



DEPARTMENT OF MENTAL HEALTH
hope. recovery. wellbeing.

LISA H. WONG, Psy.D.
Interim Director

Curley L. Bonds, M.D.
Chief Medical Officer

Connie D. Draxler, M.P.A.
Acting Chief Deputy Director

November 15, 2022

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

49 November 15, 2022

CELIA ZAVALA
EXECUTIVE OFFICER

**ADOPT A RESOLUTION TO APPROVE A NEW AGREEMENT WITH
THE STATE OF CALIFORNIA, DEPARTMENT OF AGING TO FUND
PUBLIC PATIENT REPRESENTATIVE SERVICES
(ALL SUPERVISORIAL DISTRICTS)
(3 VOTES)**

SUBJECT

Request adoption of a resolution approving a new agreement with the State of California, Department of Aging, to fund the delivery of public patient representative services for vulnerable seniors across Los Angeles, San Bernardino, and Riverside counties.

IT IS RECOMMENDED THAT THE BOARD:

1. Adopt and instruct the Chair of your Board to sign and execute a resolution (Attachment I), authorizing the Interim Director of the Department of Mental Health (Interim Director), or her designee, to sign and execute the Agreement (No. CT-2223-11), substantially similar to Attachment II, with the State of California, Department of Aging (CDA), to accept funds not to exceed \$1,406,793 to enable Department of Mental Health's (DMH) Office of Public Guardian (PG) to implement the new Public Patient Representative Program (Program). The term of the Agreement will be effective January 1, 2023 through December 31, 2024.
2. Authorize DMH, in coordination with the Chief Executive Office (CEO), to hire the four positions to oversee this new Program, pursuant to County Code Section 6.06.020 and subject to allocation by the CEO. These positions are fully funded with funds received from CDA.

3. Delegate authority to the Interim Director, or her designee, to prepare, sign, and execute future amendments to the Agreement as applicable to: 1) extend the term; 2) accept additional funds to hire additional staff; 3) clarify terms and conditions, add, delete, or modify Agreement language or other items, including the Scope of Work; 4) allow for the rollover of unspent funds; and 5) reflect regulatory and/or policy changes, subject to prior review and approval as to form by County Counsel and notification to your Board and CEO.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

DMH is committed to ensuring long-term care residents at skilled nursing facilities (SNF) have access to public patient representative services, as their overall needs (i.e., physical, mental health, and personal needs) may be complex and intersect with different social and economic conditions they experience. Executing this Agreement with the State allows DMH to provide services to seniors who lack the capacity to make health care decisions and have no legal surrogate authorized to make decisions on their behalf.

Board adoption of the resolution and approval of Recommendation 1 will allow DMH to execute a new agreement with the CDA and provide public patient representative services in three different counties.

Board approval of Recommendation 2 will provide interim ordinance authority allow DMH to hire four positions needed to fully implement the new Program.

Board approval of Recommendation 3 will allow DMH to amend the Agreement, revise the language, increase the funding amounts, and reflect federal, State, and County regulatory and/or policy changes.

Implementation of Strategic Plan Goals

The recommended actions are consistent with the County's Strategic Plan Goal I, Make Investments That Transform Lives, specifically, Strategy 1.2 Enhance Our Delivery of Comprehensive Interventions.

FISCAL IMPACT/FINANCING

The total maximum amount of the Agreement is \$1,406,793 to fund four positions and associated operated costs. The Agreement is effective January 1, 2023, through December 31, 2024. Sufficient appropriation is included in the Department's Fiscal Year 2022-23 final adopted budget.

Funding for future fiscal years will be requested in the annual budget process.

There is no net County cost impact associated with the recommendation action.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Under California Health and Safety Code, Section 1418.8, SNFs may convene an interdisciplinary team to make medical decisions for residents who lack capacity and have no legal surrogate. These teams include the resident's physician, a registered nurse responsible for the resident's care, and

other appropriate staff. In the past, the teams sometimes included patient representatives, but this was not required. Effective January 27, 2023, as the result of a court case, SNFs will be required to include a public patient representative when they convene an interdisciplinary team.

The PG will hire four Deputy Public Guardian (DPG) positions to oversee this new Program, with each managing an estimated caseload of 75 clients. Currently, the PG employs DPGs to investigate referrals on individuals who appear unable to provide for their basic needs of food, clothing, or shelter; may be victims of elder abuse; or those who may lack the capacity to give informed consent for their medical care. Expanding the role of DPGs to include public patient representative services is a seamless transition, as DPGs have the resources to link the seniors as necessary.

California Welfare and Institutions Code Section 9275 requires that the assigned DPG will be responsible for conducting interviews with the senior; reviewing medical and clinical records; participating in the interdisciplinary team review of the proposed interventions and articulating the senior's treatment preferences; reporting any abuse or neglect; and referring the senior to any necessary legal services.

Under Article XIII B, Section 6 of the California Constitution, whenever the legislature or any State agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service. This is a State mandated program; therefore, the State has the obligation to provide ongoing funding. If the State terminates this program/agreement, DMH is no longer required to provide these services; however, DMH will be able to absorb the four positions within PG using other funding sources, if needed.

Attachment II, Agreement No. CT-2223-11, has been approved as to form by County Counsel. The Agreement contains both standard and special State terms and conditions.

CONTRACTING PROCESS

DMH applied to a Request for Statement of Qualifications for the Program released by the State and is being awarded an Agreement to provide public patient representative services to long-term care residents at SNFs in Los Angeles, San Bernardino, and Riverside counties.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

Board approval of the recommended actions will enable DMH to address and reduce disparities for a highly vulnerable population by acting in the senior's best interest when they are unable to communicate their needs/wants due to a medical or mental health condition.

The Honorable Board of Supervisors

11/15/2022

Page 4

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lisa H. Wong, Psy.D.", written in a cursive style.

LISA H. WONG, Psy.D.

Interim Director

LHW:CDD:SKRLR:JH:atm

Enclosures

c: Executive Office, Board of Supervisors
Chief Executive Office
County Counsel
Chairperson, Mental Health Commission

**RESOLUTION OF
THE BOARD OF SUPERVISORS OF
COUNTY OF LOS ANGELES
STATE OF CALIFORNIA**

NOW, THEREFORE BE IT RESOLVED that the Board of Supervisors (Board) of the County of Los Angeles (County) does hereby approve and authorize the Department of Mental Health Interim Director (Interim Director) or designee to sign the Agreement No. CT-2223-11 entered into by and between the County and the State of California, Department of Aging. It is further resolved that the Board approves and authorizes the Interim Director to sign future Amendments or modifications to the Agreement No. CT-2223-11.

Attest:
CELIA ZAVALA,
Executive Officer-Board of Supervisors of
the County of Los Angeles

By *Hornitzheif*
Chair, Board of Supervisors

By *Carla Little*
Deputy



APPROVED AS TO FORM:

DAWYN R. HARRISON
INTERIM COUNTY COUNSEL
OFFICE OF THE COUNTY COUNSEL

By *Dawyn R. Harrison*
Senior Deputy County Counsel

STANDARD AGREEMENT

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER

CT-2223-11

PURCHASING AUTHORITY NUMBER (If Applicable)

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

CONTRACTING AGENCY NAME

California Department of Aging

CONTRACTOR NAME

County of Los Angeles Department of Mental Health

2. The term of this Agreement is:

START DATE

01/01/2023

THROUGH END DATE

12/31/2024

3. The maximum amount of this Agreement is:

\$1,406,793.00 One million four hundred six thousand seven hundred ninety-three 00/100 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.

Exhibits	Title	Pages
Exhibit A	Scope of Work	5
Exhibit B	Budget Detail and Payment Provisions	3
Exhibit B, Attachment 1	Budget Display	1
Exhibit C*	General Terms and Conditions – GTC-4/2017*	0
Exhibit D	Special Terms and Conditions	8
Exhibit E	Insurance Requirements	4
Exhibit F	HIPAA Business Associate Addendum	10

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 Los Angeles Department of Mental Health

CONTRACTOR BUSINESS ADDRESS

510 S. Vermont Ave,

CITY

Los Angeles

STATE

CA

ZIP

90020

PRINTED NAME OF PERSON SIGNING

Lisa H. Wong, Psy.D.

TITLE

Acting Director

CONTRACTOR AUTHORIZED SIGNATURE

DATE SIGNED

STATE OF CALIFORNIA

CONTRACTING AGENCY NAME

California Department of Aging

CONTRACTING AGENCY ADDRESS

2880 Gateway Oaks Drive, Suite 200

CITY

Sacramento

STATE

CA

ZIP

95833

PRINTED NAME OF PERSON SIGNING

Nate Gillen

TITLE

Chief, Business Management Bureau

CONTRACTING AGENCY AUTHORIZED SIGNATURE

DATE SIGNED

CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL

EXEMPTION (If Applicable)

Exempt per
California Welf. and Inst. Code 9260(b)

This page is left blank intentionally.

EXHIBIT A SCOPE OF WORK

1. CONTRACTED PARTIES:

- A. County of Los Angeles Department of Mental Health, hereafter referred to as Contractor, through its Office of the Public Guardian, agrees to provide public patient representative services (as defined in Section 6) to the Department of Aging (CDA), pursuant to the terms and conditions of the Agreement.

2. SERVICE LOCATIONS:

The services shall be performed at the meeting site, or remotely when appropriate and agreed to by CDA. Locations will be coordinated by the Project Coordinators.

3. SERVICE HOURS:

The services shall be provided on an as needed basis, Monday through Friday, during normal business hours (8:00 am – 5:00 pm).

4. PROJECT COORDINATORS:

- A. The project coordinators during the term of this Agreement shall be:

	California Department of Aging	County of Los Angeles Department of Mental Health
Section:	Office of the Long-Term Care Patient Representative (OLT CPR)	Office of the Public Guardian
Attention:	Susan Rodrigues	Luis Leyva
Title:	Assistant Director	Acting Deputy Director
Address:	2880 Gateway Oaks Drive, Suite 200 Sacramento, CA 95833	510 South Vermont Avenue 19th Floor Los Angeles, Ca. 90020
Phone:	(916)	(213) 974-0407
Email:	Susan.rodrigues@aging.ca.gov	lleyva@dmh.lacounty.gov

B. Direct all Agreement inquiries to:

	California Department of Aging	County of Los Angeles Department of Mental Health
Section:	Office of the Long-Term Care Patient Representative (OLT CPR)	Contracts Development and Administration Division (CDAD)
Attention:	Susan Rodrigues	Stella Krikorian
Title:	Assistant Director	Division Manager of Contracts
Address:	2880 Gateway Oaks Drive, Suite 200 Sacramento, CA 95833	510 South Vermont Avenue 20th Floor Los Angeles, Ca. 90020
Phone:	(916)	(213)943-9146
Email:	Susan.rodrigues@aging.ca.gov	skrikorian@dmh.lacounty.gov

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

5. SUMMARY OF WORK TO BE PERFORMED:

- A. The Contractor shall provide administrative and oversight services for local public patient representatives.

6. CONTRACTOR RESPONSIBILITIES:

- A. The Contractor (Service Provider) shall:

- 1) Receive written requests for public patient representatives pursuant to Health and Safety Code 1418.8.
- 2) Recruit local public patient representatives to perform services as outlined in Welfare and Institutions Code section 9275.
- 3) Ensure public patient representatives can communicate successfully with those long-term care residents who speak diverse languages and come from diverse cultures.
- 4) Conduct training for local public patient representatives. Public patient representatives shall be trained to represent both urban and rural residents of skilled nursing and intermediate care facilities, including residents who are socially disadvantaged, such as people who were formerly homeless or incarcerated.
- 5) Ensure that public patient representatives meet criminal background requirements. CDA will pay all associated costs.

- 6) Establish and maintain networks and working relationships with stakeholders.
 - 7) Collect facility data summarizing activities related to specified interdisciplinary team reviews.
 - 8) Provide data to the State pursuant to the instructions on the CDA website, here:
<https://www.aging.ca.gov/download.ashx?IE0rcNUV0zZeGU810B46aw%3d%3d>
- B. Contractor shall procure and keep in full force and effect during the term of this Agreement all permits, registrations and licenses necessary to accomplish the work specified in this Agreement and shall give all notices necessary and incident to the lawful prosecution of the work. Contractor shall provide proof of any such license(s) permits(s), and certificate(s) upon request by the CDA. Contractor agrees that failure to provide evidence of licensing, permits, or certifications shall constitute a material breach for which the CDA may terminate this Agreement with cause.
- C. Contractor shall provide services as outlined in this Agreement. Contractor shall be responsible to fulfill the requirements of the Agreement and shall incur expenses at its own risk and invest sufficient time and capital to fulfill the obligations contained herein.
- D. Contractor shall keep informed of, observe, comply with, and cause its agents and employees to observe and to comply with all prevailing Federal, State, and local laws, and rules and regulations made pursuant to said Federal, State, and local laws, which in any way affect the conduct of the work of this Agreement. If any conflict arises between provisions of the plans and specifications and any such law above referred to, then the Contractor shall immediately notify the State in writing.
- E. The CDA may terminate the Agreement pursuant to section 7 of Exhibit C if the Contractor fails to comply with a Federal, State or local law and the noncompliance, based on the facts and circumstances, would constitute a material breach of this Agreement under California law.

7. REPRESENTATIVES RESPONSIBILITIES

- A. Conduct a review to confirm that all criteria are met for an interdisciplinary team to convene for a resident and for the assignment of a patient representative by the program, as required by Health and Safety Code section 1418.8.
- B. Meet and, if possible, interview the resident, and any known friends and family members prior to an interdisciplinary team meeting.

- C. Review the resident's medical and clinical records.
- D. Review relevant facility policies and procedures.
- E. Participate in the interdisciplinary team review for the proposed intervention, considering the factors required by Health and Safety Code section 1418.8, including the risks and benefits of the proposed intervention and any alternatives, and consider whether the proposed intervention is either consistent with the resident's preferences or a best approximation of preferences, if known, or whether the proposed intervention appears consistent with the best interests of the resident.
- F. Articulate the resident's preferences, if known, or best approximation of preferences.
- G. Identify and report any concerns regarding abuse and neglect of the resident to the Office of the Long-Term Care Ombudsman, the State Department of Public Health, and other appropriate organizations or agencies.
- H. Refer a resident who seeks judicial review pursuant to Health and Safety Code section 1418.8 to appropriate legal services identified by OLT CPR. Local public patient representatives and OLT CPR shall not provide legal representation or advice to residents.
- I. Submit requested data outlined in Health and Safety section 1418.8 to CDA., in compliance with Exhibit G and any other security/privacy requirements.

8. CDA RESPONSIBILITIES

- A. OLT CPR shall:
 - 1) Oversee the statewide provision of public patient representative services and Contractor's participation in interdisciplinary team reviews.
 - 2) Conduct public patient representative training pursuant to Cal. Welf. and Inst. Code 9265(a).
 - 3) Conduct regular program monitoring and compliance reviews.

9. AMENDMENTS

- A. The parties reserve the right to amend this Agreement to clarify terms or add languages or other items to accomplish the work, if necessary. This right to amend is in addition to the right to amend for other reasons contained in this Agreement or noted in the solicitation that resulted in this Agreement, if applicable. Any amendment shall be in writing and signed by both parties and be approved by the Department of General Services if such approval is required.

- B. The California Department of Aging (CDA) reserves the right to amend this Agreement for up to an additional year or to increase funding within this Agreement. Should the Parties amend this Agreement to extend the term, the proposed rates or prices must remain the same. All terms and conditions will remain the same, unless changes are mutually agreed upon by the Contractor and the CDA and incorporated in writing into the amendment. All agreement amendments are subject to satisfactory performance and funding availability. Agreement amendments will not take effect and additional work will not begin until the Contractor has received a copy of the final Agreement Amendment that has been signed by the CDA Procurement Contract Officer or designee.

EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

1. INVOICING AND PAYMENT

- A. Contractor shall submit all invoices not more frequently than monthly in arrears.
- B. For services satisfactorily rendered, and upon receipt and approval of invoices submitted as described herein, CDA agrees to compensate the Contractor for actual expenditures incurred, in accordance with the rates specified in section 5, Budget Detail.
- C. CDA is not responsible for services performed by the Contractor outside of this Agreement, nor for services performed other than as outlined in Exhibit A, Scope of Work.
- D. CDA makes no guarantee, either written or implied, as to the actual amount of funds that will be expended under this Agreement. The Contractor is not entitled to the full allocation unless the Scope of Work is fulfilled.

2. BUDGET CONTINGENCY CLAUSE

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

3. PROMPT PAYMENT CLAUSE:

- A. Payment will be made in accordance with, and within the time specified in, Government Code section 927, et seq.

4. BUDGET DETAIL:

- A. At the sole discretion of CDA and for the purposes of accounting, CDA may adjust the total proposed expenditure for each fiscal year as needed. In no event will this change the contract price for the services actually rendered.

B. Budget Detail

- 1) The Contractor shall be compensated for expenses only as itemized in the approved Budget except for line-item budget transfers as noted in this Exhibit and shall not be entitled to payment for these expenses until this Agreement is approved and executed by CDA. The approved Budget is hereby incorporated by reference into this Agreement as a part of Exhibit B.
- 2) Line Item Budget Transfers
 - a. The Contractor may transfer contract funds between line items under the following terms and conditions:
 - i. The Contractor shall submit a revised budget to CDA for any line item budget transfer of funds that is ten percent (10%) or more of the total budget.
 - ii. The Contractor shall maintain a written record of all budget changes and clearly document line item budget changes. The record shall include the date of the transfer, the amount, and the purpose. This record shall be available to CDA upon request and shall be maintained in the same manner as all other financial records.
- 3) The Contractor's Budget shall include, at a minimum, the following items when reimbursable under this Agreement:
 - a) Personnel Costs - monthly, weekly, or hourly rates, as appropriate and personnel classifications together with the percentage of time to be charged to this Agreement.
 - b) Fringe Benefits.
 - c) Contractual Costs – subcontract and consultant cost detail.
 - d) Indirect Costs.
 - e) Rent - specify square footage and rate.
 - f) Supplies.
 - g) Equipment - detailed descriptions and unit costs.
 - h) In State Travel – mileage reimbursement rate, lodging, per diem and other costs.
 - i) Other Costs - a detailed list of other operating expenses

5. INSTRUCTIONS TO CONTRACTOR:

- A. The State shall reimburse Office of the Patient Representative funding that has been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Agreement. The following applies to all funding within this Agreement:
- B. The Contractor shall submit monthly expenditures in an electronic format, utilizing the CDA online Local Finance Reporting System, within 60 calendar days of the end of the applicable expenditure month, unless otherwise specified by CDA.
- C. Payments will be made to reimburse monthly expenditures reported. CDA shall process and approve reported expenditures that are based upon actual, not estimated expenditures. CDA shall notify the Contractor of any disputed expenditures.
- D. The Contractor shall submit timely expenditures to CDA. Late expenditures may lead to a delay in payment until the following month.
- E. Upon written request by CDA, Contractor shall submit additional documentation or justification to support the reported expenditure.
- F. Contractor shall be charged \$75 per program funding source(s) for expedited payments to recover the fees charged by the State Controller's Office. CDA may waive the fees on a case-by-case basis as appropriate.
- G. Expedite Fees
 - 1) If the Agreement is executed late to no fault of CDA then the Contractor may be liable for the incurred processing fees.
 - 2) If the Agreement is executed late due to CDA's handling, then CDA shall cover the incurred processing fees.
- H. The Contractor shall ensure, to the extent feasible, that all budgeted funds are expended by the expiration of this Agreement.

6. CLOSEOUT

- A. Separate Financial Closeout Reports for Office of the Patient Representative and the Program Property Inventory Certification (CDA 9024) shall be submitted when either the total contract allocation has been expended, or 30 days after the expiration of this Agreement, whichever is earlier.
- B. Final expenditures must be reported to CDA in accordance with the Budget Display in Exhibit B. If the expenditures reported by the Contractor exceed the

advanced amount, CDA will reimburse the difference to the Contractor up to the contract amount. If the expenditures reported by the Contractor are less than the advanced amount, CDA will invoice the Contractor for the unspent funds.

- C. The payment on the closeout invoice is due immediately upon receipt or no later than 60 days from the date on the invoice.

**EXHIBIT B, ATTACHMENT 1
BUDGET DISPLAY**

State of California		Award #: CT-2223-11		Date: 1/1/2023		Amendment #:		Page 1 of 1	
California Department of Aging									
<p>OFFICE OF PATIENT REPRESENTATIVE (OPR) BUDGET DISPLAY Exhibit B, Attachment 1 - Budget Display County of Los Angeles, Department of Mental Health January 1, 2023 through December 31, 2024</p>									
Fund Type		Project	Initial Allocation	Adjustments	Updated Total	Net Change			
General Fund		OPRL	1,406,793		1,406,793	0			

EXHIBIT D SPECIAL TERMS AND CONDITIONS

1. RESOLUTION OF DISPUTES

Notwithstanding the General Terms and Conditions (Exhibit C), and in compliance with Public Contract Code 10381, CDA adds:

The Contractor must first discuss the problem informally with the CDA Assistant Director, Office of the Patient Representative. If the problem cannot be resolved at this level, the Contractor must direct the grievance in writing, together with all evidence to the Assistant Director. The grievance must state the issues in dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Assistant Director will make a determination on the problem within ten (10) working days after receipt of the written communication from the Contractor. The Assistant Director will respond in writing to the Contractor indicating the decision and reasons therefore. Should the Contractor disagree with the Assistant Director's decision, the Contractor may appeal to the next level.

In appealing to the next level, the Contractor must prepare a letter indicating why the Assistant Director's decision is unacceptable, attaching to it the Contractor's original statement of the dispute with supporting documents and with a copy of the Assistant Director's decision. This letter will be sent to the Chief Deputy Director or designee within ten (10) working days from receipt of the Assistant Director's decision. The Chief Deputy Director or designee will contact or meet with the Contractor to review the issues raised. The Chief Deputy Director may confer with the CDA Director and Chief Counsel, as needed to make a decision. A written decision signed by CDA's Chief Deputy Director or designee will be returned to the Contractor within twenty (20) working days of receipt of the Contractor's letter.

Authority to terminate performance under the terms of this Agreement is not subject to appeal under this section. Notwithstanding Cal. Welf. Code section 9260(b), all other issues including, but not limited to, the amount of any equitable adjustment and the amount of any compensation or reimbursement that should be paid to the Contractor will be subject to the disputes process under this Article (Cal. Public Contract Code § 10240.5, 10381, 22200, et seq.)

2. TERMINATION WITHOUT CAUSE

This Agreement may be terminated without cause by either party after a 30-day written notice to the other party. The notification must state the effective date of termination or cancellation and include any final performance and/or payment/invoicing instructions or requirements.

The Contractor shall be entitled to payment of all allowable costs authorized under this Agreement and incurred up to the date of termination or cancellation, including authorized non-cancelable obligations, provided such expenses do not exceed the stated maximum amounts payable.

3. RIGHTS IN DATA

The Contractor agrees that all data, reports, operating manuals, notes, and other written work produced in the performance of this Agreement are subject to the rights of the State as set forth in this section. The State has the right to reproduce, publish, and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so, on its behalf. If any Deliverable Work set forth in the Scope of Work is copyrightable, the Contractor, through this Agreement transfers ownership of that copyright to the State, and the State may, as an illustration but not a limitation, reproduce, publish, and use such work, or any part thereof, and authorize others to do so (40 CFR 31.34, 31.36). All rights to future publishing remain with the State.

Any material that does not conform to the requirements of this Agreement may be rejected by the State at its discretion. Notice of such a rejection will be given to the Contractor by the State within ten (10) days of receipt of the materials, and final payment will not be made for such material until substantial compliance has been obtained within the time and manner determined by the State.

4. LICENSES AND PERMITS

The Contractor must be an individual or firm licensed to do business in California and must obtain at his/her expense all license(s) and permit(s) required by law for accomplishing any work required in connection with this Agreement.

If you are a contractor located within the State of California, a business license from the city/county in which you are headquartered is necessary and must be submitted, upon California Department of Aging (CDA) request. However, if you are a corporation, a copy of your incorporation documents/letter from the Secretary of State's Office can be submitted, upon CDA request. If you are a contractor outside the State of California, you will need to submit, upon request, a copy of your business license or incorporation papers for your respective state showing that your company is in good standing in that state.

In the event any license expires at any time during the term of this Agreement, the Contractor agrees to provide the State with a copy of the renewed license within 30 days following the expiration date. In the event the Contractor fails to keep in effect at all times all required license(s) and permit(s), the State may, in addition to any other remedies it may have, terminate this Agreement upon occurrence of such event.

5. COMPUTER SOFTWARE COPYRIGHT COMPLIANCE

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

6. SECURITY AWARENESS TRAINING

The Contractor's employees, Subcontractors/Vendors, and volunteers handling Personal, Sensitive, and Confidential Information must complete the required CDA Security Awareness Training module located at <https://www.aging.ca.gov/ProgramsProviders/#Resources> within thirty (30) days of the start date of the Agreement, within thirty (30) days of the start date of any new employee, Subcontractor, Vendor or volunteer's employment and annually thereafter. The Contractor must maintain certificates of completion on file and provide them to CDA upon request.

7. INFORMATION INTEGRITY, AND SECURITY

A. Information Assets

The Contractor, and its Subcontractors/Vendors, shall have in place operational policies, procedures, and practices to protect State information assets, including those assets used to store or access Personal Health Information (PHI), Personal Information (PI) and any information protected under the Health Insurance Portability and Accountability Act (HIPAA), (i.e., public, confidential, sensitive and/or personal identifying information) herein referred to as Personal, Sensitive and Confidential Information (PSCI) as specified in the State Administrative Manual, 5300 to 5365.3; Cal. Gov. Code § 11019.9, DGS Management Memo 06-12; DOF Budget Letter 06-34; and CDA Program Memorandum 07-18 Protection of Information Assets and the Statewide Health Information Policy Manual.

Information assets may be in hard copy or electronic format and may include but is not limited to:

- 1) Reports;
- 2) Notes;
- 3) Forms;
- 4) Computers, laptops, cellphones, printers, scanners;
- 5) Networks (LAN, WAN, WIFI) servers, switches, routers;

- 6) Storage media, hard drives, flash drives, cloud storage; and
- 7) Data, applications, databases.

B. Encryption of Computing Devices

The Contractor, and its Subcontractors/Vendors, are required to use a minimum of 128-Bit encryption for PSCI data that is collected and stored under this Agreement that is confidential, sensitive, and/or personal information including data stored on all computing devices (including but not limited to, workstations, servers, laptops, personal digital assistants, notebook computers and backup media) and/or portable electronic storage media (including but not limited to, discs, thumb/flash drives, portable hard drives, and backup media).

C. Disclosure

- 1) The Contractor, and its Subcontractors/Vendors, shall ensure that all PSCI is protected from inappropriate or unauthorized access or disclosure in accordance with applicable laws, regulations and State policies.
- 2) The Contractor, and its Subcontractors/Vendors, shall protect from unauthorized disclosure, PSCI such as names and other identifying information concerning persons receiving services pursuant to this Agreement, except for statistical information not identifying any participant.
- 3) "Personal Identifying information" shall include, but not be limited to: name; identifying number; social security number; state driver's license or state identification number; financial account numbers; and symbol or other identifying characteristic assigned to the individual, such as finger or voice print or a photograph.
- 4) The Contractor, and its Subcontractors/Vendors, shall not use PSCI above for any purpose other than carrying out the Contractor's obligations under this Agreement. The Contractor and its Subcontractors are authorized to disclose and access identifying information for this purpose as required by OAA.
- 5) The Contractor and its Subcontractors/Vendors, shall not, except as otherwise specifically authorized or required by this Agreement or court order, disclose any identifying information obtained under the terms of this Agreement to anyone other than CDA without prior written authorization from CDA. The Contractor may be authorized, in writing, by a participant to disclose identifying information specific to the authorizing participant.

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

D. Security Awareness Training

- 1) The Contractor's employees, Subcontractors/Vendors, and volunteers handling PSCI must complete the required CDA Security Awareness Training module located at <https://www.aging.ca.gov/ProgramsProviders/#Resources> within thirty (30) days of the start date of the Contract/Agreement, within thirty (30) days of the start date of any new employee, Subcontractor, Vendor or volunteer's employment and annually thereafter.
- 2) The Contractor must maintain certificates of completion on file and provide them to CDA upon request.

E. Health Insurance Portability and Accountability Act (HIPAA)

- 1) The Contractor agrees to comply with the privacy and security requirements of HIPAA and ensure that Subcontractors/Vendors comply with the privacy and security requirements of HIPAA.

F. Information Integrity and Security Statement

The Contractor shall sign and return an Information Integrity and Security Statement (CDA 1024) form with this Agreement. This is to ensure that the Contractor is aware of, and agrees to comply with, their obligations to protect CDA information assets, including PSCI, from unauthorized access and disclosure.

G. Security Incident Reporting

A security incident occurs when CDA information assets are or reasonably believed to have been accessed, modified, destroyed, or disclosed without proper authorization, or are lost or stolen. The Contractor, and its Subcontractors/Vendors, must comply with CDA's security incident reporting procedure located at <https://www.aging.ca.gov/ProgramsProviders/#Resources>.

H. Security Breach Notifications

Notice must be given by the Contractor, and/or its Subcontractors/Vendors to anyone whose PSCI could have been breached in accordance with HIPAA, the Information Practices Act of 1977, and State policy.

I. Software Maintenance

The Contractor, and its Subcontractors/Vendors, shall apply security patches and upgrades in a timely manner and keep virus software up-to-date on all systems on which State data may be stored or accessed.

J. Electronic Backups

The Contractor, and its Subcontractors/Vendors, shall ensure that all electronic information is protected by performing regular backups of files and databases and ensure the availability of information assets for continued business. The Contractor, and its Subcontractors/Vendors, shall ensure that all data, files and backup files are encrypted.

K. Provisions of this Article

The provisions contained in this Article shall be included in all contracts of both the Contractor and its Subcontractors/Vendors.

8. POTENTIAL SUBCONTRACTORS

Nothing contained in this Agreement or otherwise, creates any contractual relationship between the State and any subcontractors, and no subcontract relieves the Contractor of responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the State for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to the Contractor. Although the State has no obligation to pay any moneys directly to any subcontractor, the Contractor is encouraged to make timely payment to its subcontractors under all applicable State laws, rules and regulations.

9. APPROVAL OF SUBCONTRACTORS

The Contractor must adhere to the rules governing subcontracting as set forth in the subcontracting Fair Practices Act, commencing with Public Contract Code Section (PCC) 4100. Any and all subcontractors must be approved by the State's Contract Manager. Subcontractor substitutions also must be in accordance with the above and requires the approval of the Contract Manager. Violations of this Act by the Contractor may subject the Contractor to penalties and disciplinary action.

10. SUBSTITUTION OF STAFFING

Upon Agreement award, the Contractor must use the staffing which they proposed in their bid submittal to the State unless a substitution is requested in writing for approval by the State's Contract Manager. The request for substitution may not be used as an excuse for non-compliance with any other provision of State or federal law including, but not limited to subletting and subcontracting.

11. FORCE MAJEURE

Except for defaults of subcontractors at any tier, the Contractor is not liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include, but are not limited to:

- A. Acts of God or of the public enemy, and
- B. Acts of the federal or State government in either its sovereign or contractual capacity.

If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor is not liable for any excess costs for failure to perform.

12. WAIVER OF RIGHTS

Any action or inaction by the State or the failure of the State on any occasion, to enforce any right or provision of the Agreement, is not a waiver by the State of its rights hereunder and does not prevent the State from enforcing such provision or right on any future occasion. The rights and remedies of the State herein are cumulative and are in addition to any other rights or remedies that the State may have at law or in equity.

13. DEBARMENT AND SUSPENSION CERTIFICATION:

- A. By signing this Agreement, the Contractor agrees to comply with the debarment and suspension requirements as found in Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participants; responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211).

- 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 Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - 3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph 2.b., of this certification; and
 - 4) Have not within a three-year period preceding this agreement had one or more public transactions (Federal, State, or local) terminated for cause or default.

EXHIBIT E INSURANCE REQUIREMENTS

1. APPLICABLE LIABILITY INSURANCE:

- A. The insurance and/or bonds identified below with a marked box are a required part of this Agreement, and only the marked boxes have any force or effect under this Agreement. Except as set forth below, evidence of liability insurance coverage, in the form of a certificate acceptable to the State of California and CDA, shall be provided prior to the execution of this Agreement and the commencement of services.
- B. CDA reserves the right, at its sole discretion, to cancel a proposed award to the Contractor which does not submit all required insurance documents in a timely manner. Should CDA cancel a proposed award for this reason, CDA reserves the right, at its sole discretion, to award the contract to the next lowest, responsive, and responsible provider.

Commercial General Liability:

Contractor shall maintain general liability insurance with limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury and property damage liability combined. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal and advertising injury, and liability assumed under an insured contract. This insurance shall apply separately to each insured against whom claim is made or suit is brought.

Should the Contractor use a subcontractor to complete a portion of this Agreement, the Contractor shall include the subcontractor as an additional named insured under the Contractor's policy, or represents and warrants that each subcontractor is insured under their own Commercial General Liability policy at the amounts specified herein. The Contractor shall supply evidence of the subcontractor's insurance to the CDA upon request.

Motor Vehicle Liability:

Contractor shall maintain motor vehicle liability insurance with limits of not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of an accident involving a motor vehicle in use by the Contractor during the provision of services under this Agreement, including, but not limited to, Contractor owned, hired, and non-owned motor vehicles.

Requirement to Insure the State for the above (General Liability & Motor Vehicle Liability): Contractor is required to name the “State of California, its officers, employees, and agents” as additional insured parties, insofar as operations under the Agreement are concerned. To satisfy this requirement, the Contractor shall ensure that the following requirement(s) are met:

- 1) **Policy Endorsement:** Contractor, when providing a signed contract to the CDA and unless otherwise specified, shall provide proof that the Contractor has insured the State of California, its officers, employees, and agents. This proof shall come in the form of an endorsement to the Contractor’s insurance policy, or in the form of a copy of the Contractor’s current insurance policy that shows that the policy insures all parties required to be insured by this Agreement.

Professional Liability:

Contractor shall maintain Professional Liability insurance covering any damages caused by an error, omission, or any negligent acts. Contractor shall maintain limits of not less than \$1,000,000 per claim and \$2,000,000 aggregate.

In the event a medical professional performing services under this Agreement is a subcontractor or is performing services through a registry, the medical professional actually performing the services shall be the insured and shall comply with the Professional Liability/Medical Malpractice insurance requirements of this Agreement. The prime contractor shall be responsible to enforce this provision and employ only those medical professionals meeting this requirement. Evidence of compliant insurance shall be provided to the CDA prior to the commencement of services.

Workers’ Compensation:

If the Contractor is required by statute, regulation, or Court order, to provide Workers’ Compensation and Employer’s Liability Insurance for performance of services under this Agreement, Contractor shall carry and shall maintain sufficient and adequate insurance for all of its employees who shall be engaged in the performance of this Agreement. Contractor shall maintain Employer’s Liability limits of not less than \$1,000,000 per claim. Failure to maintain the insurance pursuant to this clause shall be deemed a material breach of the Agreement and CDA may terminate this Agreement for cause.

If required by the CDA, in writing, Contractor shall furnish, within three (3) state business days following the CDA's request, either 1) a copy of the certificate of insurance, a "true and certified" copy of the policy, or any other proof of coverage issued by Contractor's insurance carrier reflecting workers' compensation coverage; or 2) written confirmation, in a manner defined by the CDA, that workers' compensation coverage is not required.

Contractor also agrees to indemnify, defend and hold harmless the state of California, the CDA, its officers, agents, and employees from any and all claims by the Contractor's employees, agents and/or anyone representing the Contractor, related to any non-performance of this section.

2. TERM OF INSURANCE:

Insurance shall be in effect for the entire term of this Agreement. If the insurance expires prior to the end of the term of the Agreement, a new certificate must be received by the CDA at least ten (10) days prior to the expiration of the insurance.

3. TERMINATION FOR NON-COMPLIANCE:

In the event Contractor fails to keep in effect at all times the specified insurance coverage, this failure shall be deemed a material breach of the Agreement and the CDA may, in addition to any other remedies it may have, terminate this Agreement with cause upon the occurrence of such event.

4. CERTIFICATE HOLDER AND SUBMISSION:

Certificates of liability insurance must name the CDA as a certificate holder and must be submitted to the following address:

California Department of Aging
Attention: Katie Paige
2880 Gateway Oaks Drive, Suite 200
Sacramento, CA 95833
(916) 756-3068
BMBStateOps@aging.ca.gov

5. SELF-INSURANCE REQUIREMENTS:

A. The insurance will be obtained from an insurance company acceptable to the Department of General Services, Office of Risk and Insurance Management (DGS, ORIM), or be provided through partial or total self-insurance acceptable to the Department of General Services (DGS).

- B. A copy of each appropriate Certificate of Insurance or letter of self-insurance, referencing this Agreement number shall be submitted to CDA with this Agreement.
- C. The Contractor shall be insured against liability for Worker's Compensation or undertake self-insurance in accordance with the provisions of the Labor Code and the Contractor affirms to comply with such provisions before commencing the performance of the work under this Agreement. [Labor Code § 3700]
- D. The parties recognize that Contractor is self-insured and will maintain insurance in amounts and types sufficient to satisfy its contractual insurance requirements.

EXHIBIT F
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 Aging (CDA) 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.
 - A. 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 at California Civil Code section 1798.3(a). PHI includes information in any form, including paper, oral, and electronic.
 - B. 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 CDA acting on CDA's behalf and provides services or arranges, performs or assists in the performance of functions or activities on behalf of CDA, 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. CDA 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. 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 CDA, provided that such use or disclosure would not violate HIPAA or other applicable laws if done by CDA.

A. 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, and the person notifies the Business Associate of any instances of which it is aware that the confidentiality of the information has been breached.

8. Compliance with Other Applicable Law

- A. 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:
- 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
 - 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.
- B. 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.

- C. 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

A. Nondisclosure.

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.

B. Safeguards and Security.

- 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.
- 2) Business Associate shall, at a minimum, utilize an industry-recognized security framework when selecting and implementing its security controls, and shall maintain continuous compliance with its selected framework as it may be updated from time to time. Examples of industry-recognized security frameworks include but are not limited to
 - (a) NIST SP 800-53 – National Institute of Standards and Technology Special Publication 800-53
 - (b) FedRAMP – Federal Risk and Authorization Management Program
 - (c) PCI – PCI Security Standards Council
 - (d) ISO/IEC 27002 – International Organization for Standardization / International Electrotechnical Commission standard 27002
 - (e) IRS PUB 1075 – Internal Revenue Service Publication 1075
 - (f) HITRUST CSF – HITRUST Common Security Framework

- C.** Business Associate shall employ FIPS 140-2 compliant 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. In addition, Business Associate shall maintain, at a minimum, the most current industry standards for transmission and storage of PHI and other confidential information.
- 1) 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.
 - 2) 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.
 - 3) 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.
- D. 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 CDA Obligations.

To the extent Business Associate is to carry out an obligation of CDA under [45 CFR Part 164](#), Subpart E, comply with the requirements of the subpart that apply to CDA 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 CDA available to CDA upon reasonable request, and to the federal Secretary of Health and Human Services for purposes of determining CDA's 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, CDA 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 CDA of the conditions that make the return or destruction infeasible, and CDA 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 CDA that was verified by or provided by the Social Security Administration (SSA data) and is subject to an agreement between CDA and SSA, Business Associate shall provide, upon request by CDA, a list of all employees and agents and employees who have access to such data, including employees and agents of its agents, to CDA.

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:

A. Notice to CDA.

- 1) Business Associate shall notify CDA **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 CDA.
- 2) Business Associate shall notify CDA **within 24 hours by email** (or by telephone if Business Associate is unable to email CDA) of the discovery of:
 - a. Unsecured PHI if the PHI is reasonably believed to have been accessed or acquired by an unauthorized person;
 - b. Any suspected security incident which risks unauthorized access to PHI and/or other confidential information;
 - c. Any intrusion or unauthorized access, use or disclosure of PHI in violation of this Agreement; or
 - d. Potential loss of confidential data affecting this Agreement.

B. Notice shall be provided to the CDA Program Contract Manager (as applicable), the CDA Privacy Office, and the CDA Information Security Office (collectively, "CDA Contacts") using the CDA Contact Information at Section 18.G. below.

Notice shall be made using the current CDA 1025-A form, located at: https://www.aging.ca.gov/Information_security/ and shall include all information known at the time the incident is reported.

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

- 1) Prompt action to mitigate any risks or damages involved with the security incident or breach; and
- 2) Any action pertaining to such unauthorized disclosure required by applicable Federal and State law.

C. Investigation.

Business Associate shall immediately investigate such security incident or breach.

D. Complete Report.

Provide a complete report of the investigation to the CDA 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 CDA requests information in addition to that requested through the PIR form, Business Associate shall make reasonable efforts to provide CDA with such information. A “Supplemental PIR” may be used to submit revised or additional information after the Final PIR is submitted. CDA 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.

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

E. Notification of Individuals.

If the cause of a breach is attributable to Business Associate or its agents, 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. CDA shall approve the time, manner, and content of any such notifications and their review and approval must be obtained before the notifications are made.

F. Responsibility for Reporting of Breaches to Entities Other than CDA.

If the cause of a breach of PHI is attributable to Business Associate or its subcontractors, Business Associate is responsible for all required reporting of the breach as required by applicable federal and state law.

G. CDA Contact Information.

To direct communications to the above referenced CDA staff, the Contractor shall initiate contact as indicated here. CDA 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.

CDA Program Contract Manager	CDA Privacy Office	CDA Information Security Office
See the Scope of Work exhibit for Program Contract Manager/Assistant Director information. If this Business Associate Agreement is not attached as an exhibit to a contract, contact the CDA signatory to this Agreement.	Privacy Office c/o: Jeremy Avila Department of Aging 2880 Gateway Oaks Drive, Suite 200 Sacramento, CA 95833 Email: privacy@aging.ca.gov Telephone: (916) 445-4646	Information Security Office CDA Information Security Office 2880 Gateway Oaks Drive, Suite 200 Sacramento, CA 95833 Email: iso@aging.ca.gov

19. Responsibility of CDA.

CDA 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

- A. From time to time, CDA 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 CDA Privacy Officer in writing. Whether or how CDA exercises this provision shall not in any respect relieve Business Associate of its responsibility to comply with this Agreement.
- B. 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 CDA unless it is legally prohibited from doing so.

21. Termination

A. Termination for Cause.

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

- 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 CDA; or

- 2) Terminate this Agreement if Business Associate has violated a material term of this Agreement.

B. Judicial or Administrative Proceedings.

CDA 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

A. Disclaimer.

CDA 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.

B. Amendment.

- 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.
- 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.

C. Assistance in Litigation or Administrative Proceedings.

Business Associate shall make itself and its employees and agents available to CDA at no cost to CDA to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CDA, its directors, officers and/or employees based upon claimed violation of HIPAA, which involve inactions or actions by the Business Associate.

D. No Third-Party Beneficiaries.

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

E. 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.

23. 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.