contractor shall provide beneficiaries and prospective beneficiaries' access to written translation in prevalent languages free of cost. DHCS shall use the following methodology to identify the prevalent non-English languages spoken by beneficiaries and potential beneficiaries throughout the State, and in the Contractor's service area:
  - a) A population group of mandatory eligible beneficiaries residing in the Contractor's service area who indicate their primary language as a language other than English, and that meet a numeric threshold of 3,000 or five-percent (5%) of the eligible beneficiary population, whichever is lower; and
  - b) A population group of mandatory eligible beneficiaries residing in the Contractor's service area who indicate their primary language as a language other than English and who meet the concentration standards of 1,000 in a single zip code or 1,500 in two contiguous zip codes.

**3. Nondiscrimination Notice**

- a) The Contractor shall post a DHCS-approved nondiscrimination notice that informs beneficiaries, potential beneficiaries, and the public about nondiscrimination, protected characteristics, and accessibility requirements, and conveys the Contractor's compliance with the requirements.

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- b) The nondiscrimination notice shall be posted in at least a 12-point font and be included in any documents that are vital or critical to obtaining services and/or benefits, and all other informational notices targeted to beneficiaries, potential beneficiaries, and the public.
  - c) Informational notices include not only documents intended for the public, such as outreach, education, and marketing materials, but also written notices requiring a response from an individual and written notices to an individual such as those pertaining to rights or benefits.
  - d) The nondiscrimination notice shall also be posted in at least a 12-point font in conspicuous physical locations where the Contractor interacts with the public, and on the Contractor's website in a location that allows any visitor to the website to easily locate the information.
  - e) The nondiscrimination notice shall include all legally-required elements under the applicable subsections of WIC Section 14029.91 and Gov. Code 11135.
  - f) The nondiscrimination notice shall include information on how to file a discrimination grievance directly with the DHCS Office of Civil Rights, in addition to information about how to file a discrimination grievance with the County and the U.S. Health and Human Services Office for Civil Rights.
  - g) The Contractor is not prohibited from posting the nondiscrimination notice in additional publications and communications.
4. Language Assistance Taglines
- a) The Contractor shall post taglines in a conspicuously visible size (no less than 12-point font), in English and at least the top 18 non-English languages in the State (as determined by DHCS), informing beneficiaries, potential beneficiaries, and the public of the availability of no-cost language assistance services, including assistance in non-English languages and the provision of free auxiliary aids and services for people with disabilities.
  - b) Taglines shall be posted in any documents that are vital or critical to obtaining services and/or benefits, conspicuous physical locations where the Contractor interacts with the public, on the Contractor's website in a location that allows any visitor to the website to easily locate the information, and in all beneficiary information and other information notice, in accordance with federal and state requirements.

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**5. Language Assistance Services**

- a) Language assistance services shall be provided free of charge, be accurate and timely, and protect the privacy and independence of the limited English proficiency (LEP) individual. There are two primary types of language assistance services: oral and written. LEP individuals are not required to accept language assistance services, although a qualified interpreter may be used to assist in communicating with an LEP individual who has refused language assistance services.
- b) The Contractor shall comply with the following oral interpretation requirements:
  - i. Contractors shall provide oral interpretation services from a qualified interpreter, on a 24-hour basis, at all key points of contact, at no cost to beneficiaries. Key points of contact may include medical care settings and non-medical care settings.
  - ii. Oral Interpretation shall be provided in all languages and is not limited to threshold or concentration standard languages.
  - iii. Interpretation can take place in-person, through a telephonic interpreter, or internet or video remote interpreting (VRI) services. However, the Contractor is prohibited from using remote audio or VRI services that do not comply with federal quality standards, or relying on unqualified bilingual/multilingual staff, interpreters, or translators. The Contractor should not solely rely on telephone language lines for interpreter services. Rather, telephonic interpreter services should supplement face-to-face interpreter services, which are a more effective means of communication.
  - iv. An interpreter is a person who renders a message spoken in one language into one or more languages. An interpreter shall be qualified and have knowledge in both languages of the relevant terms or concepts particular to the program or activity and the dialect spoken by the LEP individual. In order to be considered a qualified interpreter for an LEP individual, the interpreter must: 1) have demonstrated proficiency in speaking and understanding both English and the language spoken by the LEP individual; 2) be able to interpret effectively, accurately, and impartially, both receptively and expressly, to and from the language spoken by the LEP individual and English, using any necessary specialized vocabulary, terminology, and phraseology; and 3) adhere to generally accepted interpreter ethics principles, including client confidentiality.

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- v. If the Contractor provides a qualified interpreter for an individual with LEP through remote audio interpreting services, the Contractor shall provide real-time audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality audio without lags or irregular pauses in communication; a clear, audible transmission of voices; and adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the remote interpreting services.
  - vi. The Contractor is prohibited from requiring LEP individuals to provide their own interpreters, or from relying on bilingual/multilingual staff members who do not meet the qualifications of a qualified interpreter. Some bilingual/multilingual staff may be able to communicate effectively in a non-English language when communicating information directly in that language, but may not be competent to interpret in and out of English. Bilingual/multilingual staff may be used to communicate directly with LEP individuals only when they have demonstrated to the Contractor that they meet all of the qualifications of a qualified interpreter listed above.
  - vii. The Contractor is prohibited from relying on an adult or minor child accompanying an LEP individual to interpret or facilitate communication except when: 1) there is an emergency involving an imminent threat to the safety or welfare of the individual or the public and a qualified interpreter is not immediately available; or, 2) the LEP individual specifically requests that an accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide that assistance, and reliance on that accompanying adult for that assistance is appropriate under the circumstances. Prior to using a family member, friend or, in an emergency only, a minor child as an interpreter for an LEP individual, the Contractor shall first inform the individual that they have the right to free interpreter services and second, ensure that the use of such an interpreter will not compromise the effectiveness of services or violate the LEP individual's confidentiality. The Contractor shall also ensure that the LEP individual's refusal of free interpreter services and their request to use family members, friends, or a minor child as an interpreter is documented.
- c) The Contractor shall comply with the following written translation requirements:
- i. The Contractor shall use a qualified translator when translating written content in paper or electronic form. A qualified translator is a translator who: 1) adheres to generally accepted translator ethics principles, including client confidentiality; 2) has demonstrated proficiency in writing and understanding both written English and the written non-English language(s) in need of translation; and, 3) is able to translate effectively, accurately, and impartially to and from such language(s) and English, using any necessary specialized vocabulary, terminology, and phraseology.

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- ii. At a minimum, the Contractor shall provide written translations of beneficiary information in the threshold and concentration languages.
6. Effective Communication with Individuals with Disabilities
- a) The Contractor shall comply with all applicable requirements of federal and state disability law and take appropriate steps to ensure effective communication with individuals with disabilities.
  - b) The Contractor shall provide appropriate auxiliary aids and services to persons with impaired sensory, manual, or speaking skills, including the provision of qualified interpreters and written materials in alternative formats, free of charge and in a timely manner, when such aids and services are necessary to ensure that individuals with disabilities have an equal opportunity to participate in, or enjoy the benefits of, the Contractor's covered services, programs, and activities.
  - c) The Contractor shall provide interpretive services and make member information available in the following alternative formats: Braille, audio format, large print (no less than 20 point font), and accessible electronic format (such as a data CD). In determining what types of auxiliary aids and services are necessary, the Contractor shall give "primary consideration" to the individual's request of a particular auxiliary aid or service.
  - d) Auxiliary aids and services include, but are not limited to:
    - i. Qualified interpreters on-site or through VRI services; note takers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunication products and systems, text telephones (TTYs), videophones, captioned telephones, or equally effective telecommunications devices; videotext displays; accessible information and communication technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing.
    - ii. Qualified readers; taped texts; audio recordings; Braille materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs; large print materials (no less than 20 point font); accessible information and communication technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision.



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- e) When providing interpretive services, the Contractor shall use qualified interpreters to interpret for an individual with a disability, whether through a remote interpreting service or an on-site appearance. A qualified interpreter for an individual with a disability is an interpreter who: 1) adheres to generally accepted interpreter ethics principals, including client confidentiality; and 2) is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary, terminology, and phraseology. For an individual with a disability, qualified interpreters can include, for example, sign language interpreters, oral translators (individuals who represent or spell in the characters of another alphabet), and cued language translators (individuals who represent or spell by using a small number of handshapes).
- f) If a Contractor provides a qualified interpreter for an individual with a disability through VRI services, the Contractor shall provide real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication; a sharply delineated image that is large enough to display the interpreter's face, arms, hands, and fingers, and the participating individual's face, arms, hands, and fingers, regardless of body position; a clear, audible transmission of voices; and adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI.
- g) The Contractor shall not require an individual with a disability to provide their own interpreter. The Contractor is also prohibited from relying on an adult or minor child accompanying an individual with a disability to interpret or facilitate communication except when: 1) there is an emergency involving an imminent threat to the safety or welfare of the individual or the public and a qualified interpreter is not immediately available; or, 2) the individual with a disability specifically requests that an accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide that assistance, and reliance on that accompanying adult for that assistance is appropriate under the circumstances. Prior to using a family member, friend, or, in an emergency only, a minor child as an interpreter for an individual with a disability, the Contractor shall first inform the individual that they have the right to free interpreter services and second, ensure that the use of such an interpreter will not compromise the effectiveness of services or violate the individual's confidentiality. The Contractor shall ensure that the refusal of free interpreter services and the individual's request to use a family member, friend, or a minor child as an interpreter is documented.
- h) The Contractor shall make reasonable modifications to policies, practices, or procedures when such modifications are necessary to avoid discrimination based on disability.

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**T. Discrimination Grievances**

1. The Contractor shall designate a Discrimination Grievance Coordinator who is responsible for ensuring compliance with federal and state nondiscrimination requirements and investigating Discrimination Grievances related to any action that would be prohibited by, or out of compliance with, federal or state nondiscrimination law.
2. The Contractor shall adopt Discrimination Grievance procedures that ensure the prompt and equitable resolution of discrimination-related complaints. The Contractor shall not require a beneficiary to file a Discrimination Grievance with the Contractor before filing the grievance directly with DHCS Office of Civil Rights and the U.S. Health and Human Services Office for Civil Rights.
3. The Discrimination Grievance Coordinator shall be available to:
  - a) Answer questions and provide appropriate assistance to the Contractor staff and members regarding the Contractor's state and federal nondiscrimination legal obligations.
  - b) Advise the Contractor about nondiscrimination best practices and accommodating persons with disabilities.
  - c) Investigate and process any Americans with Disabilities Act, Section 504 of the Rehabilitation Act, Section 1557 of the Affordable Care Act, and/or Government Code section 11135 grievances received by the Contractor.
4. The Contractor shall comply with the following discrimination grievances reporting requirements.
  - a) Within 10 calendar days of mailing a Discrimination Grievance resolution letter to a beneficiary, the Contractor shall submit detailed information regarding the grievance to DHCS Office of Civil Rights' designated Discrimination Grievance email box. The Contractor shall submit the following detailed information in a secure format to [DHCS.DiscriminationGrievances@dhcs.ca.gov](mailto:DHCS.DiscriminationGrievances@dhcs.ca.gov) :
    - i. The original complaint;
    - ii. The provider's or other accused party's response to the grievance;

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- iii. Contact information for the Contractor's personnel responsible for the Contractor's investigation and response to the grievance;
- iv. Contact information for the beneficiary filing the grievance and for the provider or other accused party that is the subject of the grievance;
- v. All correspondence with the beneficiary regarding the grievance, including, but not limited to, the Discrimination Grievance acknowledgment and resolution letter(s) sent to the beneficiary; and
- vi. The results of the Contractor's investigation, copies of any corrective action taken, and any other information that is relevant to the allegation(s) of discrimination.

**U. Grievance Process**

Effective January 1, 2023, the Contractor shall establish and comply a Beneficiary Grievance and Appeals Process, and Notice of Adverse Benefit Determination (NOABD) provisions in accordance with the requirements set forth in BHIN 22-070.

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**Part III – Reporting Requirements**

The Contractor agrees that DHCS has the right to withhold payments until the Contractor submits any required data and reports to DHCS, as identified in this Exhibit A, Attachment I or as identified in Document 1F (a), Reporting Requirement Matrix for Counties.

**A. Year-End Cost Settlement Reports**

Pursuant to W&I Code section 14124.24(g)(1), the Contractor shall submit to DHCS, on November 1 of each year, the following year-end cost settlement documents, for itself and its subcontracted DMC providers, by paper or electronic format, as prescribed by DHCS:

1. Document 2P, County Certification Year-End Claim for Reimbursement
2. Document 2P(a), Drug Medi-Cal Provider Cost Report Excel Workbook

**B. Drug Medi-Cal Claims and Reports**

The Contractor or DMC providers shall submit claims in accordance with DHCS' DMC Provider Billing Manual Drug Medi-Cal State Plan Billing Manual.

The Contractor and subcontractors that provide DMC services shall be responsible for verifying the Medi-Cal eligibility of each beneficiary for each month of service prior to billing for DMC services to that beneficiary for that month. Medi-Cal eligibility verification shall be performed prior to rendering service, in accordance with and as described in DHCS' Drug Medi-Cal State Plan Billing Manual. Options for verifying the eligibility of a Medi-Cal beneficiary are described in the DHCS' Drug Medi-Cal State Plan Billing Manual.

Claims for DMC reimbursement shall include only those services covered under California Code of Regulations, title 22, section 51341.1(c-d) and administrative charges that are allowed under DHCS' Medical Assistance Program Cost Allocation Plan approved by the Centers for Medicare and Medicaid Services (CMS).

1. DMC service claims shall be submitted electronically in a HIPAA compliant format (837P). All adjudicated claim information must be retrieved by the Contractor via an 835 HIPAA compliant format (Health Care Claim Payment/Advice).
2. The following forms shall be prepared as needed and retained by the DMC provider for review by DHCS:
  - a) Multiple Billing Override Certification (MC 6700), Document 2K
  - b) Good Cause Certification (6065A), Document 2L(a)

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c) Good Cause Certification (6065B), Document 2L(b)

In the absence of good cause documented on the Good Cause Certification (6065A or 6065B) form, claims that are not submitted within the timeframe compliant with W&I Code, Section 14021.6(g) shall be denied. The existence of good cause shall be determined by DHCS in accordance with California Code of Regulations, title 22, sections 51008 and 51008.5.

3. County Administration

Separate from direct service claims as identified in this section above, the Contractor may submit an invoice for administrative costs for administering the DMC program on a quarterly basis. The form requesting reimbursement shall be submitted to DHCS.

4. If, while completing the Quality Assurance and Utilization Review (QAUR) requirements of this Exhibit A, Attachment I, Part I, Section 7, any of the Contractor's skilled professional medical personnel and directly supporting staff meet the criteria set forth in 42 CFR 432.50(d)(1), then the Contractor shall submit a written request that specifically demonstrates how the skilled professional medical personnel and directly supporting staff meet all of the applicable criteria set forth in 42 C.F.R. 432.50(d)(1) and outline the duties they will perform to assist DHCS, or DHCS' skilled professional medical personnel, in activities that are directly related to the administration of the DMC Program. DHCS shall respond to the Contractor's written request within 20 days with either a written agreement pursuant to 42 CFR 432.50(d)(2) approving the request, or a written explanation as to why DHCS does not agree that the Contractor's skilled professional medical personnel and directly supporting staff do not meet the criteria set forth in 42 CFR 432.50(d)(1).

C. California Outcomes Measurement System for Treatment (CalOMS-Tx)

The CalOMS-Tx Business Rules and Requirements are:

1. The Contractor shall internally comply with the CalOMS-Tx data collection system requirements for submission of CalOMS-Tx data or contract with a software vendor that does. If applicable, a Business Associate Agreement (BAA) shall be established between the Contractor and the software vendor, and the BAA shall state that DHCS is allowed to return the processed CalOMS-Tx data to the vendor that supplied the data to DHCS.
2. The Contractor shall conduct information technology (IT) systems testing and pass DHCS certification testing before commencing submission of CalOMS-Tx data. If the Contractor subcontracts with vendor for IT services, the Contractor is responsible for ensuring that the subcontracted IT system is tested and certified by DHCS prior to submitting CalOMS-Tx data. If the Contractor changes or modifies the CalOMS-Tx IT system, the Contractor shall re-test and pass DHCS

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re-certification prior to submitting data from a new or modified system.

3. Electronic submission of CalOMS-Tx data shall be submitted by the Contractor within 45 days from the end of the last day of the report month.
4. The Contractor shall comply with data collection and reporting requirements established by the DHCS CalOMS-Tx Data Collection Guide (Document 3J) and all former Department of Alcohol and Drug Programs Bulletins and DHCS Information Notices relevant to CalOMS-Tx data collection.
5. The Contractor shall submit CalOMS-Tx admission, discharge, annual update, resubmissions of records containing errors or in need of correction, and “provider no activity” report records in an electronic format approved by DHCS.
6. The Contractor shall comply with the CalOMS-Tx Data Compliance Standards established by DHCS identified in Document 3S for reporting data content, data quality, data completeness, reporting frequency, reporting deadlines, and reporting method.
7. The Contractor shall participate in CalOMS-Tx informational meetings, trainings, and conference calls.
8. The Contractor shall implement and maintain a system for collecting and electronically submitting CalOMS-Tx data.
9. The Contractor shall meet the requirements as identified in Exhibit F, Privacy and Information Security Provisions and Exhibit F, Attachment I – Social Security Administration Agreement.

**D. CalOMS-Tx General Information**

If the Contractor experiences system or service failure or other extraordinary circumstances of CalOMS-Tx that affects its ability to submit timely.

1. CalOMS-Tx data, the Contractor shall report the problem in writing by secure, encrypted email to DHCS at [ITServiceDesk@dhcs.ca.gov](mailto:ITServiceDesk@dhcs.ca.gov) before the established data submission deadlines.
2. If the Contractor is unable to submit CalOMS-Tx data due to system or service failure or other extraordinary circumstance, written notice shall be submitted prior to the data submission deadline at: [SUDcalomssupport@dhcs.ca.gov](mailto:SUDcalomssupport@dhcs.ca.gov). The written notice shall include a remediation plan that is subject to review and approval by DHCS. DHCS may, at its sole discretion, grant a grace period of up to 60 days for the Contractor to resolve the problem.
3. If DHCS experiences system or service failure, an extension equal to the number of

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business days will be granted for the Contractor's data submission.

4. The Contractor shall comply with the treatment data quality standards established by DHCS. Failure to meet these standards on an ongoing basis may result in withholding DMC funds.
5. If the Contractor submits data after the established deadlines, due to a delay or problem, the Contractor is still responsible for collecting and reporting data from time of delay or problem.

**E. Drug and Alcohol Treatment Access Report (DATAR)**

The DATAR business rules and requirements are:

1. The Contractor shall be responsible for ensuring that the Contractor-operated treatment services and all treatment providers with whom the Contractor makes a contract or otherwise pays for the services, submit a monthly DATAR report in an electronic copy format as provided by DHCS.
2. The Contractor shall ensure that all DATAR reports are submitted by either the Contractor-operated treatment providers and/or by each subcontracted treatment provider to DHCS by the 10th of the month following the report activity month.
3. The Contractor shall ensure that treatment providers who reach or exceed 90 percent of their dedicated capacity report this information to [DHCSPerinatal@dhcs.ca.gov](mailto:DHCSPerinatal@dhcs.ca.gov) within seven days of reaching capacity.
4. The Contractor shall ensure that all applicable providers are enrolled in DHCS' web-based DATAR program for submission of data, accessible on the DHCS website, when executing the subcontract.
5. If the Contractor or its subcontractor experiences system or service failure or other extraordinary circumstances that affect its ability to timely submit a monthly DATAR report, and/or to meet data compliance requirements, the Contractor shall report the problem before the established data submission deadlines by writing a secure, encrypted email to DHCS at [ITServiceDesk@dhcs.ca.gov](mailto:ITServiceDesk@dhcs.ca.gov). The written notice shall include a CAP that is subject to review and approval by DHCS. A grace period of up to 60 days may be granted, at DHCS' sole discretion, for the Contractor to resolve the problem before DMC payments are withheld (See Exhibit B, Part II, Section 2).
6. If DHCS experiences system or service failure, no penalties will be assessed to the Contractor for late data submission.

**F. Failure to meet required reporting requirements shall result in:**

1. DHCS shall issue a Notice of Deficiency (Deficiencies) to the Contractor regarding

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specified providers with a deadline to submit the required data and a request for a CAP to ensure timely reporting in the future. The Contractor shall submit the CAP to DHCS, DHCS will approve or reject the CAP or request revisions to the CAP, which shall be resubmitted to DHCS within 30 days from the date of the letter.

2. If the Contractor has not ensured compliance with the data submission or CAP request within the designated timeline, then DHCS may withhold funds until all data is submitted. DHCS shall inform the Contractor 30 calendar days in advance of when funds will be withheld.



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**Part IV – Definitions**

**Section 1 - General Definitions**

The words and terms of this Contract are intended to have their usual meanings unless a particular or more limited meaning is associated with their usage pursuant to Division 10.5 of HSC, Section 11750 *et seq.*, and Title 9, Cal. Code Regs., Section 9000 *et seq.*

- A. **“Contractor”** means the county identified in the Standard Agreement or DHCS authorized by the County Board of Supervisors to administer substance use disorder programs.
- B. **“Corrective Action Plan” (CAP)** means the written plan of action document which the Contractor or its subcontracted service provider develops and submits to DHCS to address or correct a deficiency or process that is non-compliant with laws, regulations or standards.
- C. **“County”** means the county in which the Contractor physically provides covered substance use treatment services.
- D. **“County Realignment Funds”** means Behavioral Health Subaccount funds received by the County as per Gov. Code, § 30025.
- E. **“Days”** means calendar days, unless otherwise specified.
- F. **“Dedicated Capacity”** means the historically calculated service capacity, by modality, adjusted for the projected expansion or reduction in services, which the Contractor agrees to make available to provide Substance Abuse Prevention to persons eligible for the Contractor's services.
- G. **“Discrimination Grievance”** means a complaint concerning the unlawful discrimination on the basis of any characteristic protected under federal or state law, including sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, gender, gender identity, or sexual orientation.
- H. **“Modality”** means those necessary overall general service activities to provide substance use disorder services as described in Division 10.5 of the H&S Code.
- I. **“Performance”** means providing the dedicated capacity in accordance with Exhibit B, Attachment I, and abiding by the terms of this Exhibit, including all applicable state and federal statutes, regulations, and standards, including Alcohol and/or Other Drug Certification Standards (Document 1P), if applicable, in expending funds for the provision of substance use disorders services hereunder.

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- J. **“Revenue”** means the Contractor’s income from sources other than DHCS allocation.
- K. **“Service Area”** means the geographical area under the Contractor’s jurisdiction.
- L. **“Service Element”** is the specific type of service performed within the more general service modalities.
- M. **“State”** means the Department of Health Care Services or DHCS.
- N. **“Utilization”** means the total actual units of service used by beneficiaries and participants.

**Section 2 – Definitions Specific to Drug Medi-Cal**

The words and terms of this Contract are intended to have their usual meaning unless a specific or more limited meaning is associated with their usage pursuant to the HSC, Cal. Code Regs., Title 9, and/or Cal. Code Regs., Title 22. Definitions of covered treatment modalities and services are found in Title 22 (Document 2C) and are incorporated by this reference.

- A. **“Administrative Costs”** means the Contractor’s actual direct costs, as recorded in the Contractor’s financial records and supported by source documentation, to administer the program or an activity to provide service to the DMC program. Administrative costs do not include the cost of treatment or other direct services to the beneficiary. Administrative costs may include, but are not limited to, the cost of training, programmatic and financial audit reviews, and activities related to billing. Administrative costs may include the Contractor’s overhead per the approved indirect cost rate proposal pursuant to OMB Circular A-87 and the State Controller’s Office Handbook of Cost Plan Procedures.
- B. **“Authorization”** is the approval process for DMC Services prior to the submission of a DMC claim.
- C. **“Assessment”** consists of activities to evaluate or monitor the status of a beneficiary’s behavioral health and determine the appropriate level of care and course of treatment for that beneficiary. Assessments shall be conducted in accordance with applicable State and Federal laws, and regulations, and standards. Assessment may be initial and periodic, and may include contact with family members or other collaterals if the purpose of the collateral’s participation is to focus on the treatment needs of the beneficiary. Assessment services may include one or more of the following components:
  - 1. Collection of information for assessment used in the evaluation and analysis of the cause or nature of the substance use disorder.

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2. Diagnosis of substance use disorders utilizing the current DSM and assessment of treatment needs for medically necessary treatment services. This may include a physical examination and laboratory testing (e.g., body specimen screening) necessary for treatment and evaluation conducted by staff lawfully authorized to provide such services and/or order laboratory testing (laboratory testing is covered under the "Other laboratory and X-ray services" benefit of the California Medicaid State Plan).
  3. Treatment planning, a service activity that consists of development and updates to documentation needed to plan and address the beneficiary's needs, planned interventions and to address and monitor a beneficiary's progress and restoration of a beneficiary to their best possible functional level.
- D. **"Beneficiary"** means a person who: (a) has been determined eligible for Medi-Cal; (b) is not institutionalized; (c) has a substance-related disorder per the "Diagnostic and Statistical Manual of Mental Disorders IV (DSM)", or DSM V criteria; and (d) meets the admission criteria to receive DMC covered services.
- E. **"Covered Services"** means those DMC services authorized by Title XIX or Title XXI of the Social Security Act, Title 22 Section 51341.1, W&I Code section 14124.24, and California's Medicaid State Plan.
- F. **"Direct Provider Contract"** means a contract established between DHCS and a DMC enrolled provider entered into pursuant to this Agreement for the provision of DMC services.
- G. **"Drug Medi-Cal Program" or "DMC Program"** means the state system wherein beneficiaries receive covered services from DMC-certified SUD treatment providers.
- H. **"Early Periodic Screening, Diagnosis, and Treatment Program (EPSDT)"** means the federal mandate under Section 1905(r) of the Social Security Act, which ensures that all beneficiaries under age 21 receive all applicable medically necessary SUD services needed to correct and ameliorate health conditions that are coverable under Section 1905(a) of the Social Security Act.
- I. **"Enrolled Provider"** means a SUD clinic location that has received certification to be reimbursed as a DMC clinic by DHCS to provide services as described in California Code of Regulations, title 22, section 51341.1.
- J. **"Federal Financial Participation (FFP)"** means the share of Federal Medicaid funds for reimbursement of DMC services.

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- K. **“Group Counseling”** means a contact with multiple beneficiaries at the same time. Group counseling shall focus on the needs of the participants. Group counseling shall be provided to a group that includes at least 2 and no more than 12 participants.
- L. **“Individual Counseling”** means a contact with a beneficiary. Individual counseling also includes a contact between a beneficiary, substance use disorder treatment professional, and one or more collaterals if the purpose of the collateral's participation is to focus on the treatment needs of the beneficiary by supporting the achievement of the beneficiary's treatment goals. Individual counseling also includes preparing the beneficiary to live in the community, and providing linkages to treatment and services available in the community.
- M. **“Medical Necessity”** means the determination that a covered DMC service is necessary to treat a beneficiary that was made in accordance with W&I Code section 14059.5, guidance and regulations issued by the Department pursuant to W&I Code section 14184.402(a), and Part I, Section 2 of this Contract.
- N. **“Medical Psychotherapy”** means a type of counseling service to treat SUDs other than Opioid Use Disorders (OUD) conducted by the medical director of a Narcotic Treatment Program on a one-to-one basis with the beneficiary.
- O. **“Medication Services”** means the prescription or administration of medication related to substance use disorder services, or the assessment of the side effects or results of the medication. Medication Services does not include MAT to treat Opioid Use Disorders as defined below.
- P. **“Medications for Addiction Treatment (also known as medication assisted treatment (MAT) for Opioid Use Disorders (OUD)”** includes all medications approved under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and all biological products licensed under section 351 of the Public Health Service Act (42 U.S.C. 262) to treat opioid use disorders as authorized by the Social Security Act Section 1905(a)(29) and described in Supplement to Attachment 3.1-A.
- Q. **“Narcotic Treatment Program” or “NTP”** means an outpatient program that provides FDA-drugs approved to treat SUDs when ordered by a physician as medically necessary. NTPs are required to offer and prescribe medications including methadone, buprenorphine, naloxone and disulfiram. A beneficiary must receive at minimum fifty minutes of counseling sessions with a therapist or counselor for up to 200 minutes per calendar month, although additional services may be provided as medically necessary.

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- R. **“Patient Education”** means education for the beneficiary on addition, treatment, recovery and associated health risks.
- S. **“Payment Suspension”** means the enrolled DMC provider has been issued a notice pursuant to W&I Code section 14107.11 and is not authorized to receive payments after the payment suspension date for DMC services, regardless of when the service was provided.
- T. **“Perinatal DMC Services”** means a non-institutional, non-medical, residential program which provides rehabilitation services to pregnant and postpartum women with a substance use disorder diagnosis. These services include perinatal-specific treatment and recovery services. Each beneficiary shall live on the premises and shall be supported in their efforts to restore and apply interpersonal and independent living skills and access community support systems. Perinatal Residential Substance Use Disorder Treatment programs shall provide a range of activities and services for pregnant and postpartum beneficiaries. Supervision shall be available day and night, seven days a week. Medically necessary rehabilitative services are provided in accordance with individualized beneficiary needs according to the State of California requirements. The cost of room and board is not reimbursable under the Medi-Cal program. Facilities shall store and safeguard all residents’ medications, and facility staff members may assist with resident’s self-administration of medication.
- U. **“Postpartum”** defined for DMC purposes, means the 60-day period beginning on the last day of pregnancy, regardless of whether other conditions of eligibility are met. Eligibility shall end on the last day of the calendar month in which the 60<sup>th</sup> day occurs.
- V. **“Postservice Postpayment (PSPP) Utilization Review”** means the review for program compliance conducted by DHCS after service was rendered and paid. DHCS may recover prior payments of federal and DHCS funds if such review determines that the services did not comply with the applicable statutes, regulations, or standards (Cal. Code Regs., tit. 22, § 51341.1 (k)).
- W. **“Postservice Prepayment Utilization Review”** means the review for program compliance and or integrity conducted by DHCS. DHCS will provide technical assistance for areas identified that did not comply with the applicable statutes, regulations, or standards (Cal. Code Regs., tit. 22, § 51159(b)).
- X. **“Provider of DMC Services”** means any person or entity that provides direct substance use treatment services and has been certified by the DHCS in accordance with Cal. Code Regs., tit. 22, § 51000.30 Medi-Cal Provider Application for Enrollment, Continued Enrollment, or Enrollment at a New, Additional, or Changed Location.

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- Y. **“Re-certification”** means the process by which the DMC certified clinic program is required to submit an application and specified documentation, as determined by DHCS, to remain eligible to participate and be reimbursed by the DMC program. Re-certification shall occur no less than every five years from the date of previous DMC certification or re-certification.
- Z. **“Subcontract”** means an agreement between the Contractor and its subcontractors.
- AA. **“Subcontractor”** means an individual or entity that is DMC certified and has entered into an agreement with the Contractor to be a provider of covered services. It may also mean a vendor who has entered into a procurement agreement with the Contractor to provide any of the administrative functions related to fulfilling the Contractor's obligations under the terms of this Exhibit A, Attachment I.
- BB. **“SUD Crisis Intervention Services”** consists of contacts with a beneficiary in crisis. A crisis means an actual relapse or an unforeseen event or circumstance which presents to the beneficiary an imminent threat of relapse. SUD Crisis Intervention Services shall focus on alleviating the crisis problem, be limited to the stabilization of the beneficiary's immediate situation, and be provided in the least intensive level of care that is medically necessary to treat their condition.
- CC. **“Temporary Suspension”** means the provider is temporarily suspended from participating in the DMC program as authorized by W&I Code section 14043.36(a). The provider cannot bill for DMC services from the effective date of the temporary suspension.

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**DOCUMENTS INCORPORATED BY REFERENCE**

All DMC documents incorporated by reference into this contract may not be physically attached to the contract, but can be found at DHCS' website:

<https://www.dhcs.ca.gov/provgovpart/Pages/DMC-Contracts.aspx>

- Document 1F(a): Reporting Requirement Matrix – County Submission Requirements for the Department of Health Care Services
- Document 1G: Perinatal Practice Guidelines FY 2018-19
- Document 1K: Drug and Alcohol Treatment Access Report (DATAR) User Manual
- Document 1P: Alcohol and/or Other Drug Program Certification Standards (February 2020)
- Document 1V: Adolescent Substance Use Disorder Best Practices Guide
- Document 2A: Sobky v. Smoley, Judgment, Signed February 1, 1995
- Document 2C: Title 22, California Code of Regulations
- Document 2F(a): Minimum Quality Drug\_Treatment Standards for DMC
- Document 2G: Drug Medi-Cal Billing Manual
- Document 2K: Multiple Billing Override Certification (MC 6700)
- Document 2L(a): Good Cause Certification (6065A)
- Document 2L(b): Good Cause Certification (6065B)
- Document 2P: County Certification - Cost Report Year-End Claim for Reimbursement
- Document 2P(a): Drug Medi-Cal Provider Cost Report Excel Workbook
- Document 3G: California Code of Regulations, Title 9 – Rehabilitation and Developmental Services, Division 4 – Department of Alcohol and Drug Programs, Chapter 4 – Narcotic Treatment Programs
- Document 3H: California Code of Regulations, Title 9 – Rehabilitation and Developmental Services, Division 4 – Department of Alcohol and Drug Programs, Chapter 8 – Certification of Alcohol and Other Drug Counselors
- Document 3J: CalOMS Treatment Data Collection Guide

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Document 3S:	CalOMS Treatment Data Compliance Standards
Document 3T:	Non-Drug Medi-Cal and Drug Medi-Cal DHCS Local Assistance Funding Matrix
Document 3V:	Culturally and Linguistically Appropriate Services (CLAS) National Standards
Document 4A:	Drug Medi-Cal Claim Submission Certification – County Contracted Provider – DHCS Form MC 100186 with Instructions
Document 4B:	Drug Medi-Cal Claim Submission Certification – County Operated Provider – DHCS Form MC 100187 with Instructions
Document 4D:	Drug Medi-Cal Certification for Federal Reimbursement (DHCS 100224A)
Document 4E:	Treatment Standards for Substance Use Diagnosis: A Guide for Services (Spring 2010)
Document 4F:	Drug Medi-Cal (DMC) Services Quarterly Claim for Reimbursement of County Administrative Expenses (Form #MC 5312)
Document 5A:	Confidentiality Agreement



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

**Part I – General Fiscal Provisions**

**Section 1 – General Fiscal Provisions**

**A. Fiscal Provisions**

For services satisfactorily rendered, and upon receipt and approval of documentation as identified in Exhibit A, Attachment I, Part III, the Department of Health Care Services (DHCS) agrees to compensate the Contractor in accordance with the rates specified herein.

**B. Use of State General Funds**

Contractor may not use allocated Drug Medi-Cal (DMC) State General Funds to pay for any non-DMC services.

**C. Funding Authorization**

Contractor shall bear the financial risk in providing any substance use disorder services covered by this Contract.

**D. Availability of Funds**

It is understood that, for the mutual benefit of both parties, this Contract may have been written before ascertaining the availability of congressional appropriation of funds in order to avoid program and fiscal delays that would occur if this Contract were not executed until after that determination. In this event, DHCS may amend the amount of funding provided for in this Contract based on the actual congressional appropriation.

**E. Budget Contingency Clause**

It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Contract does not appropriate sufficient funds for the program, this Contract 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 Contract and Contractor shall not be obligated to perform any provisions of this Contract.

If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, DHCS shall solely have the option to either cancel this Contract with no liability occurring to DHCS, or offer an amended contract to Contractor to reflect the reduced amount.

**F. Administrative Expense Allowability / Fiscal Documentation**

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**Budget Detail and Payment Provisions**

1. Invoices for DMC Program Administration and Utilization Review and Quality Assurance, received from a Contractor and accepted and/or submitted for payment by DHCS shall not be deemed evidence of actual allowable costs.
  2. Contractor shall maintain for review and audit, and supply to DHCS upon request, adequate documentation of all expenses claimed for DMC Program Administration and Utilization Review and Quality Assurance pursuant to this Contract to permit a determination of expense allowability.
  3. If the allowability or appropriateness of an expense for DMC Program Administration and Utilization Review and Quality Assurance cannot be determined by DHCS because invoice detail, fiscal records, or backup documentation is nonexistent or inadequate according to generally accepted accounting principles, and generally accepted governmental audit standards, 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.
  4. Costs and/or expenses for DMC Program Administration and Utilization Review and Quality Assurance deemed unallowable shall not be reimbursed or, if mistakenly reimbursed, those costs and/or expenses shall be subject to recovery by DHCS pursuant to Title 22 CCR Section 51458.1.
- G. Effective from the date of execution of this Contract, nothing in this Contract waives the protections provided to Contractor under Section 36 of article XIII of the California Constitution ("Proposition 30"). Except where specifically stated in the terms of this Contract, Contractor's Performance of any additional legal requirements, including, but not limited, to court-ordered requirements and statutory or regulatory amendments, is subject to Proposition 30's funding requirements.

**Section 2 – General Fiscal Provisions – Drug Medi-Cal**

**A. Amendment or Cancellation Due to Insufficient Appropriation**

This Contract is valid and enforceable only if sufficient funds are made available to DHCS by the United States Government for the purpose of the DMC program. It is mutually agreed that if the Congress does not appropriate sufficient funds for this program, DHCS solely has the option to void this Contract or to amend the Contract to reflect any reduction of funds.

**B. Exemptions**

Exemptions to the provisions of Item A above, of this Exhibit, may be granted by the California Department of Finance provided that the Director of DHCS certifies in writing that federal funds are available for the term of the Contract.

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

C. Actual allowable costs

Actual allowable costs for DMC Program Administration and Utilization Review and Quality Assurance, shall be determined in accordance with California's Medical Assistance Program Cost Allocation Plan.

In accordance with Welfare and Institutions (W&I) Code Sections 14132.44 and 14132.47, funds allocated to the Contractor for DMC services, including funding for alcohol and other drug services for pregnant and postpartum women pursuant to Title 22 Section 51341.1(c), may not be used as match for targeted case management services or for DMC administrative activities.

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Budget Detail and Payment Provisions

**Part II – Reimbursements**

**Section 1. General Reimbursement**

**A. 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.

**B. Amounts Payable**

1. The Maximum Payable amount under this Contract shall not exceed the amount identified on the State of California Standard Agreement form STD 213\_DHCS.
2. Reimbursement shall be made for substance use disorder services covered under this Contract and allowable expenses for DMC Program Administration and Utilization Review/Quality Assurance up to the amount annually encumbered for the state fiscal year in which services are performed and/or DMC Program Administration or Utilization Review/Quality Assurance costs are incurred.
3. For each fiscal year, DHCS shall settle actual allowable costs for DMC Program Administration and Utilization Review/Quality Assurance for the Contractor based on each fiscal year-end DHCS 100187 and DHCS 100186.

**Section 2. Drug Medi-Cal**

- A. To the extent that the Contractor provides the covered services in a satisfactory manner in accordance with the terms and conditions of this Contract and submits claims in accordance with the requirements of Part III, of Attachment I to Exhibit A, DHCS agrees to pay the Contractor at the rates specified for those services in the Medicaid State Plan and/or applicable waivers.
- B. Any payment for covered services rendered pursuant to Exhibit A, Attachment I, Part I, shall only be made pursuant to applicable provisions of Title XIX or Title XXI of the Social Security Act, the W&I Code, the Health and Safety Code, California's Medicaid State Plan, Title 22 CCR Sections 51341.1, 51490.1, and BHINs.
- C. It is understood and agreed that failure by the Contractor or its subcontractors to comply with applicable federal and state requirements in rendering covered services, including the requirements specified in this Contract, shall be sufficient cause for DHCS to deny payments to and/or recover payments from the Contractor and/or terminate the Contractor or its subcontractor from DMC program participation. If DHCS or the Department of Health and Human Services (DHHS) disallows or denies payments for any claim, Contractor shall repay to DHCS the funds it received for all claims so

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

disallowed or denied. The overpayment shall be recovered by any of the methods allowed in Title 22 CCR Sections 51047(a) and (b).

- D. Before such denial, recoupment, or disallowances are made, DHCS shall provide the Contractor with written notice of its proposed action. Such notice shall include the reason for the proposed action and shall allow the Contractor 60 days to submit additional information before the proposed action is taken, as required in Title 22 CCR Section 51047(a). This requirement does not apply to the DMC Post service Post payment Utilization Reviews or claims rejected or denied by Short Doyle.
- E. DHCS shall refund to the Contractor any recovered Federal DMC overpayment that is subsequently determined to have been erroneously collected, together with interest, in accordance with Title 22 CCR Section 51047(e).
- F. Contractor shall be reimbursed by DHCS for Plan Administration and Utilization Review/Quality Assurance on the basis of its actual allowable cost.
- G. Claims submitted to the Contractor by a subcontracted provider that is not certified or whose certification has been suspended pursuant to the W&I Code Section 14107.11 and 42 CFR 455.23, be sufficient cause for DHCS to deny payments or to recover payments. Payments for any DMC services shall be held by the Contractor until the payment suspension is resolved.
- H. Contractors must accept, as payment in full, the amounts paid by DHCS in accordance with this Contract. However, Contractors and subcontractors may not deny services to any client eligible for DMC services on account of the client's inability to pay or location of eligibility. Contractors and subcontractors may not demand any additional payment from DHCS, client, or other third party payers.

**Section 3. Drug Medi-Cal Direct Provider Contracts**

- A. Pursuant to W&I Code 14124.21, DHCS shall contract directly with qualified DMC providers within the Contractor's county as necessary to ensure beneficiary access to DMC services.
- B. DHCS will invoice the County for the county realignment share of approved DMC claims received by DHCS from Direct Providers. The County shall reimburse DHCS for the county realignment share of the approved DMC claims within 30 days of receipt of the invoice. If the County does not reimburse DHCS within 30 days of receipt of the invoice, DHCS may offset the amount owed from any other funding owed to the County by DHCS or any other State agency. The parties acknowledge that DHCS's Direct Providers shall be responsible for repayment of any disallowed claims. However, in no event shall DHCS be liable for Medicaid reimbursement for any disallowed claims.

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1. Any contractor contracting with DHCS for the provision of services through NTP providers may receive reimbursement of the USDR rate.
2. As a result of the Direct Contract Provider's settled cost report, any County Realignment funds owed to the Direct Contract Provider will be handled through an invoice process to the Contractor. Additionally, as a result of the Direct Contract Provider's settled cost report, any County Realignment funds owed to DHCS will be returned to the Contractor.

**Exhibit B**  
Budget Detail and Payment Provisions

**Part III - Financial Audit Requirements**

**Section 1. General Fiscal Audit Requirements**

- A. In addition to the requirements identified below, the Contractor and its subcontractors are required to meet the audit requirements as delineated in Exhibit C, General Terms and Conditions, and Exhibit D(F), Special Terms and Conditions, of this Contract.
- B. All expenditures of county realignment funds, state and federal funds furnished to the Contractor and its subcontractors pursuant to this Contract are subject to audit by DHCS. Objectives of such audits may include, but are not limited to, the following:
  - 1. To determine whether units of service claimed/reported are properly documented by service records and accurately accumulated for claiming/reporting.
  - 2. To validate data reported by the Contractor for prospective contract negotiations.
  - 3. To provide technical assistance in addressing current year activities and providing recommendation on internal controls, accounting procedures, financial records, and compliance with laws and regulations.
  - 4. To determine the cost of services, net of related patient and participant fees, third-party payments, and other related Revenues and funds.
  - 5. To determine that expenditures are made in accordance with applicable state and federal laws, regulations, and contract requirements.
  - 6. To determine the facts in relation to analysis of data, complaints, or allegations, which may be indicative of fraud, abuse, willful misrepresentation, or failure to achieve the Contract objectives of Exhibit C and D(F).
- C. Unannounced visits may be made at the discretion of DHCS to the Contractor and/or its subcontractors.
- D. The refusal of the Contractor or its subcontractors to permit access to and inspection of electronic or print books and records, physical facilities, and/or refusal to permit interviews with employees, as described in this part, constitutes an express and immediate material breach of this Contract and will be sufficient basis to terminate the Contract for cause or default.
- E. Reports of audits conducted by DHCS shall reflect all findings, recommendations, adjustments, and corrective action as a result of its finding in any areas.

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

**Section 2. Drug Medi-Cal Financial Audits**

- A. In addition to the audit requirements set forth in Exhibit D(F), DHCS may also conduct financial audits of DMC programs, exclusive of NTP services, to accomplish any of, but not limited to, the following audit objectives:
1. To review reported costs for validity, appropriate allocation methodology, and compliance with Medicaid laws and regulations.
  2. To ensure that only the cost of allowable DMC activities are included in reported costs.
  3. To determine the provider's usual and customary charge to the general public in accordance with CMS (The Medicare Provider Reimbursement Manual) (CMS-Pub.15), which can be obtained from the Centers for Medicare & Medicaid Services, Baltimore, Maryland, or [www.cms.hhs.gov](http://www.cms.hhs.gov), for comparison to the DMC cost per unit.
  4. To review documentation of service and determine the final number of approved units of service.
  5. To determine the amount of clients' third-party Revenue and Medi-Cal share of cost to offset allowable DMC reimbursement.
  6. To compute final settlement.
- B. In addition to the audit requirements set forth in Exhibit D(F), DHCS may conduct financial audits of NTP programs.
1. A review of counseling claims to ensure that the appropriate group or individual counseling rate has been used and that counseling sessions have been billed appropriately.
  2. A review of the number of clients in group sessions to ensure that sessions include no less than two and no more than twelve clients at the same time, with at least one Medi-Cal client in attendance.
  3. A review of supporting service, time, financial, and patient records to verify the validity of counseling claims.
- C. Contractor shall be responsible for any disallowances taken by the Federal Government, DHCS, or the Bureau of State Audits as a result of any audit exception that is related to its responsibilities. Contractor shall not use funds administered by DHCS to repay one federal funding source with funds provided by another federal funding source, or to repay federal funds with state funds, or to repay state funds with federal funds.



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

- D. Contractor agrees to promptly develop and implement any corrective action plans in a manner acceptable to DHCS in order to comply with recommendations contained in any audit report. Such corrective action plans shall include time-specific objectives to allow for measurement of progress and are subject to verification by DHCS within six months from the date of the plan.
- E. Contractor, in coordination with DHCS, shall provide follow-up on all significant findings in the audit report, including findings relating to a subcontractor, and submit the results to DHCS.

If differences cannot be resolved between DHCS and the Contractor regarding the terms of the final financial audit settlements for funds expended under Exhibit B, Contractor may request an appeal in accordance with the appeal process described in the Division 9, Part 3, Chapter 7, Article 5.3 of the W&I Code. Contractor shall include a provision in its subcontracts regarding the process by which a subcontractor may file an audit appeal via the Contractor.

- F. Providers of DMC services shall, upon request, make available to DHCS their fiscal and other records to assure that such provider have adequate recordkeeping capability and to assure that reimbursement for covered DMC services are made in accordance with this Contract. These records include, but are not limited to, matters pertaining to:
1. Provider ownership, organization, and operation
  2. Fiscal, medical, and other recordkeeping systems
  3. Federal income tax status
  4. Asset acquisition, lease, sale, or other action
  5. Franchise or management arrangements
  6. Patient service charge schedules
  7. Costs of operation
  8. Amounts of income received by source and purpose
  9. Flow of funds and working capital
- G. Contractor shall retain records of utilization review activities required in Exhibit A, Attachment I Part I, Section 4(B) herein for a minimum of ten years.

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

**Part IV – Records**

**Section 1. General Provisions**

**A. Maintenance of Records**

Contractor shall maintain sufficient books, records, documents, and other evidence necessary for DHCS to audit contract Performance and contract compliance. Contractor shall make these records available to DHCS, upon request, to evaluate the quality and quantity of services, accessibility and appropriateness of services, and to ensure fiscal accountability. Regardless of the location or ownership of such records, they shall be sufficient to determine if costs incurred by Contractor are reasonable, allowable and allocated appropriately. All records must be capable of verification by qualified auditors.

1. Contractor and subcontractors shall include in any contract with an audit firm a clause to permit access by DHCS to the working papers of the external independent auditor, and require that copies of the working papers shall be made for DHCS at its request.
2. Contractor and subcontractors shall keep adequate and sufficient financial records and statistical data to support the year-end documents filed with DHCS. All records must be capable of verification by qualified auditors.
3. Accounting records and supporting documents shall be retained for a ten-year period from the date the year-end cost settlement report was approved by DHCS for interim settlement, as applicable. When an audit by the Federal Government, DHCS, or the California State Auditor has been started before the expiration of the ten-year period, the records shall be retained until completion of the audit and final resolution of all issues that arise in the audit. Final settlement shall be made at the end of the audit and appeal process. If an audit has not been completed within ten years, the interim settlement shall be considered as the final settlement.
4. Financial records shall be kept so that they clearly reflect the source of funding for each type of service for which reimbursement is claimed. These documents include, but are not limited to, all ledgers, books, vouchers, time sheets, payrolls, appointment schedules, client data cards, and schedules for allocating costs. All records must be capable of verification by qualified auditors.
5. Contractor's subcontracts shall require that all subcontractors comply with the requirements of Exhibit A, Attachment I, Part I, Section 3.

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

6. Should a subcontractor discontinue its contractual agreement with the Contractor, or cease to conduct business in its entirety, Contractor shall be responsible for retaining the subcontractor's fiscal and program records for the required retention period. DHCS Administrative Manual (SAM) contains statutory requirements governing the retention, storage, and disposal of records pertaining to state funds. Contractor shall follow SAM requirements located at <http://sam.dgs.ca.gov/TOC/1600.aspx>.

The Contractor shall retain all records required by W&I Code Section 14124.1 for reimbursement of services and financial audit purposes.

7. In the expenditure of funds hereunder, Contractor shall comply with the requirements of SAM and the laws and procedures applicable to the obligation and expenditure of federal and state funds.

**B. Dispute Resolution Process**

1. In the event of a dispute under this Exhibit A, Attachment I, Part I, other than an audit dispute, Contractor shall provide written notice of the particulars of the dispute to DHCS before exercising any other available remedy. Written notice shall include the contract number. The Director (or designee) of DHCS and the County Drug or Alcohol Program Administrator (or designee) shall meet to discuss the means by which they can effect an equitable resolution to the dispute. Contractor shall receive a written response from DHCS within 60 days of the notice of dispute. The written response shall reflect the issues discussed at the meeting and state how the dispute will be resolved.
2. As stated in Part III, Section 2, of this Exhibit, in the event of a dispute over financial audit findings between DHCS and the Contractor, Contractor may appeal the audit in accordance with Division 9, Part 3, Chapter 7, Article 5.3 of the W&I Code. Contractor shall include a provision in its subcontracts regarding the process by which a subcontractor may file an audit appeal via the Contractor.
3. Contractors that conduct financial audits of subcontractors, other than a subcontractor whose funding consists entirely of non-Department funds, shall develop a process to resolve disputed financial findings and notify subcontractors of their appeal rights pursuant to that process. This section shall not apply to those grievances or compliances arising from the financial findings of an audit or examination made by or on behalf of DHCS pursuant to Part III of this Exhibit.
4. To ensure that necessary corrective actions are taken, financial audit findings are either uncontested or upheld after appeal may be used by DHCS during prospective contract negotiations.

## Exhibit B, Attachment I Funding Amounts

Fiscal Year 2023-24	Funding Amount Original
<b>State General Funds (7/1/23 to 6/30/24)</b>	
Non Perinatal SGF** (08)	360,000
Perinatal SGF** (09)	36,000
Administration Costs & QAVUR SGF** (603)	79,000
<b>TOTAL</b>	<b>475,000</b>
<b>Drug Medi-Cal Federal Share (7/1/23 to 6/30/24)</b>	
Non Perinatal Federal Share (01)	3,600,000
Perinatal Federal Share (03)	360,000
Administration Costs & QAVUR (603)	792,000
<b>TOTAL</b>	<b>4,752,000</b>
<b>GRAND TOTAL</b>	<b>5,227,000</b>

Fiscal Year 2026-27	Funding Amount Original
<b>State General Funds (7/1/26 to 6/30/27)</b>	
Non Perinatal SGF** (08)	360,000
Perinatal SGF** (09)	36,000
Administration Costs & QAVUR SGF** (603)	79,000
<b>TOTAL</b>	<b>475,000</b>
<b>Drug Medi-Cal Federal Share (7/1/26 to 6/30/27)</b>	
Non Perinatal Federal Share (01)	3,600,000
Perinatal Federal Share (03)	360,000
Administration Costs & QAVUR (603)	792,000
<b>TOTAL</b>	<b>4,752,000</b>
<b>GRAND TOTAL</b>	<b>5,227,000</b>

Fiscal Year 2024-25	Funding Amount Original
<b>State General Funds (7/1/24 to 6/30/25)</b>	
Non Perinatal SGF** (08)	360,000
Perinatal SGF** (09)	36,000
Administration Costs & QAVUR SGF** (603)	79,000
<b>TOTAL</b>	<b>475,000</b>
<b>Drug Medi-Cal Federal Share (7/1/24 to 6/30/25)</b>	
Non Perinatal Federal Share (01)	3,600,000
Perinatal Federal Share (03)	360,000
Administration Costs & QAVUR (603)	792,000
<b>TOTAL</b>	<b>4,752,000</b>
<b>GRAND TOTAL</b>	<b>5,227,000</b>

<b>Original Four-Year Total</b>	<b>20,908,000</b>
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Fiscal Year 2025-26	Funding Amount Original
<b>State General Funds (7/1/25 to 6/30/26)</b>	
Non Perinatal SGF** (08)	360,000
Perinatal SGF** (09)	36,000
Administration Costs & QAVUR SGF** (603)	79,000
<b>TOTAL</b>	<b>475,000</b>
<b>Drug Medi-Cal Federal Share (7/1/25 to 6/30/26)</b>	
Non Perinatal Federal Share (01)	3,600,000
Perinatal Federal Share (03)	360,000
Administration Costs & QAVUR (603)	792,000
<b>TOTAL</b>	<b>4,752,000</b>
<b>GRAND TOTAL</b>	<b>5,227,000</b>

\*\* State General Fund amounts are based on biannual DMC estimates approved by the Department of Finance. DHCS will revise the amounts through the contract

**Exhibit D(F)**  
**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	20. Debarment and Suspension Certification
2. Travel and Per Diem Reimbursement	21. Smoke-Free Workplace Certification
3. Procurement Rules	22. Drug Free Workplace Act of 1988
4. Equipment Ownership / Inventory / Disposition	23. Covenant Against Contingent Fees
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## 1. Federal Equal Opportunity Requirements

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

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

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

## **2. Travel and Per Diem Reimbursement**

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

Reimbursement for travel and per diem expenses from DHCS under this Agreement shall, unless otherwise specified in this Agreement, be at the rates currently in effect,



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

### 3. Procurement Rules

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

#### a. Equipment/Property definitions

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

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

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

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

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

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

To secure equipment/property above the annual maximum limit of \$50,000, the Contractor shall make arrangements through the appropriate DHCS Program Contract Manager, to have all remaining equipment/property purchased through DHCS' Purchasing Unit. The cost of equipment/property

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

- (2) All equipment/property purchases are subject to Paragraphs d through h of Provision 3. Paragraph b of Provision 3 shall also apply, if equipment/property purchases are delegated to subcontractors that are either a government or public entity.
- (3) Nonprofit organizations and commercial businesses shall use a procurement system that meets the following standards:
  - (a) Maintain a code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in awarding procurement contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a procurement, or bid contract in which, to his or her knowledge, he or she has a financial interest.
  - (b) Procurements shall be conducted in a manner that provides, to the maximum extent practical, open, and free competition.
  - (c) Procurements shall be conducted in a manner that provides for all of the following:
    - [1] Avoid purchasing unnecessary or duplicate items.
    - [2] Equipment/property solicitations shall be based upon a clear and accurate description of the technical requirements of the goods to be procured.
    - [3] Take positive steps to utilize small and veteran owned businesses.
- d. Unless waived or otherwise stipulated in writing by DHCS, prior written authorization from the appropriate DHCS Program Contract Manager will be required before the Contractor will be reimbursed for any purchase of \$5,000 or more for commodities, supplies, equipment/property, and services related to such purchases. The Contractor must provide in its request for authorization all particulars necessary, as specified by DHCS, for evaluating the necessity or desirability of incurring such costs. The term "purchase" excludes the purchase of services from a subcontractor and public utility services at rates established for uniform applicability to the general public.
- e. In special circumstances, determined by DHCS (e.g., when DHCS has a need to monitor certain purchases, etc.), DHCS may require prior written authorization and/or the submission of paid vendor receipts for any purchase, regardless of

dollar amount. DHCS reserves the right to either deny claims for reimbursement or to request repayment for any Contractor and/or subcontractor purchase that DHCS determines to be unnecessary in carrying out performance under this Agreement.

- f. The Contractor and/or subcontractor must maintain a copy or narrative description of the procurement system, guidelines, rules, or regulations that will be used to make purchases under this Agreement. The State reserves the right to request a copy of these documents and to inspect the purchasing practices of the Contractor and/or subcontractor at any time.
- g. For all purchases, the Contractor and/or subcontractor must maintain copies of all paid vendor invoices, documents, bids and other information used in vendor selection, for inspection or audit. Justifications supporting the absence of bidding (i.e., sole source purchases) shall also be maintained on file by the Contractor and/or subcontractor for inspection or audit.
- h. DHCS may, with cause (e.g., with reasonable suspicion of unnecessary purchases or use of inappropriate purchase practices, etc.), withhold, cancel, modify, or retract the delegated purchase authority granted under Paragraphs b and/or c of Provision 3 by giving the Contractor no less than 30 calendar days written notice.

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

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

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

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

##### **(1) Reporting of Equipment/Property Receipt**

DHCS requires the reporting, tagging and annual inventorying of all equipment and/or property that is furnished by DHCS or purchased/reimbursed with funds provided through this Agreement.

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

**(2) Annual Equipment/Property Inventory**

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

- (a) Include in the inventory report, equipment and/or property in the Contractor's possession and/or in the possession of a subcontractor (including independent consultants).
  - (b) Submit the inventory report to DHCS according to the instructions appearing on the inventory form or issued by the DHCS Program Contract Manager.
  - (c) Contact the DHCS Program Contract Manager to learn how to remove, trade-in, sell, transfer or survey off, from the inventory report, expired equipment and/or property that is no longer wanted, usable or has passed its life expectancy. Instructions will be supplied by either the DHCS Program Contract Manager or DHCS' Asset Management Unit.
- b. Title to state equipment and/or property shall not be affected by its incorporation or attachment to any property not owned by the State.
- c. Unless otherwise stipulated, DHCS shall be under no obligation to pay the cost of restoration, or rehabilitation of the Contractor's and/or Subcontractor's facility which may be affected by the removal of any state equipment and/or property.
- d. The Contractor and/or Subcontractor shall maintain and administer a sound business program for ensuring the proper use, maintenance, repair, protection, insurance and preservation of state equipment and/or property.
- (1) In administering this provision, DHCS may require the Contractor and/or Subcontractor to repair or replace, to DHCS' satisfaction, any damaged, lost or stolen state equipment and/or property. In the event of state equipment and/or miscellaneous property theft, Contractor and/or Subcontractor shall immediately file a theft report with the appropriate police agency or the California Highway Patrol and Contractor shall promptly submit one copy of the theft report to the DHCS Program Contract Manager.
- e. Unless otherwise stipulated by the Program funding this Agreement, equipment and/or property purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement, shall only be used for performance of this Agreement or another DHCS agreement.
- f. Within sixty (60) calendar days prior to the termination or end of this Agreement, the Contractor shall provide a final inventory report of equipment and/or property to the DHCS Program Contract Manager and shall, at that time, query DHCS as

to the requirements, including the manner and method, of returning state equipment and/or property to DHCS. Final disposition of equipment and/or property shall be at DHCS expense and according to DHCS instructions. Equipment and/or property disposition instructions shall be issued by DHCS immediately after receipt of the final inventory report. At the termination or conclusion of this Agreement, DHCS may at its discretion, authorize the continued use of state equipment and/or property for performance of work under a different DHCS agreement.

**g. Motor Vehicles**

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

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

**Automobile Liability Insurance**

- (a) The Contractor, by signing this Agreement, hereby certifies that it possesses or will obtain automobile liability insurance in the amount of \$1,000,000 per occurrence for bodily injury and property damage combined. Said insurance must be obtained and made effective upon the delivery date of any motor vehicle, purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement, to the Contractor and/or Subcontractor.

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

## 5. Subcontract Requirements

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

- a. Prior written authorization will be required before the Contractor enters into or is reimbursed for any subcontract for services costing \$5,000 or more. Except as indicated in Paragraph a(3) herein, when securing subcontracts for services exceeding \$5,000, the Contractor shall obtain at least three bids or justify a sole source award.
  - (1) The Contractor must provide in its request for authorization, all information necessary for evaluating the necessity or desirability of incurring such cost.
  - (2) DHCS may identify the information needed to fulfill this requirement.
  - (3) Subcontracts performed by the following entities or for the service types listed below are exempt from the bidding and sole source justification requirements:
    - (a) A local governmental entity or the federal government,
    - (b) A State college or State university from any State,
    - (c) A Joint Powers Authority,
    - (d) An auxiliary organization of a California State University or a California community college,
    - (e) A foundation organized to support the Board of Governors of the California Community Colleges,
    - (f) An auxiliary organization of the Student Aid Commission established under Education Code § 69522,
    - (g) Firms or individuals proposed for use and approved by DHCS' funding Program via acceptance of an application or proposal for funding or pre/post contract award negotiations,
    - (h) Entities and/or service types identified as exempt from advertising and competitive bidding in [State Contracting Manual Chapter 5 Section 5.80 Subsection B.2.](#)
- b. DHCS reserves the right to approve or disapprove the selection of subcontractors and with advance written notice, require the substitution of subcontractors and require the Contractor to terminate subcontracts entered into in support of this Agreement.
  - (1) Upon receipt of a written notice from DHCS requiring the substitution and/or termination of a subcontract, the Contractor shall take steps to ensure the completion of any work in progress and select a replacement, if applicable, within 30 calendar days, unless a longer period is agreed to by DHCS.

- c. Actual subcontracts (i.e., written agreement between the Contractor and a subcontractor) of \$5,000 or more are subject to the prior review and written approval of DHCS. DHCS may, at its discretion, elect to waive this right. All such waivers shall be confirmed in writing by DHCS.
- d. Contractor shall maintain a copy of each subcontract entered into in support of this Agreement and shall, upon request by DHCS, make copies available for approval, inspection, or audit.
- e. DHCS assumes no responsibility for the payment of subcontractors used in the performance of this Agreement. Contractor accepts sole responsibility for the payment of subcontractors used in the performance of this Agreement.
- f. The Contractor is responsible for all performance requirements under this Agreement even though performance may be carried out through a subcontract.
- g. The Contractor shall ensure that all subcontracts for services include provision(s) requiring compliance with applicable terms and conditions specified in this Agreement.
- h. The Contractor agrees to include the following clause, relevant to record retention, in all subcontracts for services:  
  

"(Subcontractor Name) agrees to maintain and preserve, until three years after termination of (Agreement Number) and final payment from DHCS to the Contractor, to permit DHCS or any duly authorized representative, to have access to, examine or audit any pertinent books, documents, papers and records related to this subcontract and to allow interviews of any employees who might reasonably have information related to such records."
- i. Unless otherwise stipulated in writing by DHCS, the Contractor shall be the subcontractor's sole point of contact for all matters related to performance and payment under this Agreement.
- j. Contractor shall, as applicable, advise all subcontractors of their obligations pursuant to the following numbered provisions of this Exhibit: 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 17, 19, 20, 24, 32 and/or other numbered provisions herein that are deemed applicable.

## 6. Income Restrictions

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



## 7. Audit and Record Retention

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

- a. The Contractor and/or Subcontractor shall maintain books, records, documents, and other evidence, accounting procedures and practices, sufficient to properly reflect all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this Agreement, including any matching costs and expenses. The foregoing constitutes "records" for the purpose of this provision.
- b. The Contractor's and/or subcontractor's facility or office or such part thereof as may be engaged in the performance of this Agreement and his/her records shall be subject at all reasonable times to inspection, audit, and reproduction.
- c. Contractor agrees that DHCS, the Department of General Services, the Bureau of State Audits, or their designated representatives including the Comptroller General of the United States shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Government Code Section 8546.7, Public Contract Code (PCC) Sections 10115 et seq., Code of California Regulations Title 2, Section 1896.77.) The Contractor shall comply with the above and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in PCC Section 10115.10.
- d. The Contractor and/or Subcontractor shall preserve and make available his/her records (1) for a period of six years for all records related to Disabled Veteran Business Enterprise (DVBE) participation (Military and Veterans Code 999.55), if this Agreement involves DVBE participation, and three years for all other contract records 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 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.

- f. The Contractor shall, if applicable, comply with the Single Audit Act and the audit requirements set forth in 2 C.F.R. § 200.501 (2014).

## **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. Termination**

### **a. For Cause**

The State may terminate this Agreement, in whole or in part, and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such

termination, the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand. If this Agreement is terminated, in whole or in part, the State may require the Contractor to transfer title, or in the case of licensed software, license, and deliver to the State any completed deliverables, partially completed deliverables, and any other materials, related to the terminated portion of the Contract, including but not limited to, computer programs, data files, user and operations manuals, system and program documentation, training programs related to the operation and maintenance of the system, and all information necessary for the reimbursement of any outstanding Medicaid claims. The State shall pay contract price for completed deliverables delivered and accepted and items the State requires the Contractor to transfer as described in this paragraph above.

**b. For Convenience**

The State retains the option to terminate this Agreement, in whole or in part, without cause, at the State's convenience, without penalty, provided that written notice has been delivered to the Contractor at least ninety (90) calendar days prior to such termination date. In the event of termination, in whole or in part, under this paragraph, the State may require the Contractor to transfer title, or in the case of licensed software, license, and deliver to the State any completed deliverables, partially completed deliverables, and any other materials related to the terminated portion of the contract including but not limited to, computer programs, data files, user and operations manuals, system and program documentation, training programs related to the operation and maintenance of the system, and all information necessary for the reimbursement of any outstanding Medicaid claims. The Contractor will be entitled to compensation upon submission of an invoice and proper proof of claim for the services and products satisfactorily rendered, subject to all payment provisions of the Agreement. Payment is limited to expenses necessarily incurred pursuant to this Agreement up to the date of termination.

**11. 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.



## **12. 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 by law.

- a. Government contractors agree to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 USC 7606) section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations.
- 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 Clean Water Act (33 U.S.C. 1251 et seq.), as amended.

## **13. 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.

## **14. 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.

## **15. 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.

## **16. 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.

## 17. 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*** and expends \$750,000 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 2 C.F.R. 200.501 entitled "Audit Requirements". 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 a 2 C.F.R. 200.501 audit, the Contractor must also submit a certification indicating the Contractor has not expended \$750,000 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".

## **18. 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.

## **19. 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.

## **20. 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 2 CFR Part 180, 2 CFR Part 376

- 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) violation of Federal or State antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, obstruction of justice, or the commission of any other offense indicating a lack of business integrity or business honesty that seriously affects its business honesty;
  - (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) Have not, within a three-year period preceding this application/proposal/agreement, engaged in any of the violations listed under 2 CFR Part 180, Subpart C as supplemented by 2 CFR Part 376.
  - (6) 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.
  - (7) 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 2 CFR Part 180 as supplemented by 2 CFR Part 376.
- 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.

**21. 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.

**22. Drug Free Workplace Act of 1988**

The Federal government implemented the Drug Free Workplace Act of 1988 in an attempt to address the problems of drug abuse on the job. It is a fact that employees who use drugs have less productivity, a lower quality of work, and a higher absenteeism, and are more likely to misappropriate funds or services. From this perspective, the drug abuser may endanger other employees, the public at large, or themselves. Damage to property, whether owned by this entity or not, could result from drug abuse on the job. All these actions might undermine public confidence in the services this entity provides. Therefore, in order to remain a responsible source for government contracts, the following guidelines have been adopted:

- a. The unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the work place.
- b. Violators may be terminated or requested to seek counseling from an approved rehabilitation service.

- c. Employees must notify their employer of any conviction of a criminal drug statute no later than five days after such conviction.
- d. Although alcohol is not a controlled substance, it is nonetheless a drug. It is the policy that abuse of this drug will also not be tolerated in the workplace.
- e. Contractors of federal agencies are required to certify that they will provide drug-free workplaces for their employees.

### **23. 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.

### **24. 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.

### **25. 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.

### **26. 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.



## **27. 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.

## **28. 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.

## **29. Use of Disabled Veteran's Business Enterprises (DVBE)**

(Applicable to agreements over \$10,000 in which the Contractor committed to achieve DVBE participation. Not applicable to agreements and amendments specifically exempted from DVBE requirements by DHCS.)

- a. The State Legislature has declared that a fair portion of the total purchases and contracts or subcontracts for property and services for the State be placed with disabled veteran business enterprises.
- b. All DVBE participation attachments, however labeled, completed as a condition of bidding, contracting, or amending a subject agreement, are incorporated herein and made a part of this Agreement by this reference.
- c. Contractor agrees to use the proposed DVBEs, as identified in previously submitted DVBE participation attachments. Contractor understands and agrees to comply with the requirements set forth in Military and Veterans Code Section 999 et seq. in that should award of this contract be based on part on its commitment to use the DVBE subcontractor(s) identified in its bid or offer, per Military and Veterans Code section 999.5(g), a DVBE subcontractor may only be replaced by another DVBE subcontractor and must be approved by both DHCS and the Department of General Services (DGS) prior to the commencement of any work by the proposed subcontractor. Changes to the scope of work that impact the DVBE subcontractor(s) identified in the bid or offer and approved DVBE substitutions will be documented by contract amendment.

- d. Requests for DVBE subcontractor substitution must include:
  - (1) A written explanation of the reason for the DVBE substitution.
  - (2) A written description of the business enterprise that will be substituted, including its DVBE certification status.
  - (3) A written description of the work to be performed by the substituted DVBE subcontractor and an identification of the percentage share/dollar amount of the overall contract that the substituted subcontractor will perform.
- e. Failure of the Contractor to seek substitution and adhere to the DVBE participation level identified in the bid or offer may be cause for contract termination, recovery of damages under rights and remedies due to the State, and penalties as outlined in Military and Veterans Code § 999.9; Public Contract Code (PCC) §10115.10, or PCC §4110 (applies to public works only).
- f. Upon completion of this Contract, DHCS requires the Contractor to certify using the Prime Contractor's Certification – DVBE Subcontracting Report (STD 817), all of the following: .
  - (1) The total amount the prime contractor received under the agreement;
  - (2) The name, address, Contract number and certification ID Number of the DVBE(s) that participated in the performance of this Contract;
  - (3) The amount and percentage of work the prime Contractor committed to provide to one or more DVBE(s) under the requirements of the Contract and the total payment each DVBE received from the prime Contractor;;
  - (4) That all payments under the Contract have been made to the DVBE(s); and
  - (5) The actual percentage of DVBE participation that was achieved. Upon request, the prime Contractor must provide proof of payment for the work.
- g. If for this Contract the Contractor made a commitment to achieve the DVBE participation goal, the Department will withhold \$10,000 from the final payment, or the full payment if less than \$10,000, until the Contractor complies with the certification requirements above. A Contractor that fails to comply with the certification requirement must, after written notice, be allowed to cure the defect. Notwithstanding any other law, if, after at least 15 calendar days but not more than 30 calendar days from the date of written notice, the prime Contractor refuses to comply with the certification requirements, DHCS will permanently deduct \$10,000 from the final payment, or the full payment if less than \$10,000. (Mil. & Vet. Code § 999.7.)
- h. A person or entity that knowingly provides false information will be subject to a civil penalty for each violation. (Mil. & Vet. Code § 999.5(d); Govt. Code § 14841.)

- i. Contractor agrees to comply with the rules, regulations, ordinances, and statutes that apply to the DVBE program as defined in Section 999 of the Military & Veterans Code, including, but not limited to, the requirements of Section 999.5(d). (PCC§ 10230.)

### **30. 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.

- a. Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.
- b. 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.
- c. 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.
- d. 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.
- e. 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.

### **31. 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.)

### **32. 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.

### **33. 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.

**34. 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.

### **35. Public Communications**

“Electronic and printed documents developed and produced, for public communications shall follow the following requirements to comply with Section 508 of the Rehabilitation Act and the American with Disabilities Act:

- a. Ensure visual-impaired, hearing-impaired and other special needs audiences are provided material information in formats that provide the most assistance in making informed choices.”

### **36. Compliance with Statutes and Regulations**

- a. The Contractor shall comply with all California and federal law, regulations, and published guidelines, to the extent that these authorities contain requirements applicable to Contractor's performance under the Agreement.
- b. These authorities include, but are not limited to, Title 2, Code of Federal Regulations (CFR) Part 200, subpart F, Appendix II; Title 42 CFR Part 431, subpart F; Title 42 CFR Part 433, subpart D; Title 42 CFR Part 434; Title 45 CFR Part 75, subpart D; and Title 45 CFR Part 95, subpart F. To the extent applicable under federal law, this Agreement shall incorporate the contractual provisions in these federal regulations and they shall supersede any conflicting provisions in this Agreement.

### **37. 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**  
**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
County of Sutter	Rick Bingham
Contract / Grant Number	Signature of Person Signing for Contractor
23-30104	
Date	Title
10-2-23	Director, Sutter-Yuba Behavioral Health; Assistant Director Sutter County Health and Human Services

Department of Health Care Services

23-30104  
Exhibit D(F)

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**

Approved by OMB (0348-0046)

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

(See reverse for public burden disclosure)

1. Type of Federal Action:		2. Status of Federal Action:		3. Report Type:	
- a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance		- a. bid/offer/application b. initial award c. post-award		- a. initial filing b. material change For Material Change Only: Year _____ quarter _____ date of last report _____.	
4. Name and Address of Reporting Entity:			5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:		
<input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier ____, if known:					
Congressional District, If known:			Congressional District, If known:		
6. Federal Department/Agency			7. Federal Program Name/Description:		
			CDFA Number, if applicable: _____		
8. Federal Action Number, if known:			9. Award Amount, if known:		
10.a. Name and Address of Lobbying Registrant (If individual, last name, first name, MI):			b. Individuals Performing Services (including address if different from 10a. (Last name, First name, MI):		
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.					
Signature:					
Print Name:					
Title:					
Telephone Number:					
Date:					
<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**

- A. The Department of Health Care Services (DHCS) may amend the Contract.
- B. Should either DHCS or the Contractor, during the term of this Contract, desire any amendments to this Contract, such amendments shall be proposed in writing to the other party, who will respond in writing as to whether the proposed amendments are accepted or rejected. If accepted, the agreed upon amendments shall be made through DHCS' official agreement amendment process. No amendment shall be binding on either party until it is formally approved by both parties and the Department of General Services (DGS), if DGS approval is required.
- C. Any proposed amendments to the Contract shall be requested by the Contractor by May 1 of the current fiscal year in order for the amendment to be effective the following fiscal year.
  - 1) The proposed amendment submitted by the Contractor shall include the proposed changes, and a statement of the reason and basis for the proposed change.
  - 2) Amendments shall be duly approved by the County Board of Supervisors or its authorized designee, and signed by a duly authorized representative.
- D. Contractor acknowledges that any newly allocated funds that are in excess of the initial amount for each fiscal year may be forfeited if DHCS does not receive a fully executable Contract amendment on or before June 30<sup>th</sup> of the final year of the Contract.
- E. DHCS may settle costs for DMC services based on the year-end cost settlement report as the final amendment to the approved Contract.

**2. Cancellation / Termination**

- A. This Contract may be cancelled by DHCS without cause upon 90 calendar days advance written notice to the Contractor.
- B. DHCS reserves the right to cancel or terminate this Contract immediately for cause. The Contractor may submit a written request to terminate this Contract only if DHCS substantially fails to perform its responsibilities as provided herein.
- C. The term "for cause" shall mean that the Contractor failed to meet any terms, conditions, and/or responsibilities of this Contract.

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

- D. Contract 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 Contract 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.
- G. In the event of changes in law that affect provisions of this Contract, the parties agree to amend the affected provisions to conform to the changes in law retroactive to the effective date of such changes in law. The parties further agree that the terms of this Contract are severable and in the event that changes in law render provisions of the Contract void, the unaffected provisions and obligations of this Contract will remain in full force and effect.
- H. The following additional provisions regarding termination apply only to Exhibit A, Attachment I, of this Contract:
  - 1) In the event the federal Department of Health and Human Services (hereinafter referred to as DHHS), or DHCS determines that the Contractor does not meet the requirements for participation in DMC, the DHCS will terminate payments for services provided pursuant to Exhibit A, Attachment I, of this Contract for cause.
  - 2) All obligations to provide covered services under this Contract will automatically terminate on the effective date of any termination of this Contract. Contractor will be responsible for providing or arranging for covered services to beneficiaries until the effective date of termination or expiration of the Contract.

Contractor shall remain liable for processing and paying invoices and statements for covered services and utilization review requirements prior to the expiration or termination until all obligations have been met.
  - 3) In the event this Contract is nullified, cancelled, or terminated, the Contractor shall refer DMC beneficiaries to providers who are enrolled to provide DMC State Plan services.
- I. In the event this Contract is nullified, cancelled, or terminated, the Contractor shall deliver its entire fiscal and program records pertaining to the

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

performance of this Contract to DHCS, which will retain the records for the required retention period.

**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, the subcontractor, or employees, officers and directors of the Contractor or subcontractor. Thus, DHCS reserves the right to determine, at its sole discretion, whether any information, assertion or claim received from any source indicates the existence of a real or apparent conflict of interest; and, if a conflict is found to exist, to require the Contractor to submit additional information or a plan for resolving the conflict, subject to DHCS review and prior approval.
- B. Conflicts of interest include, but are not limited to:
  - 1) An instance where the Contractor or subcontractor, or any employee, officer, or director of the Contractor or subcontractor has an interest, financial or otherwise, whereby the use or disclosure of information obtained while performing services under the Contract would allow for private or personal benefit or for any purpose that is contrary to the goals and objectives of the Contract.
  - 2) An instance where the Contractor's or subcontractor's employees, officers, or directors use their positions for purposes that are, or give the appearance of being, motivated by a desire for private gain for themselves or others, such as those with whom they have family, business or other ties.
- C. If DHCS is or becomes aware of a known or suspected conflict of interest, the Contractor will be given an opportunity to submit additional information or to resolve the conflict. A Contractor with a suspected conflict of interest will have five (5) working days from the date of notification of the conflict by DHCS to provide complete information regarding the suspected conflict. If a conflict of interest is determined to exist by DHCS and cannot be resolved to the satisfaction of DHCS, the conflict will be grounds for terminating the Agreement. DHCS may, at its discretion upon receipt of a written request from the Contractor, authorize an extension of the timeline indicated herein.
- D. Contractor acknowledges that state laws on conflict of interest, found in the Political Reform Act, Public Contract Code Section 10365.5, and Government Code Section 1090, apply to this Contract.

**4. Freeze Exemptions**

- A. Contractor agrees that any hiring freeze adopted during the term of this Contract shall not be applied to the positions funded, in whole or part, by this Contract.



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

- B. Contractor agrees not to implement any personnel policy, which may adversely affect performance or the positions funded, in whole or part, by this Contract.
- C. Contractor agrees that any travel freeze or travel limitation policy adopted during the term of this Contract shall not restrict travel funded, in whole or part, by this Contract.
- D. Contractor agrees that any purchasing freeze or purchase limitation policy adopted during the term of this Contract shall not restrict or limit purchases funded, in whole or part, by this Contract.

**5. Force Majeure**

Neither party shall be responsible for delays or failures in performance resulting from acts beyond the control of either parties. Such acts shall include but not be limited to acts of God, fire, flood, earthquake, other natural disaster, nuclear accident, strike, lockout, riot, freight-embargo, related-utility, or governmental statutes or regulations super-imposed after the fact. If a delay or failure in performance by the Contractor arises out of a default of its subcontractor, and if such default of its subcontractor arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for damages of such delay or failure, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required performance schedule.

**6. Identification of Contractor versus Subrecipient**

DHCS has classified this Agreement as a procurement contract. Therefore, the Contractor is considered a contractor, and not a subrecipient, for the purposes of U.S. Office of Management and Budget Uniform Guidance pursuant to 2 CFR 200.330.

### **Business Associate Addendum**

1. This Agreement has been determined to constitute a business associate relationship under the Health Insurance Portability and Accountability Act (HIPAA) and its implementing privacy and security regulations at 45 Code of Federal Regulations, Parts 160 and 164 (collectively, and as used in this Agreement)
2. The term "Agreement" as used in this document refers to and includes both this Business Associate Addendum and the contract to which this Business Associate Agreement is attached as an exhibit, if any.
3. For purposes of this Agreement, the term "Business Associate" shall have the same meaning as set forth in 45 CFR section 160.103.
4. The Department of Health Care Services (DHCS) intends that Business Associate may create, receive, maintain, transmit or aggregate certain information pursuant to the terms of this Agreement, some of which information may constitute Protected Health Information (PHI) and/or confidential information protected by Federal and/or state laws.
  - 4.1 As used in this Agreement and unless otherwise stated, the term "PHI" refers to and includes both "PHI" as defined at 45 CFR section 160.103 and Personal Information (PI) as defined in the Information Practices Act (IPA) at California Civil Code section 1798.3(a). PHI includes information in any form, including paper, oral, and electronic.
  - 4.2 As used in this Agreement, the term "confidential information" refers to information not otherwise defined as PHI in Section 4.1 of this Agreement, but to which state and/or federal privacy and/or security protections apply.
5. Contractor (however named elsewhere in this Agreement) is the Business Associate of DHCS acting on DHCS's behalf and provides services or arranges, performs or assists in the performance of functions or activities on behalf of DHCS, and may create, receive, maintain, transmit, aggregate, use or disclose PHI (collectively, "use or disclose PHI") in order to fulfill Business Associate's obligations under this Agreement. DHCS and Business Associate are each a party to this Agreement and are collectively referred to as the "parties."
6. The terms used in this Agreement, but not otherwise defined, shall have the same meanings as those terms in HIPAA and/or the IPA. Any reference to statutory or regulatory language shall be to such language as in effect or as amended.

**7. Permitted Uses and Disclosures of PHI by Business Associate**

Except as otherwise indicated in this Agreement, Business Associate may use or disclose PHI, inclusive of de-identified data derived from such PHI, only to perform functions, activities or services specified in this Agreement on behalf of DHCS, provided that such use or disclosure would not violate HIPAA or other applicable laws if done by DHCS.

**7.1 Specific Use and Disclosure Provisions**

Except as otherwise indicated in this Agreement, Business Associate may use and disclose PHI if necessary for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate. Business Associate may disclose PHI for this purpose if the disclosure is required by law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person. The person shall notify the Business Associate of any instances of which the person is aware that the confidentiality of the information has been breached, unless such person is a treatment provider not acting as a business associate of Business Associate.

**8. Compliance with Other Applicable Law**

**8.1** To the extent that other state and/or federal laws provide additional, stricter and/or more protective (collectively, more protective) privacy and/or security protections to PHI or other confidential information covered under this Agreement beyond those provided through HIPAA, Business Associate agrees:

**8.1.1** To comply with the more protective of the privacy and security standards set forth in applicable state or federal laws to the extent such standards provide a greater degree of protection and security than HIPAA or are otherwise more favorable to the individuals whose information is concerned; and

**8.1.2** To treat any violation of such additional and/or more protective standards as a breach or security incident, as appropriate, pursuant to Section 18. of this Agreement.

**8.2** Examples of laws that provide additional and/or stricter privacy protections to certain types of PHI and/or confidential information, as defined in Section 4. of this Agreement, include, but are not limited to the Information Practices Act, California Civil Code sections 1798-1798.78, Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2, Welfare and Institutions Code section 5328, and California Health and Safety Code section 11845.5.

- 8.3** If Business Associate is a Qualified Service Organization (QSO) as defined in 42 CFR section 2.11, Business Associate agrees to be bound by and comply with subdivisions (2)(i) and (2)(ii) under the definition of QSO in 42 CFR section 2.11.

**9. Additional Responsibilities of Business Associate**

**9.1 Nondisclosure**

- 9.1.1** Business Associate shall not use or disclose PHI or other confidential information other than as permitted or required by this Agreement or as required by law.

**9.2 Safeguards and Security**

- 9.2.1** Business Associate shall use safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI and other confidential data and comply, where applicable, with subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of the information other than as provided for by this Agreement. Such safeguards shall be based on applicable Federal Information Processing Standards (FIPS) Publication 199 protection levels.
- 9.2.2** Business Associate shall, at a minimum, utilize a National Institute of Standards and Technology Special Publication (NIST SP) 800-53 compliant security framework when selecting and implementing its security controls and shall maintain continuous compliance with NIST SP 800-53 as it may be updated from time to time. The current version of [NIST SP 800-53, Revision 5](#), is available online at; updates will be available online through the [Computer Security Resource Center website](#).
- 9.2.3** Business Associate shall employ FIPS 140-2 validated encryption of PHI at rest and in motion unless Business Associate determines it is not reasonable and appropriate to do so based upon a risk assessment, and equivalent alternative measures are in place and documented as such. FIPS 140-2 validation can be determined online through the [Cryptographic Module Validation Program Search](#), with information about the [Cryptographic Module Validation Program under FIPS 140-2](#). In addition, Business Associate shall maintain, at a minimum, the most current industry standards for transmission and storage of PHI and other confidential information.
- 9.2.4** Business Associate shall apply security patches and upgrades, and keep virus software up-to-date, on all systems on which PHI and other confidential information may be used.

- 9.2.5** Business Associate shall ensure that all members of its workforce with access to PHI and/or other confidential information sign a confidentiality statement prior to access to such data. The statement must be renewed annually.
- 9.2.6** Business Associate shall identify the security official who is responsible for the development and implementation of the policies and procedures required by 45 CFR Part 164, Subpart C.

**9.3 Business Associate's Agent**

Business Associate shall ensure that any agents, subcontractors, subawardees, vendors or others (collectively, "agents") that use or disclose PHI and/or confidential information on behalf of Business Associate agree to the same restrictions and conditions that apply to Business Associate with respect to such PHI and/or confidential information.

**10. Mitigation of Harmful Effects**

Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI and other confidential information in violation of the requirements of this Agreement.

**11. Access to PHI**

Business Associate shall make PHI available in accordance with 45 CFR section 164.524.

**12. Amendment of PHI**

Business Associate shall make PHI available for amendment and incorporate any amendments to protected health information in accordance with 45 CFR section 164.526.

**13. Accounting for Disclosures**

Business Associate shall make available the information required to provide an accounting of disclosures in accordance with 45 CFR section 164.528.

**14. Compliance with DHCS Obligations**

To the extent Business Associate is to carry out an obligation of DHCS under 45 CFR Part 164, Subpart E, comply with the requirements of the subpart that apply to DHCS in the performance of such obligation.

**15. Access to Practices, Books and Records**

Business Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI on behalf of DHCS available to DHCS upon reasonable request, and to the federal Secretary of Health and Human Services for purposes of determining DHCS' compliance with 45 CFR Part 164, Subpart E.

**16. Return or Destroy PHI on Termination; Survival**

At termination of this Agreement, if feasible, Business Associate shall return or destroy all PHI and other confidential information received from, or created or received by Business Associate on behalf of, DHCS that Business Associate still maintains in any form and retain no copies of such information. 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. If such return or destruction is not feasible, Business Associate shall extend the protections of this Agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

**17. Special Provision for SSA Data**

If Business Associate receives data from or on behalf of DHCS that was verified by or provided by the Social Security Administration (SSA data) and is subject to an agreement between DHCS and SSA, Business Associate shall provide, upon request by DHCS, a list of all employees and agents and employees who have access to such data, including employees and agents of its agents, to DHCS.

**18. Breaches and Security Incidents**

Business Associate shall implement reasonable systems for the discovery and prompt reporting of any breach or security incident, and take the following steps:

**18.1 Notice to DHCS**

- 18.1.1** Business Associate shall notify DHCS immediately upon the discovery of a suspected breach or security incident that involves SSA data. This notification will be provided by email upon discovery of the breach. If Business Associate is unable to provide notification by email, then Business Associate shall provide notice by telephone to DHCS.

**18.1.2** Business Associate shall notify DHCS within 24 hours by email (or by telephone if Business Associate is unable to email DHCS) of the discovery of the following, unless attributable to a treatment provider that is not acting as a business associate of Business Associate:

**18.1.2.1** Unsecured PHI if the PHI is reasonably believed to have been accessed or acquired by an unauthorized person;

**18.1.2.2** Any suspected security incident which risks unauthorized access to PHI and/or other confidential information;

**18.1.2.3** Any intrusion or unauthorized access, use or disclosure of PHI in violation of this Agreement; or

**18.1.2.4** Potential loss of confidential information affecting this Agreement.

**18.1.3** Notice shall be provided to the DHCS Program Contract Manager (as applicable), the DHCS Privacy Office, and the DHCS Information Security Office (collectively, "DHCS Contacts") using the DHCS Contact Information in Section 18.6.

Notice shall be made using the current DHCS "Privacy Incident Reporting Form" ("PIR Form"; the initial notice of a security incident or breach that is submitted is referred to as an "Initial PIR Form") and shall include all information known at the time the incident is reported. The form is available online at the [DHCS Data Privacy webpage](#).

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

**18.1.3.1** Prompt action to mitigate any risks or damages involved with the security incident or breach; and

**18.1.3.2** Any action pertaining to such unauthorized disclosure required by applicable Federal and State law.

## **18.2 Investigation**

Business Associate shall immediately investigate such security incident or breach.

### **18.3 Complete Report**

To provide a complete report of the investigation to the DHCS contacts within ten (10) working days of the discovery of the security incident or breach. This "Final PIR" must include any applicable additional information not included in the Initial Form. The Final PIR Form shall include an assessment of all known factors relevant to a determination of whether a breach occurred under HIPAA and other applicable federal and state laws. The report shall also include a full, detailed corrective action plan, including its implementation date and information on mitigation measures taken to halt and/or contain the improper use or disclosure. If DHCS requests information in addition to that requested through the PIR form, Business Associate shall make reasonable efforts to provide DHCS with such information. A "Supplemental PIR" may be used to submit revised or additional information after the Final PIR is submitted. DHCS will review and approve or disapprove Business Associate's determination of whether a breach occurred, whether the security incident or breach is reportable to the appropriate entities, if individual notifications are required, and Business Associate's corrective action plan.

**18.3.1** If Business Associate does not complete a Final PIR within the ten (10) working day timeframe, Business Associate shall request approval from DHCS within the ten (10) working day timeframe of a new submission timeframe for the Final PIR.

### **18.4 Notification of Individuals**

If the cause of a breach is attributable to Business Associate or its agents, other than when attributable to a treatment provider that is not acting as a business associate of Business Associate, Business Associate shall notify individuals accordingly and shall pay all costs of such notifications, as well as all costs associated with the breach. The notifications shall comply with applicable federal and state law. DHCS shall approve the time, manner and content of any such notifications and their review and approval must be obtained before the notifications are made.

### **18.5 Responsibility for Reporting of Breaches to Entities Other than DHCS**

If the cause of a breach of PHI is attributable to Business Associate or its agents, other than when attributable to a treatment provider that is not acting as a business associate of Business Associate, Business Associate is responsible for all required reporting of the breach as required by applicable federal and state law.



## **18.6 DHCS Contact Information**

To direct communications to the above referenced DHCS staff, the Contractor shall initiate contact as indicated here. DHCS reserves the right to make changes to the contact information below by giving written notice to Business Associate. These changes shall not require an amendment to this Agreement.

### **18.6.1 DHCS Program Contract Manager**

See the Scope of Work exhibit for Program Contract Manager information. If this Business Associate Agreement is not attached as an exhibit to a contract, contact the DHCS signatory to this Agreement.

### **18.6.2 DHCS Privacy Office**

Privacy Office  
c/o: Office of HIPAA Compliance  
Department of Health Care Services  
P.O. Box 997413, MS 4722  
Sacramento, CA 95899-7413

Email: [incidents@dhcs.ca.gov](mailto:incidents@dhcs.ca.gov)

Telephone: (916) 445-4646

### **18.6.3 DHCS Information Security Office**

Information Security Office  
DHCS Information Security Office  
P.O. Box 997413, MS 6400  
Sacramento, CA 95899-7413

Email: [incidents@dhcs.ca.gov](mailto:incidents@dhcs.ca.gov)

## **19. Responsibility of DHCS**

DHCS agrees to not request the Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA and/or other applicable federal and/or state law.

## **20. Audits, Inspection and Enforcement**

**20.1** From time to time, DHCS may inspect the facilities, systems, books and records of Business Associate to monitor compliance with this Agreement. Business Associate shall promptly remedy any violation of this Agreement and shall certify the same to the DHCS Privacy Officer in writing. Whether or how DHCS exercises this provision shall not in any respect relieve Business Associate of its responsibility to comply with this Agreement.

- 20.2** If Business Associate is the subject of an audit, compliance review, investigation or any proceeding that is related to the performance of its obligations pursuant to this Agreement, or is the subject of any judicial or administrative proceeding alleging a violation of HIPAA, Business Associate shall promptly notify DHCS unless it is legally prohibited from doing so.

## **21. Termination**

### **21.1 Termination for Cause**

Upon DHCS' knowledge of a violation of this Agreement by Business Associate, DHCS may in its discretion:

- 21.1.1** Provide an opportunity for Business Associate to cure the violation and terminate this Agreement if Business Associate does not do so within the time specified by DHCS; or
- 21.1.2** Terminate this Agreement if Business Associate has violated a material term of this Agreement.

### **21.2 Judicial or Administrative Proceedings**

DHCS may terminate this Agreement if Business Associate is found to have violated HIPAA, or stipulates or consents to any such conclusion, in any judicial or administrative proceeding.

## **22. Miscellaneous Provisions**

### **22.1 Disclaimer**

DHCS makes no warranty or representation that compliance by Business Associate with this Agreement will satisfy Business Associate's business needs or compliance obligations. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI and other confidential information.

### **22.2 Amendment**

- 22.2.1** Any provision of this Agreement which is in conflict with current or future applicable Federal or State laws is hereby amended to conform to the provisions of those laws. Such amendment of this Agreement shall be effective on the effective date of the laws necessitating it, and shall be binding on the parties even though such amendment may not have been reduced to writing and formally agreed upon and executed by the parties.
- 22.2.2** Failure by Business Associate to take necessary actions required by amendments to this Agreement under Section 22.2.1 shall constitute a material violation of this Agreement.

**22.3 Assistance in Litigation or Administrative Proceedings**

Business Associate shall make itself and its employees and agents 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 and/or employees based upon claimed violation of HIPAA, which involve inactions or actions by the Business Associate.

**22.4 No Third-Party Beneficiaries**

Nothing in this Agreement is intended to or shall confer, upon any third person any rights or remedies whatsoever.

**22.5 Interpretation**

The terms and conditions in this Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA and other applicable laws.

**22.6 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.