

STANDARD AGREEMENT
 STD. 213 (NEW 02/98)

AGREEMENT NUMBER MS-0304-13	AMENDMENT NUMBER
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1. This Agreement is entered into between the State Agency and the Contractor named below
 STATE AGENCY'S NAME
 California Department of Aging
 CONTRACTOR'S NAME
 County of San Mateo
2. The term of this Agreement is: July 1, 2003 through June 30, 2004
3. The maximum amount of this Agreement is: \$ Six hundred thirty-one thousand, eight hundred ninety two dollars 631,892.00
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:

Exhibit A – Scope of Work	6	Page(s)	
Exhibit B – Budget Detail and Payment Provision	7	Page(s)	
* Exhibit C – General Terms and Conditions	GTC103 (Number)		1/1/2003 (Dated)
Exhibit D – Special Terms and Conditions	23	Page(s)	
Exhibit E – Medi-Cal Aid Codes	4	Page(s)	
Exhibit F – Definition of Service Provider Under Waiver	9	Page(s)	
Exhibit G – Catchment Area	1	Page(s)	
Exhibit H – HIPPA Business Associate	6	Page(s)	

*View at www.dgs.ca.gov/contracts

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

CONTRACTOR		CALIFORNIA Department of General Services Use Only
CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.) County of San Mateo		
BY (Authorized Signature) 	DATE SIGNED	
PRINTED NAME AND TITLE OF PERSON SIGNING Rose Jacobs Gibson, President, Board of Supervisors, County of San Mateo		
ADDRESS 225 37th Avenue, San Mateo, California 94403		
STATE OF CALIFORNIA		
AGENCY NAME California Department of Aging		
BY (Authorized Signature) 	DATE SIGNED	<input type="checkbox"/> Exempt per _____
PRINTED NAME AND TITLE OF PERSON SIGNING Rachel de la Cruz, Manager, Contracts and Business Services Section		
ADDRESS 1600 K Street, Sacramento, California 95814		

EXHIBIT A
(Standard Agreement)

SCOPE OF WORK

1. Contractor agrees to provide to the California Department of Aging the types of services as described in the following pages of Exhibit A. Total annual number of client months for County of San Mateo, Department of Health Services is 2,400.
2. The services shall be performed in catchment area described in Exhibit G.
3. The services shall be provided as needed.
4. The project representatives during the term of this agreement will be:

State Agency: California Department of Aging	Contractor: County of San Mateo, Department of Health Services
Name: Joanne Brandt	Name: Pam Borrelli, Site Director
Phone: (916) 323-3168	Phone: (650) 573-3512
Fax: (916) 322-3573	Fax: (650) 573-2310

Direct all contract inquiries to:

State Agency: California Department of Aging	Contractor: County of San Mateo, Department of Health Services
Section/Unit: Business Services and Contracts	Section/Unit: Multipurpose Senior Services Program
Attention: Don Fingado	Attention: Jacqueline Toliver
Address: 1600 K Street Sacramento, CA 95814	Address: 225 37 th Avenue San Mateo, CA 94403
Phone: (916) 322-3574	Phone: (650) 573-2383
Fax: (916) 323-4490	Fax: (650) 573-2193

Scope of Work – Exhibit A
MSSP

ARTICLE II. MULTIPURPOSE SENIOR SERVICES PROGRAM (MSSP) OVERVIEW

The MSSP is a Medi-Cal waiver program authorized pursuant to Section 1915(c) of Title XIX of the Social Security Act. The primary objectives of the Multipurpose Senior Services Program are to:

- (1) Avoid the inappropriate placement of frail older persons in nursing facilities; and
- (2) Foster independent living in their own communities.

CDA contracts with local government entities and private nonprofit organizations for local administration of the MSSP throughout the State. The contractor is responsible for arranging for and monitoring community services to the MSSP client population in the catchment area identified in Exhibit G of this Agreement. Individuals eligible for MSSP must be aged 65 or older; meet the eligibility criteria as a Medi-Cal recipient with an eligible Medi-Cal Aid Code for MSSP as described in the Multipurpose Senior Services Program Medi-Cal Aid Codes, Exhibit E, of this Agreement; be certifiable for placement in a nursing facility; live within a site's catchment area; be served within the program's cost limitations; and be appropriate for care management services.

The contractor uses a care management team to assess eligibility and need, and provide for delivery of services. The contractor is reimbursed for expenditures through a claims process operated by the State's fiscal intermediary, Electronic Data Systems.

ARTICLE III. MSSP PROGRAM OPERATIONS

The Contractor shall be responsible for all care management obligations including processing client applications, making eligibility determinations, assessments, developing care plans, case recording and documentation, and providing follow-up. The Contractor shall directly provide or arrange for the continuous availability and accessibility of all services identified in each client's care plan.

A. CARE MANAGEMENT TEAM

1. Contractor shall employ a care management team that consists of a social worker and a public health nurse who meet the qualifications set forth in the Waiver. The care management team shall determine client eligibility based on the criteria specified in Article II and in Exhibit E, MSSP and Medi-Cal Aid Codes, which is attached and hereby incorporated by reference, and assure that appropriate services are provided to the client. This team shall work with the client throughout the care management process (e.g., assessment, care plan development, service coordination, and service delivery).

**Scope of Work – Exhibit A
MSSP**

ARTICLE III. MSSP PROGRAM OPERATIONS (Continued)

2. The care management team shall provide information, counseling, and advocacy to the client and family; and shall identify resources to help assure the timely, effective, and efficient mobilization and allocation of all services, regardless of the source, to meet the client's care plan goals.

B. CARE PLAN

1. Contractor's care management team shall conduct the client assessments and work with the client, family, and others to develop a care plan covering the full range of required social and health services. The care management team shall continue to work with the client to assure that she/he is receiving and benefiting from the services, and to determine if modification of the care plan is required.
2. The Contractor shall pay allowable claims from authorized vendors of waived services rendered to clients in conformance with an authorized care plan.

C. SERVICES

1. Contractor's care management team shall first explore informal support to the client through family, friends, the volunteer community, and explore use of available publicly funded services. If these resources prove insufficient, the care management team may purchase services as authorized under the Waiver. Descriptions of Waived Services are contained in Exhibit F, Definition of Services Provided Under Waiver, which is attached and hereby incorporated by reference.
2. Contractor shall maintain sufficient written vendor agreements for the following minimum array of Waived Services at all times during the term of this Agreement.
 - (a) Adult Day Support Center (ADSC) and Adult Day Care (ADC)
 - (b) Housing Assistance
 - (c) In-Home Supportive Services (IHSS) Supplementation
 - (d) Care Management
 - (e) Respite Care
 - (f) Transportation
 - (g) Meal Services
 - (h) Protective Services

Scope of Work – Exhibit A
MSSP

ARTICLE III. MSSP PROGRAM OPERATIONS (Continued)

(i) Special Communications

D. CASE FILES

Contractor shall maintain an up-to-date, centralized, secured case file record for each client, consisting, at a minimum, of the following, using forms prescribed by CDA:

1. Application Form
2. Release of Information Form
3. Client Information Form
4. Certification/Recertification Form
5. Initial health assessment and psychosocial assessment and most recent reassessment.
6. Initial and most recent care plan which identifies the client's care problems and needs, functional limitations, authorized services, and the outcomes of delivered services.
7. Client progress notes and other client-related information (e.g., correspondence, medical/psychological/social records).
8. Denial or discontinuance letters
9. Termination Forms
10. Fair Hearing documentation
11. Institutionalization Form

E. MANAGEMENT INFORMATION SYSTEMS (MIS)

The Contractor shall maintain and operate an MIS at its site. The Contractor shall:

1. Maintain office space with proper security and climate control for on-site computer hardware (terminals, processors, modems, and printers, for example).
2. Provide adequate staff for timely, accurate, and complete MIS data input, including:

**Scope of Work – Exhibit A
MSSP**

ARTICLE III. MSSP PROGRAM OPERATIONS (Continued)

- (a) Client name, MSSP client number, Medi-Cal Aid Code, county code, Medicare and social security number, birth date, level of care, emergency contact information, physician information, and demographic information;
 - (b) Tracking of purchased and referred services and costs;
 - (c) Enrollment and termination dates; and
 - (d) Provider index.
3. Accommodate State-required changes in MIS procedures which may be necessary from time to time.
 4. Generate reports as required by the State.
 5. Submit to CDA by the fifteenth (15th) of the month, the client enrollment and termination data for the preceding month.
 6. Completely (100%) verify all referred services data within ninety (90) calendar days of the date of service. Contractor shall submit these data to CDA by the fifteenth (15th) calendar day of the following month (one hundred five [105] days from the end of the month of services).
 7. Submit purchased (Waived) services data to the DHS Medi-Cal Fiscal Intermediary, Electronic Data Systems (EDS), per instructions stated in the Medi-Cal Inpatient/Outpatient Manual, timelines, and guidelines.

F. CASELOADS

The Contractor shall maintain a caseload of no less than 95 percent or more than 105 percent of the specified annual total "active client count" included in the Scope of Work, Exhibit A, Section 1 unless otherwise authorized by CDA. "Active client count" represents clients served during each month. For monthly reporting purposes, this will be the number of clients as of the first of the month, plus the number enrolled during the month. The "unduplicated client count" is defined as the total number of clients for the fiscal year at the close of business on the last day. A client is only counted once, even if the client terminates and re-enrolls during the fiscal year.

G. OTHER PROVISIONS

1. A client ceases to be a "client" and the Contractor is relieved of all obligations to provide and arrange for services to him/her under this Agreement when the client has been given ten (10) days prior notice of termination, where appropriate, and the client has exhausted his/her appeal rights.

Scope of Work – Exhibit A
MSSP

ARTICLE III. MSSP PROGRAM OPERATIONS (Continued)

2. The Contractor shall administer a vendor appeal and adjudication process as prescribed by the State. This process shall assure fair consideration and disposition of vendor claims against Contractor and vest final authority to decide claims with the State.
3. The Contractor shall operate a Multipurpose Senior Services Program at a location and in a manner approved by the State, ensuring that client inquiries and requests for service(s) receive prompt response.
4. "Catchment Area," defining the region to be served under this Agreement, is attached hereto as part of Exhibit G and is incorporated by reference.
5. The Contractor shall abide by the MSSP Site Manual, training manuals, and other guidance issued by the CDA MSSP Branch. The Contractor shall comply with any and all changes to State and federal law. The Contractor shall include this requirement in each of its vendor agreements.
6. The Contractor shall make staff available to CDA for training and meetings which CDA may find necessary from time to time.

Budget Detail and Payment Provisions – Exhibit B
MSSP

ARTICLE I. INVOICING AND PAYMENT

- A. To receive payment, the Contractor shall prepare and submit electronic claims through DHS's fiscal intermediary, Electronic Data Systems (EDS), as set forth in the Medi-Cal Inpatient/Outpatient Manual.
- B. Payments shall be made in accordance with the following provisions:
1. Contractor shall submit claims to EDS based upon the month of service and only for actual expenses. On each claim, the Contractor shall show the amount billed for each service code.

2. Failure to provide data and reports specified by this Agreement will result in the delay of payment of invoices.

C. Prompt Payment Clause

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

D. Advance Payments

CDA, having found that an advance payment to the Contractor is essential for the effective implementation of this Contract may authorize an advance payment during the term of the Agreement, pursuant to Welfare and Institutions Code, Section 9408.5 for public entities and Section 11019 of the Government Code for private non-profit entities, subject to the following conditions:

1. Upon approval of this Agreement, the Contractor may receive from DHS an advance payment not to exceed twenty-five percent (25%) of the total Contract amount. The Contractor shall make a request for the advance payment on Contractor's letterhead with original signature of authorized designee, stating this Agreement number. Requests for advances will not be accepted past the first day of the fiscal year.
2. Any funds advanced, plus interest earned on same, under this Agreement shall be deducted from amounts due the Contractor. If, after settlement of Contractor's final claim, DHS or CDA determines an amount is owed DHS or CDA hereunder, DHS or CDA shall notify the Contractor and the Contractor shall refund the requested amount within ten (10) working days of the date of the State's request.
3. The Contractor may at any time repay all or any part of the funds advanced hereunder. Whenever either party gives thirty (30) or more days prior written notice of termination of this Agreement, the Contractor shall repay to DHS, within ten (10) working days of such notice, the unliquidated balance of the advance payment.

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

ARTICLE I. INVOICING AND PAYMENT (Continued)

4. Repayment of advances will be recovered from claims submitted to the DHS fiscal intermediary, EDS, after January 1, 2004, and be collected at 50% (fifty percent) of each claim submitted until the amount advanced is repaid. If the Contractor has insufficient client enrollment to permit repayment of advances through claims submitted to the DHS fiscal intermediary, the Contractor may at any time be required to repay to DHS all or any part of the funds advanced hereunder to ensure that the unliquidated balance of the advance payment is repaid.

ARTICLE II. FUNDS

A. Expenditure of Funds

1. The Contractor shall expend all funds received hereunder in accordance with the Scope of Work, Exhibit A, of this Agreement.
2. Any reimbursement for necessary travel expenses and per diem shall not exceed rates that are set in accordance with Department of Personnel (DPA) Administration rates set for comparable classes as determined by Department of Health Services (DHS). This is not to be construed as limiting the Contractor from paying any differences in costs, from funds other than those provided by DHS, between the DPA rates and any rates the Contractor is obligated to pay under other contractual agreements. No travel outside the State of California shall be reimbursed unless prior written authorization is obtained from the State.
3. DHS and CDA reserve the right to refuse payment to the Contractor or later disallow costs for any expenditure, when DHS or CDA determine that the costs are not in compliance with this Agreement or unrelated or inappropriate to contract activities, or when inadequate supporting documentation is presented, or where prior approval was required but was either not requested or not granted.
4. The Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to, or received by the Contractor under this Contract, shall be paid by the Contractor to DHS, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by DHS under this Contract.
5. CDA may require prior approval and may control the location, cost, dates, agenda, instructors, instructional materials, and attendees at any reimbursable training seminar workshop or conference conducted by the Contractor in relation to the program funded through this Contract, and maintain control over any reimbursable publicity, or education materials to be made available for distribution. The Contractor is required to acknowledge the support of CDA, in writing, whenever publicizing the work under this Agreement in any media.

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

ARTICLE II. FUNDS (Continued)

B. Accountability for Funds

The Contractor shall maintain accounting records for funds received under the terms and conditions of this Agreement. These records shall be separate from those for any other funds administered by the Contractor, and shall be kept in accordance with Generally Accepted Accounting Principles and Procedures.

C. Unexpended Funds

Upon termination, cancellation, or expiration of this Agreement, or dissolution of the entity, the Contractor shall return to DHS immediately upon written demand, any funds provided under this Agreement, which are not payable for goods or services delivered prior to the termination, cancellation, or expiration of this Agreement, or the dissolution of the entity.

D. Interest Earned

Recipients shall maintain advances of federal funds in interest bearing accounts, unless (1), (2), or (3) apply.

- (1) The recipients receives less than \$120,000 in federal awards per year.
- (2) The best reasonably available interest bearing account would not be expected to earn interest in excess of \$250 per year on federal cash balances.
- (3) The depository would require an average or minimum balance so high that it would not be feasible within the expected federal and non-federal cash resources.

For non-profit entities interest earned on federal advances deposited in interest bearing accounts in excess of \$250 shall be remitted annually to DHS.

ARTICLE III. BUDGET AND BUDGET REVISION

A. Limitation of State Liability

Payment for performance by the Contractor may be dependent upon the availability of future appropriations by the Legislature or Congress for the purposes of this contract. No legal liability on the part of the State for any payment may arise under this contract until funds are made available and until the Contractor has received notice of funding availability, which will be confirmed in writing.

B. Funding Reduction in Subsequent Fiscal Years

1. If funding for any State fiscal year is reduced or deleted by the Legislature, Congress, or Executive Branch for the purposes of this program, the State shall have the option to either:

Budget Detail and Payment Provisions – Exhibit B
MSSP

ARTICLE III. BUDGET AND BUDGET REVISION (Continued)

- a. Terminate the Contractor pursuant to Exhibit D, Article XIII, A.
 - b. Offer a contract amendment to the Contractor to reflect the reduced funding for this contract.
2. In the event that State elects to offer an amendment, it shall be mutually understood by both parties that State reserves the right to determine which contracts, if any, under this program shall be reduced and that some contracts may be reduced by a greater amount than others, and that State shall determine at its sole discretion the amount that any or all of the contracts shall be reduced for the fiscal year.
- C. The Contractor shall be reimbursed for expenses only as itemized in the approved Site Budget which is attached and hereby incorporated by reference into this exhibit.
 - D. Category amounts stipulated in the Budget, Exhibit B, are the maximum amounts that may be reimbursed by DHS under this Agreement.
 - E. "Line Item Budget," includes the detail of budget line item information filed and recorded with CDA's program contact. Indirect costs shall not exceed fifteen percent (15%) of salaries plus benefits.
 - F. The Contractor must obtain written approval from CDA to transfer funds from one budget category to another. This request shall be in writing.
 - G. Budgeting processes and conditions will be subject to instructions that will be issued to the Contractor under separate cover.

ARTICLE IV. DEFAULT PROVISIONS

The State, without limiting any rights which it may otherwise have, may, at its discretion, and upon written notice to the Contractor, withhold further payments under this Agreement, and/or demand immediate repayment of the unliquidated balance of any advance payment hereunder, upon occurrence of any one of the following events.

1. Termination or suspension of this Agreement.
2. A finding by the State that the Contractor:
 - a. Has failed to observe any of the covenants, conditions, or warrants of these provisions, or has failed to comply with any material provisions of this Agreement; or
 - b. Has failed to make progress, or is in such unsatisfactory financial condition, as to endanger performance of this Agreement; or
 - c. Has allocated inventory to this Agreement substantially exceeding reasonable requirements; or

Budget Detail and Payment Provisions – Exhibit B
MSSP

ARTICLE IV. DEFAULT PROVISIONS (Continued)

- d. Is delinquent in payment of taxes or of the cost of performance of this Agreement in the ordinary course of business.
3. Appointment of a trustee, receiver, or liquidator for all or a substantial part of the Contractor's property, or institution of bankruptcy, reorganization, or arrangement of liquidation proceedings by or against the Contractor.
4. Service of any writ of attachment, levy, or execution, or commencement of garnishment proceeding; or
5. The commission of an act of bankruptcy.

EXHIBIT B
Budget Detail and Payment Provisions

Site Name: San Mateo County		MS-0304-13	
LINE ITEM TITLE	FTE	LINE	FY 03/04 Budget
CARE MANAGEMENT			
Position Title			
SSSC	0.455	[1]	\$27,834.00
SSC	1.000	[2]	\$49,377.00
SSC	1.000	[3]	\$49,377.00
SSC	1.000	[4]	\$50,340.00
HP	1.000	[5]	\$64,573.00
HP	1.000	[6]	\$64,573.00
HP		[7]	\$0.00
HP		[8]	\$0.00
		[9]	\$0.00
		[10]	\$0.00
		[11]	\$0.00
		[12]	\$0.00
		[13]	\$0.00
		[14]	\$0.00
		[15]	\$0.00
		[16]	\$0.00
		[17]	\$0.00
		[18]	\$0.00
		[19]	\$0.00
		[20]	\$0.00
		[21]	\$0.00
		[22]	\$0.00
		[23]	\$0.00
		[24]	\$0.00
		[25]	\$0.00
SUBTOTAL CARE MGMT SALARIES		[26]	\$306,074.00
BENEFITS		[27]	\$51,797.00
SALARY SAVINGS		[28]	\$0.00
TOTAL CARE MANAGEMENT		{29}	\$357,871.00
ADMINISTRATION			
Site Administrator Salary	0.240	[30]	\$20,360.00
Fiscal Officer Salary	0.500	[31]	\$37,199.00
Clerical Support Salaries	0.800	[32]	\$31,269.00
Data Support Salaries		[33]	\$0.00
		[34]	\$0.00
		[35]	\$0.00
SUBTOTAL ADMIN SALARIES		[36]	\$88,828.00
ADMINISTRATION BENEFITS		[37]	\$14,582.00
SALARY SAVINGS		[38]	\$0.00
TOTAL ADMIN SAL & BENEFITS		[39]	\$103,410.00
Office Supplies/Equip		[40]	\$0.00
Library Purchases/Subscriptions		[41]	\$0.00
Equipment \$300/unit or more		[42]	\$0.00
Recruitment costs		[43]	\$0.00
Equipment Rental		[44]	\$0.00
Equipment Maintenance		[45]	\$0.00
Reproduction, Printing and Copy		[46]	\$0.00
Communications		[47]	\$0.00
Postage		[48]	\$0.00
Consultation/Professional Services		[49]	\$0.00
Insurance		[50]	\$0.00
Travel		[51]	\$0.00
Training w/out associated travel costs		[52]	\$0.00
Facility, Rent and Operations		[53]	\$0.00
Indirect Costs (IC) (IC / Base)		[54]	\$0.00
Base = Salaries & Benefits ([29] & [39])	461281.00	[55]	
Temporary Help		[56]	\$0.00
		[57]	\$0.00
		[58]	\$0.00
		[59]	\$0.00
TOTAL ADMINISTRATION		{60}	\$103,410.00
WAIVED SERVICES		{61}	\$170,611.00
GRAND TOTAL		{63}	\$631,892.00

EXHIBIT B
Budget Detail and Payment Provisions

Site: San Mateo County

MS-0304-13

CHANGES TO BE IMPLEMENTED ON OR AFTER 7-1-03											
CARE MANAGEMENT	Position Title	Last Name	FTE	MONTHLY WAGE (AS OF 6/30/03)	MERIT/STEP SALARY ADJUSTMENT			COLA ADJUSTMENTS			TOTAL ANNUAL SALARY
					PERCENT OF INCREASE	DOLLAR AMOUNT	EFFECTIVE DATE	PERCENT OF INCREASE	DOLLAR AMOUNT	EFFECTIVE DATE	
[1]	SSSC	Rodriguez	0.455	\$6,410				3.00%	\$687	11/9/2003	\$35,684
[2]	SSC	Heinrich	1.000	\$5,446				3.00%	\$1,282	11/9/2003	\$63,304
[3]	SSC	Kennelly	1.000	\$5,446				3.00%	\$1,282	11/9/2003	\$63,304
[4]	SSC	Trabucco	1.000	\$5,555				3.00%	\$1,282	11/9/2003	\$64,539
[5]	HP	Clendenin	1.000	\$7,234				3.00%	\$334	3/30/2004	\$82,786
[6]	HP	Manders	1.000	\$7,234				3.00%	\$334	3/30/2004	\$72,786
[7]	HP										
[8]	HP										
[9]	HP										
[10]	SSA										
[11]	SSA										
[12]	SSA										
[13]											
[14]											
ADMINISTRATION											
	Position Title										
[30]	Site Administrator	Borrelli	0.240	\$1,664				3.00%	\$392	11/9/2003	\$20,660
[31]	Fiscal Officer	Lai	0.500	\$3,040				3.00%	\$716	11/9/2003	\$37,199
[32]	Clerical Support	Miller	0.800	\$2,556				3.00%	\$602	11/9/2003	\$31,269
[33]	Data Support										
[34]											
[35]											

[42]	Equipm't \$300/unit or more	
[53]	Facility, Rent & Opers.	
[54]	Indirect Costs	
[56]	Temporary Help	

Special Terms and Conditions – Exhibit D
MSSP

ARTICLE I. DEFINITIONS AND RESOLUTIONS OF LANGUAGE CONFLICTS

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

Special Terms and Conditions – Exhibit D
MSSP

ARTICLE II. ASSURANCES

A. Nondiscrimination

1. The Contractor shall comply with the provisions of Title VII of the Civil Rights Act of 1964 (42 USC 2000 et seq.), as amended by the Equal Opportunity Act of March 24, 1972 (Public Law 92-261).
2. The Contractor shall comply with Sections 503 and 504 of the Rehabilitation Act of 1973, as amended (29 USC 794), and all requirements imposed by the applicable Health and Human Services regulations (45 CFR, Part 84).
3. Compliance with State Law: Contractor shall, unless exempted, comply with the nondiscrimination program requirements (Government Code, Sections 11135-11139.5). Contractor agrees to include this requirement in all contracts it enters into with vendors to provide services pursuant to this Agreement.
4. Compliance with ADA: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 UAC Sections 12101 et seq.). Contractor agrees to include this requirement in all contracts it enters into with vendors to provide services pursuant to this Agreement

B. Confidentiality

1. Client identifying information shall include, but not be limited to, name, identifying number, symbol or other identifying characteristic assigned to the individual, such as finger or voice print or a photograph.
2. The Contractor shall protect from unauthorized disclosure names and other identifying information concerning persons receiving services pursuant to this Agreement, except for statistical information not identifying any participant. This provision will remain in force even after termination.
3. The Contractor shall not use such identifying information for any purpose other than carrying out the Contractor's obligations under this Agreement.
4. The Contractor shall not disclose, except as otherwise specifically permitted by this Agreement or authorized by the participant, any such identifying information to anyone other than CDA without prior written authorization from CDA, except by court order.
5. The Contractor may allow participants 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 from any participant.

Special Terms and Conditions – Exhibit D
MSSP

ARTICLE II. ASSURANCES (Continued)

6. The Contractor agrees to comply with the privacy and security requirements of HIPAA as specified in Exhibit H, HIPPA Business Associate.

C. Copyrights and Rights in Data

1. Copyrights

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

2. Rights in Data

- a. The Contractor shall not spend or encumber funds covered by this Agreement on research or publications; or any activities, staff, products, or materials, including analysis and services, supporting research, and publications, unless expressly authorized by the terms of this Agreement. The Contractor shall not publish any document or materials produced or resulting from activities supported by this Agreement unless the copy of the final draft for publication has been sent to the Director of CDA, for approval, at least sixty (60) days before it is to be printed.
- b. As used in this Agreement, the term "subject data" means writings, sound recordings, pictorial reproductions, drawings, designs or graphic representations, procedural manuals, forms, diagrams, workflow charts, equipment descriptions, data files and data processing or computer programs, and works of any similar nature (whether or not copyrighted or copyrightable) which are first produced or developed under this Agreement. The term does not include financial reports, cost analyses, and similar information incidental to contract administration.

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ARTICLE II. ASSURANCES (Continued)

- c. The State may use, duplicate, or disclose in any manner and have or permit others to do so, subject to State and federal law, all subject data delivered under this Agreement.
- d. Materials published by or transferred to the Contractor shall: (a) state "The materials or product were a result of a project funded by a contract from the California Department of Aging; (b) give the name of the entity the address, and telephone number at which the supporting data is available; and (c) include a statement that "The conclusions and opinions expressed may not be those of the California Department of Aging and that the publication may not be based upon or inclusive of all raw data. "

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

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

E. Fraud and Abuse

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

F. Standards of Work

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

G. Code of Conduct

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

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ARTICLE II. ASSURANCES (Continued)

2. In the event that the State determines that a conflict of interest exists, any increase in costs associated with the conflict of interest may be disallowed by CDA and such conflict may constitute grounds for termination of the Agreement.
3. This provision shall not be construed to prohibit employment of persons with whom the Contractor's officers, agents, or employees have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant, and such persons have successfully competed for employment with the other applicants on a merit basis.

H. Covenant Against Contingent Fees

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

I. Payroll Taxes and Deductions

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

J. Facility Construction or Repair

1. When applicable for purposes of construction or repair of facilities, the Contractor shall comply with the provisions contained in the following acts and/or will include such provisions in any applicable agreements with vendors:
 - a. Copeland "Anti-Kickback" Act (18 USC 874, 40 USC 276c) (29 CFR, Part 3).
 - b. Davis-Bacon Act (40 USC 276a-7) (29 CFR, Part 5).
 - c. Contract Work Hours and Safety Standards Act (40 USC 327-333) (29 CFR, Part 5, 6, 7, 8).

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ARTICLE II. ASSURANCES (Continued)

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

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ARTICLE II. ASSURANCES (Continued)

- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - d. Have not within a three-year period preceding this application had one or more public transactions (federal, State, or local) terminated for cause or default.
2. The Contractor agrees to timely execute any and all amendments to this Agreement or other required documentation relating to their vendors debarment/suspension status.

M. Agreement Authorization

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

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

N. Staff

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

O. Corporate Status

1. The Contractor shall be either a public entity or private non-profit corporation. If a private nonprofit corporation, the Contractor shall be in good standing with the Secretary of State of California and shall maintain that status throughout the term of the Agreement.
2. Failure of a corporation to maintain good standing with the Secretary of the State of California shall result in suspension or termination of this Agreement with CDA until satisfactory status is restored. Failure to maintain good standing by a subcontracting corporation shall result in suspension or termination of the subcontract until satisfactory status is restored.

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ARTICLE II. ASSURANCES (Continued)

P. Lobbying Certification

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

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

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

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

ARTICLE III. AGREEMENT

- A.** All elements of this Agreement, as defined in Article I of this Exhibit D, Section A, and as approved by CDA in making this award, are hereby incorporated by reference.
- B.** A copy of this Agreement is on file and available for inspection at the California Department of Aging, 1600 K Street, Sacramento, CA 95814.

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ARTICLE IV. COMMENCEMENT OF WORK

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

ARTICLE V. VENDOR AGREEMENTS

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

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

- H. Vendor Agreements shall require all vendors to report immediately in writing to the Contractor any incidents of fraud or abuse to clients, in the delivery of services, in Vendor operations.

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ARTICLE V. VENDOR AGREEMENTS (Continued)

- I. The Contractor shall require language in all vendor agreements to require all vendors to comply with all applicable state and federal laws, including but not limited to the Americans with Disabilities Act (ADA) of 1990 (42 USC 12101 et. seq) and California Government Code Sections 11135-11139.5.
- J. The Contractor shall require all vendor agreements to comply with Exhibit H, HIPPA Business Associate as it appropriately relates to services rendered.

ARTICLE VI. RECORDS

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

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ARTICLE VI. RECORDS (Continued)

- E. The Contractor agrees that CDA or its delegatee will have the right to review, obtain, and copy all records pertaining to the performance of this Agreement. The Contractor agrees to provide CDA or its delegatee with any relevant information requested and shall permit the awarding agency or its delegatee access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with Government Code, Section 8546.7 et seq. Contractor further agrees to maintain such records for a period of three (3) years or for such a longer period as CDA deems necessary after final payment under the Agreement.
- F. After the authorized period has expired, confidential records shall be destroyed by shredding and disposed of in a manner that will maintain confidentiality.

ARTICLE VII. REPORTS

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

- 1. Quarterly Status Reports

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

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

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

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

Fiscal – (Quarterly Waived Cost Monitoring Report)

Caseload Count

Staff Roster

- 2. Ad Hoc Reports

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ARTICLE VII. REPORTS (Continued)

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

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

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

ARTICLE VIII. PROPERTY

- A. Unless otherwise provided for in this Article, property refers to all assets, capitalized or noncapitalized, used in operation of this Agreement. Property that is capitalized is referred to as property, plant, and equipment. Property includes land, buildings, improvements, machinery, vehicles, furniture, tools, and intangibles, etc. Property does not include consumable office supplies such as paper, pencils, typing ribbons, file folders, etc.

- B. Property meeting all of the following criteria are subject to the capitalization requirements. Such property must:

1. Have a normal useful life of at least 1 year;
2. Have a unit acquisition cost of at least \$5,000 (e.g., four identical assets which cost \$3,000 each, for a \$12,000 total would not meet this capitalization requirement); and
3. Be used to conduct business under this Agreement.

As used in this Agreement, the term "equipment" shall refer only to capitalized property.

- C. Noncapitalized property are those items which do not meet all three requirements in this Article VIII, Section B above.
- D. Additions, improvements, and betterments to assets meeting all of the conditions in Section B above must be capitalized. Additions typically involve physical extensions of existing units. Improvements and betterments typically do not increase the physical size of the asset. Instead, improvements and

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ARTICLE VIII. PROPERTY (Continued)

betterments enhance the condition of an asset (e.g., extend life, increase service capacity, and lower operating costs). Examples of assets that might be improved and bettered include roads, bridges, curbs and gutters, tunnels, parking lots, streets and sidewalks, drainage, and lighting systems.

- E. Intangibles are property which lack physical substance but give valuable rights to the owner and can be capitalized or noncapitalized. Examples of intangible property include patents, copyrights, leases, and computer software. By contrast, hardware consists of tangible equipment (e.g., computer, printer, terminal, etc.).

Costs include all amounts incurred to acquire and to ready the intangible asset for its intended use. Typical intangible property costs include the purchase price, legal fees, and other costs incurred to obtain title to the asset.

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

1. Date acquired;
2. Property description (include model number);
3. Property identification number (serial number);
4. Cost or other basis of valuation;
5. Fund source; and
6. Rate of depreciation (or depreciation schedule), if applicable.

The Contractor shall keep track of property purchased with State funds, whether capitalized or not. The Contractor shall submit to CDA, annually with the Closeout, a current inventory of property furnished or purchased with funds awarded under the terms of this Agreement or any predecessor agreement for the same purpose. The Contractor shall use the Report of Project Property Furnished/Purchased with Agreement Funds (CDA 32) to report property.

- G. Prior to disposal of any State-owned property, the Contractor must obtain approval from CDA, regardless of the acquisition value. Disposition, which includes sale, trade-in, discarding, or transfer to another agency may not occur until approval is received from CDA. The Contractor shall use the Request to Dispose of Property (CDA 248) to request disposal.
- H. The Contractor shall immediately investigate and within five (5) days fully document the loss, destruction, or theft of such property.
- I. CDA reserves title to all State-purchased or financed property not fully consumed in the performance of this Agreement, unless otherwise required by federal law or regulations, or as otherwise agreed by the parties.

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ARTICLE VIII. PROPERTY (Continued)

- J. The Contractor shall exercise due care in the use, maintenance, protection, and preservation of such property during the period of the project, and shall assume responsibility for replacement or repair of such property during the period of the project and until the Contractor has complied with all written instructions from CDA regarding the final disposition of the property.
- K. In the event of the Contractor's dissolution or upon termination of this Agreement, the Contractor shall provide a final property inventory to CDA. CDA reserves the right to require the Contractor to transfer such property to another entity, or to CDA.
- L. To exercise the above right, no later than 120 days after termination of the Agreement or notification of the Contractor's dissolution, CDA will issue specific written disposition instructions to the Contractor.
- M. The Contractor shall use the property for the purpose for which it was intended under the Agreement. When no longer needed for that use, the Contractor shall use it, if needed, and with written approval of CDA for other purposes in this order:
 - 1. Another CDA program providing the same or similar service; or
 - 2. Another CDA-funded program; or
 - 3. State/federally-funded program.
- N. The Contractor may share use of the property and equipment or allow use by other programs, upon written approval of CDA. As a condition of the approval, CDA may require reimbursement under this Agreement for its use.
- O. The Contractor or vendor shall not use equipment or supplies acquired under this Agreement with federal and/or State monies for personal gain or to usurp the competitive advantage of a privately-owned business entity.
- P. If purchase of equipment is a reimbursable item, the equipment to be purchased will be specified in the budget.
- Q. Property, for the purpose of this Agreement, does not include any equipment or supplies acquired utilizing Waived Services funds on behalf of MSSP clients.

ARTICLE IX. ACCESS

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

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ARTICLE X. MONITORING, ASSESSMENT, AND EVALUATION

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

ARTICLE XI. AUDIT

- A. Where expenditures of federal awards, in the aggregate from all sources, exceed \$300,000 per year, Contractor will arrange for an audit to be performed in accordance with requirements of the Single Audit Act of 1984, P.L. 98-502, and the Single Audit Act Amendments of 1996, P.L. 104-156.
- B. Unless prohibited by law, the cost of audits made in accordance with provisions of Single Audit Act Amendments of 1996, are allowable charges to Federal Awards. The costs may be considered a direct cost, or an allocated indirect cost, as determined in accordance with provisions of applicable OMB cost principle circulars.
- C. Contractor may not charge to federal awards the cost of any audit under the Single Audit Act Amendments of 1996, not conducted in accordance with the Act.
- D. Contractor may not charge to federal awards the cost of auditing a non-federal entity which has federal awards expended of less than \$300,000 per year, and is thereby exempted under OMB Circular A-133, Subsection 200(d) from having an audit conducted under the Act.
- E. Copies of all audits arranged by the Contractor are to be submitted to:

California Department of Aging
Attention: Audit Branch
1600 K Street
Sacramento, CA 95814
- F. CDA and DHS shall have access to all audit reports of Contractors and have the option to perform audits and/or additional work, as needed.
- G. All audits shall be performed in accordance with and address all issues contained in any federal OMB Compliance Supplement that applies to this program.
- H. The Contractor shall include in its contract with an independent auditor a clause permitting access by the State to the work papers of the independent auditor.

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ARTICLE XI. AUDIT (Continued)

- I. Audits to be performed shall be, minimally, financial and compliance audits, and may include economy and efficiency and/or program results audits.
- J. The Contractor shall cooperate with, and participate in, any further audits which may be required by DHS.
- K. Contractor agrees that CDA, DHS, the Department of General Services, the Bureau of State Audits, or their designated representative shall, at all times, have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is required. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of CDA and DHS to audit records and interview staff in any subcontract related to performance of this Agreement. (GC 8546.7, PCC 10115 et seq., CCR Title 2, Section 1896).

ARTICLE XII. INSURANCE

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

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

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

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

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

unless otherwise amended by future regulation.

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

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ARTICLE XII. INSURANCE (Continued)

- B. The insurance will be obtained from an insurance company acceptable to the Department of General Services, Office of Risk and Insurance Management, or be provided through partial or total self-insurance acceptable to the Department of General Services.
- C. Evidence of insurance shall be in a form and content acceptable to the Department of General Services, Office of Risk and Insurance Management. Insurance obtained through commercial carriers shall meet the following requirements:
 - 1. The Certificate of Insurance shall provide that the insurer will not cancel the insured's coverage without thirty (30) days prior written notice to the State, or ten (10) days written notice if the reason for cancellation is for non-payment of insurance premium.
 - 2. The Certificate of Insurance shall provide that the "Department of Aging", State of California, its officers, agents, employees, and servants are included as additional insureds, with respect to work performed for the State of California under this Agreement. Professional liability coverage is exempt from this requirement.
 - 3. CDA shall be named the certificate holder and the address must be listed on the certificate.
- D. The insurance provided herein shall be in effect at all times during the term of this Agreement. In the event the insurance coverage expires during the term of this Agreement, the Contractor agrees to provide CDA, at least thirty (30) days prior to the expiration date, a new certificate of insurance evidencing insurance coverage as provided herein for a period not less than the remaining Agreement term or for a period not less than one (1) year. In the event the Contractor fails to keep in effect at all times said insurance coverage, CDA may, in addition to any other remedies it may have, terminate this Agreement.
- E. The Contractor shall require its vendors under this Agreement, other than units of local government which are similarly self-insured, to maintain adequate insurance coverage for general liability, workers' compensation liabilities, and if appropriate, auto liability including non-owned auto and/or professional liability, and further, the Contractor shall require all of its vendors to hold the Contractor and CDA harmless. The vendors Certificate of Insurance shall also have the Contractor, not the State as the certificate holder and additional insured. The Contractor shall maintain certificates of insurance for all its vendors.
- F. The Contractor shall submit to CDA a copy of each appropriate Certificate of Insurance referencing this Agreement Number, or letter of self-insurance.

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ARTICLE XII. INSURANCE (Continued)

- G. Contractor shall be insured against liability for worker's compensation or undertake self-insurance in accordance with the provisions of the Labor Code, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement (Labor Code Section 3700).

ARTICLE XIII. TERMINATION

A. Termination for the Convenience of the State

- 1. The State may terminate performance of work under this Agreement for its convenience in whole or in part, if CDA determines that a termination is in the State's interest. CDA shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date thereof. Such termination shall be effective thirty (30) days from the delivery of the Notice of Termination.
- 2. After receipt of a Notice of Termination, and except as directed by the State, the Contractor shall immediately proceed with the obligations set forth in Section B 4 of Article XIII of this Agreement.

B. Termination for Cause by CDA

- 1. CDA may terminate this Agreement in the event of: (1) a violation of the law or failure to comply with any condition of this Agreement; (2) inadequate program performance; (3) failure to comply with reporting requirements; (4) evidence that the Contractor is in such an unsatisfactory financial condition, as determined by the Department, as to endanger performance of this Agreement which includes the loss of other funding sources; (5) delinquency in payment of taxes or the costs of performance of this Agreement in the ordinary course of business; (6) appointment of a trustee, receiver, or liquidator for all or a substantial part of the Contractor's property, or institution of bankruptcy, reorganization, arrangement of liquidation proceedings by or against the Contractor; (7) service of any writ of attachment, levy of execution, or commencement of garnishment proceedings against the Contractor's assets or income; (8) the commission of an act of bankruptcy; (9) finding of Contractor debarment or suspension; or (10) the Contractor's organizational structure has materially changed.
- 2. Such termination for cause shall be effective immediately in the case of threat to health or safety of the public or, in all other cases, upon thirty (30) days written notice to the Contractor of the action being taken. Notice of Termination shall include the reason for such action and any conditions of the termination. Said notice shall also inform the Contractor of its right to appeal such decision to CDA and of the procedure for doing so.

**Special Terms and Conditions – Exhibit D
MSSP**

ARTICLE XIII. TERMINATION (Continued)

3. In the event of termination for cause, CDA will present written notice to the Contractor of any conditions, including but not limited to a Transition Plan which identifies all measures to be taken by the Contractor to minimize any trauma to clients. The Transition Plan shall include all elements in paragraph C 3 of this Article XIII.
4. In the event of termination for cause of this Agreement:
 - a. Contractor shall provide adequate staff and vendor agreements to provide services to clients during the course of client transition to another MSSP site.
 - b. Contractor shall deliver updated client records to the subsequent MSSP contractor identified by CDA or as directed by CDA.
 - c. Contractor shall provide a current needs assessment for each of its clients to the subsequent MSSP contractor or as directed by CDA.
 - d. Contractor shall provide access to CDA and a subsequent contractor to copies of medical records, client files, and other pertinent information held by Contractor or subcontractors.
 - e. Contractor shall provide a full accounting and closeout of Contractor's existing budget, including return of unspent funds and disposition of funds.
5. CDA may determine that a Contractor may be considered "high risk" as described in 45 CFR, Part 92.12 for local governments and 45 CFR, Part 74.14 for non-profit organizations. If such a determination is made, the Contractor may be subject to special conditions or restrictions.

C. Termination by Contractor

1. Contractor may terminate this Agreement by giving CDA a written Notice to Terminate at least 180 days prior to the proposed effective date of termination.
2. Contractor's Obligations Upon Termination
 - a. In the event of termination or anticipated termination of this Agreement, in full or in part, Contractor shall take immediate steps to ensure the health and safety of clients in the MSSP program managed by the Contractor. Contractor agrees to cooperate in any and all efforts to refer MSSP clients to other local agencies in order to maintain continuity of services required for each client.

Special Terms and Conditions – Exhibit D
MSSP

ARTICLE XIII. TERMINATION (Continued)

- b. Contractor shall provide adequate staff and vendor agreements to provide services to clients during the course of client transition to another MSSP site.
 - c. Contractor shall deliver updated client records to the subsequent MSSP contractor or as directed by CDA upon notice by CDA.
 - d. Contractor shall provide a current needs assessment for each of its clients to the subsequent MSSP contractor or as directed by CDA.
 - e. The Contractor shall, with assistance from CDA, develop a written Transition Plan to locate alternative services for each client through another MSSP site or community agency. This Transition Plan shall identify all measures to be taken by the Contractor to minimize any trauma to clients and shall include the elements described in Paragraph C 3 of this Article XIII.
 - f. The Contractor shall be responsible for providing all necessary client services until termination or expiration of the Contract and shall remain liable for the processing and payment of invoices and statements for covered services provided to clients prior to such expiration or termination.
 - g. A full accounting and closeout of the Contractor's existing budget will be required. While it is recognized that Contractor will require funding to continue client services and operations at a reduced level until the termination of this Agreement, Contractor and CDA agree that it is also necessary to transfer funding to those MSSP sites that will be assuming responsibility for clients of the Contractor. Therefore, upon demand of CDA, Contractor will immediately execute a contract amendment to return funds not anticipated to be required for remaining operations.
 - h. Contractor shall make available copies of medical records, patient files, and other pertinent information, including information maintained by any subcontractor, necessary for efficient care management of clients, as determined by CDA. Costs of reproduction will be authorized by CDA as an approved expenditure of local assistance administrative funds. In no circumstances will a Medi-Cal beneficiary be billed for this service.
3. Contractor shall submit a Transition Plan to the State within 15 days of delivery of the written Notice to Terminate the Contract. The Transition Plan must be approved by CDA and shall, at a minimum, include the following:
- a. Names, addresses, telephone numbers and Medi-Cal numbers of current clients.

Special Terms and Conditions – Exhibit D
MSSP

ARTICLE XIII. TERMINATION (Continued)

- b. Description of how clients will be notified about the change in their MSSP provider.
 - c. Plan to communicate with other MSSP sites, local agencies and advocacy organizations that can assist in locating alternative services.
 - d. Plan to inform community referral sources of the pending termination of this MSSP contract and what alternatives, if any, exist for future referrals.
 - e. Plan to evaluate health and safety of clients in order to assure appropriate placement.
 - f. Plan to transfer confidential medical and client records to a new contractor or care management agency.
 - g. Plan for adequate staff to provide continued care through the term of the Contract.
 - h. A full inventory and plan to dispose or, transfer, or return to CDA all equipment purchased during the entire operation of the Contract.
 - i. Additional information as necessary to effect a safe transition of clients to other MSSP or community care management programs.
4. Contractor shall implement the Transition Plan as approved by CDA. CDA will monitor the Contractor's progress in carrying out all elements of the Transition Plan.
5. If the Contractor fails to provide and implement a transition plan as required by Paragraphs C 2 and C 3 of Article XIII of this Agreement, Contractor agrees to implement a transition plan submitted by CDA to the Contractor following the Contractor's Notice of Termination.
6. Phase-out Requirements
 - a. Phase-out for this Contract will consist of the processing, payment and monetary reconciliation necessary to pay claims for Waived Services.
 - b. Phase-out for the Contract will consist of the resolution of all financial and reporting obligations of the Contractor. Contractor shall remain liable for the processing and payment of invoices and other claims for payment for Waived Services and other services provided to clients pursuant to this Contract prior to the expiration or termination. Contractor shall submit to CDA all reports required.

Special Terms and Conditions – Exhibit D
MSSP

ARTICLE XIII. TERMINATION (Continued)

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

ARTICLE XIV. REMEDIES

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

ARTICLE XV. DISSOLUTION OF ENTITY

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

ARTICLE XVI. REVISIONS, WAIVERS, OR MODIFICATIONS

- A. Any revision, waiver, or modification of this Agreement, shall be proposed in writing to the other party. The other party shall accept in writing within thirty (30) days of receipt of request or it shall be considered rejected, except those revisions, waivers, or modifications put into effect under Section B of this Article. Once accepted, such revisions, waivers, or modifications shall require an Agreement amendment through the Department's amendment process to provide for the change mutually agreed to by the parties. The revision, waiver, or modification is not effective until the appropriate CDA processes have been completed.
- B. CDA reserves the right to revise, waive, or modify the Agreement to reflect any restrictions, limitations, or conditions enacted by Congress or the Legislature or as directed by the Executive Branch.

ARTICLE XVII. NOTICES

- A. Any notice to be given hereunder by either party to the other may be effected by personal delivery in writing or by registered or certified mail, overnight mail, postage prepaid, return receipt requested, or overnight mail, provided Contractor retains receipt, and shall be communicated as of actual receipt.
- B. Notices mailed to the State shall be addressed to the California Department of Aging, Medi-Cal Services Branch, 2014 Capitol Avenue, Sacramento, California, 95814.
- C. Notices mailed to the Contractor shall be to the address indicated on the coversheet of this Agreement.
- D. Either party may change its address by written notice to the other party in accordance with this Article.

**Special Terms and Conditions – Exhibit D
MSSP**

ARTICLE XVIII. APPEAL PROCESS

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

- A. The Contractor should first discuss the problem informally with the designated CDA Program Analyst. If the problem is not resolved, the Contractor must, within fifteen (15) working days of the failed attempt to resolve the dispute with the CDA Program Analyst, submit a written complaint together with any evidence to the Division Deputy Director. The complaint must include a description of the disputed issues, the legal authority/basis for each issue which supports the Contractor's position, and the remedy sought. The Deputy Director shall, within fifteen (15) working days after receipt of the Contractor's written complaint, make a determination on the dispute and issue a written decision and reasons therefor. All written communication shall be pursuant to Article XVII of this Agreement. Should the Contractor disagree with the decision of the Division Deputy Director, the Contractor may appeal the decision to the Chief Deputy Director of the California Department of Aging.
- B. The Contractor's appeal of the Division Deputy Director must be submitted within ten (10) working days from the date of the decision of the Division Deputy Director; be in writing; state the reasons why the decision is unacceptable; and include the original complaint, the decision that is the subject of appeal, and all supporting documents. Within twenty (20) working days from the date of the Contractor's appeal, the Chief Deputy Director or designee shall meet with the Contractor to review the issues raised on appeal. The Chief Deputy Director shall and issue a final written decision within fifteen (15) working days of such meeting.
- C. The Contractor may appeal the final decision of the Chief Deputy Director in accordance with the procedures set forth in Division 25.1 (commencing with Section 38050) of the Health and Safety Code and the regulations adopted thereunder. (Title 1, Subchapter 2.5 commencing with Section 251, or Subchapter 3 commencing with Section 300, whichever is applicable, of the California Code of Regulations.)
- D. The Contractor shall continue to carry out the obligations under this Agreement during any dispute.

Costs incurred by the Contractor or vendor for administrative/court review are not reimbursable by the Department.

ARTICLE XIX. DEPARTMENT CONTACT

- A. The name of CDA's contact to request revisions, waivers, or modifications affecting this Agreement, will be provided by CDA, to the Contractor, upon full execution of this Agreement.
- B. The Contractor shall present the name of its contact for this Agreement to CDA. The Contractor shall immediately notify CDA, in writing, of any change of its contact or address.

EXHIBIT E
Multipurpose Senior Services Program Medi-Cal Aid Codes

<u>AID CODE</u>	<u>PROGRAM</u>	<u>DEFINITION</u>
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1. CASH GRANT

10	AGED	SSI/SSP Aid to the Aged (FFP) – cash assistance Program administered by the Social Security Administration, pays a cash grant to needy persons age 65 or older.
20	BLIND	SSI/SSP Aid to the Blind (FFP) – cash assistance program administered by the Social Security Administration, pays a cash grant to needy blind persons of any age.
60	DISABLED	SSI/SSP Aid to the Disabled (FFP) – Cash assistance program administered by the Social Security Administration, pays a cash grant to needy persons who meet the federal definition of disability.

2. PICKLE ELIGIBLES/20 PERCENT SOCIAL SECURITY DISREGARDS

***16	AGED	Aid to the Aged-Pickle Eligibles (FFP) – Persons age 65 or older who were eligible for and receiving SSI/SSP and Title II Benefits concurrently in any month since April, 1977, and were subsequently discontinued from SSI/SSP but would be eligible to receive SSI/SSP if their Title II cost-of-living increases were disregarded. These persons are eligible for Medi-Cal benefits as public assistance recipients in accordance with the provisions of the <u>Lynch v. Rank</u> lawsuit.
***26	BLIND	Aid to the Blind-Pickle Eligibles (FFP) – Persons who meet the federal criteria for blindness and are covered by the provision of the <u>Lynch v. Rank</u> lawsuit. See aid code 16 for definition of Pickle Eligibles.
***66	DISABLED	Aid to the Disabled-Pickle Eligibles (FFP) – Persons who meet the federal definition of disability and are covered by the provision of the <u>Lynch v. Rank</u> lawsuit. See aid code 16 for definition of Pickle Eligibles.

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

EXHIBIT E
Multipurpose Senior Services Program Medi-Cal Aid Codes

<u>AID CODE</u>	<u>PROGRAM</u>	<u>DEFINITION</u>
3. IN-HOME SUPPORTIVE SERVICES		
18	AGED-IHSS	Aid to the Aged-In-Home Supportive Services (FFP) – Persons age 65 or older receiving In-Home Supportive Services, but not an SSI/SSP cash grant, provided they are using their net income (if any) in excess of the cash grant maximum payment level to pay toward the In-Home Supportive Services. (Includes persons who are eligible for IHSS under Chapter 1362 of the Statutes of 1978).
28	BLIND-IHSS	Aid to the Blind-In-Home Supportive Services (FFP) – Persons who meet the federal definition of blindness and are eligible for In-Home Supportive Services. See Aid Code 18 for definition of eligibility for In-Home Supportive Services.
68	DISABLED- BLIND	Aid to the Disabled-In-Home Supportive Services (FFP) – Persons who meet the federal definition of disability and are eligible for In-Home Supportive Services. See Aid Code 18 for definition of eligibility for In-Home Supportive Services.
4. MEDICALLY NEEDY, NO SHARE OF COST		
14	AGED-MN	Aid to the Aged-Medically Needy (FFP) – Persons age 65 or older who do not wish or are not eligible for a cash grant but are eligible for Medi-Cal only. No share of cost required of the beneficiaries.
24	BLIND-MN	Aid to the Blind-Medically Needy (FFP) – Persons who meet the federal definition of disability and do not wish or are not eligible for a cash grant, but are eligible for Medi-Cal only. No share of cost required of the beneficiaries.
64	DISABLED-MN	Aid to the Disabled-Medically Needy (FFP) – Persons who meet the federal definition of disability and do not wish or are not eligible for a cash grant, but are eligible for Medi-Cal only. No Share of cost required of the beneficiaries.

EXHIBIT E
Multipurpose Senior Services Program Medi-Cal Aid Codes

<u>AID CODE</u>	<u>PROGRAM</u>	<u>DEFINITION</u>
5. MEDICALLY NEEDED, SHARE OF COST		
17 1F	AGED-MN-SOC	Aid to the Aged-Medically Needy, Share of Cost (FFP) – See Aid Code 14 for definition of AGED-MN. Share of cost is required of the beneficiaries. These recipients are identified apart from the regular Medi-Cal SOC population by the Special Program Aid Code of 1F. This 1F special program Aid Code must be present for the recipient to be eligible for MSSP.
27 2F	BLIND-MN-SOC	Aid to the Blind-Medically Needy, Share of Cost (FFP) – See Aid Code 24 for definition of BLIND-MN. Share of cost is required of the beneficiaries. These recipients are identified apart from the regular Medi-Cal SOC population by the Special Program Aid Code of 2F. This 2F special program Aid Code must be present for the recipient to be eligible for MSSP.
67 6F	DISABLED-MN-SOC	Aid to the Disabled-Medically Needy, Share of Cost (FFP) – See Aid Code 64 for definition of Disabled-MN. Share of cost is required of the beneficiaries. These recipients are identified apart from the regular Medi-Cal SOC population by the Special Program Aid Code of 6F. This 6F special program Aid Code must be present for the recipient to be eligible for MSSP.
6. AGED AND DISABLED FEDERAL POVERTY LEVEL (A&D FPL) PROGRAM		
1H	AGED	Aged persons who, due to their income levels, would normally be included in the Medi-Cal Share of Cost population (Aid Code 17). Under this new program, those recipients with a Share of Cost of \$1 to \$326 will be given full scope, no Share of Cost Medi-Cal.
6H	DISABLED	Disabled persons who, due to their income levels, would normally be included in the Medi-Cal Share of Cost population (Aid Code 17). Under this new program, those recipients with a Share of Cost of \$1 to \$326 will be given full scope, no Share of Cost Medi-Cal.

EXHIBIT E
Multipurpose Senior Services Program Medi-Cal Aid Codes

<u>AID CODE</u>	<u>PROGRAM</u>	<u>DEFINITION</u>
7. INSTITUTIONAL DEEMING		
1X	NO SOC	Full scope Medi-Cal eligibility using special institutional deeming rules (spousal impoverishment) for MSSP transitional and non-transitional services with no share of cost.
1Y	SOC	Full scope Medi-Cal eligibility using special institutional deeming rules (spousal impoverishment) for MSSP transitional and non-transitional services with a share of cost.

EXHIBIT F
Definition of Services Provided Under the Waiver

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

ADULT DAY SUPPORT CENTER (1.0): This is a community-based program that provides nonmedical care to meet the needs of functionally-impaired adults. Services are provided according to an individual plan of care in a structured comprehensive program that will provide a variety of social, psychosocial, and related support services in a protective setting on less than a 24-hour basis. The State Department of Social Services (DSS) licenses these centers as community care facilities. Eligible clients are those who:

- Need, but do not have, a caretaker available during the day;
- Are isolated and in need of social stimulation;
- Need a protective setting for social interaction; and/or,
- Need psychological support to prevent institutionalization.

Care in adult day support centers will be provided when specific therapeutic goals are stipulated in the client's plan of care. Adult day support center care is not meant to be merely diversional or recreational in nature.

ADULT DAY CARE (1.1): Will be provided to MSSP clients who are identified in their plan of care as benefiting from being in a social setting with less intense supervision and fewer professional services than offered in an adult day support center. Adult Day Care services will be provided when the client's plan of care indicates that the service is necessary to reach a therapeutic goal. Adult day care centers are community-based programs that provide nonmedical care to persons 18 years of age or older in need of personal care services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a 24-hour basis. The DSS licenses these centers as community care facilities.

HOUSING ASSISTANCE (2.2, 2.3, 2.4, 2.5 AND 2.6): These services are necessary to ensure the health, welfare, and safety of the client in his or her physical residence or home setting. As specified in the client's plan of care, services may include provision of physical adaptations and assistive devices, emergency assistance in situations which demand relocation and assistance to restore utility service. Housing Assistance services include:

MINOR HOME REPAIRS AND MAINTENANCE (2.2): Minor Home Repairs do not involve major structural changes or repairs to a dwelling. Maintenance is defined as those services necessary for accessibility [e.g., ramps, grab bars, handrails], safety [electrical wiring], or security [locks]). Eligible clients are those whose health and/or safety or independence are jeopardized because of deficiencies in their place of residence. This service is limited to clients who are owners/occupiers of their own home, or those in rental housing where the owner refuses to make needed repairs or otherwise alter the residence to adapt to

EXHIBIT F
Definition of Services Provided Under the Waiver

special client needs. Written permission from the landlord is required before undertaking repairs or maintenance on leased premises. All services shall be provided in accordance with applicable State or local building codes.

NONMEDICAL HOME EQUIPMENT (2.3): Includes those assistive devices, appliances and supplies which are necessary to assure the client's health, safety and independence. This service includes the purchase or repair of nonmedical home equipment and appliances such as refrigerators, stoves, washing machines, furniture, mattresses and bedding. Eligible clients are those who require such items to preserve their health, improve functional ability, and assure maximum independence, thereby preventing their elevation to a higher level of care.

The MSSP utilizes all available formal and informal services prior to authorizing purchases under the waiver. However, in the absence of other resources and given the level of frailty of our clients, the purchase of nonmedical home equipment, assistive devices, appliances, and supplies is justified to preserve the client's ability to live in the community and avoid more costly institutionalization.

EMERGENCY MOVE (2.4): Involves facilitating a smooth transition from one living situation to another. Eligible clients are those who, due to loss of residence or the need for a change in residence, require assistance with relocation. Services may be provided by moving companies or other individuals who can guarantee the safe transfer of the client's possessions. Activities may include materials and labor necessary for such moves.

RESTORATION OF UTILITY SERVICE (2.5): Allows for payment of utilities only when the client has no other resources to meet this need. Additionally, the client must be at risk to receive a shut-off notice and the potential shut off of utility services would place the health and safety of the client in jeopardy.

TEMPORARY LODGING (2.6): Allows for payment of hotel or motel lodging for those clients, usually from rural areas, who must travel long distances and stay overnight for medical treatments not available in their home area. Lodging rates shall not exceed State per diem limits.

CHORE (3.1) AND PERSONAL CARE (3.2): Services are provided by trained individuals to elderly persons who need outside help to maintain independent living. Eligible clients are frail elderly individuals whose social, physical, and/or emotional impairments preclude total independent functioning, but who can be maintained outside of an institution with assistance. Services will be provided in the client's place of residence.

MSSP will purchase these services only after awards of existing county Title XX Social Services and Title XIX Medi-Cal resources have been fully utilized to the extent possible and a need remains which cannot be met through such funding. Payment will not be made for these services furnished by a member of the client's family.

EXHIBIT F
Definition of Services Provided Under the Waiver

CHORE (3.1): Is for purposes of household support and applies to the performance of household tasks rather than to the care of the client. Chore activities are limited to: household cleaning, laundry (including the services of a commercial laundry or dry cleaner), shopping, food preparation, and household maintenance, as long as the client does not live in a Residential Care Facility for the Elderly (RCFE). Client instruction in performing household tasks and meal preparation may also be provided.

PERSONAL CARE (3.2): Provides assistance to maintain bodily hygiene, personal safety, and activities of daily living (ADL). These tasks are limited to nonmedical personal services such as feeding, bathing, oral hygiene, grooming, dressing, care of and assistance with prosthetic devices, rubbing skin to promote circulation, turning in bed and other types of repositioning, assisting the individual with walking, and moving the individual from place to place (e.g., transferring). Purchase of toiletries and other personal care supplies may be covered where there are no other resources and the purchase would create a financial hardship; client instruction in self care may also be provided; may also include assistance with preparation of meals, but does not include the cost of the meals. When specified in the plan of care, this service may also include such housekeeping chores as bed making, dusting, and vacuuming, which are essential to the health and welfare of the recipient. The household chores which are performed by the worker are essentially ancillary to the provision of the client-centered care. Thus, if food is spilled, it may be cleaned up, and when bed linen is soiled it may be changed, washed, and put away. However, at no time would household chores become the central activity furnished by a personal care worker. When this service includes nursing tasks to be performed by a health care worker who is not licensed to perform nursing tasks, permissible duties will be limited to those allowed by the worker's employer, according to the Board of Registered Nursing policy on unlicensed assistive personnel, and as permitted by the individual's certification (if applicable).

HEALTH CARE (3.3): Addresses the care of health problems by appropriately licensed or certified persons when such care is not otherwise available. These services will be provided by authorized individuals when such care is prescribed or approved by a physician. Persons providing such health care may include: registered nurses, licensed vocational nurses, nutritionists, and occupational physical, and speech therapists.

MSSP health care is limited to: skilled nursing services, nutrition evaluation and counseling, physical therapy, occupational therapy, and speech therapy. In addition to the provision of care, these professional and paraprofessionals may train, demonstrate, and supervise clients in techniques which will enable them (or their caregivers) to carry out their own care whenever possible.

It should be kept in mind that the MSSP utilizes all home health agency services available under the State Medicaid Plan prior to purchasing Waived Services. However,

EXHIBIT F
Definition of Services Provided Under the Waiver

utilization controls for the State Medicaid Program place limits on the amount and scope of benefits which can be provided by home health agencies. MSSP's clients are extremely frail and, on occasion, in need of more health-related services than can be provided under Medi-Cal. Such services are especially critical for persons recently discharged from acute hospitals or who are otherwise recovering at home from an acute illness or injury. This MSSP service supplements benefits provided by the existing Medi-Cal Program.

PROTECTIVE SUPERVISION (3.7): Insures provision of 24-hour supervision to persons in their own homes who are very frail or otherwise may suffer a medical emergency, to prevent immediate placement in an acute care hospital, skilled nursing facility, or other 24-hour care facility. Such supervision does not require medical skills and can be performed by an individual trained to identify the onset of a medical crisis and able to summon aid in the event of an emergency. May also provide a visit to the client's home to assess a medical situation during a emergency; includes assisting a fallen client, assessing extent of injuries, and arranging transportation for the client to a medical facility for treatment when there is no other means for summoning aid.

Waived Service funds may not be used to purchase this service until existing county Title XX Social Services and Title XIX Medi-Cal resources have been fully utilized and an unmet need remains.

PROFESSIONAL CARE ASSISTANCE (PCA)(3.9): Is provided to those clients who are also receiving services under the Personal Care Services Program (PCSP). PCA is a comprehensive skilled service delivered by a certified nursing assistant (CNA) or a home health aide (HHA). The CNA/HHA works under either the supervision of an R.N. employed by a home health agency, or under the direction of an R.N. from MSSP. The specific tasks provided are the same as listed under Personal Care (3.2) above. However, the special needs and circumstances of Waiver clients require a provider who can make skilled observations and exercise judgement regarding the execution of specific tasks and the overall provision of care. The training and expertise of a CNA/HHA is greater and more specialized than that of a provider working under the State plan. This higher level of skill is required to meet the needs of the frail elderly clients served under the Waiver. When this service includes nursing tasks to be performed by a health care worker who is not licensed to perform nursing tasks, permissible duties will be limited to those allowed by the worker's employer, according to the Board of Registered Nursing policy or unlicensed assistive personnel, and as permitted by the individual's certification (if applicable)

CARE (CASE) MANAGEMENT: Assists clients in gaining access to needed Waiver and other State Plan services, as well as needed medical, social, and other services, regardless of the funding source. Care managers are responsible for ongoing monitoring of the provision of services included in the client's plan of care. Additionally, care managers initiate and oversee the process of assessment and reassessment of client level of care and the monthly review of plans of care.

EXHIBIT F
Definition of Services Provided Under the Waiver

SITE-PROVIDED CARE (CASE) MANAGEMENT: The MSSP care management system vests responsibility for assessing, care planning, authorizing, locating, coordinating and monitoring a package of long-term care services for community-based clients with a local MSSP site contractor and specifically with the site care management team. The care management teams at each of the local sites are trained professionals working under the job titles of health practitioner (i.e., public health nurse [PHN] and senior services counselor (i.e., social worker); these professionals may be assisted by case aides. The teams are responsible for care management services including the assessment, care plan development, service authorization/delivery, monitoring, and follow up components of the program. Although the primary care manager will be either a senior services counselor or health practitioner, both professionals will be fully utilized in carrying out the various case management functions. Care records must document all client contact activity each month.

PURCHASED SPECIALIST CARE (CASE) MANAGEMENT (4.3): For the vast majority of MSSP clients, care management services are provided solely by site care management staff. However, at the client's request, care management may also be arranged through a qualified outside provider under contract or provider agreement with the MSSP site. Also under this service definition, additional case-specific resources of limited duration may be purchased from social, legal, and health specialists in the community in order to augment the resources and skills of site-staffed case management. Activities may include the purchase of more skilled diagnostic and consultant services by social, legal/paralegal and health professionals. Fees necessary to procure birth certificates or other legal documents required for establishment of public health benefits or assistance are also covered.

TRANSITIONAL CARE MANAGEMENT (TCM) (4.6): This service is used ONLY with individuals who are institutionalized. It may be used in two situations, as follows:

1. where MSSP has gone into a facility (nursing facility or acute hospital) to begin working with a resident to facilitate their discharge into the community.
2. where an established MSSP client is institutionalized and MSSP services are necessary for the person to be discharged back into the community.

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

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

EXHIBIT F
Definition of Services Provided Under the Waiver

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

TRANSPORTATION (6.3, 6.4): This service provides clients with access to waiver and other community services, activities, and resources, specified by their plan of care; it includes escort, if necessary to assure the safe transport of the client. This service is in contrast to the transportation service authorized by the State Medicaid Plan which is limited to emergency medical services or clients who have documentation from their physician that they are medically unable to use public or ordinary transportation. Whenever possible, family, neighbors, friends, or community agencies which can provide this service without charge will be utilized.

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

MEAL SERVICES (7.1, 7.2, and 7.3): These services may be provided daily, but are not to constitute a full nutritional regimen (three meals a day) [42 CFR 440.180 (b)].

CONGREGATE MEALS (7.1): Meals served in congregate meal settings for clients who are able to leave their homes or require the social stimulation of a group environment in order to maintain a balanced diet. Congregate meals can be a preventive measure for the frail older person who has few (if any) informal supports, as well as a rehabilitative activity for people who have been physically ill or have suffered emotional stress, due to losses associated with aging. This service should be available to MSSP clients through Title III of the Older Americans Act.

HOME DELIVERED MEALS (7.2): For clients who are homebound, unable to prepare their own meals and have no caretaker at home to prepare meals for them. As with Congregate Meals, the primary provider of this service is Title III of the Older

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Definition of Services Provided Under the Waiver

Americans Act. MSSP funds shall only be used to supplement home-delivered meals when they are unavailable or inadequate through Title III or other public or private sources.

FOOD (7.3): Provision of food staples is limited to purchase of food to facilitate and support a client's return home following institutionalization, and to food purchases which are medically required.

If oral nutrition supplements (ONS) are purchased, the following must be recorded in the client record:

1. The Health Practitioner has assessed the client's nutritional needs and concluded that ONS is advised.
2. The use of home prepared or brand name drinks/supplements has been explored and found not to meet the client's needs.

ONS may be purchased for a period of three months. When it is determined that it is desirable to continue beyond that time, the client's personal physician must be notified and approval obtained. This approval may be documented in the record by: a prescription; a letter sent by the site to the physician who signs consent and returns it; or by documenting a verbal order received by telephone from the physician.

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

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

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

These services are often provided by volunteers or through Title III of the Older Americans Act; however, these services may not be available in a particular

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community and do, infrequently, require purchase. The waiver will be used to purchase friendly visiting only if the service is unavailable in the community or is inadequate as provided under other public or private programs.

THERAPEUTIC COUNSELING (8.4): Includes individual or group counseling to assist with social, psychological, or medical problems which have been identified in the assessment process and included in the client's care plan. Services shall not exceed 12 visits per quarter.

The MSSP has found that therapeutic counseling is essential for preventing some clients from being placed in a nursing facility (NF). This service may be utilized in situations where clients or their caretakers may face crises, severe anxiety, emotional exhaustion, personal loss/grief, confusion, and related problems. Counseling by licensed or certified counselors in conjunction with other services (e.g., respite, IHSS, meals) may reverse some states of confusion and greatly enhance the ability of a family to care for the client in the community, or allow the client to cope with increasing impairment or loss.

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

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

COMMUNICATIONS SERVICES (9.1 and 9.2): Clients who receive these services are those with special communication problems such as vision, hearing, or speech impairments and persons with physical impairments likely to result in a medical emergency. Services shall be provided by organizations such as: speech and hearing clinics; organizations serving blind individuals; hospitals; senior citizens centers; providers specializing in communications equipment for disabled or at-risk persons. Services shall be available on a routine or emergency basis as designated in the client's plan of care.

COMMUNICATION/TRANSLATION (9.1): The provision of translation and interpretive services for purposes of instruction, linkage with social or medical services, and conduct of business is essential to maintaining independence and carrying out the ADL and Instrumental Activities of Daily Living (IADL) functions. For non-English speaking clients, this service is the link to the entire in-home and community-based service delivery system. MSSP resources shall be used to

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support this service only where family and community resources are unable to meet the need, and as described in the care plan.

COMMUNICATION/DEVICE (9.2): The rental/purchase of mechanical/electronic devices, or installation of a telephone, to assist in communication (excluding hearing aids, eye appliances, and monthly telephone charges) for clients who are at risk of institutionalization due to physical conditions likely to result in a medical emergency. Purchase of emergency response systems is limited to those clients who live alone, or who are alone for significant parts of the day, and have no regular caretaker for extended periods of time, and who would otherwise require extensive routine supervision. Items such as identification bracelets or cards used to communicate vital client information in case of emergency may also be purchased.

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

Exhibit G
Catchment Area
Zip Codes

County of San Mateo, Department of Health Services

Brisbane	94005
Daly City	94014-17
South San Francisco	94080
San Bruno	94066
Millbrae	94030
Burlingame	94010
San Mateo	94401-04
San Carlos	94070
Belmont	94002
Redwood City	94061-64
East Palo Alto	94303
East Menlo Park	94025
Pacifica	94044
Montara	94037
Moss Beach	94038
El Granada	94018
Half Moon Bay	94019
La Honda	94020

**HIPPA Business Associate – Exhibit H
MSSP**

1. Recitals

- A. This Agreement has been determined to constitute a business associate relationship under the Health Insurance Portability and Accountability Act (“HIPAA”) and its implementing privacy and security regulations at 45 CFR Parts 160 and 164 (“the HIPAA regulations.”).
- B. The California Department of Aging (CDA) the California Department of Health Services (DHS) wish to disclose to Business Associate certain information pursuant to the terms of this Agreement, some of which may constitute Protected Health Information (“PHI”).
- C. “Protected Health Information” or “PHI” means any information, whether oral or recorded in any form or medium that relates to the past, present, or future physical or mental condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI shall have the meaning given to such term under HIPAA and HIPAA regulations, as the same may be amended from time to time.
- D. Under this Agreement, Contractor is the Business Associate of DHS/CDA and provides services, arranges, performs or assists in the performance of functions or activities on behalf of DHS/CDA and uses or discloses PHI.
- E. DHS/CDA and Business Associate desire to protect the privacy and provide for the security of PHI disclosed pursuant to this Agreement, in compliance with HIPAA and HIPAA regulations and other applicable laws.
- F. The purpose of the Exhibit is to satisfy certain standards and requirements of HIPAA and the HIPAA regulations.
- G. The terms used in this Exhibit, but not otherwise defined, shall have the same meanings as those terms in the HIPAA regulations.

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

2. Permitted Uses and Disclosures of PHI by Business Associate.

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

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

3. Responsibilities of Business Associate.

Business Associate agrees:

- A. *Nondisclosure.* To not use or disclose Protected Health Information (PHI) other than as permitted or required by this Agreement or as required by law.
- B. *Safeguards.* To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the protected health information, including electronic PHI, that it creates, receives, maintains or transmits on behalf of DHS/CDA; and to prevent use or disclosure of PHI other than as provided for by this Agreement. Business Associate shall maintain a comprehensive written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Business Associate's operations and the nature and scope of its activities. Business Associate will provide DHS/CDA with information concerning such safeguards as DHS/CDA may reasonably request from time to time.
- C. *Mitigation of Harmful Effects.* To mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate or its subcontractors in violation of the requirements of this Exhibit.
- D. *Reporting of Improper Disclosures.* To report to DHS/CDA within twenty-four (24) hours during a work week, of discovery by Business Associate that PHI has been used or disclosed other than as provided for by this Agreement and this Exhibit.
- E. *Business Associate's Agents.* To ensure that any agents, including subcontractors, to whom Business Associate provides PHI received from or created or received by Business Associate on behalf of DHS/CDA, agree to the same restrictions and conditions that apply to Business Associate with respect to such PHI; and to incorporate, when applicable, the relevant provisions of this Exhibit into each subcontract or subaward to such agents or subcontractors.
- F. *Availability of Information to DHS/CDA and Individuals.* To provide access as DHS/CDA may require, and in the time and manner designated by DHS/CDA (upon reasonable notice and during Business Associate's normal business hours) to PHI in a Designated Record Set, to DHS/CDA (or, as directed by DHS/CDA), to an Individual, in accordance with 45 CFR Section 164.524. Designated Record Set means the group of records maintained for DHS/CDA that includes medical and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for DHS/CDA health plans; or those records used to make decisions about individuals on behalf of DHS/CDA.
- G. *Amendment of PHI.* To make any amendment(s) to PHI that DHS/CDA directs or agrees to pursuant to 45 CFR Section 164.526, in the time and manner designated by DHS/CDA.

**HIPPA Business Associate – Exhibit H
MSSP**

- H. *Internal Practices.* To make Business Associate's internal practices, books and records relating to the use and disclosure of PHI received from DHS/CDA, or created or received by Business Associate on behalf of DHS/CDA, available to DHS/CDA or to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by DHS/CDA or by the Secretary, for purposes of determining DHS/CDA's compliance with the HIPAA regulations.
- I. *Documentation of Disclosures.* To document and make available to DHS/CDA or (at the direction of DHS/CDA) to an Individual such disclosures of PHI, and information related to such disclosures, necessary to respond to a proper request by the subject Individual for an accounting of disclosures of PHI, in accordance with 45 CFR 164.528.
- J. *Notification of Breach.* During the term of this Agreement, to notify DHS within twenty-four (24) hours during a work week of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI and/or any actual or suspected use or disclosure of data in violation of any applicable Federal and State laws or regulations. Business Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations. Business Associate shall investigate such breach, or unauthorized use or disclosure of PHI, and provide a written report of the investigation to the DHS Privacy Officer within fifteen (15) working days of the discovery of the breach or unauthorized use at:

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

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

4. Obligations of DHS/CDA.

DHS/CDA agrees to:

- A. *Notice of Privacy Practices.* Provide Business Associate with the Notice of Privacy Practices that DHS produces in accordance with 45 CFR 164.520, as well as any changes to such notice. Visit this Internet address to view the most current Notice of Privacy Practices:
<http://www.dhs.ca.gov/hipaa>.
- B. *Permission by Individuals for Use and Disclosure of PHI.* Provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate's permitted or required uses and disclosures.
- C. *Notification of Restrictions.* Notify the Business Associate of any restriction to the use or disclosure of PHI that DHS/CDA has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of PHI.

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

5. Audits, Inspection and Enforcement.

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

- (a) Failure to detect or
- (b) Detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices

constitute acceptance of such practice or a waiver of DHS/CDA's enforcement rights under this Agreement and this Exhibit.

6. Termination.

- A. *Termination for Cause.* Upon DHS/CDA's knowledge of a material breach of this Exhibit by Business Associate, DHS/CDA shall either:

- (1) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by DHS/CDA;
- (2) Immediately terminate this Agreement if Business Associate has breached a material term of this Exhibit and cure is not possible; or
- (3) If neither cure nor termination are feasible, the DHS/CDA Privacy Officer shall report the violation to the Secretary of the U.S. Department of Health and Human Services.

- B. *Judicial or Administrative Proceedings.* DHS/CDA may terminate this Agreement, effective immediately, if (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA or (ii) a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, or other security or privacy laws is made in any administrative or civil proceeding in which the Business Associate has been joined.

- C. *Effect of Termination.* Upon termination or expiration of this Agreement for any reason, Business Associate shall return or destroy all PHI received from DHS/CDA (or created or received by Business Associate on behalf of DHS/CDA) that Business Associate still maintains in any form, and shall retain no copies of such PHI or, if return or destruction is not feasible, it shall continue to extend the protections of this Exhibit to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.

7. Miscellaneous Provisions.

- A. *Disclaimer.* DHS/CDA makes no warranty or representation that compliance by Business Associate with this Exhibit, HIPAA or the HIPAA regulations will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
- B. *Amendment.* The parties acknowledge that Federal and State laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Exhibit may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon DHS/CDA's request, Business Associate agrees to promptly enter into negotiations with DHS/CDA concerning an amendment to this Exhibit embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA regulations or other applicable laws. DHS/CDA may terminate this Agreement upon thirty (30) days written notice in the event (i) Business Associate does not promptly enter into negotiations to amend this Exhibit when requested by DHS/CDA pursuant to this Section or (ii) Business Associate does not enter into an amendment providing assurances regarding the safeguarding of PHI that DHS/CDA in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA regulations.
- C. *Assistance in Litigation or Administrative Proceedings.* Business Associate shall make itself, and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under this Agreement, available to DHS/CDA at no cost to DHS/CDA to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against DHS/CDA, its directors, officers or employees based upon claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy, except where Business Associate or its subcontractor, employee or agent is a named adverse party.
- D. *No Third-Party Beneficiaries.* Nothing express or implied in the terms and conditions of this Exhibit is intended to confer, nor shall anything herein confer, upon any person other than DHS/CDA or Business Associate and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.
- E. *Interpretation.* The terms and conditions in this Exhibit shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA regulations and applicable State laws. The parties agree that any ambiguity in the terms and conditions of this Exhibit shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA regulations.
- F. *Regulatory References.* A reference in the terms and conditions of this Exhibit to a section in the HIPAA regulations means the section as in effect or as amended.
- G. *Survival.* The respective rights and obligations of Business Associate under Section 6.C of this Exhibit shall survive the termination or expiration of this Agreement.

**HIPPA Business Associate – Exhibit H
MSSP**

H. *No Waiver of Obligations.* No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

CCC-103

CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

<i>Contractor/Bidder Firm Name (Printed)</i>		<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in the County of</i>	

CONTRACTOR CERTIFICATION CLAUSES

1. STATEMENT OF COMPLIANCE: Contractor has, unless exempted, complied with the nondiscrimination program requirements. (GC 12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)

2. DRUG-FREE WORKPLACE REQUIREMENTS: Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

b. Establish a Drug-Free Awareness Program to inform employees about:

- 1) the dangers of drug abuse in the workplace;
- 2) the person's or organization's policy of maintaining a drug-free workplace;
- 3) any available counseling, rehabilitation and employee assistance programs; and,
- 4) penalties that may be imposed upon employees for drug abuse violations.

c. Every employee who works on the proposed Agreement will:

- 1) receive a copy of the company's drug-free workplace policy statement; and,
- 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any ... if the department determines that any of the

following has occurred: (1) the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (GC 8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board. (PCC 10296) (Not applicable to public entities.)

4. UNION ORGANIZING: Contractor hereby certifies that no request for reimbursement, or payment under this agreement, will seek reimbursement for costs incurred to assist, promote or deter union organizing.

5. CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT: Contractor hereby certifies that contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lessor of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California.

1. CONFLICT OF INTEREST: Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (PCC 10410):

1). No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.

2). No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (PCC 10411):

1). For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.

2). For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (PCC 10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (PCC 10430 (e))

2. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

3. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

4. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:

a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.

b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.

c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

6. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

7. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

8. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other government entity.