

Special Terms and Conditions - Exhibit D

ARTICLE I. DEFINITIONS AND RESOLUTIONS OF LANGUAGE CONFLICTS

- A. The term “Agreement” or “Contract” shall mean the Standard Agreement exhibits A, B, C, D, and E, and an approved Budget, which is hereby incorporated by reference, amendments, and any other documents incorporated by reference, unless otherwise provided for in this Article.
- B. Contractor’s proposal, including its modifications as agreed to by Contractor and the AAA, shall be part of this Agreement.
- C. The text of the request for proposal and/or grant renewal application, including general program requirements and specific program requirements (as contained in the descriptive Scope of Work (Exhibit A) shall be part of this Agreement.
- D. In the event of any inconsistency between the articles, attachments, or provisions which constitute this contract, the following order of precedence shall apply:
 - 1. Standard Contract Conditions (Long Form 4/5/01); Exhibit A
 - 2. Scope of Work; Exhibit B
 - 3. Special terms and Conditions; Exhibit D
 - 4. Budget Detail, Payment Provisions and Closeout; Exhibit C
 - 5. Additional Provisions; Exhibit E
 - 6. Any other documents incorporated herein by reference
- E. The Contractor shall comply with all applicable written communication and other guidance issued by the AAA. In the event of conflict between the written communication and/or other AAA guidance and the provisions in this Agreement, the provisions in this contract shall prevail.
- F. “AAA” and “County” means the Stanislaus County Area Agency on Aging and Stanislaus County interchangeably.
- G. “Contractor” means the Service Provider to which funds are awarded under this Agreement and which is accountable to the AAA, State and/or federal government for use of these funds and which is responsible for executing the provisions for services of this Agreement.
- H. “CFR” means Code of Federal Regulations. “CCR” means California Code of Regulations. “GC” means Government Code. “W & I” means Welfare and Institutions Code. “USC” means United States Code. “PCC” means the Public Contract Code.

ARTICLE II. ASSURANCES

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

The Contractor agrees to administer this Agreement with all applicable local, State, and federal laws and regulations including, but not limited to,

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ARTICLE II. ASSURANCES (Continued)

discrimination, wages and hours of employment, occupational safety, and to fire, safety, health, and sanitation regulations, directives, guidelines, and/or manuals related to this Agreement and resolve all issues using good administrative practices and sound judgment. The Contractor shall keep in effect all licenses, permits, notices, and certificates that are required by law.

B. Nondiscrimination

The Contractor shall comply with all federal statutes relating to nondiscrimination. These include those statutes and laws contained in the Contractor Certification Clauses (CCC1005) 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 et seq. with Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d; 45 C.F.R. Part 80), which prohibits recipients of federal financial assistance from discriminating against persons based on race, color, religion, or national origin.

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

Contractor shall, unless exempted, ensure compliance with the requirements of Government Code sections 11135-11139.5, and Section 98000 et seq. of Title 22 of the California Code of Regulations, which prohibit recipients of state financial assistance from discriminating against persons based on race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, or disability. (22 CCR 98323) (Chapter 182, Stats.2006)

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

C. Standards of Work

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

D. Conflict of Interest

1. The Contractor shall prevent employees, consultants, or members of governing bodies from using their positions for purposes including, but

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ARTICLE II. ASSURANCES (Continued)

not limited to, the selection of subcontractors, that are, or give the appearance of being, motivated by a desire for private gain for themselves or others, such as family, business, or other ties. In the event that the State determines that a conflict of interest exists, funds may be disallowed by the State and such conflict may constitute grounds for termination of the Agreement.

2. This provision shall not be construed to prohibit employment of persons with whom the Contractor's officers, agents, or employees have family, 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.

E. Covenant Against Contingent Fees

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

F. Payroll Taxes and Deductions

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

G. Contracts in Excess of \$100,000

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

1. Clean Air Act, as amended (42 USC 1857).
2. Clean Water Act, as amended (33 USC 1368).
3. Federal Water Pollution Control Act, as amended (33 USC 1251, et seq.).

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ARTICLE II. ASSURANCES (Continued)

4. Environmental Protection Agency Regulations (40 CFR, Part 15 and Executive Order 11738).
 5. Public Contract Code Section 10295.3
- H. Debarment, Suspension, and Other Responsibility Matters
1. The Contractor certifies to the best of its knowledge and belief, that it:
 - a. Is not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
 - b. Has not within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, State, or local) transaction or contract under a public transaction; violation of federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c. Is 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. Has not within a three-year period preceding this Agreement had one or more public transactions (federal, State, or local) terminated for cause or default.
 - e. Contractor shall report immediately to the AAA in writing any incidents of alleged fraud and/or abuse by Contractor. Contractor shall maintain any records, documents, or other evidence of fraud and abuse until otherwise notified by the AAA.
- I. Contractor's Staff
1. The Contractor shall maintain adequate staff to meet the contractor's obligations under this Agreement.
 2. This staff shall be available to the AAA for training and meetings which the AAA may find necessary from time to time.
- J. Corporate Status

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ARTICLE II. ASSURANCES (Continued)

1. The Contractor shall be a public or private nonprofit entity. If a private nonprofit corporation, the Contractor shall be in good standing with the Secretary of State of California and shall maintain that status throughout the term of the Agreement.
2. In the event that use of a subcontractor is authorized for any portion of the project, Contractor shall, nevertheless, retain the prime responsibility for performance of the work and for assurance of the availability and retention of records in accordance with Exhibit D, Article VI. A. Specifications for any subcontract shall be submitted in writing to the AAA for approval fifteen (15) days prior to award. Any and all subcontracting shall be done in accordance with management and procurement procedures established by the AAA.
3. The Contractor shall ensure that any subcontractors providing services under this Agreement shall be of sound financial status. Any private, subcontracting corporation or JPA shall be in good standing with the Secretary of State of California and shall maintain that status throughout the term of the Agreement.
4. Failure to maintain good standing by the contracting corporation shall result in suspension or termination of this Agreement with the AAA until satisfactory status is restored.

K. Lobbying Certification

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

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-

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ARTICLE II. ASSURANCES (Continued)

LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. This certification is a prerequisite for making or entering into this transaction imposed by 31 USC 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

ARTICLE III. AGREEMENT

A copy of this Agreement is on file and available for inspection at the Stanislaus County Area Agency on Aging, 121 Downey Avenue, Suite 102, Modesto, California, 95354.

ARTICLE IV. COMMENCEMENT OF WORK

Should the Contractor begin work in advance of receiving notice that this Agreement is approved, that work may be considered as having been performed at Contractor's risk as a mere volunteer and may not be reimbursed or compensated.

ARTICLE V. SUBCONTRACTS OR VENDOR AGREEMENTS

- A. The Contractor shall indemnify, defend, and save harmless the County, its officers, agents, and employees from any and all claims and losses accruing to or resulting from any subcontractors, 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 subcontractor and/or vendor in the performance of this Agreement.
- B. The Contractor shall maintain adequate staff to meet this Agreement. This staff shall be available to the AAA and the State for training and meetings which the AAA and the State may find necessary from time to time.

ARTICLE VI. RECORDS

- A. The Contractor shall maintain complete records (which shall include, but not be limited to, accounting records, insurance documentation in accordance with this Article, patient or client records, and electronic files) of its activities and expenditures hereunder in a form satisfactory to the AAA and shall make all records pertaining to this Agreement available for inspection and audit by the AAA or its duly authorized agents, at any time during normal business hours. All such records must be maintained and made available by the Contractor: (a) until

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ARTICLE VI. RECORDS (Continued)

an audit has occurred and an audit resolution has been issued or unless otherwise authorized in writing by the California Department of Aging (CDA) and AAA's Audit Branches, (b) for such longer period, if any, as is required by applicable statute, by any other clause of this Agreement, or by Sections B, and C of this Article, and (c) for such longer period as the AAA and CDA deems necessary.

- B. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for the same periods as specified in Section A above. The Contractor shall ensure that any resource directories and all client records remain the property of the AAA upon termination of this Agreement, and are returned to the AAA or transferred to another Contractor as instructed by the AAA.
- C. In the event of any litigation, claim, negotiation, audit exception, or other action involving the records, all records relative to such action shall be maintained and made available until every action has been cleared to the satisfaction of the AAA and CDA, and so stated in writing to the Contractor.
- D. Adequate source documentation of each transaction shall be maintained relative to the allowability of expenditures reimbursed by the AAA under this Agreement. If the allowability of expenditures cannot be determined because records or documentation of the Contractor are nonexistent or inadequate according to Generally Accepted Accounting Principles and Procedures, the expenditures will be questioned in the audit and may be disallowed by the AAA and/or CDA during the audit resolution process.
- E. After the authorized period has expired, confidential records shall be shredded and disposed of in a manner that will maintain confidentiality.

ARTICLE VII. PROPERTY

- A. Unless otherwise provided for in this Article, property refers to all assets, capitalized or noncapitalized, used in operation of this Agreement. Property that is capitalized is referred to as property, plant, and equipment. Property includes land, buildings, improvements, machinery, vehicles, furniture, tools, and intangibles, etc. Property does not include consumable office supplies such as paper, pencils, typing ribbons, file folders, etc.
- B. Property meeting all of the following criteria are subject to the capitalization requirements. Such property must:
 - 1. Have a normal useful life of at least 1 year;
 - 2. Have a unit acquisition cost of at least \$5000 (e.g., four identical assets which cost \$3000 each, for a \$12,000 total would not meet this

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ARTICLE VII. PROPERTY (Continued)

capitalization requirement); and

3. Be used to conduct business under this Agreement.

As used in this Agreement, the term "equipment" shall refer only to capitalized property.

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

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

- F. The Contractor shall record the following information when property is acquired:
 1. Date acquired;
 2. Property description (include model number);
 3. Property identification number (serial number);
 4. Cost or other basis of valuation;
 5. Fund source; and
 6. Rate of depreciation (or depreciation schedule), if applicable.

The Contractor shall keep track of property purchased with Contract funds, whether capitalized or not. The Contractor shall submit to the AAA, annually with the Closeout, a current inventory of property furnished or purchased by the

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ARTICLE VII. PROPERTY (Continued)

Contractor with funds awarded under the terms of this Agreement or any predecessor agreement for the same purpose.

- G. Prior to disposal of any property purchased by the Contractor with funds from this Agreement, the Contractor must obtain approval from the AAA regardless of the acquisition value. Disposition, which includes sale, trade-in, discarding, or transfer to another agency may not occur until approval is received from the AAA.
- H. The Contractor shall immediately investigate and within five (5) days fully document the loss, destruction, or theft of such property.
- I. The AAA reserves title to all State-purchased or financed property not fully consumed in the performance of this Agreement, unless otherwise required by federal law or regulations or as otherwise agreed by the parties.
- J. Contractor shall exercise due care in the use, maintenance, protection, and preservation of such property during the period of the project, and shall assume responsibility for replacement or repair of such property during the period of the project, until the Contractor has complied with all written instructions from the AAA regarding the final disposition of the property.
- K. In the event of the Contractor's dissolution or upon termination of this Agreement, the Contractor shall provide a final property inventory to the AAA. The AAA reserves the right to require the Contractor to transfer such property to another entity, or to the AAA.
- L. To exercise the above right, no later than 120 days after termination of the Agreement or notification of the Contractor's dissolution the AAA will issue specific written disposition instructions to the Contractor.
- M. The Contractor shall use the property for the purpose for which it was intended under the Agreement. When no longer needed for that use, the Contractor shall use it, if needed, and with written approval of the AAA for other purposes in this order:
 - 1. Another Department program providing the same or similar service; or
 - 2. Another Department-funded program.
- N. The Contractor may share use of the property and equipment or allow use by other programs, upon written approval of the AAA. As a condition of the approval, the AAA may require reimbursement under this Agreement for its use.
- O. The Contractor shall not use equipment or supplies acquired under this Agreement with federal and/or State monies for personal gain or to usurp the

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ARTICLE VII. PROPERTY (Continued)

competitive advantage of a privately-owned business entity.

- P. If purchase of equipment is a reimbursable item, the equipment to be purchased will be specified in the budget.

ARTICLE VIII. ACCESS

The Contractor shall provide access to the federal or State agency, Bureau of State Audits, the Controller General of the United States, or any of their duly authorized federal or State representatives to any books, documents, papers, records, and electronic files of the Contractor 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 AAA representatives shall have the right to monitor, assess, and evaluate the Contractor's performance pursuant to this Agreement. Said monitoring, assessment, and evaluation may include, but is not limited to, audits, inspections of project premises, inspection of food preparation sites, and interviews of project staff and participants.
- B. The Contractor shall cooperate with the AAA in the monitoring, assessment, and evaluation processes, which include making any Administrative program and fiscal staff available during any scheduled process.
- C. Authorized county, state or federal representatives shall have the right to inspect Contractor's administrative offices, service sites, and food preparation sites during normal business hours.

ARTICLE X. AUDITS

- A. Contractors that expend \$500,000 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 Law 104-156, and Office of Management and Budget (OMB) Circular A-133, and a copy submitted to the:

Stanislaus County Area Agency on Aging
Attention: Fiscal Officer
121 Downey Avenue, Suite 102
Modesto, California 95354

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

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ARTICLE X. AUDITS (Continued)

The contractor shall ensure that State-Funded expenditures are displayed discreetly along with the related federal expenditures in the single audit report's "Schedule of Expenditures of Federal Awards" under the Catalog of Federal Domestic Assistance number 93.779.

For State contracts that do not have CFDA numbers, the 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 the California Department of Aging.

B. This section B applies only to Title III/VII.

The following closely related programs identified by CFDA number are to be considered as an "Other Cluster" for purposes of determining major program whether a program specific audit may be elected. The contractor shall communicate this information to the independent auditor conducting the organization's single audit.

10.576	Seniors Farmers Market Program
93.041	Special Programs for the Aging-Title VII, Chapter 3- Programs for Prevention of Elder Abuse, Neglect, and Exploitation (Title VII-B)
93.042	Special Programs for the Aging-Title VII, Chapter 2- Long Term Care Ombudsman services for Older Individuals (Title VII-A)
93.043	Special Programs for the Aging-Title III, Part D- Disease Prevention and Health Promotion Services (Title III-D)
93.044	Special Programs for the Aging-Title III, Part B – Grants for Supportive Services and Senior Centers (Title III-B)
93.045	Special Programs for the Aging-Title III, Part C – Nutrition Services (Title III-C)
93.052	National Family Caregiver Support-Title III, Part E
93.053	Nutrition Services Incentive Program (NSIP)

Cluster of programs means a grouping of closely-related programs that share common compliance requirements. The types of clusters of programs are research and development (R&D), student financial aid (SFA), and other clusters. "Other Clusters" are as defined by the OMB in the Compliance Supplement or as designated by a State for federal awards the State provides to its subrecipients that meet the definition of cluster of programs. When designating an "other cluster," a State shall identify the federal awards included in the cluster and advise the subrecipients of compliance requirements applicable to the cluster, consistent with §400 (d) (1) and §.400 (d) (2), respectively. A

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ARTICLE X. AUDITS (Continued)

cluster of programs shall be considered as one program for determining major programs, as described in §.520, and, with the exception of R&D as described in §.200(c), whether a program-specific audit may be elected. (Federal Office of Management and Budget, (OMB) Circular, A-133, Audits of States, Local Governments, and Non-Profit Organizations).

- C. The Contractor shall ensure that the single audit reports meet OMB Circular A-133 requirements:
 - 1. Performed timely – not less frequently than annually and a report submitted timely. The audit is required to be submitted within 30 days after receipt of the auditor's report or nine months after the end of the audit period, whichever occurs first.
 - 2. Properly procured – use procurement standards provided for in OMB Circular A-133 and provide maximum opportunities to small and minority audit firms.
 - 3. Performed in accordance with Generally Accepted Government Auditing Standards – shall be performed by an independent auditor and be organization-wide.
 - 4. All inclusive – includes an opinion (or disclaimer of opinion) of the financial statements; a report on internal control related to the financial statements and major programs; an opinion (or disclaimer of opinion) on compliance with laws, regulations, and the provisions of contracts or grant agreements; and the schedule of findings and questioned costs.
 - 5. Performed in accordance with provisions applicable to this program as identified in OMB Circular A-133 Compliance Supplement.
- D. The Contractor shall include in its contract with the independent auditor that the auditor will comply with all applicable audit requirements/standards, the AAA and CDA shall have access to all audit reports and supporting work papers, and the AAA and CDA has the option to perform additional work, as needed.
- E. Unless prohibited by law, the cost of audits completed in accordance with provisions of the Single Audit Act Amendments of 1996, are allowable charges to Federal Awards. The cost may be considered a direct cost or an allocated indirect cost, as determined in accordance with the provisions of applicable OMB cost principle circulars.
- F. Unless prohibited by law, the cost of audits completed in accordance with provisions of the Single Audit Act Amendments of 1996, are allowable charges to Federal Awards. The cost may be considered a direct cost or an allocated

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ARTICLE X. AUDITS (Continued)

indirect cost, as determined in accordance with the provisions of applicable OMB cost principle circulars.

- G. Contractor may not charge to Federal Awards the cost of any audit under the Single Audit Act Amendments of 1996 not conducted in accordance with the Act. Contractor may not charge to Federal Awards the cost of auditing a non-federal entity which has Federal Awards expended of less than \$500,000 per year, and is thereby exempted under OMB Circular A-133, Subsection. 200(d). However, this does not prohibit the Contractor from charging Federal Awards for the cost of conducting a limited-scope audit to address compliance requirements provided the contractor is not required to obtain a single audit. These costs must be charged as an Administrative expense of the Contractor.

ARTICLE XI. INSURANCE

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

General liability of not less than \$1,000,000 per occurrence for bodily injury and property damage combined. Higher limits may be required by the AAA and/or CDA in cases of higher than usual risks.

Automobile liability including non-owned auto liability, of not less than \$1,000,000 for volunteers and paid employees providing services supported by this Agreement.

If applicable, contractors shall comply with the Public Utilities Commission (PUC) General Order No. 115-F which requires higher levels of insurance for charter-party carriers of passengers and is based on seating capacity as follows:

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

unless otherwise amended by future regulation.

Professional liability of not less than \$1,000,000 as it appropriately relates to the services rendered. Coverage shall include medical malpractice and/or errors and omissions.

- B. The insurance will be obtained from an insurance company acceptable to the Department of General Services, Office of Risk and Insurance Management, or be provided through partial or total self-insurance acceptable to the Department of General Services.

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ARTICLE XI. INSURANCE (Continued)

- A. Evidence of insurance shall be in a form and content acceptable to the Department of General Services, Office of Risk and Insurance Management. Insurance obtained through commercial carriers shall meet the following requirements:
1. The Certificate of Insurance shall provide that the insurer will not cancel the insured's coverage without thirty (30) days prior written notice to the AAA, or ten (10) days written notice if the reason for cancellation is for non-payment of insurance premiums.
 2. The Certificate of Insurance shall provide the statement: "The Stanislaus County Area Agency on Aging and the County of Stanislaus, its officers, agents, employees, and servants are included as additional insureds, with respect to work performed for the State of California under this Agreement." Professional liability coverage is exempt from this requirement.
 3. The AAA shall be named the certificate holder and the address must be listed on the certificate.
- B. The insurance provided herein shall be in effect at all times during the term of this Agreement. In the event the insurance coverage expires during the term of this Agreement, the Contractor agrees to provide the AAA, at least thirty (30) days prior to the expiration date, a new certificate of insurance evidencing insurance coverage as provided herein for a period not less than the remaining agreement term or for a period not less than one (1) year. In the event the Contractor fails to keep in effect at all times said insurance coverage, the AAA may, in addition to any other remedies it may have, terminate this Agreement.
- E. The Contractor shall require its subcontractors or vendors under this Agreement, other than units of local government which are similarly self-insured, to maintain adequate insurance coverage for general liability, worker's compensation liabilities, and if appropriate, auto liability including non-owned auto and professional liability.
- F. The Contractor shall be insured against liability for Worker's Compensation or undertake self-insurance in accordance with the provisions of the Labor Code and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement (Labor Code Section 3700).
- 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.

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ARTICLE XII. TERMINATION

A. Termination Without Cause

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

B. Termination for Default

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

1. In case of threat of life, health or safety of the public. (Termination of Agreement shall be effective immediately.)
2. A violation of the law or failure to comply with any condition of this Agreement.
3. Inadequate performance or failure to make progress so as to endanger performance of this Agreement.
4. Failure to comply with reporting requirements.
5. Evidence that the Contractor is in an unsatisfactory financial condition as determined by an audit of the AAA or evidence of a financial condition that endangers performance of this Agreement and/or the loss of other funding sources.
6. Delinquency in payment of taxes or payment of costs for performance of this Agreement in the ordinary course of business.
7. Appointment of a trustee, receiver, or liquidator for all or a substantial part of the Contractor's property, or institution of bankruptcy, reorganization or the arrangement of liquidation proceedings by or against the Contractor.

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ARTICLE XII. TERMINATION (Continued)

8. Service of any writ of attachment, levy of execution, or commencement of garnishment proceedings against the Contractor's assets or income.
9. The commission of an act of bankruptcy.
10. Finding of debarment or suspension, Article II J.
11. The Contractor's organizational structure has materially changed.
12. The AAA determines that a Contractor may be considered a "high risk" agency as described in 45 CFR 92.12 local government and 45 CFR 74.14 for non-profit organization. If such a determination is made, the Contractor may be subject to special conditions or restrictions.
13. Funding is reduced or deleted for any State fiscal year by the Department of Finance, Legislature, or Congress.

C. Contractor's Obligation After Notice of Termination

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

The Contractor shall:

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

D. Effective Date

Termination of this Agreement shall take effect immediately in the case of an emergency such as threat to life, health, or safety of the public. In all other cases, the termination shall take effect 30 days subsequent to written notice to the Contractor. The notice shall describe the action being taken by the AAA, the reason for such action and, any conditions of the termination, including the date of termination. Said notice shall also inform the Contractor of its right to appeal such decision to the AAA and the procedure for doing so.

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ARTICLE XII. TERMINATION (Continued)

E. Voluntary Termination of Area Plan Agreement

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

In case of voluntary termination, the Contractor shall allow the AAA up to 180 days to transition services.

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

ARTICLE XIII. REMEDIES

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

ARTICLE XIV. DISSOLUTION OF ENTITY

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

ARTICLE XV. REVISIONS OR MODIFICATIONS

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

ARTICLE XVI. NOTICES

- A. Any notice to be given hereunder by either party to the other may be effected by personal delivery in writing or by registered or certified mail, overnight mail, postage prepaid, return receipt requested, or overnight mail to the addresses written on page 1 of the Standard Agreement; provided Contractor retains receipt, and shall be communicated as of actual receipt.
- B. Any notice given to the AAA for a contractor's change of legal name, main address, or name of Director shall be addressed to the Director of the AAA on

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ARTICLE XVI. NOTICES (Continued)

the Contractor's letterhead.

ARTICLE XVII. CONFIDENTIALITY

- A. Identity shall include, but not be limited to, name, identifying number, symbol or other identifying characteristic assigned to the individual, such as finger or voice print or a photograph.
- B. The Contractor shall protect from unauthorized disclosure names and other identifying information concerning persons receiving services pursuant to this Agreement, except for statistical information not identifying any participant. This provision shall remain in force even after termination.
- C. The Contractor shall not use such identifying information for any purpose other than carrying out the Contractor's obligations under this Agreement.
- D. The Contractor shall not disclose, except as otherwise specifically permitted by this Agreement or authorized by the participant, any such identifying information to anyone other than the AAA without prior written authorization from the AAA.
- E. The Contractor may allow participants to authorize the release of information to specific entities, but shall not request or encourage any participant to give a blanket authorization or sign a blank release, nor shall the Contractor accept such from any participant.
- F. The Contractor agrees to comply with the privacy and security requirements of Health Insurance Portability and Accountability Act (HIPAA) to the extent applicable and to take all reasonable efforts to implement HIPAA requirements.

ARTICLE XVIII. COPYRIGHTS AND RIGHTS IN DATA

- A. Copyrights
 - 1. If any material funded by this Agreement is subject to copyright, the AAA reserves the right to copyright such material and the Contractor agrees not to copyright such material, except as set forth in subdivisions (b) and (c) of this section.
 - 2. The Contractor certifies that it has appropriate systems and controls in place to ensure that AAA funds will not be used in the performance of this contract for the acquisition, operation, or maintenance of computer software in violation of copyright laws.
- B. Rights in Data
 - 1. The Contractor shall not publish or transfer any materials, as defined in

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ARTICLE XVIII. COPYRIGHTS AND RIGHTS IN DATA (Continued)

item 2 below, produced or resulting from activities supported by this Agreement without the express written consent of the Director of the AAA. That consent shall be given or the reasons for denial shall be given and any conditions under which it is given or denied within thirty (30) days after the written request is received by the AAA. The AAA may request a copy of the material for review prior to approval of the request. This subsection is not intended to prohibit contractors from sharing identifying client information authorized by the participant or summary program information which is not client-specific.

2. As used in this Agreement, the term "subject data" means writings, sound recordings, pictorial reproductions, drawings, designs or graphic representations, procedural manuals, forms, diagrams, workflow charts, equipment descriptions, data files and data processing or computer programs, and works of any similar nature (whether or not copyrighted or copyrightable) which are first produced or developed under this Agreement. The term does not include financial reports, cost analyses, and similar information incidental to contract administration.
3. Subject only to the provisions of Article XVII and Article XVIII of this Exhibit, the AAA may use, duplicate, or disclose in any manner, and have or permit others to do so subject to State and federal law all subject data delivered under this Agreement.
4. Materials published or transferred by Contractor shall: (a) state "The materials or product were a result of a project funded by a contract with the Stanislaus County Area Agency on Aging"; (b) give the name of the entity, the address, and telephone number at which the supporting data is available; and (c) include a statement that "The conclusions and opinions expressed may not be those of the Stanislaus County Area Agency on Aging and that the publication may not be based upon or inclusive of all raw data."

ARTICLE XIX. SANCTION

- A. If it becomes necessary to withhold Agreement funds, suspend or terminate this Agreement, the AAA may proceed in accordance with its adopted sanction policy.
- B. Contractor may appeal any denial of funding, decreased funding, or sanction affecting a Title III or Title VII Older Americans Act project under this Agreement through use of the fair hearing procedure contained in the AAA Sanction Policy. Notification of sanction will be given in writing to Contractor at least ten (10)

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ARTICLE XIX. SANCTION (Continued)

working days before the Board of Supervisors' session at which the recommendations for sanction are presented. A written request for a fair hearing must be made at least four (4) working days before the Board of Supervisors' session. Testimony and information may be presented to the Board of Supervisors at that time. The Board of Supervisors may issue a decision at that meeting or hold it over for more information. If the Contractor is not satisfied with said decision, a request for a hearing may be made with the California Department of Aging, 1300 National Drive, Suite 200, Sacramento, CA, 95834, in accordance with 22 CCR §7700 et. seq. Contractor may be represented by another person or organization at any stage in the proceedings. In the event that Contractor fails to exhaust its remedies under the appeals procedure above, or fails to abide by its time limits with respect to each step, the claim shall be presumed to be abandoned and the matter settled in accordance with the last decision rendered. A time limit may be extended by written agreement of Contractor and the reviewing body. In the event that the reviewing body fails to give its answer at any step within the time limit prescribed, Contractor shall have the right to proceed immediately to the next step.

ARTICLE XX. APPEAL PROCESS

- A. The Contractor may appeal the County's final adverse determination relating to Title III and VII programs using the appeal process established in Title 22 CCR, Sections 7700 through 7710.
- B. Appeal costs or costs associated with any court review are not reimbursable.

ARTICLE XXI. ENACTMENT

- A. This Agreement shall not be considered effective until it has been signed by the Contractor and approved by the Stanislaus County Board of Supervisors and signed by the Director of the Stanislaus County Department of Aging and Veterans Services (Area Agency on Aging).
- B. The term of the grant shall be limited to a maximum period of one year unless a shorter period or term is specified elsewhere in this Agreement.
- C. The initial contract period of July 1, 2006 through June 30, 2007 may be renegotiated with the Contractor annually for one additional one-year period. The current contract covers fiscal year July 1, 2006 through June 30, 2007. The AAA retains the right to use the competitive request for proposal process at the end of any one-year period if the Contractor's performance and service quality are unacceptable as determined by the AAA.
- D. This Agreement is subject to the availability of funds intended for the project.

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ARTICLE XXI. ENACTMENT (Continued)

- E. Should the Contractor begin work in advance of receiving notice that the agreement is approved, that work may be considered as having been done at the Contractor's risk as a mere volunteer and Contractor may go unpaid.