

## ARTICLE I. DEFINITIONS AND RESOLUTIONS OF LANGUAGE CONFLICTS

### A. GENERAL DEFINITIONS

1. The term "Agreement" or "Contract" shall mean the Standard Agreement, Exhibits A, B, C, D, E, F, and G, and an approved Budget Display, and if applicable, a Budget Summary, which are hereby incorporated by reference, amendments, and any other documents incorporated by reference, unless otherwise provided for in this Article.
2. "State," "Department," and "CDA" mean the State of California and the California Department of Aging interchangeably.
3. "A12AA" "Area 12 Agency on Aging", means the Area 12 Agency on Aging interchangeably.
4. "Contractor" means the entity that receives funds from A12AA to provide direct services identified in this Agreement. Contractor is accountable to A12AA for use of these funds and is responsible for executing the provisions for services provided under this Agreement.
5. "Reimbursable item" also means "allowable cost" and "compensable item."
6. "CFR" means Code of Federal Regulations.  
"CCR" means California Code of Regulations.  
"GC" means Government Code.  
"Welf. & Inst. Code" means Welfare and Institutions Code.  
"USC" means United States Code.  
"Cal. Civ. Code" means California Civil Code.  
"Cal. Pub. Con. Code" means the California Public Contract Code.  
"PM" means Program Memo which is issued by CDA.  
"Cal. Gov. Code" means California Government Code.  
"HHS" means United States Department of Health & Human Services.  
"HSC" means California Health & Safety Code.  
"OAA" means Older Americans Act.  
"OMB" means Office of Management & Budget.
7. "Vendor" means an entity providing goods or services for Contractor during Contractor's performance of this Agreement. "Vendor" means the legal entity that receives funds from Contractor to provide specific services. Vendors shall provide specific services described in Exhibit #1 of the Vendor Agreement, titled "Description of Services" and fulfill the responsibilities of the vendor found in the Vendor Agreement under the "Scope of Work".
8. "Allocation" means the process of assigning a cost, or a group of costs, to one or more cost objective(s), in reasonable proportion to the benefit provided or other equitable relationship. The process may entail assigning a cost(s) directly to a

- final cost objective or through one or more intermediate cost objectives. (2 CFR 200.4 and 45 CFR 75.2)
9. "Disallowed costs" means those charges determined to be unallowable, in accordance with the applicable Federal statutes, regulations, or the terms and conditions of the Federal award. (2 CFR 200.31 and 45 CFR 75.2)
  10. "Questioned costs" means a cost that is questioned by the auditor because of an audit finding which resulted from a violation or possible violation of a statute, regulation, or the terms and condition of a Federal award, including for funds used to match Federal funds; where the costs, at the time of the audit, are not supported by adequate documentation; or where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances. (2 CFR 200.84 and 45 CFR 75.2)
  11. "Recoverable cost" means the state and federal share of the questioned cost.

B. Resolution of Language Conflicts

Conflicts in language shall be resolved in the following order of priority:

1. The Grant terms and conditions.
2. The Older Americans Act and other applicable federal statutes and their implementing regulations.
3. If applicable, the Older Californians Act and other California State codes and regulations.
4. Title 22 CCR §7000 et. seq.;
5. Standard Agreement, all Exhibits and any amendments thereto;
6. Any other documents incorporated herein by reference, including the federal HHS terms and conditions found in Part II of the HHS Grant Policy Statement. The HHS Grant Policy Statement is available under the HHS Policy Requirements Topic at <https://www.hhs.gov/grants/grants/grants-policies-regulations/index.html>;
7. Program memos and other guidance issued by A12AA and CDA.

**ARTICLE II. ASSURANCES**

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

Contractor agrees to administer this Agreement and require any vendors to administer their contracts in accordance with this Agreement, and with all applicable A12AA, local, State, and Federal laws and regulations including, but not limited to, discrimination, wages and hours of employment, occupational safety, and to fire, safety, health, and sanitation regulations, directives, guidelines, and/or manuals related to this Agreement and resolve all issues using good administrative practices and sound judgment. Contractor shall keep in effect all licenses, permits, notices, and certificates that are required by law.

B. Nondiscrimination

Contractor shall comply with all Federal statutes relating to nondiscrimination. These include those statutes and laws contained in the Contractor Certification Clauses (CCC 307) which is hereby incorporated by reference. In addition, Contractor shall comply with the following:

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

Contractor shall ensure compliance with Title VI of the Civil Rights Act of 1964 [42 USC Section 2000d; 45 CFR Part 80], which prohibits recipients of Federal financial assistance from discriminating against persons based on race, color, religion, or national origin.

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

Contractor shall, unless exempted, ensure compliance with the requirements of Cal. Gov. Code § 11135 et seq., and 2 CCR § 11140 et seq., which prohibit recipients of state financial assistance from discriminating against persons based on race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, or disability. [22 CCR § 98323]

3. Americans with Disabilities Act

Contractor assures the State and A12AA that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. [42 USC Sections 12101 et seq.]

4. California Civil Rights Laws

Contractor shall ensure compliance with the requirements of Cal. Public Contract Code §2010 by submitting a completed California Civil Rights Laws Certification, prior to execution of this Agreement. The certificate is available by contacting the A12AA office.

The California Civil Rights Laws Certification ensures Contractor compliance with the Unruh Civil Rights Act (Cal. Civ. Code § 51 et seq.) and the Fair Employment and Housing Act (Cal. Gov. Code § 12960 et seq.); and ensures Contractor internal policies are not used in violation of California Civil Rights Laws.

C. Standards of Work

Contractor agrees that the performance of work and services pursuant to the requirements of this Agreement shall conform to accepted professional standards.

D. Professional Standards of Conduct

Contractor is responsible for ensuring the public trust by avoiding any situation that creates a real or perceived misrepresentation. Generally, misrepresentation occurs when a personal interest may intertwine with a professional interest. This may specifically occur when an employee or volunteer enters the online world.

A12AA encourages Contractor, in the performance of the services agreed to be performed, to adhere to professional standards of conduct. As the internet and electronic communications play an ever increasing role in our work and personal lives, Contractor must always be mindful of its responsibilities as a provider of direct public services. If an employee uses social media and includes his or her affiliation or title or comments on matters related to their organization or A12AA, the line between public and private, personal and professional can be blurred.

Assume everything you, your staff or volunteers write online becomes public. Information from your Facebook page, blog entries, tweets and other social media outlets, can be easily circulated beyond your intended audience. This content, therefore represents you and your organization to the general public. As a result, when using social media, staff/volunteers should use caution and exhibit sound judgment.

Before using social media or information shared online to communicate about matters affecting Contractor or A12AA, A12AA encourages Contractor to review the information. Be sure the information is ethical, does not represent political activity, does not discriminate or harass, does not disclose non-public information, does not make false or misleading statements, and does not make disparaging comments about other likeminded organizations.

These same standards of conduct should be demonstrated while staff or volunteers are representing Contractor in a public venue.

E. Conflict of Interest

1. Contractor shall prevent its employees or consultants from using their positions for purposes including, but not limited to, the selection of vendors that are, or give the appearance of being, motivated by a desire for private gain for themselves or others, such as family, business, or other ties. In the event that the State or A12AA determines that a conflict of interest exists, any increase in costs associated with the conflict of interest may be disallowed by the State or A12AA and such conflict may constitute grounds for termination of this Agreement.
2. This provision shall not be construed to prohibit employment of persons with whom Contractor's officers, agents, or employees have family, business, or

other ties, so long as the employment of such persons does not result in a conflict of interest (real or apparent) or increased costs over those associated with the employment of any other equally qualified applicant, and such persons have successfully competed for employment with the other applicants on a merit basis.

F. Covenant against Contingent Fees

1. Contractor warrants that no person or selling agency has been employed or retained to solicit this Agreement. There has been no agreement to make commission payments in order to obtain this Agreement.
2. For breach or violation of this warranty, A12AA shall have the right to terminate this Agreement without liability or at its discretion to deduct from this Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingency fee.

G. Payroll Taxes and Deductions

Contractor shall promptly forward payroll taxes, insurances, and contributions, including State Disability Insurance, Unemployment Insurance, Old Age Survivors Disability Insurance, and Federal and State income taxes withheld, to designated governmental agencies.

H. Facility Construction or Repair (This section only applies to Title III.)

1. When applicable for purposes of construction or repair of facilities, Contractor shall comply with the provisions contained in the following acts and shall include such provisions in any applicable agreements with vendors:
  - a. Copeland "Anti-Kickback" Act (18 USC 874, 40 USC 276c) (29 CFR, Part 3).
  - b. Davis-Bacon Act (40 USC 276a to 276a-7) (29 CFR, Part 5).
  - c. Contract Work Hours and Safety Standards Act (40 USC 3701 et seq.) (29 CFR, Part 5, 6, 7, 8).
  - d. Executive Order 11246 of September 14, 1965, entitled "Equal Employment Opportunity" as amended by Executive Order 11375 of October 13, 1967, as supplemented in Department of Labor Regulations (41 CFR, Part 60).
2. Contractor shall not use payments for construction, renovation, alteration, improvement, or repair of privately-owned property which would enhance the owner's value of such property to the benefit of the owner except where permitted by law and by A12AA and CDA.

3. When funding is provided for construction and non-construction activities, Contractor must obtain prior written approval from A12AA before making any fund or budget transfers between construction and non-construction.

I. Contracts in Excess of \$100,000

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

1. Clean Air Act, as amended [42 USC 7401]
2. Federal Water Pollution Control Act, as amended [33 USC 1251 et seq.]
3. Environmental Protection Agency Regulations. [40 CFR, Part 29 and Executive Order 11738]
4. Cal. Pub. Contract Code Section 10295.3.
5. Pub. Contract Code Section 2010.

J. Debarment, Suspension, and Other Responsibility Matters

1. Contractor certifies to the best of its knowledge and belief that it and its vendors [45 CFR §92.35]:
  - a. Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - b. Have not within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against it for: (i) 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; (ii) violation of Federal or State antitrust statutes; (iii) or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
  - d. Have not within a three-year period preceding this Agreement had one or more public transactions (Federal, State, or local) terminated for cause or default.

2. Contractor shall report immediately to A12AA in writing any incidents of alleged fraud and/or abuse by either Contractor or Contractor's vendors.
3. Contractor shall maintain any records, documents, or other evidence of fraud and abuse until otherwise notified by A12AA.
4. The Contractor agrees to timely execute any and all amendments to this Agreement or other required documentation relating to the debarment/suspension status of its vendor(s).

**K. Agreement Authorization**

1. If a public entity, Contractor shall submit to A12AA a copy of an approved resolution, order, or motion referencing this Agreement number authorizing execution of this Agreement. If a private non-profit entity, Contractor shall submit to A12AA an authorization by the Board of Directors to execute this Agreement, referencing this Agreement number.
2. These documents must also identify the action taken.
3. Documentation in the form of a resolution, order or motion by the Governing Board of Contractor is required for the original and each subsequent amendment to this Agreement. This requirement may also be met by a single resolution from the Governing Board of Contractor authorizing the Director or designee to execute the original and all subsequent amendments to this Agreement.

**L. Contractor's Staff**

1. Contractor shall maintain adequate staff to meet Contractor's obligations under this Agreement.
2. This staff shall be available to A12AA for training and meetings, which A12AA may find necessary from time to time.

**M. Corporate Status**

1. Contractor shall be a public entity, private nonprofit entity or Joint Powers Agreement (JPA). If a private nonprofit corporation or JPA, Contractor shall be in good standing with the Secretary of State of California and shall maintain that status throughout the term of Agreement.
2. Contractor shall ensure that any vendors providing services under this Agreement shall be of sound financial status. Any contracting private entity, corporation or JPA shall be in good standing with the Secretary of State of California and shall maintain that status throughout this term of the Agreement.

3. Failure to maintain good standing by the contracting corporation or JPA shall result in suspension or termination of this Agreement until satisfactory status is restored.

N. Lobbying Certification

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this Agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. Contractor shall require that the language of this certification be included in the award documents for all vendors (including grants, and contracts under grants, loans, and cooperative agreements which exceed \$100,000) and that all vendors shall certify and disclose accordingly.
4. This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into.
5. This certification is a prerequisite for making or entering into this Agreement imposed by 31 USC 1352.
6. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

- O. Contractor or vendor shall comply with Governor's Executive Order 2-18-2011, which bans expenditures on promotional and marketing items colloquially known as "S.W.A.G." or "Stuff We All Get."

**ARTICLE III. EXECUTED AGREEMENT**



A copy of this Agreement shall be filed and available for inspection at A12AA, 19074 Standard Rd., Suite A, Sonora, California 95370.

#### **ARTICLE IV. COMMENCEMENT OF WORK**

Contractor shall not begin work in advance of approval of the Agreement by A12AA. If this Agreement is not approved and Contractor has begun work, Contractor may be considered to be a volunteer or the Contractor may have to pursue a claim for payment by filing with the Victim Compensation and Government Claims Board. A12AA has no legal obligation unless and until this Agreement is approved.

#### **ARTICLE V. VENDOR AGREEMENTS**

- A. Contractor shall satisfy, settle, and resolve all administrative, programmatic, and fiscal aspects of the program(s), including issues that arise out of any vendor agreements and shall not delegate or contract these responsibilities to any other entity. This includes, but is not limited to, disputes, claims, protests of award, or other manners of a contractual nature. Decision of A12AA is final and the vendor has no right of appeal to the California Department of Aging.
- B. In the event any vendor is utilized by Contractor for any portion of this Agreement, Contractor shall retain the prime responsibility for all the terms and conditions set forth in the Agreement including but not limited to, the responsibility for preserving A12AA's and the State's copyrights and rights in data in accordance with Article XIX of this exhibit, for handling property in accordance with Article VII. of this exhibit, and ensuring the keeping of, access to, availability, and retention of records of vendors in accordance with Article VI. of this exhibit.
- C. Funds for this Agreement shall not be obligated in vendor agreements for services beyond the ending date of this Agreement, unless all funding under this Agreement is appropriated without regard for fiscal year, and A12AA has agreed in writing to permit the specific expenditure for a specified period of time.
- D. Contractor shall have no authority to contract for or on behalf of A12AA, or incur obligations on behalf of A12AA.
- E. Copies of vendor agreements, memorandums and/or letters of understanding shall be on file with Contractor and shall be forwarded to A12AA with each proposal and budget.
- F. Contractor shall monitor the insurance requirements of its vendors in accordance with Article XI of this exhibit.
- G. Contractor shall require language in all vendor agreements to indemnify, defend, and save harmless A12AA, its officers, agents, and employees from any and all claims and losses accruing to or resulting from any vendors, suppliers, laborers, and any other

person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with any activities performed for which funds from this Agreement were used and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the vendor in the performance of this Agreement.

- H. Contractor shall complete all reporting and expenditure documents requested by A12AA. These reporting and expenditure documents shall be sent to A12AA in a timely manner and at intervals as determined by A12AA.
  - 1. Monthly program reports are due electronically on the 5<sup>th</sup> working day of each month.
  - 2. Monthly fiscal reports are due electronically on the 15<sup>th</sup> of each month.
  - 3. The last budget revision is due to A12AA no later than April 15<sup>th</sup> of each fiscal year.
  - 4. Closeout reports are due to A12AA no later than July 15<sup>th</sup> of each fiscal year.
- I. Contractor shall maintain adequate staff to meet the requirements of this Agreement. This staff shall be available to A12AA for training and meetings, which A12AA and CDA may find necessary from time to time.
- J. If a private nonprofit corporation, Contractor shall be in good standing with the Secretary of State of California and shall maintain that status throughout the term of this Agreement.

## **ARTICLE VI. RECORDS**

- A. Contractor shall maintain complete records which shall include, but not be limited to, accounting records, contracts, agreements, reconciliation of the "Financial Closeout Report" to the audited financial statements, a summary worksheet of results from the audit resolution performed for all vendors with supporting documentation, letters of agreement, insurance documentation in accordance with Article X of this exhibit. This includes memorandums and/or letters of understanding, patient or client records, and electronic files of its activities and expenditures hereunder in a form satisfactory to A12AA and CDA and shall make all records pertaining to this Agreement available for inspection and audit by A12AA and CDA or its duly authorized agents, at any time during normal business hours.
- B. All such records, including confidential records, must be maintained and made available by Contractor.
  - 1. Until an audit has occurred and an audit resolution has been issued or unless otherwise authorized in writing by A12AA and CDA's Audit Branch;

2. For such longer period, if any, as is required by any applicable statute, by any other clause of this Agreement, or by Sections A and C of this Article; and 3. For such longer period as A12AA deems necessary.

- C. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for the same periods as specified in Sections A and C of this Article. Contractor shall ensure that any resource directories and all client records remain the property of A12AA upon termination of this Agreement, and are returned to A12AA or transferred to another contractor as instructed by A12AA.
- D. In the event of any litigation, claim, negotiation, audit exception, or other action involving Contractor's records, all records relative to such action shall be maintained and made available until every action has been cleared to the satisfaction of A12AA and CDA and so stated in writing to Contractor.
- E. Adequate source documentation of each transaction shall be maintained relative to the allowability of expenditures reimbursed by A12AA under this Agreement. If the allowability of expenditures cannot be determined because records or documentation of Contractor are nonexistent or inadequate according to guidelines set forth in 2 CFR 200.302, and 45 CFR 75.302, the expenditures will be questioned in the audit and may be disallowed by A12AA and/or CDA during the audit resolution process.
- F. All records containing confidential information shall be handled in a confidential manner in accordance with the requirements for information integrity and security, and in accordance with guidelines set forth in this Article, and Article XVIII. After the authorized period has expired, confidential records shall be shredded and disposed of in a manner that will maintain confidentiality.
- G. Public Records Act

Contractor is aware that this Agreement and any documents provided to A12AA may be subject to the California Public Records Act and may be disclosed to members of the public upon request. It is the responsibility of Contractor to clearly identify information in those documents that it considers to be confidential under the California Public Records Act. To the extent that A12AA agrees with that designation, such information will be held in confidence whenever possible. All other information will be considered public.

## **ARTICLE VII. PROPERTY**

- A. Unless otherwise provided for in this Article, property refers to all assets, capitalized or noncapitalized, used in the performance of this Agreement.
  - 1. Property includes land, buildings, improvements, machinery, vehicles, furniture, tools, and intangibles, etc.

2. Property does not include consumable office supplies such as paper, pencils, toner, file folders, etc.

B. Property, acquired under this agreement which meets any of the following criteria is subject to capitalization requirements. Such property must:

1. Has a normal useful life of at least 1 year;
2. Has a normal useful life of at least one (1) year and has a unit acquisition cost of at least \$5000 (a desktop or laptop setup, including all peripherals is considered a unit, if purchased as a unit);
3. All computing devices, regardless of cost (including but not limited to, laptops, flash drives, workstations, servers, personal digital assistants, notebook computers, tablets, smartphones, i-pads and cellphones);
4. All Portable electronic storage media, regardless of cost (including but not limited to, thumb/flash drives and portable hard drives); and
5. Be used to conduct business under this Agreement.

C. Noncapitalized property is those items which do not meet all three requirements in Section B above.

D. Additions, improvements, and betterments to assets meeting all of the conditions in Section B above must be reported. Additions typically involve physical extensions of existing units. Improvements and betterments typically do not increase the physical size of the asset. Instead, improvements and betterments enhance the condition of an asset (e.g., extend life, increase service capacity, and lower operating costs). Examples of assets that might be improved and bettered include roads, bridges, curbs and gutters, tunnels, parking lots, streets and sidewalks, drainage, and lighting systems.

E. Intangibles are property which lack physical substance but give valuable rights to the owner and can be capitalized or noncapitalized. Examples of intangible property include patents, copyrights, leases, and computer software. By contrast, hardware consists of tangible equipment (e.g., computer printer, terminal, etc.).

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

F. Contractor shall request approval from A12AA following the A12AA's Inventory Instructions, Provider Responsibilities, when purchasing items with a per unit cost of \$5000 or more, or computing devices with digital memory and storage capacity, regardless of the purchase price. The unit cost requires justification and approval from A12AA and must be included in the approved Provider Budget.

- G. Contractor shall keep track of property purchased with funds from this Agreement that meet the requirements as defined in Exhibit D, Article VII, Item B, whether capitalized or not. Contractor shall maintain and submit to A12AA, annually with the Closeout, a current inventory of property furnished or purchased by either the Contractor or by A12AA for Contractor with funds awarded under this Agreement or any predecessor agreement for the same purpose. Contractor shall use the A12AA Provider Inventory Worksheet with authorized signature to report property to A12AA, unless further restricted by Exhibit E, where applicable.
- H. Disposal of Property
1. Prior to disposal of any property purchased by Contractor with funds awarded under this Agreement or any predecessor agreement, Contractor must obtain approval from A12AA for all items with a unit cost of \$5000 or more regardless of the acquisition value OR computing devices with digital memory and storage capacity. Disposition, which includes sale, trade-in, discarding, or transfer to another agency may not occur until approval is received from A12AA. Contractor shall follow A12AA's Inventory Instructions, Provider Responsibilities, and use the Inventory Transfer/Disposal Form provided by A12AA staff to dispose of property.
  2. Contractor must remove all Personal, Sensitive, or Confidential Information (PSCI), from A12AA property prior to disposal including removal or destruction of data on computing devices with digital memory and storage capacity. Since these media may require special disposition in order to mitigate the risk of unauthorized disclosure and ensure confidentiality of information, Contractor must follow the instructions outlined on Certification for Computing Media Sanitation, a document provided by A12AA and CDA. Information systems capture, process, store, and transmit information using a wide variety of media such as, but not limited to, magnetic tapes, flash drives, personal computers, workstations, PDAs (personal digital assistants), iPads, and laptops.
- I. Any loss, damage, or theft of equipment shall be investigated, fully documented and Contractor shall promptly notify A12AA. A12AA will notify CDA. [CFR 215.34]
- J. A12AA reserves title to all A12AA and CDA purchased or financed property not fully consumed in the performance of this Agreement, unless otherwise required by Federal law or regulation or as otherwise agreed by the parties.
- K. Contractor shall exercise due care in the use, maintenance, protection, and preservation of such property during the period of the project, and shall assume responsibility for replacement or repair of such property during the period of the project, until Contractor has complied with all written instructions from A12AA regarding the final disposition of the property.

- L. In the event of Contractor's dissolution or upon termination of this Agreement, Contractor shall provide a final property inventory to A12AA. A12AA reserves the right to require Contractor to transfer such property to another entity or to A12AA.
- M. To exercise the above right, no later than 120 days after termination of this Agreement or notification of Contractor's dissolution, A12AA will issue specific written disposition instructions to Contractor.
- N. Contractor shall use the property for the purpose for which it was intended under Agreement. When no longer needed for that use, Contractor with written approval of A12AA may use the property for other purposes in this order:
  - 1. Another A12AA program providing the same or similar service; or
  - 2. State or Federally-funded program.
- O. Contractor may share use of the property and equipment or allow use by other programs upon written approval of A12AA. As a condition of the approval, A12AA may require reimbursement under this Agreement for its use.
- P. Contractor shall not use equipment or supplies acquired under this Agreement for personal gain or to usurp the competitive advantage of a privately owned business entity.
- Q. If purchase of equipment is a reimbursable item, the equipment to be purchased will be specified in the Budget Summary.

## **ARTICLE VIII. ACCESS**

Contractor shall provide access to A12AA, the Bureau of State Audits, the Controller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, records, and electronic files of Contractor which are directly pertinent to this specific Agreement for the purpose of audit, examination, excerpts, and transcriptions.

## **ARTICLE IX. MONITORING, ASSESSMENT, AND EVALUATION**

- A. Authorized A12AA and State representatives shall have the right to monitor and evaluate Contractor's administrative, fiscal, and program performance pursuant to this Agreement. Said monitoring and evaluation may include, but is not limited to, administrative processes, fiscal, data and procurement components. This will include policies, procedures and procurement audits, inspections of project premises, when applicable, inspection of food preparation sites, and interview of project staff and participants.

- B. Contractor shall cooperate with A12AA and the State in the monitoring and evaluation processes, which include making any administrative and fiscal staff available during any scheduled process.
- C. Contractor shall monitor contracts and vendor agreements to ensure compliance with laws, regulations, and provisions of contracts or grant agreements that may have a direct or material effect on each of its A12AA funded and CDA funded programs.
- D. Contractor is responsible for maintaining supporting documentation including financial and statistical records, contracts, or grant agreements monitoring reports, and all other pertinent records until an audit has occurred and an audit resolution has been issued or unless otherwise authorized in writing by A12AA or CDA.

## **ARTICLE X. AUDIT REQUIREMENTS**

### **A. General**

- 1. Any duly authorized representative of the federal or State government, which includes but is not limited to the State Auditor, A12AA Staff and any entity selected by A12AA to perform inspections, shall have the right to monitor and audit Contractor providing services under this Agreement through on-site inspections, audits and other applicable means the A12AA determines necessary. In the event that A12AA is informed of an audit by an outside federal or State government entity affecting the Contractor, A12AA will provide timely notice to Contractor.
- 2. Contractor shall make available all reasonable information necessary to substantiate that expenditures under this agreement are allowable and allocable, including, but not limited to books, documents, papers, and records. Contractor shall agree to make such information available to the A12AA or any of their duly authorized representatives, including representatives of the entity selected by A12AA to perform inspections, for examination, copying, or mechanical reproduction, on or off the premises of the appropriate entity upon a reasonable request.
- 3. All agreements entered into by Contractor with audit firms for purposes of conducting independent audits under this Agreement shall contain a clause permitting any duly authorized representative of the A12AA or State government access to the supporting documentation of said audit firm(s).
- 4. The Contractor shall cooperate with and participate in any further audits which may be required by the State, including CDA fiscal and compliance audits.

### **B. A12AA Fiscal and Compliance Audits**

- 1. The A12AA Fiscal department shall enlist outside entities to perform fiscal and compliance audits of Contractors in accordance with Generally Accepted

Government Auditing Standards (GAGAS) to ensure compliance with applicable laws, regulations, grants, and contract requirements.

2. The A12AA fiscal and compliance audits may include, but not be limited to, a review of:
  - a. Financial closeouts (2 CFR 200.16 and 45 CFR 75.2)
  - b. Internal controls (2 CFR 200.303 and 45 CFR 75.303)
  - c. Allocation of expenditures (2 CFR 200.4 and 45 CFR 75.2)
  - d. Allowability of expenditures (2 CFR 200.403 and 45 CFR 75.403)
  - e. Equipment expenditures and approvals (2 CFR 200.439 and 45 CFR 75.439)

C. Single Audit Reporting Requirements (2 CFR 200 Subparts F and 45 CFR 75 Subparts F)

1. Contractor Single Audit Reporting Requirements
  - a. Contractors that expend \$750,000 or more in Federal Awards shall arrange for an audit to be performed as required by the Single Audit Act of 1984, Public Law 98-502; Single Audit Act Amendments of 1996, Public 104-156; and 2 CFR Part 200.501 to 200.521; and 45 CFR 75.501 to 75.521. A copy of the audit shall be submitted to A12AA: Area 12 Agency on Aging, 19074 Standard Rd., Ste. A, Sonora, CA 95370.
  - b. The copy shall be submitted within 30 days after receipt of the auditor's report or nine (9) months after the end of the audit period, whichever occurs first, or unless a longer period is agreed to in advance by the cognizant or oversight agency.
  - c. Contractor shall ensure that State-funded expenditures are displayed discretely along with the related Federal expenditures in the single audit report's "Schedule of Expenditures of Federal Awards" (SEFA) under the appropriate Catalog of Federal Domestic Assistance (CFDA) number as referenced in Section B of this Article.
  - d. For State contracts that do not have CFDA numbers, Contractor shall ensure that the State-funded expenditures are discretely identified in the SEFA by the appropriate program name, identifying grant/contract number, and as passed through CDA.
2. Contractor shall perform a reconciliation of the "Financial Closeout Report" to the audited financial statements, single audit and general ledgers. The reconciliation shall be maintained and made available to A12AA review.



3. Contractor shall have the responsibility for resolving its contracts with its vendors to determine whether funds provided under this Agreement are expended in accordance with applicable laws, regulations, and provisions of this Agreement.
4. The Contractor shall ensure that single audit reports meet 2 CFR 200 and 45 CFR 75, Subparts F – Audit Requirements.
5. Contract resolution includes:
  - a. Ensuring that contractors expending \$750,000 or more in federal awards during the contractor's fiscal year has met the audit requirements of the 2 CFR 200.501 to 200.521 and 45 CFR 75.501 to 75.521.
  - b. Issuing a management decision on audit findings within six months after receipt of Contractor's single audit report and ensuring that Contractor takes appropriate and timely corrective action.
  - c. Reconciling expenditures reported to A12AA to the amounts identified in the single audit or other alternate procedures if Contractor was not subject to the single audit requirements. For a contractor who was not required to obtain a single audit and who did not obtain another type of audit, the reconciliation of expenditures reported to A12AA must be accomplished through the performance of alternative procedures (e.g., risk assessment [2 CFR 200.331 and 45 CFR 75.352], documented review of financial statements, or documented expense verification reviews/fiscal monitoring assessments).
6. When alternative procedures are used, Contractor shall perform financial management system testing which provides, in part, the following:
  - a. Accurate, current and complete disclosure of the financial results of each federal award or program.
  - b. Records, supported by source documentation, that adequately identify the source and application of funds.
  - c. Effective control over and accountability for all funds, property, and other assets to ensure these items are used solely for authorized purposes.
  - d. Comparison of expenditures with budget amounts for each federal award.
  - e. Written procedures to implement the requirements of 2 CFR 200.305 and 45 CFR 75.305.
  - f. Written procedures for determining the allowability of costs in accordance with 2 CFR Part 200 and 45 CFR Part 75, Subparts E - Cost Principles. [2 CFR 200.302 and 45 CFR 75.302]

7. Contractor shall document system and expense testing to show an acceptable level of reliability, including a review of actual source documents.
8. Determining whether the results of the reconciliations performed necessitate adjustment of Contractor's own records.
9. The Contractor shall ensure that the requirements of the 2 CFR 200 and 45 CFR 75, Subparts F – Audit Requirements are met is generally interpreted to mean that Contractor will ensure that the audit was:
  - a. Performed timely – not less frequently than annually and a report submitted timely. The audit is required to be submitted within 30 days after receipt of the auditor's report or nine months after the end of the audit period, whichever comes first. [2 CFR 200.512 and 45 CFR 75.512]
  - b. Properly procured – use procurement standards for auditor selection. [2 CFR 200.509 and 45 CFR 75.509]
  - c. Performed in accordance with Generally Accepted Government Auditing Standards. [2 CFR 200.514 and 45 CFR 75.514]
  - d. All inclusive – includes an opinion (or disclaimer of opinion) of the financial statements; a report on internal control related to the financial statements and major programs; an opinion (or disclaimer of opinion) on compliance with laws, regulations, and the provisions of contracts or grant agreements; and the schedule of findings and questioned costs. [2 CFR 200.515 and 45 CFR 75.515]
  - e. Performed in accordance with provisions applicable to the program as identified in 2 CFR 200 and 45 CFR Part 75, Subparts F - Audit Requirements.
10. Requirements identified in D and E of this Article shall be included in Contractor's contracts/agreements. Further, Contractor shall be required to include in its contract with the independent auditor that the auditor will comply with all applicable requirements/standards, A12AA and the CDA shall have access to all audit reports and supporting work papers, and A12AA and the CDA has the option to perform additional work, as needed.
11. A reasonably proportionate share of the costs of audits required by, and performed in, accordance with the Single Audit Act Amendments of 1996, as implemented by requirements of this part, are allowable. However, the following audit costs are unallowable:
  - a. Any costs when audits required by the Single Audit Act and 2 CFR 200 and 45 CFR 75, Subparts F - Audit Requirements have not been conducted or have been conducted but not in accordance therewith; and

- b. Any costs of auditing a non-federal entity that is exempted from having an audit conducted under the Single Audit Act and 2 CFR 200 and 45 CFR 75, Subparts F - Audit Requirements because its expenditures under federal awards are less than \$750,000 during the non-federal entity's fiscal year.
- D. Contractor shall cooperate with and participate in any further audits which may be required by A12AA or CDA.

## ARTICLE XI. INSURANCE

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

1. General Liability Coverage - Commercial general liability insurance with a minimum liability limit per occurrence of one million dollars (\$1,000,000) for bodily injury and one hundred thousand dollars (\$100,000) property damage combined. Higher limits may be required by A12AA in cases of higher than usual risks. If a commercial general liability insurance form or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Coverage shall be included for premises, operations and broad form contractual.
2. Automobile Liability insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and \$100,000 for property damage. This insurance shall cover for bodily injury and property damage, owned, hired and non-owned vehicles. This insurance shall cover volunteers and paid employees providing services supported by this Agreement.
3. Automobile Liability for Charter-Party Carriers: If applicable, contractors shall comply with the Public Utilities Commission (PUC) General Order No. 115-F which requires higher levels of insurance for charter-party carriers of passengers and is based on seating capacity as follows:

\$750,000 if seating capacity is under 8  
\$1,500,000 if seating capacity is 8 – 15  
\$5,000,000 if seating capacity is over 15

unless otherwise amended by future regulation.

4. Professional Liability: Professional errors and omissions liability for protection against claims alleging negligent acts, errors or omissions which may arise from Contractor's operations under this Agreement, whether such operations be by Contractor or by its employees or vendors. The amount of this insurance shall not be less than one million dollars (\$1,000,000) per claim.

5. Workers' Compensation Coverage – Workers' Compensation Insurance and Employer's Liability Insurance for employees in accordance with the laws of the State of California (including requiring any authorized vendor to obtain such insurance for its employees).
- B. The insurance shall be obtained from an insurance company acceptable to A12AA and the California Department of General Services, Office of Risk and Insurance Management, or be provided through partial or total self-insurance acceptable to A12AA and the Department of General Services.
- C. Evidence of insurance shall be in a form and content acceptable to the A12AA and the California Department of General Services, Office of Risk and Insurance Management. Insurance obtained through commercial carriers shall meet the following requirements:
  1. The Certificate of Insurance shall provide that the insurer will not cancel the insured's coverage without thirty (30) days prior written notice to the A12AA or ten (10) days written notice if the reason for cancellation is for non-payment of any insurance premium.
  2. The Certificate of Insurance shall provide the statement: "The Area 12 Agency on Aging, its officers, agents, employees, and servants are included as additional insured's, with respect to work performed for the Area 12 Agency on Aging ."
  3. The Area 12 Agency on Aging shall be named the certificate holder and the A12AA address must be listed on the certificate.
- D. The insurance provided herein shall be in effect at all times during the term of this Agreement. In the event the insurance coverage expires during the term of this Agreement, Contractor agrees to provide A12AA, at least thirty (30) days prior to the expiration date, a new certificate of insurance evidencing insurance coverage as provided herein for a period not less than the remaining term of this Agreement or for a period not less than one (1) year. In the event Contractor fails to keep in effect at all times said insurance coverage, A12AA may, in addition to any other remedies it may have, terminate this Agreement.
- E. Contractor shall require its vendors under this Agreement, other than units of local government which are self-insured, to maintain adequate insurance coverage for general liability, worker's compensation liabilities, and if appropriate, auto liability including non-owned auto and professional liability, and further, Contractor shall require all of its vendors to hold Contractor harmless. The vendor's Certificate of Insurance for general and auto liability shall also name Contractor, not A12AA, as the certificate holder and additional insured. Contractor shall maintain certificates of insurance for all its vendors and forward copies to A12AA if requested.

- F. A copy of each appropriate Certificate of Insurance referencing this Agreement number and specific programs, or letter of self-insurance, shall be submitted to A12AA with this Agreement.
- G. The entity providing Ombudsman services must be insured or self-insured for professional liability covering all Ombudsman activities including, but not limited to, investigation of patient complaints.

A copy of all volunteer and employee drivers' insurance coverage and licenses shall be reviewed at the yearly monitoring by A12AA a minimum of once a year or whenever an update and/or change is required.

## ARTICLE XII. TERMINATION

### A. Termination Without Cause

A12AA may terminate this Agreement without cause in whole or in part, if A12AA determines that a termination is in A12AA's best interest, upon 90 days written notice to Contractor. The Notice of Termination shall specify the extent of the termination and shall be effective 90 days from the delivery of the notice. The parties agree that if the termination of this Agreement is due to a reduction or deletion of funding by the Department of Finance, Legislature or Congress, the Notice of Termination shall be effective 30 days from the delivery of the notice. The parties agree that if a portion of this Agreement is terminated, the remainder of this Agreement shall be deemed to remain in effect and is not void. Upon termination of this Agreement, or any part thereof, Contractor shall submit to A12AA for submission to CDA Transition Plan as specified in Exhibit E.

### B. Termination for Cause

A12AA may terminate for cause the performance of work under this Agreement upon 30 days written notice to Contractor. The Notice of Termination shall be effective 30 days from the delivery of the Notice of Termination unless the ground for termination is due to a threat to life or the health or safety of the public and in that case the termination shall take effect immediately. The grounds for termination for cause shall include but not limited to, the following:

1. A threat to life, health, or to the safety of the public. (Termination of this Agreement shall be effective immediately.)
2. A violation of the law or failure to comply with any condition of this Agreement.
3. Inadequate performance or failure to make progress so as to endanger performance of this Agreement.
4. Failure to comply with reporting requirements.

5. Evidence that Contractor is in an unsatisfactory financial condition as determined by an audit by A12AA and/or Contractor or evidence of a financial condition that endangers performance of this Agreement and/or the loss of other funding sources.
6. Delinquency in payment of taxes or payment of costs for performance of this Agreement in the ordinary course of business.
7. Appointment of a trustee, receiver, or liquidator for all or a substantial part of the Contractor's property, or institution of bankruptcy, reorganization or the arrangement of liquidation proceedings by or against Contractor.
8. Service of any writ of attachment, levy of execution, or commencement of garnishment proceedings against Contractor's assets or income.
9. The commission of an act of bankruptcy.
10. A finding of debarment or suspension pursuant to Article II, Section K.
11. Contractor's organizational structure has materially changed.
12. A12AA determines that Contractor may be considered a "high risk" agency as described in 45 CFR 92.12 (local government) 45 CFR 74.14 (non-profit organizations). If such a determination is made, Contractor may be subject to special conditions or restrictions.

C. Contractor's Obligation After Notice

After receipt of a Notice of Termination, and except as directed by A12AA, Contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any funds due under this clause.

The Contractor shall:

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

D. Effective Date

Termination of this Agreement shall take effect immediately in the case of an emergency such as threat to life, or to the health or safety of the public. The effective date for termination to cause or for funding reductions is 30 days and the effective date for termination without cause is 90 days subsequent to written notice to Contractor. The notice shall describe the action being taken by A12AA, the reason for such action, and any conditions of the termination, including the date of termination.

**E. Voluntary Termination of Agreement**

Pursuant to Title 22, Section 7210, Contractor may voluntarily terminate this Agreement prior to its expiration either by mutual agreement with A12AA or upon 30 days written notice to A12AA.

In case of voluntary termination, Contractor shall allow A12AA up to 180 days to transition services. Contractor shall submit a Transition Plan in accordance with Exhibit E.

- F.** In the event of a termination, A12AA will present written notice to Contractor of any condition, such as, but not limited to, transfer of clients, care of clients, return of unspent funds, and disposition of property, which must be met prior to termination.

**ARTICLE XIII. REMEDIES**

Contractor agrees that any remedy provided in this Agreement is in addition to and not in derogation of any other legal or equitable remedy available to A12AA as a result of breach of this Agreement by Contractor, whether such breach occurs before or after completion of the project.

**ARTICLE XIV. DISSOLUTION OF ENTITY**

Contractor shall notify A12AA immediately of any intention to discontinue existence of the entity or to bring an action for dissolution.

**ARTICLE XV. AMENDMENTS, REVISIONS OR MODIFICATIONS**

- A.** No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties, and approved as required. No oral understanding or agreement not incorporated in this Agreement is binding on any of the parties.
- B.** A12AA reserves the right to revise, waive, or modify this Agreement to reflect any restrictions, limitations, or conditions enacted by Congress or the State of California.

**ARTICLE XVI. NOTICES**

- A.** Any notice to be given hereunder by either party to the other may be affected by personal delivery in writing or by registered or certified mail, or overnight mail, postage

prepaid, return receipt requested, provided Contractor retains receipt, and shall be communicated as of actual receipt.

- B. Any notice given to A12AA for Contractor's change of legal name, main address, or name of Director shall be addressed to the Executive Director of A12AA one Contractor's letterhead and be submitted within three (3) business days of said action.
- C. All other notices with the exception of those identified in Section B of this Article, shall be addressed to A12AA, 19074 Standard Rd., Suite A, Sonoma, CA 95370. Notices mailed to Contractor shall be to the address indicated on the coversheet of this Agreement.
- D. Either party may change its address by written notice to the other party in accordance with this Article.

#### **ARTICLE XVII. DEPARTMENT CONTACT**

- A. The name of A12AA's contact to request revisions, waivers, or modifications affecting this Agreement, will be provided by A12AA to Contractor upon full execution of this Agreement.
- B. Contractor shall submit the name of its Agency Contract Representative (ACR), for this Agreement by submitting an ACR form to A12AA with this signed Agreement. The ACR's address, phone number, e-mail address, and FAX number shall be included on the form. For any change in this information, Contractor shall submit an amended ACR form. This form may be requested from A12AA.

#### **ARTICLE XVIII. INFORMATION INTEGRITY AND SECURITY**

##### **A. Information Assets**

Contractor and any of its vendor(s), shall have in place operational policies, procedures, and practices to protect A12AA and State information assets, including those assets used to store or access Personal Health Information (PHI), Personal Information (PI) and any information protected under the Health Insurance Portability and Accountability Act (HIPAA), (i.e., public, confidential, sensitive and/or personal identifying information) herein referred to as Personal, Sensitive and Confidential Information (PSCI) as specified in State Administrative Manual, § 5300-5365.3, Cal. Gov. Code §11019.9, DGS Management Memo 06-12, Department of Finance (DOF) Budget Letter 06-34, and CDA Program Memorandum 07-18 Protection of Information Assets, and the Statewide Health Information Policy Manual.

Information assets may be in hard copy or electronic format and may include but are not limited to:

1. Reports



2. Notes
3. Forms
4. Computers, laptops, cellphones, printers, scanners
5. Networks (LAN, WAN, WIFI), servers, switches, routers
6. Storage media, hard drives, flash drives, cloud storage
7. Data, applications, databases including:
  - Information collected and/or accessed in the administration of A12AA programs and services.
  - Information stored in any media form, paper or electronic.

**B. Encryption of Computing Devices**

A12AA and Contractors, and any of its vendor(s) that collect data, are required to use 128-Bit encryption for PSCI data that is collected and stored on all computing devices (including but not limited to, workstations, servers, laptops, personal digital assistants, notebook computers and back up media) and/or portable electronic storage media (including but not limited to, discs and thumb/flash drives, portable hard drives and backup media).

**C. Disclosure**

1. Contractor, and any of its vendors, shall ensure that all PSCI is protected from inappropriate or unauthorized access or disclosure in accordance with applicable laws, regulations and state policies. The requirement to protect information shall remain in force until superseded by laws, regulations or policies.
2. Contractor, and any of its vendors, shall protect from unauthorized disclosure, confidential, PSCI such as names and other identifying information, concerning persons receiving services pursuant to this Agreement, except for statistical information not identifying any participant.
3. "Personal Identifying Information" shall include, but not be limited to, name, identifying number, social security number, state driver's license, or state identification number, financial account numbers, symbol or other identifying characteristic assigned to the individual, such as finger or voice print or photograph.
4. Contractor, and any of its vendors shall not use PSCI for any purpose other than carrying out the Contractor's obligations under this Agreement. Contractor is authorized to disclose and access identifying information for this purpose as required by Older Americans Act (OAA).
5. Contractor, and any of its vendors, shall not, except as otherwise specifically authorized or required by this Agreement or court order, disclose any PSCI obtained under the terms of this Agreement to anyone other than A12AA and/or

CDA without prior authorization from A12AA. Contractor may be authorized, in writing, by a participant to disclose PSCI specific to the authorizing participant.

6. Contractor, and any of its vendors, may allow participants to authorize the release of information to specific entities, but shall not request or encourage any participant to give a blanket authorization or sign a blank release, nor shall Contractor accept such blanket authorization from any participant.

D. Security Awareness Training

1. Contractor's employees, vendors and volunteers handling PSCI must complete the required CDA Security Awareness Training module located at [https://aging.ca.gov/Information\\_security/](https://aging.ca.gov/Information_security/) within thirty (30) days of the start date of this Agreement, or within thirty (30) days of the start date of any new employee, vendor or volunteer's employment and annually thereafter.
2. Contractor must maintain certificates of completion on file and provide them to A12AA upon request.

E. Health Insurance Portability and Accountability Act (HIPAA)

Contractor agrees to comply with the privacy and security requirements of the HIPAA and ensure that any of its vendors comply with the privacy and security requirements of HIPAA.

F. Contractor Information Integrity & Security Statement

Contractor shall sign and return an Information Integrity & Security form with this Agreement. This is to ensure that Contractor and any of its vendors are aware of, and agree to comply with, their obligations to protect A12AA and CDA information assets including PSCI, from unauthorized access and disclosure.

G. Security Incident Reporting

A security incident occurs when A12AA and/or CDA information assets are or are reasonably believed to have been accessed, modified, destroyed, disclosed without proper authorization, lost or stolen. Contractor and any of its vendors must comply with CDA's security incident reporting procedure located at [http://aging.ca.gov/Information Security and Privacy](http://aging.ca.gov/Information_Security_and_Privacy). All security incidents must be reported to A12AA Executive Director or Assistant Director immediately upon detection. A Security Incident Report form (CDA 1025 attached with Exhibit D), must be submitted to the A12AA Executive Director or Assistant Director within five (5) business days of date of the incident was detected.

H. Security Breach Notifications

Notice must be given by Contractor, and/or any of its vendors to anyone whose PSCI

could have been breached in accordance with HIPAA, the Information Practices Act of 1977, State, and A12AA policy.

**I. Software Maintenance**

Contractor and any of its vendors shall apply security patches and upgrades in a timely manner and keep virus software up-to-date on all systems on which A12AA and State data may be stored or accessed.

**J. Electronic Backups**

Contractor and any of its vendors shall ensure that all electronic information is protected by performing regular backups of files and databases, and shall ensure the availability of information assets for continued business. Contractor, and any of its vendors shall ensure that all data, files and backup files are encrypted.

**K. Provisions of this Article**

The provisions contained in this Article shall be included in all contracts between Contractor and its vendors.

**XIX. COPYRIGHTS AND RIGHTS TO DATA**

**A. Copyrights**

1. If any material funded by this Agreement is subject to copyright, A12AA reserves the right to copyright such material and Contractor agrees not to copyright such material, except as set forth in Section B of this article.
2. Contractor may request permission to copyright material by writing to the Executive Director of A12AA. The Executive Director will contact the CDA's Director for permission to copyright and shall consent to or give the reason for denial to Contractor in writing within ninety (90) days of receipt of the request.
3. If the material is copyrighted with the consent of CDA and A12AA, the State and federal awarding departments reserve a royalty-free, non-exclusive, and irrevocable license to reproduce, prepare derivative works, publish, distribute and use such materials, in whole or in part, and to authorize others to do so, provided written credit is given the author. At any time during the term of this Agreement Contractor shall deliver to A12AA upon request, any materials, systems or other items developed, refined, or enhanced using funds from this Agreement.
4. On all publications funded solely or in part by this Agreement, Contractor shall include the following acknowledgement: "This publication has been created or produced by the Area 12 Agency on Aging with financial assistance, in whole or in part, through funds from the Administration for Community Living."

Contractors undertaking projects under government sponsorship are encouraged to express their findings and conclusions. These contents do not necessarily represent the policy of the U. S. Department of Health & Human Services or A12AA and Contractor should not assume endorsement by the federal or State government.

5. Contractor certifies that it has appropriate systems and controls in place to ensure that A12AA 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.

**B. Rights in Data**

1. Contractor shall not publish or transfer any materials, as defined in subsection 2 below, produced or resulting from activities supported by this Agreement without the express written consent of A12AA. That consent shall be given or the reasons for denial shall be given and any conditions under which it is given or denied within sixty (60) days after the written request is received by A12AA. A12AA may request a copy of the material for review prior to approval of the request. This subsection is not intended to prohibit Contractor from sharing identifying client information authorized by the participant or summary program information which is not client-specific.
2. As used in this Agreement, the term "subject data" means writings, sound recordings, pictorial reproductions, drawings, designs or graphic representations, procedural manuals, forms, diagrams, workflow charts, equipment descriptions, data files and data processing or computer programs, and works of any similar nature (whether or not copyrighted or copyrightable) which are first produced or developed under this Agreement. The term does not include financial reports, cost analyses, and similar information incidental to contract administration, or the exchange of that information between Area Agencies on Aging to facilitate uniformity of contract and program administration on a statewide basis.
3. Subject only to the provisions of Article XVIII and Article XIX of this Exhibit, A12AA may use, duplicate, or disclose in any manner, and have or permit others to do so subject to State and Federal law all subject data delivered under this Agreement.

**ARTICLE XX. BILINGUAL AND LINGUISTIC PROGRAM SERVICES**

**A. Needs Assessment**

1. Contractor shall conduct a cultural and linguistic group-needs assessment of the eligible client population in Contractor's service area to assess the language needs of the population and determine what reasonable steps are necessary to

ensure meaningful access to services and activities to eligible individuals. [22 CCR 98310, 98314]

The group needs assessment shall take into account the following four (4) factors:

- a. Number of persons with Limited English Proficiency (LEP) eligible to be served or encountered by the program.
- b. Frequency with which LEP individuals come in contact with the program.
- c. Nature and importance of the services provided.
- d. Local or frequently used resources available to Contractor.

This group needs assessment will serve as the basis for Contractor's determination of "reasonable steps" and provide documentary evidence of compliance with Cal. Gov. Code § 11135 et seq.; 2 CCR 11140; 2 CCR 11200 et seq.; and 22 CCR 98300 et seq.

2. Contractor shall prepare and make available a report of the findings of the group needs assessment that summarizes:
  - e. Methodologies used.
  - f. The linguistic and cultural needs of non-English speaking or LEP groups.
  - g. Services proposed to address the needs identified and a timeline for implementation. [22 CCR 98310]
  - h. Local or frequently used resources available to Contractor.
3. Contractor shall maintain a record of the group needs assessment on file at Contractor's headquarters at all times during the term of this Agreement. [22 CCR 98310, 98313]

B. Provision of Services

1. Contractor shall take reasonable steps, based on the group needs assessment identified in Section A of this Article, to ensure that "alternative communication services" are available to non-English speaking or LEP beneficiaries of services under this Agreement.  
[22 CCR 11162]
2. "Alternative communication services" include, but are not limited to, the provision of services and programs by means of the following:

- i. Interpreters or bilingual providers and provider staff.
  - j. Contracts with interpreters.
  - k. MOU with community individuals or organizations that provide interpreter services.
  - l. Use of telephone interpreter lines.
  - m. Sharing of language assistance materials and services with other providers.
  - n. Translated written information materials, including but not limited to, enrollment information and descriptions of available services and programs.
  - o. Referral to culturally and linguistically appropriate community service programs.
3. Based on the findings of the group needs assessment, Contractor shall ensure that reasonable alternative communication services are available to meet the linguistic needs of identified eligible client population groups at key points of contact. Key points of contact include, but are not limited to, telephone contacts, office visits and in-home visits. [22 CCR 11162]
4. Contractor shall self-certify compliance with the requirements of this section and shall maintain the self-certification record on file at Contractor's office at all times during the term of this Agreement. [22 CCR 98324]
5. Contractor shall notify its employees of clients' rights regarding language access and Contractor's obligation to ensure access to alternative communication services where determined appropriate based upon the needs assessment conducted by Contractor. [22 CCR 98324]

C. Compliance Monitoring

- 1. Contractor shall develop and implement policies and procedures for assessing and monitoring the performance of individuals and entities that provide alternative communication services to non-English and LEP clients. [22 CCR 98310]
- 2. Contractor and A12AA shall monitor, evaluate and take effective action to address any needed improvement in the delivery of culturally and linguistically appropriate services. [22 CCR 98310]
- 3. Contractor shall permit timely access to all records of compliance with this section. Failure to provide access to such records may result in appropriate sanctions. [22 CCR 98314]

D. Notice to Eligible Beneficiaries of Contracted Services

- 1. Contractor shall designate an employee to whom initial complaints or inquiries regarding national origin can be directed. [22 CCR 98325]

2. Contractor shall make available to ultimate beneficiaries of contracted services and programs information regarding A12AA procedures for filing a complaint and other information regarding the provisions of Cal. Gov. Code § 11135 et seq. [22 CCR 98326]
3. Contractor shall notify A12AA immediately of a complaint alleging discrimination based on a violation of State or Federal law. [2 CCR 11162; 22 CCR 98310, 98340]