

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND  
OMBUDSMAN SERVICES OF SAN MATEO COUNTY, INC.**

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_ ,  
20\_\_\_\_\_, by and between the COUNTY OF SAN MATEO, hereinafter called "County,"  
and OMBUDSMAN SERVICES OF SAN MATEO COUNTY, INC., hereinafter called  
"Contractor";

W I T N E S S E T H:

WHEREAS, pursuant to Government Code Section 31000, County may contract  
with independent contractors for the furnishing of such services to or for County or any  
Department thereof;

WHEREAS, it is necessary and desirable that Contractor be retained for the  
purpose of providing Ombudsman Program services.

**NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS  
FOLLOWS:**

**1. Exhibits and Attachments**

The following exhibits and attachments are included hereto and incorporated by  
reference herein:

Schedule A—FY 2008-2009 Description of Services  
Schedule B—FY 2008-2009 Fiscal Summary  
Attachment H—HIPAA Business Associate requirements  
Attachment I—§ 504 Compliance

**2. Services to be Performed by Contractor**

In consideration of the payments set forth herein and in Schedule B, Contractor shall  
perform services for County in accordance with the terms, conditions and specifications  
set forth herein and in Schedule A.

**3. Payments**

In consideration of the services provided by Contractor in accordance with all terms,  
conditions and specifications set forth herein and in Schedule A, County shall make  
payment to Contractor based on the rates and in the manner specified in Schedule B.  
The County reserves the right to withhold payment if the County determines that the  
quantity or quality of the work performed is unacceptable. In no event shall the  
County's total fiscal obligation under this Agreement exceed THREE HUNDRED  
SIXTEEN THOUSAND FOUR HUNDRED FIFTY-SEVEN DOLLARS (\$316,457).

#### **4. Term and Termination**

Subject to compliance with all terms and conditions, the term of this Agreement shall be from July 1, 2008 through June 30, 2009.

This Agreement may be terminated by Contractor, the Health Director or his/her designee at any time without a requirement of good cause upon thirty (30) days' written notice to the other party.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of the County and shall be promptly delivered to the County. Upon termination, the Contractor may make and retain a copy of such materials. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that portion of the full payment which is determined by comparing the work/services completed to the work/services required by the Agreement.

#### **5. Transition Plan**

- A. The Contractor shall submit a transition plan to Aging and Adult Services within 15 days of delivery of a written Notice of Termination of a program funded either by Title III and Title VII or a Community-Based Services Program funded by the Older Californians Act. The transition plan must be approved by the County and State and shall at a minimum include the following:
1. Description of how clients will be notified about the change in their service provider.
  2. A plan to communicate with other organizations that can assist in locating alternative services.
  3. A plan to inform community referral sources of the pending termination of the service and what alternatives, if any, exist for future referrals.
  4. A plan to evaluate clients in order to assure appropriate placement.
  5. A plan to transfer any confidential medical and client records to a new contractor.
  6. A plan to dispose of confidential records in accordance with applicable laws and regulations.
  7. A plan for adequate staff to provide continued care through the term of the contract.
  8. A full inventory and plan to dispose of, transfer, or return to the State all equipment purchased during the entire operation of the contract.
  9. Additional information as necessary to effect a safe transition of clients to other community service providers.

- B. Contractor shall implement the transition plan as approved by Aging and Adult Services. Aging and Adult Services will monitor the Contractor's progress in carrying out all elements of the transition plan.

**6. Availability of Funds**

The County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon unavailability of Federal, State, or County funds, by providing written notice to Contractor as soon as is reasonably possible after the County learns of said unavailability of outside funding.

**7. Relationship of Parties**

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent Contractor and not as an employee of the County and that Contractor acquires none of the rights, privileges, powers, or advantages of County employees.

**8. Hold Harmless**

Contractor shall indemnify and save harmless County, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of: (A) injuries to or death of any person, including Contractor, or (B) damage to any property of any kind whatsoever and to whomsoever belonging, (C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, or (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County, its officers, agents, employees, or servants, resulting from the performance of any work required of Contractor or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Contractor to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

**9. Controlling Law**

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California.

**10. Law, Policy and Procedure, Licenses, and Certificates**

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances and regulations, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the Federal Regulations promulgated thereunder, as amended, and will comply with the Business Associate requirements set

forth in Attachment "H," and the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended and attached hereto and incorporated by reference herein as Attachment "I," which prohibits discrimination on the basis of handicap in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations including, but not limited to: appropriate licensure; certification regulations; provisions pertaining to confidentiality of records; applicable quality assurance regulations; wages and hours of employment; occupational safety; 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. In the event of a conflict between the terms of this Agreement and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement. The Contractor shall keep in effect all licenses, permits, notices, and certificates that are required by law.

In compliance with Government Code 11019.9, Civil Code 1798 et. seq., Management Memo 06-12 and Budget Letter 06-34, the Contractor will ensure that confidential information is protected from disclosure in accordance with applicable laws, regulations, and policies.

Contractor shall provide services pursuant to Title 22 California Code of Regulations Sections 7352 through 7364.

The Contractor agrees to provide ongoing education and training, at least annually, for all employees and subcontractors who handle personal, sensitive or confidential information. Contractor employees and subcontractors will complete the Security Awareness Training module located on the Department of Aging's website, [http://www.aging.ca.gov/resources/Security\\_Awareness\\_Training.ppt](http://www.aging.ca.gov/resources/Security_Awareness_Training.ppt) within 30 days of the start date of this Agreement or within 30 days of the start date of any new employee or subcontractor and send certificates of completion to the County. The County must maintain certificates of completion on file and provide them to the State upon request.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

**11. Non-Discrimination and Other Requirements**

- A. *Section 504 applies only to Contractors who are providing services to members of the public.* Contractor shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement.

- B. *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.
- C. *Equal employment opportunity.* Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County of San Mateo upon request.
- D. *Violation of Non-discrimination provisions.* Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to:
1. Termination of this Agreement;
  2. Disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
  3. Liquidated damages of \$2,500 per violation; and
  4. Imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.
- E. *Compliance with Equal Benefits Ordinance.* With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.
- F. The Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.
- G. *Compliance with Contractor Employee Jury Service Ordinance.* Contractor shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the employee's regular pay the fees received for jury service.

To effectuate the provisions of this section, the County Manager shall have the authority to examine Contractor's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of their response to the Complaint when filed.

## **12. Merger Clause**

This Agreement, including the Exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement or specification set forth in this body of the Agreement conflicts with or is inconsistent with any term, condition, provision, requirement or specification in any exhibit and/or attachment to this Agreement, the provisions of this body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the parties.

## **13. Conflict of Interest**

- A. 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.
- B. 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.

**14. Debarment, Suspension, and Other Responsibility Matters**

- A. The Contractor certifies to the best of its knowledge and belief, that it and its subcontractors:
1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  2. Have not within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (A)(1) of this section;
  4. Have not within a three-year period preceding this Agreement had one or more public transactions (Federal, State, or local) terminated for cause or default; and
  5. 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.
- B. The Contractor agrees to timely execute any and all amendments to this Agreement or other required documentation relating to their subcontractors' debarment/suspension status.

**15. Contractor's Staff**

- A. The Contractor shall maintain adequate staff to meet the contractor's obligations under this Agreement.
- B. This staff shall be available to the State and Aging and Adult Services for training and meetings as necessary.

**16. Lobbying Certification**

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

- A. 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.

- B. 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.
- C. 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.
- D. 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.

#### **17. Commencement of Work**

Should the Contractor 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.

#### **18. Records**

- A. Contractor shall maintain complete records (which shall include, but not be limited to, accounting records, contracts, agreements, reconciliation of the "Financial Closeout Report", to be audited financial statements, a summary worksheet of results from the audit resolutions performed with supporting documentation, letters of agreement, insurance documentation in accordance with this Agreement, Memorandums and/or Letter of Understanding, patient or client records, and electronic files) of its activities and expenditures hereunder in a form satisfactory to the County and shall make all records pertaining to the Agreement available for inspection and audit by the County 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 by the State, or unless otherwise authorized in writing by the

County, (b) for a longer period, if any, as is required by the applicable statute, by any other clause of this Agreement, or by B and C below, or: (c) for a longer period as the County 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 A above. The Contractor shall ensure that any resource directories and all client records remain the property of the County upon termination of this Agreement, and are returned to the County or transferred to another Contractor as instructed by the County.
- 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 County 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 County 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 County during the audit resolution process.
- E. After the authorized period has expired, confidential records shall be shredded and disposed of in a manner that will maintain confidentiality.

**19. Property**

- A. Unless otherwise provided for in this Section, property refers to all assets, capitalized or noncapitalized, used in operation of this Agreement.
  - 1. Property includes land, building, improvements, machinery, vehicles, furniture, tools, intangibles, etc.
  - 2. Property does not include consumable office supplies such as paper, pencils, typing ribbons, file folders, etc.
- B. Property meeting all the following criteria are subject to the capitalization requirements. Such property must:
  - 1. Have a normal useful life of at least one year;
  - 2. Have a unit acquisition cost of at least \$5,000 (e.g., four identical assets which cost \$3,000 each, for a \$12,000 total would not meet this capitalization requirement); and
  - 3. Be used to conduct business under this Agreement.

- C. Noncapitalized property are those items which do not meet all three requirements in 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, gutters, tunnels, parking lots, streets, 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 assets 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 County, 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 use the Report of Project Property Furnished/Purchased with Agreement Funds (CDA 32) to report property to the County.

- 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 County 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 County. 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 County 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 County. The County reserves the right to require the Contractor to transfer such property to another entity, or to the County.
- L. To exercise the above right, no later than 120 days after termination of the Agreement or notification of the Contractor's dissolution, the County 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 County for other purposes in this order:
  - 1. Another County program providing the same or similar service; or
  - 2. Another County-funded program.
- N. The Contractor may share use of the property and equipment or allow use by other programs, upon written approval of the County. As a condition of the approval, the County 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 reimbursement item, the equipment to be purchased will be specified in the budget.

**20. Access**

The Contractor shall provide access to the Federal, State or County agency, Bureau of State Audits, the Controller General of the United States, or any of their duly authorized Federal, State, or County representative to any books, documents, papers, records, and electronic files of the Contractor which are directly pertinent to this specific Agreement for the purpose of audit, examination, excerpts, and transcriptions.

**21. Monitoring, Assessment, and Evaluation**

- A. Authorized State and County 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 and County in the monitoring, assessment, and evaluation processes, which include making any Administrative program and fiscal staff available during any scheduled process.

**22. Audit**

- A. The Contractor shall ensure that the single audit reports meet OMB Circular A-133 requirements:
  - 1. Performed timely – not less frequently than annually and a report submitted timely. The audit is required to be submitted within 30 days after receipt of the auditor's report or nine months after the end of the audit period, whichever occurs first.
  - 2. Property procured – use procurement standards provided for in OMB Circular A-133 and provide maximum opportunities to small and minority audit firms.
  - 3. Performed in accordance with General Accepted Government Auditing Standards – shall be performed by an independent auditor and be organization-wide.
  - 4. All inclusive – includes an opinion (or disclaimer of opinion) of the financial statements; a report on internal control related to the financial statements and major programs; an opinion (or disclaimer of opinion) on compliance with laws, regulations, and the provisions of contracts or grant agreements; and the schedule of findings and questioned costs.
  - 5. Performed in accordance with provisions applicable to this program as identified in OMB Circular A-133 Compliance Supplement.
- B. The Contractor shall be required to include in its contract with the independent auditor that the auditor will comply with all applicable audit requirements/standards, the County shall have access to all audit reports and supporting work papers, and the County has the option to perform additional work, as needed.

- C. Unless prohibited by law, the cost of audits completed in accordance with provision of the Single Audit Act Amendments of 1996, are allowable charges to Federal Awards. The cost may be considered a direct cost or an allocated indirect cost, as determined in accordance with the provisions of applicable OMB cost principle circulars.
- D. The Contractor shall cooperate in any further audits which may be required by the County or State.

### **23. Insurance**

The Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this paragraph has been obtained and such insurance has been approved by Risk Management, and Contractor shall use diligence to obtain such issuance and to obtain such approval. The Contractor shall furnish the Department/Division with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the Department/Division of any pending change in the limits of liability or of any cancellation or modification of the policy.

- A. **Worker's Compensation and Employer's Liability Insurance** The Contractor shall have in effect during the entire life of this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the Contractor certifies, as required by Section 1861 of the California Labor Code, that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and will comply with such provisions before commencing the performance of the work of this Agreement.
- B. **Liability Insurance** The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Contractor's operations under this Agreement, whether such operations be by himself/herself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

Comprehensive General Liability .....	\$1,000,000
Motor Vehicle Liability Insurance .....	\$1,000,000
Professional Liability .....	\$1,000,000

County and its officers, agents, employees and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to the County, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the County or its officers and employees have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, the County of San Mateo at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

**24. Dissolution of Entity**

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

**25. Notices**

Any notice, request, demand, or other communication required or permitted hereunder shall be deemed to be properly given when deposited in the United States mail, postage prepaid, or when deposited with a public telegraph company for transmittal, charges prepaid, addressed to:

**In the case of County, to:**

Heather Ledesma, FSM II  
Aging and Adult Services  
225 37<sup>th</sup> Avenue  
San Mateo, CA 94403

**In the case of Contractor, to:**

Elizabeth Irwin, Executive Director  
Ombudsman Services of San Mateo County, Inc.  
1700 South Amphlett, #220  
San Mateo, CA 94402

**26. Assignability and Subcontracting**

Contractor shall not assign this Agreement or any portion thereof to a third party or subcontract with a third party to provide services required by contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without the County's prior written consent shall give County the right to automatically and immediately terminate this Agreement.

**27. Grievance Procedure**

Consumers of services funded through Aging and Adult Services (AAS) shall have the opportunity to file a written complaint against an AAS-funded program or an employee or volunteer of that program. All service providers must have a written grievance/complaint process for reviewing and attempting to resolve consumer complaints. Should the complaint not result in resolution at the provider level, the consumer or his/her representative may bring the complaint to AAS. The levels of resolution are as follows:

- First Level: The service provider (AAS subcontractor)
- Second Level: The Health Services Manager over the Commissions and Provider Services Unit
- Third Level: The AAS Director
- Fourth Level: The Health Department Director or his/her designee
- Fifth Level: A Formal Administrative Hearing with the Area Agency on Aging
- Final Level: The California Department on Aging

**28. Provision of Services**

- A. Contractor shall take reasonable steps to ensure that "alternative communication services" are available to non-English speaking or Limited English Proficiency beneficiaries of services under this Agreement. (22 CCR 98211)
  
- B. "Alternative communication services" include, but are not limited to, the provision of services and programs by means of the following:
  - 1. Interpreters or bilingual providers and provider staff;
  - 2. Contracts with interpreter services;
  - 3. Use of telephone interpreter lines;
  - 4. Sharing of language assistance materials and services with other providers;
  - 5. Translated written information materials, including but not limited to, enrollment information and descriptions of available services and programs; and
  - 6. Referral to culturally and linguistically appropriate community services programs.

**29. Notification of Security Breach to Data Subjects**

- A. Notice must be given by the Contractor to County and any data subject whose personal information could have been breached.
- B. Notice must be given in the most expedient time possible and without unreasonable delay except when notification would impede a criminal investigation, or when necessary measures to restore system integrity are required.
- C. Notice may be provided in writing, electronically, or by substitute notice in accordance with State law, regulation, or policy.

**30. Compliance with Use of Disposable Food Service Ware Ordinance**

Contractor certifies that the Contractor and all of its subcontractors will adhere to all applicable provisions of Chapter 4.106 of the San Mateo County Ordinance Code which regulates the use of disposable food service ware.

**31. Emergency Preparedness**

Contractor agrees to assist County in emergency planning and response by providing County client specific information, as requested by County.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

OMBUDSMAN SERVICES OF SAN MATEO COUNTY, INC.

By: \_\_\_\_\_  
Adrienne Tissier, President,  
Board of Supervisors, San Mateo County

\_\_\_\_\_  
Contractor's Signature

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Clerk of Said Board

## SCHEDULE A

### OMBUDSMAN SERVICES OF SAN MATEO COUNTY, INC.

#### FY 2008-2009 DESCRIPTION OF SERVICES

Contractor shall operate the following Older Americans Act (OAA) and/or Community-Based Services (CBSP) program(s): an Ombudsman Program. Services described in this Schedule A reflect program performance requirements (units of service) during fiscal year July 1, 2008 through June 30, 2009. This program shall operate in accordance with the California Department of Aging and/or state licensing regulations and the standards and requirements established by Aging and Adult Services of San Mateo County. Monitoring will be conducted annually and onsite in accordance with the Area Agency on Aging Contract Monitoring Procedures Manual. Contractor agrees to provide requested programmatic and administrative documentation as part of the contract monitoring process.

#### Program Performance Measurement:

Contractor shall agree to distribute customer feedback surveys, which will be provided by County and returned to the County for data collection and analysis. Contractor agrees to attempt to obtain at least a 75% rating of good or better from client surveys. This percentage will serve as a baseline for performance in future years.

### I. OMBUDSMAN PROGRAM

#### A. Units of Service

Contractor agrees to provide a minimum of 1,200 hours of volunteer recruitment and volunteer training for at least 10 volunteers.

Contractor agrees to provide a minimum of a 75% resolution rate for Complaints; 50 meetings with resident councils (11% increase from FY 2003-04 baseline); 31 meetings with Family Councils (same as FY 2003-04 baseline); 250 consultations to facilities (26% increase from FY 2003-04 baseline); 571 units of Information & Consultation to Individuals (same as FY 2003-04 baseline); 60 sessions of Community Education (36% increase from FY 2003-04 baseline); Regular Nursing Facility Visitation to 23 facilities; Regular Visitation to 210 Residential Care Facilities for the Elderly facilities (61% increase from FY 2003-04 baseline); staffing of 5.4 FTE Paid Staff Ombudsmen (same as FY 2003-04 baseline); 45 Certified Volunteer Ombudsmen; and two sessions of National Ombudsman Reporting System (NORS) Part I, II, or III training.

Contractor also agrees to provide at least 1,700 hours of case monitoring and investigation to a minimum of 85 unduplicated cases in adult residential facilities, and at least 200 hours of community education and in-service training for the Under 60 Program.

B. Unit Definitions

**Community Education:** To provide in-service training, consultation and information to facility staff, resident councils, community groups, families and individuals regarding long-term care.

**Unit of Service: One hour**

**Complaint/Abuse Investigation and Facility Monitoring:** To participate in activities related to receiving, verifying, investigating, and resolving a complaint. Includes all hours spent in facilities by staff or volunteers, traveling to or from facilities, and completing required records.

**Unit of Service: One hour**

**Volunteer Recruitment:** To engage in activities directed towards the recruitment and training of volunteer workers (need not be over 60 years of age).

**Unit of Service: One hour**

C. Program Requirements

1. Contractor agrees to provide ombudsman services in accordance with the California Department of Aging and the Area Agency on Aging requirements.
2. Contractor agrees to submit monthly reports that specify the number of individual referrals received and monthly reports that include multiple referrals.
3. **State Long-Term Care Ombudsman Program** means the CDA program recognized by the State Legislature and in compliance with the Older Americans Act and the Older Californians Act. The legislative intent of this program is to use volunteers and volunteer programs to effectively assist older individuals residing in long-term care facilities in the assertion of their civil and human rights. [OAA 712(a) (1) (B); WIC 9700, 9701(f)].
4. **Office of the Long-Term Care Ombudsman** means the office established and operated by CDA to carry out the State Long-Term Care Ombudsman Program, both directly and by contract with the Area Agencies on Aging (AAAs). As a program of CDA, the Office is responsible for activities that promote the development, coordination,

and utilization of Ombudsman services. The Office establishes and maintains effective communication with programs that provide legal services for the elderly and advocacy services of similar nature that receive funding or official designation from the state. The Office analyzes data, monitors government actions, and provides recommendations pertaining to long-term care facilities and services. The Office periodically updates training procedures for Local Ombudsman Programs and provides them with administrative and technical assistance. [OAA 712(a) (1) (A), 712(a) (3) (C&F), 712(h); WIC 9710, 9716, 9717].

5. **State Ombudsman** means the individual who serves as the full-time head of the Office of the Long-Term Care Ombudsman. The State Ombudsman is appointed by the CDA director and reports directly to this director. With the participation of the Area Agencies on Aging, the State Ombudsman develops policies and procedures for the State Ombudsman Program, including AAA responsibilities for the provision of Ombudsman services in their Planning and Service Area (PSA) – including their resolution of concerns with respect to Local Ombudsman Program activity. [OAA 712(a) (2&3), 712(a) (5) (D) (ii), 712(e); WIC 9711].
6. **Local Ombudsman Program** means either a program of the Area Agency on Aging or its subcontractor that is selected to carry out the duties of the State Long-Term Care Ombudsman Program with respect to the planning or service area. The selection is in accordance with policies and procedures established by the State Ombudsman and meet the State Ombudsman's criteria for designation and concurrence. [OAA 711(3), 712(a) (5) (D); WIC 9701(a)].
7. **Local Ombudsman Coordinator** means the individual selected by the governing board or executive director responsible for the Local Ombudsman Program to represent the Local Ombudsman Program and manage the day-to-day operations, including implementation of federal and State requirements. The Local Ombudsman Coordinator is required to be a State Certified Ombudsman Representative, complete State training for new Coordinators, and participate in State Ombudsman sponsored meetings at least twice each year. The selection is in accordance with policies and procedures established by the State Ombudsman and meet the State Ombudsman's criteria for designation and concurrence. [OAA 712(a)(5) (A), 712(h) (5); 9701(e), 9719].
8. **State Certified Ombudsman Representative** means the volunteer or employee of the Local Ombudsman Program who is individually certified in accordance with policies and procedures established by the

State Ombudsman to serve as representative of the State Long-Term Care Ombudsman Program. Prior to acceptance by the State Ombudsman for certification, the individual is required to complete a minimum of 36 hours of training in accordance with policies and procedures established by the State Ombudsman. [OAA 711(5), 712(a) (5) (A), 712(h) (5); WIC 9719],

9. **Volunteer Recruitment** means those activities associated with engaging and retaining the services of volunteers to serve as a State Certified Ombudsman Representative. [OAA Section 712(a) (5) (B) (vii)].
10. **Eligible Service Population** means older individuals, 60 years of age or older, who are residents of long-term care facilities (i.e. nursing, skilled nursing, distinct part facilities, residential care facilities for the elderly, and other adult care homes similar to these facilities) regardless of their socio-economic status or area of residence. [OAA Sections 102(35), 321(a)(10), WIC 9701(b). The Local Ombudsman Program may serve residents under 60 years of age if:
  - a. A majority of the residents of the facility where the younger person resides are over age 60;
  - b. Such service does not weaken or decrease service to older individuals covered by the Older Americans Act [Policy of the Office of Elder Rights Protection, Administration on Aging; July 15, 1996]; and
  - c. County General Funds are used to fund the services.
11. The Contractor, in accordance with policies and procedures established by the State Ombudsman, will:
  - a. Provide services to protect the health, safety, welfare and rights of residents. [OAA 712(a)(5)(i); 9701(a)];
  - b. Ensure residents in the service area of the Local Ombudsman Program have regular, timely access to State Certified Ombudsman Representatives, and timely responses to complaints and requests for assistance. [OAA 712(a)(5)(B)(ii)];
  - c. Identify, investigate, and seek to resolve complaints made by or on behalf of residents that relate to their rights and well-being as residents. Complaint investigations shall be done in an objective manner to ascertain the pertinent facts. Findings shall be reported to the complainant. If a complaint is not investigated;

the complainant shall be notified in writing the decision not to investigate and the reasons for the decision. [OAA 712(a)(5)(B)(iii); WIC 9701(a), 9720];

- d. Witness advance health care directives and property transfers of more than \$100 for residents of skilled nursing facilities. [HSC 1289, PC 4675, PC 4700 et seq.];
- e. Collect and submit data in accordance with the statewide uniform reporting system established by the State Ombudsman and the reporting provisions specified in Exhibit E of this contract. [OAA 712(c)];
- f. Represent the interests of residents before governmental agencies and seek administrative, legal, and other remedies to protect the rights and well-being of residents. [OAA 712(a)(5)(B) iv)];
- g. Review, comment, and facilitate the ability of the public to comment on laws, regulations, policies, actions, and legislative bills that pertain to the rights and well-being of residents. [OAA 712(a)(5)(B)(v)];
- h. Support the development of resident and family councils. [OAA 712(a)(5) (B)(vi)];
- i. Carry out other activities that the State Ombudsman determines to be appropriate, including periodic updating of a plan for maintaining an ongoing presence in long-term care facilities, and participation in special initiatives to recruit volunteers to serve as State Certified Ombudsman Representatives. [OAA 712(a)(5)(B)(vii)]; and
- j. Have the option to provide additional services, if they do not weaken or decrease required Ombudsman responsibilities and duties, including the following services:
  - (1) Provide public information and technical support pertaining to long-term care services, including inspection reports, statements of deficiency, and plans of correction for long-term care facilities within the service area. [WIC 9726.1(a)].
  - (2) Promote visitation programs and other community involvement in long-term care facilities within the service area. [WIC 9726.1(b&d)];

- (3) Establish (in addition to support) resident, family and friends' councils. [WIC 9726.1(c)];
- (4) Present community education and training programs to long-term care facility staff, human service workers, and the general public about long-term care and residents' rights. [WIC 9726.1(e)]; and
- (5) Refer to the appropriate governmental agency the complaints and concerns of other residents in long-term care facilities that are not eligible to receive the services of the State Long-Term Care Ombudsman Program. [WIC 9720];

12. The Contractor, in accordance with policies and procedures established by the State Ombudsman, will:

- a. 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 Skilled Nursing Facilities (SNF) 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;
- b. Ensure that before the funds referred to in paragraph 12. a. are requested from the Department, the Long-Term Care Ombudsman Program(s) shall submit an annual plan to the Department that includes:
  - (1) Estimated number of volunteers to be certified during the State fiscal year who will perform Ombudsman activities primarily in SNFs and Distinct Part SNFs in acute care hospitals;
  - (2) Number of staff to be hired or number and percentage of additional Full-time Equivalents (FTEs) dedicated to volunteer recruitment activities during the State fiscal year;
  - (3) Anticipated time period during which staff will be hired; and

- (4) Number and type of community awareness activities for the purpose of recruiting volunteers (e.g., speaking engagements, attending senior fairs, health fairs, etc.) during the State fiscal year.
  - c. Submit monthly fiscal documents to Aging and Adult Services, as determined by the Department, for Medicaid reimbursement and federal Citation Penalties Account funds.
13. Assurances Specific to the Ombudsman Program:
- Contractor shall assure the following:
- a. Representatives of the Local Ombudsman Program and members of their immediate family shall be free of conflicts of interest and not stand to gain financially through the following:
    - (1) Remuneration (in cash or in kind) received directly or indirectly under a compensation arrangement with a long-term care facility. [OAA 712(f)]; and
    - (2) An action or potential action brought on behalf of individuals the Program serves. [OAA 712(a)(5)((C)(ii)].
  - b. Representatives of the Local Ombudsman Program shall have access to long-term care facility residents and their medical and social records, with documentation of consent in accordance to section (3)(a), between the hours of 7:00 a.m. and 10:00 p.m. seven days a week [OAA 712(b)(1); WIC 9722 and 9724; CCR 8020(a)]. Authorization is required by the State Ombudsman for entry outside of these hours and for access to resident records when a legal guardian refuses to give permission and there is reason to believe the guardian is not acting in the best interests of the resident [OAA 712(b)(1)(B)(ii); WIC 9724(c and d); CCR 8020(b)];
  - c. Representatives of the Local Ombudsman Program shall not carry out the responsibilities of the Program until the State Ombudsman accepts them for certification [OAA 712(h)(5)(B)];
  - d. Complaint information collected and maintained by the Local Ombudsman Program, including the identity of the complainant or resident, shall only be disclosed [OAA 712(d); WIC 9725]:
    - (1) At the discretion of the Local Ombudsman Program [OAA 712(d)(2)(A); and

- (2) With documentation of one of the following:
  - i. Written consent of the complainant or resident, or his or her legal representative as appointed by the court [OAA 712(d)(2)(B)(i)];
  - ii. Oral consent of the complainant or resident, documented by the State Certified Ombudsman Representative at the same time it is granted by the consenter [OAA 712(d)(2)(B)(ii)]; or
  - iii. Disclosure is ordered by the court [OAA 712(d)(2)(B)(iii)];
- e. The Local Ombudsman Program shall enter into a memorandum of understanding with the Legal Services Provider (LSP) which will address conflict of interest, provision of legal advice, procedures for referral, and other technical assistance. The LSP may assist the State in providing legal representation to the Program when an Ombudsman Representative has been subpoenaed or in a suit or other legal action threatened or brought against the performance of the official duties of the Ombudsman Representative [OAA 712(h)(7); WIC 9717(c); Statewide Standards for Legal Assistance in California];
- f. Each Local Ombudsman Program shall maintain a separate budget. The Local Ombudsman Coordinator shall be responsible for managing the day-to-day operation of the Program, develop or participate in budget preparation, and be informed of budget allocations by the Contractor specific to the Ombudsman Program;
- g. Representatives of the Local Ombudsman Program shall conduct interviews/investigations in a confidential manner and the Program shall have office space and telecommunications that protect the confidentiality of all complaint-related communications and records. [OAA 705(a)(6)(C), WIC 9725, WIC 25633(b)(2)(B)]; and
- h. Each Local Ombudsman Program shall have information systems sufficient to run State-approved database systems and to receive and send confidential e-mail messages to and from the Department. [OAA 712(C); WIC 9716].

#### 14. Background Clearance

Existing and prospective Long-Term Care (LTC) Ombudsman staff and volunteers are required to be fingerprinted and to undergo background clearances prior to certification as a LTC Ombudsman (Chapter 902, Statutes of 2006).

15. Contractor assures that:
- a. Means tests shall not be used to determine program/service eligibility;
  - b. Services shall not be denied to any client that does not contribute toward the cost of the services received;
  - c. Methods used to solicit voluntary contributions shall be non-coercive;
  - d. Donation letters sent to clients shall stipulate that contributions are voluntary and not required to receive service; and
  - e. Proof of age or citizenship shall not be required as a condition of receiving services.

## **SCHEDULE B**

### **OMBUDSMAN SERVICES OF SAN MATEO COUNTY, INC.**

#### **FY 2008-2009 FISCAL SERVICES**

Contractor shall operate the following Older Americans Act (OAA) and/or Community-Based Services (CBSP) program(s): an Ombudsman Program. Services described in this Schedule B reflect program funding and payment method during fiscal year July 1, 2008 through June 30, 2009. This program shall operate in accordance with the California Department of Aging and/or state licensing regulations, applicable federal laws, and the standards and requirements established by Aging and Adult Services of San Mateo County.

#### **I. OMBUDSMAN PROGRAM**

Aging and Adult Services will pay Contractor in consideration of community education services, complaint investigation, and volunteer recruitment rendered \$191,133 in OAA funding, in consideration of services rendered to individuals under 60 years of age in residential care facilities \$50,000 in County General Funds, the rate of one-twelfth of the total reimbursement for this program per month, as long as this amount does not exceed the total cost of ombudsman services rendered and \$75,324 in County General Funds for general program support.

The maximum reimbursement for the Ombudsman Program in OAA and County General Funds funding during the contract term July 1, 2008 through June 30, 2009 shall not exceed THREE HUNDRED SIXTEEN THOUSAND FOUR HUNDRED FIFTY-SEVEN DOLLARS (\$316,457).

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Contractor agrees to the following:

- A. Contractor is responsible for covering the cost of all components of each program outlined above and shall be reimbursed for actual expenditures on the approved budget for each program;
- B. A mid-year review, scheduled for January, will require a reconciliation of year-to-date outcomes. Based on these outcomes, a budget revision may be required;
- C. Submit client intake forms as appropriate, monthly program reports and invoices by the tenth (10<sup>th</sup>) of each month. (Invoices submitted more than two months past the month of service may not be reimbursed. Statistical reports submitted more than one month past the month of service may result in withholding of payments until reports are brought current.);

- D. Offer services throughout the twelve-month contract period, unless prior written approval is received from Aging and Adult Services;
- E. Submit a closing report with supporting documentation of expenses by July 31, 2009;

Documentation should include the following:

- General ledger of expenditures for the contracted program
  - Applicable payroll register
  - Lease agreements and allocation percentage for rent cost
  - Equipment invoices
  - Vendor invoices for large purchases
  - CDA 32 form – Report of property furnished/purchased
- F. Program Income must be reported and expended under the same terms and conditions as the program funds from which it is generated; and
  - G. Program Income must be used to pay for current allowable costs of the program in the same fiscal year that the income was earned.

The maximum reimbursement for contracted services between San Mateo County Aging and Adult Services and Ombudsman Services of San Mateo County, Inc., is \$191,133 in OAA funds, \$50,000 in County General Funds to serve individuals under 60 years of age in residential care facilities, and \$75,324 in County General Funds for general program support for a total amount of THREE HUNDRED SIXTEEN THOUSAND FOUR HUNDRED FIFTY-SEVEN DOLLARS (\$316,457) for the contract term July 1, 2008 through June 30, 2009.

**Attachment H**  
**Health Insurance Portability and Accountability Act (HIPAA)**  
**Business Associate Requirements**

Definitions

Terms used, but not otherwise defined, in this Schedule shall have the same meaning as those terms are defined in 45 Code of Federal Regulations section 160.103 164.304 and 164.501. (All regulatory references in this Schedule are to Title 45 of the Code of Federal Regulations unless otherwise specified.)

- a. *Designated Record Set.* “Designated Record Set” shall have the same meaning as the term “designated record set” in Section 164.501.
- b. *Electronic Protected Health Information.* “Electronic Protected Health Information” (“EPHI”) means individually identifiable health information that is transmitted or maintained in electronic media, limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.
- c. *Individual.* “Individual” shall have the same meaning as the term “individual” in Section 160.103 and shall include a person who qualifies as a personal representative in accordance with Section 164.502(g).
- d. *Privacy Rule.* “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 Code of Federal Regulations Part 160 and Part 164, Subparts A and E.
- e. *Protected Health Information.* “Protected Health Information” shall have the same meaning as the term “protected health information” in Section 160.103 and is limited to the information created or received by Contractor from or on behalf of County.
- f. *Required By Law.* “Required by law” shall have the same meaning as the term “required by law” in Section 164.103.
- g. *Secretary.* “Secretary” shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.
- h. *Security Incident.* “Security Incident” shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system, but does not include minor incidents that occur on a daily basis, such as scans, “pings”, or unsuccessful random attempts to penetrate computer networks or servers maintained by Business Associate
- i. *Security Rule.* “Security Rule” shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Part 164, Subparts A and C.

## Obligations and Activities of Contractor

- a. Contractor agrees to not use or further disclose Protected Health Information other than as permitted or required by the Agreement or as required by law.
- b. Contractor agrees to use appropriate safeguards to prevent the use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- c. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of Protected Health Information by Contractor in violation of the requirements of this Agreement.
- d. Contractor agrees to report to County any use or disclosure of the Protected Health Information not provided for by this Agreement.
- e. Contractor agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Contractor on behalf of County, agrees to the same restrictions and conditions that apply through this Agreement to Contractor with respect to such information.
- f. If Contractor has protected health information in a designated record set, Contractor agrees to provide access, at the request of County, and in the time and manner designated by County, to Protected Health Information in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under Section 164.524.
- g. If Contractor has protected health information in a designated record set, Contractor agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the County directs or agrees to make pursuant to Section 164.526 at the request of County or an Individual, and in the time and manner designed by County.
- h. Contractor agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Contractor on behalf of, County available to the County or to the Secretary, in a time and manner designated by the County or the Secretary, for purposes of the Secretary determining County's compliance with the Privacy Rule.
- i. Contractor agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.

- j. Contractor agrees to provide to County or an Individual in the time and manner designated by County, information collected in accordance with Section (i) of this Schedule, to permit County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.
- k. Contractor shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Contractor creates, receives, maintains, or transmits on behalf of County.
- l. Contractor shall conform to generally accepted system security principles and the requirements of the final HIPAA rule pertaining to the security of health information.
- m. Contractor shall ensure that any agent to whom it provides EPHI, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect such EPHI.
- n. Contractor shall report to County any Security Incident within 5 business days of becoming aware of such incident.
- o. Contractor shall make its policies, procedures, and documentation relating to the security and privacy of protected health information, including EPHI, available to the Secretary of the U.S. Department of Health and Human Services and, at County's request, to the County for purposes of the Secretary determining County's compliance with the HIPAA privacy and security regulations.

#### Permitted Uses and Disclosures by Contractor

Except as otherwise limited in this Schedule, Contractor may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, County as specified in the Agreement; provided that such use or disclosure would not violate the Privacy Rule if done by County.

#### Obligations of County

- a. County shall provide Contractor with the notice of privacy practices that County produces in accordance with Section 164.520, as well as any changes to such notice.
- b. County shall provide Contractor with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Contractor's permitted or required uses and disclosures.
- c. County shall notify Contractor of any restriction to the use or disclosure of Protected Health Information that County has agreed to in accordance with Section 164.522.

### Permissible Requests by County

County shall not request Contractor to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by County, unless the Contractor will use or disclose Protected Health Information for, and if the Agreement provides for, data aggregation or management and administrative activities of Contractor.

### Duties Upon Termination of Agreement

- a. Upon termination of the Agreement, for any reason, Contractor shall return or destroy all Protected Health Information received from County, or created or received by Contractor on behalf of County. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Contractor. Contractor shall retain no copies of the Protected Health Information.
- b. In the event that Contractor determines that returning or destroying Protected Health Information is infeasible, Contractor shall provide to County notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Contractor shall extend the protections of the Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Contractor maintains such Protection Health Information.

### Miscellaneous

- a. *Regulatory References.* A reference in this Schedule to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.
- b. *Amendment.* The Parties agree to take such action as is necessary to amend this Schedule from time to time as is necessary for County to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.
- c. *Survival.* The respective rights and obligations of Contractor under this Schedule shall survive the termination of the Agreement.
- d. *Interpretation.* Any ambiguity in this Schedule shall be resolved in favor of a meaning that permits County to comply with the Privacy Rule.
- e. *Reservation of Right to Monitor Activities.* County reserves the right to monitor the security policies and procedures of Contractor

(rev. 8/08)

ATTACHMENT I

**Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, as Amended**

The undersigned (hereinafter called the "Contractor(s)") hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended, all requirements imposed by the applicable DHHS regulation, and all guidelines and interpretations issued pursuant thereto.

The Contractor(s) gives/give this assurance in consideration of for the purpose of obtaining contracts after the date of this assurance. The Contractor(s) recognizes/recognize and agrees/agree that contracts will be extended in reliance on the representations and agreements made in this assurance. This assurance is binding on the Contractor(s), its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Contractor(s).

The Contractor(s): (Check a or b)

- a. Employs fewer than 15 persons.
- b. Employs 15 or more persons and, pursuant to section 84.7 (a) of the regulation (45 C.F.R. 84.7 (a), has designated the following person(s) to coordinate its efforts to comply with the DHHS regulation.

\_\_\_\_\_  
Name of 504 Person - Type or Print

\_\_\_\_\_  
Name of Contractor(s) - Type or Print

\_\_\_\_\_  
Street Address or P.O. Box

\_\_\_\_\_  
City, State, Zip Code

I certify that the above information is complete and correct to the best of my knowledge.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title of Authorized Official

\_\_\_\_\_  
Date

\*Exception: DHHS regulations state that:

"If a recipient with fewer than 15 employees finds that, after consultation with a disabled person seeking its services, there is no method of complying with (the facility accessibility regulations) other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible."