



**COUNTY OF SAN MATEO**  
**Inter-Departmental Correspondence**  
Health System



**DATE:** May 27, 2011  
**BOARD MEETING DATE:** June 28, 2011  
**SPECIAL NOTICE/HEARING:** None  
**VOTE REQUIRED:** Majority

**TO:** Honorable Board of Supervisors

**FROM:** Jean S. Fraser, Chief, Health System  
Lisa Mancini, Director, Aging and Adult Services

**SUBJECT:** Agreement No. HI-1112-08 with the California Department of Aging for Fiscal Year 2011-12

**RECOMMENDATION:**

Adopt a Resolution authorizing the:

- A) President of the Board to execute Agreement No. HI-1112-08 with the California Department of Aging for the Health Insurance Counseling and Advocacy Program for the term July 1, 2011 through June 30, 2012, in the amount of \$286,547; and
- B) Chief of the Health System or designee to execute contract amendments which modify the funding amount by no more than \$25,000 (in aggregate), and/or modify the contract term and/or services so long as the modified term or services is/are within the current or revised fiscal provisions.

**BACKGROUND:**

Every four years your Board, as the Area Agency on Aging (AAA) of San Mateo County, is required to submit an Area Plan for aging services to the California Department of Aging (CDA). The State also requires that counties submit annual updates identifying revised goals and objectives for the coming fiscal year in order to claim their allotted Older Americans Act (OAA) funds, which are determined through a statewide funding formula. The plan provides a profile of the County's senior population, identifies activities to improve and expand existing services, as well as to develop new programs designed to address current countywide needs, and recommends services to be funded with San Mateo County's OAA allocations. On April 28, 2009, your Board approved the AAA 2009 – 2012 Area Plan for Services for Older Adults and Adults with Disabilities (Area Plan). This plan, together with the annual budget, fulfills CDA's requirements and generates a contract from CDA for funding.

**DISCUSSION:**

Aging and Adult Services (AAS) contracts with a community-based organization, Self-Help for the Elderly, to provide Health Insurance Counseling and Advocacy Program (HICAP) services, a volunteer-supported program that provides three basic services:

community education, lay counseling, and advocacy related to Medicare. Self Help for the Elderly was selected to provide HICAP services through a Request for Proposals (RFP) process conducted in December 2008 for the contract term July 1, 2009 through June 30, 2013. HICAP is an integral component of California's community-based long-term care system. Medicare beneficiaries and those under 65 who are about to become eligible for Medicare or who are disabled and on Medicare are eligible for HICAP services. Locally, the program is designed to carry out goals and objectives of the AAA Plan related to advocacy and health care.

County Counsel has reviewed and approved the Agreement and Resolution as to form and content.

This Agreement contributes to the Shared Vision 2025 outcome of a Healthy Community by allowing AAS to provide clients with objective health insurance counseling, advocacy and assistance. It is anticipated that 75% of HICAP service recipients will feel that they have gained useful knowledge and feel that their personal life has improved.

**Performance Measures:**

| <b>Measure</b>   | <b>FY 2010-11<br/>Estimated</b> | <b>FY 2011-12<br/>Projected</b> |
|--|---------------------------------|---------------------------------|
| Percent of HICAP services recipient stakeholder survey respondents indicating that their personal life has improved as a result of services received*                                      | 75%                             | 75%                             |
| Percent of HICAP services recipient stakeholder survey respondents indicating that they gained useful knowledge through the presentations, trainings, conferences, and resources provided* | 75%                             | 75%                             |

\* This measure is reported annually at the end of the fiscal year.

**FISCAL IMPACT:**

The term of this Agreement is July 1, 2011 through June 30, 2012. Execution of this Agreement with CDA allows the County to claim funding for HICAP for FY 2011-12. The total amount of this Agreement is \$286,547. Revenues and expenses related to this Agreement are included in the AAS tentatively Adopted FY 2011-12 Budget. There is no Net County Cost associated with approving this Agreement with CDA.

RESOLUTION NO. \_\_\_\_\_

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

\* \* \* \* \*

**RESOLUTION AUTHORIZING THE: A) PRESIDENT OF THE BOARD TO EXECUTE AGREEMENT NO. HI-1112-08 WITH THE CALIFORNIA DEPARTMENT OF AGING FOR THE HEALTH INSURANCE COUNSELING AND ADVOCACY PROGRAM FOR THE TERM JULY 1, 2011 THROUGH JUNE 30, 2012, IN THE AMOUNT OF \$286,547; AND B) CHIEF OF THE HEALTH SYSTEM OR DESIGNEE TO EXECUTE CONTRACT AMENDMENTS WHICH MODIFY THE FUNDING AMOUNT BY NO MORE THAN \$25,000 (IN AGGREGATE), AND/OR MODIFY THE CONTRACT TERM AND/OR SERVICES SO LONG AS THE MODIFIED TERM OR SERVICES IS/ARE WITHIN THE CURRENT OR REVISED FISCAL PROVISIONS**

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**RESOLVED**, by the Board of Supervisors of the County of San Mateo, State of California, that

**WHEREAS**, this Board has designated itself as the Area Agency on Aging of San Mateo County to carry out programs pursuant to senior services; and

**WHEREAS**, there has been presented to this Board of Supervisors for its consideration and acceptance an Agreement, reference to which is hereby made for further particulars, whereby the Aging and Adult Services Division shall provide Health Insurance Counseling and Advocacy Program (HICAP) services; and

**WHEREAS**, both parties now wish to enter into an Agreement to provide HICAP funding for community education, lay counseling, and advocacy related to Medicare for the term of July 1, 2011 through June 30, 2012, for a total obligation of \$286,547; and

**WHEREAS**, this Board has examined the Agreement and has approved it as to both form and content.

**NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED** that the President of this Board of Supervisors be and is hereby authorized and directed to execute said Agreement for and on behalf of the County of San Mateo, and the Clerk of this Board shall attest the President's signature thereto.

**BE IT FURTHER RESOLVED** that the Chief of the Health System or designee is hereby authorized to execute contract amendments which modify the funding amount by no more than \$25,000 (in aggregate), and/or modify the contract term and/or services so long as the modified term or services is/are within the current or revised fiscal provisions.

\* \* \* \* \*

AGREEMENT NUMBER

**HI-1112-08**

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, Aging and Adult Services**

2. The term of this Agreement is: July 1, 2011  
 June 30, 2012

3. The maximum amount of this Agreement is: **\$ 286,547.00**  
 Two hundred eighty-six thousand five hundred forty-seven and 00/100

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

Exhibit A – Scope of Work 6 page(s)

Exhibit B – Budget Detail, Payment Provisions, and Closeout 6 page(s)

Exhibit C\* – General Terms and Conditions GTC 610

Check mark one item below as Exhibit D:

Exhibit - D Special Terms and Conditions (Attached hereto as part of this agreement) 26 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, Aging and Adult Services

BY (Authorized Signature)

DATE SIGNED(Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

225 37TH AVE SAN MATEO CA 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

ADDRESS

1300 National Drive, Suite 200, Sacramento CA. 95834

**California Department of General Services Use Only**

Exempt per:  
 Mello Grunland Older Californians Act  
 and AG OP 80-111

## Scope of Work - Exhibit A

### Health Insurance Counseling and Advocacy Program (HICAP) - FY 11-12

#### 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 CDA 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 CDA requirements so that all HICAP Counselors and responsible persons have ready access to standards, policies, and procedures. Additionally, all Counselors shall be provided the latest HICAP Counselor Handbook. [W&I Code, Section 9100 (c) & (d); Section 9541 (b)(1) & (2)].
- C. Provide timely notice to CDA 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 CDA.
- D. Submit the name of the HICAP Program Manager to CDA and to the Contractor within 30 days of initial employment.
- E. 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 Counselors shall

## Scope of Work - Exhibit A

### Health Insurance Counseling and Advocacy Program (HICAP) - FY 11-12

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

be recruited, trained, apprenticed, and registered as needed to adjust for attrition and to maintain the agreed upon performance levels in the latest Area Plan Service Unit Plans.

- F. Standard HICAP work week business hours, open to the public, shall be five days a week, Monday through Friday, at least 9 a.m. to 4 p.m., except holidays.
- G. Telephone access by the public shall be during normal business hours, Monday through Friday, 9 a.m. through 4 p.m. In the event clients cannot receive personal assistance immediately, they shall be offered an opportunity to leave their name, a message, and return telephone number with an answering service or answering machine. Calls from clients leaving messages shall be returned within two business days.
- H. Provide a disclosure statement to counseling clients prior to counseling, as prescribed by CDA 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, related health care plans, and insurance topics [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 CDA required 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. Meet the minimum performance requirements in the Service Unit Plan. Programs will be notified of the new measures in a Program Memorandum. The measures will also be available on the Statewide HICAP Automated Reporting Program (SHARP) portal.

**Scope of Work - Exhibit A**

**Health Insurance Counseling and Advocacy Program (HICAP) - FY 11-12**

ARTICLE II. SCOPE OF WORK (Continued)

- N. Provide timely input to the State HICAP Office (upon request) of any SHIP or CMS required reports, including, but not limited to, the SHIP Grant Application, Supplemental Grant Funding Applications, and the SHIP Grant Mid-term Report.
- O. 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 and technical program support 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.
  2. Legal representation services shall be limited to Medicare, Medicare Part D issues, Medicare savings programs, low-income subsidy issues, long-term care insurance, managed care, and related health care coverage plans.
  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 Reporting Instructions available at [www.aging.ca.gov](http://www.aging.ca.gov).
- P. 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 CDA 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.



**Scope of Work - Exhibit A**

**Health Insurance Counseling and Advocacy Program (HICAP) - FY 11-12**

ARTICLE II. SCOPE OF WORK (Continued)

3. Review, approve, and monitor subcontractor budgets and expenditures and any subsequent amendments and revisions to budgets. Contractor shall, to the extent feasible, ensure that all budgeted funds are expended by the end of each fiscal year.
4. Annually conduct onsite monitoring, evaluate and document subcontractor performance and compliance with this Agreement. [45 CFR Part 1321.11]
5. 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.

ARTICLE III. BILINGUAL AND LINGUISTIC PROGRAM SERVICES (GC 11135 - 11139.5; Title 22 CCR Sections 98211, 98310-98314, 98324- 98326, 98340, 98370)

A. Needs Assessment

1. Contractor shall conduct a cultural and linguistic group-needs assessment of the eligible client population in the Contractor's service area to assess the language needs of the population and determine what reasonable steps are necessary to ensure meaningful access to services and activities to eligible individuals. (Title 22 CCR 98310, 98314)  
The group-needs assessment shall take into account the following four factors:
  - a. Number or proportion of limited English speaking (LEP) persons eligible to be served or likely to be encountered by the program.
  - b. Frequency with which LEP individuals come in contact with the program.
  - c. Nature and importance of the services provided to people's lives.
  - d. Resources available to the Contractor.

This group-needs assessment will serve as the basis for Contractor's determination of "reasonable steps" and provide documentary evidence of compliance with GC Section 11135 et seq., and Sections 98000-98382 of Title 22 of the CCR.

2. Contractor shall prepare and make available a report of the findings of the group-needs assessment that summarizes the items listed below:
  - a. Methodologies used.

## Scope of Work - Exhibit A

### Health Insurance Counseling and Advocacy Program (HICAP) - FY 11-12

#### ARTICLE III. BILINGUAL AND LINGUISTIC PROGRAM SERVICES (Continued)

- b. Findings regarding linguistic and cultural needs of non-English or LEP groups.
  - c. Services proposed to address the needs identified and a timeline for implementation. (Title 22 CCR 98310)
3. Contractor shall maintain a record of the group-needs assessment on file at the Contractor's headquarters at all times during the term of this Agreement. (Title 22 CCR 98310, 98313)

#### B. Provision of Services

1. Contractor shall take reasonable steps, based upon the group-needs assessment identified in subdivision A of this section, to ensure that "alternative communication services" are available to non-English speaking or LEP beneficiaries of services under this Agreement. (Title 22 CCR 98211)
2. "Alternative communication services" include, but are not limited to, the provision of services and programs by means of the following:
  - a. Interpreters or bilingual providers and provider staff.
  - b. Contracts with interpreter services.
  - c. Use of telephone interpreter lines.
  - d. Sharing of language assistance materials and services with other providers.
  - e. Translated written information materials, including but not limited to, enrollment information and descriptions of available services and programs.
  - f. Referral to culturally and linguistically appropriate community service programs.
3. Based upon the findings of the group needs assessment, Contractor shall ensure that reasonable alternative communication services are available to meet the linguistic needs of identified eligible client population groups at key points of contact. Key points of contact include, but are not limited to, telephone contacts, office visits and in-home visits. (Title 22 CCR 98211)
4. Contractor shall self-certify to compliance with the requirements of this section and shall maintain the self-certification record on file at Contractor's office at all times during the term of this Agreement.

**Scope of Work - Exhibit A**

**Health Insurance Counseling and Advocacy Program (HICAP) - FY 11-12**

**ARTICLE III. BILINGUAL AND LINGUISTIC PROGRAM SERVICES (Continued)**

(Title 22 CCR 98310)

5. Contractor shall notify its employees of clients' rights regarding language access and Contractor's obligation to ensure access to alternative communication services where determined appropriate based upon the needs assessment conducted by Contractor. (Title 22 CCR 98324)
6. Noncompliance with this section may result in suspension or termination of funds and/or termination of this Agreement. (Title 22 CCR 98370)

**C. Compliance Monitoring**

1. Contractor shall develop and implement policies and procedures for assessing and monitoring the performance of individuals and entities that provide alternative communication services to non-English and LEP clients. (Title 22 CCR 98310)
2. Contractor shall monitor, evaluate, and take effective action to address any needed improvement in the delivery of culturally and linguistically appropriate services. (Title 22 CCR 98310)
3. Contractor shall permit timely access to all records of compliance with this section. Failure to provide access to such records may result in appropriate sanctions. (Title 22 CCR 98314)

**D. Notice to Eligible Beneficiaries of Contracted Services**

1. Contractor shall designate an employee to whom initial complaints or inquiries regarding national origin can be directed. (Title 22 CCR 98325)
2. Contractor shall make available to ultimate beneficiaries of contracted services and programs information regarding the Department's procedure for filing a complaint and other information regarding the provisions of GC Section 11135 et seq. (Title 22 CCR 98326)
3. Contractor shall notify the Department immediately of a complaint alleging discrimination based upon a violation of State or federal law. (Title 22 CCR 98211, 98310, 98340)

**Budget Detail, Payment Provisions, and Closeout – Exhibit B  
Health Insurance Counseling and Advocacy Program (HICAP) - FY 11-12**

**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.
  - Mileage- <http://www.dpa.ca.gov/personnel-policies/travel/personal-vehicle-mileage-reimbursement.htm>
  - Per Diem (meals and incidentals) - <http://www.dpa.ca.gov/personnel-policies/travel/meals-and-incidentals.htm>
  - Lodging – <http://www.dpa.ca.gov/personnel-policies/travel/short-term-travel.htm>

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.)

Contractor agrees to include these requirements in all contracts it enters into with subcontractors/vendors to provide services pursuant to this Agreement.

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**

1. 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 and the Office of Management and Budget's Cost Principles.

**Budget Detail, Payment Provisions, and Closeout – Exhibit B**  
**Health Insurance Counseling and Advocacy Program (HICAP) - FY 11-12**

ARTICLE I. FUNDS (Continued)

2. Financial Management Systems

The Contractor shall meet the following standards for its financial management systems, as stipulated in 45 CFR Section 92.20 (governmental) or 45 CFR, Section 74.21 (non-profits):

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

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 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 and approval of an itemized HICAP Budget (CDA 229). No legal liability on the part of the State for any payment may arise under this contract until funds are made available, the itemized budget is received and approved by the State, and the Contractor has received an executed contract.
4. Funding Reduction(s)

**Budget Detail, Payment Provisions, and Closeout – Exhibit B  
Health Insurance Counseling and Advocacy Program (HICAP) - FY 11-12**

**ARTICLE I. FUNDS (Continued)**

- a. If funding for any State fiscal year is reduced or deleted by the Department of Finance, Legislature or Congress 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 the 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. Contractor may keep interest amounts earned on advances of federal funds up to \$100 per year for Local Government Agencies or \$250 for non-profit organizations for administrative expenses. Interest earned above the stated limit shall be remitted at least quarterly to the Department's Accounting Section. [45CFR 92.21(i); 45CFR 74.22(l)]
2. Interest earned on advances of federal and non-federal funds shall be identified as non-match cash.
3. Contractor may retain interest on non-federal funds if it reasonably demonstrates that such interest was earned on non-federal funds. If the Contractor fails to adequately demonstrate the source of the interest, then such interest will be considered earned on federal funds and shall be remitted, at least quarterly, to the Department's Accounting Section.
4. 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.

**Budget Detail, Payment Provisions, and Closeout – Exhibit B**  
**Health Insurance Counseling and Advocacy Program (HICAP) - FY 11-12**

ARTICLE I. FUNDS (Continued)

F. One-Time-Only Funds

One-Time-Only funds are to be used for the purposes for which they were originally allocated.

ARTICLE II. BUDGET AND BUDGET REVISION

A. The Contractor shall be compensated for expenses only as itemized in the approved HICAP Budget (CDA 229), with the exception of line item transfers as noted in D.1.(a) below, and shall not be entitled to payment for these expenses until the HICAP Budget (CDA 229) is reviewed and approved by the Department. The approved HICAP Budget is hereby incorporated by reference into this Agreement as a part of Exhibit B.

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. Line Item Transfers

1. The Contractor may transfer contract funds between line items under the following terms and conditions:
  - a. The Contractor shall submit a revised budget to the Department for any line item transfer of funds that is 10 percent or more of the total budget.
  - b. 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.

**Budget Detail, Payment Provisions, and Closeout – Exhibit B  
Health Insurance Counseling and Advocacy Program (HICAP) - FY 11-12**

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

**E. Allocation Transfers**

1. Contractors requesting allocation transfers shall submit a revised CDA 229 to the Department for approval.
  - a) Administration Allocations for HICAP SHIP, HICAP FUND and HICAP Reimbursement may be transferred to the corresponding HICAP Program allocation.
  - b) Allocations for HICAP Program may not be transferred to HICAP Administration.
2. 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.

- F. The final date to submit budget revisions is May 1 of the contract period unless otherwise specified by the Department. The Department will not accept any budget revision after the contract period has expired.

**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 unless otherwise specified by the Department.
- B. During the contract period, the Department shall advance funds based on an analysis of current cash needs.
- C. The Department shall pay the Contractor a total not to exceed the amount shown on the Budget Display, which is hereby incorporated by reference.

**ARTICLE IV. CLOSEOUT**

The HICAP Financial Closeout Report (CDA 230) shall be submitted annually, to the AAA-Based Team, no later than August 15, or within 30 days following termination prior to the end of the contract period.



**Exhibit B - Budget Detail, Payment Provisions, and Closeout  
 HICAP Budget Display  
 Fiscal Year 2011/12  
 County of San Mateo**

|   | PROGRAM<br>BASELINE                       | ONE-TIME<br>ONLY   | TOTAL          | NET<br>CHANGE |
|---|---|--------------------|----------------|---------------|
| <b>HICAP Program</b>  |   |                    |                |               |
| HICAP Fund  | 57,347                                    | -                  | 57,347         | -             |
| Reimbursements (Ins Fund)   | 114,726                                   | -                  | 114,726        | -             |
| Federal SHIP Funds  | 95,645                                    | -                  | 95,645         | -             |
| <b>TOTAL HICAP Program</b>  | <b>267,718</b>                            | <b>-</b>           | <b>267,718</b> | <b>-</b>      |
| <b>HICAP Administration</b>   |   |                    |                |               |
| HICAP Fund  | 3,086                                     | -                  | 3,086          | -             |
| Reimbursements (Ins Fund)   | 6,179                                     | -                  | 6,179          | -             |
| Federal SHIP Funds  | 9,564                                     | -                  | 9,564          | -             |
| <b>TOTAL Administration</b>   | <b>18,829</b>                             | <b>-</b>           | <b>18,829</b>  | <b>-</b>      |
| <b>Grand Total All Funds</b>  | <b>286,547</b>                            | <b>-</b>           | <b>286,547</b> | <b>-</b>      |
| <b>Funding Summary</b>  |   |                    |                |               |
| HICAP Fund  | 60,433                                    | -                  | 60,433         | -             |
| Reimbursements (Ins Fund)   | 120,905                                   | -                  | 120,905        | -             |
| Federal SHIP Funds  | 105,209                                   | -                  | 105,209        | -             |
| <b>Total Funds</b>  | <b>286,547</b>                            | <b>-</b>           | <b>286,547</b> | <b>-</b>      |
| <b>**Funds for this contract are provided by using the following Centers for Medicare &amp; Medicaid Services grants:</b> |   |                    |                |               |
| CFDA#   | Project Title                             | Award #            | Effective Date |               |
| 93.779  | State Health Insurance Assistance Program | 1N0CMS020196-19-00 | 4/1/2011       |               |
| 93.779  | State Health Insurance Assistance Program | 1N0CMS020196-20-00 | 4/1/2012       |               |

**Special Terms and Conditions - Exhibit D**

**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2011-12**

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

**A. Definitions**

1. The term "Agreement" or "Contract" shall mean the Standard Agreement, (Std. 213), exhibits A,B,C,D, and E, an approved Health Insurance Counseling Advocacy Program (HICAP) Budget, which is hereby incorporated by reference , and amendments, unless otherwise provided in this Article.
2. "State" and "Department," mean the State of California and the California Department of Aging (CDA) interchangeably.
3. "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.
4. "Subcontractor" or "vendor" means the legal entity that receives funds from the Contractor to provide direct services identified in the Agreement. Subcontract and/or vendor Agreement means a subcontract and/or vendor agreement supported by funds from this Agreement
5. "Reimbursable item" also means "allowable cost" and "compensable item."
6. "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.
7. "Program income" means revenue generated by the Contractor or subcontractor from contract-supported activities. Program income is:
  - a. Voluntary contributions received from a participant or responsible party as a result of the service.
  - b. Income from usage or rental fees of real or personal property acquired with grant funds or funds provided under this Agreement.
  - c. Royalties received on patents and copyrights from contract-supported activities.
  - d. Proceeds from the sale of items fabricated under a contract agreement.

**Special Terms and Conditions - Exhibit D**

**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2011-12**

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

**B. Resolution of Language Conflicts**

The terms and conditions of this federal Award and other funding sources have the following order of precedence if there is any conflict in what they require:

1. The State Health Insurance Assistance Program (SHIP) Grant Terms and Conditions;
2. Other applicable Federal statutes and their implementing regulations;
3. Older Californians Act provisions;
4. Standard Agreement (Std. 213), all Exhibits and any amendments thereto;
5. Any other documents incorporated herein by reference;
6. Program memos and other guidance issued by the Department.

**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**

The Contractor shall comply with all federal statutes relating to nondiscrimination. These include those statutes and laws contained in the Contractor Certification Clauses (CCC307) which is hereby incorporated by reference. In addition, Contractor shall comply with the following:

**Special Terms and Conditions - Exhibit D**

**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2011-12**

**ARTICLE II. ASSURANCES (Continued)**

1. 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.

2. 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, sexual orientation, color, or disability. (Title 22 CCR 98323) (Chapter 182, Stats. 2006)

3. 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.).
4. Contractor agrees to include these requirements 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 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,

**Special Terms and Conditions - Exhibit D**  
**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2011-12**

ARTICLE II. ASSURANCES (Continued)

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).
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).

**Special Terms and Conditions - Exhibit D**  
**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2011-12**

ARTICLE II. ASSURANCES (Continued)

5. Public Contract Code Section 10295.3

J. Debarment, Suspension, and Other Responsibility Matters

1. The Contractor certifies to the best of its knowledge and belief, that it and its subcontractors: [45 CFR 92.35]
  - 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
  - f. 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.

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

**Special Terms and Conditions - Exhibit D**  
**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2011-12**

ARTICLE II. ASSURANCES (Continued)

Contractor shall submit to the Department an authorization by the board of directors to execute this Agreement, referencing this Agreement number.

2. These documents must also identify the action taken.
3. Documentation in the form of a resolution, order, or motion 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 by the Contractor until satisfactory status is restored.

N. Lobbying Certification

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

**Special Terms and Conditions - Exhibit D**  
**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2011-12**

**ARTICLE II. ASSURANCES (Continued)**

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.
4. 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, 1300 National Drive, Suite 200, Sacramento, California 95834.

**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.



**Special Terms and Conditions - Exhibit D**

**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2011-12**

**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.
- 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.

**Special Terms and Conditions - Exhibit D**  
**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2011-12**

**ARTICLE V. SUBCONTRACTS (Continued)**

- 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 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

**Special Terms and Conditions - Exhibit D**  
**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2011-12**

**ARTICLE VI. RECORDS (Continued)**

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.
  - 1. Property includes land, buildings, improvements, machinery, vehicles, furniture, tools, and intangibles, etc.
  - 2. Property does not include consumable office supplies such as paper, pencils, typing ribbons, file folders, etc.
- B. Property meeting all of the following criteria are subject to the capitalization requirements. Such property must:
  - 1. Have a normal useful life of at least 1 year;
  - 2. Have a unit acquisition cost of at least \$5000 (e.g., four identical assets which cost \$3000 each, for a \$12,000 total would not meet this capitalization requirement); and
  - 3. Be used to conduct business under this Agreement.
- C. Noncapitalized property are those items which do not meet all three requirements in this Article, Section B above.

**Special Terms and Conditions - Exhibit D**  
**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2011-12**

ARTICLE VII. PROPERTY (Continued)

- D. Additions, improvements, and betterments to assets meeting all of the conditions in Section B above must be capitalized. Additions typically involve physical extensions of existing units. Improvements and betterments typically do not increase the physical size of the asset. Instead, improvements and betterments enhance the condition of an asset (e.g., extend life, increase service capacity, and lower operating costs). Examples of assets that might be improved and bettered include roads, bridges, curbs and gutters, tunnels, parking lots, streets and sidewalks, drainage, and lighting systems.
- E. Intangibles are property which lack physical substance but give valuable rights to the owner and can be capitalized or noncapitalized. Examples of intangible property include patents, copyrights, leases, and computer software. By contrast, hardware consists of tangible equipment (e.g., computer printer, terminal, etc.).

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

- F. The Contractor shall record the following information when property is acquired:
1. Date acquired;
  2. Property description (include model number);
  3. Property identification number;
  4. Serial number;
  5. Cost or other basis of valuation;
  6. Fund source; and
  7. 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 maintain and submit to the Department annually with the Closeout, a current inventory of property furnished or purchased by either the Contractor or 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, unless otherwise directed by 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

**Special Terms and Conditions - Exhibit D**  
**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2011-12**

ARTICLE VII. PROPERTY (Continued)

approval from the Department regardless of the acquisition value. Disposition, which includes sale, trade-in, discarding, or transfer to another agency may not occur until approval is received from the Department. The Contractor shall use the Request to Dispose of Property (CDA 248) to dispose of property.

- H. The Contractor shall immediately investigate and within five (5) days fully document the loss, destruction, or theft of such property.
- I. The State reserves title to all State-purchased or financed property not fully consumed in the performance of this Agreement, unless otherwise required by federal law or regulations or as otherwise agreed by the parties.
- J. Contractor shall exercise due care in the use, maintenance, protection, and preservation of such property during the period of the project, and shall assume responsibility for replacement or repair of such property during the period of the project, until the Contractor has complied with all written instructions from the Department regarding the final disposition of the property.
- K. In the event of the Contractor's dissolution or upon termination of this Agreement, the Contractor shall provide a final property inventory to the State. The State reserves the right to require the Contractor to transfer such property to another entity, or to the State.
- L. To exercise the above right, no later than 120 days after termination of the Agreement or notification of the Contractor's dissolution the State will issue specific written disposition instructions to the Contractor.
- M. The Contractor shall use the property for the purpose for which it was intended under the Agreement. When no longer needed for that use, the Contractor shall use it, if needed, and with written approval of the State for other purposes in this order:
  - 1. Another Department program providing the same or similar service; or
  - 2. Another Department-funded program.
- 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.

**Special Terms and Conditions - Exhibit D**  
**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2011-12**

**ARTICLE VII. PROPERTY (Continued)**

- 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 AND EVALUATION**

- A. Authorized State representatives shall have the right to monitor and evaluate the Contractor's administrative, fiscal and program performance pursuant to this Agreement. Said monitoring and evaluation may include, but is not limited to, administrative processes, policies and procurement, 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 and evaluation processes, which include making any Administrative program and fiscal staff available during any scheduled process.
- C. Contractor shall monitor contracts, subcontracts or grant agreements to ensure compliance with laws, regulations, and the provisions of contracts or grant agreements that may have a direct and material effect on each of its major programs.
- D. Contractor is responsible for maintaining supporting documentation including financial and statistical records, contracts, subcontracts, or grant agreements monitoring reports, and all other pertinent records until an audit has occurred and an audit resolution has been issued or unless otherwise authorized in writing by the Department.

**ARTICLE X. AUDITS**

- A. The Contractor will arrange for an audit to be performed in accordance with requirements of the Single Audit Act of 1984, Public Law 98-502; the Single Audit Act Amendments of 1996, Public Law 104-156; and Office of Management and Budget (OMB) Circular A-133. A copy shall be submitted to the:

**Special Terms and Conditions - Exhibit D**  
**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2011-12**

ARTICLE X. AUDITS (Continued)

California Department of Aging  
Attn: Audit Branch  
1300 National Drive, Suite 200  
Sacramento, California 95834

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 audit period, unless a longer period is agreed to in advance by the cognizant or oversight agency.

For purposes of reporting in the Schedule of Expenditures of Federal Awards in the audit, the federal grantor is U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services. The Catalog of Federal Domestic Assistance Number is 93.779. The pass-through grantor is CDA.

Contractor will ensure that State-Funded expenditures shall be separated out and specifically displayed 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 number 93.779.

- B. 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.
- C. The Contractor shall have the responsibility of resolving its contracts with subcontractors to determine whether funds provided under this Agreement are expended in accordance with applicable laws, regulations, and provisions of contracts or agreements.

Contract resolution includes:

1. Ensuring that subcontractors expending \$500,000 or more in Federal Awards during the subcontractor's fiscal year have met the audit requirements of OMB Circular A-133 as summarized in D;
2. Issuing a management decision on audit findings within six months after receipt of the subcontractor's single audit report and ensuring that the subcontractor takes appropriate and timely corrective action;
3. Reconciling expenditures reported to CDA to the amounts identified in the single audit or other type of audit if the subcontractor is not subject to the single audit requirements. For a subcontractor that is not required to have a single audit and did not obtain another type of audit, the reconciliation of expenditures reported to CDA must be accomplished through performing alternative procedures (e.g., expense verification reviews/monitoring assessments);

**Special Terms and Conditions - Exhibit D**  
**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2011-12**

**ARTICLE X. AUDITS (Continued)**

4. When alternative procedures are used, the Contractor shall perform financial management system testing per existing federal requirements (45 CFR, Subpart C, Part 92.20 and 45 CFR, Part 74.21) which state in part that financial reporting must be accurate, current, and complete; and, accounting records must adequately identify the source and application of funds and must be supported by source documentation. The Contractor shall document system and expense testing to show an acceptable level of reliability, including a review of actual source documents; and
  5. Determining whether the results of the reconciliations performed necessitate adjustment of the Contractor's own records.
- D. The Contractor shall ensure that subcontractor 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. Properly 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 Generally 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 program; 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.
- E. Requirements identified in D shall be included in contracts/agreements with the subcontractors. Further, subcontractors shall be required to include in its contract with the independent auditor that the auditor will comply with all applicable audit requirements, the Department shall have access to all audit reports and supporting work papers, and the Department has the option to perform additional work, as needed.



**Special Terms and Conditions - Exhibit D**

**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2011-12**

**ARTICLE X. AUDITS (Continued)**

- F. The Contractor shall prepare a summary worksheet of results from the contract resolutions performed of 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, issuance date of the management letter; and any communication or follow-up performed to resolve the findings.
- G. 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.
- H. 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. 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). However, this does not prohibit the Contractor from charging Federal Awards for the cost of conducting a limited-scope audit to monitor its subcontractor to address compliance requirements provided the subcontractor is not required to obtain a single audit. These costs must be charged as an Administration expense.
- I. The Contractor shall cooperate with and participate in any further audits which may be required by the State.

**ARTICLE XI. INSURANCE**

- A. Prior to commencement of any work under this Agreement, the Contractor shall provide for the term of this Agreement, the following insurance:
  - 1. 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.
  - 2. 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.
  - 3. If applicable, contractors and subcontractors shall comply with the Public

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**ARTICLE XI. INSURANCE (Continued)**

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.

4. Professional liability of not less than \$1,000,000 as it appropriately relates to the services rendered. Coverage shall include medical malpractice and/or errors and omissions.
- B. The insurance will be obtained from an insurance company acceptable to the Department of General Services, Office of Risk and Insurance Management, or be provided through partial or total self-insurance acceptable to the Department of General Services.
- 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

**Special Terms and Conditions - Exhibit D**

**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2011-12**

**ARTICLE XI. INSURANCE (Continued)**

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 excluding professional liability shall also name the Contractor, not the State, as the certificate holder and additional insured. The Contractor shall maintain certificates of insurance for all its subcontractors.
- F. A copy of each appropriate Certificate of Insurance 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).

**ARTICLE XII. TERMINATION**

**A. Termination Without Cause**

The Department may terminate performance of work under this Agreement without cause in whole or in part, if the Department determines that a termination is in the State's best interest. The Department may terminate the Agreement upon 90 days written notice to the Contractor. The Notice of Termination shall specify the extent of the termination and shall be effective 90 days from the delivery of the notice. The parties agree that if the termination of the contract is due to a reduction or deletion of funding by the Department of Finance, Legislature or Congress, the Notice of Termination shall be effective 30 days from the delivery of the notice. The parties agree that for the terminated portion of the Agreement, the remainder of Agreement shall be deemed to remain in effect and is not void. Upon termination of the Agreement, the Contractor shall submit to the Department a Transition Plan as specified in Exhibit E.

**B. Termination for Cause**

The Department may terminate for cause the performance of work under this Agreement. The Department may terminate the Agreement upon 30 days written

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**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2011-12**

**ARTICLE XII. TERMINATION (Continued)**

notice to the Contractor. The Notice of Termination shall be effective 30 days from the delivery of the Notice of Termination unless the ground for termination is due to threat to life, health or safety of the public and in that case the termination shall take effect immediately. The grounds for termination for cause shall include but not limited to the following:

1. In case of threat of life, health or safety of the public. (Termination of Agreement shall be effective immediately.)
2. A violation of the law or failure to comply with any condition of this Agreement.
3. Inadequate performance or failure to make progress so as to endanger performance of this Agreement.
4. Failure to comply with reporting requirements.
5. 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.
6. Delinquency in payment of taxes or payment of costs for performance of this Agreement in the ordinary course of business.
7. 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.
8. Service of any writ of attachment, levy of execution, or commencement of garnishment proceedings against the Contractor's assets or income.
9. The commission of an act of bankruptcy.
10. Finding of debarment or suspension, Article II J.
11. The Contractor's organizational structure has materially changed.
12. The Department determines that a Contractor may be considered a "high risk" agency as described in 45 CFR 92.12 local government 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.

**C. Contractor's Obligation After Notice of Termination**

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**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2011-12**

**ARTICLE XII. TERMINATION (Continued)**

After receipt of a Notice of Termination, and except as directed by the Department, 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).

**D. Effective Date**

Termination of this Agreement, shall take effect immediately in the case of an emergency such as threat to life, health, or safety of the public. In all other cases, the termination shall take effect 30 days subsequent to written notice to the Contractor. The notice shall describe the action being taken by the Department, 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 Department and the procedure for doing so.

**E. Notice of Intent to Terminate by Contractor**

Contractor may give the Department 30 days written Notice of Intent to Terminate. In such instance, Contractor shall allow the Department up to 180 days to transition services. Unless mutually agreed upon, the Contractor does not have the authority to terminate the Agreement. The notice of intent to terminate shall include the reason for such action and the anticipated last day of work. Upon receipt of such notice, the Department will work with the Contractor to terminate the Agreement.

- F.** 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.

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Health Insurance Counseling and Advocacy Program (HICAP) - FY 2011-12**

**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.
- 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, 1300 National Drive, Suite 200, Sacramento, California 95834. 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.

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**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2011-12**

ARTICLE XVII. DEPARTMENT CONTACT (Continued)

- 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. Information Integrity and Security

A. Information Assets

The Contractor shall have in place operational policies, procedures, and practices to protect State information assets, i.e., public, confidential, sensitive and/or personal information as specified in State Administrative Manual, Section 4841.2., GC Section 11019, Department of Finance (DOF) Management Memo 06-12, and (DOF) Budget Letter 06-34)

Information assets include (but are not limited to):

- Information collected and/or accessed in the administration of the State programs and services.
- Information stored in any media form, paper or electronic.

B. Encryption on Portable Computing Devices

The Contractor is required to encrypt (or use an equally effective measure), any data collected under this Agreement that is confidential, sensitive, and/or personal including data stored on portable computing devices (including but not limited to, laptops, personal digital assistants, and notebook computers) and/or portable electronic storage media (including but not limited to, discs and thumb/flash drives, portable hard drives).

C. Disclosure

1. The Contractor shall ensure that personal, sensitive and confidential information is protected from inappropriate or unauthorized access or disclosure in accordance with applicable laws, regulations and State policies. The requirement to protect information shall remain in force until superseded by laws, regulations or policies.
2. The Contractor shall protect from unauthorized disclosure names and other identifying information, concerning persons receiving services pursuant to this Agreement, except for statistical information not identifying any participant.

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**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2011-12**

ARTICLE XVIII. Information Integrity and Security (Continued)

3. "Identifying information" shall include, but not be limited to, name, identifying number, social security number, state driver's license or state identification number, financial account numbers, symbol or other identifying characteristic assigned to the individual, such as finger or voice print or a photograph.
4. The Contractor shall not use such identifying information for any purpose other than carrying out the Contractor's obligations under this Agreement.
5. The Contractor shall not, except as otherwise specifically authorized or required by this Agreement or court order, disclose any identifying information obtained under the terms of this Agreement to anyone other than CDA without prior written authorization from CDA. The Contractor may be authorized, in writing, by a participant to disclose identifying information specific to the authorizing participant.
6. The Contractor may allow a participant to authorize the release of information to specific entities, but shall not request or encourage any participant to give a blanket authorization or sign a blank release, nor shall the Contractor accept such blanket authorization from any participant.

D. Training/Education

1. The Contractor must provide ongoing education and training, at least annually, to all employees and subcontractors who handle personal, sensitive or confidential information. Contractor employees, subcontractors, and volunteers must complete the required Security Awareness Training module located at [www.aging.ca.gov](http://www.aging.ca.gov) within 30 days of the start date of the Contract/Agreement or within 30 days of the start date of any new employee, subcontractor or volunteer. The Contractor must maintain certificates of completion on file and provide them to CDA upon request. Training may be provided on an individual basis or in groups. A sign-in sheet is acceptable documentation for group training in lieu of individual certificates. If internet access is not available, a hardcopy of the training module may be provided to employees and/or volunteers for their completion.
2. Contractor may substitute CDA's Security Awareness Training program with its own Security Training provided such training meets or exceeds CDA's training requirement. Contractors/Vendors shall maintain documentation of training and education provided to their staff, volunteers, and/or subcontractors.



**Special Terms and Conditions - Exhibit D**  
**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2011-12**

ARTICLE XVIII. Information Integrity and Security (Continued)

3. All employees and volunteers who handle personal, sensitive or confidential information relating to CDA's programs must participate in Security Awareness Training.

E. Health Insurance Portability and Accountability Act (HIPAA)

The Contractor agrees to comply with the privacy and security requirements of the 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.

F. Contractor Confidentiality Statement

The Contractor shall sign and return a Contractor/Vendor Confidentiality Statement CDA 1024 form with this Agreement. This is to ensure that Contractor/Vendors are aware of, and agree to comply with, their obligations to protect CDA information assets from unauthorized access and disclosure.

G. Security Incident Reporting

A security incident occurs when CDA information assets are accessed, modified, destroyed, or disclosed without proper authorization, or are lost, or stolen. The Contractor must report all security incidents to the appropriate CDA Program Manager immediately upon detection. A Security Incident Report form (CDA 1025) must be submitted to the CDA Information Security Officer within five (5) business days of the date the incident was detected.

H. Notification of Security Breach to Data Subjects

1. Notice must be given by the contractor or subcontractor to any data subject whose personal information could have been breached.
2. 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.
3. Notice may be provided in writing, electronically, or by substitute notice in accordance with State law, regulation, or policy.

I. Software Maintenance

The Contractor shall apply security patches and upgrades and keep virus software up-to-date on all systems on which State data may be used.

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**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2011-12**

**ARTICLE XVIII. Information Integrity and Security (Continued)**

**J. Provisions of this Article**

The provisions contained in this Article shall be included in all contracts of both the contractor and its subcontractors.

**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 (2) and (3) 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 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.

**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. Consent shall be given or the reasons for denial shall be given and any conditions under which it is given or denied within 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

**Special Terms and Conditions - Exhibit D**  
**Health Insurance Counseling and Advocacy Program (HICAP) - FY 2011-12**

**ARTICLE XIX. COPYRIGHTS AND RIGHTS IN DATA (Continued)**

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) - FY 11-12**

#### **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. Staffing shall be adequate to cover all contract requirements and timelines of the Program. The Program Manager shall manage the program at least 32 hours per week. The equivalent of at least one half-time paid Volunteer Coordinator shall assist the Program Manager in coordinating the activities of volunteers.
  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, regulation, and Section 106 of the HICAP Program Manual.
  6. Confidential Records. All records containing confidential client information shall be handled in a confidential manner, in accordance with the requirements for monitoring, audits and confidentiality, 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

## **Additional Provisions—Exhibit E**

### **Health Insurance Counseling and Advocacy Program (HICAP) - FY 11-12**

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

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.

- B. The Contractor shall assure, either as a direct or contracted HICAP, compliance with the State Conflict of Interest Requirements as follows:
  - 1. 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.
  - 2. 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.
  - 3. 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, either as a direct or contracted HICAP, have written reporting procedures specific to the HICAP program which include:
  - 1. Collection and reporting of program data for the Contractor;

**Additional Provisions—Exhibit E  
Health Insurance Counseling and Advocacy Program (HICAP) - FY 11-12**

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

2. Ensuring accuracy of data from the Contractor and subcontractor intake/assessment process;
  3. Verification of Contractor and subcontractor data prior to use by CDA for the federal National Performance Report (NPR).
- B. The Contractor shall ensure, either as a direct or contracted HICAP, program performance data is entered into the State HICAP Automated Reporting Program (SHARP) in accordance with Department requirements [(W & I Code, Section 9541(c)(8)]. Data entered must be timely, complete, accurate, and verifiable.
1. Contractor shall review and approve program performance data entered into the State HICAP Automated Reporting Program (SHARP).
  2. The Contractor, either as a direct or contracted HICAP, shall review and approve program performance data in the following manner:
    - a. By the 15<sup>th</sup> day of the month in which the quarterly report is due, Contractor will certify by email that they have reviewed and approved the data for their AAA on October 15, January 15, April 15 and July 15. Emails must be sent to:  
[Datateam.reports@aging.ca.gov](mailto:Datateam.reports@aging.ca.gov)
    - b. If the Contractor fails to send an email to the CDA HICAP Team verifying they have reviewed and approved program data by the due date, CDA must assume the AAA has reviewed and approved the data and will use the AAA data for submission to the federal National Performance Report (NPR).
- C. Contractor, either as a direct or contracted HICAP, shall train and orient staff and subcontractor's staff regarding program data collection and reporting requirements. The Contractor shall have MIS cross-trained staff in the event of planned or unplanned prolonged absences to ensure timely and accurate submission of data. [45 CFR 1321.55(b)]

**ARTICLE III. CONTINUITY OF SERVICE AND TRANSITION PLAN**

**A. Continuity of Service**

In the event of a change in HICAP subcontractors, the Contractor shall assure that a subsequent HICAP subcontractor is available to complete any open cases or transactions during the transition period. This shall include Medicare appeals and timelines with CMS or hearing officers.

**Additional Provisions—Exhibit E**

**Health Insurance Counseling and Advocacy Program (HICAP) - FY 11-12**

**ARTICLE III. CONTINUITY OF SERVICE AND TRANSITION PLAN (Continued)**

**B. Transition Plan**

In the event there is a change in the HICAP service provider, either as a result of a routine procurement process or a termination by the service provider, the Contractor shall submit a transition plan to the Department within 20 days of a written Notice of Termination to the outgoing service provider or within 20 days of a written Notice of Termination from the outgoing service provider. The transition plan must be approved by the Department and shall at a minimum include the following:

1. A description of how open or active counseling and legal cases (if applicable) shall be transitioned from the out-going service provider to the incoming service provider.
2. A description of how names, addresses, and telephone numbers of current clients will be handled and transferred to the new subcontractor.
3. A description of how clients will be notified about the change in their HICAP service provider.
4. Description of how the new subcontractor will communicate with other HICAP sites, local agencies and advocacy organizations that can assist in locating alternative services.
5. A description of how the new subcontractor will inform community referral sources of the pending termination of this HICAP contract and the transition to the in-coming HICAP service provider.
6. A description of how to transfer sensitive and confidential records to a new subcontractor.
7. A description of adequate staff to provide continued service through the term of the existing subcontract.
8. A full inventory and a plan to dispose of, transfer, or return to the Department all equipment purchased during the entire operation of the Contract.
9. Additional information as necessary to effect a safe transition of clients from the outgoing service provider to the new service provider.

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