

AGREEMENT NUMBER

**HI-0405-08**

REGISTRATION NUMBER

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, 2004 through June 30, 2005

3. The maximum amount of this Agreement is: \$ 148,118.00  
 One hundred forty-eight thousand, one hundred eighteen 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 3 page(s)

Exhibit B – Budget Detail and Payment Provisions 9 page(s)

Exhibit C\* – General Terms and Conditions

Check mark one item below as Exhibit D:

Exhibit - D Special Terms and Conditions

24 page(s)

Exhibit - D\* Special Terms and Conditions

Exhibit E – Additional Provisions

4 page(s)

Items shown with an Asterisk (\*), are hereby incorporated by reference and made part of this agreement as if attached hereto.  
 These documents can be viewed at [www.ols.dgs.ca.gov/Standard+Language](http://www.ols.dgs.ca.gov/Standard+Language)

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

**CONTRACTOR**

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

County of San Mateo

BY (Authorized Signature)

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

Mark Church, President, Board of Supervisors

ADDRESS

225 West 37<sup>th</sup> Avenue, Room 140, San Mateo, California 94403

**STATE OF CALIFORNIA**

AGENCY NAME

California Department of Aging

BY (Authorized Signature)

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

Rachel de la Cruz, Manager, Contracts and Business Services Section

ADDRESS

1600 K Street, Sacramento, California 95814

California Department of General  
 Services Use Only

Exempt per: Mello-Granlund  
 Older Californians Act

**Scope of Work - Exhibit A**  
**Health Insurance Counseling and Advocacy Program (HICAP)**

**ARTICLE I. DEFINITIONS SPECIFIC TO HICAP PROGRAM**

- A. **Health Insurance Counseling and Advocacy Program (HICAP)**, is defined in State law, Welfare and Institutions Code (W&I), Section 9541.
- B. **State Health Insurance Assistance Program (SHIP)**, is defined by the Centers for Medicare and Medicaid Services (CMS). This term may be used interchangeably with **HICAP**.
- C. **Eligible Service Population** means (a) Medicare Beneficiaries, including Medicare Beneficiaries by virtue of a disability, and those persons imminent of Medicare eligibility [W&I Code, Section 9541 (a) and (c) (2)], (b) the public at large for HICAP community education services [W&I Code, Section 9541, (c) (1), (4), (5), and (6)].

**ARTICLE II. SCOPE OF WORK**

The Contractor shall perform the following if operating as a direct HICAP program; for a HICAP contracted program the Contractor shall ensure that the subcontractor shall perform the following:

- A. Ensure statutory provisions of the HICAP (W&I Code, Section 9541) are met and services provided in accordance with all applicable laws, regulations, and the HICAP Program Manual as issued by the Department and in any other subsequent program memos, provider bulletins or similar instructions issued during the term of this Agreement.
- B. Maintain and if applicable distribute an up-to-date HICAP Program Manual and related Department requirements so that all responsible persons have ready access to standards, policies, and procedures. [W&I Code, Section 9100 (c) & (d); Section 9541 (b) (1) & (2)].
- C. Provide timely notice to the Department or to the Contractor of any changes to the program or changes in the status of the Contractor or subcontractor that could restrict the operations of, or access to, HICAP services including, but not limited to, personnel changes, program or project phone number changes, headquarters office address changes and mailing address changes. If subcontracted, the Contractor will forward this information to the Department.
- D. Submit the name of the HICAP Program Manager to the Department and/or to the Contractor within 30 days of initial employment. If subcontracted, the Contractor will forward this information to the Department.
- E. Develop, follow, and maintain a Plan of Operation that follows the guidance provided in the HICAP Program Manual.

**Scope of Work - Exhibit A**  
**Health Insurance Counseling and Advocacy Program (HICAP)**

**ARTICLE II. SCOPE OF WORK (Continued)**

- F. Recruit and maintain a strong, well-trained, cadre of volunteer Counselors, Long -Term Care Counselors, Long Term Care Community Educators and General Community Educators [W&I Code Section 9541 (c) (7)]. New volunteer Counselors shall be recruited, trained, apprenticed, and registered as needed to adjust for attrition and to maintain the agreed upon level of Counselors.
- G. Provide clients with reasonable accommodation and access to HICAP by guaranteeing telephone access during normal business hours (Monday – Friday 9:00 – 4:00). In the event clients cannot receive personal assistance immediately, they shall be offered an opportunity to leave their name, message, and return telephone number with an answering service or answering machine. Messages shall be returned within 48 hours, excluding weekends and holidays.
- H. Provide a disclosure statement to counseling clients prior to counseling, as prescribed by the Department in the HICAP Program Manual [W&I Code, Section 9541 (f) (4)].
- I. Provide a community education campaign designed to inform the public about Medicare, Medicare supplement and long-term care insurance options, Medicare Advantage plans, and related health care plans [W&I Code Section 9541(c) (1), (4), (5), &, (6)].
- J. Refer instances of suspected misrepresentation in advertising or sales of services provided by Medicare, managed health care plans, and life and disability insurers and agents, in accordance with the HICAP Manual [W&I Code, Section 9541 (e)].
- K. The Program Manager and/or designated representative shall attend all Department sponsored HICAP training sessions or conferences conducted during each fiscal year, in order to maintain program knowledge, efficiency, and competency [W&I Code Section 9541, (f) (7)].
- L. Maintain a program data collection and reporting system as specified in Exhibit E.
- M. If the Contractor is directly providing or subcontracting legal services, which is funded by the HICAP program, the Contractor or subcontractor shall perform the following:
  - 1. Provide HICAP legal representation by or under the direction of a Supervising Attorney who is trained in Medicare law and who is in good standing with the California Bar.

**Scope of Work - Exhibit A**

**Health Insurance Counseling and Advocacy Program (HICAP)**

**ARTICLE II. SCOPE OF WORK (Continued)**

2. Legal representation services shall be limited to Medicare, long-term care insurance, managed care, and related health care coverage plans, but shall not engage in Medicaid law.
  3. HICAP legal representation shall be subject to the understanding that the legal representation and legal advocacy shall not include the filing of lawsuits against private insurers or managed health care plans.
  4. Contracted legal representation services shall not commence without a formal referral from the HICAP Program Manager to the Supervising Attorney, and only after a preliminary counseling session determines the need for referral.
  5. The Supervising Attorney shall report the performance of legal services in accordance with the HICAP Legal Performance Section of the HICAP Performance Reporting Manual by submitting the completed HICAP Legal Performance Report to the HICAP Program Manager.
- N. In addition to the conditions above, the Contractor shall perform the following if subcontracting for HICAP program services:
1. Enter into contracts with subcontractors to operate the HICAP and provide HICAP counseling, informal advocacy, education and legal representation to Medicare beneficiaries within the contracted service area pursuant to W&I Code, Chapters 7 and 7.5, the HICAP Program Manual as issued by the Department and in any other subsequent program memos, provider bulletins or similar instructions issued during the term of this Agreement.
  2. Ensure all applicable provisions required within this Agreement are included in any subcontract entered into by the Contractor to carry out the terms of this Agreement.
  3. Review, approve, and monitor subcontractor budgets and expenditures and any subsequent amendments and revisions to budgets.
  4. Review and approve Program Operating Plans of the subcontractor.
  5. Annually monitor, evaluate and document subcontractor performance and compliance with this Agreement.
  6. Provide training, support and technical assistance to the subcontractor as needed and respond in writing to all written requests from subcontractors for guidance, and interpretation of instructions.

**Budget Detail, Payment Provisions, and Closeout – Exhibit B  
Health Insurance Counseling and Advocacy Program (HICAP)**

**ARTICLE I. FUNDS**

**A. Expenditure of Funds**

1. The Contractor shall expend all funds received hereunder in accordance with this Agreement.
2. 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.)
3. The Department reserves the right to refuse payment to the Contractor or later disallow costs for any expenditure, as determined by the Department not to be in compliance with this Agreement, 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.

**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 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 or 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 and the Budget Act of the appropriate fiscal years for the purpose of this program. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions imposed by the Congress or the Legislature or

**Budget Detail, Payment Provisions, and Closeout – Exhibit B  
Health Insurance Counseling and Advocacy Program (HICAP)**

**ARTICLE I. FUNDS (Continued)**

the Executive Branch of State Government 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 is contingent upon appropriation 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 an executed contract.

**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 purpose 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.

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 (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**

1. Nonprofit entities shall maintain advances of federal funds in interest bearing accounts, unless (a), (b), or (c) apply.

a. The recipient receives less than \$120,000 in federal awards per year.

b. The best reasonably available interest bearing account would not be expected to earn interest in excess of \$250 per year on federal cash balances.

c. 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.

2. For nonprofit entities, interest earned in excess of \$250 on federal advances deposited in interest bearing accounts shall be remitted annually to the Department.

**Budget Detail, Payment Provisions, and Closeout – Exhibit B  
Health Insurance Counseling and Advocacy Program (HICAP)**

**ARTICLE II. BUDGET AND BUDGET REVISION**

- A. The Contractor shall be compensated for expenses only as itemized in the approved HICAP Budget (CDA 229) which is hereby incorporated by reference.
- B. The CDA 229 must set forth in detail the reimbursable items, unit rates and extended total amounts for each line item. The Contractor's budget shall include, at a minimum, the following items when reimbursable under this Agreement:
  - 1. Direct and overhead costs.
  - 2. Monthly, weekly, or hourly rates, as appropriate and personnel classifications together with the percentage of personnel time to be charged to this Agreement, as well as fringe benefits.
  - 3. Rental reimbursement items should specify the unit rate, such as the rate per square foot.
  - 4. If purchase of equipment is a reimbursable item, the equipment to be purchased should be specified.
  - 5. Any travel outside the State of California.
  - 6. A detailed list of other operating expenses.
- C. The Contractor shall ensure that the subcontractor shall submit a budget, which shall be incorporated by reference into the subcontract and will have, at a minimum, the categories listed in Section B, above.
- D. The Contractor may make changes in budget allocations, subject to the following conditions:
  - 1. The Contractor may transfer contract funds from each line item under the following terms and conditions:
    - a. The Contractor may transfer contract funds within each line item without prior approval from the Department providing the change is less than \$1,000.
    - b. The Contractor shall submit a revised budget to the Department for any line item transfer of funds that is 10% or more and greater than \$1,000 for each line item.
  - 2. The Contractor shall maintain a written record of all budget changes and clearly document line item changes. The record shall include the date of the transfer, the amount, and the purpose. This record shall be available to the Department upon request and shall be maintained in the same manner as all other financial records.
  - 3. Allocations for program costs may not be transferred to the AAA administration allocation.

**Budget Detail, Payment Provisions, and Closeout – Exhibit B  
Health Insurance Counseling and Advocacy Program (HICAP)**

**ARTICLE II. BUDGET AND BUDGET REVISION (Continued)**

4. In the event that programs are changed from DIRECT to CONTRACTED or CONTRACTED to DIRECT, the Contractor shall submit a revised budget to the Department, prior to implementation of said change. An amendment to this Agreement shall be required in accordance with Exhibit D, Article XV.

E. The final date to submit budget revisions is May 1 of the contract period unless otherwise specified by the Department.

**ARTICLE III. PAYMENT**

A. The Contractor shall prepare and submit by the 30<sup>th</sup> of each month to the AAA-Based Team, in electronic format, a Detailed Expenditure Data File (CBSP 107), unless otherwise specified by the Department.

**B. Advance Payments**

1. The Contractor may request one advance payment within the first quarter of the fiscal year, which shall not exceed twenty-five percent (25%) of the total amount awarded for each program under the terms of this Agreement, unless otherwise specified by the Department. To receive an advance payment, the Contractor shall submit an annual Request for Advance Data File (CBSP 108).

2. Beginning with the October CBSP 107, one-sixth of the advance payment shall be deducted each month from amounts due the Contractor, until the advance is fully liquidated.

3. If at the time of the Closeout Report for each fiscal year, or upon completion or termination of this Agreement, the advance payment has not been fully liquidated, the Contractor agrees to pay the balance to the Department immediately upon written demand.

4. If the Contractor has received an advance payment, the Contractor shall advance to the subcontractor, upon execution of the subcontract, one advance payment of up to twenty-five percent (25%) of the subcontract amount.

**C. Monthly Reimbursement Payments**

1. The Contractor shall submit a CBSP 107 to the Department no later than thirty (30) days after the close of the month for which expenditures occurred.

2. The Contractor shall be reimbursed for actual cash expenditures beginning with the July CBSP 107.

D. The Contractor shall ensure the implementation of policy and procedures developed by the Department whereby the subcontractors report expenditures and request payment monthly in arrears for actual expenses incurred, beginning with the July expenditure report.



**Budget Detail, Payment Provisions, and Closeout – Exhibit B  
Health Insurance Counseling and Advocacy Program (HICAP)**

**ARTICLE III. PAYMENT (Continued)**

**E. Financial Management Systems**

The Contractor shall meet the following standards for its financial management systems:

1. Financial Reporting
2. Accounting Records
3. Internal Control
4. Budgetary Control
5. Allowable Costs
6. Source Documentation
7. Cash Management

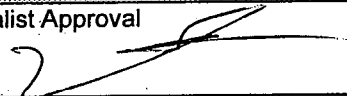

**ARTICLE IV. CLOSEOUT**

The HICAP Financial Closeout Report (CDA 230) 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.

## HICAP BUDGET SUMMARY

BUDGET PERIOD: 7/1/04 - 6/30/05	[ X ] ORIGINAL [ ] AMENDMENT NO.:			CONTRACT NO.: HI 0405-08	DATE: 5/28/04	PSA NO.: 08	
COST CATEGORY	Col (a)	Col (b)	Col (c)	Col (d)	Col (e)	Col (f)	Col (g)
	STATE AND FEDERAL (SHIP) FUNDS ONLY				OTHER FUNDING		TOTAL
	AAA Admin	Direct Service	Contracted Service	TOTAL Columns (a,b,c)	Program Income	Other Funding	All Funds Columns (d,e,f)
<b>AAA ADMINISTRATION</b>							
Personnel							
Operating Expenses							
Indirect Admin							
<b>TOTAL ADMINISTRATION</b>							
<b>HICAP PROGRAM</b>							
HICAP Reimbursements			80,815	80,815		11,150	91,965
HICAP Fund			40,360	40,360			40,360
HICAP Federal (SHIP) Funds			26,943	26,943			26,943
<b>TOTAL HICAP PROGRAM</b>			148,118	148,118		11,150	159,268
<b>TOTAL BUDGET</b>	0	0	148,118	148,118	0	11,150	159,268

FOR STATE USE ONLY

Fiscal Specialist Approval	Date	Team Coach Verification	Date
	6/21/04		6-21-04

HICAP Legal Representation Services are provided [W&I Code, Section 9541 (c) (3)]:

[ ] Yes Amount Budgeted:\$ \_\_\_\_\_

## AAA ADMINISTRATION BUDGET NARRATIVE

BUDGET PERIOD: 7/1/04 - 6/30/05	[X] ORIGINAL [ ] AMENDMENT NO.:	CONTRACT NO.: HI 0405-08	DATE: 5/28/04	PSA NO.: 08
<b>PERSONNEL</b>	(a)	(b)	(c)	
Position Classification:	Annual Wage Rate	% of Time Devoted	<b>TOTAL</b>	
<b>TOTAL SALARIES &amp; WAGES</b>				
STAFF BENEFITS				
<b>TOTAL PERSONNEL</b>				
<b>OPERATING EXPENSES</b>	Rate per Square Ft.		<b>TOTAL</b>	
Annual Rent				
Equipment (List):	Quantity	Unit Price		
Travel:				
Other Operating Expenses (List):				
<b>TOTAL OPERATING EXPENSES</b>				
INDIRECT ADMIN				
<b>TOTAL ADMINISTRATION</b>				

# HICAP DIRECT SERVICES BUDGET NARRATIVE

BUDGET PERIOD: 7/1/04 - 6/30/05	<input checked="" type="checkbox"/> ORIGINAL <input type="checkbox"/> AMENDMENT NO.:	CONTRACT NO.: HI 0405-08	DATE: 5/28/04	PSA NO.: 08
<b>PERSONNEL</b>		(a)	(b)	(c)
Position Classification:	Annual Wage Rate	% of Time Devoted	<b>TOTAL</b>	
<b>TOTAL SALARIES &amp; WAGES</b>				
<b>STAFF BENEFITS</b>				
<b>TOTAL PERSONNEL</b>				
<b>OPERATING EXPENSES</b>		Rate per Square Ft.	<b>TOTAL</b>	
Annual Rent:				
Equipment (List):	Quantity	Unit Price		
Travel:				
Other Operating Expenses (List):				
<b>TOTAL OPERATING EXPENSES</b>				
<b>INDIRECT COSTS</b>				
<b>TOTAL DIRECT SERVICES</b>				

## HICAP CONTRACTED SERVICES SCHEDULE

BUDGET PERIOD: 7/1/04 - 6/30/05	[X] ORIGINAL [ ] AMENDMENT NO.:		CONTRACT NO.: HI 0405-08	DATE: 5/28/04	PSA NO.: 08	
Contractors	(a) HICAP Reimbursements	(b) HICAP Fund	(c) HICAP Federal (SHIP)	(d) Program Income	(e) Other Funding	(f) TOTAL CONTRACTED SERVICES
Name: Self Help for the Elderly						
Address: 1710 Amphett Blvd, Ste 302 San Mateo, Ca 94402						
Telephone: (650) 627-9350						
Contact Person: Diana Gray	80,815	40,360	26,943		11,150	159,268
Name:						
Address:						
Telephone:						
Contact Person:						
Name:						
Address:						
Telephone:						
Contact Person:						
Name:						
Address:						
Telephone:						
Contact Person:						
<b>TOTAL HICAP CONTRACTED SERVICES</b>						

**Special Terms and Conditions - Exhibit D**  
**Health Insurance Counseling and Advocacy Program (HICAP)**

**ARTICLE I. DEFINITIONS AND RESOLUTIONS OF LANGUAGE CONFLICTS**

- A. The term "Agreement" or "Contract" shall mean the Standard Agreement, (Std. 213), all exhibits, the Health Insurance Counseling Advocacy Program (HICAP) Budget, the Area Plan, 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 (CDA) 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**  
**Health Insurance Counseling and Advocacy Program (HICAP)**

**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**

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 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; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and 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; (g) §§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

**Special Terms and Conditions - Exhibit D**  
**Health Insurance Counseling and Advocacy Program (HICAP)**

ARTICLE II. ASSURANCES (Continued)

records; (h) 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; (i) any other nondiscrimination provisions in the specific statute(s) under which application for federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to this Agreement.

2. Equal Access to Federally-Funded Benefits, Programs and Activities (Title VI of the Civil Rights Act of 1964.)

Contractor shall ensure compliance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d; 45 C.F.R. Part 80), which prohibits recipients of federal financial assistance from discriminating against persons based on race, color, religion, or national origin.

3. Equal Access to State-Funded Benefits, Programs and Activities

Contractor shall, unless exempted, ensure compliance with the requirements of Government Code sections 11135-11139.5, and Section 98000 et seq. of Title 22 of the California Code of Regulations, which prohibit recipients of state financial assistance from discriminating against persons based on race, national origin, ethnic group identification, religion, age, sex, color, or disability. (22 CCR 98323)

4. 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. 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.

E. 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



**Special Terms and Conditions - Exhibit D**  
**Health Insurance Counseling and Advocacy Program (HICAP)**

ARTICLE II. ASSURANCES (Continued)

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.

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.

F. 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.

G. 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.

H. Facility Construction or Repair

Funds from this Agreement are not allowed to be used for facility construction or repair.

I. 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).

**Special Terms and Conditions - Exhibit D  
Health Insurance Counseling and Advocacy Program (HICAP)**

**ARTICLE II. ASSURANCES (Continued)**

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).

**J. 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; 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.

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**Health Insurance Counseling and Advocacy Program (HICAP)**

ARTICLE II. ASSURANCES (Continued)

K. 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.

L. Contractor's Staff

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

M. 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.

**Special Terms and Conditions - Exhibit D  
Health Insurance Counseling and Advocacy Program (HICAP)**

**ARTICLE II. ASSURANCES (Continued)**

**N. 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.
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.

**Special Terms and Conditions - Exhibit D**  
**Health Insurance Counseling and Advocacy Program (HICAP)**

**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.
- 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.

**Special Terms and Conditions - Exhibit D**  
**Health Insurance Counseling and Advocacy Program (HICAP)**

**ARTICLE V. SUBCONTRACTS (Continued)**

- 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):
  - 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, reconciliation of the "Financial Closeout Report" to the audited financial statements, a summary worksheet of results from the audit resolutions performed for all subcontractors with supporting documentation, letters of agreement, insurance documentation in accordance with this Article, Memorandums and/or Letters of Understanding, patient or client 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

**Special Terms and Conditions - Exhibit D**  
**Health Insurance Counseling and Advocacy Program (HICAP)**

**ARTICLE VI. RECORDS (Continued)**

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.
- 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

**Special Terms and Conditions - Exhibit D**  
**Health Insurance Counseling and Advocacy Program (HICAP)**

ARTICLE VII. PROPERTY (Continued)

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.
- 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,



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**ARTICLE VII. PROPERTY (Continued)**

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.

- 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

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**Health Insurance Counseling and Advocacy Program (HICAP)**

**ARTICLE VII. PROPERTY (Continued)**

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.
- 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.

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Health Insurance Counseling and Advocacy Program (HICAP)**

**ARTICLE X. AUDITS**

- A. The 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  
Attn: Audit Branch  
1600 K Street  
Sacramento, California 95814

The copy shall be submitted within the earlier of 30 days after receipt of the auditor's report or nine months after the end of the fiscal period, unless a longer period is agreed to in advance by the cognizant or oversight agency of the audit.

The Contractor will ensure that State-Funded expenditures shall be displayed discretely along with the related federal expenditures in the single audit report's "Schedule of Expenditures of Federal Awards" under the Catalog of Federal Domestic Assistance (CFDA) number 93.779.

- B. The Contractor shall ensure that all subcontractors expending \$500,000 or more in total federal funds have met the audit requirements of the OMB Circular A-133.
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 \$500,000 in total federal funds are exempt from federal audit requirements but records must be available for review.
- C. 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:

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**ARTICLE X. AUDITS (Continued)**

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.
- D. 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.
- E. The Contractor shall have the responsibility of resolving audits of its subcontractors. The Contractor shall prepare a summary worksheet of results from the audit resolutions performed for all subcontractors. The summary worksheet shall include, but not be limited to, contract amount; amount resolved; variances; whether an audit was relied upon or the Contractor performed an independent expense verification review of the subcontractor in making the determination; whether audit findings were issued, and if applicable date of management letter.
- F. If the subcontractor is not required to obtain an audit in accordance with Section D 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/expense verification reviews).

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**Health Insurance Counseling and Advocacy Program (HICAP)**

ARTICLE X. AUDITS (Continued)

The Contractor shall prepare a summary worksheet of results from the audit resolutions performed for all subcontractors. The summary worksheet shall include, but not be limited to, contract amount; amount resolved; variances; whether an audit was relied upon or the Contractor performed an independent expense verification review of the subcontractor in making the determination; whether audit findings were issued, and if applicable date of management letter.

- G. 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.
- H. 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.
- I. Contractor may not charge to Federal Awards the cost of auditing a non-federal entity which has federal awards expended of less than \$500,000 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.
- J. The Contractor assures the State that all subcontractors are audited as required by State requirements and federal law.
- K. 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.
- L. Audits to be performed shall be, minimally, financial and compliance audits, and may include economy and efficiency and/or program results audits.
- M. The Contractor shall cooperate with and participate in any further audits which may be required by the State.
- N. The Contractor shall perform a reconciliation of the "Financial Closeout Report" to the audited financial statements. The reconciliation shall be maintained and made available for CDA review.

**Special Terms and Conditions - Exhibit D**  
**Health Insurance Counseling and Advocacy Program (HICAP)**

ARTICLE X. AUDITS (Continued)

- O. The Contractor agrees that the awarding Department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records with supporting documentation pertaining to the performance of this Agreement. The Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, or for a longer period as stipulated in Exhibit D, Article VI. The Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement (GC 8546.7, PCC 10115 et. Seq., CC Title 2, Section 1986).

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.

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**ARTICLE XI. 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 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.

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**ARTICLE XI. INSURANCE (Continued)**

- F. A copy of each appropriate Certificate of Insurance or letter of self-insurance, referencing this Agreement Number shall be submitted to the Department with this Agreement.
- 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. After receipt of a Notice of Termination, and except as directed by the State, the Contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any funds due under this clause.

The Contractor shall:

1. Stop work as specified in the Notice of Termination.
2. Place no further subcontracts for materials, or services, except as necessary to complete the continued portion of the contract.
3. Terminate all subcontracts to the extent they relate to the work terminated.
4. Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts (the approval or ratification of which will be final for purposes of this clause).



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ARTICLE XII. TERMINATION (Continued)

C. 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.
5. Delinquency in payment of taxes or payment of costs for 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 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 J.
10. The Contractor's organizational structure has materially changed.

- D. 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.

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**ARTICLE XII. TERMINATION (Continued)**

- E. 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.
- F. 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.

**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. Any notice given to the CDA for a contractor's change of legal name, main address, or name of Director shall be addressed to the Director of the Department.

**Special Terms and Conditions - Exhibit D**  
**Health Insurance Counseling and Advocacy Program (HICAP)**

**ARTICLE XVI. NOTICES (Continued)**

- C. All other notices with the exception of those identified in Article VII. B. 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.
- D. 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 submit the name of its Agency Contract Representative (ACR), for this Agreement by submitting an Agency Contract Representative form to the CDA's Contracts and Business Services Section. This form requires the ACR's address, phone number, e-mail address, and FAX number to be included on this form. For any change in this information, the Contractor shall submit an amended Agency Contract Representative form to the same address. This form may be requested from the Contracts and Business Services Section.

**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.
- C. 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.
- D. The Contractor shall not use such identifying information for any purpose other than carrying out the Contractor's obligations under this Agreement.
- E. 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.

**Special Terms and Conditions - Exhibit D**  
**Health Insurance Counseling and Advocacy Program (HICAP)**

**ARTICLE XVIII. CONFIDENTIALITY (Continued)**

- 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.
- 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.

**Special Terms and Conditions - Exhibit D**  
**Health Insurance Counseling and Advocacy Program (HICAP)**

ARTICLE XIX. COPYRIGHTS AND RIGHTS IN DATA (Continued)

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**  
**Health Insurance Counseling and Advocacy Program (HICAP)**

**ARTICLE I. ASSURANCES SPECIFIC TO HICAP**

- A. The Contractor shall assure, either as a direct or contracted HICAP, that the following conditions are met:
1. Services are provided only to the defined Eligible Service Population.
  2. Contributions. No fees may be charged for services although contributions or donations may be requested. Signs and literature about the HICAP services may indicate that donations are welcome and may suggest donation amounts. HICAP clients are not to be pressured to make donations. All contributions or donations, either in cash or in goods and services, provided specifically to the HICAP, shall be spent on activities related to HICAP. Voluntary contributions received from a client or responsible party for services rendered by HICAP shall be reported as HICAP Program Income.
  3. Management Capacity. The Program Manager shall manage the program at least 32 hours per week.
  4. Program Manager Authority. Assure that the Program Manager for HICAP has general oversight of the HICAP services and sole authority to recommend persons for HICAP Counselor registration, to file industry complaints and, to refer HICAP clients to legal services.
  5. Registered Counselors. Provide that all persons affiliated with the program and who are counseling, including paid personnel and volunteers, are trained and registered with the State as HICAP Counselors in accordance with law and regulation.
  6. Confidential Records. All records containing confidential client information shall be handled in a confidential manner, subject to the requirements for audits and monitoring, Exhibit D, Articles IX and X. Confidential records shall be collected no less than annually from the field. This includes individual Intake/Counseling Forms of persons being counseled exceeding the maximum counseling period of twelve (12) months as defined in the HICAP Program Manual, Section 4, subsection 4.1. Maintain confidential records until an audit has occurred and an audit resolution has been issued, unless a longer retention period is otherwise authorized in writing by the Department's Audit Branch or required by law. After that period of authorization, confidential records shall be destroyed by shredding and disposed of in a manner that will maintain confidentiality.

**Additional Provisions - Exhibit E**  
**Health Insurance Counseling and Advocacy Program (HICAP)**

**ARTICLE I. ASSURANCES SPECIFIC TO HICAP (Continued)**

- B. The Contractor shall assure, either as a direct or contracted HICAP, compliance with the State Conflict of Interest Requirements as follows:
1. State Conflict of Interest Requirements
    - a. The Contractor shall assure that project staff and volunteers do not engage in the solicitation of insurance, nor endorse any Medicare supplement, long-term care, or other insurance policies or plans, nor endorse the services of any insurer or managed care plan, claims processing organization, or other enterprise that could benefit from activities conducted by the HICAP. All project staff and volunteers shall provide HICAP educational services in a manner that is objective and impartial and provide counseling consistent with the best interests of the clients and which preserves the independent decision-making responsibilities of the client.
    - b. The Contractor shall assure that the project, project staff, and volunteers shall not have a conflict of interest such as, but not limited to, a business relationship with insurers, health plans, or organizations posing a conflict of interest. The Contractor shall assure that project staff and volunteers do not accept money or gifts from the clientele in exchange for services in accordance with Department guidance on conflict of interest and the HICAP Program Manual.
    - c. The Contractor shall take all reasonable and necessary measures to assure that advisors, employees, and volunteers associated with the operation of HICAP agree to act in a manner so as to prevent the appearance of impropriety, or any other act which would place in jeopardy HICAP's reputation as an independent and impartial program. The Contractor shall assure that advisors and governing board members shall recuse themselves from HICAP business if they are employed by, or receive compensation from, the health insurance or managed health care industries. This shall not preclude the Contractor from soliciting program contributions from entities that do not pose a conflict of interest.

**ARTICLE II. REPORTING PROVISIONS**

- A. The Contractor shall submit, either as a direct or contracted HICAP, program performance reports in accordance with Department requirements. Data reported must be timely, complete, accurate, and verifiable. The Contractor must submit program data reports to the Data Team, California Department of Aging, 1600 K Street, Sacramento, CA 95814, according to the frequency listed:

**Additional Provisions - Exhibit E**  
**Health Insurance Counseling and Advocacy Program (HICAP)**

**ARTICLE II. REPORTING PROVISIONS (Continued)**

1. Aggregate Counseling Activity Report (CDA 264), batched monthly, submitted quarterly.
2. Aggregate Public and Media Activity Report (CDA 265), batched monthly and submitted quarterly.
3. Annual Resource Report (CDA 266), 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 Data Team by the 15<sup>th</sup> 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, either as a direct or contracted HICAP, submit complete and accurate data using the Contractor approved reporting procedures.
- C. The Contractor, either as a direct or contracted HICAP, shall train and orient staff regarding program data collection and reporting requirements.

**ARTICLE III. TRANSITION PLAN**

- A. The Contractor shall submit a transition plan to the State within 15 days of delivery of a written Notice of Termination of the Contract. The transition plan must be approved by the State and shall at a minimum include the following:
  1. Names, addresses, and telephone numbers of current clients.
  2. Description of how clients will be notified about the change in their HICAP provider.
  3. A plan to communicate with other HICAP sites, local agencies and advocacy organizations that can assist in locating alternative services.
  4. A plan to inform community referral sources of the pending termination of this HICAP contract and what alternatives, if any, exist for future referrals.
  5. A plan to transfer confidential records to a new Contractor.
  6. A plan for adequate staff to provide continued service through the term of the Contract.
  7. A full inventory and plan to dispose or, transfer, or return to the State all equipment purchased during the entire operation of the Contract.



**Additional Provisions - Exhibit E**  
**Health Insurance Counseling and Advocacy Program (HICAP)**

**ARTICLE III. TRANSITION PLAN (Continued)**

8. Additional information as necessary to effect a safe transition of clients to other HICAP or community service programs.
- B. Contractor shall implement the transition plan as approved by the State. The State will monitor the Contractor's progress in carrying out all elements of the transition plan.
- C. If the Contractor fails to provide and implement a transition plan as required by paragraphs A and C of Article XII of Exhibit D of this Agreement. The Contractor agrees to implement a transition plan submitted by the State to the Contractor following Notice of Termination.