

STANDARD AGREEMENT

STD. 213 (NEW 02/98)

AGREEMENT NUMBER	AMENDMENT NUMBER
FF-0304-08	

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: \$ 2,412,679.00
Two million, four hundred twelve thousand, six hundred seventy-nine dollars

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

Exhibit A – Scope of Work	6	Page(s)		
Exhibit B – Budget Detail and Payment Provision	6	Page(s)		
* Exhibit C – General Terms and Conditions	GTC103			1/1/2003
	(Number)			(Dated)
Exhibit D – Special Terms and Conditions	24	Page(s)		
Exhibit E – Additional Provisions	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	
ADDRESS	
225 West 37 th Street, San Mateo, California 94403	
STATE OF CALIFORNIA	
AGENCY NAME	
California Department of Aging	
BY (Authorized Signature)	DATE SIGNED
PRINTED NAME AND TITLE OF PERSON SIGNING	
Rachel de la Cruz, Manager, Contracts and Business Services Section	
ADDRESS	
1600 K Street, Sacramento, California 95814	
<input type="checkbox"/> Exempt per _____	

**Exempt per Mello-Granlund
Older Californians Act**

Scope of Work – Exhibit A
TITLE III/VII

ARTICLE I. DEFINITIONS SPECIFIC TO TITLE III AND TITLE VII PROGRAMS

A. DEFINITIONS

1. **Program Requirements** means Title III program requirements found in the Older Americans Act (OAA 42 USC Section 3001-3058), Code of Federal Regulations (45 CFR XIII, 1321); Title 22, California Code of Regulations (CCR), Section 7000 et seq., and Department Program Memoranda.
2. **Title III B (Supportive Services)** means a variety of services including, but not limited to: personal care, homemaker, chore, adult day care/adult day health, case management, assisted transportation, transportation, legal assistance, information and assistance, outreach, long-term care ombudsman, as defined in the National Aging Programs Information Systems (NAPIS) categories and National Ombudsman Reporting System(NORS).
3. **Priority Services** means those services associated with access to services (transportation, outreach, information and assistance, and case management); in-home services including supportive services for families of older individuals who are victims of Alzheimer's disease and related disorders with neurological and organic brain dysfunction, and legal assistance.
4. **Title III C-1 (Congregate Nutrition Services)** means nutrition services for older individuals in a congregate setting. Services include meals, nutrition and health promotion education, health promotion programs, nutrition risk screening, and opportunities for socialization. Each meal shall provide one-third (1/3) of the recommended dietary allowance (RDA), and comply with the Dietary Guidelines for Americans.
5. **Title III C-2 (Home Delivered Nutrition Services)** means nutrition services provided to homebound older individuals including meals, nutrition and health promotion education, and nutrition risk screening. Each meal shall provide one-third (1/3) of the recommended dietary allowance (RDA), and comply with the Dietary Guidelines for Americans.
6. **Title III D (Disease Prevention and Health Promotion Services)** means disease prevention, health promotion education, and health promotion programs, nutrition education, nutrition counseling, nutrition risk screening services, and medication management.

Scope of Work – Exhibit A
TITLE III/VII

ARTICLE I. DEFINITIONS SPECIFIC TO TITLE III AND TITLE VII PROGRAMS (Continued)

7. **Eligible Service Population** for Title III means individuals 60 years of age or older, with emphasis on those in economic and social need with particular attention to low income minority individuals and older individuals residing in rural areas. [OAA, Section 305 (a)(2)(E)][Title 22, CCR, Sections 7125,7127,7130, and 7135].

B. DEFINITIONS SPECIFIC TO TITLE VII (Allotments for Vulnerable Elder Rights Protection Activities)

1. **Chapter 2. Ombudsman Program** means advocacy services provided to or on behalf of residents of long-term care facilities, including, but not limited to: identification, investigation and resolution of complaints, training of personnel, promotion of and attendance at resident and family councils, representation of residents' interests before governmental agencies, analysis and monitoring of the development and implementation of federal, State, and local laws, regulations, and other governmental policies and actions pertaining to the health, safety, welfare, and rights of long-term care residents.
2. **Volunteer Recruitment** means any and all activities associated with engaging the services of certified volunteer Ombudsmen. The volunteer Ombudsmen will perform all Long-Term Care Ombudsman functions including identifying, investigating, and resolving complaints.
3. **Target Client Population** (for Chapter 2—Ombudsman) means individuals 60 years of age or older who are residents of long-term care facilities. [OAA Section 321(a)(10)] [Welfare and Institutions (W&I) Code Section 9720(a)].
4. **Chapter 3. Programs for Prevention of Elder Abuse, Neglect, and Exploitation** means activities to develop, strengthen, and carry out programs for the prevention and treatment of elder abuse, neglect, and exploitation.
5. **Target Client Population** (for Chapter 3-Prevention of Elder Abuse, Neglect, and Exploitation) means individuals 60 years of age or older who are likely to be subject to abuse, neglect, and exploitation, including older individuals who live in State licensed facilities, unlicensed facilities, or domestic or community-based settings. [OAA Section 721(c)].

Scope of Work – Exhibit A
TITLE III/VII

ARTICLE II. SCOPE OF WORK

A. The Contractor shall perform the following:

1. Implement the statutory provisions of the Title III and Title VII Programs (OAA, Section 306) in accordance with State and federal laws and regulations. Contractor shall make every effort to meet the goals and objectives stipulated in the four-year Area Plan and annual updates of the Area Plan's Goals, Objectives, and Service Unit Plan, herein incorporated into this Agreement by reference. Performance shall not be unilaterally reduced or otherwise changed without prior consultation with, and written approval of, the Department.
2. Establish and maintain an organization that shall have the ultimate accountability for funds received from the Department and for the effective and efficient implementation of the activities as described in the Area Plan and all pertinent State and federal laws and regulations including data reporting requirements.
3. Meet the adequate proportion requirements for priority services as required under the OAA, Section 306 (a)(2); and CCR, Section 7312.
4. Meet the requirements under the OAA, Section 301(a)(1) to secure and maintain maximum independence and dignity in a home environment for older individuals capable of self care with appropriate supportive and nutrition services.
5. Remove individual and social barriers to economic and personal independence for older individuals to the extent possible as required under OAA, Section 301(a)(2)(B).
6. Provide a continuum of care for vulnerable older individuals as required under OAA, Section 301(a)(2)(C).
7. Secure the opportunity for older individuals to receive managed in-home and community-based long-term care services as required under OAA, Section 301(a)(2)(D).
8. Maintain or improve community-based services to meet the physical and mental health of older persons, as required under the OAA, Section 361(a) through funding that includes Title III D Disease Prevention and Health Promotion.
9. Conduct and/or promote activities to prevent, treat, and remedy elder abuse, neglect, and exploitation, as required under the OAA, Section 721.

Scope of Work – Exhibit A
TITLE III/VII

ARTICLE II. SCOPE OF WORK (Continued)

10. If federal and/or State funds for meal programs increase, the number of Title III C-1 and C-2 meals served shall be maintained or increased. This contract shall promote and maintain high standards of food safety and sanitation as required by the California Uniform Retail Food Facilities Law (CURFFL).
 11. Contractor shall enter into contracts with subcontractors which require them to provide services pursuant to Title 22 CCR, Sections 7352 through 7364, and ensure all applicable provisions required within this Agreement are included in the subcontract(s).
 12. Review, approve, and monitor subcontractor budgets and expenditures and any subsequent amendments and revisions to budgets.
 13. Annually monitor, evaluate, and document subcontractor performance.
 14. Provide support and technical assistance to subcontractors and respond in writing to all written requests for direction, guidance, and interpretation of instructions to include client and service data.
 15. Distribute and maintain up-to-date Department requirements so that all responsible persons have ready access to standards, policies, and procedures.
 16. Provide program information and assistance to the public.
 17. Maintain a four-year Area Plan, with annual updates, as specified in CCR, Sections 7300 through 7320. The annual update and year-end report shall be effective during the same term as this Agreement.
 18. Maintain the NAPIS data collection and reporting system as required by the Department.
- B. The Contractor shall ensure that the Long-Term Care Ombudsman Program will:
1. Identify, investigate and attempt to resolve complaints made by or on behalf of long-term care residents, protect residents' rights, and ensure that residents have access to Ombudsman services. [OAA Section 712(a)(5)(B)(iii)] [W&I Code Section 9720(a)].
 2. Maintain an ongoing presence in long-term care facilities. [OAA Section 712(a)(5)(B)(ii)]. Facility presence is measured by facility visits in the Facility Plan, hereby incorporated by reference, Section 303 of the Ombudsman Program Guide, and as reported in NORS.

Scope of Work – Exhibit A
TITLE III/VII

ARTICLE II. SCOPE OF WORK (Continued)

3. Provide information and technical support to residents, families, and the public about long-term care services. [OAA Section 712 (a)(3)(H)(iii)] [W&I Code Section 9726.1(e)]
4. Provide on-going education (other than education for certification) and consultation to facilities and community. [OAA Section 712 (a)(5)(B)(vii)] [W&I Code Section 9726.1 (e)].
5. Represent the interests of residents before government agencies; analyze, comment on, and monitor federal, State and local laws, regulations, and policies. [OAA Section 712(a)(5)(B)(iv) and (v)].
6. Promote the development of community-based citizens' organizations dedicated to enhancing the quality of long-term care. [OAA Section 712(a)(5)(B)(vi) and (vii)] [W&I Code Section 9726.1(c) and (d)].
7. Witness advance health care directives and property transfers of more than \$100 for residents of skilled nursing facilities. [H&S Code Sections 1289; California Probate Code Sections 4675 and 4700, et seq.]
8. Adhere to Ombudsman performance indicators and assessment criteria that are enumerated in the document LTC Ombudsman Core Elements that are used by the Office of the State Long-Term Care Ombudsman as a guide in evaluating the success of a local program.
9. Use Federal Citation Penalties Account and Medi-Cal Reimbursement funds to provide an increase in the number of certified volunteer Ombudsmen that provide services to residents living in SNFs and Distinct Part SNFs in acute care hospitals. These programs provide staff and resources to recruit, hire, train, and manage additional volunteer certified Ombudsmen. Allowable expenditures include: increased staffing, office space, equipment and furniture for new staff, increased utilities usage, additional funding for volunteer mileage, training, volunteer recognition activities, and materials and space to conduct community awareness activities.
10. Ensure that before the funds referred to in paragraph 9 are requested from the Department, the Long-Term Care Ombudsman Program(s) shall submit a plan to the Department that includes:
 - a. Estimated number of volunteers to be certified during the State fiscal year who will perform Ombudsman activities in SNFs and Distinct Part SNFs in acute care hospitals only.

Scope of Work – Exhibit A
TITLE III/VII

ARTICLE II. SCOPE OF WORK (Continued)

- b. Number of staff to be hired or number and percentage of additional Full-time Equivalents (FTEs) dedicated to volunteer recruitment activities.
 - c. Anticipated time period during which staff will be hired (e.g., One staff person will be hired within two months after State budget passage.)
 - d. Number and type of community awareness activities for the purpose of recruiting volunteers (e.g., speaking engagements, attending senior fairs, health fairs, etc.)
11. Contractor shall review and approve claims for Medicaid reimbursement and federal Citation Penalties Account funds.
12. Contractor shall submit monthly fiscal documents to CDA, as determined by the Department, for Medicaid reimbursement and federal Citation Penalties Account funds.

Budget Detail, Payment Provisions, and Closeout – Exhibit B
TITLE III/VII

ARTICLE I. FUNDS

A. Expenditure of Funds

1. The Contractor shall expend all funds received hereunder in accordance with this Agreement.
2. Funds made available for Ombudsman expansion of volunteer recruitment activities in the Budget Act of 2003 shall supplement, and not supplant, the level of any federal, State, or local funds expended by the Ombudsman Program immediately prior to this augmentation. Accordingly, the Contractor must spend these funds to expand the Long-Term Care Ombudsman Program and shall not reduce normal funding in the program to use these funds for activities of any other programs.
3. Any reimbursement for authorized travel and per diem shall be at rates not to exceed those amounts paid by the State in accordance with Department of Personnel Administration's rules and regulations. This is not to be construed as limiting the Contractor from paying any differences in costs, from funds other than those provided by this Department, between the Department of Personnel Administration 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.(CCR, Title 2 Section 599.615 et seq.)
4. The Department reserves the right to refuse payment to the Contractor or disallow costs for any expenditure, as determined by the Department to be: out of compliance with this Agreement, unrelated or inappropriate to contract activities, when adequate supporting documentation is not presented, or where prior approval was required but was either not requested or not granted.

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 maintained in accordance with Generally Accepted Accounting Principles and Procedures.

Budget Detail, Payment Provisions, and Closeout – Exhibit B
TITLE III/VII

ARTICLE I. FUNDS (Continued)

C. Unexpended Funds

Upon termination, cancellation, or expiration of this Agreement, or dissolution of the entity, the Contractor shall return to the State 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. Availability of Funds

1. It is understood between the parties that this Agreement may have been written before ascertaining the availability of appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if this Agreement were executed after that determination was made.

2. This Agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government or the Budget Acts of the appropriate fiscal years for the purpose of these programs. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or to any statute enacted by the Congress that may affect the provisions, terms, or funding of this Agreement in any manner.

3. Limitation of State Liability

Payment for performance by the Contractor shall 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.

4. Funding Reduction(s)

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

- Terminate the Contractor pursuant to Exhibit D, Article XII, A.
- Offer a contract amendment to the Contractor to reflect the reduced funding for this contract.

Budget Detail, Payment Provisions, and Closeout – Exhibit B
TITLE III/VII

ARTICLE I. FUNDS (Continued)

- b. In the event that State elects to offer an amendment, it shall be mutually understood by both parties that (1) the State reserves the right to determine which contracts, if any, under this program shall be reduced and (2) some contracts may be reduced by a greater amount than others, and (3) that the State shall determine at its sole discretion the amount that any or all of the contracts shall be reduced for the fiscal year.

E. Interest Earned

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

- (1) The recipient 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 in excess of \$250 on federal advances deposited in interest bearing accounts shall be remitted annually to the Department.

ARTICLE II. BUDGET AND BUDGET REVISION

- A. The Contractor shall be compensated for expenses only as itemized in the approved Area Plan Budget (CDA 122).
- B. The Contractor shall comply with those provisions and restrictions regarding revisions to the approved Area Plan Budget. (CDA 122).
- C. The final date to submit budget revisions is April 30 of the contract period unless otherwise specified by the Department.

ARTICLE III. PAYMENT

- A. The Contractor shall prepare and submit by the 30th of each month to the AAA-Based Team, in electronic format, a Detailed Expenditure Data File (SPR 107) and a Request for Funds Data file (SPR 108), unless otherwise specified by the Department.

Budget Detail, Payment Provisions, and Closeout – Exhibit B
TITLE III/VII

ARTICLE III. PAYMENT (Continued)

- B. The Department shall review requests for payment to ensure compliance with the approved Area Plan Budget (CDA 122).
- C. During the contract period, the Department shall advance funds based on an analysis of current cash needs. The Department shall pay the Contractor a total not to exceed the amount shown on the Budget Display, which is hereby incorporated by reference.
- D. Financial Management Systems

The Contractor shall meet the following standards for its financial management systems, as stipulated in 45 CFR 92.20:
 - 1. Financial Reporting
 - 2. Accounting Records
 - 3. Internal Control
 - 4. Budgetary Control
 - 5. Allowable Costs
 - 6. Source Documentation
 - 7. Cash Management
- E. The Department may require financial reports more frequently than indicated above or with more detail (or both), upon written notice to the Contractor, until such time as the Department determines that the financial management standards are met.

ARTICLE IV. CLOSEOUT

The Financial Closeout Report (CDA 180) shall be submitted annually to the AAA-Based Team, within sixty (60) calendar days following the end of the fiscal year, or within thirty (30) days following termination prior to the end of the contract period, unless otherwise specified by the Department.

State of California
 California Department of Aging
 CDA #1 (Rev. 4/98)

Award #: FF-0304-08
 Date: 1-Jul-03
 Amendment #:
 Date:

Title III/VII Budget Display
 Fiscal Year 2003-04
 COUNTY OF SAN MATEO

Page 1 - Federal Funds		BASELINE	CUMULATIVE TRANSFERS	OTO	TOTAL	NET CHANGE
Title IIIB:	Administration	87,451	-	-	87,451	-
	LTC-Ombudsman-Program	25,782	-	-	25,782	-
	Other Supportive Services - Progr.	600,879	-	-	600,879	-
	Total Title IIIB	714,112	-	-	714,112	-
Title III C-1:	Administration	84,148	-	-	84,148	-
	Congregate Nutrition - Program	647,793	-	-	647,793	-
	Total Title III C-1	731,941	-	-	731,941	-
Title III C-2:	Administration	43,939	-	-	43,939	-
	Home Delivered Nutrition - Program	338,258	-	-	338,258	-
	Total Title III C-2	382,197	-	-	382,197	-
Title IIID	Preventive Health - Program	33,519	-	-	33,519	-
	Medication Management - Program	11,276	-	-	11,276	-
	Total Title IIID	44,795	-	-	44,795	-
	Total Title III	1,873,045	-	-	1,873,045	-
USDA:	Congregate Meals - C-1	132,840	-	-	132,840	-
	Home-Delivered Meals- C-2	96,786	-	-	96,786	-
	Total USDA	229,626	-	-	229,626	-
Title VII-(a)	Ombudsman - Program	36,851	-	-	36,851	-
Title VII-(b)	Elder Abuse Prevention - Program	11,142	-	-	11,142	-
	Total Title VII	47,993	-	-	47,993	-
	Total Federal Funds	2,150,664	-	-	2,150,664	-
Comments:	The maximum amount of Title III/VII Baseline expenditures allowable for the first quarte				480,260	

State of California
 California Department of Aging
 CDA #1 (Rev. 4/98)

Award #: FF-0304-08
 Date: 1-Jul-03
 Amendment #:
 Date:

Title III/VII Budget Display
 Fiscal Year 2003-04
 COUNTY OF SAN MATEO

Page 2 - State Funds		BASELINE	CUMULATIVE TRANSFERS	OTO	TOTAL	NET CHANGE
Title IIIB:	Ombudsman - Program	98,889	-	-	98,889	-
	Other Supportive Services - Progr.	26,952	-	-	26,952	-
	Total Title IIIB	125,841	-	-	125,841	-
Title III C-1:	Administration	511	-	-	511	-
	Congregate Nutrition - Program	44,233	-	-	44,233	-
	Total Title III C-1	44,744	-	-	44,744	-
Title III C-2:	Administration	136	-	-	136	-
	Home Delivered Nutrition - Program	24,846	-	-	24,846	-
	Total Title III C-2	24,982	-	-	24,982	-
Title IIID	Preventive Health - Program	1,959	-	-	1,959	-
	Total Title III General Fund	197,526	-	-	197,526	-
Title VII-(a)	Ombudsman - Program	5,545	-	-	5,545	-
Title VII-(b)	Elder Abuse Prevention - Program	504	-	-	504	-
	Total Title VII General Fund	6,049	-	-	6,049	-
	Total Title III/VII General Fund	203,575	-	-	203,575	-
Ombudsman Initiative						
	Federal Penalty Citations Account	40,916	-	-	40,916	-
	Medi-Cal Reimbursement	17,524	-	-	17,524	-
	Total Ombudsman Initiative	58,440	-	-	58,440	-
	Total State Funds	262,015	-	-	262,015	-
BUDGET DISPLAY SUMMARY						
	Title III/VII Federal Funds	2,150,664	-	-	2,150,664	-
	Title III/VII State Funds	203,575	-	-	203,575	-
	Ombudsman Initiative	58,440	-	-	58,440	-
	Grand Total, Federal & State Funds	2,412,679	-	-	2,412,679	-
Comments:						

Special Terms and Conditions - Exhibit D
Title III and Title VII

ARTICLE I. DEFINITIONS AND RESOLUTIONS OF LANGUAGE CONFLICTS

- A. The term "Agreement" or "Contract" shall mean the Standard Agreement, (Std. 213), all exhibits, the Budget Display, the Area Plan, Area Plan Budget (CDA 122), attachments and amendments, unless otherwise provided in this Article.
- B. In the event of any inconsistency between the articles, attachments, or provisions which constitute this contract, the following order of precedence shall apply:
 - 1. Contract form, Standard Agreement, etc., and any amendments thereto;
 - 2. Scope of work;
 - 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. The Contractor shall comply with program memos and other guidance issued by the Department. In the event of conflict between the program memos and/or other Department guidance and the provisions in this Agreement, the provisions in this Agreement shall prevail.
- D. "State" and "Department," mean the State of California and the California Department of Aging interchangeably.
- E. "Contractor" means the Area Agency on Aging to which funds are awarded under this Agreement and which is accountable to the State and/or federal government for use of these funds and is responsible for executing its provisions and services.
- F. "Subcontractor" means the legal entity that receives funds from the Contractor under this Agreement.
- G. "Reimbursable item" also means "allowable cost" and "compensable item."
- H. "CFR" means Code of Federal Regulations. "CCR" means California Code of Regulations. "GC" means Government Code. "W & I" means Welfare and Institutions Code. "USC" means United States Code. "PCC" means the Public Contract Code.
- I. "Program income" means revenue generated by the Contractor or subcontractor from contract-supported activities. Program income is:
 - 1. Voluntary contributions received from a participant or responsible party as a result of the service.

Special Terms and Conditions - Exhibit D
Title III and Title VII

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

2. Income from usage or rental fees of real or personal property acquired with grant funds or funds provided under this Agreement.
3. Royalties received on patents and copyrights from contract-supported activities.
4. Proceeds from the sale of items fabricated under a contract agreement.

ARTICLE II. ASSURANCES

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

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

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

C. Nondiscrimination – (Federal Laws)

1. The Contractor shall comply with all federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VII of the Civil Rights Act of 1964 (42 USC 2000e et.seq), as amended by the Equal Opportunity Act of March 24, 1972 (Public Law 92-261), (b) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (c) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (d) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (e) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (f) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (g) the Comprehensive Alcohol Abuse and

Special Terms and Conditions - Exhibit D
Title III and Title VII

ARTICLE II. ASSURANCES (Continued)

Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (h) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3) as amended, relating to confidentiality of alcohol and drug abuse patient records; (i) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 43601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (j) any other nondiscrimination provisions in the specific statute(s) under which application for federal assistance is being made; and, (k) the requirements of any other nondiscrimination statute(s) which may apply to this Agreement.

2. 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. Sections 12101 et seq.). Contractor agrees to include this requirement in all contracts it enters into with subcontractors to provide services pursuant to this Agreement.

D. Forced, Convict, and Indentured Labor

No foreign-made equipment, materials, or supplies furnished to the State pursuant to this Agreement may be produced in whole or in part by forced labor, convict labor, or indentured labor. By submitting a bid to the State or accepting a Contract, the Contractor agrees to comply with this provision of this Agreement.

E. 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.

F. Conflict of Interest

1. The Contractor shall prevent employees, consultants, or members of governing bodies from using their positions for purposes including, but not limited to, the selection of subcontractors, that are, or give the appearance of being, motivated by a desire for private gain for themselves or others, such as family, business, or other ties. In the event that the State determines that a conflict of interest exists, funds may be disallowed by the State and such conflict may constitute grounds for termination of the Agreement.

Special Terms and Conditions - Exhibit D
Title III and Title VII

ARTICLE II. ASSURANCES (Continued)

2. This provision shall not be construed to prohibit employment of persons with whom the Contractor's officers, agents, or employees have family, business, or other ties, so long as the employment of such persons does not result in a conflict of interest (real or apparent) or increased costs over those associated with the employment of any other equally qualified applicant, and such persons have successfully competed for employment with the other applicants on a merit basis.

G. 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, the State shall have the right to terminate this Agreement without liability or at its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingency fee.

H. 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.

I. 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 shall include such provisions in any applicable agreements with subcontractors:
 - a. Copeland "Anti-Kickback" Act (18 USC 874, 40 USC 276c) (29 CFR, Part 3).
 - b. Davis-Bacon Act (40 USC 276a to 276a-7) (29 CFR, Part 5).
 - c. Contract Work Hours and Safety Standards Act (40 USC 327-333) (29 CFR, Part 5, 6, 7, 8).

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Title III and Title VII

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. The Contractor shall not use payments for construction, renovation, alteration, improvement, or repair of privately-owned property which would enhance the owner's value of such property to the benefit of the owner except where permitted by law and by the Department.
3. When funding is provided for construction and nonconstruction activities, the Contractor or subcontractor must obtain prior written approval from the State before making any fund or budget transfers between construction and nonconstruction.

J. Contracts in Excess of \$100,000

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

1. Clean Air Act, as amended (42 USC 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 Executive Order 11738).

K. 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 Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, State, or local) transaction or contract under a public transaction;

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Title III and Title VII

ARTICLE II. ASSURANCES (Continued)

violation of federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - d. Have not within a three-year period preceding this Agreement had one or more public transactions (federal, State, or local) terminated for cause or default.
 - e. Contractor shall report immediately to the Department in writing any incidents of alleged fraud and/or abuse by either Contractor or Contractor's subcontractor. Contractor shall maintain any records, documents, or other evidence of fraud and abuse until otherwise notified by the Department.
2. The Contractor agrees to timely execute any and all amendments to this Agreement or other required documentation relating to their subcontractors debarment/suspension status.

L. Agreement Authorization

1. If a public entity, the Contractor shall submit to the Department a copy of the resolution, order, or motion referencing this Agreement number authorizing execution of this Agreement. If a private nonprofit entity, the Contractor shall submit to the Department an authorization by the board of directors to execute this Agreement, referencing this Agreement number.
2. Documentation in the form of a resolution by the Governing Board of the Area Agency on Aging is required for the original and each subsequent amendment to this Agreement. This requirement may also be met by a single resolution from the Governing Board of the Contractor authorizing the Area Agency on Aging Director or designee to execute the original and all subsequent amendments to this Agreement.

M. Contractor's Staff

1. The Contractor shall maintain adequate staff to meet the contractor's obligations under this Agreement.

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Title III and Title VII

ARTICLE II. ASSURANCES (Continued)

2. This staff shall be available to the State for training and meetings which the State may find necessary from time to time.

N. Corporate Status

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

O. Lobbying Certification

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

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

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Title III and Title VII**

ARTICLE II. ASSURANCES (Continued)

2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any 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 31 USC 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

ARTICLE III. AGREEMENT

A copy of this Agreement is on file and available for inspection at the California Department of Aging, 1600 K Street, Sacramento, California 95814.

ARTICLE IV. COMMENCEMENT OF WORK

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

ARTICLE V. SUBCONTRACTS

- A. The Contractor shall satisfy, settle, and resolve all administrative, programmatic, and fiscal aspects of the program(s), including issues that arise out of any subcontracts, and shall not delegate or contract these responsibilities to any other entity. This includes, but is not limited to, disputes, claims, protests of award, or other manners of a contractual nature.

**Special Terms and Conditions - Exhibit D
Title III and Title VII**

ARTICLE V. SUBCONTRACTS (Continued)

- B. In the event any subcontractor is utilized by the Contractor for any portion of this Agreement, the Contractor shall retain the prime responsibility for all the terms and conditions set forth, including but not limited to, the responsibility for preserving the State's copyrights and rights in data in accordance with Article XIX, of this exhibit, for handling property in accordance with Article VII of this exhibit, and ensuring the keeping of, access to, availability, and retention of records of subcontractors in accordance with Article VI of this exhibit.
- C. Funds for this Agreement shall not be obligated in subcontracts for services beyond the ending date of this Agreement, unless all funding under this Agreement is appropriated without regard for fiscal year, and the Department has agreed in writing to permit the specific expenditure for a specified period of time.
- D. The Contractor shall have no authority to contract for, or on behalf of, or incur obligations on behalf of the State.
- E. Copies of subcontracts, Memorandums and/or Letters of Understanding shall be on file with the Contractor and shall be made available for review at the request of the Department.
- F. The Contractor shall monitor the insurance requirements of its subcontractors in accordance with Article XI, Section E of this exhibit.
- G. The Contractor shall require all its subcontractors to indemnify, defend, and save harmless the Contractor, its officers, agents, and employees from any and all claims and losses accruing to or resulting from any subcontractors, suppliers, laborers, and any other person, firm, or corporation furnishing or supplying work services, materials, or supplies in connection with any activities performed for which funds from this Agreement were used and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the subcontractor in the performance of this Agreement.
- H. The Contractor shall ensure that the subcontractor will complete all reporting and expenditure documents requested by the Department. These reporting and expenditure documents shall be sent to the Contractor in a timely manner and at intervals as determined by the Department.
- I. Prior to the awarding of a subcontract to any for-profit entity, the Contractor shall submit the following to the Department for review and approval (per CCR, Title 22, Division 1.8, Section 7362):

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Title III and Title VII

ARTICLE V. SUBCONTRACTS (Continued)

1. The RFP or IFB.
2. All bid proposals received.
3. The proposal or bid evaluation documentation, along with the Contractor's rationale for awarding the subcontract to a for-profit entity.

Where a program may be subcontracted to a for-profit organization, the Contractor should include in its contract with the for-profit entity a requirement for performance of a program specific audit of the sub-contracted program by an independent audit firm.

- J. The Contractor shall require the subcontractor to maintain adequate staff to meet the subcontractor's Agreement with the Contractor. This staff shall be available to the State for training and meetings which the State may find necessary from time to time.
- K. If a private nonprofit corporation, the subcontractor shall be in good standing with the Secretary of State of California and shall maintain that status throughout the term of the Agreement.

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 this Article, Memorandums and/or Letters of Understanding, patient records, and electronic files) of its activities and expenditures hereunder in a form satisfactory to the State 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; (a) until an audit has occurred and an audit resolution has been issued or unless otherwise authorized in writing by the Department's Audit Branch, (b) 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, and (c) for such longer period as the Department 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 the Department upon termination of this Agreement, and are returned to the Department or transferred to another Contractor as instructed by the Department.

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Title III and Title VII

ARTICLE VI. RECORDS (Continued)

- 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 the State 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 the State 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 by the State during the audit resolution process.
- E. 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. 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 \$5000 (e.g., four identical assets which cost \$3000 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, Section B above.

Special Terms and Conditions - Exhibit D
Title III and Title VII

ARTICLE VII. PROPERTY (Continued)

- 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 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 Contract funds, whether capitalized or not. The Contractor shall submit to the Department, annually with the Closeout, a current inventory of property furnished or purchased by the Contractor with funds awarded under the terms of this Agreement or any predecessor agreement for the same purpose. The Contractor shall maintain an annual inventory of property furnished or purchased by the subcontractor 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 to the Department.

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Title III and Title VII

ARTICLE VII. PROPERTY (Continued)

- G. Prior to disposal of any property purchased by the Contractor or the subcontractor with funds from this Agreement, the Contractor must obtain approval from the Department 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 the Department. The Contractor shall use the Request to Dispose of Property (CDA 248) to dispose of property.
- H. The Contractor shall immediately investigate and within five (5) days fully document the loss, destruction, or theft of such property.
- I. The State reserves title to all State-purchased or financed property not fully consumed in the performance of this Agreement, unless otherwise required by federal law or regulations or as otherwise agreed by the parties.
- J. 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, until the Contractor has complied with all written instructions from the Department 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 the State. The State reserves the right to require the Contractor to transfer such property to another entity, or to the State.
- L. To exercise the above right, no later than 120 days after termination of the Agreement or notification of the Contractor's dissolution the State will issue specific written disposition instructions to the Contractor.
- 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 the State for other purposes in this order:
 - 1. Another Department program providing the same or similar service; or
 - 2. Another Department-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 the Department. As a condition of the approval, the Department may require reimbursement under this Agreement for its use.

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Title III and Title VII

ARTICLE VII. PROPERTY (Continued)

- O. The Contractor or subcontractor 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. The Contractor shall include the provisions contained in this Article in all its subcontracts awarded under this Agreement.

ARTICLE VIII. ACCESS

The Contractor shall provide access to the federal or State agency, Bureau of State Audits, the Controller General of the United States, or any of their duly authorized federal or State representatives to any books, documents, papers, records, and electronic files of the Contractor or subcontractor which are directly pertinent to this specific Agreement for the purpose of audit, examination, excerpts, and transcriptions. The Contractor shall include this requirement in its subcontracts.

ARTICLE IX. MONITORING, ASSESSMENT, AND EVALUATION

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

ARTICLE X. AUDITS

- A. Contractor will arrange for an audit to be performed as required by the Single Audit Act Amendments of 1996, Public Law 98-502, OMB Circular A-133, and a copy submitted to the:

California Department of Aging
Attention: Audit Branch
1600 K Street
Sacramento, California 95814

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Title III and Title VII

ARTICLE X. AUDITS (Continued)

- B. The following closely related programs identified by Catalog of Federal Domestic Assistance (CFDA) number are to be considered as an "Other Cluster" for purposes of determining major programs or whether a program specific audit may be elected. The contractor shall communicate this information to the independent auditor conducting the organization's single audit. This Section B applies to Title III/VII only.

US Department of Agriculture	
10.570	Nutrition Programs for the Elderly
US Department of Health and Human Services, Administration on Aging	
93.041	Special Programs for the Aging-Title VII, Chapter 3- Programs for Prevention of Elder Abuse, Neglect, and Exploitation (Title VII-B)
93.042	Special Programs for the Aging-Title VII, Chapter 2- Long Term Care Ombudsman services for Older Individuals (Title VII-A)
93.043	Special Programs for the Aging-Title III, Part F- Disease Prevention and Health Promotion Services (Title III-D)
93.044	Special Programs for the Aging-Title III, Part B – Grants for Supportive Services and Senior Centers (Title III-B)
93.045	Special Programs for the Aging-Title III, Part C – Nutrition Services (Title III-C)

Cluster of programs means a grouping of closely related programs that share common compliance requirements. The types of clusters of programs are research and development (R&D), student financial aid (SFA), and other clusters. "Other Clusters" are as defined by the Office of Management and Budget (OMB) in the compliance supplement or as designated by a State for federal awards the State provides to its subrecipients that meet the definition of a cluster of programs. When designating an "other cluster," a State shall identify the federal awards included in the cluster and advise the subrecipients of compliance requirements applicable to the cluster, consistent with .400 (d) (1) and .400 (d) (2), respectively. A cluster of programs shall be considered as one program for determining major programs, as described in .520, and, with the exception of R&D as described in .200(c), whether a program-specific audit may be elected. (Federal Office of Management and Budget, (OMB) Circular, A-133, Audits of States, Local Governments, and Non-Profit Organizations)

- C. The Contractor shall ensure that all subcontractors expending \$300,000 or more in total federal funds have met the audit requirements of the OMB Circular A-133.

Special Terms and Conditions - Exhibit D
Title III and Title VII

ARTICLE X. AUDITS (Continued)

1. Ensure that appropriate corrective action has been taken to correct instances of noncompliance with federal laws and regulations. Corrective action shall be taken within six months after the Contractor receives the subcontractor's audit report;
 2. Consider whether subcontractor audits necessitate adjustment of the Contractor's own records; and
 3. Require each subcontractor to permit independent auditors to have access to the records and financial statements as necessary for the Contractor to comply with OMB Circular A-133.
 4. Subcontractors expending less than \$300,000 in total federal funds are exempt from federal audit requirements but records must be available for review.
- D. Ensuring that the requirements of the OMB Circular A-133 are met is generally *interpreted to mean that the Contractor will ensure that the subcontractor's audit was:*
1. Performed timely – not less frequently than annually and a report submitted timely. The audit is required to be completed not later than 9 months after the end of the subcontractor's fiscal year. The audit report is due to the Contractor not later than 30 days after the completion of the audit.
 2. Properly procured – use OMB Circular A-110 procurement standards; and provide maximum opportunities to small and minority audit firms.
 3. Performed in accordance with Government Auditing Standards – shall be performed by an independent audit and be organization-wide.
 4. All inclusive – includes an audit of the financial statements; an assessment of internal controls, including tests of transactions; and a determination of compliance with laws and regulations of all major federal programs and selected non-major program transactions.
 5. All audits shall be performed in accordance with and address all issues contained in any federal OMB Compliance Supplement that applies to this program.

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Title III and Title VII

ARTICLE X. AUDITS (Continued)

6. All audits or subcontractor shall consider the programs identified in "B" as a cluster for purposes of determining major programs or whether a program specific audit may be elected. This paragraph applies to Title III/VII only.
- E. These requirements shall be included in subcontractor Agreements. Further, subcontractor shall be required to include in its contracts with the auditors selected by subcontractors, that the auditors will comply with all applicable audit requirements.
- F. The Contractor shall have the responsibility of resolving audits of its subcontractors.
- G. If the subcontractor is not required to obtain an audit in accordance with Section C of this Article, the Contractor must determine whether the subcontractor expended the funds provided under this Agreement in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subcontractor or through other means (e.g., monitoring reviews) if the subcontractor has not had an audit.
- H. The Department shall have access to all audit reports of Contractors and subcontractors and has the option to perform audits and/or additional work, as needed.
- I. Unless prohibited by law, the cost of audits made in accordance with provisions of the 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. 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.
- J. 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. Contractor may arrange for agreed upon procedures, the scope of which is less than that of an audit, to be performed by independent auditors on subcontractors not subject to OMB Circular A-133, for purposes of fiscal monitoring. The costs of such agreed upon procedures performed by an independent auditor may be charged to this Award as a cost of monitoring under Administration of the Area Plan.

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ARTICLE X. AUDITS (Continued)

- K. The Contractor assures the State that all subcontractors are audited as required by State requirements and federal law.
- L. 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.
- M. Audits to be performed shall be, minimally, financial and compliance audits, and may include economy and efficiency and/or program results audits.
- N. The Contractor shall cooperate with and participate in any further audits which may be required by the State.

ARTICLE XI. INSURANCE

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

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

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

If applicable, contractors and subcontractors shall comply with the Public Utilities Commission (PUC) General Order No. 115-F 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.

- 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.

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ARTICLE XI. INSURANCE (Continued)

- 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 the statement: "The Department of Aging, State of California, its officers, agents, employees, and servants are included as additional insureds, with respect to work performed for the State of California under this Agreement." Professional liability coverage is exempt from this requirement.
 3. The Department 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 the Department, 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, the Department may, in addition to any other remedies it may have, terminate this Agreement.
- E. The Contractor shall require its subcontractors under this Agreement, other than units of local government which are similarly self-insured, to maintain adequate insurance coverage for general liability, worker's compensation liabilities, and if appropriate, auto liability including non-owned auto and professional liability, and further, the Contractor shall require all of its subcontractors to hold the Contractor harmless. The subcontractor's Certificate of Insurance shall also name the Contractor, not the State, as the certificate holder and additional insured. The Contractor shall maintain certificates of insurance for all its subcontractors.
- F. A copy of each appropriate Certificate of Insurance referencing this Agreement Number, or letter of self-insurance, shall be submitted to the Department with this Agreement.

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ARTICLE XI. INSURANCE (Continued)

- G. The Contractor shall be insured against liability for Worker's Compensation or undertake self-insurance in accordance with the provisions of the Labor Code and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement (Labor Code Section 3700).
- H. The entity providing Ombudsman services must be insured or self-insured for professional liability covering all Ombudsman activities including, but not limited to, investigation of patient complaints.

ARTICLE XII. TERMINATION

A. Termination for Convenience

The State may terminate performance of work under this Agreement for its convenience in whole or, from time to time, in part, if the State determines that a termination is in the State's interest. The State 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. The parties agree that, as to the terminated portion of the Agreement, the Agreement shall be deemed to remain in effect until such time as the termination settlement, if any, is concluded and the Agreement shall not be void.

B. Termination for Default

The State may by written notice of default to the Contractor, terminate this Agreement, in whole or in part, as a consequence of any of the following events:

1. A violation of the law or failure to comply with any condition of this Agreement.
2. Inadequate performance or failure to make progress so as to endanger performance of this Agreement.
3. Failure to comply with reporting requirements.
4. Evidence that the Contractor is in an unsatisfactory financial condition as determined by an audit of the Department or evidence of a financial condition that endangers performance of this Agreement and/or the loss of other funding sources.
4. Delinquency in payment of taxes or payment of costs for performance of this Agreement in the ordinary course of business.

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ARTICLE XII. TERMINATION (Continued)

6. Appointment of a trustee, receiver, or liquidator for all or a substantial part of the Contractor's property, or institution of bankruptcy, reorganization or the arrangement of liquidation proceedings by or against the Contractor.
 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 debarment or suspension, Article II K.
 10. The Contractor's organizational structure has materially changed.
- C. Such termination of this Agreement, shall take effect immediately in the case of threat to life, health, or safety of the public or, in all other cases, upon thirty (30) days subsequent to written notice to the Contractor. The notice shall describe the action being taken, the reason for such action and, any conditions of the termination, including the date of termination. Said notice shall also inform the Contractor of its right to appeal such decision to the State and of the procedure for doing so.
- D. In the event of a termination notice, the Department will present written notice to the Contractor of any condition, such as, but not limited to, transfer of clients, care of clients, return of unspent funds, and disposition of property, which must be met prior to termination.
- E. The Department may determine that a Contractor may be considered a "high risk" agency as described in 45 CFR 92.12 for local governments and 45 CFR 74.14 for non-profit organizations. If such a determination is made, the Contractor may be subject to special conditions or restrictions.

ARTICLE XIII. REMEDIES

The Contractor agrees that any remedy provided in this Agreement is in addition to and not in derogation of any other legal or equitable remedy available to 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 XIV. DISSOLUTION OF ENTITY

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

**Special Terms and Conditions - Exhibit D
Title III and Title VII**

ARTICLE XV. REVISIONS OR MODIFICATIONS

- A. No amendment or variation of the terms of this Agreement shall be valid unless made in writing, and approved as required. No oral understanding or agreement not incorporated in this Agreement is binding on any of the parties.
- B. The State reserves the right to revise, waive, or modify the Agreement to reflect any restrictions, limitations, or conditions enacted by Congress or the Legislature or as directed by the Executive Branch of State Government.

ARTICLE XVI. NOTICES

- A. Any notice to be given hereunder by either party to the other may be effected by personal delivery in writing or by registered or certified mail, overnight mail, postage prepaid, return receipt requested, 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, AAA Based Teams, 1600 K Street, Sacramento, California 95814. Notices mailed to the Contractor shall be to the address indicated on the coversheet of this Agreement.
- C. Either party may change its address by written notice to the other party in accordance with this Article.

ARTICLE XVII. DEPARTMENT CONTACT

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

ARTICLE XVIII. CONFIDENTIALITY

- A. Identity 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.
- B. 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 shall remain in force even after termination.

Special Terms and Conditions - Exhibit D
Title III and Title VII

ARTICLE XVIII. CONFIDENTIALITY (Continued)

- C. The Contractor shall not use such identifying information for any purpose other than carrying out the Contractor's obligations under this Agreement.
- D. 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 the State without prior written authorization from the State, except by court order.
- E. 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.
- F. The Contractor agrees to comply with the privacy and security requirements of Health Insurance Portability and Accountability Act (HIPAA) to the extent applicable and to take all reasonable efforts to implement HIPAA requirements. Contractor will make reasonable efforts to ensure that subcontractors comply with the privacy and security requirements of HIPAA.

ARTICLE XIX. COPYRIGHTS AND RIGHTS IN DATA

A. Copyrights

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

Special Terms and Conditions - Exhibit D
Title III and Title VII

ARTICLE XIX. COPYRIGHTS AND RIGHTS IN DATA (Continued)

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

B. Rights in Data

1. The Contractor shall not publish or transfer any materials, as defined in item 2 below, produced or resulting from activities supported by this Agreement without the express written consent of the Director of the Department. That consent shall be given or the reasons for denial shall be given and any conditions under which it is given or denied within thirty (30) days after the written request is received by the Department. The Department may request a copy of the material for review prior to approval of the request. This subsection is not intended to prohibit contractors from sharing identifying client information authorized by the participant or summary program information which is not client-specific.
2. As used in this Agreement, the term "subject data" means writings, sound recordings, pictorial reproductions, drawings, designs or graphic representations, procedural manuals, forms, diagrams, workflow charts, equipment descriptions, data files and data processing or computer programs, and works of any similar nature (whether or not copyrighted or copyrightable) which are first produced or developed under this Agreement. The term does not include financial reports, cost analyses, and similar information incidental to contract administration, or the exchange of that information between Area Agencies on Aging to facilitate uniformity of contract and program administration on a statewide basis.
3. Subject only to the provisions of Article XVIII and Article XIX of this Exhibit, the State may use, duplicate, or disclose in any manner, and have or permit others to do so subject to State and federal law all subject data delivered under this Agreement.
4. Materials published or transferred by Contractor shall: (a) state "The materials or product were a result of a project funded by a contract with 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."

Additional Provisions – Exhibit E
TITLE III/VII

ARTICLE I. ASSURANCES SPECIFIC TO TITLE III AND TITLE VII

- A. General Assurances. The Contractor shall assure that the following conditions are met:
1. Services are provided only to the defined Eligible Service Population.
 2. If the Contractor makes any award of funds to a public or private nonprofit agency, for the following purposes: (1) acquiring, altering, leasing, or renovating a facility, including a mobile facility, for use as a multipurpose senior center or (2) constructing a facility, including a mobile facility, for use as a multipurpose senior center, the Contractor shall adhere to the program requirements and to 45 CFR Part 74, "Procurement Standards," procurement by contractors and subcontractors for nonprofit organizations, and 45 CFR Part 92.36, procurement for State and local governments, as applicable.
 3. The Contractor shall comply with the standards and guidelines for procurement of supplies, equipment, construction, and services as provided in 45 CFR, Part 92.36, "Procurement Standards."
 4. The Contractor assures that when an existing facility has been altered (with funds made available by this Agreement) and is used as a multipurpose senior center, the period of time in which such facility shall be used as a center is as follows:
 - a. Not less than three (3) years from the date the Agreement terminates where the amount of the Agreement, including the non-federal share, does not exceed \$30,000.
 - b. If the Agreement amount exceeds \$30,000, the fixed period of time shall be not less than three (3) years from the date of Agreement plus one (1) year for each additional \$10,000, or part thereof, to a maximum of \$75,000.
 - c. For Agreement amounts which exceed \$75,000, the fixed period of time shall be no less than ten (10) years.
 5. Any agency awarded Title III funds for senior center acquisition or construction has a completed and notarized Notice of Assurances to the State of California of the Use of Property and the United States' Right of Recapture (CDA 214) recorded with the county recorder. The Contractor shall periodically validate continuing use of such facility as a senior center during the recapture period.

Additional Provisions – Exhibit E
TITLE III/VII

ARTICLE I. ASSURANCES SPECIFIC TO TITLE III AND TITLE VII (Continued)

6. Any multipurpose senior center constructed with funds made available by this Agreement shall be used for that purpose for at least twenty (20) years after completion of that construction.
7. Any facility to be used as a senior center and acquired with funds made available by this Agreement, shall be used for that purpose for at least ten (10) years from the date of acquisition.
8. Department funds will be made available only for the support of activities specified in an approved and current Area Plan that is in compliance with State and federal laws and regulations.

B. Assurances Specific to the Ombudsman Program:

The Contractor shall assure the following:

1. The identity of the complainant or resident of the long-term care facility shall not be disclosed unless: (a) consent is given in writing by the individual or his or her legal representative as appointed by the court; (b) consent is given orally and the consent is documented contemporaneously in writing by an Ombudsman; or (d) such disclosure is required by court order. [OAA, Section 712(d)(2)(B)(i)(ii)(iii)] Files maintained by the Ombudsman Program shall be disclosed only at the discretion of the Ombudsman having authority over the disposition of that file. [OAA, Section 712(d)(2)(A)]
2. The Contractor, if providing services directly, or its subcontractor, a Long-Term Care Ombudsman Program, must secure a Legal Services Assistance Provider and enter into a Memorandum of Understanding with the Legal Services Provider to provide legal advice to the Long-Term Care Ombudsman Program staff and volunteers.
3. Each Long-Term Care Ombudsman Program shall maintain a separate budget. The Long-Term Care Ombudsman Coordinator shall develop or participate in budget preparation and be informed of budget expenditures by the Contractor specific to the Ombudsman program.
4. The Ombudsman staff will have office space for conducting interviews/investigations in a confidential manner.
5. Each Long-Term Care Ombudsman Program shall have information systems sufficient to run State-approved database systems and to receive and send e-mail messages to and from the Department.

Additional Provisions – Exhibit E
TITLE III/VII

ARTICLE I. ASSURANCES SPECIFIC TO TITLE III AND TITLE VII (Continued)

- C. Assurances Specific to Legal Assistance Providers.- The Contractor shall assure that the following conditions are met:
1. The contract between the Contractor or its subcontractor, a Long-Term Care Ombudsman Program, and a Legal Services Assistance Provider shall contain a provision for support of the Ombudsman Program staff and volunteers by the Legal Services Assistance Provider. The Contractor further assures that the subcontract shall require the Legal Services Assistance Provider enter into a Memorandum of Understanding with the Ombudsman Program wherein the Legal Assistance Provider shall provide advice to Ombudsman Program staff and volunteers.
 2. Waiver of this part can be obtained from the Department pursuant to Exhibit D, Article XV., of this Agreement entitled, "Revisions, Waivers, or Modifications."

ARTICLE II. REPORTING PROVISIONS

- A. The Contractor shall submit program performance reports in accordance with Department requirements. Data reported must be timely, complete, accurate, and verifiable. The Contractor must submit program data reports electronically to the Data Analysis and Regulations Team (DART), California Department of Aging, 1600 K Street, Sacramento, CA 95814, according to the frequency listed:
1. Service Units (SPR 101), quarterly,
 2. Detailed and Summary Client Profile (SPR 102A and 102B), annually,
 3. Provider Profile (SPR 103), annually,
 4. Staffing Profile (SPR 104), annually,
 5. Unduplicated Client Count (SPR 105), annually, and
 6. Focal Point (SPR 106), annually.

Quarterly reports are due October 31, January 31, April 30, and July 31. Annual reports are due August 30. For late reports, the Contractor shall submit a written explanation to the DART by the 15th of the following month. This written explanation shall include the reasons for the delay and the date the report will be submitted.

- B. The Contractor shall assure that all subcontractors submit complete and accurate data using the Contractor approved reporting procedures.
- C. The Contractor shall have written procedures specific to the programs requiring electronic reporting which include:

Additional Provisions – Exhibit E
TITLE III/VII

ARTICLE II. REPORTING PROVISIONS (Continued)

1. Collection and reporting of electronic program data for the Contractor and subcontractor,
 2. Ensuring accuracy of data from the Contractor and subcontractor intake/assessment process through data entry and reporting to DART,
 3. Verification of Contractor and subcontractor data prior to submission to the DART,
 4. Correction procedures for Contractor and subcontractor,
 5. Method for collecting and reporting estimated unduplicated client counts and demographics for each non-registered service, total non-registered services, and total for all services (registered and non-registered),
- D. Contractor shall train and orient staff and subcontractor's staff regarding program data collection and reporting requirements,
- E. Reporting Provisions Specific to the Ombudsman Program

The Contractor shall take the following actions, or shall require its subcontractor, the Long-Term Care Ombudsman Program, to:

1. Submit quarterly/annual National Ombudsman Reporting System (NORS)/AoA reports to the Office of the State Long-Term Care Ombudsman (OSLTCO) by the dates specified below:
 - Quarterly NORS reports are due to CDA October 31, January 31, April 30, and July 31.
 - Annual AoA reports shall be due to CDA by August 30th.
2. NORS data must be timely, complete, accurate, and verifiable. For any reports 30 days or more in arrears of the due date, the Contractor shall immediately provide a written explanation to the OSLTCO. This written explanation shall include the reasons for the delay and the date the report will be submitted, the date being contingent on agreement of that date by the OSLTCO .

ARTICLE III. APPEAL PROCESS

If the Contractor disputes the administration of this Agreement, either fiscal or nonfiscal, the Contractor shall use the appeal procedure established by the Department in Title 22 CCR, Sections 7700 through 7706. Unless the Department notifies the Contractor of a different stated time, the Contractor shall file an appeal within thirty (30) days of the disputed action.

Additional Provisions – Exhibit E
TITLE III/VII

ARTICLE III. APPEAL PROCESS (Continued)

Costs of administration or court review are not reimbursable.

ARTICLE IV. OBLIGATIONS UPON TERMINATION SPECIFIC TO THE OMBUDSMAN PROGRAM

A. Notice of Intent to Terminate Ombudsman Services

Contractor shall provide written notice to OSLTCO of its intent to terminate any subcontract with a third party to provide Ombudsman services. Such notice shall be delivered to OSLTCO within three working days after Contractor receives notice of intent to terminate from the subcontractor. The Contractor shall assure that a certified Ombudsman is available to carry out the mandates and responsibilities of the program. In its notice to OSLTCO, Contractor shall identify which of the following two options it will use to continue to provide Ombudsman services:

1. Use experienced certified volunteer Ombudsmen to continue to operate the local Ombudsman program with supervision from either a certified Ombudsman from the terminating subcontractor or certified Ombudsman staff from a neighboring Ombudsman program.
2. Provide the Ombudsman program as a direct service and rehire the existing staff until such time as a Request for Proposal is prepared and a new subcontractor is selected.

If the Contractor cannot continue to provide Ombudsman services using either of these options, the State Long Term Care Ombudsman or a designated representative will operate the program until a Coordinator/Manager and experienced certified volunteer(s) can do so.

B. Transition Plan

1. Contractor shall submit a Transition Plan (TP) with the Notice of Intent to Terminate to OSLTCO which describes how the Contractor will implement the option it has chosen to ensure continued services. The TP shall include the following:
 - a. Names, addresses, and telephone numbers of current facilities which the local Ombudsman Program oversees.
 - b. A plan for notifying all the impacted facilities of the change in the parties providing Ombudsman services.
 - c. A plan to ensure that the full inventory of confidential records is maintained in a secure location.

Additional Provisions – Exhibit E
TITLE III/VII

**ARTICLE IV. OBLIGATIONS UPON TERMINATION SPECIFIC TO THE OMBUDSMAN
PROGRAM (Continued)**

- C. Contractor shall implement the transition plan as approved by the OSLTCO. The OSLTCO will monitor the Contractor's progress in carrying out all elements of the transition plan.

- D. If the Contractor fails to provide and implement the transition plan as required above, the Contractor agrees to implement a transition plan submitted by the OSLTCO to the Contractor following the Notice of Intent to Terminate.