



Edmund G. Brown Jr., Governor  
State of California  
Health and Human Services Agency

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August 5, 2016

**REQUEST FOR PROPOSALS (RFP) - SECONDARY  
CAL MEDICONNECT OMBUDSMAN SERVICES  
RFP No. 16MC-SA007**

You are invited to review and respond to this Request for Proposals (RFP) entitled "Cal MediConnect Ombudsman Program." Potential Proposers are encouraged to download the solicitation package as well as any future addendums from Cal eProcure at: <https://caleprocure.ca.gov>. In submitting a proposal, Proposers must comply with the instructions found herein. **The deadline for submitting proposals is 4:00 p.m. Pacific Standard Time (PST) September 2, 2016.**

The Department of Managed Health Care is soliciting proposals from qualified entities to provide services to California's dual eligible beneficiaries\* of the Cal MediConnect demonstration project, for a contract term of up to one (1) year and three (3) months, to provide services related to the Cal MediConnect program, including consumer assistance, education, training, and outreach. It is anticipated that the contract will begin on **October 1, 2016** and end on **December 31, 2017**.

The Small Business Preference and other preference programs apply to this solicitation. The Disabled Veteran Business Enterprise (DVBE) participation requirement has been waived; however, the DVBE Incentive Program will apply for this solicitation.

Note that all Agreements entered into with the State of California will include by reference General Terms and Conditions and Contractor Certification Clauses that may be viewed and downloaded at Internet site: [www.dgs.ca.gov/ols/Resources/StandardContractLanguage.aspx](http://www.dgs.ca.gov/ols/Resources/StandardContractLanguage.aspx). If you do not have Internet access, a hard copy can be provided by contacting the person listed below.

If you have questions, or need clarifying information, the contact person for this RFP is:

Christopher Rendall  
DMHC Contract Analyst  
[Christopher.Rendall@dmhc.ca.gov](mailto:Christopher.Rendall@dmhc.ca.gov)  
(916) 324-1618

Please note that **no verbal** information given will be binding upon the State unless such information is issued in writing as an official addendum.

\* Eligible for Medicare and Medi-Cal ("dual eligible").

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## A. PURPOSE AND DESCRIPTION OF SERVICES

A detailed description of the services to be provided is included in Section E, Scope of Work.

The Department of Managed Health Care (DMHC) is seeking proposals from private non-profit consumer advocacy organizations to provide assistance with the Cal MediConnect program. In collaboration with the Centers for Medicare and Medicaid Services (CMS), California has implemented a demonstration Ombudsman program under the Financial Alignment Initiative model. The demonstration, now known as Cal MediConnect, partners California's Medi-Cal program with the federal Medicare program promoting an integration of services and coordinated health care delivery to seniors and people with disabilities who are dually eligible for both programs. Cal MediConnect aims to create a seamless service delivery experience for dual eligible beneficiaries, with the ultimate goals of improved care quality, better health, and a more efficient delivery system.

Cal MediConnect is part of California's Coordinated Care Initiative (CCI). Building on many years of stakeholder discussions, the CCI was enacted in July 2012 through Senate Bill (SB) 1008 (Chapter 33, Statutes of 2012) and SB 1036 (Chapter 45, Statutes of 2012). Further updates and clarifications to this initiative were enacted in June 2013 through SB 94 (Chapter 37, Statutes of 2013). The Cal MediConnect demonstration program has been extended from September 2016 through December 31, 2017.

The DMHC in partnership with the California Department of Health Care Services (DHCS), implemented the initial Cal MediConnect Ombudsman Service Providers (OSPs) program from April 1, 2014 through August 31, 2016. The program assists Cal MediConnect managed care enrollees and dual eligible Medicare and Medi-Cal beneficiaries in 7 California counties. The initial proposal provided consumer assistance in 8 counties, although one county, Alameda, was discontinued. The Cal MediConnect OSPs assist Cal MediConnect managed care beneficiaries by resolving issues with the Cal MediConnect managed care plans in which they are enrolled, offering individual advocacy services and conducting impartial investigations of member complaints. The OSPs conduct independent, systematic analysis of complaints related to Cal MediConnect plans, and work with the DMHC and the DHCS to ensure Cal MediConnect health plans comply with the principles of community integration, independent living and person-centered care. The OSPs empower beneficiaries with appropriate information and resources, provide assistance with filing complaints and seeking resolutions, conduct systems analysis, identify trends and emerging issues, and develop recommendations to the DMHC and the DHCS for program improvements.

Organizations that meet the minimum qualifications are invited to submit a proposal either independently or in collaboration with other community-based organizations to serve as Cal MediConnect OSPs. The DMHC intends to award one Agreement encompassing all seven (7) counties in which the Cal MediConnect will operate. An award, if made, will be to the highest scoring proposal.

The DMHC intends to award one (1) Agreement, to one (1) Proposer, but shall not guarantee any specific volume of work once the award is made. The total amount awarded under this RFP is **\$1,200,000**. The actual amount awarded will be based upon the actual grant funds awarded to the DMHC by CMS for this project. For each proposal submitted, the total cost of all deliverables and tasks cannot exceed the total RFP award.

The DMHC reserves the right to amend this Agreement for up to an additional year and/or to increase funding. Should the DMHC amend this Agreement to extend the term, the proposed rates or prices shall remain the same. All terms and conditions shall remain the same, unless changes are mutually agreed upon by the Contractor and the DMHC and incorporated into the amendment. All Agreement amendments are subject to satisfactory performance and funding availability.

Agreement amendments will not take effect until the Contractor has received a copy of the final documents signed by both parties and executed by the Department of General Services.

## 1. Regional Information

The total Cal MediConnect active enrollee population as of March 1, 2016 is 123,560. The following outlines this population by group/region and award amount.

### Region 1

Maximum award for this group: \$209,679.

The Cal MediConnect active enrollee population is 21,590.

- **San Mateo County** – Cal MediConnect active enrollment of 9,503 people.
- **Santa Clara County** – Cal MediConnect active enrollment of 12,087 people.

### Region 2

Maximum award for this group: \$405,743.

The Cal MediConnect active enrollee population is 41,778.

- **Los Angeles County** – Cal MediConnect active enrollment of 41,778 people.

### Region 3

Maximum award for this group: \$170,609.

The Cal MediConnect active enrollee population is 17,567.

- **Orange County** - Cal MediConnect active enrollment of 17,567 people.

### Region 4

Maximum award for this group: \$151,457.

The Cal MediConnect active enrollee population is 15,595.

- **San Diego County** - Cal MediConnect active enrollment of 15,595 people.

### Region 5

Maximum award for this group: \$262,512.

The Cal MediConnect active enrollee population is 27,030.

- **Riverside County** - Cal MediConnect active enrollment of 13,671 people.
- **San Bernardino County** - Cal MediConnect active enrollment of 13,359 people.

**Coalition:** If a coalition is proposed, one organization must be designated as the lead organization and the others should be listed as subcontractors. The lead organization may be awarded funds that exceed their region's maximum award, thereby reducing the amount awarded to each of the other regions. These funds will be used to cohesively report on Cal MediConnect issues and concerns. The lead organization should identify in the RFP how it will promote coordination among all regions to establish a single, cohesive Cal MediConnect OSP program.

## B. ADMINISTRATIVE REQUIREMENTS

The successful Proposer who is awarded an Agreement must fulfill the following Administrative Requirements, prior to commencing work, and is responsible for any fees or expenses, including time, for completing these items:

1. **Background Investigation** - Due to the nature of the services to be performed, the DMHC requires a thorough background investigation of the Contractor, its agents, subcontractors and individual employees who will have access to medical information as part of their duties under this Agreement; and reserves the right to disapprove any individual from performing under the scope of this Agreement. This background investigation includes fingerprinting and a California Department of Justice criminal record check. Each Contractor, agent, subcontractor and individual employee who is to perform services under this Agreement must voluntarily consent to a background investigation. Fingerprint rolling fees and background investigation costs will be borne by the Contractor, payable at time of fingerprinting. Previous clearances and/or investigations conducted by other agencies will not be accepted as an alternative to the DMHC's background investigation. It is the Contractor's responsibility to notify the DMHC when an employee working under this Agreement is terminated, not hired or reassigned to other work.

Per Government Code Section 1041, pre-employment background investigations shall be required of contract employees whose duties include or would include access to medical information. The pre-employment background investigation will consist of fingerprinting and an inquiry to the Department of Justice (DOJ) and the Federal Bureau of Investigations (FBI) to disclose Criminal Offender Record Information (CORI). Investigations are conducted to ascertain whether a contract employee has any state or federal convictions, or is currently released from custody on bail or on their own recognizance pending trial, of a crime of "moral turpitude".

2. **Information Security, Integrity and Confidentiality Statement** - Complete Attachment I for Contractor Authorized Representative and Attachment II for project employees, agents or subcontractors, which certify that the Contractor and the Contractor's staff understand and agree to comply with the DMHC's Information Security and Confidentiality Statement.
3. **Annual Information Security Awareness and Privacy Training** - California state policy requires that the DMHC must provide for the proper use and protection of its information assets and arrange for basic security and privacy awareness training (SAM Sections 5305.1; 5320.1; 5320.2, SIMM 5330-B) for **new users, and annually** thereafter. Therefore, DMHC Contractors (including subcontractors) who access state resources must complete the designated DMHC online annual Information Security Awareness and Privacy Training prior to accessing DMHC information assets and/or beginning work on a contract. The DMHC Information Security Officer will set up your training account. While the training course is free-of-charge, any expenses, including Contractor and/or subcontractor time, related to new and/or annual Information Security Awareness and Privacy Training will be the responsibility of the Contractor. Active Contractors/subcontractors must provide a list of their employees' names and email addresses annually to the DMHC Information Security Officer to administer this online annual Information Security Awareness and Privacy Training.

### C. MINIMUM QUALIFICATIONS

The Proposer must complete Attachment 3, Minimum Qualifications Certification, certifying that all minimum qualifications are satisfied. Failure to certify will result in the immediate rejection of the proposal.

The Proposer must have the capacity to successfully work with the DMHC to provide Ombudsman services to Cal MediConnect dual eligibles in their geographic/regional areas. The Proposer must meet all of the following minimum qualifications:

1. The Proposer must provide documented history of having been in business in the targeted local geographic area for a minimum of five (5) years.
2. The Proposer must demonstrate a minimum of three (3) years experience in effectively providing direct consumer assistance services and resolving consumer issues of Medicare and Medi-Cal beneficiaries.
3. The Proposer must be a non-profit organization and provide documentation of the non-profit, corporate status of the organization, i.e., incorporated as a 501(c)(3) organization.

### D. BACKGROUND

The DHCS is the single state agency responsible for the Medi-Cal program and is the Cal MediConnect sponsor. The DHCS coordinates and directs the delivery of important health, mental health, and long term care services to approximately 8.3 million individuals, including low-income families and children, seniors and persons with disabilities, children in foster care, pregnant women, and individuals with certain diseases and conditions. More information about the authority and services of the DHCS can be found at [www.dhcs.ca.gov](http://www.dhcs.ca.gov) and [www.calduals.org](http://www.calduals.org).

The DMHC regulates managed health care plans in California and protects the rights of approximately 25 million health plan enrollees. The DMHC has 12 years of experience advocating on behalf of consumers and has assisted more than one million Californians to resolve problems with their health plans or coverage. The DMHC currently has an established, locally-based consumer assistance network providing service to health plan enrollees. More information about the authority and services of the DMHC can be found at [www.dmhc.ca.gov](http://www.dmhc.ca.gov).

The DMHC and the DHCS operate programs to help beneficiaries with health care issues and problems, and ensure that health plans and insurers licensed or contracted under their respective authorities are accountable for providing timely access to necessary health care services and appropriately addressing enrollee appeals and grievances.

The California Department of Aging operates a Long Term Care Ombudsman office created to advocate for the rights of all residents of long term care facilities. Additionally, the Department of Aging directs the Health Insurance Counseling and Advocacy Program and provides free, impartial, and individualized counseling assistance to seniors with Medicare. More information about the authority and services of the Department of Aging can be found at [www.aging.ca.gov](http://www.aging.ca.gov).

## E. SCOPE OF WORK

The Contractor agrees to provide the DMHC services as described herein.

The Contractor shall promptly notify the DMHC Contract Manager of events or proposed changes that could affect the scope, budget or schedule of work performed under this Agreement.

### 1. Overview of Goals and Objectives

The Contractor shall provide services free of charge to dual eligibles and Cal MediConnect managed care enrollees, consistent with program requirements outlined in the Support for Demonstration Ombudsman Programs Serving Beneficiaries of Financial Alignment Models for Medicare - Medicaid Enrollees Funding Opportunity number CMS-1J1-13-001 (CFDA #93.634) issued by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, Medicare-Medicaid Coordination Office, Center for Medicare & Medicaid Innovation. Refer to Appendix 1 for the Ombudsman Program Funding Opportunity.

The Cal MediConnect OSP program assists Cal MediConnect managed care enrollees by resolving issues with the Cal MediConnect managed care plans in which they are enrolled, offering individual advocacy services and conducting impartial investigations of member complaints. The program conducts independent, systematic analysis of complaints related to Cal MediConnect plans, and works with the DMHC and the DHCS to ensure they will comply with the principles of community integration, independent living and person-centered care. The OSPs empower enrollees with appropriate information and resources, provide assistance with filing complaints and seeking resolutions, conduct systems analysis and develop recommendations to the DMHC and the DHCS for program improvements.

The Contractor will:

- a. Provide free individual assistance to enrollees at no cost to the enrollees.
- b. Develop procedures to protect the privacy of personal health and other identifying information.
- c. Be accessible to enrollees by phone, web, email and in-person, when necessary.
- d. Provide culturally and linguistically competent services in compliance with the Americans with Disabilities Act (ADA).
- e. Provide services without regard to a beneficiary's household income level.
- f. Be free of conflicts of interest.
- g. Maintain confidentiality.
- h. Provide a safe place where enrollees may register complaints against their health plans or service providers without fear of retaliation, know that their personal information is secure and can expect to be treated fairly and with dignity.
- i. Navigate the complaint and appeal process and negotiate on behalf of the enrollee as needed with entities to resolve issues.
- j. Coordinate its services with other entities, including consumer-friendly and efficient referral protocols.

- k. Provide outreach to enrollees and the community regarding the availability of Cal MediConnect Ombudsman services.
- l. Provide direct one-on-one education to individual enrollees, their caregivers, and authorized representatives with regard to Medicare and/or Medi-Cal Benefits.
- m. Provide one-on-one assistance regarding complaint filing, investigation and resolution as follows:
  - I. Provide information about and assist enrollees with filing complaints and appeals with the internal appeal or grievance process of a Cal MediConnect health plan;
  - II. Provide information about and assist enrollees with filing complaints and appeals with the external appeal or grievance process of a Cal MediConnect health plan, including assistance with filing external appeals or grievances with the applicable external review entity or regulator; and
  - III. Investigate, file and resolve complaints relating to enrollee rights with regard to Cal MediConnect health plans with the interests of the enrollee at the forefront and represented during all resulting actions.
- n. Provide to the DMHC an analysis of complaint trends and information regarding systemic barriers that impact the successful implementation of Cal MediConnect program.
- o. Collect data and report it to the DHCS, the DMHC, CMS, and other policymakers.
- p. Coordinate with stakeholders and other agencies involved in Cal MediConnect benefits so that enrollees receive excellent service.
- q. Provide services to Cal MediConnect enrollees with special needs, including, but not limited to: limited-English proficiency, requiring culturally competent services, with low household income, seniors and consumers with disabilities, and with multiple health conditions, including behavioral health conditions.
- r. Collaborate with subcontractors who are awarded funding under this program to collect and report data to the DMHC as specified in Task 6 below.

## 2. Tasks

### Task 1 - Empowering Individuals

The Contractor must provide education and direct assistance to dual eligibles and Cal MediConnect enrollees, family members and authorized representatives, with regards to Medi-Cal, Medicare, Long Term Services and Supports, and Cal Medi-Connect health coverage in-person, via telephone, and/or via a website or other electronic modes. The Contractor will respond to contacts from dual eligible, family members, or their representatives; provide assistance to resolve coverage problems; and provide informational materials. For Organizations that have existing target groups, the Contractor will integrate the activities of the Cal MediConnect Ombudsman Services into the other activities of the organization. The Contractor must provide services in all “threshold languages” identified under the Medi-Cal program. “Threshold Language” means a language that has been identified as the primary language of 3,000 beneficiaries or five (5) percent of the beneficiary population, whichever is lower, in an identified geographic area. Upon award of this contract, the Contractor must have a toll free phone number that is capable of transferring callers to local OSPs. The Contractor must accept phone calls and provide in-person assistance for beneficiaries, family members and their representatives needing assistance between the hours of 9:00 a.m. to 5:00 p.m.

Pacific Standard Time (PST) Monday through Friday (business hours) and have a method for returning phone calls within 24 hours during business-hours. After hour phone calls will be overflowed to a voicemail system.

### **Task 2 - Referrals**

The Contractor must develop consumer-friendly and efficient referral procedures to refer enrollees to the DMHC, Health Insurance Counseling and Assistance Programs (HICAPs), State Protection and Advocacy Programs, Aging and Disability Resource Centers (ADRCs), Consumer Assistance Programs, Legal Services Programs and other public programs and relevant licensing and regulatory agencies, as appropriate.

### **Task 3 - Education and Outreach**

The Contractor must develop a work plan for educating dual eligibles and their family members or representatives, employers, other advocates, local health care providers, and the public in general on the organization's Cal MediConnect Ombudsman services. The work plan must also demonstrate how the Contractor will use its target group and local area expertise in designing and implementing the work plan. The Contractor will work with the DMHC, the DHCS, and Department of Aging to learn about the outreach materials available from each organization and will distribute those materials at local outreach events. Organizations may utilize their own outreach materials for topics not covered in the DMHC, the DHCS or Department of Aging materials.

### **Task 4 - Materials and Training Development**

The Contractor must develop and update training materials that encompass all facets of managed care, Medicare, Medi-Cal, Long Term Services and Support and competency in service to seniors and people with disabilities. The DHCS in conjunction with the DMHC will provide OSPs initial training.

The Contractor shall:

1. Utilize training, outreach and education materials if provided by the DMHC, the DHCS and the Department of Aging.
2. Participate in training and informational conference calls provided by CMS, the oversight agency under the Federal Support for Demonstration Ombudsman Program grant.
3. Ensure that all information intended for dual eligibles, caregivers and their representatives uses "Plain Language" best practices and is provided in formats that are accessible to persons with disabilities.
4. Ensure that all electronic and written information, including web-based information and training materials, is consistent with applicable federal and state laws and regulations.
5. Upon request by the DMHC, the DHCS or CMS' technical assistance provider, modify electronic and written information and training materials to ensure consistency with applicable federal and state laws and regulations regarding Cal MediConnect, the Coordinated Care Initiative, the Affordable Care Act, health privacy, grievance and appeals processes, and patient rights.

### **Task 5 - Filing Complaints with a Cal MediConnect Health Plan**

The Contractor must provide each Ombudsman with a computer and internet capabilities. Ombudsman will be required to access CMS' secured website portal (CTM) to file a beneficiary complaint to the Cal MediConnect health plans. The Cal MediConnect health plans will respond to the beneficiary's complaint on the CTM system.

**Task 6 - Data Collection and Reporting to the DMHC**

The Contractor will provide the following information:

1. Number of inquiries and complaints made by enrollees, enrollee representatives, and others.
2. Plan Name and County associated with the enrollee.
3. Number of referrals made to other entities and referral entity name.
4. Means of contact that the Ombudsman made with the enrollee or representative (telephone, e-mail, website, face-to-face, written correspondence).
5. Identification of issue(s) prompting contact.
6. Type of service provided (e.g., information and assistance/consultation, complaint investigation/resolution).
7. For complaint investigation/resolution services:
  - i. Initial response time;
  - ii. Time spent resolving the complaint(s);
  - iii. Resolution result rates (i.e. problem resolved to the satisfaction of the enrollee).
8. Outcome of assistance provided.
9. Number of CCI Cal MediConnect phone inquiries received by each organization.
10. Total number of outreach events in which the organization participated, name and location of events, estimated number of attendees, and list of materials distributed.
11. Evaluation results regarding the outreach events.
12. List of systemic barriers and trends barring the successful enrollment in a Cal MediConnect health plan.
13. Three (3) to five (5) compelling stories, including, but not limited to: success stories highlighting the assistance provided by the OSPs and the outcome of the assistance provided; complex or unique issues encountered by OSPs; and, illustrations of collaborative efforts among a number of entities leading to successful outcomes.

As of the date of release of this RFP, CMS has not finalized the required final reporting format. Once finalized by CMS, the Contractor will be expected to submit information and data to the DMHC in compliance with the final reporting template.

Reports will be submitted to the DMHC in accordance with the following schedule:

| <b>Reporting Period</b>                | <b>Date due to the DMHC</b>                    |
|--|--|
| <b>Monthly Reports</b>                 | Due the 8 <sup>th</sup> of the following month |
| <b>Quarterly Reports:</b>              |  |
| September 1 – Nov 30, 2016             | December 8, 2016                               |
| December 1 – February 28, 2017         | March 8, 2017                                  |
| March 1 – May 31, 2017                 | June 8, 2017                                   |
| June 1, 2017 – August 31, 2017         | September 8, 2017                              |
| September 1 – Nov 30, 2017             | December 8, 2017                               |
| December 1 – December 31, 2017         | January 8, 2018                                |
| <b>Final Report</b>                    |  |
| September 1, 2016 to December 31, 2017 | January 31, 2018                               |

**F. PROPOSAL REQUIREMENTS AND INFORMATION**

**1. Key Action Dates**

| <u>Event</u>                               | <u>Date</u>                         | <u>Time</u> |
|--|-------------------------------------|-------------|
| RFP Available to Prospective Proposers     | August 5, 2016                      |             |
| Last Day for Proposers to Submit Questions | August 12, 2016                     | 4:00 p.m.   |
| Questions Answered                         | August 17, 2016                     |             |
| Proposal Submittal Deadline                | September 2, 2016                   | 4:00 p.m.   |
| Proposal Opening                           | September 6, 2016                   |             |
| Evaluations Completed                      | September 9, 2016                   |             |
| Notice of Intent to Award (Anticipated)    | September 12, 2016                  |             |
| Proposed Award Date                        | September 16, 2016                  |             |
| Contract Term (Anticipated)                | October 1, 2016 – December 31, 2017 |             |

**Note:** DMHC may modify this RFP prior to the Proposal Submittal Deadline above through the issuance of a formal addendum posted at <https://caleprocure.ca.gov>. All dates after the Proposal Submittal Deadline are approximate and may be adjusted as conditions indicate, without an Addendum to this RFP.

**2. Submission of Questions from Proposers**

All questions must be submitted in writing **prior to 4:00 p.m. PST on August 12, 2016** to Christopher Rendall at [Christopher.Rendall@dmhc.ca.gov](mailto:Christopher.Rendall@dmhc.ca.gov). The responses to all questions received will be posted on <https://caleprocure.ca.gov> under the Cal MediConnect Ombudsman Services RFP (16MC-SA007), and on <http://HealthHelp.ca.gov>.

To ensure receipt of any addenda or questions and answers that may be issued, interested parties are encouraged to regularly check for new postings on <http://HealthHelp.ca.gov> under "What's New." All addenda and questions and answers will also be posted on <https://caleprocure.ca.gov>. Instructions for free registration to Cal eProcure can be found at: <http://www.documents.dgs.ca.gov/pd/caleprocure/RegistrationInstructions.pdf>.

### 3. General Requirements

- a. The Proposer must provide a statement certifying and documentation to substantiate that they are in good standing and qualified to conduct business in California.
- b. The Proposer must provide a statement certifying that it and its subcontractor(s) are not an affiliate or a subsidiary of, nor in any way owned or controlled by, a health care service plan or a trade association of health care service plans. A board member, director, or officer of a health care service plan or a trade association of health care service plans shall not serve as a board member, director, officer, or employee of a health care service plan, the actuary or actuarial firm in accordance with section 1385.06 (3) of the Health and Safety Code.
- c. The Proposer must provide a statement certifying that it and its subcontractor(s) are not currently engaged in services with a health care service plan or a trade association of health care service plans in California or any activities that could appear to be a conflict of interest.
- d. The Proposer must submit a written statement regarding its financial and organizational stability. Include how long the Proposer has been in business; if the Proposer is nation-wide or local; and the number of years performing services similar to the services detailed in Section E, Scope of Work. The statement of financial stability should include any probable contingencies that may affect the Proposer's financial and organizational stability.
- e. The Proposer's written statement should also include a description of financial support from other funding sources, excluding in-kind resources. This contract should supplement existing funds and represent no more than 25 percent of the total budget of the lead organization. If the Proposer wishes to go above this threshold, it must provide a justification.
- f. The Proposer must submit a detailed description of how it will monitor for potential conflicts of interest that may preclude it from accepting work assignments from the DMHC. The description should include the criteria to determine a conflict of interest and timeframe for notifying the DMHC after a conflict of interest has been identified. The Proposer must also include their policy and procedures for monitoring conflicts of interest. If the Proposer does not have a policy, they must provide an explanation of how they monitor for potential conflicts of interest.

### 4. References

- a. The Proposer is required to provide three (3) references, on Attachment 5, Proposer References, for which the Proposer has provided similar services as described in Section E, Scope of Work, within the last five (5) years. The DMHC retains the right to conduct reference checks beyond those provided.
- b. Provide three (3) reference letters from the community which demonstrates that the organization has the knowledge and expertise in assisting Cal MediConnect eligible populations, and knowledge and expertise in federal, state and local laws relative to the rights of Medi-Cal and Medicare health plan members. Possess expertise in Medi-Cal, Medicare and Long Term Services and Supports and competency in serving the population affected by the demonstration.

## 5. Work Plan Format and Requirements

The Proposer shall develop a narrative Work Plan for task completion outlining their ability to fulfill the requested services as identified in Section E, Scope of Work. Please list Attachment 6 at the top of your Work Plan. The Work Plan must include the following:

### a. Statement of Purpose

Include a section that provides an overall statement of purpose for the project and a description of how this project fits into the mission of the Organization(s).

### b. Project Description

Describe activities in each Organization that will be undertaken to implement Tasks 1-6 listed in Section E, Scope of Work. Include each major task and identify any necessary sub tasks and schedule of milestones by which progress can be measured. In addition, include how the Task will be successfully achieved. If the Task is not being met, identify the steps that will be taken to ensure success of the Task. The work plan and schedule of milestones will be included in the final Agreement.

### c. Geographic Reach

Explain what types and to what extent services will be provided within each region. The proposal should explain how the Organization will serve consumers throughout the entire region.

### d. Language Capacity

Explain how and to what extent services will be provided in languages applicable to the region population.

### e. Project Personnel

Provide a list of all key personnel who will be working on the project (for both the lead organization and any subcontractors), their titles, and attach their résumés. If subcontractors are contemplated, identification of those persons or firms, the portions and monetary percentages of the work to be done by the subcontractors, how they were selected and why, résumés of each major subcontract participant, and a description of how the subcontracted work will be controlled, monitored and evaluated.

## 6. Cost Proposal Format and Requirements

- a. The Proposer must complete the Cost Proposal, Attachment 4, in the prescribed format with a detailed budget for the Proposer and subcontractor(s), if applicable. Any deviation from the prescribed format, which in the opinion of the DMHC is material, may result in the rejection of the proposal. The proposed cost shall include all fees and expenses for providing services described in this RFP. The successful organization shall only be compensated based on actual services performed at the rates submitted.
- b. For each proposal submitted, the total cost of all Tasks shall not exceed the specified amount for each region.

- c. All pricing shall remain firm and constant during the entire Agreement term and for any amendments.
- d. Any reimbursement for necessary travel and per diem will not exceed State rates and will abide by CalHR guidelines. All rates can be found at:  
<http://www.calhr.ca.gov/employees/pages/travel-reimbursements.aspx>.

Any out-of-state travel by the Contractor for purposes of this Agreement must have prior written approval by the DMHC Contract Manager and must be submitted on a STD. 262 form with the receipts attached.

## 7. Submission of Proposal

- a. Proposals should provide straight-forward and concise descriptions of the Proposer's ability to satisfy the requirements of this RFP. The proposal must be complete and accurate. Omissions, inaccuracies or misstatements may be cause for rejection of a proposal.
- b. Proposals must be submitted for the performance of all the services described herein. Any deviation from the work specifications will not be considered and may cause a proposal to be rejected, if it is conditional or incomplete, or if it contains any alterations of any form or other irregularities of any kind. The State may reject any or all proposals and may waive an immaterial deviation in a proposal. [The State's waiver of an immaterial deviation shall in no way modify the RFP document, or excuse the Proposer from full compliance with all requirements if awarded the Agreement.]
- c. All proposals shall include the documents identified in Attachment 1, Required Attachment Check List. Proposals not including the Attachments listed below shall be deemed non-responsive. A non-responsive proposal is one that does not meet the basic proposal requirements. All proposals must include the following Attachments:
  - i. Attachment 1, Required Attachment Check List
  - ii. Attachment 2, Proposal/Proposer Certification Sheet
  - iii. Attachment 3, Minimum Qualifications Certification
  - iv. Attachment 4, Cost Proposal
  - v. Attachment 5, Proposer References
  - vi. Attachment 6, Work Plan
- d. An individual who is contractually authorized to bind the proposing organization shall sign Attachment 2, Proposal/Proposer Certification Sheet. The signature must indicate the title or position that the individual holds in the organization. An unsigned proposal may be rejected.
- e. If the proposal is made under a fictitious name or business title, the actual legal name of the Proposer must be provided.
- f. More than one (1) proposal from an individual, organization, firm, partnership, corporation or association under the same or different names, will not be considered.
- g. Joint proposals are not acceptable. A joint proposal is when two (2) or more bidders sign and submit a bid together for requested services.
- h. The proposal package should be prepared in the least expensive method (i.e., cover page with a staple in upper left-hand corner, no elaborate bindings, etc.).

- i. All pages of the proposal shall have the following header and consecutive page numbering format in the upper right-hand corner:

Department of Managed Health Care  
RFP No. 16MC-SA007  
Cal MediConnect Ombudsman Services

- j. The Proposer must submit one (1) original and four (4) copies of the original in its entirety, as well as e-mail an electronic version in its entirety in Microsoft Office Word and/or Excel formats to: [Christopher.Rendall@dmhc.ca.gov](mailto:Christopher.Rendall@dmhc.ca.gov).
- k. The original proposal must be marked "Original Copy". All documents contained in the original proposal package must have original signatures and must be signed by a person who is authorized to bind the proposing organization. All additional proposal sets may contain photocopies of the original package.
- l. The proposal box/envelope must list your firm's legal name and address, the RFP number and title, and must be marked "DO NOT OPEN" as shown in the following example, and shall be mailed or hand-delivered to:

|  |
|--|
| <p>Department of Managed Health Care<br/>980 9<sup>th</sup> Street, Suite 500<br/>Sacramento, CA 95814</p> <p style="text-align: center;"><b>DO NOT OPEN</b><br/>RFP No. 16MC-SA007 Cal MediConnect Ombudsman Services</p> <p style="text-align: center;">Department of Managed Health Care<br/><b>Attn: Christopher Rendall</b><br/>980 9<sup>th</sup> Street, Suite 500<br/>Sacramento, CA 95814</p> |
|--|

- m. All proposals must be received under sealed cover by the DMHC contact listed above by **September 2, 2016 at 4:00 p.m. PST**. Proposals received after this date and time will not be considered. Proposals not submitted under sealed cover and marked as indicated may be rejected.
- n. When hand-delivering a proposal, the Proposer should have the receptionist date/time stamp the envelope immediately upon delivery. Proposals date/time stamped after the due date and time will not be accepted.
- o. A Proposer may modify a proposal after submission by withdrawing its original proposal and resubmitting a new proposal prior to the proposal submission deadline as set forth in Section F, Proposal Requirements and Information, item 1, Key Action Dates. Proposal modifications offered in any other manner, oral or written, will not be considered.
- p. A Proposer may withdraw its proposal by submitting a written withdrawal request to the DMHC, signed by the Proposer or an authorized agent for the organization. A Proposer may then submit a new proposal prior to the proposal submission deadline. Subsequent to proposal submission deadline, proposals may not be withdrawn without cause.
- q. The Proposers are cautioned to not rely on the DMHC during the evaluation to discover and report to the Proposer any defects and errors in the submitted documents. Proposers, before submitting their documents, should carefully proof them for errors and adherence to the RFP requirements.

- r. The Proposer agrees that in submitting a proposal, they authorize the DMHC to verify any or all claimed information, proprietary or non-proprietary, by any reasonable means, including on-site inspection and to verify any references named in their proposal.
- s. Costs incurred for developing proposals and in anticipation of award of an Agreement, are entirely the responsibility of the Proposer and shall not be charged to the State of California.
- t. The DMHC reserves the right to reject all proposals and is not required to award an Agreement.
- u. No oral understanding or Agreement shall be binding on either party.

**8. Disposition of Proposals**

- a. Upon proposal opening, all documents submitted in response to this RFP will become the property of the State of California, and will be regarded as public records under the California Public Records Act (Government Code Section 2650, et. seq.) and subject to review by the public.
- b. Proposal packages may be returned only at the Proposer's expense, unless such expense is waived by the DMHC.

**9. Evaluation Process and Criteria**

- a. At the time of proposal opening, each proposal will be checked for the presence or absence of the required information in conformance with the submission requirements of this RFP. A responsive proposal is one which meets or exceeds the requirements stated in this RFP.
- b. Proposals that contain false or misleading statements, or which provide references which do not support an attribute or condition claimed by the Proposer, may be rejected.
- c. Proposers claiming any of the bid preferences shall submit the proper required certification documents and check next to the applicable Attachment number on Attachment 1, Required Attachment Check List. Refer to the links in Section G, Preference Programs, in this RFP for information regarding these preference programs.

**Evaluation Criteria is set as follows:**

**Stage 1: Minimum Qualifications**

The proposals that meet the minimum qualifications will be evaluated and scored according to the criteria indicated below. A minimum of 91 points must be achieved in this phase to be considered responsive. (A responsive proposal is one, which meets or exceeds the requirements stated in this RFP.) A minimum of 3.5 points must be achieved for each rating/scoring criteria.

**Stage 2: Firm's Capacity to Perform the Contracted Services**

- a. All proposals passing the Minimum Qualifications Requirement will be evaluated and scored for their degree of responsiveness to each of the components mentioned below.

- b. An overall maximum of 130 possible points may be achieved in this stage and an overall minimum of 91 points must be achieved to be considered a responsive proposal. (A responsive proposal is one that meets the requirements stated in this RFP).
- c. Proposals will be reviewed, evaluated and scored by an authorized Evaluation Committee. Evaluation of proposals will be based on the criteria shown as follows for each component; each component will be scored according to the degree of responsiveness present in the proposal being evaluated. A component score will not exceed the possible points shown for that component

| Evaluation Criteria (130 points maximum)  | Maximum Possible Score |
|---|------------------------|
| <b>1. General Requirements</b>  |                        |
| <b><u>General Requirements</u></b>  |                        |
| <b>A - Financial Stability</b>  |                        |
| Does the proposal demonstrate organizational and financial stability?   | 5                      |
| <b>B - Conflicts of Interest</b>  |                        |
| Does the proposal demonstrate adequate methodology for monitoring and managing potential conflicts of interest?   | 5                      |
| <b>2. References</b>  |                        |
| <b>A - References</b>   |                        |
| Does the proposal provide three (3) references for which the Proposer has provided similar services as described in Section E, Scope of Work?   | 5                      |
| <b>B - Reference Letters</b>  |                        |
| Does the proposal provide three (3) reference letters from the community that demonstrate the organization has the knowledge and expertise in assisting Cal MediConnect eligible populations?   | 5                      |
| <b>3. Work Plan Format and Requirements</b>   |                        |
| <b>A - Statement of Purpose</b>   |                        |
| Does the proposal demonstrate an emphasis on empowering individuals, and investigating and resolving complaints for the enrollees participating in the Cal MediConnect program?   | 5                      |
| Does the statement adequately tie the project into the organization's overall mission?  | 5                      |
| <b>B - Project Description</b>  |                        |
| Does the proposal demonstrate the ability to provide education and multi-lingual direct assistance to dual eligible and Cal MediConnect enrollees, family members and representatives related to Medi-Cal, Medicare and Cal Medi-Connect health coverage (either in-person, via telephone, and/or via a website)? | 5                      |

|  |   |
|--|---|
| <b>C - <u>Geographic Reach</u></b>   |   |
| Does the proposal provide services to the entire geographic region(s)?   | 5 |
| <b>D - <u>Project Personnel</u></b>  |   |
| Do the résumés demonstrate the experience and knowledge needed to complete the tasks required?   | 5 |
| <b>4. WORK PLAN EVALUATION</b>   |   |
| <b>Task 1 - Empowering Individuals</b>   |   |
| Does the proposal describe how the organization will respond to dual eligible enrollees, family members or representatives; what levels of assistance will be provided for resolution of coverage problems, and what informational materials will be used and how those materials will be disseminated?              | 5 |
| Does the proposal describe how the activities of this contract will be integrated into the other activities of the organization?   | 5 |
| Does the proposal describe how it can provide services in all threshold languages identified under the Medi-Cal program?   | 5 |
| Does the proposal describe the Proposer's toll free number and transferring capabilities?  | 5 |
| Does the proposal describe how it will provide in-person assistance, when needed?  | 5 |
| Does the proposal describe whether the organization will have the ability to accept phone calls from consumers needing assistance between the hours of 9:00 a.m. to 5:00 p.m. and have a method for returning phone calls within 24 hours if live calls or after-hour calls are overflowed to an answering 5machine? | 5 |
| <b>Task 2 - Referrals to Other Organizations</b>   |   |
| Does the proposal include consumer- friendly and efficient referral procedures for entities to use in referring enrollees to other organizations?  | 5 |
| <b>Task 3 - Education and Outreach</b>   |   |
| Does the proposal contain a preliminary work plan for making dual eligible enrollees and their family members or representatives, employers, other advocates, local health care providers and the public in general aware of the organization's Cal MediConnect Ombudsman services?                                  | 5 |
| Does the work plan also demonstrate how the organization will use its target group and local area expertise in designing and implementing the work plan?   | 5 |
| <b>Task 4 - Materials and Training Development</b>   |   |
| Does the proposal demonstrate the organization's capacity and experience in developing and maintaining training materials for its in-service staff that encompass all facets of Medicare, Medi-Cal, and Long Term Services and Support?  | 5 |
| Does the proposal demonstrate how and when trainings related to Cal MediConnect health coverage rights (including grievance and appeal rights) will be delivered?  | 5 |

|   |            |
|---|------------|
| <b>Task 5 - Filing Complaints with a Cal MediConnect Health Plan</b>  |            |
| Does the proposal describe how the organization's computer hardware and software capabilities will allow the use of CTM, the web-based communication system, with Cal MediConnect health plans?   | 5          |
| Does the proposal describe how the organization will overcome barriers to the use of the CTM system?  | 5          |
| <b>Task 6 - Data Collection and Reporting to the DMHC</b>   |            |
| Does the proposal describe how the organization's data collection and reporting capabilities will meet the specific requirements outlined under this task?  | 5          |
| Does the proposal detail how the Proposer will provide and meet the required DMHC reporting criteria?   | 5          |
| <b>Task 7 - Project Management</b>  |            |
| Does the proposal demonstrate how the Contractor will coordinate and collaborate with subcontractors in other regions?  | 5          |
| Does the proposal contain a plan for managing all program and fiscal components of the project using generally accepted management and financial standards, and for ensuring that invoices for payment and activity reports are submitted on a timely basis (monthly) in a format designated by the DMHC? | 5          |
| <b>Total Possible Points</b>  | <b>130</b> |

**Stage 3: Cost Proposal Evaluation and Scoring**

The points for the Cost Proposal for each responsive proposer shall first be adjusted before any of the preference programs for which they qualify and any DVBE incentive points. Refer to the links in Section G, Preference Programs, for information regarding preference programs and Section H, Disabled Veteran Business Enterprise (DVBE) Incentive Program, on how DVBE incentive points are calculated.

- a. The proposal work plan offering the lowest total cost proposal shall receive the maximum 56 cost points.
- b. Cost points for the remaining proposals shall be determined by applying the following formula:

$$\frac{\text{Lowest Cost Proposal}}{\text{Other Cost Proposal}} = \text{Factor}$$

$$\text{Factor} \times 56 (\text{max. cost points}) = \text{Cost Points for Other Organization}$$

For example:

$$\text{Lowest Cost Proposal} = \$75,000 \text{ divided by the other proposal: } \$100,000 = 0.75$$

So:

$$0.75 \times 56 = 42 \text{ cost points awarded to other proposal}$$

Final calculations shall result in numbers rounded to two decimal places.

**Stage 4: Total Points Calculation**

For all proposals achieving a passing score in Stage 2, the DMHC will combine the organization's score earned in Stage 2 to the Proposer's cost points calculated in Stage 3 as follows:

$$\text{Total Points} = \text{Components Score} + \text{Cost Proposal Score}$$

Awards, if made, will be to the highest scored responsive proposal. In the event of a precise tie, the winner shall be determined by a coin toss. Affected organizations will be contacted to participate in the coin toss.

| Evaluation Criteria                    | Maximum Possible Score |
|--|------------------------|
| <b>Components Evaluation (Stage 2)</b> | <b>130</b>             |
| <b>Cost Proposal (Stage 3)</b>         | <b>56</b>              |
| <b>TOTAL POINTS</b>                    | <b>186</b>             |
| <b>Preference Program(s) Points</b>    |                        |
| <b>DVBE Incentive Points</b>           |                        |
| <b>GRAND TOTAL POINTS</b>              |                        |

**10. Award and Protest**

- a. Notice of the proposed award shall be posted in the DMHC lobby at 980 9<sup>th</sup> Street, Suite 500, Sacramento, CA 95814 and at [www.dmhc.ca.gov](http://www.dmhc.ca.gov) for **five (5) business days prior to award of the Agreement.**
- b. If any Proposer, prior to award of the Agreement, files a protest with the DMHC, 980 9<sup>th</sup> Street, Suite 500, Sacramento, CA 95814 and the Department of General Services, Office of Legal Services, 707 Third Street, 7<sup>th</sup> Floor, Suite 7-330, West Sacramento, CA 95605, on the grounds that the (protesting) Proposer would have been awarded the Agreement had the Department evaluated and scored their proposal as described in the RFP, the Agreement shall not be awarded until either the protest has been withdrawn or the Department of General Services has decided the matter. It is suggested that any protest be sent by certified or registered mail.
- c. Within five (5) days after filing the initial protest, the protesting Proposer shall file with the Department of General Services, Office of Legal Services and the Department of Managed Health Care a detailed statement specifying the grounds for the protest. The protest must be submitted to the address listed in item b, above.
- d. Upon resolution of the protest and award of the Agreement, Contractor must complete and submit the Payee Data Record (STD. 204 Form) to determine if the Contractor is subject to state income tax withholding pursuant to the California Revenue and Taxation Code Sections 18662 and 26131. This form is available at: <http://www.dgs.ca.gov/dgs/ProgramsServices/Forms/FMC/search/resultsNumber.aspx?number=204>.

No payment shall be made unless a completed Std. 204 has been returned to the DMHC.

- e. Upon resolution of protest and award of an Agreement, the Contractor must sign and submit the Contractor Certification Clauses (CCC 307) which are available at: <http://www.dgs.ca.gov/ols/Resources/StandardContractLanguage.aspx>.

## 11. Agreement Execution and Performance

- a. Performance shall start on the express date set by the DMHC and the Contractor, after all approvals have been obtained and the Agreement is fully executed. Should the Contractor fail to commence work at the agreed upon time, the DMHC, upon five (5) days written notice to the Contractor, reserves the right to terminate the Agreement.
- b. The State's General Terms and Conditions (GTC) are not negotiable. The DMHC does not accept alternate Agreement language from a Contractor. A proposal with such language will be considered a counter proposal and will be rejected. The GTC 610 may be viewed at <http://www.dgs.ca.gov/ols/Resources/StandardContractLanguage.aspx>. If you do not have internet access, a hard copy of the GTC can be provided by contacting the person identified within this solicitation.
- c. All performance under the Agreement shall be completed on or before the termination date of the Agreement.

## G. PREFERENCE PROGRAMS

The standard Agreement language for the preference programs applied to this RFP can be found at the Internet web sites listed below:

1. Small Business Preference - [www.documents.dgs.ca.gov/pd/smallbus/sbregs.pdf](http://www.documents.dgs.ca.gov/pd/smallbus/sbregs.pdf).
2. Non-Small Business SubContractor Preference – [www.documents.dgs.ca.gov/pd/smallbus/sbregs.pdf](http://www.documents.dgs.ca.gov/pd/smallbus/sbregs.pdf).
3. Target Area Contract Preference Act (TACPA) - <http://www.documents.dgs.ca.gov/pd/poliproc/tacpapage.pdf>.

If applying for one of these preference programs, please be sure to complete and submit the required documents, which can be found at the above links.

## H. DISABLED VETERAN BUSINESS ENTERPRISE (DVBE) INCENTIVE PROGRAM

Note: The DVBE participation requirement has been waived; however, the DVBE Incentive Program will apply for this RFP.

Under California Code of Regulations (CCR) Title 2, Section 1896.99.100, the California DVBE Incentive provides responsive and responsible firms the opportunity to receive additional incentive calculations. The incentive is applied at the time of solicitation evaluation when a proposing firm selects a California-certified DVBE subcontractor to provide services or commodities in support of the overall contract effort. Application of the DVBE Incentive may place the proposing firm in line for contract award.

The following are key elements of the DVBE Incentive Program:

1. The DVBE Incentive is applied during the evaluation process and is applied *only* to responsive proposals from responsible firms proposing the percentage(s) of DVBE participation for the incentive(s) specified in the solicitation.
2. The DVBE Incentive participation is optional and at the discretion of the proposing firm.

3. When requesting the Incentive Application, proposing firms must complete and return the DVBE Incentive Application Request (Attachment 8) with their proposal at time of submission.
4. The Incentive is calculated by multiplying the solicitation's total points possible by the level of DVBE participation (%) identified by the proposing firm. This amount is then added to the proposer's total points to determine if they have the highest total score. Computation is for evaluation purposes only and cannot be used to achieve any applicable minimum point requirements. (2 CCR 1896.99.100 (d))
5. Services or commodities provided by the DVBE firm MUST meet the definition of a "Commercially Useful Function" (CUF) as defined under Government Codes 14837(d)(4) and Military and Veterans Code 999(b)(5)(B). A DVBE firm not meeting CUF regulations will render the proposing firm ineligible for the DVBE Incentive application.
6. The DVBE Incentive application will be based on the Highest Total Score Method and follows the guidelines identified below:
  - a. The Incentives shall not exceed 5%, nor be less than 1% of the total possible points, not including points for socioeconomic incentives or preferences. (2 CCR 1896.99.120 (b))
  - b. Incentive points are included in the sum of non-cost points, and are based on amounts of participation.

**SAMPLE:** Using the incentive scale below (Display is for illustration purposes only)

| Confirmed DVBE Participation | Possible Points Calculation: |
|------------------------------|------------------------------|
| 1% - 1.99% inclusive         | 1% X 100 = 1                 |
| 2% - 2.99% inclusive         | 2% X 100 = 2                 |
| 3% - 3.99% inclusive         | 3% X 100 = 3                 |
| 4% - 4.99% inclusive         | 4% X 100 = 4                 |
| 5% and Higher                | 5% X 100 = 5                 |

| SAMPLE RESULTS               | FIRM A    | FIRM B   | FIRM C   |
|------------------------------|-----------|----------|----------|
| Responsive/Responsible       | Yes       | Yes      | Yes      |
| Total Points                 | 80        | 87       | 85       |
| Eligible Preference          | SB        | None     | SB       |
| SB Preference Points Applied | 4.35      | 0        | 4.35     |
| Subtotal                     | 84.35     | 87       | 89.35    |
| Rank                         | 3         | 2        | 1        |
| Confirmed DVBE Participation | None (0%) | Yes (5%) | Yes (2%) |
| Incentive Points Applied     | 0         | 5        | 2        |
| Adjusted Points              | 84.35     | 92       | 91.35    |
| New Rank                     | 3         | 1        | 2        |

**Order of Evaluation**

- i. Small Business Preference is calculated by multiplying the highest total points achieved by a Non-Small Business by 5% and adding the resulting calculation to the total points of the certified Small Business firm(s). In this sample, the calculation was based on 87

points x .05 resulting in 4.35 additional points added to the certified Small Businesses (A and C).

- ii. The DVBE Incentive points are factored by multiplying the DVBE participation (%) identified by the total possible points that could be awarded (100). This amount is then added to the firm's total points. In the sample above, Firm B had 5 additional points added (.05% x 100 total possible points) to their total points placing them first for award. Firm C received 2 Incentive points, but this was not enough to place them first for award).
- iii. Under the Highest Total Score Method, it is possible to displace a high point Certified Small Business with the Application of the DVBE Incentive.

I. ATTACHMENTS

**ATTACHMENT 1**

REQUIRED ATTACHMENT CHECK LIST

**Proposer's Name:** \_\_\_\_\_

**A complete proposal package will consist of all required items listed in the RFP as well as those identified below.** Place an "X" next to each Attachment that you are submitting to the State. For your proposal to be considered responsive, all Required Attachments must be submitted with this checklist on top.

| Check List  |                          |                                       |   |
|---|--------------------------|---------------------------------------|---|
|   | <u>Attachment Number</u> | <u>Attachment Name/Description</u>    | DMHC use only<br>Confirmed                                |
| <b>Required Attachments</b>                                     |                          |                                       |   |
| <input type="checkbox"/>  | 1                        | Required Attachment Check List        | <input type="checkbox"/> Yes <input type="checkbox"/> No  |
| <input type="checkbox"/>  | 2                        | Proposal/Proposer Certification Sheet | <input type="checkbox"/> Yes <input type="checkbox"/> No  |
| <input type="checkbox"/>  | 3                        | Minimum Qualifications Certification  | <input type="checkbox"/> Yes <input type="checkbox"/> No  |
| <input type="checkbox"/>  | 4                        | Cost Proposal                         | <input type="checkbox"/> Yes <input type="checkbox"/> No  |
| <input type="checkbox"/>  | 5                        | Proposer References                   | <input type="checkbox"/> Yes <input type="checkbox"/> No  |
| <input type="checkbox"/>  | 6                        | Work Plan                             | <input type="checkbox"/> Yes <input type="checkbox"/> No  |
| <b>If Applicable</b>  |                          |                                       |   |
| <input type="checkbox"/> Yes or<br><input type="checkbox"/> N/A | 7                        | Darfur Contracting Act Certification  | <input type="checkbox"/> Yes <input type="checkbox"/> N/A |
| <input type="checkbox"/> Yes or<br><input type="checkbox"/> N/A | 8                        | DVBE Incentive Application Request    | <input type="checkbox"/> Yes <input type="checkbox"/> N/A |

**ATTACHMENT 2**  
 (Page 1 of 2)

PROPOSAL/PROPOSER CERTIFICATION SHEET

This sheet must be signed and returned along with all the Required Attachments and must bear an original signature of someone authorized to bind your organization contractually.

The signature affixed hereon and dated certifies compliance with all the requirements of this proposal document. The signature below authorizes the verification of this certification.

**An Unsigned Proposal/Proposer Certification Sheet May Be Cause for Rejection**

|  |   |   |
|--|---|---|
| 1. Organization/Company Name   | 2. Telephone Number<br>(   )  | 2a. Fax Number<br>(   )                 |
| 3. Address   |   |   |
| Indicate your organization type:   |   |   |
| 4. <input type="checkbox"/> Sole Proprietorship  | 5. <input type="checkbox"/> Partnership   | 6. <input type="checkbox"/> Corporation |
| Indicate the applicable employee and/or corporation number:  |   |   |
| 7. Federal Employee ID No. (FEIN)  | 8. California Corporation No.   |   |
| 9. Indicate applicable license and/or certification information:   |   |   |
| 10. Proposer's Name (Print)  | 11. Title   |   |
| 12. <b>Signature</b>   | 13. Date  |   |
| 14. Are you certified with the Department of General Services, Office of Small Business and Disabled Veteran Certification (OSDC) as:  |   |   |
| a. Small Business Enterprise Yes <input type="checkbox"/> No <input type="checkbox"/><br>If yes, enter certification number:<br>_____  | b. Disabled Veteran Business Enterprise Yes <input type="checkbox"/> No <input type="checkbox"/><br>If yes, enter your service code below:<br>_____ |   |
| <b>NOTE:</b> A copy of your Certification is required to be included if either of the above items is checked "Yes".<br>Date application was submitted to OSDC, if an application is pending: |   |   |

**ATTACHMENT 2**  
 (Page 2 of 2)

**Completion Instructions for Proposal/Proposer Certification Sheet**

Complete the numbered items on the Proposal/Proposer Certification Sheet by following the instructions below.

| Item Numbers   | Instructions  |
|----------------|---|
| 1, 2, 2a, 3    | Must be completed. These items are self-explanatory.  |
| 4              | Check if your firm is a sole proprietorship. A sole proprietorship is a form of business in which one person owns all the assets of the business in contrast to a partnership and corporation. The sole proprietor is solely liable for all the debts of the business.  |
| 5              | Check if your firm is a partnership. A partnership is a voluntary Agreement between two or more competent persons to place their money, effects, labor, and skill, or some or all of them in lawful commerce or business, with the understanding that there shall be a proportional sharing of the profits and losses between them. An association of two or more persons to carry on, as co-owners, a business for profit. |
| 6              | Check if your firm is a corporation. A corporation is an artificial person or legal entity created by or under the authority of the laws of a state or nation, composed, in some rare instances, of a single person and his successors, being the incumbents of a particular office, but ordinarily consisting of an association of numerous individuals.   |
| 7              | Enter your federal employee tax identification number.  |
| 8              | Enter your corporation number assigned by the California Secretary of State's Office. This information is used for checking if a corporation is in good standing and qualified to conduct business in California.   |
| 9              | Indicate applicable license and/or certification information that your firm possesses and that is required for the type of services being procured.   |
| 10, 11, 12, 13 | Must be completed. These items are self-explanatory.  |
| 14             | If certified as a Small Business Enterprise, place a check in the "yes" box, and enter your certification number on the line. If certified as a Disabled Veteran Business Enterprise, place a check in the "Yes" box and enter your service code on the line. If you are not certified, place a check in the "No" box. If your certification is pending, enter the date your application was submitted to OSD.              |

**ATTACHMENT 3**

MINIMUM QUALIFICATIONS CERTIFICATION

The Proposer must substantiate that it satisfies each of the minimum qualifications, to DMHC's satisfaction, to be given further consideration for a contract award. The statement must contain sufficient information as prescribed to assure DMHC of its accuracy. Failure to provide complete information, based on DMHC's sole judgment, will result in the immediate rejection of the bid.

**Please indicate the page number where documentation for each Minimum Qualification is located in the proposal.**

| <b>Qualification</b>   | <b>Included in Proposal</b>                              | <b>Documentation can be found on:</b> |
|--|--|---------------------------------------|
| 1. The Proposer must provide documented history of having been in business in the targeted local geographic area for a minimum of five (5) years.  | <input type="checkbox"/> Yes <input type="checkbox"/> No | Page _____                            |
| 2. The Proposer must demonstrate a minimum of three (3) years' experience in effectively providing direct consumer assistance services and resolving consumer issues of Medicare and Medi-Cal beneficiaries. | <input type="checkbox"/> Yes <input type="checkbox"/> No | Page _____                            |
| 3. The Proposer must be a non-profit organization and provide documentation of the non-profit, corporate status of the organization, i.e., incorporated as a 501(c)(3) organization.                         | <input type="checkbox"/> Yes <input type="checkbox"/> No | Page _____                            |

\_\_\_\_\_  
 Proposer's Authorized Signature

\_\_\_\_\_  
 Print Name

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Date



**ATTACHMENT 5**

PROPOSER REFERENCES

Submission of this attachment is Mandatory. **Failure to complete and return this attachment with your proposal will cause your proposal to be rejected and deemed nonresponsive.**

List below three (3) references or more for organizations for which proposing firm performed similar type of work as specified in Section E, Scope of Work, within the last five (5) years.

| <b>REFERENCE 1</b>                    |                          |       |          |
|---------------------------------------|--------------------------|-------|----------|
| Name of Firm                          |                          |       |          |
| Street Address                        | City                     | State | Zip Code |
| Contact Person                        | Telephone Number         |       |          |
| Dates of Service                      | Value or Cost of Service |       |          |
| Brief Description of Service Provided |                          |       |          |

| <b>REFERENCE 2</b>                    |                          |       |          |
|---------------------------------------|--------------------------|-------|----------|
| Name of Firm                          |                          |       |          |
| Street Address                        | City                     | State | Zip Code |
| Contact Person                        | Telephone Number         |       |          |
| Dates of Service                      | Value or Cost of Service |       |          |
| Brief Description of Service Provided |                          |       |          |

| <b>REFERENCE 3</b>                    |                          |       |          |
|---------------------------------------|--------------------------|-------|----------|
| Name of Firm                          |                          |       |          |
| Street Address                        | City                     | State | Zip Code |
| Contact Person                        | Telephone Number         |       |          |
| Dates of Service                      | Value or Cost of Service |       |          |
| Brief Description of Service Provided |                          |       |          |

**ATTACHMENT 6**

WORK PLAN

Please refer to Section F.5, Work Plan Format and Requirements, for specific instructions.

**ATTACHMENT 7**

**DARFUR CONTRACTING ACT CERTIFICATION**

Public Contract Code Sections 10475 -10481 applies to any company that currently or within the previous three years has had business activities or other operations outside of the United States. For such a company to bid on or submit a proposal for a State of California contract, the company must certify that it is either a) not a scrutinized company; or b) a scrutinized company that has been granted permission by the Department of General Services to submit a proposal.

If your company has not, within the previous three years, had any business activities or other operations outside of the United States, you do **not** need to complete this form.

**OPTION #1 - CERTIFICATION**

If your company, within the previous three years, has had business activities or other operations outside of the United States, in order to be eligible to submit a bid or proposal, please insert your company name and Federal ID Number and complete the certification below.

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that a) the prospective Proposer/Bidder named below is **not** a scrutinized company per Public Contract Code 10476; and b) I am duly authorized to legally bind the prospective Proposer/Bidder named below. This certification is made under the laws of the State of California.

|   |  |
|---|--|
| <i>Company/Vendor Name (Printed)</i>            | <i>Federal ID Number</i>                   |
| <i>By (Authorized Signature)</i>                |  |
| <i>Printed Name and Title of Person Signing</i> |  |
| <i>Date Executed</i>                            | <i>Executed in the County and State of</i> |

**OPTION #2 – WRITTEN PERMISSION FROM DGS**

Pursuant to Public Contract Code section 10477(b), the Director of the Department of General Services may permit a scrutinized company, on a case-by-case basis, to bid on or submit a proposal for a contract with a State agency for goods or services, if it is in the best interests of the State. If you are a scrutinized company that has obtained written permission from the DGS to submit a bid or proposal, complete the information below.

We are a scrutinized company as defined in Public Contract Code section 10476, but we have received written permission from the Department of General Services to submit a bid or proposal pursuant to Public Contract Code section 10477(b). A copy of the written permission from DGS is included with our bid or proposal.

|  |                          |
|--|--------------------------|
| <i>Company/Vendor Name (Printed)</i>               | <i>Federal ID Number</i> |
| <i>Initials of Submitter</i>                       |                          |
| <i>Printed Name and Title of Person Initialing</i> |                          |

**ATTACHMENT 8**

DVBE INCENTIVE APPLICATION REQUEST

Under the DVBE Incentive Regulations, CCR Title 2, Section 1896.99.100, I request the application of the DVBE Program Incentive to RFP XXMC-SAXXX to determine if my firm may be in line for bid award.

- a. I understand that the DVBE Incentive application will be applied using the “Low Cost Method” and cannot be used to achieve any applicable minimum point requirements.
- b. I understand the DVBE firm(s) selected must provide a “Commercially Useful Function” as required under Government Codes 14837(d)(4) and Military and Veterans Code 999(b)(5)(B).
- c. I understand I will be required to report my firm’s DVBE activities quarterly to the DMHC Contract Unit.
- d. I understand that subsequent amendments to the Agreement may require continued use of the identified DVBE firm if that contract amendment adds additional funding for continued services.
- e. As the Proposing firm, I identify the following percentage of DVBE participation for this solicitation: \_\_\_\_ percent.

|   |        |        |
|---|--------|--------|
| <b>SECTION A - PROPOSING FIRM INFORMATION</b> |        |        |
| Firm Name:                                    |        |        |
| Firm Representative:                          |        | Title: |
| Firm Address:                                 |        |        |
| City:   | State: | Zip:   |
| Firm Telephone:                               |        |        |
| Firm Email Contact:                           |        |        |

|                                       |               |                     |
|---------------------------------------|---------------|---------------------|
| <b>SECTION B - PROPOSED DVBE FIRM</b> |               |                     |
| DVBE Firm Name:                       |               |                     |
| Firm Representative:                  |               | Title:              |
| Firm Address:                         |               |                     |
| City:                                 | State:        | Zip:                |
| Firm Telephone:                       |               | Firm Fax:           |
| Firm Email Contact:                   |               |                     |
| DVBE Certification:                   | DGS OSDS No.: | Date of Expiration: |
| Services to be Performed:             |               |                     |

**Proposer Instructions:**

1. Complete information in Section A.

2. Fax this form to DVBE firm(s) to complete Section B.
3. Instruct the DVBE firm(s) to provide a copy of their DGS Office of Small and DVBE Services Certification.
4. This form must be included with your proposal to be considered for the DVBE Incentive application.

**J. SAMPLE AGREEMENT**  
 STATE OF CALIFORNIA  
**STANDARD AGREEMENT**  
 STD 213 (Rev 06/03)

|                                       |
|---------------------------------------|
| AGREEMENT NUMBER<br><b>XXMC-SAXXX</b> |
| REGISTRATION NUMBER                   |

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME  
**Department of Managed Health Care**

CONTRACTOR'S NAME

2. The term of this Agreement is:

3. The maximum amount of this Agreement is: **\$ 1,200,000**

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.

|   |                 |
|---|-----------------|
| <b>Exhibit A - Statement of Work</b>  | <b>x Pages</b>  |
| <b>Exhibit B - Budget Detail and Payment Provisions</b>   | <b>x Pages</b>  |
| <b>Exhibit C*- General Terms and Conditions</b>   | <b>GTC 610</b>  |
| <b>Exhibit D - Special Terms and Conditions</b>   | <b>x Pages</b>  |
| <b>Exhibit E – Additional Provisions</b>  | <b>x Pages</b>  |
| <b>Exhibit F - Information Security, Integrity and Confidentiality Terms and Conditions</b>                       | <b>4 Pages</b>  |
| <b>Attachment I. Information Security and Confidentiality Statement (for Contractors)</b>                         | <b>2 Pages</b>  |
| <b>Attachment II. Information Security and Confidentiality Statement (Employees, Agents &amp; subcontractors)</b> | <b>1 Page</b>   |
| <b>Exhibit G - Resumes</b>  | <b>3 Pages</b>  |
| <b>Exhibit F - HIPPA Business Associate Addendum</b>  | <b>X Pages</b>  |
|   | <b>13 Pages</b> |

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 <http://www.dhcs.ca.gov/Programs/StandardContractDocuments.aspx>~~

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

|   |                     |   |
|---|---------------------|---|
| <b>CONTRACTOR</b>   |                     | <b>California Department of<br/>General Services Use Only</b> |
| CONTRACTOR'S NAME (if other than an individual, state whether a corporation,  |                     |   |
| BY (Authorized Signature)   | DATE SIGNED (Do not |   |
| PRINTED NAME AND TITLE OF PERSON SIGNING  |                     |   |
| ADDRESS   |                     |   |
| <b>STATE OF CALIFORNIA</b>  |                     |   |
| AGENCY NAME<br><b>Department of Managed Health Care</b>   |                     |   |
| BY (Authorized Signature)   | DATE SIGNED (Do not |   |
| PRINTED NAME AND TITLE OF PERSON SIGNING<br><b>Teresa Gonzales, Acting Deputy Director, Administrative Services</b> |                     |   |
| ADDRESS<br><b>980 – 9<sup>th</sup> Street, Suite 500, Sacramento, CA 95814</b>                                      |                     |   |

Exempt

**EXHIBIT A  
 STATEMENT OF WORK**

1. SERVICE OVERVIEW:

The Contractor, \_\_\_\_\_ agrees to provide to the Department of Managed Health Care (DMHC) \_\_\_\_\_ (type of service) as described herein:

*(Service Types: consulting, services, legal, expert witness, etc.)  
 (Give a brief overview of services to be provided)*

2. SERVICE LOCATION AND HOURS: *(as necessary)*

The services shall be performed at \_\_\_\_\_ (location).

*(This can be a geographical location, city/county, Contractor's place of business, State department, etc...)*

The services shall be provided during (time frame, i.e.- working hours, 8am-5pm Monday-Friday except State holidays).

3. CONTRACT TERM:

The term of this contract shall be \_\_\_\_\_ (Month/Day/Year) through \_\_\_\_\_ (Month/Day/Year)

4. CONTRACT MANAGERS:

The Contract Managers during the term of this Agreement will be:

|  |                  |
|--|------------------|
| Department of Managed Health Care                                      | Contractor Name: |
| Division/Unit  | Division/Unit:   |
| Name:  | Name:            |
| Address: 980 9 <sup>th</sup> Street, Suite 500<br>Sacramento, CA 95814 | Address:         |
| Phone:   | Phone:           |
| Fax:   | Fax:             |
| E-mail:  | E-mail:          |

The parties may change their Contract Manager upon providing ten (10) days written notice to the other party. Said changes shall not require an amendment to this Agreement.

5. BACKGROUND AND SERVICES TO BE PERFORMED:

A. BACKGROUND:

*(Provide the context for the need for the services: federal grant, regulation or statute that requires the services or the need for an amendment, etc...)*

B. SERVICES:

- Task 1:
- Task 2:
- Task 3:
- Task 4:

C. CONTRACTOR'S RESPONSIBILITIES:

1. *List responsibilities*
2. *List responsibilities*
3. *List responsibilities*
4. *List responsibilities*

D. DMHC'S RESPONSIBILITIES:

1. *List responsibilities*
2. *List responsibilities*
3. *List responsibilities*
4. *List responsibilities*

6. DELIVERABLES AND TIMELINE:

| Task # | Deliverable | Due Date |
|--------|-------------|----------|
|        |             |          |
|        |             |          |
|        |             |          |

SAMPLE

**EXHIBIT B**  
**BUDGET DETAIL AND PAYMENT PROVISIONS**

1. INVOICING AND PAYMENT

- A. For services satisfactorily rendered, and upon receipt of appropriate invoices, the State agrees to compensate the Contractor for actual authorized expenditures incurred in accordance with the rates specified herein, which is attached hereto and made a part of this Agreement.
- B. Invoices shall include the DMHC Agreement Number and dates services were performed, and shall be submitted in duplicate not more frequently than monthly in arrears to:

Department of Managed Health Care  
Accounting Office  
980 – 9<sup>th</sup> Street, Suite 500  
Sacramento, CA 95814

- C. In addition to the DMHC Agreement Number, invoices shall contain the following information:
  - 1. Service period covered;
  - 2. Detailed description of services provided. Each activity must be identified by date performed and the number of hours worked on each activity. In addition:
    - a. Identify specific deliverable, task or service outlined in SOW;
    - b. Number of hours billed for each activity based upon rounding to the nearest quarter hour increment;
    - c. Name of individual performing service and their hourly billing rate;
    - d. Meeting topics and names of participants;
    - e. Case names;
    - f. Change Request numbers;
    - g. Receipts for any costs requesting reimbursement such as travel, meals and lodging.

2. BUDGET CONTINGENCY CLAUSE

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.
- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an Agreement amendment to Contractor to reflect the reduced amount.

3. PROMPT PAYMENT CLAUSE

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

4. FEDERAL CONTRACT FUNDS

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

- B. This Agreement is valid and enforceable only if sufficient funds are made available to the DMHC by the United States Government for the fiscal years covered by the term of this Agreement. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress, which may affect the provisions, terms or funding of this Agreement in any manner.
- C. It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.
- D. The DMHC has the option to invalidate or cancel the Agreement with 30-days advance written notice or to amend the Agreement to reflect any reduction in funds.

5. BUDGET

- A. The total amount for this Agreement for duties specified under "EXHIBIT A, ITEM #5 BACKGROUND AND SERVICES TO BE PERFORMED" shall not exceed \$ 1,200,000.
- B. Movement of funds between line items is permissible as long as it does not exceed the total budgeted amount and with approval of the DMHC Contract Manager.

**EXHIBIT C  
GENERAL TERMS AND CONDITIONS**

General Terms and Conditions can be viewed online at:  
<http://www.dgs.ca.gov/ols/Resources/StandardContractLanguage.aspx>.

SAMPLE

**EXHIBIT D**  
**SPECIAL TERMS AND CONDITIONS**

1. RESOLUTION OF DISPUTES

Notwithstanding the General Terms and Conditions (Exhibit C), and in compliance with Public Contract Code 10381, DMHC adds:

The Contractor should first discuss the problem informally with the Department of Managed Health Care (DMHC) Contract Manager. If the problem cannot be resolved at this stage, the Contractor must direct the grievance together with any evidence, in writing, to the DMHC program Section Chief. The grievance must state the issues in dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The program Section Chief must make a determination on the problem within ten (10) working days after receipt of the written communication from the Contractor. The program Section Chief shall respond in writing to the Contractor indicating the decision and reasons therefore. Should the Contractor disagree with the program Section Chief's decision, the Contractor may appeal to the next level.

The Contractor must prepare a letter indicating why the program Section Chief's decision is unacceptable, attaching to it the Contractor's original statement of the dispute with supporting documents along with a copy of the program Section Chief's response. This letter shall be sent to the DMHC Deputy Director or designee in which the Section is organized within ten (10) working days from receipt of the program Section Chief's decision. The Deputy Director or designee shall meet with the Contractor to review the issues raised. A written decision signed by the Deputy Director or designee shall be returned to the Contractor within twenty (20) working days of receipt of the Contractor's letter.

Authority to terminate performance under the terms of this Agreement is not subject to appeal under this section. All other issues including, but not limited to, the amount of any equitable adjustment and the amount of any compensation or reimbursement that should be paid to the Contractor shall be subject to the disputes process under this section. (Public Contract Code (PCC) Sections 10240.5, 10381, 22200, et seq.)

2. RIGHTS IN DATA

The Contractor agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of this Agreement are subject to the rights of the State as set forth in this section. The State shall have the right to reproduce, publish, and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so, on its behalf. If any Deliverable Work set forth in the Scope of Work is copyrightable, the Contractor, through this Agreement transfers ownership of that copyright to the State, and the State may, as an illustration but not a limitation, reproduce, publish, and use such work, or any part thereof, and authorize others to do so (40 CFR 31.34, 31.36). The State grants the Contractor a royalty-free, nonexclusive, nontransferable, irrevocable license to reproduce, publish and prepare derivative works of the copyrightable work, for noncommercial research and noncommercial educational purposes.

Any material that does not conform to the requirements of this Agreement may be rejected by the State at its discretion. Notice of such a rejection shall be given to the Contractor by the State within ten (10) days of receipt of the materials, and final payment shall not be made for such material until substantial compliance has been obtained within the time and manner determined by the State.

### 3. CONTRACTOR'S RIGHTS AND OBLIGATIONS

Public Contract Code Sections 10335-10381 contain language describing the Contractor's duties, obligations, and rights under this Agreement. By signing this Agreement, the Contractor certifies that he or she has been fully informed regarding these provisions of the Public Contract Code.

As required by Public Contract Code Section 10371(e)(2), resumé's attached hereto and by this reference are incorporated herein.

### 4. CONTRACTOR EVALUATION

The Contractor's performance under this Agreement shall be evaluated within sixty (60) days after completion. For this purpose a form designated by the Department of General Services (the "Contract/Contractor Evaluation," Form STD. 4) shall be used. Post-evaluations shall remain on file for a period of thirty-six (36) months. If the Contractor did not satisfactorily perform the work or service specified in the Agreement, Contract Manager shall place one copy of the evaluation form in the Agreement file and send one copy of the form to the Department of General Services within five (5) working days of the completion of the evaluation. Upon filing an unsatisfactory evaluation with the Department of General Services, the Contract Manager shall notify and send a copy of the evaluation to the Contractor within fifteen (15) days. The Contractor shall have thirty (30) days to prepare and send statement to the Contract Manager and the Department of General Services defending his or her performance under the Agreement. The Contractor's statement shall be filed with the evaluation in the Contract Manager's file and at the Department of General Services. (PCC 10369)

### 5. DISCLOSURE REQUIREMENTS

The Contractor shall acknowledge the support of DMHC when publicizing the work performed under this Agreement. Materials developed with contract funds shall contain an acknowledgement of the use of State funds in the development of materials and a disclaimer that the contents do not necessarily reflect the position or policy of DMHC.

If the Contractor or subContractor(s) are required to prepare multiple documents or written reports, the disclosure statement may also contain a statement indicating that the total Agreement amount represents compensation for multiple documents or written reports.

The Contractor shall include in each of its subcontracts for work under this Agreement a provision which incorporates the requirements stated within this Section.

### 6. LICENSES AND PERMITS

The Contractor shall be an individual or firm licensed to do business in California and shall obtain at his/her expense all license(s) and permit(s) required by law for accomplishing any work required in connection with this Agreement.

If you are a Contractor located within the state of California, a business license from the city/county in which you are headquartered is necessary and must be submitted. However, if you are a corporation, a copy of your incorporation documents/letter from the Secretary of State's Office can be submitted. If you are a Contractor outside the state of California, you will need to submit a copy of your business license or incorporation papers for your respective state showing that your company is in good standing in that state.

In the event any license expires at any time during the term of this Agreement, the Contractor agrees to provide the State with a copy of the renewed license within 30 days following the expiration date. In the event the Contractor fails to keep in effect at all times all required license(s) and permit(s), the

State may, in addition to any other remedies it may have, terminate this Agreement upon occurrence of such event.

#### 7. TRAVEL AND PER DIEM

All DMHC reimbursement for necessary travel and per diem will not exceed State rates and will abide by CalHR guidelines. All out-of-state travel by the Contractor for purposes of this Agreement must have prior written approval by the DMHC Contract Manager specified in this Agreement. The Contractor must include a completed STD 262 form, with receipts, when submitting invoices to the Accounting Office. All rates can be found at: <http://www.calhr.ca.gov/employees/pages/travel-reimbursements.aspx>.

#### 8. INSURANCE REQUIREMENTS

When the Contractor submits a signed Agreement to the State, if DMHC requests, the Contractor shall furnish a certificate of insurance, stating that there is liability insurance presently in effect of not less than \$2,000,000 per occurrence for bodily injury and property damage liability combined.

The Certificate of Insurance will include provisions a, b, and c in their entirety:

- a. The insurer will not cancel insured's coverage without 30 days prior written notice to the state.
- b. The State of California, its officers, agents, employees, and servants are included as additional insureds, but only insofar as operations under this Agreement are concerned.
- c. The State will not be responsible for any premiums or assessments on the policy. The Contractor agrees that the bodily injury liability insurance herein provided for shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time during the term of this Agreement, the Contractor agrees to provide at least 30 days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the Agreement, or for a period of not less than one year. New certificates or insurance are subject to the approval of the Department of General Services and the Contractor agrees that no work or services shall be performed prior to the giving of such approval. In the event the Contractor fails to keep in effect at all times insurance coverage as herein provided, the State may, in addition to other remedies it may have, terminate this Agreement upon occurrence of such event.

The State will not provide for nor compensate the Contractor for any insurance premiums or costs for any type or amount of insurance.

#### Automobile Liability

The Contractor shall maintain commercial auto liability insurance with limits not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of a motor vehicle including owned, hired and non-owned motor vehicles. Should the scope of the Agreement involve transportation of hazardous materials, an MCS-90 endorsement is required.

#### Commercial General Liability

The Contractor, along with any of its subcontractors engaged to perform work pursuant to this Agreement, shall maintain Commercial Liability insurance with limits of at least \$2,000,000 covering any damages caused by an error, omission, or negligent act of the Contractor in connection with the work provided such claims arise during the period commencing upon the preparation of the project work documents and ending 5 years following substantial completion.

### Workers' Compensation

The Contractor certifies and is aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code and the Contractor agrees to comply with such provisions before commencing performance of the work of this Agreement.

By signing this Agreement, the Contractor hereby warrants that it carries Workers' Compensation insurance on all of its employees who will be engaged in the performance of this Agreement. If staff provided by the Contractor are defined as independent Contractors, this clause does not apply.

### 9. TERMINATION WITHOUT CAUSE

Notwithstanding GTC termination clause, DMHC adds the following:

The DMHC may terminate this Agreement for any or no reason whatsoever, upon giving the Contractor thirty (30) calendar days prior written notice.

Any termination shall be effected by written notice to the Contractor, either hand-delivered to the Contractor or sent certified mail, return receipt requested. The notice of termination shall specify the effective date of termination.

Upon receipt of notice of termination, and except as otherwise directed in the notice, the Contractor shall:

- (a) Stop work on the date specified in the notice;
- (b) Place no further orders or enter into any further subcontracts for materials, services or facilities except as necessary to complete work under the Agreement up to effective date of termination;
- (c) Terminate all orders and subcontracts;
- (d) Promptly take all other reasonable and feasible steps to minimize any additional cost, loss, or expenditure associated with work terminated, including, but not limited to reasonable settlement of all outstanding liability and claims arising out of termination of orders and subcontracts;
- (e) Deliver or make available to the DMHC all data, drawings, specifications, reports, estimates, summaries, and such other information and material as may have been accumulated by the Contractor under this Agreement, whether completed, partially completed, or in progress.

In the event of termination, an equitable adjustment in the price provided for in this Agreement shall be made. Such adjustment shall include reasonable compensation for all services rendered, materials supplied, and expenses incurred pursuant to this Agreement prior to the effective date of termination.

### 10. COMPUTER SOFTWARE COPYRIGHT COMPLIANCE

By signing this Agreement, 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 Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

### 11. ADMINISTRATIVE REQUIREMENTS

The following administrative requirements must be completed before execution of the contract. The Contractor is responsible for any costs or expenses, including time, for completing these items.

#### a. Background Investigation

Due to the nature of the services to be performed, the DMHC requires a thorough background investigation of the Contractor, its agents, subcontractors and individual employees who will have

access to medical information as part of their duties under this Agreement; and reserves the right to disapprove any individual from performing under the scope of this Agreement. This background investigation includes fingerprinting and a California Department of Justice criminal record check. Each Contractor, agent, subcontractor and individual employee who is to perform services under this Agreement must voluntarily consent to a background investigation. Fingerprint rolling fees and background investigation costs will be borne by the Contractor, payable at time of fingerprinting. Previous clearances and/or investigations conducted by other agencies will not be accepted as an alternative to the DMHC's background investigation. It is the Contractor's responsibility to notify the DMHC when an employee working under this Agreement is terminated, not hired or reassigned to other work.

Per Government Code Section 1041, pre-employment background investigations shall be required of contract employees whose duties include or would include access to medical information. The pre-employment background investigation will consist of fingerprinting and an inquiry to the Department of Justice (DOJ) and the Federal Bureau of Investigations (FBI) to disclose Criminal Offender Record Information (CORI). Investigations are conducted to ascertain whether a contract employee has any state or federal convictions, or is currently released from custody on bail or on their own recognizance pending trial, of a crime of "[moral turpitude](#)".

b. Information Security, Integrity and Confidentiality Statement

Complete Attachment I for Contractor Authorized Representative and Attachment II for project employees, agents or sub-Contractors, which certify that the Contractor and the Contractor's staff understand and agree to comply with the DMHC's Information Security and Confidentiality Statement

c. Annual Information Security Awareness and Privacy Training

California state policy requires that the DMHC must provide for the proper use and protection of its information assets and arrange for basic security and privacy awareness training (SAM Sections 5305.1; 5320.1; 5320.2, SIMM 5330-B) for new users, and annually thereafter. Therefore, DMHC Contractors (including subcontractors) who access state resources must complete the designated DMHC online annual Information Security Awareness and Privacy Training prior to accessing DMHC information assets and/or beginning work on a contract. The DMHC Information Security Officer will set up your training account. While the training course is free-of-charge, any expenses, including Contractor time, related to new and/or annual Information Security Awareness and Privacy Training will be the responsibility of the Contractor. Active Contractors/subcontractors must provide a list of their employees' names and email addresses annually to the DMHC Information Security Officer to administer this online annual Information Security Awareness and Privacy Training.

d. Statement of Economic Interests (Form 700)

The California Political Reform Act requires individuals holding positions designated within an agency's conflict of interest code to file an annual Statement of Economic Interests (Form 700). The DMHC's conflict of interest code designates "Consultants" among the positions that must file a Form 700. Your employees or independent Contractors, working on the above named contract, have been designated as such consultants and are required to file an original Form 700 with the DMHC. (See Government Code Sections 82019 and 87302.)

Additionally, the Government Code requires all officials, employees and contracted consultants designated to file a Form 700, to also complete an Ethics Certification when first assuming a designated position and then every odd numbered year thereafter. In some cases, this means that consultants may be required to complete the Ethics Certification two years in a row if they assumed their designated position during an even numbered year. (See Government Code Sections 11146 through 11146.4.)

## 12. CONFLICT OF INTEREST

No Contractor shall participate in the making of, or in any way attempt to influence, a decision in which the Contractor knows, or has reason to know, that it has a financial interest. The Contractor shall notify the DMHC Contract Manager immediately in writing if the Contractor has a potential, or actual, conflict of interest relating to this Agreement.

The Contractor shall abide by the provisions of Government Code Sections 1090, 81000 et seq., 82000 et seq., 87100 et seq., and 87300 et seq., Public Contract Code (PCC) Sections 10335 et seq. and 10410 et seq., California Code of Regulations, Title 2, Section 18700 et seq., and the DMHC Incompatible Activities Policy.

Each of the Contractor's employees assigned to the DMHC project shall file a Statement of Economic Interests, Fair Political Practices Commission (FPPC) Form 700 within thirty (30) days of commencing services under the Agreement, annually during the life of the Agreement, and within thirty (30) days after the expiration of the Agreement.

The Contractor shall have a continuing duty to disclose to the DMHC, in writing, all interests and activities that create an actual or potential conflict of interest in performance of the Agreement.

The Contractor shall have a continuing duty to keep the DMHC timely and fully apprised in writing of any material changes in the Contractor's business structure and/or status. This includes any changes in business form, such as a change from sole proprietorship or partnership into a corporation or vice-versa; any changes in company ownership; any dissolution of the business; any change of the name of the business; any filing in bankruptcy; any revocation of corporate status by the Secretary of State; and any other material changes in the Contractor's business status or structure that could affect the performance of the Contractor's duties under the Agreement.

If the Contractor violates any provision of the above paragraphs, such action by the Contractor shall render this Agreement void.

## 13. PROHIBITION OF FOLLOW-ON CONTRACTS

No Contractor or subsidiary thereof who has been awarded a consulting services contract may submit a bid for, nor be awarded a contract for, the provision of services, procurement of goods or supplies, or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract. (PCC 10365.5)

## 14. POTENTIAL SUBCONTRACTORS

Nothing contained in this Agreement or otherwise, shall create any contractual relationship between the State and any subcontractors, and no subcontract shall relieve the Contractor of responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the State for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to the Contractor. Although the State shall have no obligation to pay any moneys directly to any subContractor, the Contractor is encouraged to make timely payment to its subcontractors under all applicable State laws, rules and regulations.

## 15. APPROVAL OF SUBCONTRACTS

The Contractor shall adhere to the rules governing subcontracting as set forth in the subcontracting Fair Practices Act, commencing with Public Contract Code Section (PCC) 4100. Any and all subcontractors must be approved by the DMHC Contract Manager. SubContractor substitutions also

shall be in accordance with the above and shall require the approval of the Contract Manager. Violations of this Act by the Contractor may subject the Contractor to penalties and disciplinary action.

#### 16. SUBSTITUTION OF SUBCONTRACTORS/STAFFING

Upon Agreement award, the Contractor must use the subcontractors and/or suppliers which they proposed in their bid submittal to the State unless a substitution is requested in writing for approval by the State's Contract Manager. The request for substitution may not be used as an excuse for non-compliance with any other provision of State or federal law including, but not limited to subletting and subcontracting.

#### 17. FORCE MAJEURE

Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include, but are not limited to:

- Acts of God or of the public enemy, and
- Acts of the federal or State government in either its sovereign or contractual capacity

If the failure to perform is caused by the default of a subContractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subContractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform.

#### 18. PROGRESS REPORTS

The Contractor shall submit progress reports to the State representative (Contract Manager) as required, describing work performed, work status, work progress, difficulties encountered, remedial action, and statement of activity anticipated subsequent to reporting period for approval prior to payment of invoices. The Contractor is to be reimbursed by invoicing, in detail, all costs and charges with Contract Number and sending to designated address.

#### 19. WAIVER OF RIGHTS

Any action or inaction by the State or the failure of the State on any occasion, to enforce any right or provision of the contract, shall not be construed to be a waiver by the State of its rights hereunder and shall not prevent the State from enforcing such provision or right on any future occasion. The rights and remedies of the State herein are cumulative and are in addition to any other rights or remedies that the State may have at law or in equity.

#### 20. AMENDMENTS

The DMHC reserves the right to amend this Agreement for up to an additional year and/or to increase funding. Should the DMHC amend this Agreement to extend the term, the proposed rates or prices shall remain the same. All terms and conditions shall remain the same, unless changes are mutually agreed upon by the Contractor and the DMHC and incorporated into the amendment. All Agreement amendments are subject to satisfactory performance and funding availability. Agreement amendments will not take effect until the Contractor has received a copy of the final purchase document that has been signed by the DMHC Procurement Contract Officer or designee.

#### 21. NON-ELIGIBLE ALIEN CERTIFICATION

An alien who is not: (1) a qualified alien; or (2) a nonimmigrant under the Immigration and Nationality Act; or (3) an alien who is paroled into the United States for less than one year, is not eligible for any State or local public benefit. The term "State or local public benefit" means any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government or

by appropriated funds of a State or local government. By signing this contract, the Contractor certifies under penalty of perjury under the laws of the State of California that he or she is not a non-eligible alien.

## 22. AGREEMENTS FUNDED BY THE FEDERAL GOVERNMENT

1. OMB Circular A-133 Audit: If the Contractor is a state or local agency, or non-profit organization including a nonprofit institution of higher education (as defined by the Federal Office of Management and Budget [OMB] Circular A-133) and expends \$500,000 or more in federal funds, the Contractor agrees to obtain an annual single organization wide, independent audit in accordance with the Federal Office of Management and Budget (OMS) Circular A-133. All OMB Circular A-133 audit reports shall meet the reporting requirements established in OMS § 1101.320 "Report Submission" and a copy shall be forwarded to funding program of DMHC.
2. DEBARMENT AND SUSPENSION CERTIFICATION:
  - a. By signing this Agreement, the Contractor agrees to comply with the debarment and suspension requirements as found in Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participants; responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211)
  - b. By signing this Agreement, the Contractor certifies to the best of its knowledge and belief, that it and its principals:
    - i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
    - ii. 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;
    - iii. 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 2.b., of this certification; and
    - iv. 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.

**EXHIBIT E  
ADDITIONAL PROVISIONS**

AGREEMENTS FUNDED BY THE FEDERAL GOVERNMENT

1. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of Congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the 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 for the Fiscal Years covered by this Agreement for the purposes of this program. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress, which may affect the provisions, terms, or funding of this Agreement in any manner.
3. It is mutually agreed that if Congress does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction of funds.
4. The department has the option to void the Agreement under the 30-day termination clause or to amend the Agreement to reflect any reduction of funds.
5. The recipient shall comply with the Single Audit Act and the reporting requirements set forth in OMB Circular A-133.

## **EXHIBIT F INFORMATION SECURITY, INTEGRITY, AND CONFIDENTIALITY**

Where access to personal<sup>[1]</sup>, confidential<sup>[2]</sup>, and/or sensitive<sup>[3]</sup> information assets<sup>[4]</sup> (hereafter, collectively referred to as Confidential Information) is required in the performance of this Agreement for the Department of Managed Health Care (Department); or access to such information is not required but physical access to facilities or computer systems is required and such access presents the potential for incidental access and/or inadvertent disclosure of such information, Contractor agrees to the following:

1. **General Confidentiality of Data Provision:** Contractor shall protect all Confidential Information from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. This includes, but is not limited to, the secure transport, transmission and storage of data used or acquired in the performance of this Agreement. No reports, information, discoveries or data obtained, assembled or developed by Contractor in the performance of this Agreement may be released, published or made available to any individual or entity without prior written approval from the Department. Contractor shall retain as confidential all work performed under this Agreement, recommendations and/or reports made to the Department, and all discussions between Contractor and Department staff, including all communications, whether oral, written or electronic. The Department may deem non-confidential part or all of the work or other information referenced in this Paragraph without prior permission of Contractor.
2. Contractor warrants and certifies that in the performance of this Agreement, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California and agrees to indemnify the State against any loss, cost, damage or liability by reason of Contractor's violation of this provision, including but not limited to information handling and confidentiality requirements outlined in the California Information Practices Act (Civil Code sections 1798 et.seq.).
3. Contractor shall not, except as authorized or required by his or her duties by law, reveal or divulge to any person or entity any of the Confidential Information concerning the Department and its affiliates which becomes known to him or her during the term of this Agreement.
4. Contractor shall keep confidential all Confidential Information entrusted to him or her and shall not use or attempt to use any such Confidential Information in any manner which may injure or cause loss, either directly or indirectly, to the Department.
5. Contractor shall comply, and shall cause its agents, subcontractors and individual employees to comply, with such directions as the Department shall make to ensure the safeguarding or confidentiality of all its resources.
6. The Department reserves the right to require that, prior to commencing work on this contract, Contractor, its agents, subcontractors and individual employees who will be involved in the performance of this Agreement, sign an information security and confidentiality statement, in a form to be provided by the Department. In such cases, Contractor shall attest that its agents, subcontractors and individual employees who will be involved in the performance of this Agreement are bound by terms of a confidentiality Agreement with Contractor similar in nature to this statement.

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<sup>[1]</sup> Information that identifies or describes an individual, including but not limited to, name, social security number, physical description, home address, home telephone number, education, financial account numbers, employment history and individually identifiable health information. (See California State Administrative Manual, sections 5300.4 and 5320.5.)

<sup>[2]</sup> Information that is exempt from disclosure under the provisions of the California Public Records Act (GC 6250-6265) or other applicable state or federal laws. (See California State Administrative Manual, sections 5300.4 and 5320.5.)

<sup>[3]</sup> Information, either public or confidential, maintained by the Department that requires special precautions to protect from unauthorized use, access, disclosure, modification, loss, or deletion. Sensitive information includes, but is not limited to, records of the Department's financial transactions and regulatory actions. (See California State Administrative Manual, sections 5300.4 and 5320.5.)

7. Contractor shall immediately notify the Department when it discovers that there may have been a breach in security which has or may have resulted in compromise to Confidential Information. For purposes of this Paragraph, immediately is defined as within 2 hours of discovery. The Department contact for such notification is as follows:

Chandra Jingar  
Department of Managed Health Care  
980 9<sup>th</sup> Street, Suite 500  
Sacramento, CA 95814

916-323-7908 Phone  
916-322-0662 FAX

Contractor shall furnish written notification of the discovery, including a description of the nature of the breach or potential breach in security, in a form to be provided by the Department, to the Department contact within 48 hours of Contractor's discovery.

8. Contractor agrees to properly secure and maintain any computer systems (hardware and software applications) that Contractor will use in the performance of this Agreement. This includes ensuring that all security patches, upgrades, and anti-virus updates are applied appropriately to secure data that may be used, transmitted, or stored on such systems in the performance of this Agreement.
9. Whenever Contractor utilizes non-State issued equipment in the performance of this Agreement, Contractor agrees, in addition to Paragraphs 1 through 8 above, to:
- Access and use Confidential Information only for performing Agreement duties for the Department;
  - Install and maintain encryption technology for all personal, sensitive, or confidential information that is stored on portable electronic storage media (including, but not limited to, CDs and thumb drives) and on portable computing devices (including, but not limited to, handheld devices, laptop and notebook computers) following the Federal Information Processing Standards (FIPS 140-2);
  - Store and transmit Confidential Information using encryption technology;
  - Pay all costs associated with complying with the encryption requirements within this section whenever utilizing non-State issued equipment;
  - Have fully functional and operating encryption technology in place prior to commencing work on this Agreement;
  - Set the lock computer feature on personal laptops or PCs to automatically engage after no more than 15 minutes of keyboard and/or mouse inactivity;
  - Not remove Confidential Information from any Department-controlled work area without prior authorization from Department staff authorized to provide such authorization; and
  - Consent to the Department's monitoring of Contractor's activities involving use of the Department's systems, applications and/or network.



- <sup>1</sup> Information that identifies or describes an individual, including, but not limited to, name, social security number, physical description, home address, home telephone number, education, financial account numbers, employment history and individually identifiable health information. (See California State Administrative Manual, sections 5300.4 and 5320.5.)
- <sup>2</sup> Information that is exempt from disclosure under the provisions of the California Public Records Act (GC §§6250-6265) or other applicable state or federal laws. (See California State Administrative Manual, sections 5300.4 and 5320.5.)
- <sup>3</sup> Information, either public or confidential, maintained by the Department that requires special precautions to protect from unauthorized use, access, disclosure, modification, loss, or deletion. Sensitive information includes, but is not limited to, records of the Department's financial transactions and regulatory actions. (See California State Administrative Manual, sections 5300.4 and 5320.5.)
- <sup>4</sup> All categories of automated information, including but not limited to records, files, statistics and databases; and information technology facilities, equipment (including personal computer systems), and software owned or leased by the Department. (See California State Administrative Manual, section 5300.4.)

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<sup>[4]</sup> All categories of automated information, including but not limited to records, files, statistics and databases; and information technology facilities, equipment (including personal computer systems), and software owned or leased by the Department. (See California State Administrative Manual, section 5300.4.)

**ATTACHMENT II**  
**INFORMATION SECURITY AND CONFIDENTIALITY STATEMENT**  
(for Employees, Agents and Subcontractors)

As an employee, agent or subContractor of **PRIME CONTRACTOR NAME**, I understand that, while performing my duties under Agreement number **(Final Agreement Number)** with the California Department of Managed Health Care (Department), I may have access to personal<sup>2</sup>, confidential<sup>3</sup>, and/or sensitive<sup>4</sup> information assets<sup>5</sup> as well as documents. I agree to protect these assets and documents from unauthorized (accidental or intentional) access, modification, destruction, or disclosure. Moreover, I agree to safeguard the integrity of the Department's information assets and documents and preserve them for their intended purpose, including the availability, accuracy, and completeness of information systems and the data maintained within those systems.

Special precautions are necessary to protect the Department's information assets. As such, **I agree to comply with all State and Federal law and policy regarding use of information assets and agree to:**

- Access and use information assets only for performing duties pursuant to Agreement number **(Final Agreement Number)** with the Department;
- Ensure that encryption technology has been installed and is being maintained for all personal, sensitive, or confidential information that is stored on portable electronic storage media (including, but not limited to, CDs and thumb drives) and on portable computing devices (including, but not limited to, handheld devices, laptop and notebook computers) following the Federal Information Processing Standards (FIPS 140-2).
- Store and transmit information assets in accordance with the Department's information security practices, including, but not limited to, using encryption technology;
- Maintain security patches and upgrades, and keep virus software up-to-date on all systems on which the information assets may be used;
- Set the lock computer feature on personal laptops or PCs to automatically engage after no more than 15 (fifteen) minutes of keyboard and/or mouse inactivity;
- Never access information assets for illegal use, personal interest or advantage;
- Never show, disclose or discuss information assets to or with unauthorized persons;
- Never remove information assets from any Department-controlled work area without authorization; and
- Notify my supervisor/manager under this Agreement immediately if I discover that there may have been a breach in security involving these information assets.

*I understand that my activities involving the Department's information assets may be monitored and that my personal equipment may be randomly audited for security compliance at the Department's discretion. I give express consent to such monitoring and auditing. I certify that I have read, understand and will comply with this Information Security and Confidentiality Statement.*

**Print Full Name**

**Signature**

**Date**

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<sup>2</sup> Information that identifies or describes an individual, including, but not limited to, name, social security number, physical description, home address, home telephone number, education, financial account numbers, employment history and individually identifiable health information. (See California State Administrative Manual, sections 5300.4 and 5320.5.)

<sup>3</sup> Information that is exempt from disclosure under the provisions of the California Public Records Act (GC §§6250-6265) or other applicable state or federal laws. (See California State Administrative Manual, sections 5300.4 and 5320.5.)

<sup>4</sup> Information, either public or confidential, maintained by the Department that requires special precautions to protect from unauthorized use, access, disclosure, modification, loss, or deletion. Sensitive information includes, but is not limited to, records of the Department's financial transactions and regulatory actions. (See California State Administrative Manual, sections 5300.4 and 5320.5.)

<sup>5</sup> All categories of automated information, including but not limited to records, files, statistics and databases; and information technology facilities, equipment (including personal computer systems), and software owned or leased by the Department. (See California State Administrative Manual, section 5300.4.)

### ATTACHMENT III INFORMATION SECURITY INCIDENT REPORT FOR CONTRACTORS

Contractor is required to follow a prescribed process when an information security incident occurs. Contractor must notify the Department of Managed Health Care's (DMHC) Information Security Officer (ISO) immediately upon discovery of an incident. The prescribed process includes the following steps:

#### 1. Immediately call the DMHC ISO at (916) 323-7908 to report the incident

You may leave a message if the DMHC ISO is not available. Leave your contact information. You will receive a call back within 24-hours of your call.

#### 2. Guidance for reporting the incident

- Name and address of the reporting entity.
- Name, address, e-mail address, and phone number(s) of the reporting person.
- Name, address, e-mail address, and phone number(s) of the alternate contact.
- Description of the incident.
- Date and time the incident occurred.
- Date and time the incident was discovered.
- Make / model of the affected computer(s).
- IP address of the affected computers(s).
- Assigned name of the affected computers(s).
- Operating system of the affected computers(s).
- Location of the affected computers(s).
- Any actions at and following the time of discovery that were taken prior to calling the DMHC ISO.

**IMPORTANT:** Reporting must NOT be delayed until all of this information is gathered. It is understood that in some circumstances this information may not be readily available. Therefore, the reporting entity must make the report to the DMHC ISO immediately and provide as much information as possible at the time the incident is discovered.

#### 3. Personally Identifiable Information (PII)

Contractor is required to report whether the incident involves personally identifiable information, including, but not limited to, breach notice-triggering personal information as defined in California Civil Code Section 1798.29. **Note: this section now includes categories of medical information and health information.**

#### 4. Written Report

The Information Security Incident Report for Contractors must be completed and forwarded to the Office of Technology and Innovation - Security Management Division within 48 (forty-eight) hours following Contractor's discovery of the incident. The completed Incident Report must be signed by the appropriate Contractor staff authorized to sign on behalf of the Contractor.

The Incident Report must be mailed to the address listed on the report. An electronic version of the Incident Report, in lieu of a hard copy, may be made available at the discretion of the DMHC ISO.



Contractor Name: \_\_\_\_\_ Contract No.: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_

**A. Date the DMHC ISO was notified:** \_\_\_\_\_

**B. Incident Details:**

1. Date incident occurred: \_\_\_\_\_  Unknown

2. Date incident detected: \_\_\_\_\_  Unknown

3. Incident location: \_\_\_\_\_

4. General description: \_\_\_\_\_

5. Media/Device type, if applicable: \_\_\_\_\_

a) Was the portable storage device encrypted?  Yes  No

If NO, explain: \_\_\_\_\_

6. Incidents involving personally identifiable information:

a) Was personally identifiable information involved?  Yes  No (If No, go to Part C)

Type of personally identifiable information (Check all that apply):

- |   |  |
|---|--|
| <input type="checkbox"/> Name                             | <input type="checkbox"/> Health or Medical Information |
| <input type="checkbox"/> Social Security Number           | <input type="checkbox"/> Financial Account Number      |
| <input type="checkbox"/> Driver's License/State ID Number | <input type="checkbox"/> Other (Specify)               |

b) Number of individuals affected: \_\_\_\_\_

**C. Corrective Actions Planned/Taken to Prevent Future Occurrences:**

1. Date corrective actions will be fully implemented: \_\_\_\_\_

**D. Signature** (Authorized Contractor Staff):

\_\_\_\_\_  
Print Name Signature Date

**Incident report must be mailed to:**

Department of Managed Health Care  
OTI - Security Management Division  
Attention: Information Security Officer  
980 9<sup>th</sup> Street, Suite 500  
Sacramento, CA 95814

**Note:** An electronic version of the Incident Report, in lieu of a hard copy, may be made available at the discretion of the DMHC ISO.

***The information contained in this document is confidential and should be maintained and safeguarded as confidential information.***

### Instructions

Contractor Name – Provide your company's name.

Contract Number - Provide DMHC Contract number involved.

Address – Provide your company's address, phone number, and email address.

**A. Date of notification** by phone to the DMHC ISO at **(916) 323-7908**. Notification to other DMHC staff by email or any other method is NOT a substitute for the required DMHC ISO notification.

**B. Incident Details** - Provide the date the incident occurred and the date the incident was discovered, if known. In the general description field, provide an overview of the incident with enough details so that the incident can be easily understood. Do not include any personally identifiable information (such as social security numbers, home addresses, etc.). Your report should include the following information, as applicable:

1. **Date incident occurred.**
2. **Date incident discovered.**
3. **Incident location** – Provide the location where the incident occurred. For example, if a laptop was stolen from an employee's home, suggested content might be, "Employee's Home, Roseville, CA" or, if the incident occurred at the Contractor's office, suggested content might be, "Contractor's Headquarters, 123 Any Street, Sacramento, CA"
4. **General description** – include the following in the description:
  - When the incident occurred and how it was discovered.
  - The number of people affected by this incident.
  - The details of any law enforcement investigation of this incident, such as, which agency investigated, when, and the report number.
  - Any personal, confidential, or sensitive information involved.
5. **Media/Device type, if applicable** – Provide the type of media or device involved in the incident, such as paper (fax, mail, etc.) or electronic (CD, floppy drive, laptop, PDA, email, thumb drive, etc.).
  - a) **Was the portable storage device encrypted?** – Check appropriate box. If NO, describe why the storage device was not encrypted.
6. **Incidents involving personally identifiable information:**
  - a) **Was personally identifiable information involved?** – Check appropriate boxes.
  - b) **Number of individuals affected** – Identify the number of individuals whose personally identifiable information was breached.

**C. Corrective Actions Planned/Taken to Prevent Future Occurrences** – Provide a detailed description of the corrective actions taken, or planned to be taken, by your company to prevent future occurrences of a similar incident.

1. **Date corrective actions will be fully implemented** – Provide a date when the corrective actions were, or will be, fully implemented.

**D. Signatures** – Authorized Contractor representative must sign this report.

**Mail the completed Incident Report, without these instructions, to:**

Department of Managed Health Care  
OTI - Security Management Division  
Attention: Information Security Officer  
980 9<sup>th</sup> Street, Suite 500  
Sacramento, CA 95814

**Note:** An electronic version of the Incident Report, in lieu of a hard copy, may be made available at the discretion of the DMHC ISO.

**EXHIBIT G**  
**HIPAA Business Associate Addendum**

**I. Recitals**

- 2) This Contract (Agreement) has been determined to constitute a business associate relationship under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ('the HITECH Act'), 42 U.S.C. section 17921 et seq., and their implementing privacy and security regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations").
- B. The Department of Health Care Services ("DHCS") wishes to disclose to Business Associate certain information pursuant to the terms of this Agreement, some of which may constitute Protected Health Information ("PHI"), including protected health information in electronic media ("ePHI"), under federal law, and personal information ("PI") under state law.
- C. As set forth in this Agreement, Contractor, here and after, is the Business Associate of DHCS acting on DHCS' behalf and provides services, arranges, performs or assists in the performance of functions or activities on behalf of DHCS and creates, receives, maintains, transmits, uses or discloses PHI and PI. DHCS and Business Associate are each a party to this Agreement and are collectively referred to as the "parties."
- D. The purpose of this Addendum is to protect the privacy and security of the PHI and PI that may be created, received, maintained, transmitted, used or disclosed pursuant to this Agreement, and to comply with certain standards and requirements of HIPAA, the HITECH Act and the HIPAA regulations, including, but not limited to, the requirement that DHCS must enter into a contract containing specific requirements with Contractor prior to the disclosure of PHI to Contractor, as set forth in 45 CFR Parts 160 and 164 and the HITECH Act.
- E. The terms used in this Addendum, but not otherwise defined, shall have the same meanings as those terms have in the HIPAA regulations. Any reference to statutory or regulatory language shall be to such language as in effect or as amended.

**II. Definitions**

- A. Breach shall have the meaning given to such term under HIPAA, the HITECH Act, and the HIPAA regulations.
- B. Business Associate shall have the meaning given to such term under HIPAA, the HITECH Act, and the HIPAA regulations.
- C. Covered Entity shall have the meaning given to such term under HIPAA, the HITECH Act, and the HIPAA regulations.
- D. Electronic Health Record shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C Section 17921 and implementing regulations.
- E. Electronic Protected Health Information (ePHI) means individually identifiable health information transmitted by electronic media or maintained in electronic media, including but not limited to electronic media as set forth under 45 CFR section 160.103.
- F. Individually Identifiable Health Information means health information, including demographic information collected from an individual, that is created or received by a health care provider, health plan, employer or health care clearinghouse, and relates to the past, present or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual,

that identifies the individual or where there is a reasonable basis to believe the information can be used to identify the individual, as set forth under 45 CFR section 160.103.

- G. Privacy Rule shall mean the HIPAA Regulation that is found at 45 CFR Parts 160 and 164.
- H. Personal Information shall have the meaning given to such term in California Civil Code section 1798.29.
- I. Protected Health Information means individually identifiable health information that is transmitted by electronic media, maintained in electronic media, or is transmitted or maintained in any other form or medium, as set forth under 45 CFR section 160.103.
- J. Required by law, as set forth under 45 CFR section 164.103, means a mandate contained in law that compels an entity to make a use or disclosure of PHI that is enforceable in a court of law. This includes, but is not limited to, court orders and court-ordered warrants, subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information, and a civil or an authorized investigative demand. It also includes Medicare conditions of participation with respect to health care providers participating in the program, and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.
- K. Secretary means the Secretary of the U.S. Department of Health and Human Services ("HHS") or the Secretary's designee.
- L. Security Incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI or PI, or confidential data that is essential to the ongoing operation of the Business Associate's organization and intended for internal use; or interference with system operations in an information system.
- M. Security Rule shall mean the HIPAA regulation that is found at 45 CFR Parts 160 and 164.
- N. Unsecured PHI shall have the meaning given to such term under the HITECH Act, 42 U.S.C. section 17932(h), any guidance issued pursuant to such Act and the HIPAA regulations.

### III. Terms of Agreement

#### A. Permitted Uses and Disclosures of PHI by Business Associate

**Permitted Uses and Disclosures.** Except as otherwise indicated in this Addendum, Business Associate may use or disclose PHI only to perform functions, activities or services specified in this Agreement, for, or on behalf of DHCS, provided that such use or disclosure would not violate the HIPAA regulations, if done by DHCS. Any such use or disclosure must, to the extent practicable, be limited to the limited data set, as defined in 45 CFR section 164.514(e)(2), or, if needed, to the minimum necessary to accomplish the intended purpose of such use or disclosure, in compliance with the HITECH Act and any guidance issued pursuant to such Act, and the HIPAA regulations.

1. **Specific Use and Disclosure Provisions.** Except as otherwise indicated in this Addendum, Business Associate may:
  - a. **Use and disclose for management and administration.** Use and disclose PHI for the proper management and administration of the Business Associate provided that such disclosures are required by law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business

Associate of any instances of which it is aware that the confidentiality of the information has been breached.

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

## B. Prohibited Uses and Disclosures

1. Business Associate shall not disclose PHI about an individual to a health plan for payment or health care operations purposes if the PHI pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full and the individual requests such restriction, in accordance with 42 U.S.C. section 17935(a) and 45 CFR section 164.522(a).
2. Business Associate shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior written consent of DHCS and as permitted by 42 U.S.C. section 17935(d)(2).

## C. Responsibilities of Business Associate

Business Associate agrees:

1. **Nondisclosure.** Not to use or disclose Protected Health Information (PHI) other than as permitted or required by this Agreement or as required by law.
2. **Safeguards.** To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI, including electronic PHI, that it creates, receives, maintains, uses or transmits on behalf of DHCS, in compliance with 45 CFR sections 164.308, 164.310 and 164.312, and to prevent use or disclosure of PHI other than as provided for by this Agreement. Business Associate shall implement reasonable and appropriate policies and procedures to comply with the standards, implementation specifications and other requirements of 45 CFR section 164, subpart C, in compliance with 45 CFR section 164.316. Business Associate shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Business Associate's operations and the nature and scope of its activities, and which incorporates the requirements of section 3, Security, below. Business Associate will provide DHCS with its current and updated policies.
3. **Security.** To take any and all steps necessary to ensure the continuous security of all computerized data systems containing PHI and/or PI, and to protect paper documents containing PHI and/or PI. These steps shall include, at a minimum:
  - a. Complying with all of the data system security precautions listed in Attachment A, the Business Associate Data Security Requirements;
  - b. Achieving and maintaining compliance with the HIPAA Security Rule (45 CFR Parts 160 and 164), as necessary in conducting operations on behalf of DHCS under this Agreement;
  - c. Providing a level and scope of security that is at least comparable to the level and scope of security established by the Office of Management and Budget in OMB Circular No. A-130, Appendix III - Security of Federal Automated Information Systems, which sets forth guidelines for automated information systems in Federal agencies; and

- d. In case of a conflict between any of the security standards contained in any of these enumerated sources of security standards, the most stringent shall apply. The most stringent means that safeguard which provides the highest level of protection to PHI from unauthorized disclosure. Further, Business Associate must comply with changes to these standards that occur after the effective date of this Agreement.

Business Associate shall designate a Security Officer to oversee its data security program who shall be responsible for carrying out the requirements of this section and for communicating on security matters with DHCS.

- D. *Mitigation of Harmful Effects.*** To mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate or its subcontractors in violation of the requirements of this Addendum.

**E. *Business Associate's Agents and Subcontractors.***

1. To enter into written Agreements with any agents, including subcontractors and vendors, to whom Business Associate provides PHI or PI received from or created or received by Business Associate on behalf of DHCS, that impose the same restrictions and conditions on such agents, subcontractors and vendors that apply to Business Associate with respect to such PHI and PI under this Addendum, and that comply with all applicable provisions of HIPAA, the HITECH Act and the HIPAA regulations, including the requirement that any agents, subcontractors or vendors implement reasonable and appropriate administrative, physical, and technical safeguards to protect such PHI and PI. Business Associate shall incorporate, when applicable, the relevant provisions of this Addendum into each subcontract or subaward to such agents, subcontractors and vendors, including the requirement that any security incidents or breaches of unsecured PHI or PI be reported to Business Associate.
2. In accordance with 45 CFR section 164.504(e)(1)(ii), upon Business Associate's knowledge of a material breach or violation by its subContractor of the Agreement between Business Associate and the subContractor, Business Associate shall:
  - a. Provide an opportunity for the subContractor to cure the breach or end the violation and terminate the Agreement if the subContractor does not cure the breach or end the violation within the time specified by DHCS; or
  - b. Immediately terminate the Agreement if the subContractor has breached a material term of the Agreement and cure is not possible.

**F. *Availability of Information to DHCS and Individuals.*** To provide access and information:

1. To provide access as DHCS may require, and in the time and manner designated by DHCS (upon reasonable notice and during Business Associate's normal business hours) to PHI in a Designated Record Set, to DHCS (or, as directed by DHCS), to an Individual, in accordance with 45 CFR section 164.524. Designated Record Set means the group of records maintained for DHCS that includes medical, dental and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for DHCS health plans; or those records used to make decisions about individuals on behalf of DHCS. Business Associate shall use the forms and processes developed by DHCS for this purpose and shall respond to requests for access to records transmitted by DHCS within fifteen (15) calendar days of receipt of the request by producing the records or verifying that there are none.
2. If Business Associate maintains an Electronic Health Record with PHI, and an individual requests a copy of such information in an electronic format, Business Associate shall provide such information in an electronic format to enable DHCS to fulfill its obligations under the HITECH Act, including but not limited to, 42 U.S.C. section 17935(e).

3. If Business Associate receives data from DHCS that was provided to DHCS by the Social Security Administration, upon request by DHCS, Business Associate shall provide DHCS with a list of all employees, Contractors and agents who have access to the Social Security data, including employees, Contractors and agents of its subcontractors and agents.
- G. Amendment of PHI.** To make any amendment(s) to PHI that DHCS directs or agrees to pursuant to 45 CFR section 164.526, in the time and manner designated by DHCS.
- H. Internal Practices.** To make Business Associate's internal practices, books and records relating to the use and disclosure of PHI received from DHCS, or created or received by Business Associate on behalf of DHCS, available to DHCS or to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by DHCS or by the Secretary, for purposes of determining DHCS' compliance with the HIPAA regulations. If any information needed for this purpose is in the exclusive possession of any other entity or person and the other entity or person fails or refuses to furnish the information to Business Associate, Business Associate shall so certify to DHCS and shall set forth the efforts it made to obtain the information.
- I. Documentation of Disclosures.** To document and make available to DHCS or (at the direction of DHCS) to an Individual such disclosures of PHI, and information related to such disclosures, necessary to respond to a proper request by the subject Individual for an accounting of disclosures of PHI, in accordance with the HITECH Act and its implementing regulations, including but not limited to 45 CFR section 164.528 and 42 U.S.C. section 17935(c). If Business Associate maintains electronic health records for DHCS as of January 1, 2009, Business Associate must provide an accounting of disclosures, including those disclosures for treatment, payment or health care operations, effective with disclosures on or after January 1, 2014. If Business Associate acquires electronic health records for DHCS after January 1, 2009, Business Associate must provide an accounting of disclosures, including those disclosures for treatment, payment or health care operations, effective with disclosures on or after the date the electronic health record is acquired, or on or after January 1, 2011, whichever date is later. The electronic accounting of disclosures shall be for disclosures during the three years prior to the request for an accounting.
- J. Breaches and Security Incidents.** During the term of this Agreement, Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any breach or security incident, and to take the following steps:
1. **Notice to DHCS.** (1) To notify DHCS **immediately by telephone call plus email or fax** upon the discovery of a breach of unsecured PHI or PI in electronic media or in any other media if the PHI or PI was, or is reasonably believed to have been, accessed or acquired by an unauthorized person, or upon the discovery of a suspected security incident that involves data provided to DHCS by the Social Security Administration. (2) To notify DHCS **within 24 hours by email or fax** of the discovery of any suspected security incident, intrusion or unauthorized access, use or disclosure of PHI or PI in violation of this Agreement and this Addendum, or potential loss of confidential data affecting this Agreement. A breach shall be treated as discovered by Business Associate as of the first day on which the breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the breach) who is an employee, officer or other agent of Business Associate.

Notice shall be provided to the DHCS Program Contract Manager, the DHCS Privacy Officer and the DHCS Information Security Officer. If the incident occurs after business hours or on a weekend or holiday and involves electronic PHI, notice shall be provided by calling the DHCS ITSD Service Desk. Notice shall be made using the "DHCS Privacy Incident Report" form, including all information known at the time. Business Associate shall use the most current version of this form, which is posted on the DHCS Privacy Office website ([www.dhcs.ca.gov](http://www.dhcs.ca.gov)), then select "Privacy" in the left column and then "Business Use" near the

middle of the page) or use this link:  
<http://www.dhcs.ca.gov/formsandpubs/laws/priv/Pages/DHCSBusinessAssociatesOnly.aspx>

Upon discovery of a breach or suspected security incident, intrusion or unauthorized access, use or disclosure of PHI or PI, Business Associate shall take:

- a. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment; and
  - b. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.
2. **Investigation and Investigation Report.** To immediately investigate such security incident, breach, or unauthorized access, use or disclosure of PHI or PI. Within 72 hours of the discovery, Business Associate shall submit an updated "DHCS Privacy Incident Report" containing the information marked with an asterisk and all other applicable information listed on the form, to the extent known at that time, to the DHCS Program Contract Manager, the DHCS Privacy Officer, and the DHCS Information Security Officer:
3. **Complete Report.** To provide a complete report of the investigation to the DHCS Program Contract Manager, the DHCS Privacy Officer, and the DHCS Information Security Officer within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall be submitted on the "DHCS Privacy Incident Report" form and shall include an assessment of all known factors relevant to a determination of whether a breach occurred under applicable provisions of HIPAA, the HITECH Act, the HIPAA regulations and/or state law. The report shall also include a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure. If DHCS requests information in addition to that listed on the "DHCS Privacy Incident Report" form, Business Associate shall make reasonable efforts to provide DHCS with such information. If necessary, a Supplemental Report may be used to submit revised or additional information after the completed report is submitted, by submitting the revised or additional information on an updated "DHCS Privacy Incident Report" form. DHCS will review and approve the determination of whether a breach occurred and individual notifications are required, and the corrective action plan.
4. **Notification of Individuals.** If the cause of a breach of PHI or PI is attributable to Business Associate or its subcontractors, agents or vendors, Business Associate shall notify individuals of the breach or unauthorized use or disclosure when notification is required under state or federal law and shall pay any costs of such notifications, as well as any costs associated with the breach. The notifications shall comply with the requirements set forth in 42 U.S.C. section 17932 and its implementing regulations, including, but not limited to, the requirement that the notifications be made without unreasonable delay and in no event later than 60 calendar days. The DHCS Program Contract Manager, the DHCS Privacy Officer, and the DHCS Information Security Officer shall approve the time, manner and content of any such notifications and their review and approval must be obtained before the notifications are made.
5. **Responsibility for Reporting of Breaches.** If the cause of a breach of PHI or PI is attributable to Business Associate or its agents, subcontractors or vendors, Business Associate is responsible for all required reporting of the breach as specified in 42 U.S.C. section 17932 and its implementing regulations, including notification to media outlets and to the Secretary. If a breach of unsecured PHI involves more than 500 residents of the State of California or its jurisdiction, Business Associate shall notify the Secretary of the breach immediately upon discovery of the breach. If Business Associate has reason to believe that duplicate reporting of the same breach or incident may occur because its subcontractors, agents or vendors may report the breach or incident to DHCS in addition to Business Associate, Business Associate shall notify DHCS, and DHCS and Business Associate may

take appropriate action to prevent duplicate reporting. The breach reporting requirements of this paragraph are in addition to the reporting requirements set forth in subsection 1, above.

- 6. **DHCS Contact Information.** To direct communications to the above referenced DHCS staff, the Contractor shall initiate contact as indicated herein. DHCS reserves the right to make changes to the contact information below by giving written notice to the Contractor. Said changes shall not require an amendment to this Addendum or the Agreement to which it is incorporated.

| <b>DHCS Program Contract Manager</b>                                   | <b>DHCS Privacy Officer</b>  | <b>DHCS Information Security Officer</b>   |
|--|--|--|
| See the Scope of Work exhibit for Program Contract Manager information | Privacy Officer<br>c/o: Office of HIPAA Compliance<br>Department of Health Care Services<br>P.O. Box 997413, MS 4722<br>Sacramento, CA 95899-7413<br><br>Email: <a href="mailto:privacyofficer@dhcs.ca.gov">privacyofficer@dhcs.ca.gov</a><br><br>Telephone: (916) 445-4646<br><br>Fax: (916) 440-7680 | Information Security Officer<br>DHCS Information Security Office<br>P.O. Box 997413, MS 6400<br>Sacramento, CA 95899-7413<br><br>Email: <a href="mailto:iso@dhcs.ca.gov">iso@dhcs.ca.gov</a><br>Fax: (916) 440-5537<br><br>Telephone: ITSD Service Desk<br>(916) 440-7000 or<br>(800) 579-0874 |

- K. **Termination of Agreement.** In accordance with Section 13404(b) of the HITECH Act and to the extent required by the HIPAA regulations, if Business Associate knows of a material breach or violation by DHCS of this Addendum, it shall take the following steps:
  1. Provide an opportunity for DHCS to cure the breach or end the violation and terminate the Agreement if DHCS does not cure the breach or end the violation within the time specified by Business Associate; or
  2. Immediately terminate the Agreement if DHCS has breached a material term of the Addendum and cure is not possible.
- L. **Due Diligence.** Business Associate shall exercise due diligence and shall take reasonable steps to ensure that it remains in compliance with this Addendum and is in compliance with applicable provisions of HIPAA, the HITECH Act and the HIPAA regulations, and that its agents, subcontractors and vendors are in compliance with their obligations as required by this Addendum.
- M. **Sanctions and/or Penalties.** Business Associate understands that a failure to comply with the provisions of HIPAA, the HITECH Act and the HIPAA regulations that are applicable to Business Associate may result in the imposition of sanctions and/or penalties on Business Associate under HIPAA, the HITECH Act and the HIPAA regulations.

**IV. Obligations of DHCS**

DHCS agrees to:

- A. **Notice of Privacy Practices.** Provide Business Associate with the Notice of Privacy Practices that DHCS produces in accordance with 45 CFR section 164.520, as well as any changes to such notice. Visit the DHCS Privacy Office to view the most current Notice of Privacy Practices at: <http://www.dhcs.ca.gov/formsandpubs/laws/priv/Pages/default.aspx> or the DHCS website at [www.dhcs.ca.gov](http://www.dhcs.ca.gov) (select "Privacy in the left column and "Notice of Privacy Practices" on the right side of the page).
- B. **Permission by Individuals for Use and Disclosure of PHI.** Provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate's permitted or required uses and disclosures.

- C. *Notification of Restrictions.*** Notify the Business Associate of any restriction to the use or disclosure of PHI that DHCS has agreed to in accordance with 45 CFR section 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of PHI.
- D. *Requests Conflicting with HIPAA Rules.*** Not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA regulations if done by DHCS.

## V. Audits, Inspection and Enforcement

- A.** From time to time, DHCS may inspect the facilities, systems, books and records of Business Associate to monitor compliance with this Agreement and this Addendum. Business Associate shall promptly remedy any violation of any provision of this Addendum and shall certify the same to the DHCS Privacy Officer in writing. The fact that DHCS inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems and procedures does not relieve Business Associate of its responsibility to comply with this Addendum, nor does DHCS':
  - 1. Failure to detect or
  - 2. Detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices constitute acceptance of such practice or a waiver of DHCS' enforcement rights under this Agreement and this Addendum.
- B.** If Business Associate is the subject of an audit, compliance review, or complaint investigation by the Secretary or the Office of Civil Rights, U.S. Department of Health and Human Services, that is related to the performance of its obligations pursuant to this HIPAA Business Associate Addendum, Business Associate shall notify DHCS and provide DHCS with a copy of any PHI or PI that Business Associate provides to the Secretary or the Office of Civil Rights concurrently with providing such PHI or PI to the Secretary. Business Associate is responsible for any civil penalties assessed due to an audit or investigation of Business Associate, in accordance with 42 U.S.C. section 17934(c).

## VI. Termination

- A. *Term.*** The Term of this Addendum shall commence as of the effective date of this Addendum and shall extend beyond the termination of the contract and shall terminate when all the PHI provided by DHCS to Business Associate, or created or received by Business Associate on behalf of DHCS, is destroyed or returned to DHCS, in accordance with 45 CFR 164.504(e)(2)(ii)(I).
- B. *Termination by DHCS.*** In accordance with 45 CFR section 164.504(e)(1)(ii), upon DHCS' knowledge of a material breach or violation of this Addendum by Business Associate, DHCS shall:
  - 1. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by DHCS; or
  - 2. Immediately terminate this Agreement if Business Associate has breached a material term of this Addendum and cure is not possible.
- C. *Termination by DMHC.*** In accordance with Section 13404(b) of the HITECH Act and to the extent required by the HIPAA regulations, if Business Associate knows of a material breach or violation by DHCS of this Addendum, it shall take the following steps:

1. Provide an opportunity for DHCS to cure the breach or end the violation and terminate the Agreement if DHCS does not cure the breach or end the violation within the time specified by Business Associate; or
  2. Immediately terminate the Agreement if DHCS has breached a material term of the Addendum and cure is not possible.
- C. *Judicial or Administrative Proceedings.*** Business Associate will notify DHCS if it is named as a defendant in a criminal proceeding for a violation of HIPAA. DHCS may terminate this Agreement if Business Associate is found guilty of a criminal violation of HIPAA. DHCS may terminate this Agreement if a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, or other security or privacy laws is made in any administrative or civil proceeding in which the Business Associate is a party or has been joined.
- D. *Effect of Termination.*** Upon termination or expiration of this Agreement for any reason, Business Associate shall return or destroy all PHI received from DHCS (or created or received by Business Associate on behalf of DHCS) that Business Associate still maintains in any form, and shall retain no copies of such PHI. If return or destruction is not feasible, Business Associate shall notify DHCS of the conditions that make the return or destruction infeasible, and DHCS and Business Associate shall determine the terms and conditions under which Business Associate may retain the PHI. Business Associate shall continue to extend the protections of this Addendum to such PHI, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.

## VII. Miscellaneous Provisions

- A. *Disclaimer.*** DHCS makes no warranty or representation that compliance by Business Associate with this Addendum, HIPAA or the HIPAA regulations will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
- B. *Amendment.*** The parties acknowledge that federal and state laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon DHCS' request, Business Associate agrees to promptly enter into negotiations with DHCS concerning an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other applicable laws. DHCS may terminate this Agreement upon thirty (30) days written notice in the event:
1. Business Associate does not promptly enter into negotiations to amend this Addendum when requested by DHCS pursuant to this Section; or
  2. Business Associate does not enter into an amendment providing assurances regarding the safeguarding of PHI that DHCS in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA regulations.
- C. *Assistance in Litigation or Administrative Proceedings.*** Business Associate shall make itself and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under this Agreement, available to DHCS at no cost to DHCS to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against DHCS, its directors, officers or employees based upon claimed violation of HIPAA, the

HIPAA regulations or other laws relating to security and privacy, which involves inactions or actions by the Business Associate, except where Business Associate or its subContractor, employee or agent is a named adverse party.

- D. *No Third-Party Beneficiaries.*** Nothing express or implied in the terms and conditions of this Addendum is intended to confer, nor shall anything herein confer, upon any person other than DHCS or Business Associate and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.
- E. *Interpretation.*** The terms and conditions in this Addendum shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the HIPAA regulations and applicable state laws. The parties agree that any ambiguity in the terms and conditions of this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act and the HIPAA regulations.
- F. *Regulatory References.*** A reference in the terms and conditions of this Addendum to a section in the HIPAA regulations means the section as in effect or as amended.
- G. *Survival.*** The respective rights and obligations of Business Associate under Section VI.D of this Addendum shall survive the termination or expiration of this Agreement.
- H. *No Waiver of Obligations.*** No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

## Attachment A Business Associate Data Security Requirements

### I. Personnel Controls

- A. *Employee Training.*** All workforce members who assist in the performance of functions or activities on behalf of DHCS, or access or disclose DHCS PHI or PI must complete information privacy and security training, at least annually, at Business Associate's expense. Each workforce member who receives information privacy and security training must sign a certification, indicating the member's name and the date on which the training was completed. These certifications must be retained for a period of six (6) years following contract termination.
- B. *Employee Discipline.*** Appropriate sanctions must be applied against workforce members who fail to comply with privacy policies and procedures or any provisions of these requirements, including termination of employment where appropriate.
- C. *Confidentiality Statement.*** All persons that will be working with DHCS PHI or PI must sign a confidentiality statement that includes, at a minimum, General Use, Security and Privacy Safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the workforce member prior to access to DHCS PHI or PI. The statement must be renewed annually. The Contractor shall retain each person's written confidentiality statement for DHCS inspection for a period of six (6) years following contract termination.
- D. *Background Check.*** Before a member of the workforce may access DHCS PHI or PI, a thorough background check of that worker must be conducted, with evaluation of the results to assure that there is no indication that the worker may present a risk to the security or integrity of confidential data or a risk for theft or misuse of confidential data. The Contractor shall retain each workforce member's background check documentation for a period of three (3) years following contract termination.

### II. Technical Security Controls

- A. *Workstation/Laptop encryption.*** All workstations and laptops that process and/or store DHCS PHI or PI must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as Advanced Encryption Standard (AES). The encryption solution must be full disk unless approved by the DHCS Information Security Office.
- B. *Server Security.*** Servers containing unencrypted DHCS PHI or PI must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.
- C. *Minimum Necessary.*** Only the minimum necessary amount of DHCS PHI or PI required to perform necessary business functions may be copied, downloaded, or exported.
- D. *Removable media devices.*** All electronic files that contain DHCS PHI or PI data must be encrypted when stored on any removable media or portable device (i.e. USB thumb drives, floppies, CD/DVD, Blackberry, backup tapes etc.). Encryption must be a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES.
- E. *Antivirus software.*** All workstations, laptops and other systems that process and/or store DHCS PHI or PI must install and actively use comprehensive anti-virus software solution with automatic updates scheduled at least daily.
- F. *Patch Management.*** All workstations, laptops and other systems that process and/or store DHCS PHI or PI must have critical security patches applied, with system reboot if necessary. There must be a documented patch management process which determines installation

timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable patches must be installed within 30 days of vendor release.

- G. *User IDs and Password Controls.*** All users must be issued a unique user name for accessing DHCS PHI or PI. Username must be promptly disabled, deleted, or the password changed upon the transfer or termination of an employee with knowledge of the password, at maximum within 24 hours. Passwords are not to be shared. Passwords must be at least eight characters and must be a non-dictionary word. Passwords must not be stored in readable format on the computer. Passwords must be changed every 90 days, preferably every 60 days. Passwords must be changed if revealed or compromised. Passwords must be composed of characters from at least three of the following four groups from the standard keyboard:
- Upper case letters (A-Z)
  - Lower case letters (a-z)
  - Arabic numerals (0-9)
  - Non-alphanumeric characters (punctuation symbols)
- H. *Data Destruction.*** When no longer needed, all DHCS PHI or PI must be wiped using the Gutmann or US Department of Defense (DoD) 5220.22-M (7 Pass) standard, or by degaussing. Media may also be physically destroyed in accordance with NIST Special Publication 800-88. Other methods require prior written permission of the DHCS Information Security Office.
- I. *System Timeout.*** The system providing access to DHCS PHI or PI must provide an automatic timeout, requiring re-authentication of the user session after no more than 20 minutes of inactivity.
- J. *Warning Banners.*** All systems providing access to DHCS PHI or PI must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only by authorized users. User must be directed to log off the system if they do not agree with these requirements.
- K. *System Logging.*** The system must maintain an automated audit trail which can identify the user or system process which initiates a request for DHCS PHI or PI, or which alters DHCS PHI or PI. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. If DHCS PHI or PI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least 3 years after occurrence.
- L. *Access Controls.*** The system providing access to DHCS PHI or PI must use role based access controls for all user authentications, enforcing the principle of least privilege.
- M. *Transmission encryption.*** All data transmissions of DHCS PHI or PI outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files containing PHI can be encrypted. This requirement pertains to any type of PHI or PI in motion such as website access, file transfer, and E-Mail.
- N. *Intrusion Detection.*** All systems involved in accessing, holding, transporting, and protecting DHCS PHI or PI that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

### III. Audit Controls

- A. *System Security Review.*** All systems processing and/or storing DHCS PHI or PI must have at least an annual system risk assessment/security review which provides assurance that administrative, physical, and technical controls are functioning effectively and providing adequate levels of protection. Reviews should include vulnerability scanning tools.

- B. *Log Reviews.*** All systems processing and/or storing DHCS PHI or PI must have a routine procedure in place to review system logs for unauthorized access.
- C. *Change Control.*** All systems processing and/or storing DHCS PHI or PI must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.

#### **IV. Business Continuity / Disaster Recovery Controls**

- A. *Emergency Mode Operation Plan.*** Contractor must establish a documented plan to enable continuation of critical business processes and protection of the security of electronic DHCS PHI or PI in the event of an emergency. Emergency means any circumstance or situation that causes normal computer operations to become unavailable for use in performing the work required under this Agreement for more than 24 hours.
- B. *Data Backup Plan.*** Contractor must have established documented procedures to backup DHCS PHI to maintain retrievable exact copies of DHCS PHI or PI. The plan must include a regular schedule for making backups, storing backups offsite, an inventory of backup media, and an estimate of the amount of time needed to restore DHCS PHI or PI should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of DHCS data.

#### **V. Paper Document Controls**

- A. *Supervision of Data.*** DHCS PHI or PI in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by an employee authorized to access the information. DHCS PHI or PI in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.
- B. *Escorting Visitors.*** Visitors to areas where DHCS PHI or PI is contained shall be escorted and DHCS PHI or PI shall be kept out of sight while visitors are in the area.
- C. *Confidential Destruction.*** DHCS PHI or PI must be disposed of through confidential means, such as cross cut shredding and pulverizing.
- D. *Removal of Data.*** DHCS PHI or PI must not be removed from the premises of the Contractor except with express written permission of DHCS.
- E. *Faxing.*** Faxes containing DHCS PHI or PI shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending the fax.
- F. *Mailing.*** Mailings of DHCS PHI or PI shall be sealed and secured from damage or inappropriate viewing of PHI or PI to the extent possible. Mailings which include 500 or more individually identifiable records of DHCS PHI or PI in a single package shall be sent using a tracked mailing method which includes verification of delivery and receipt, unless the prior written permission of DHCS to use another method is obtained.