**MASTER SERVICES AGREEMENT**

**THIS MASTER SERVICES AGREEMENT** (the “Agreement ”)is made and entered intoby and betweenVentura County Medi-Cal Managed Care Commission doing business as Gold Coast Health Plan, a California public entity established under the laws of the State of California, (“GCHP”) and **,** a      , (“Contractor”), is effective as of \_\_\_\_\_\_\_\_\_\_\_\_\_ (“Effective Date”).

section I: services

* 1. Description of Services. Contractor shall perform the services and provide all of the items to be delivered to GCHP (“Deliverables”) described in statements of work (each, a “Statement of Work” or “SOW”) in a form substantially similar to that in Exhibit A attached hereto as well as any Change Order (defined below) (collectively, the “Services”). The Services described in any SOW may be referred to herein as a “Project.” If executed by both parties, Exhibit A shall constitute the first SOW. Each SOW and Change Order executed by both parties is incorporated into this Agreement. The SOW shall become effective upon the issuance of a GCHP purchase order, which is a written authorization to provided specified Services to GCHP at a specified price (the “Purchase Order”) by an authorized member of GCHP’s Procurement Services organization (the “Authorized Procurement Representative”).
	2. Order of Precedence. Any inconsistency in this Agreement shall be resolved by giving precedence in the following order: (1) the Business Associate Agreement; (2) this Agreement; (3) the Scope of Work, unless a single separate and distinct section within the SOW or Change Order (a) is labeled as the "MSA Override" section, and (b) expressly identifies both the provision within this Agreement that is being overridden by the SOW or Change Order and in which case the provision within the SOW or Change Order that shall prevail over this Agreement; (4) the Request for Proposals to which Contractor responded (“RFP”); and (5) Contractor’s response to such RFP Proposal. Each document identified in this Section is a part of this Agreement and is incorporated herein by this reference. Any requirement or obligation of Contractor set forth in the RFP shall be deemed a part of the general terms and conditions of this Agreement unless the Parties expressly agree to exclude any such requirement from this Agreement. Each document identified in this Section is a part of this Agreement and is incorporated herein by this reference.

1.3 Transition Services. Upon GCHP's request during the Term (defined below) and at any time during the first six (6) months following the expiration or termination of this Agreement (“Transition Period”), Contractor shall make available to GCHP all services necessary for an orderly migration to GCHP or a replacement contractor designated by GCHP including providing at no cost or expense to GCHP all GCHP files in HTML format (or such other mutually agreed format) and all data and other property of GCHP that are in the possession of Contractor, its employees, agents and subcontractors (“Transition Services”). Contractor shall use its best efforts to facilitate a complete and efficient transfer of all Services to GCHP or its designated agents to ensure the smooth and continued operation of Services. Contractors shall reasonably cooperate with GCHP and any of its contractors and agents, including any successor contractor during the Transition Period. The Transition Services include: (i) providing technical support and assistance with transition to complete a controlled transition to GCHP or successor contractor; (ii) cooperating with the successor contractor while providing all required Runout Services (as defined in the SOW), to include meeting with the successor and devising work schedules that are agreeable for GCHP, Contractor and the successor contractor; (iii) including GCHP and successor contractor staff in the design of any program changes underway during the Runout Period (as defined in the SOW) - Contractor must clearly identify each change and provide all updated user documentation that may result from system changes; (iv) transferring all data (including historical file with paid claims), including back-up data, to GCHP or a successor contractor, as directed by GCHP; (v) providing operations and technical applications walk-throughs with GCHP and successor contractor staff; and (vi) maintaining existing service levels and service level agreements throughout Transition Period for normal execution of the Services, as set forth in the applicable SOW. Contractor shall provide transition assistance utilizing Contractor personnel then being regularly used to perform the Services. For transition assistance (excluding the return of GCHP files, data and other property) for which there is a predetermined Charge (defined below) in a SOW, such pre-determined Charge shall apply. For transition assistance for which there is no predetermined Charge in an SOW, Contractor shall charge its then-current hourly rates, less a twenty-five percent (25%) discount. In the event GCHP terminates this Agreement or any SOW due to Contractor’s breach of this Agreement or the applicable SOW, Contractor shall not be entitled to any compensation or remuneration for transition services provided by Contractor during the Transition Period.

* 1. Non-Exclusivity. GCHP retains the right at all times to negotiate terms and enter contracts with any other person or entity for services that are the same or similar to the Services without notice to Contractor and without incurring any liability by virtue thereof.
	2. Place of Performance. Except as expressly described in a SOW, Contractor shall not perform the Services or any portion thereof, nor send or make available any Confidential Information (defined below) of GCHP or individually identifiable health information outside the United States. If during the term of this Agreement, or at any time after the Effective Date of this Agreement, it is determined that Contractor is in breach of this Section, GCHP shall have, in its sole discretion, the right to immediately terminate this Agreement.

1.6 Offshore

Contractor shall not perform the Services or any portion thereof Offshore, nor shall Contractor engage in Offshore subcontracts for the performance of the Services or any portion thereof, without the express written consent of GCHP. In the event GCHP approves an Offshore subcontract, then to the extent required by the Center for Medicare and Medicaid Services (“CMS”) or any governmental agency, within ten (10) days of the execution of such Offshore subcontract, Contractor shall provide to GCHP any and all information necessary complete the required CMS attestations.

 All Offshore subcontracts entered into by Contractor pursuant to this Section shall include regulatory and privacy and security provisions substantially similar to those in this Agreement, including but not limited to all Medicare and/or Medicaid language and HIPAA provisions and a Business Associate Agreement.

Contractor shall contractually require all Offshore subcontractors to maintain policies and procedures to protect Protected Health Information, subject to GCHP’s review and approval.

Contractor shall provide ongoing oversight of all Offshore subcontractors, and conduct annual audits of the Offshore subcontractors for compliance with any and all applicable regulations and the terms of this Agreement. Contractor shall make said audit results immediately available upon request from GCHP and CMS.

1. The term “Offshore” refers to any country that is not one of the 50 United States or one of the United States Territories (American Samoa, Guam, Northern Marianas, Puerto Rico, and Virgin Islands
PAYMENT
	1. Charges. In full consideration for Contractor’s performance of the Services described in an SOW or Change Order, GCHP shall pay the charges and expenses expressly described in the Compensation section in such SOW in accordance with its terms and this Agreement (“Charges”). Contractor is not entitled to any compensation or remuneration other than the Charges. All payments by GCHP to Contractor pursuant to this Agreement are due and payable within forty-five (45) calendar days of receipt by GCHP of an undisputed invoice after Acceptance (defined below) of a Service, or Deliverable or Milestone (as defined in the SOW).
	2. Invoice Detail. Each invoice shall show: (i) the SOW number to which the invoice relates; (ii) the Purchase Order Number of the GCHP Purchase Order relating to the SOW; (iii) the GCHP billing information identified on the applicable SOW; and (iv) the specific items billed, including hours billed for each Contractor Personnel performing under each SOW. GCHP, at its sole discretion, may refuse to pay any invoice that does not contain the required detail and, instead, may return the invoice to Contractor within thirty (30) days of receipt. In such event, GCHP shall not be obligated to pay any sums billed by such returned invoice until thirty (30) days after GCHP receives a properly corrected invoice therefor.
	3. Mailing of Invoices. Each invoice shall be mailed, in duplicate, to GCHP at the following address:

GOLD COAST HEALTH PLAN

711 E DAILY DRIVE

SUITE 106

CAMARILLO, CA 93010
Attention: Accounts Payable

E-mail Invoices. Invoices may also be submitted to GCHP using the following e-mail address: Accountspayable@goldchp.org.

* 1. Additional Charges. Contractor may not charge GCHP any additional amounts for Services or Deliverables for which an invoice has been rendered, except where a particular invoice (i) indicates that certain Charges are incapable of being determined as of the date of such invoice and (ii) Contractor provides an estimate of such Charges so that GCHP can make appropriate accruals, in which event Contractor may include such Charges on a later invoice. However, under no circumstances shall GCHP be liable for any Charges presented to GCHP more than ninety (90) days after the date the underlying Services/Deliverables or expenses were provided or incurred, as the case may be. GCHP may deduct from an invoice any credits or other amounts Contractor owes GCHP hereunder. In the event of a dispute regarding an invoice, the parties shall negotiate in good faith to resolve such dispute as soon as practicable. If the dispute is not resolved informally, it shall be subject to the dispute resolution procedures set forth in Section 14.
	2. Overpayment and Recovery.
		1. In the event that Contractor identifies an overpayment, Contractor shall report within sixty (60) calendar days of the date of identification of the overpayment to GCHP’s Compliance Officer at Gold Coast Health Plan, 711 E. Daily Drive, Suite #106 Camarillo, CA 93010-6082, Fax: (805) 437-5132, compliance@goldchp.org. The report shall include the amount of overpayment identified and the reason for the overpayment. Contractor also shall make repayment to GCHP within sixty (60) calendar days of the date of identification of the overpayment.
		2. In the event that GCHP determines that Contractor has received an overpayment, GCHP shall notify Contractor of the amount of overpayment identified and the reason for the overpayment. Such written notice shall identify the funds claimed to be overpaid or paid in duplicate, or that with a reason as to why GCHP believes such funds were paid which were not provided for under this Agreement, overpaid. Contractor shall make repayment of any undisputed overpayment to GCHP within sixty (60) calendar days of written notification by GCHP.
		3. If Contractor fails to make repayment of the overpayment, duplicate payment, or other excess payment, in accordance with subprovisions a. and b. above, then in addition to any other contractual or legal remedy, GCHP may recover the amounts owed by way of offset or recoupment from current or future amounts due Contractor by giving Contractor not less than thirty (30) calendar days’ notice.
		4. As a material condition to GCHP’s obligations under this Agreement, Contractor agrees that the offset and recoupment rights set forth herein shall be deemed to be and to constitute rights of offset and recoupment authorized in state and federal law or in equity to the maximum extent legally permissible, and that such rights shall not be subject to any requirement of prior or other approval from any court or other governmental authority that may now or hereafter have jurisdiction over GCHP and/or Contractor.
		5. This Section shall survive Termination of this Agreement.
	3. Availability of Funds. Payment to Contractor is subject to GCHP’s corresponding receipt of funding from the Department of Health Care Services (“DHCS”), the Centers for Medicare and Medicaid Services (“CMS”), or any other governmental agency providing revenue to GCHP, as applicable. If payments from federal or State governmental agencies are terminated or reduced, GCHP may terminate the Agreement or adjust the rate of payment as set forth herein. If GCHP’s payment from federal agencies is delayed, GCHP may extend the time to make payment to Contractor upon prompt written notification of such delay. Contractor shall not suspend or terminate GCHP due to a delay in receipt of payment if such delay results from a corresponding delay in GCHP’s receipt of payment from federal or State governmental agencies, provided that such delays do not exceed ninety (90) days and GCHP has notified Contractor as set forth above. Within fifteen (15) days following GCHP’s receipt of payment federal or State governmental agencies, GCHP shall make payment to Contractor for the applicable time period. Notwithstanding the foregoing, Contractor shall receive payment for services rendered and obligations incurred prior to termination or amendment of the Agreement. Contractor agrees to hold harmless both the State and GCHP members in the event that GCHP cannot or will not pay for services performed by Contractor pursuant to this Agreement. This Agreement is subject to any restrictions, limitations, or conditions enacted by the Congress or State Legislature or any statute enacted by the Congress tor State Legislature that may affect the provisions, terms or funding of this Agreement in any manner.
	4. Expense Reimbursement. GCHP shall not be responsible for reimbursement of Contractor’s expenses incurred in the performance of Services pursuant to this Agreement except to the extent that the issuing SOW so provides. If, and to the extent, that the SOW provides that GCHP shall reimburse any such expenses of Contractor, such reimbursement shall be subject to the GCHP’s Reimbursable Expense Guidelines, attached hereto as Exhibit B and incorporated herein by reference. To the extent that a SOW contains a limitation, under no circumstances will reimbursement for expenses exceed the “Maximum Amount” specified in the SOW ,unless the SOW is modified to increase such maximum amount.
	5. Taxes. Contractor agrees to pay and hold GCHP harmless against any penalty, interest, additional tax or other charges that may be levied or assessed as a result of the delay or failure of Contractor for any reason to pay any tax or file any return or information required by law, rule or regulation.
	6. Sales and Use Taxes. GCHP shall be solely responsible for the payment of any and all sales and use taxes assessed by any governmental authority with respect to the Services performed under this Agreement.
	7. Records and Audit. Contractor agrees to make all of its premises, facilities, equipment, books, records, contracts, computer and other electronic systems pertaining to the goods and services furnished under the terms of this Agreement, available for the purpose of an audit, inspection, evaluation, examination or copying at all reasonable times at the Contractor’s place of business or at such other mutually agreeable location in California.
		1. Record Maintenance and Retention. Contractor shall maintain complete and accurate records to validate and document Contractor’s (i) compliance with this Agreement, (ii) performance of the Services, and (iii) Charges for Services and/or the Deliverables, all in accordance with general standards applicable to such book or record keeping consistently applied. Such records, , shall be maintained for a term of at least ten (10) years from the final date of the Agreement period or from the date of completion of any audit, whichever is later. Contractor shall furnish any record, or copy of it, to DHCS or any other entity listed in this Section at Contractor’s sole expense.
		2. Audit by GCHP. Contractor shall, upon request from GCHP, make available to GCHP for audit and inspection all of its premises, facilities, equipment, books, and records, contracts, computer and other electronic systems pertaining to the goods and services furnished under the terms of this Agreement.
		3. Audit by California Auditor General. If this Agreement exceeds Ten Thousand and No/100 Dollars ($10,000.00), Contractor shall be subject to the examination and audit of the State of California Auditor General for a period of three (3) years after final payment under contract (California Government Code Section 8546.7). Any such audit will be conducted upon reasonable notice and during regular business hours, and shall be at GCHP’s expense, unless such audit reveals an overcharge of more than five percent (5%), in which event Contractor shall reimburse GCHP the cost of such audit. Contractor shall provide reasonable assistance to GCHP or its designated agent to conduct audits. All overcharges revealed by any audit hereunder shall be immediately reimbursed to GCHP.
		4. Audit by State and Federal Agencies. Contractor shall permit DHCS, CMS, the Federal Department of Health and Human Services (“DHHS”) Inspector General, the federal Comptroller General, the Federal and California Departments of Justice (“DOJ”), the California Department of Managed Health Care (“DMHC”), and their designees to inspect, examine, or copy all applicable books and records, and the premises in which it is being performed. Contractor shall provide all reasonable facilities and assistance for the safety and convenience of the authorized representatives of State or federal agencies in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

If DHCS, CMS, or the DHHS Inspector General determines there is a reasonable possibility of fraud or similar risk, DHCS, CMS, or the DHHS Inspector General may inspect, evaluate, and audit the Contractor at any time. Upon resolution of a full investigation of fraud, DHCS reserves the right to suspend or terminate Contractor from participation in the Medi-Cal program; seek recovery of payments made to Contractor; impose other sanctions provided under the State or GCHP, and direct GCHP to terminate this Agreement due to fraud.

* + 1. Return of Documents. All Deliverables and supporting documents, records, data, or other materials provided to GCHP by Contractor shall be the property of GCHP upon completion of this Agreement. Any and all records, documents, data, or other materials provided by GCHP to Contractor that were required for Contractor to perform the Services required by this Agreement shall be returned immediately to GCHP upon expiration or termination of this Agreement.
1. CHANGES; DELAYS; AND SERVICE CREDITS
	1. Change Orders. If either party desires a change in the Services or Deliverables, the desired change and any resultant change to the Charges shall be specified in a written document presented to the other party (“Change Order”). Contractor shall be entitled to an additional charge described in a Change Order only if Contractor provides to GCHP a written proposal for such change or increase in scope. If such proposal is accepted, Contractor shall be compensated at the rates set forth in the SOW and/or at such other fixed price mutually agreed upon in writing. Contractor shall not perform any services not described in an SOW or a Change Order and shall not be entitled to any compensation or remuneration unless such SOW or Change Order has been signed by an appropriate GCHP employee with sufficient authority to bind GCHP to the SOW or Change Order. Contractor acknowledges and agrees that a SOW or Change Order may include additional required GCHP approvals. Notwithstanding anything in this Agreement to the contrary, GCHP shall have the right, upon written notice to Contractor, to suspend in whole or in part the delivery of any Services or Deliverables, and the parties shall negotiate in good faith any adjustments in prices or ship dates necessitated by such suspension.
	2. Delays. If Contractor has failed or is likely to fail to provide the Services on time, Contractor shall, at Contractor’s expense, provide as many additional Contractor personnel as necessary to meet the performance timelines. Contractor shall inform GCHP as early as possible of any anticipated delays in the Services and of the actions being taken to ensure completion of the Services within a time period acceptable to GCHP. GCHP’s acceptance of additional personnel as provided herein shall not be construed or implied to constitute a waiver of any of GCHP’s rights under the terms of this Agreement.
	3. Force Majeure.

a. Neither party shall be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused by an event (including, fire, flood, terrorism, pestilence, earthquake, elements of nature or acts of God, riots, or civil disorders) beyond the reasonable control of such party, provided (i) the non-performing party is without fault in causing such default or delay, (ii) such default or delay could not have been prevented by reasonable precautions (including the implementation of, and adherence to, a prudent disaster recovery and business continuity plan), and (iii) such default or delay could not reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means.

b. Unless specified in the SOW, in the event Contractor’s performance of the Services is delayed or interrupted because of a Force Majeure event as described in this Section 3 of this Agreement for a period of five (5) days or more, and such delay or interruption materially, adversely impacts GCHP’s business and Contractor fails to provide a temporary alternative reasonably acceptable to GCHP, GCHP may in its sole discretion without liability, suspen Contractor’s performance of the Agreement by providing Contractor with written notice of suspension. Once Contractor demonstrates to GCHP’s satisfaction that it is capable of performing the Services, then the above suspension shall end upon GCHP’s written notice of end of suspension.

* 1. Service Credits. To the extent described in an SOW, GCHP may be entitled to credits against the Charges as a result of Contractor’s failure to meet service levels that are subject to such credits. Alternatively, GCHP may make a claim for damages against Contractor arising out of Contractor’s failure to meet such service levels; provided, however, that if GCHP had previously received any service level credits as a result of such failure, then the amount of damages to which GCHP is entitled under its subsequent claim shall be reduced by the amount of any service level credits previously accepted by GCHP with respect to such failure. This right shall not limit any other rights of the parties in this Agreement.
	2. Changes to DHCS Agreement. GCHP shall inform Contractor of prospective requirements added by DHCS to this Agreement before the requirement would be effective, and obtain Contractor’s agreement to comply with the new requirements within thirty (30) days of the effective date, unless otherwise instructed by DHCS and to the extent possible.
1. PROJECT MANAGEMENT
	1. Contractor Project Personnel. Contractor shall staff each Project with sufficient qualified personnel to complete its obligations hereunder. Contractor shall promptly replace any such individual upon GCHP's reasonable request, and shall not otherwise remove, replace or reassign any individuals identified in the applicable SOW as Key Contractor Personnel without GCHP's prior written consent, provided that Contractor reserves the right to terminate the employment of any person without the consent of GCHP. Contractor shall cooperate with third parties working on GCHP’s behalf.
	2. Project Reports. Unless specified otherwise in the applicable SOW, Contractor shall present to GCHP a written status report of the Project and its progress, on a task-by-task basis, including, without limitation, Contractor hours expended if charged on an hourly basis and any impediments to the timely completion of the Project, all sufficiently in advance to permit GCHP to compensate for, or work around, such impediment. These reports shall include any unanticipated issues and recommendations for dealing with such issues.
2. ACCEPTANCE

GCHP shall have thirty (30) calendar days from the date the Deliverables and Services are delivered to and received by GCHP to review and test them to ensure they conform to their specifications, documentation and SOW. GCHP shall notify Contractor of the existence of any defect and Contractor shall, at no cost or expense to GCHP, work promptly and diligently to correct such defect within twenty (20) calendar days of GCHP’s notice to Contractor of such defect. Should Contractor fail to make such correction in a reasonably timely manner, such correction may be made by GCHP, and the cost thereof shall be charged to Contractor. If GCHP determines the Deliverables and Services (as corrected, if applicable) contain no defects, GCHP shall provide Contractor a written notice of acceptance (“Acceptance”). No other event shall constitute Acceptance. Acceptance by Contractor of the final payment made under this Agreement shall operate as and be a release of GCHP from all claims and liabilities for compensation to Contractor for anything done, furnished or relating to Contractor’s work or services. Acceptance of payment shall mean any negotiation of GCHP's check or the failure to make a written extra compensation claim within ten (10) calendar days of the receipt of that check. However, approval or payment by GCHP shall not constitute, nor be deemed, a release of the responsibility and liability of Contractor, its employees, subcontractors, agents for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by GCHP for any defect or error in the future.

1. WARRANTIES; COMPLIANCE WITH LAW
	1. Service and Performance Warranty. Contractor represents and warrants that it (a) has the experience and skill to perform the Services in this Agreement; and (b) shall perform the Services in a timely, competent, workmanlike manner and in conformance with the requirements of this Agreement, and (c) that all Deliverables shall conform to their documentation, functional specifications and requirements for one (1) year from the date of Acceptance (the "Warranty Period"). In the event the Services or Deliverables do not conform to this warranty, Contractor shall, at no cost or expense to GCHP, promptly correct, re-perform and, as applicable, re-deliver the Services and Deliverables. For each day during the Warranty Period that the Services or Deliverables do not conform to this warranty, the Warranty Period shall be extended by one day.
	2. Pass-Through Warranty. If applicable, Contractor shall pass through to GCHP any product and third party warranties and indemnities associated with the Services. If Contractor is not permitted to so pass-through, Contractor shall enforce such warranties and indemnities on behalf of GCHP.
	3. Mutual Warranties. Each party represents and warrants to the other that: (i) it is validly existing under the laws of the state of its formation and has the full right, authority, capacity and ability to enter into this Agreement and to carry out its obligations hereunder; (ii) this Agreement is a legal and valid obligation binding upon it and enforceable according to its terms; and (iii) its execution, delivery and performance of this Agreement does not conflict with any agreement, instrument or understanding, oral or written, to which it is bound.
	4. No Other Warranties. Except for the express warranties set forth herein, each party disclaims all other warranties, express and implied, including warranties of merchantability and fitness for a particular purpose.
	5. Compliance with Law and Policies. Contractor shall provide the Services in compliance with the requirements of all applicable Federal, State and local laws, ordinances, regulations and codes, including those laws applicable to the DHCS Medi-Cal Managed Care Program and governing the DHCS contract with GCHP for Medi-Cal managed care, and, if applicable, the Health Insurance Portability and Accountability Act (collectively, "Law"). Contractor agrees to comply with any provision required to be in this Agreement by such DHCS contract with GCHP, which is incorporated in this Agreement by reference, and any GCHP policies and procedures that have been provided to Contractor at least thirty (30) days in advance of implementation. Contractor agrees to report any violation of Law or GCHP policies or procedures committed by Contractor or, its employees, agents, workforce members, or subcontractors in the performance of the Services to GCHP’s Ethics Hotline at (888) 866-1366 or GCHP’s Ethics Officer at GCHP’s address for Notices.

6.6 Licensure. Contractor shall maintain at all times and in full force and effect any and all applicable licenses, certificates or permits required to perform the work and/or Services pursuant to the terms and conditions set forth in this Agreement.

1. INTELLECTUAL PROPERTY AND CONFIDENTIALITY
	1. Intellectual Property. As between Contractor and GCHP, Contractor agrees that all “Work Product” (which, for purposes of this Agreement, shall include any and all Deliverables [including all intermediate versions and all derivatives thereof] and any and all results and proceeds of Contractor’s Services hereunder) shall be owned exclusively by GCHP in any and all manner or media now known or hereafter devised, in perpetuity. Such ownership shall inure to the benefit of GCHP from the date of creation or fixation in a tangible medium of expression, as applicable. GCHP and Contractor agree that all Work Product shall be considered a “work-made-for-hire” in favor of GCHP within the meaning of the Copyright Act of 1976, as amended. If and to the extent the Work Product, or any part thereof, is found by a court of competent jurisdiction not to be a “work-made-for-hire” within the meaning of the Copyright Act of 1976, as amended, Contractor hereby expressly assigns to GCHP all exclusive right, title and interest in and to the copyright, patent, trademark, trade secret and all other proprietary rights in and to the Work Product without further consideration, free from any claim, lien for balance due or rights of retention thereto on the part of Contractor. Contractor shall deliver all Work Product to GCHP promptly upon completion or, if sooner, the termination of the Services hereunder. Contractor agrees to execute all documents GCHP reasonably requires to perfect such assignment, and in the event that Contractor fails to execute such documents for any reason, Contractor hereby appoints GCHP as its attorney-in-fact for the sole purpose of executing such documents.
	2. Confidential Information. For the purposes of this Agreement, “Confidential Information” means any software, data, business, financial, operational, customer, contractor or other information disclosed by one party to the other and not generally known by or disclosed to the public. Confidential Information shall include any and all Personal Information, defined as any information that is or includes personally identifiable information. Personal Information includes, but is not limited to, name, address and any unique personal identification number. Notwithstanding anything herein to the contrary, Confidential Information shall not include information that is: (a) already known to or otherwise in the possession of a party at the time of receipt from the other party, provided such knowledge or possession was not the result of a violation of any obligation of confidentiality; (b) publicly available or otherwise in the public domain prior to disclosure by a party; (c) rightfully obtained by a party from any third party having a right to disclose such information without breach of any confidentiality obligation by such third party; or (d) developed by a party independent of any disclosure hereunder.

7.3 GCHP Data Ownership. GCHP Data (which shall also be known and treated by Contractor as “Confidential Information”) shall include: (a) GCHP’s data collected, used, processed, stored, or generated in the course of GCHP and its users’ use of Services and Contractor’s performance of the Services herein; (b) personally identifiable information (“PII“) collected, used, processed, stored, or generated as the result of the use of the Software or Services, including, without limitation, any information that identifies an individual, such as an individual’s name, address, social security number or other government-issued identification number, date of birth, telephone number, biometric data, mother’s maiden name, email address, credit card information, or an individual’s name in combination with any other of the elements listed herein; and (c) protected health information (“PHI”), as that term is defined by defined under the Health Insurance Portability and Accountability Act of 1996, and its implementing regulations (“HIPAA”), collected, used, processed, stored, or generated as the result of the use of the Services. GCHP Data is and shall remain the sole and exclusive property of GCHP and all right, title, and interest in the same is reserved by GCHP. This Section shall survive the expiration or termination of this Agreement.

7.4 Contractor Use of GCHP Data Contractor is provided a limited license to GCHP Data for the sole and exclusive purpose of providing the Services. Contractor shall: (i) keep and maintain GCHP Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Agreement and applicable law to avoid unauthorized access, use, disclosure, or loss; (ii) use and disclose GCHP Data solely and exclusively for the purpose of providing the Software and Services, such use and disclosure being in accordance with this Agreement, the applicable Service Order, SOW, or Exhibit, and applicable law; and, (iii) not use, sell, rent, transfer, distribute, or otherwise disclose or make available GCHP Data for Contractor’s own purposes or for the benefit of anyone other than GCHP without GCHP’s prior written consent. This Section shall survive the expiration or termination of this Agreement.

* 1. Health Information. All services performed by Contractor under this Agreement shall be in strict conformance with all applicable Federal, State of California and/or local laws and regulations relating to confidentiality, including but not limited to, California Civil Code Section 56 et seq., California Welfare and Institutions Code Sections 5328, 10850 and 14100.2, Health and Safety Code Sections 11977 and 11812, 22 California Code of Regulations Section 51009, 45 Code of Federal Regulations Parts 160, 162, and 164, and 42 Code of Federal Regulations Section 2.1 et seq. Contractor shall submit to GCHP's monitoring of said compliance with all State of California and Federal statutes and regulations regarding confidentiality. To the extent the services to be performed by the Contractor involve Protected Health Information as defined in the Health Insurance Portability and Accountability Act implementing regulations at 45 Code of Federal Regulations Section 160.103, Contractor shall execute and abide by the terms of the Business Associate Agreement between the Parties, which is incorporated by reference herein.
	2. Confidentiality Obligations. Each party shall maintain all of the other party’s Confidential Information in strict confidence and shall protect such information with the same degree of care that such party exercises with its own Confidential Information, but in no event less than a reasonable degree of care. If a party suffers any unauthorized disclosure, loss of, or inability to account for the Confidential Information of the other party, then the party to whom such Confidential Information was disclosed shall promptly notify and cooperate with the disclosing party and take such actions as may be necessary or reasonably requested by the disclosing party to minimize the damage that may result therefrom. Except as provided in this Agreement, a party shall not disclose (or allow the disclosure of) any Confidential Information of the other party without the prior written consent of such party. If a party is legally required to disclose the Confidential Information of the other party, the party required to disclose shall, as soon as reasonably practicable, provide the other party with written notice of the applicable order or subpoena creating the obligation to disclose so that such other party may seek a protective order or other appropriate remedy. In any event, the party subject to such disclosure obligation shall only disclose that Confidential Information which the party is advised by counsel as legally required to be disclosed. In addition, such party shall exercise reasonable efforts to obtain assurance that confidential treatment shall be accorded to such Confidential Information. Access to and use of any Confidential Information shall be restricted to those employees and persons within a party’s organization who have a need to use the information to perform such party’s obligations under this Agreement and are subject to a contractual or other obligation to keep such information confidential. A party’s consultants and subcontractors are included within the meaning of “persons within a party’s organization,” provided such consultants and subcontractors have executed confidentiality agreement with provisions no less stringent than those contained in this Section. Additionally, GCHP may, in response to a request, disclose Contractor’s Confidential Information to a regulator or other governmental entity with oversight authority over GCHP, provided GCHP (i) first informs Contractor of the request, and (ii) requests the recipient to keep such information confidential. Contractor and its subcontractors shall not use such Confidential Information for any purpose other than carrying out the Contractor’s obligations under this Agreement. Contractor and its subcontractors shall promptly transmit to the GCHP program contract manager all requests for disclosure of such Confidential Information.
	3. Return of Confidential Information. All of a party’s Confidential Information disclosed to the other party, and all copies thereof, are and shall remain the property of the disclosing party. All such Confidential Information and any and all copies and reproductions thereof shall, upon request of the disclosing party or the expiration or termination of this Agreement, be promptly returned to the disclosing party or destroyed (and removed from the party's computer systems and electronic media) at the disclosing party’s direction, except that to the extent any Confidential Information is contained in a party's backup media, databases and email systems, then such party shall continue to maintain the confidentiality of such information and shall destroy it as soon as practicable and, in any event, no later than required by such party's record retention policy. In the event of any destruction hereunder, the party who destroyed such Confidential Information shall provide to the other party written certification of compliance therewith within fifteen (15) days after destruction.

7.8 Non-Compete. Contractor may not use, transfer, distribute, interface or dispose of its Services, Software, Customer Data, or any portion thereof, or any information derived therefrom, in any manner that competes with GCHP, including developing or assisting any third party in developing any content, product(s) or service(s) which could be competitive with services provided by GCHP.7.9 HealthEdge Software: Contractor understands that Contractor may access and use certain software and programs from HealthEdge Software, Inc. in the course of Contractor’s performance of Services under this Agreement. Contractor agrees the confidentiality obligations under this Agreement shall also apply to HealthEdge’s Confidential Information. Contractor further agrees to comply with all applicable terms of GCHP’s Subscription Services Agreement with HealthEdge dated \_\_\_\_\_, including but not limited to Section 2, and to the extent applicable to the Contractor, Sections 3.2, 5.1, and 9.2, as well as with the terms of Section 8 of GCHP’s Mater Services Agreement with HealthEdge dated \_\_\_ A copy of said agreements will be provided to Contractor. Contractor further agrees to execute any agreements reasonably required by GCHP and/or HealthEdge to protect HealthEdge’s Confidential Information. Contractor agrees to indemnify, defend and hold harmless GCHP for contractor’s violation, breach, misappropriation, infringement or otherwise improper use and disclosure of HealthEdge’s Confidential Information in accordance with Contractor’s indemnification obligations as set forth in Section 9.1 of this Agreement.

1. TERM AND TERMINATION
	1. Term. This Agreement shall commence on the Effective Date and continue until the later of (i) the fifth (5th) anniversary of the Effective Date, or (ii) the completion of all outstanding SOWs (collectively, ”Term”). The definition of “Term” shall encompass any and all extensions and renewals of this Agreement, including, to the extent provided in the applicable SOW , any extensions and renewals that GCHP has the right to exercise upon written notice or Purchase Order pursuant to the terms of any SOW.

This Agreement shall commence on the Effective Date and continue until the later of (i) the seventh (7th) anniversary of the Effective Date, or (ii) the completion of all outstanding SOWs (collectively, ”Term”). By giving written notice via a Purchase Order to Contractor no less than thirty days prior to the then-existing expiration date, GCHP may extend the term of this Agreement or any Statement of Work for a period up to sixty (60) months on the terms and conditions (including pricing and cost-of-living adjustments, if any) then in effect. GCHP may also procure additional quantities of Services on the same terms and conditions (including pricing and cost-of-living adjustments, if any) then in effect via a Purchase Order to Contractor at any time during the Term of this Agreement or the Term of any Statement of Work. No other terms in GCHP’s Purchase Order to Contractor shall be binding on either party. GCHP shall have one (1) such extension option for the Agreement and as many extension options as required for any associated Statement of Work, but in no event shall any Statement of Work be extended beyond a period of seventy two (72) months from its initial Term. The definition of “Term” shall encompass any and all extensions and renewals of this Agreement.

* 1. Termination.

a. Unless specified otherwise in the MSA Override section of an SOW, GCHP may terminate this Agreement and any SOW(s) for convenience without cost or penalty at any time upon thirty (30) days advance written notice to Contractor.

b. In the event either party breaches any provision of this Agreement, the non-breaching party may terminate this Agreement without penalty or fee upon thirty (30) days advance written notice to the other party, provided such breach is not cured within such thirty (30) day period.

c. In the event GCHP terminates this Contract or a SOW for an uncured breach and it is later adjudicated that no breach occurred, the termination shall be deemed to have been made for convenience.

d. Notwithstanding anything herein to the contrary, Contractor agrees that a good faith dispute regarding Charges that remain unpaid for fewer than sixty (60) days shall not be deemed to be a breach of this Agreement, and Contractor shall not suspend, delay or terminate this Agreement, any SOW, Deliverables or Services during such 60 day period.

* 1. Immediate Termination or Suspension. GCHP may immediately suspend or terminate this Agreement in whole or in part, where in the sole determination of GCHP, there is any of the following:

a. Failure to cure a breach as required by the Corrective Action Plan within thirty (30) days.

b. Contractor (i) becomes subject to a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors; (ii) becomes subject to an involuntary petition regarding the foregoing that is not dismissed within 120 days after filing; (iii) declares or admits publicly and in writing that it is insolvent or is unable to meet its debts as they mature; or (iv) makes an assignment for the benefit of all or substantially all of its creditors.

* 1. Effect of Termination.

a. Upon the termination or expiration of this Agreement or any SOW, Contractor shall: (a) deliver to GCHP all Deliverables in whatever form or media they may then exist; (b) document the status of the Services that have been terminated and deliver such documentation to GCHP; and (c) deliver to GCHP all fees paid by GCHP for Services and Deliverables that remain unperformed or undelivered as of the date of termination as well as all GCHP property and materials that are in the possession of Contractor, its employees, subcontractors and agents. The termination or expiration of this Agreement or any SOW for any reason shall not affect GCHP’s or Contractor’s rights or obligations for any Services or Deliverables completed and delivered to GCHP prior to the date of termination, and GCHP shall pay all charges outstanding at the time of termination within forty five (45) days following submission of a final statement by Contractor.b. In addition to Contractor’s obligations in Section 8.4 a above, upon the termination or expiration of this Agreement or any SOW, the parties agree to negotiate the timing and specific delivery of the Transition Services to be provided by Contractor pursuant to Section 1.3. Any SOW may provide additional obligations upon termination or expiration.

8.5 Remedies. Notwithstanding anything in this Agreement to the contrary, where a breach of certain provisions of this Agreement may cause either party irreparable injury or may be inadequately compensable in monetary damages, either party may obtain equitable relief in addition to any other remedies which may be available. The rights and remedies of the parties in this Agreement are not exclusive and are in addition to any other rights and remedies available at law or in equity.

8.6 No Waiver. In no event shall any payment by GCHP constitute a waiver by GCHP of any breach of this Contractor any default which may then exist on the part of Contractor. Neither shall such payment impair or prejudice any remedy available to GCHP with respect to the breach or default.

1. INDEMNITY
	1. Indemnification.
		1. Contractor agrees to defend, indemnify and hold harmless GCHP, its affiliates and subsidiaries, and their officers, directors, commissioners, employees, agents and representatives (collectively, “GCHP Indemnitees”) from and against all actions, suits, costs, damages, expenses, fines, penalties, settlements and judgments, and liabilities (including, without limitation, reasonable attorneys’ fees and costs) (“Claims”) arising out of or in connection with: (i) any breach of any representation or warranty of Contractor contained in this Agreement; (ii)any breach of any covenant or other obligation or duty of Contractor under this Agreement or under applicable law; (iii) negligent acts or omissions of Contractor or Contractor personnel while performing under this Agreement, including SOWs; (iv) any assertion or allegation of infringement, misappropriation or violation of third party copyright, trademark, patent or any proprietary rights of third parties or (v) any theft or other misappropriation of GCHP property or funds by Contractor or any of Contractor personnel; excluding Claims to the extent resulting from the sole negligence or willful misconduct rof GCHP. GCHP agrees to notify Contractor promptly in writing of any such claim, following actual knowledge of such Claim, provided however that the failure to give such notice shall not relieve Contractor of its obligations hereunder except to the extent that Contractor is materially prejudiced by such failure.
		2. In the event that any third party Claim is brought, GCHP shall have the option at any time to either (i) tender its defense to Contractor, in which case Contractor shall provide qualified attorneys, consultants, and other appropriate professionals to represent GCHP's interests at Contractor's expense, or (ii) undertake its own defense, choosing the attorneys, consultants, and other appropriate professionals to represent its interests, in which case Contractor shall be responsible for and shall pay reasonable fees and expenses of such attorneys, consultants, and other appropriate professionals. GCHP shall have the sole right and discretion to settle, compromise, or otherwise resolve any and all claims, causes of action, liabilities, or damages against it, notwithstanding that GCHP may have tendered its defense to Contractor. Any such resolution shall not relieve Contractor of its obligation to indemnify GCHP. Contractor agrees that any settlement, compromise or resolution Contractor enters into arising as a result of the Claims will not include any admission of wrongdoing by GCHP. The indemnification requirements set forth herein shall survive the termination of this Agreement.
		3. If the use of any Deliverables or Services is enjoined or threatened to be enjoined due to an alleged infringement or misappropriation, Contractor shall, at its discretion and expense, (i) procure the right for GCHP to continue using such Deliverables or Services, (ii) modify or replace the affected items with functionally equivalent or better items, or (iii) refund the amount paid by GCHP in connection with the affected Deliverables or Services.
2. INSURANCE

Contractor shall maintain insurance coverage and satisfy the requirements in the Insurance Addendum, attached hereto at its sole cost and expense. If Contractor ceases operations or for any other reason terminates such insurance coverage, Contractor shall obtain other coverage for an extended claims reporting period for no less than two (2) years after the expiration or termination of this Agreement.

1. SubcontractorS
	1. Approval of Subcontracts. Contractor shall obtain GCHP’s written consent, which GCHP may withhold in its sole discretion,before entering into agreements with a subcontractor for the performance of the Services or portion thereof. GCHP may, in its sole discretion and upon thirty (30) days advance notice to Contractor, withdraw its consent for the use of a permitted subcontractor and, in such an event, Contractor must terminate its use of that subcontractor for the Services. Contractor shall be responsible for all acts or omissions of its subcontractors. Contractor shall ensure that any and all subcontractors are insured in accordance with the Insurance Addendum. The GCHP Reimbursable Expense Guidelines in Exhibit B shall apply to travel expenses incurred by a subcontractor that Contractor is obligated to reimburse to the subcontractor. GCHP shall not be responsible to pay Contractor any amount in excess of Contractor’s actual cost of reimbursing a subcontractor, or the maximum amount permitted by the GCHP’s Reimbursable Expense Guidelines, whichever is less. In no event shall GCHP pay Contractor any percentage, fee, administrative charge, or other mark-up. Contractor agrees to notify GCHP in the event the agreement with its subcontractor is terminated.
	2. Copies of Subcontracts, Requirements.
		1. Upon GCHP or DHCS request, Contractor shall provide copies of all subcontracts and/or subcontract templates to GCHP. or DHCS.
		2. Contractor’s agreements with subcontractors shall be in writing and shall bind subcontractors to the terms and conditions of this Agreement as applicable to the services provided by the subcontractor.
		3. Contractor shall require that the subcontractor: (a) make all premises, facilities, equipment, applicable books, records, contracts, computer, or other electronic systems related to this Agreement, available at all reasonable times for audit, inspection, examination, or copying by DHCS, CMS, or the DHHS, Inspector General, the Comptroller General, DOJ, and DMHC, or their designees, and (b) retain all records and documents for a term minimum of at least ten (10) years from the close of the final date of the Agreement or from the date of completion of any audit, whichever is later.
	3. Reports. Contractor shall submit all reports required by GCHP and shall cooperate with GCHP by collecting and sharing all data that GCHP is required to report to government agencies, accreditation entities, and other third parties.
	4. Oversight and Monitoring. Nothing contained in this Agreement shall limit the right of GCHP to perform its oversight and monitoring responsibilities of Contractor or its subcontractors, as required by applicable State and Federal law, as amended, programmatic requirements, or its contract with DHCS. Contractor shall comply with all monitoring provisions of this Agreement, including any RFP or SOW, and any monitoring requests by DHCS or GCHP.
		1. Authorized State and federal agencies shall have the right to monitor all aspects of the Contractor's operation for compliance with the provisions of this Agreement and applicable Federal and State laws and regulations. Such monitoring activities shall include, but are not limited to, inspection and auditing of Contractor and subcontractor facilities, management systems and procedures, and books and records as deemed appropriate, at any time, pursuant to 42 CFR 438.3(h). The monitoring activities shall be either announced or unannounced.
	5. To assure compliance with this Agreement and for any other reasonable purpose, the State and its authorized representatives and designees shall have the right to premises access, with or without notice to the Contractor. This will include the Management Information System operations site or such other place where duties under the Agreement are being performed..
		1. Staff designated by authorized State agencies shall have access to all security areas and the Contractor shall provide, and shall require any and all of its subcontractors to provide, reasonable facilities, cooperation and assistance to State representative(s) in the performance of their duties. Access shall be undertaken in such a manner as to not unduly delay the work of the Contractor and/or the subcontractor(s).
	6. Disclosures. In accordance with 42 C.F.R. 438.608(c), Contractor and any subcontractors shall:
		1. Provide written disclosure of any prohibited affiliation under 42 C.F.R. 438.610.
		2. Provide written disclosures of information on ownership and control as required under 42 C.F.R. 455.104.
		3. Report to DHCS within 60 calendar days when it has identified the Capitation Payments or other payments in excess of the amounts specified in this Agreement.
	7. Conflicts of Interest. Contractor shall ensure that its personnel do not have conflicts of interest with respect to GCHP and the Services. “Conflict of Interest” includes activities or relationships with other persons or entities that may result in a person or entity being unable or potentially unable to render impartial assistance or advice to GCHP, or the person's objectivity in performing the contract work is or may be impaired, or a person has an unfair competitive advantage.
	8. Litigation Assistance. Contractor shall timely gather, preserve and provide to GCHP, DHCS, Division of Medi-Cal Fraud & Elder Abuse, CMS, and any authorized State or federal regulatory agencies, any information, subject to any lawful privileges, in Contractor’s possession related to threatened or pending litigation by or against DHCS or GCHP related to this Agreement. If Contractor asserts that any requested documents are covered by a lawful privilege, Contractor must: (i) Sufficiently identify the claimed privileged documents to reasonably identify the documents; and (ii) State the privilege being claimed that supports withholding production of the document.

	Contractor shall use all reasonable efforts to immediately notify GCHP of any subpoenas, document production requests, or requests for records, received by Contractor or its subcontractors related to this Contractor subcontracts entered into under this Agreement.

	Contractor shall make itself and any subcontractors, employees or agents assisting in the performance of its obligations under this Agreement, available to GCHP at no cost to GCHP to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against GCHP, its directors, officers or employees based upon claimed violation of contract or laws.

	Contractor shall make its personnel and employees available to DHCS to authenticate documents, provide testimony as a witness, act as a “person most knowledgeable,” and assist in other ways as requested by DHCS, in connection with litigation, Public Record Acts requests, subpoenas, inquiries, and/or audits by federal and State agencies and departments, and inquiries by third-parties, as requested by DHCS.
2. FRAUD and Abuse
	1. Compliance with State and Federal Fraud and Abuse Laws. Contractor represents, certifies, and warrants that it is currently, and for the duration of this Agreement shall remain in compliance with all applicable State and federal laws and regulations designed to prevent or ameliorate fraud, waste, and abuse including, but not limited to, applicable provisions of the federal and State civil and criminal law, the program integrity requirements of 42 C.F.R. Section 438.608, the Federal False Claims Act (31 U.S.C. § 3729 et seq.), Employee Education About False Claims Recovery (42 U.S.C. § 1396a(a)(68)), the California State False Claims Act (Cal. Gov’t Code § 12650 et seq.), and the anti-kickback statute (Social Security Act § 1128B(b).). Upon request by DHCS, Contractor shall demonstrate compliance with this provision, which may include providing DHCS with copies of Contactor’s applicable written policies and procedures and any relevant employee handbook excerpts.
	2. Fraud and Abuse. Contractor shall implement and maintain procedures that are designed to detect and prevent fraud, waste, and abuse.
		1. Fraud Reporting.

Contractor shall report to GCHP’s compliance officer all cases of suspected fraud, waste, and/or abuse, as defined in Title 42, of the Code of Federal Regulations, Section 455.2, where there is reason to believe that an incident of fraud and/or abuse has occurred, by subcontractors, Members, providers, or employees within forty-eight (48) hours of the time when Contractor first becomes aware of, or is on notice of, such activity. Contractor shall immediately report to GCHP any notices of investigations of Contractor relating to fraud, waste, or abuse. Upon the request of GCHP and/or the State, Contractor shall consult with the appropriate State agency prior to and during the course of any such investigations. Contractor shall comply with GCHP’s antifraud plan, including its policies and procedures relating to the investigation, detection, and prevention of and corrective actions relating to fraud, waste and abuse.

Contractor shall submit quarterly fraud reports to GCHP which must, at a minimum, include:

Number of complaints of fraud and abuse submitted that warranted preliminary investigation.

For each complaint which warranted a preliminary investigations, supply:

Name and/or SSN or CIN;

Source of complaint;

Type of provider (if applicable);

Nature of complaint;

Approximate dollars involved; and

Legal and administrative disposition of the case.

Contractor shall submit the following components with the report or explain why the components are not submitted with the report: police report, health plan’s documentation (background information, investigation report, interviews, and any additional investigative information), Member information (patient history chart, Patient profile, Claims detail report), provider enrollment data, Confirmation of services, list items or services furnished by the provider, Pharmaceutical data from manufacturers, wholesalers and retailers and any other pertinent information.

b. Suspended, Excluded, or Ineligible Employees or Contractors.

Contractor shall comply with 42 C.F.R. 438.608(a)(8) and 438.610. Additionally, Contractor is prohibited from employing, contracting or maintaining a contract with persons or entities for the provision of services related to this Agreement that are excluded, suspended or terminated from participation in the Medicare or Medi-Cal/Medicaid programs. Contractor shall notify GCHP immediately upon discovery of employment or contract with a person or entity that is excluded, suspended, or terminated. A list of suspended and ineligible providers is updated monthly and available on line and in print at the DHCS Medi-Cal Web site (http://medi-cal.ca.gov), by the DHHS, Office of Inspector General, List of Excluded Individuals and Entities (http://oig.hhs.gov), and the Federal System of Award Management (http://www.sam.gov). Contractor is deemed to have knowledge of any persons or entities on these lists.

Contractor must notify GCHP within 10 working days of removing a suspended, excluded, or terminated provider from its employment or subcontract and confirm that the individual or entity is no longer receiving payments in connection with the Medicaid program.

1. CORRECTIVE ACTION/REMEDIES
	1. Corrective Action. If GCHP has reason to believe that a Contractor has not provided Services or performed activities in accordance with the terms of this Agreement or any SOW or in accordance with GCHP's reasonable performance expectations, GCHP may take such steps as it deems necessary, including but not limited to the following:
		1. Conduct an audit of Contractor's performance of the contracted services in accordance with Section 2.10;
		2. Notify Contractor in writing regarding the area of deficiency, and require Contractor to implement, by a specific time of not less than thirty (30) days, a corrective action plan developed by GCHP. Failure on the part of Contractor to fully correct the deficiency or issue within the specified time frame may lead to the imposition of a payment withhold.
		3. Withhold a portion of payment based upon GCHP's reasonable analysis of the impact of the cost associated with the impact of the performance deficiency or issue, including but not limited to costs incurred to mitigate the impact of the performance deficiency or issue. Any such withhold, or portion thereof, may be restored to the Contractor upon GCHP's determination of satisfactory correction of the performance deficiency or issue (with any interest on such withholding retained by GCHP).
		4. Withhold and retain from the compensation due Contractor as provided for in any applicable Exhibit of the Agreement.
		5. If GCHP has delegated function(s) or activity(s) under this Agreement pursuant to Delegation Agreement attached as Exhibit D, GCHP may de-delegate a function assigned to Contractor that has led to an administrative, financial, and/or other issue that does, or threatens to, seriously and adversely impact GCHP’s operations related to quality of Member care, access to care, or payment for care. In addition to de-delegating a function, GCHP shall reduce Contractor’s payment based upon an agreed upon dollar amount associated with GCHP’s costs to perform the previously delegated function;
		6. Impose monetary sanctions for performance deficiencies or issues, in the same manner as provided in law, regulation and the Medi-Cal Agreement for non-performance or non-compliance of contractual or regulatory requirements, which may be deducted from payments at the discretion of GCHP.
		7. Terminate this Agreement for Cause as described in the Agreement and/or SOW.
2. Dispute Resolution
	1. Government Claims Act. Contractor agrees to meet and confer in good faith to resolve any disputes that may arise under or in connection with this Agreement. In all events and subject to the provisions of this Section which follow, Contractor shall comply with the provisions of the Government Claims Act (Government Code Section 900, et. seq.) with respect to any dispute or controversy arising out of or in any way relating to this Agreement or the subject matter of this Agreement (whether sounding in contract or tort, and whether or not involving equitable or extraordinary relief) (a "“Dispute").”).
	2. Judicial Reference. A dispute between Contractor and GCHP arising out of this Agreement shall be heard and decided by a referee appointed pursuant to California Code of Civil Procedure Section 638 (or any successor provision thereto, if applicable), who shall hear and determine any and all of the issues in any such action or proceeding, whether of fact or law, and to report a statement of decision, subject to judicial review and enforcement as provided by California law, and in accordance with Chapter 6 (References and Trials by Referees), of Title 8 of Part 2 of the California Code of Civil Procedure, or any successor chapter. The referee shall be a retired judge of the California superior or appellate courts. The referee shall be determined by agreement between the parties, provided that in the absence of such agreement, the referee shall be appointed by the Ventura County Superior Court in accordance with California Code of Civil Procedure Section 640 (or any successor provision thereto, if applicable). The parties acknowledge, by their initials herein, that they forego any right to trial by jury in any judicial reference proceeding, and that each party shall be responsible for paying an equal share of all costs for the referee until such time as a judgment is entered. Any counterpart or copy of this Agreement, filed with such Court upon such motion, shall conclusively establish the agreement of the parties to such appointment. The parties agree that the only proper venue for the submission of claims to judicial reference shall be the courts of general jurisdiction of the State of California located in Ventura County. The parties reserve the right to contest the referee's decision and to appeal from any award or order of any court. The designated non-prevailing party in any dispute shall be required to fully compensate the prevailing party for its payments to the referee for his or her services hereunder at the referee's then respective prevailing rates of compensation.

Acknowledgement of Waiver of Jury and Payment of Referee Fees (Initials)

\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_

Contractor GCHP

* + 1. Limitations. Contractor must comply with the claim procedures set forth in the Government Claims Act (Government Code Section 900, et. seq.) prior to filing any legal proceeding, including judicial reference, against GCHP. If no such Government Code claim is submitted, no action against GCHP may be filed. Notwithstanding anything to the contrary contained in this Agreement, any suit, judicial reference or other legal proceeding must be initiated within one (1) year after the date the facts giving rise to a dispute occurred or such dispute shall be deemed waived and forever barred; provided that, if a shorter time period is prescribed under the Government Claims Act, then, the shorter time period (if any) prescribed under the Government Claims Act shall apply.
		2. Cut-Off for Disputes Against GCHP. Within ninety (90) days of the expiration or termination of this Agreement or any SOW under this Agreement, Contractor shall provide to GCHP formal written notice of any unresolved disputes Contractor has against GCHP relating to this Contractor to the applicable SOW. The formal written notice shall describe any unresolved dispute and identify the amount Contractor demands in satisfaction of the dispute, and it shall include any supporting documentation. Contractor’s failure to submit timely notice shall constitute a waiver of all unresolved disputes against GCHP. To the extent a dispute arises after the time for providing notice, and Contractor could not have timely discovered the dispute, Contractor shall provide formal written notice within ten (10) days of discovery. Nothing herein shall modify Contractor’s duty to comply with the Government Claims Act and subsection “a” above.
1. miscellaneous
	1. Use of Name; Publicity. Except for its internal business use, as required by law or to comply with the request of a governmental entity, neither party shall use the other party's name, trademarks, service marks, logos or other identifiers (collectively, “Trademarks”), or make any reference to the other party or its Trademarks in any manner including, without limitation, client lists and press releases without the prior written approval of such other party.
	2. Notices. Unless otherwise provided herein, any notice, consent, request, or other communication to be given under this Agreement shall be deemed to have been given by either party to the other party upon the date of receipt, if hand delivered, or two (2) business days after deposit in the U.S. mail if mailed to the other party by registered or certified mail, properly addressed, postage prepaid, return receipt requested, or one (1) business day after deposit with a national overnight courier for next business day delivery, or upon the date of electronic confirmation of receipt of a facsimile transmission if followed by the original copy mailed to the applicable party at its address below or other address provided in accordance herewith, or upon the date of transmission of electronic notice to an authorized email address with written confirmation of receipt. Either party may change its address for notices effective three (3) business days after providing written notice to the other party.

Gold Coast Health Plan

711 E. Daily Drive, Suite #106

Camarillo, CA 93010-6082

Attn: Dale Villani
Title: Chief Executive Officer

Fax: (805) 981-5314

Email: Dvillani@goldchp.org

Contractor:

[NAME OF Contractor]

STREET ADDRESS

CITY, STATE ZIP

Attn: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Fax: (XXX)XXX-XXXX

Email: EMAIL ADDRESS]

* 1. Authority. Each corporate entity executing this Agreement represents and warrants that all necessary corporate action has been taken, including the due adoption of a resolution by its board of directors, sufficient to enable such corporation to enter into this Agreement, to be bound thereby and to perform fully as required hereunder. Each person executing this Agreement on behalf of Contractor represents and warrants that he/she has been duly authorized to enter into this Agreement on behalf of said party.
	2. Entire Agreement.
		1. Entire Agreement. This Agreement, its addenda, all SOWs, Change Orders and all exhibits and addenda thereto are incorporated herein and constitute the entire agreement of the parties. The Medi-Cal Agreement between the state and the GCHP is incorporated herein by reference and shall be the guiding and controlling document when interpreting the terms of this Agreement. This Agreement supersedes all prior and contemporaneous negotiations, representations, promises, and agreements concerning the subject matter herein whether written or oral.
	3. Assignment. This Agreement and the duties and obligations of Contractor hereunder are of a unique and personal nature and may not be delegated or assigned (in whole or in part) by Contractor without GCHP's and DHCS’ prior written consent. Any assignment or delegation made by Contractor without such written consent is void. The provisions of this Agreement are binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.
	4. Amendments and Modifications. Except as expressly provided otherwise in an SOW or Change Order, no addition to or change in the terms of this Agreement shall be effective or binding on either of the parties unless reduced to writing and signed by the duly authorized representative of each party. Notwithstanding anything to the contrary anywhere in this Agreement, no terms or conditions related to the Services or Deliverables available via click-through or similar mechanism, in shrink-wrap or other Deliverable packaging, or described on Contractor’s or a third party's website shall be binding upon GCHP.
	5. Waiver and Severability. An individual waiver of a breach of any provision of this Agreement requires the consent of the party whose rights are being waived and such waiver shall not constitute a subsequent waiver of any other breach. If a court of competent jurisdiction declares any provision of this Agreement invalid or unenforceable, such judgment shall not invalidate or render unenforceable the remainder of the Agreement, provided the basic purposes of this Agreement are achieved through the provisions remaining herein.
	6. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to any conflict of law principles. Unless otherwise specified in this Section, all actions and proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the state courts located in the County of Ventura, State of California. Each party hereby submits to the personal jurisdiction and venue of such courts.
	7. Independent Contractor. Contractor is acting as an independent contractor in performing the Services hereunder. Nothing contained herein or done in pursuance of this Agreement shall constitute a joint venture, partnership or agency for the other for any purpose or in any sense and neither party shall have the right to make any warranty or representation to such effect or to otherwise bind the other party.
	8. No Third-Party Beneficiaries. The obligations created by this Agreement shall be enforceable only by the parties hereto, and no provision of this Agreement is intended to, nor shall it be construed to, create any rights for the benefit of or be enforceable by any third party, including but not limited to any Member.
	9. Survival. In addition to this Section, the following sections shall survive the expiration or termination of this Agreement: Section 1.2 (Transition Services), Section 2 (Payment), Section 3.4 (Service Credits), Section 6.1 (Services and Performance Warranty) and Sections 7 through 14.
	10. Immigration Compliance. Contractor warrants, represents and agrees that Covered Services shall not be performed under this Agreement by any person who is an unauthorized alien under the Immigration Reform and Control Act of 1986 (as the same has been or may be amended) or its implementing regulations. Contractor shall ensure that each and every person performing Covered Services shall be a citizen or permanent resident of the United States, or have a valid United States visa authorizing employment in the United States, and shall be permitted to work for Federal contractors, including but not limited to Medicare and Medicaid contractors.
	11. Export Regulations. Contractor acknowledges its obligations to control access to technical data under the U.S. Export Laws and Regulations and agrees to adhere to such laws and regulations with regard to any technical data received under this Agreement.
	12. Nondiscrimination. Contractor shall not discriminate against Members or Eligible Beneficiaries because of race, color, national origin, creed, ancestry, religion, language, age, marital status, sex, sexual orientation, gender identity, health status, physical or mental disability, or identification with any other persons or groups defined in Penal Code 422.56, in accordance with Title VI of the Civil Rights Act of 1964, 42 USC Section 2000d, rules and regulations promulgated pursuant thereto, or as otherwise provided by law or regulations.
		1. Foreign Corrupt Practices Act. Contractor represents and warrants that it has not and shall not (i) violate the Foreign Corrupt Practices Act, the United Kingdom Bribery Act or any other applicable anti-corruption laws or regulations, or (ii) offer, give pay, promise to give or pay, or authorize the giving or payment of anything of value to a Territory official (as defined in the Foreign Corrupt Practices Act (P.L. 95-213), as amended), to any Territory political party or official thereof or any candidate for Territory political office, or to any person (collectively, “Foreign Person”), while knowing or being aware of a high probability that all or a portion of such thing of value shall be used, directly or indirectly, for the purposes of (a) influencing any official act, omission or decision of such Foreign Person; or (b) inducing such Foreign Person to use his or its influence to affect any official or governmental act, omission or decision in order to assist GCHP or Contractor in obtaining or retaining business. Contractor further agrees that if subsequent developments cause the certifications and information reported herein to be no longer accurate or complete, Contractor shall immediately furnish GCHP with a report detailing such change in circumstances.
	13. Disabled Veteran Business Enterprises. Contractor shall comply with applicable requirements of California law relating to Disabled Veteran Business Enterprises commencing at Section 10115 of the Public Agreement Code.
	14. Equal Opportunity. Contractor and its subcontractors shall abide by the requirements of 41 C.F.R. 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities. In the event of the Contractor’s noncompliance with the requirements of the provisions herein or with any Federal rules, regulations, or orders which are referenced herein, this Agreement may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Federal and State contracts in accordance with procedures authorized in Federal Executive Order No. 11246 or as otherwise provided by law.
	15. Air or Water Pollution Requirements. If the amount of this contract exceeds $100,000, Contractor agrees to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act [42 USC 1857(h)], Section 508 of the clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 C.F.R. part 15), If Contractor is an institution of higher education, nonprofit organizations or commercial businesses, it agrees to comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 USC 7401 et seq.), as amended, and the Federal Water Pollution Control Act (33 USC 1251 et seq.), as amended.
	16. Debarment and Suspension Certification. Contractor agrees to comply with applicable Federal suspension and debarment regulations including, but not limited to 7 C.F.R. 3017, 45 C.F.R. 76, 40 C.F.R. 32, or 34 C.F.R. 85. By signing this Agreement, the Contractor certifies to the best of its knowledge and belief, that it and its principals.
		1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
		2. Have not within a three-year period preceding this Agreement have been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
		3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Subprovision b. herein; and
		4. Have not within a three-year period preceding this Agreement had one or more public transactions (Federal, State or local) terminated for cause or default.
		5. Shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under Federal regulations (i.e., 48 C.F.R. 9, subpart 9.4), debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction, unless authorized by the State.
		6. Shall include a clause entitled, “Debarment and Suspension Certification’’ that essentially sets forth the provisions herein, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
		7. If Contractor knowingly violates this certification, in addition to other remedies available to the Federal Government, GCHP may terminate this Agreement for cause or default.

h. In the event Contractor receives payment for Services under this Agreement which are later disallowed for nonconformance with the terms and conditions herein, Contractor shall refund the disallowed amount to GCHP within thirty (30) days of GCHP’s written request. GCHP retains the option to offset the amount disallowed from any payment due to Contractor under this Agreement, or under any other contract or agreement between Contractor and GCHP.

* 1. Additional Federal Requirements.
	Contractor shall comply with all applicable Federal requirements in Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972 (regarding education programs and activities, as amended); the Age Discrimination Act of 1975; the Rehabilitation Act of 1973, as amended; the Americans with Disabilities Act of 1990, as amended; and Section 1557 of the Patient Protection and Affordable Care Act, as applicable.
	2. Public Records Act. Information received in accordance with this Agreement shall be public records on file with GCHP and DHCS, except as specifically exempted in statute. GCHP and DHCS shall ensure the confidentiality of information and contractual provisions filed with GCHP and DHCS which are specifically exempted by statute from disclosure, in accordance with the statutes providing the exemption. Contractor shall disclose the names of the officers and owners of Contractor, stockholders owning more than ten percent (10%) of the stock issued by Contractor, if any, and major creditors holding more than five percent (5%) of the debt of Contractor. For that purpose, Contractor shall use the Disclosure Form made available by GCHP.
	3. Headings; Captions. Section headings are used for convenience only and shall in no way affect the construction or interpretation of this Agreement.
	4. Counterparts; Time is of the Essence. This Agreement, each SOW and Change Order may be executed in counterparts and by facsimile or emailed PDF signature, all of which taken together constitute a single agreement between the parties. Each signed counterpart, including a signed counterpart reproduced by reliable means (such as facsimile and emailed PDF), shall be considered as legally effective as an original signature. The parties acknowledge and agree that time is of the essence in this Agreement.
	5. Interpretation. This Agreement is the product of mutual negotiation, and if any ambiguities should arise in the interpretation of this Agreement, both parties shall be deemed authors of this Agreement. Any provision of this Agreement that is in conflict with Current or future applicable Federal or State laws or regulations is hereby automatically amended to conform to the provisions of those laws and regulations.

**Ventura County Medi-Cal Managed Care Commission doing business as GOLD COAST HEALTH PLAN**

 **GCHP**

By: **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name: Print Name:

Title: **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**CONTRACTOR:**

By: **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** By: **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Print Name: Print Name:

Title: **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**INSURANCE ADDENDUM**

1. Prior to the commencement of work, Contractor shall deposit with GCHP’s designated representative evidence of insurance protection in the form of certificates (ACORD). All insurance policies maintained to provide the coverages required herein shall be issued by insurance companies authorized to do business in the state in which work is performed, and by companies rated, at a minimum, “A X” by A.M. Best. Coverages afforded under such policies are primary as respects GCHP, and any other insurance maintained by GCHP are excess and non-contributing with the insurance required hereunder. The amounts shall not be less than those specified below:

 Insurance Coverage Limits of Liability

a. Workers Compensation Statutory

b. General Liability -coverage $1,000,000 per occurrence/ $2,000,000 annual aggregate

c. Professional Liability $1,000,000 per claim/ $3,000,000 annual aggregate This coverage shall be maintained for a minimum of two (2) years following termination or completion of Contractor’s work pursuant to the Agreement.

d. Automobile Liability – owned, hired, $500,000 per person/ $1,000,000 per occurrence

 and non-owned.

e. Privacy Liability and Network $10,000,000 per occurrence/$10,000,000 annual aggregate. This

 Security or Cyber Liability Insurance coverage shall include coverage of data breaches, security incidents, hacks, and ransomware attacks against Contractor and be maintained for a minimum of five (5) years following termination of Contractor’s work pursuant to the Agreement.

1. Contractor agrees to waive any rights of subrogation that Contractor may have against GCHP under applicable insurance policies related to the work performed by Contractor. Indemnification by Contractor shall not be limited or reduced by any insurance coverage limitations. GCHP, Inc. and its affiliates and subsidiaries shall be named as an additional insured on all policies (excluding Workers Compensation) and evidenced on the certificate of insurance. All certificates of insurance shall provide that the insurer give thirty (30) days’ written notice to GCHP prior to the effective date of expiration, any material change or cancellation. Said notice shall be submitted to a GCHP Strategic Sourcing representative.

3.0 Notwithstanding any insurance coverages of Contractor, nothing in this Insurance Addendum shall be deemed to limit or nullify Contractor’s indemnification obligations under the Agreement. Contractor agrees that it shall work solely at Contractor’s risk.

1. Contractor shall make certain that any and all subcontractors hired by Contractor are insured in accordance with this Agreement. If any subcontractor’s coverage does not comply with the provisions herein, Contractor shall indemnify and hold GCHP harmless of and from any and all damage, loss, cost or expense, including attorneys’ fees, incurred by GCHP as a result thereof.

**EXHIBIT A**

**STATEMENT OF WORK NO.\_\_\_ TO MASTER SERVICES AGREEMENT**

THIS STATEMENT OF WORK ("SOW") is made \_\_\_\_\_\_\_\_\_\_, 201\_ by and between       (“Contractor”) and GCHP, Inc. (“GCHP”). The parties entered into certain Master Services Agreement dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Agreement”). The Agreement is incorporated into this SOW and this SOW is subject to the Agreement’s terms and conditions.

1. **SUMMARY OF SCOPE OF WORK**

Contractor shall provide:

1. **VENDOR'S RESPONSIBILITIES**

[INSERT SPECIFIC RESPONSIBILITIES OF VENDOR.]

1. **GCHP’S RESPONSIBILITIES**

[INSERT SPECIFIC RESPONSIBILITIES—i.e., GCHP shall supply working office space and access to the applicable software applications as necessary to perform Services.]

**IV. VENDOR'S DELIVERABLES**

[NEED CLEAR DESCRIPTION OF VENDOR'S DELIVERABLES AND, IF APPROPRIATE, THEIR DUE DATES. MUST BE CLEAR ENOUGH TO LATER DETERMINE IF VENDOR LIVED UP TO CONTRACTUAL OBLIGATION.]

# V. MILESTONES [SPECIFY MILESTONES FOR DELIVERABLES TO ENSURE VENDOR PERFORMS TIMELY]

**VI. PROJECT SCHEDULE**

|  |
| --- |
| **PROJECT SCHEDULE** |
| **Milestone or Major Project Deliverable** | **Completion Date** |
| [insert Period of performance, milestones, etc.] (If Applicable) |  |
| [insert Period of performance, milestones, etc.] (If Applicable) |  |

a. Assumptions. Insert certain assumptions upon which the SOW is based

**VII. SOW TERM**

The Initial Term of this Statement of Work shall be from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ until \_\_\_\_\_\_\_\_\_\_\_\_\_\_. Upon the expiration of the Initial Term, GCHP shall have the right to renew this Statement of Work at the fees listed, for consecutive Renewal Terms of \_\_\_\_\_\_\_\_\_\_\_\_\_, not to exceed a maximum of \_\_\_\_\_\_\_ (\_\_\_) Renewal Terms, by giving Contractor written notice of renewal at least thirty, (30) days prior to the expiration of the then-current term.

**OR:**

Start Date: End Date:

**VIII. COMPENSATION (Check the appropriate box)**

[ ]  **Fixed Fee.** The fixed fee to GCHP for the Services in this SOW is: $     .

GCHP shall pay Contractor in accordance with the following fixed fee payment schedule.

|  |  |
| --- | --- |
| **Project Task** | **Payment Amount** |
|  |  |

**or**

[ ]  **Time and Materials Fees.** GCHP shall pay Contractor for the Services in this SOW on an hourly basis at the hourly rates listed below:

|  |  |  |
| --- | --- | --- |
| **Position or Skill-set** | **Estimated Number of Hours** | **Hourly Fee** |
|  |  |  |
|  |  |  |

**☐ Travel & Expenses:** (check if applicable) **$ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Total Compensation.** The total compensation for the project under this SOW No. \_\_\_ shall not exceed $\_\_\_\_\_\_.

**IX. ACCEPTANCE**

Insert acceptance criteria which will trigger payment.

**X. Key Contractor Personnel (Names & Titles), if any (changes and additions may be made by email consent of both parties):**

The parties' duly authorized representatives have executed this SOW as of the date first written above.

**Ventura County Medi-Cal Managed Care**

**Commission doing business as GOLD COAST
health plan**

 **GCHP**

By: By:

Print Name: Print Name:

Title: Title:

**EXHIBIT B**

**REIMBURSABLE EXPENSE GUIDELINES**

These REIMBURSABLE EXPENSE GUIDELINES (“Guidelines”) shall apply to certain expenses that Contractor may incur, pursuant to the agreement entered into by and between GCHP and Contractor dated as of [DATE] entitled MASTER SERVICES AGREEMENT (“Agreement”). With respect to such expenses, when incurred by Contractor specifically for purposes of the Agreement, GCHP and Contractor hereby agree as follows:

1. **GENERAL**
	1. When practical to do so, Contractor shall book all travel for the sole purpose of fulfilling on-site service obligations described in the GCHP SOW. Contractor should communicate to GCHP’s Project Manager all associated travel costs prior to finalizing any/all travel arrangements. Contractor shall provide the travel service name and telephone number and agent assigned to Contractor by GCHP. Any airline ticket, car rental and hotel charges should be paid directly by Contractor, with available discounts applied.
	2. For purposes of reimbursement hereunder, Contractor must submit original receipts to receive reimbursement of air travel expenses.
2. **AIR TRAVEL**

All personnel of Contractor (“Travelers”) will fly coach class. Original airline receipts are required for reimbursement in all cases.

1. **HOTELS**
	1. Requests by Travelers for specific hotels will be honored only at the discretion of GCHP’s Project Manager and only if the rates of such hotels are the same as or lower than current industry averages.
	2. Lodging expenses shall include the cost of a Traveler’s room plus applicable taxes, but shall not include room service, recreation, or any other direct charges to the room. (See Section 5 of the Guidelines for further discussion of these charges.)
2. **AUTOMOBILE EXPENSE**
	1. Rental car charges shall be billed directly to each Traveler.
		1. Reimbursement will cover no more than the cost of a mid-size rental car. ***Limousine service is expressly prohibited.***
		2. Additional insurance coverage, as provided in the rental car agreement, will not be reimbursed.
	2. Mileage for travel in Contractor’s vehicle or in Traveler’s personal vehicle shall be reimbursed at the same per-mile rate in effect from time to time for reimbursement of mileage incurred by GCHP’s own employees. Toll-road charges will be reimbursed only if incurred for office-to-office travel between Contractor’s offices and GCHP’s. Mileage and tolls should be supported by appropriate, contemporaneous logs of such charges maintained by Traveler.
3. **MISCELLANEOUS TRAVEL EXPENSES**
	1. Original receipts must be submitted for expenses including the following: meals; taxi and hotel shuttle fares; parking; and other costs for which receipts can be typically obtained. Expenses such as tips (for which receipts are usually are not provided) should be reasonable for the services provided and supported by a personal log or other contemporaneous record kept by the Traveler.
		1. Traveler’s expense report submitted as documentation for reimbursement is to be signed by appropriate management personnel of Contractor and is to include copies of applicable receipts as supporting documentation.
		2. Documentation of each business meal should include the names of all Individuals for whom the meal was ordered, the date of the meal, the business purpose, the relationships between or among the individuals, and a summary of the business discussion.
	2. A per diem allowance is offered for meals, tips, and incidentals, when agreed to in advance in writing by GCHP Management, shall be in lieu of any other reimbursement for such expenses and shall not exceed the maximum per traveler rates established by the U.S. General Services Administration: http://www.gsa.gov/portal/category/100120
4. **OTHER EXPENSES**

If incurred by Contractor exclusively for purposes of the Agreement, other costs (such as for document reproduction, computer time, air freight, postage telephone, and facsimile) will be reimbursed by GCHP only upon submission in advance of documentation satisfactory to GCHP. Such documentation may include office logs that identify specific costs with specific services performed by Contractor under the Agreement.

1. **Subcontractors**

If Contractor contracts with a third party (“Subcontractor”) for purposes of performing Contractor’s obligations under the Agreement, these Guidelines shall apply to travel expenses incurred by a Subcontractor and which Contractor is obligated to reimburse to the Subcontractor. GCHP shall not be responsible to pay Contractor any amount in excess of Contractor’s actual cost of reimbursing a Subcontractor, or the maximum amount permitted by these Guidelines, whichever is less. In no event shall GCHP pay Contractor any percentage, fee, administrative charge or other mark-up.

**EXHIBIT C**

 **MEDI-CAL AND MEDICAID MANAGED CARE PROGRAM PROVISIONS AND OTHER FEDERAL REQUIREMENTS**

The below provisions apply exclusively to services provided and activities engaged in under a subcontract pursuant to the Medi-Cal Managed Care Program contract requirements and the rules set forth in Title 22, California Code of Regulations and Title 42 of the Code of Federal Regulations. The below provisions are required to be included in GCHP’s subcontracts by either the MegaRule Amendments, GCHP’s Medi-Cal Managed Care Program Contract with DHCS (“Medi-Cal Agreement”), or are established in State regulations, or by one or all of these authorities. Authorities are cited in parentheses for ease of reference to relevant regulatory requirements. The Parties do not anticipate an expansion of the scope of Services related to including this Attachment C Medi-Cal and Medicaid Managed Care Program Provisions. If a Medi-Cal and Medicaid Managed Care Program Provisions require additional scope change, the Parties shall amend the applicable Statement of Work to revise the fees/charges in an amount bearing a reasonable relationship to the impact of the change in the scope. All citations to the Medi-Cal Agreement are for reference only.

All Services to be furnished by Contractor are set forth in this Agreement. (22 C.C.R. § 53250(c)(1); 42 C.F.R. § 438.230(c)(1); Medi-Cal Agreement, Ex. A, Att. 6, § 14.B.(1).)

This Agreement shall be governed by and construed in accordance with all laws, regulations, and contractual obligations incumbent upon the GCHP under its agreement with DHCS as further enumerated in this Attachment D and/or the Agreement, including but not limited to, Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972 (regarding education programs and activities); the Age Discrimination Act of 1975; the Rehabilitation Act of 1973, as amended; the Americans with Disabilities Act of 1990, as amended; and Section 1557 of the Patient Protection and Affordable Care Act. Contractor shall comply with all applicable requirements of the DHCS Medi-Cal Managed Care Program, pertaining to the obligations and functions undertaken pursuant to this Agreement, including, but not limited to, all applicable Medicaid and Medi-Cal laws, regulations, sub—regulatory guidance, and All Plan Letters. Contractor shall further comply with all applicable provisions of the Medi-Cal Agreement as enumerated in this Attachment D and/or the Agreement. (22 C.C.R. § 53250(c)(2); 42 C.F.R. § 438.230(c)(2); Medi-Cal Agreement, Ex. A, Att. 6, § 14.B.(2).)

This Agreement has been approved by DHCS in accordance with procedures set forth in the Medi-Cal Agreement. (22 C.C.R. § 53250(c)(3); Medi-Cal Agreement, Ex. A, Att. 6, § 14.B.(3).) Amendments to this Agreement will be submitted to the DHCS, for prior approval, at least thirty (30) days before the effective date of any proposed changes governing compensation, services or term. Proposed changes which are neither approved nor disapproved by the DHCS, shall become effective by operation of law thirty (30) days after the DHCS has acknowledged receipt of the amendment, or upon the date specified in the amendment, whichever is later. (22 C.C.R. § 53250(c)(3); Medi-Cal Agreement, Ex. A, Att. 6, § 14.B.(3).)

The term of this Agreement and the methods of extension, renegotiation, and termination are as set forth in the Agreement. (22 C.C.R. § 53250(c)(4); Medi-Cal Agreement, Ex. A, Att. 6, § 14.B.(4).)

Contractor agrees to submit all of the reports required and requested by GCHP in accordance with the Agreement and/or applicable SOW. (22 C.C.R. § 53250(c)(5); Medi-Cal Agreement, Ex. A, Att. 6, § 14.B.(6).) Contractor shall submit claims and Encounter Data in accordance with the Agreement to GCHP that allow the GCHP to meet its administrative functions and the requirements set forth in the Medi-Cal Agreement. (Medi-Cal Agreement, Ex. A, Att. 3, § 2.C.)

To the extent applicable, Contractor shall comply with all of the monitoring provisions of this Agreement, the monitoring provisions in the Medi-Cal Agreement (as applicable) and enumerated herein, and any monitoring requests of DHCS, including but not limited to, the following: (42 CFR § 438.3(h), Medi-Cal Agreement, Ex. A, Att. 6, Ex. A, Att. 6, § 14.B.(7).)

Through the end of the records retention period, Contractor shall allow DHCS to inspect, evaluate, and audit any and all premises, books, records, equipment, and facilities, contracts, computers, or other electronic systems maintained by Contractor pertaining to these Services at any time during normal business hours, pursuant to 42 CFR § 438.3(h).

Records and documents include, but are not limited to, all physical records originated or prepared pursuant to the performance under this Agreement, including working papers, reports, financial records, and books of account, medical records, prescription files, laboratory results, subcontracts, information systems and procedures, and any other documentation pertaining to medical and non-medical services rendered to Members. Upon request, through the end of the records retention period Contractor shall furnish any record as it is maintained by Contractor, or copy of it, to DHCS or any other entity listed below at Contractor's sole expense.

If DHCS, the Center for Medicare and Medicaid Services (“CMS”), or the Department of Health and Humans Services (“DHHS”) Inspector General determines that there is a reasonable possibility of fraud or similar risk, DHCS, CMS, or the DHHS Inspector General may inspect, evaluate, and audit a subcontractor at any time.

DHCS shall conduct unannounced validation reviews on primary care sites, selected at the discretion of DHCS' to verify compliance of these sites with DHCS requirements.

Authorized State and federal agencies will have the right to monitor all aspects of the Contractor's operation for compliance with the provisions of this Agreement and applicable federal and State laws and regulations. Such monitoring activities will include, but are not limited to, inspection and auditing of Contractor and subcontractor facilities, management systems and procedures, and books and records as the Director deems appropriate, at any time pursuant to 42 CFR § 438.3(h). The monitoring activities will be either announced or unannounced. Staff designated by authorized State agencies will have access to all security areas and Contractor will provide reasonable facilities, cooperation and assistance to State representative(s) in the performance of their duties. Access will be undertaken in such a manner as to not unduly delay the work of the Contractor. (42 CFR § 438.3(h), Medi-Cal Agreement, Ex. E, Att. 2, § 20.)

Contractor shall make all of its premises, facilities, equipment, books and records, contracts, computer and other electronic systems, pertaining to the goods and Services furnished under the terms of this Agreement, available for purpose of audit, inspection, evaluation, examination or copying:

By DHCS, CMS, DHHS Inspector General, the Comptroller General, and the Department of Justice; or their designees;

At all reasonable times, at Contractor’s place of business or at such other mutually agreeable location in California;

In a form maintained in accordance with the general standards applicable to such book or record keeping;

For a term of at least ten (10) years from the final date of the Agreement period or from the date of completion of any audit, whichever is later.

Including all encounter data for a period of at least ten (10) years.

If DHCS, CMS, or the DHHS Inspector General determines there is a reasonable possibility of fraud or similar risk, DHCS, CMS, or the DHHS Inspector General may inspect, evaluate, and audit the Subcontractor at any time.

Upon resolution of a full investigation of fraud, DHCS reserves the right to prospectively suspend or terminate the Contractor’s Agreement pursuant to the Agreement; seek recovery of payments made to the Contractor; impose other sanctions provided under this Agreement, and/or direct GCHP to terminate its subcontract with Contractor due to fraud. (22 C.C.R. § 53250(e)(1); 42 C.F.R. § 438.230(c)(3); Medi-Cal Agreement, Ex. A, Att. 6, § 14.B.(8).)

The method and amount of compensation to be received by Contractors is set forth in this Agreement. (22 C.C.R. § 53250(e)(2); Medi-Cal Agreement, Ex. A, Att. 6, § 14.B.(9).)

Contractor shall maintain and make available to the DHCS, upon request, copies of all subcontracts. All subcontracts shall be in writing and require that:

Subcontractor make all applicable premises, facilities, equipment, books, records, contracts, computer, or other electronic systems related to this Agreement available at all reasonable times for audit, inspection, examining or copying by the DHCS, CMS, DHHS, the Inspector General, at the Comptroller General, the Department of Managed Health Care (“DMHC”), and the Department of Justice, or their designees. (42 C.F.R. § 438(h); Medi-Cal Agreement, Ex. A, Att. 6, § 14.B.(10).)

Subcontractor agrees to retain all records and documents for a minimum of at least ten (10) years from the close of the final date of the contract period or from the date of completion of any audit, whichever is later. (42 C.F.R. § 438.3(u); Medi-Cal Agreement, Ex. A, Att. 6, § 14.B.(10).)

Contractor agrees to notify DHCS in the event that this Agreement is amended or terminated. Notice is considered given when properly addressed and deposited in the United States Postal Service as first-class registered mail, postage attached to:

California Department of Health Care Services

Managed Care Operations Division

Attn: Contracting Officer

MS 4407

P.O. Box 997413

Sacramento, CA 95899-7413

(22 C.C.R. § 53250(e)(4); Medi-Cal Agreement, Ex. A, Att. 6, § 14.B.(13).)

Contractor agrees that any assignment or delegation of this Agreement shall be void unless prior written approval is obtained from the DHCS in those instances where prior approval by the DHCS is required. (22 C.C.R. § 53250(e)(5); Medi-Cal Agreement, Ex. A, Att. 6, § 14.B.(14).)

Contractor agrees to hold harmless both the State of California and GCHP Members in the event that GCHP cannot or will not pay for Services performed by Contractor pursuant to this Agreement. (22 C.C.R. § 53250(e)(6); Medi-Cal Agreement, Ex. A, Att. 6, § 14.B.(15).)

Upon request by DHCS, Contractor shall timely gather, preserve and provide to DHCS, in the form and manner specified by DHCS, any information specified by DHCS, subject to lawful privileges, in Contractor’s possession, related to threatened or pending litigation by or against DHCS. If Contractor asserts that any requested documents are covered by a privilege, Contractor shall: (1) identify such privileged documents with sufficient particularity to reasonably identify the document while retaining the privilege; and (2) state the privilege being claimed that supports withholding production of the document. Such request shall include, but is not limited to, a response to a request for documents submitted by any party in any litigation by or against DHCS. Contractor acknowledges that time may be of the essence in responding to such request. Contractor shall use all reasonable efforts to immediately notify DHCS and GCHP of any subpoenas, document production requests, or requests for records, received by Contractor related to GCHP’s contract with DHCS. Contractor shall be reimbursed by GCHP for the services necessary to comply with this requirement. If Contractor uses a third party to assist in comply with this Section 13, the amount shall not exceed normal and customary charges for similar services and such charges and documentation shall be subject to review by GCHP and DHCS. If Contractor uses existing personnel and resources to comply with this Section 13, Contractor shall maintain and provide to GCHP time reports supporting the time spent by each employee as a condition of reimbursement. The reimbursement claims and supporting documentation shall be subject to review by GCHP and DHCS and shall include but are not limited to: a) compensation and payroll taxes and benefits, on a prorated basis, for the employees' time devoted directly to compiling information pursuant to this Section 13; b)costs for copies of all documentation submitted to GCHP and/or DHCS pursuant to this section, subject to a maximum reimbursement of ten (10) cents per copied page; and/or c) copies of invoices from third Parties.

Contractor agrees to comply with all applicable requirements of the DHCS, Medi-Cal Managed Care Program as enumerated herein. (Medi-Cal Agreement, Ex. A, Att. 6, § 14.B.(21).)

Contractor agrees that GCHP’s may prospectively revoke its delegation of activities or obligations or specify other remedies in accordance with the Agreement in instances where DHCS or GCHP determines that Contractor has not performed satisfactorily. (Medi-Cal Agreement, Ex. A, Att. 6, § 14.B.(22).)

GCHP shall inform Contractor of prospective requirements added by DHCS to this Agreement before the requirement would be effective, and obtain Contractor’s agreement to comply with the new requirements within thirty (30) days of the effective date or as otherwise provided for under the Agreement and to the extent possible. (Medi-Cal Agreement, Ex. A, Att. 6, § 14.B.(24).)

Contractor shall retain, as applicable to Contractor’s provision of Services, the following information: enrollee grievance and appeal records in § 438.416, base data in § 438.5(c), Medical Loss Ratio reports in § 438.8(k), and the data, information, and documentation specified in §§ 438.604, 438.606, 438.608, and 438.610 for a period of no less than ten (10) years. (42 CFR § 438. 3(h).)

In accordance with 42 C.F.R. § 438.608(c), Contractor agrees to:

Provide written disclosure of any prohibited affiliation under 42 C.F.R. § 438.610.

Provide GCHP with the disclosure statement that satisfies the requirements of 22 C.C.R. § 51000.35 and 42 C.F.R. § 455.104 prior to commencing services under this Agreement. Specifically, Contractor shall disclose the names of the officers and owners of Contractor, stockholders owning more than ten percent (10%) of the stock issued by Contractor, if any, and major creditors holding more than five percent (5%) of the debt of Contractor. For that purpose, Contractor shall use the Disclosure Form made available by GCHP. (42 C.F.R. § 438.608(c), Medi-Cal Agreement, Ex E, Att. 2, §34, Cal. Welf & Inst. Code § 14452(a).)

In the event that Contractor identifies an overpayment, duplicate payment or other excess payment to Contractor from GCHP (“Overpayment”), Contractor shall report within sixty (60) calendar days of the date of identification of the Overpayment to Plan’s Compliance Officer at GCHP, 711 E. Daily Drive, Suite #106 Camarillo, CA 93010-6082, Fax: (805) 437-5132, compliance@goldchp.org. The report shall include the amount of Overpayment identified and the reason for the Overpayment. Contractor shall also make repayment to GCHP within sixty (60) calendar days of the date of identification of such Overpayment. (42 C.F.R. § 438.608(d), 42 U.S.C. § 1320a–7k, Medi-Cal Agreement, Ex. E, Att. 2, § 34.B.)

Contractor shall not attempt recovery in circumstances involving casualty insurance, tort liability or workers’ compensation. (22 C.C.R. § 53222.)

Contractor shall report to GCHP for reporting to DHCS within ten (10) days after discovery any circumstances which may result in casualty insurance payments, tort liability payments, or workers’ compensation award. (22 C.C.R. § 53222(b).)

Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that it is an equal opportunity employer, and will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by DHCS, advising the labor union or workers' representative of the Contractor's commitment as an equal opportunity employer and will post copies of the notice in conspicuous places available to employees and applicants for employment.

If applicable, Contractor shall not discriminate against Members or Eligible Beneficiaries because of race, color, national origin, creed, ancestry, religion, ancestry, language, age, marital status, sex, sexual orientation, national origin, age, sex, or physical or mental handicap gender identity, health status, physical or mental disability, or identification with any other persons or groups defined in Penal Code 422.56, in accordance with Title VI of the Civil Rights Act of 1964, 42 USC Section 2000d, rules and regulations promulgated pursuant thereto, or as otherwise provided by law or regulations. For the purpose of this Agreement, discrimination on the grounds of race, color, national origin, creed, ancestry, religion, ancestry language, age, marital status, sex, national origin, marital status, sexual orientation, gender identity, health status, physical or mental disability, or identification with any other persons or groups defined in Penal Code 422.56 or physical or mental handicap include, but are not limited to, the following:

* Denying any Member any Covered Services or availability of a Facility;
* Providing to a Member any Covered Service which is different, or is provided in a different manner or at a different time from that provided to other Members under this Contract except where medically indicated;
* Subjecting a Member to segregation or separate treatment in any manner related to the receipt of any Covered Service;
* Restricting a Member in anyway in the enjoyment of any advantage or privilege enjoyed by others receiving any Covered Service, treating a Member or Eligible Beneficiary differently from others in determining whether he or she satisfies any admission, Enrollment, quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any Covered Service;
* The assignment of times or places for the provision of services on the basis of the race, color, national origin, creed, ancestry, religion, language, age, gender, marital status, sex, sexual orientation, gender identity, health status, or physical or mental disability, or identification with any other persons or groups defined in Penal Code 422.56, of the participants to be served.

Contractor shall take affirmative action to ensure that Members are provided Covered Services without regard to race, color, national origin, creed, ancestry, religion, language, age, gender, marital status, sex, sexual orientation, gender identity, health status, or physical or mental disability, or identification with any other persons or groups defined in Penal Code 422.56, except where medically indicated. For the purposes of this section, physical handicap includes the carrying of a gene which may, under some circumstances, be associated with disability in that person's offspring, but which causes no adverse effects on the carrier. Such genes will include, but are not limited to, Tay-Sachs trait, sickle cell trait, thalassemia trait, and X-linked hemophilia. (Medi-Cal Agreement, Ex. E, Att. 2, § 28.A.)

In addition to other obligations contained herein, Contractor shall comply with applicable requirements of California law relating to Disabled Veteran Business Enterprises commencing at Section 10115 of the Public Contract Code. (Medi-Cal Agreement, Ex. E, Att. 2, § 30.)

Contractor shall ensure that its personnel do not have conflicts of interest with respect to GCHP and the Services. “Conflict of Interest” includes activities or relationships with other persons or entities that may result in a person or entity being unable or potentially unable to render impartial assistance or advice to GCHP, or the person’s objectivity in performing the contract work is or may be impaired, or a person has an unfair competitive advantage. (Medi-Cal Agreement, Ex. E, Att. 3, § 10.)

Contractor shall report to GCHP’s compliance officer all cases of suspected fraud, waste, and/or abuse, as defined in 42 C.F.R. § 455.2, where there is reason to believe that an incident of fraud and/or abuse has occurred, by subcontractors, Members, Contractors, or employees within (48) hours of the time when Contractor first becomes aware of, or is on notice of, such activity. Contractor shall immediately report to GCHP any notices of investigations of Contractor relating to fraud, waste, or abuse. Contractor shall establish policies and procedures for identifying, investigating, and taking appropriate corrective action against fraud, waste, and/or abuse in the provision of or payment for health care services under the Medi-Cal Managed Care Program. Upon the request of GCHP and/or the State, Contractor shall consult with the appropriate State agency prior to and during the course of any such investigations. Contractor shall comply with GCHP’s antifraud plan, including its policies and procedures as provided to Contractor relating to the investigation, detection, and prevention of and corrective actions relating to fraud, waste and abuse.

Contractor represents, certifies and warrants that it is currently, and for the duration of this Agreement shall remain in compliance with all applicable State and federal laws and regulations designed to prevent or ameliorate fraud, waste, and abuse including, but not limited to, applicable provisions of the federal and State civil and criminal law, the program integrity requirements of 42 C.F.R. § 438.608, the Federal False Claims Act (31 .S.C. § 3729 *et seq.),* Employee Education About False Claims Recovery (U.S.C. § 1396a(a)(68)), the California State False Claims Act ([Cal. Gov](http://Cal.Gov)’t Code Section§ 12650 *et seq.),* and the anti-kickback statute (Social Security Act § 1128B(b).). Upon request by DHCS, Contractor shall demonstrate compliance with this provision, which may include providing DHCS with copies of Contractor’s applicable written policies and procedures and any relevant employee handbook excerpts. Contractor shall comply with 42 C.F.R. §§ 438.608(a)(8) and 438.610.

Additionally, Contractor is prohibited from employing, contracting or maintaining a contract with persons or entities for the provision of services related to this Agreement that are excluded, suspended or terminated from participation in the Medicare or Medi-Cal/Medicaid programs. Contractor shall notify GCHP immediately upon discovery of employment or contract with a person or entity that is excluded, suspended, or terminated. A list of suspended and ineligible Contractors is updated monthly and available online and in print at the DHCS Medi-Cal website (<http://medi-cal.ca.gov>). Lists of excluded individuals and entities are also available through the DHHS, Office of Inspector General, List of Excluded Individuals and Entities (<http://oig.hhs.gov>), and the Federal System of Award Management (<http://www.sam.gov>). Contractor is deemed to have knowledge of any persons or entities on these lists. Contractor must notify GCHP within ten (10) working days of removing a suspended, excluded, or terminated Contractor from its employment or subcontract and confirm that the individual or entity is no longer receiving payments in connection with the Medicaid program. Medi-Cal Agreement, Ex. E, Att. 2, § 28.)

**OTHER FEDERAL REQUIREMENTS**

Foreign Corrupt Practices Act. Contractor represents and warrants that it has not and shall not (i) violate the Foreign Corrupt Practices Act, the United Kingdom Bribery Act or any other applicable anti-corruption laws or regulations, or (ii) offer, give pay, promise to give or pay, or authorize the giving or payment of anything of value to a Territory official (as defined in the Foreign Corrupt Practices Act (P.L. 95-213), as amended), to any Territory political party or official thereof or any candidate for Territory political office, or to any person (collectively, “Foreign Person”), while knowing or being aware of a high probability that all or a portion of such thing of value shall be used, directly or indirectly, for the purposes of (a) influencing any official act, omission or decision of such Foreign Person; or (b) inducing such Foreign Person to use his or its influence to affect any official or governmental act, omission or decision in order to assist GCHP or Contractor in obtaining or retaining business. Contractor further agrees that if subsequent developments cause the certifications and information reported herein to be no longer accurate or complete, Contractor shall immediately furnish GCHP with a report detailing such change in circumstances.

Equal Opportunity. Contractor and its subcontractors shall abide by the requirements of 41 C.F.R. 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities. In the event of the Contractor’s noncompliance with the requirements of the provisions herein or with any federal rules, regulations, or orders which are referenced herein, this Agreement may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further federal and State contracts in accordance with procedures authorized in Federal Executive Order No. 11246 or as otherwise provided by law.

Air or Water Pollution Requirements. If the amount of this contract exceeds $100,000, Contractor agrees to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act [42 USC 1857(h)], Section 508 of the clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 C.F.R. part 15).

Additional Federal Requirements.
Contractor shall comply with all applicable Federal requirements in Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972 (regarding education programs and activities, as amended); the Age Discrimination Act of 1975; the Rehabilitation Act of 1973, as amended; the Americans with Disabilities Act of 1990, as amended; and Section 1557 of the Patient Protection and Affordable Care Act, as applicable.

EXHIBIT D

 **DELEGATION AGREEMENT**

This Exhibit [ ] to the Master Service Agreement (“Delegation Agreement”) sets forth the delegated function and services of Contractor and its responsibilities as a Delegate.

**RECITALS**

**WHEREAS,** Health Plan and DELEGATE have entered into Master Services Agreement (“Agreement”) of which this Delegation Agreement is incorporated by reference and made a part thereof;

**WHEREAS,** Health Plan has agreed to arrange for or provide for certain print fulfillment services and functions for Members enrolled in Health Plan;

**WHEREAS,** pursuant to the Agreement and Health Plan policies and procedures, Health Plan has delegated to DELEGATE the obligation to provide those activities that are defined in the Print Fulfillment SOW and described in Attachment A of this Delegation Agreement (“Delegated Activities”) under the Medi-Cal Program to Members who may enroll in Health Plan;

**WHEREAS,** in accordance with federal and state statutory and regulatory requirements, including Centers for Medicare and Medicaid Services (“CMS”) and Department of Health Care Services (“DHCS”) guidance Health Plan and DELEGATE wish to memorialize Health Plan’s delegation of the performance of certain functions to DELEGATE and also to memorialize Health Plan’s oversight of DELEGATE’s performance of those same functions.

THEREFORE, in consideration of the foregoing premises and the mutual covenants of the Parties set forth herein, the Parties agree as follows:

1. Appointment. Health Plan engages and appoints DELEGATE to perform the Delegated Activities as identified in this Amendment and set forth in the Agreement, including but not limited to Section 3 of this Delegation Agreement, and DELEGATE accepts such appointment on the terms and conditions hereof. The Parties hereto intend and agree that all terms and conditions contained in this Delegation Agreement shall supplement and be in addition to those terms and conditions contained in the Agreement. In the event of any conflict between the terms of the Agreement and Section 3 of this Delegation Agreement, the more stringent terms and conditions shall prevail. In the event neither the Agreement nor this Delegation Agreement has more stringent terms and conditions, the terms and conditions of this Delegation Agreement shall prevail.
2. Term, Renewal, and Amendments.
	1. Term. The term of this Delegation Agreement shall commence on the Effective Date set forth above and shall continue until the termination of the Agreement as provided for in the Agreement or termination of this Delegation Agreement as provided for in Section 9 herein unless terminated earlier in Health Plan’s sole discretion as provided in the Agreement or Section 9 of this Delegation Agreement.
	2. Amendments. This Delegation Agreement may be modified or amended by a written instrument executed by the Parties. In the event Health Plan determines that, for any reason, DELEGATE cannot or should not perform a Delegated Activity or Activities, Health Plan may revise Health Plan Programs as defined in Section 3.1 herein and or Attachment A herein, and that portion of this Delegation Agreement shall be deemed amended.
3. Responsibilities of DELEGATE.
	1. Performance of Delegated Activities. DELEGATE agrees to perform the Delegated Activities described in Attachment A and services reasonably related or ancillary thereto in accordance with the procedures described in DELEGATE’s program documents and in accordance with Health Plan’s Quality Management Program, Utilization Management Program, Credentialing Program and Member Rights and Responsibilities Program (sometimes hereinafter collectively referred to herein as “Health Plan’s Programs” or “Health Plan Programs”) requirements, as amended from time to time in accordance with Health Plan’s policies and procedures.
	2. Submission of Reports. DELEGATE agrees to provide the reports described in Section 5.4 of the Print Fulfillment SOW as described therein.
	3. Cooperation with Audits. DELEGATE agrees to permit Health Plan to conduct annual, or more frequent, on site audits of DELEGATE’s performance of Delegated Activities. Such audits may include, without limit, interviews with staff; review of DELEGATE’s policies, procedures, files, personnel records, program descriptions, work plans and other relevant documents; observation of DELEGATE’s staff or agents performing tasks related to the Delegated Activities.
	4. Health Plan’s Attendance at Meetings. DELEGATE agrees to permit Health Plan to attend, at Health Plan’s discretion, meetings of DELEGATE’s staff where activities relevant to the Delegated Activities are presented.
	5. Participating in Related Activities. DELEGATE agrees to participate in meetings, projects or other tasks or activities related to the Delegated Activities, or services reasonably related or ancillary thereto, as may from time to time be reasonably requested by Health Plan.
	6. Corrective Action Plan. In the event DELEGATE is delinquent in submitting a corrective action plan to Health Plan, Health Plan shall have the right to withhold and retain 10% of the DELEGATE’s aggregate monthly Administrative PMPM compensation for each month in which the DELEGATE is delinquent, or any amount due the DELEGATE under this Agreement.
	7. Community Reinvestment. If DELEGATE is a Fully Delegated Subcontractor or Downstream Fully Delegated Subcontractor, DELEGATE shall demonstrate a commitment to the local communities in which it operates through community reinvestment activities, including contributing a set percentage of DELEGATE’S annual net income that is attributable to Members covered under this Agreement to community reinvestment, in accordance with the Health Plan’s Community Reinvestment Plan and Report. The percentage of the DELEGATE’S annual net income required to be contributed shall be:
		1. Five (5%) percent of the portion of the DELEGATE’s annual net income that is less than or equal to seven and a half (7.5%) percent of the amount the DELEGATE is paid under its Agreement with Health Plan for the year, and
		2. Seven and a half (7.5%) percent of the portion of the DELEGATE’s annual net income that is greater than seven and a half (7.5%) percent of the amount the DELEGATE is paid under its Agreement with Health Plan for the year.
4. Responsibilities of Health Plan. Health Plan retains authority and oversight for all Delegated Activities and full and final authority and responsibility for the administration of its health care benefit plans and the operation thereof. In addition to Health Plan’s responsibilities as described in Attachment A Health Plan shall perform, and DELEGATE agrees to permit Health Plan to perform, the below activities.
	1. Pre-Delegation Audit. Health Plan shall review DELEGATE’s policies and procedures, program description, work plan and other documents (the “Program Documents”) describing DELEGATE’s procedures for performing the Delegated Activities to determine if they comply with Health Plan’s current program requirements and the Medi-Cal Agreement. Prior to the performance of any Delegated Activities, Health Plan must determine that DELEGATE’s Program Documents comply with Health Plan’s current program requirements and the Medi-Cal Agreement. If such Program Documents do not comply with the current Health Plan program requirements and the Medi-Cal Agreement, DELEGATE must submit, implement, and fully execute a plan of correction acceptable to Health Plan.
	2. Amendment to Health Plan’s Program Requirements. DELEGATE understands and agrees that Health Plan may, at its sole discretion, amend Health Plan’s program requirements from time to time. Health Plan is responsible for giving DELEGATE reasonable advance notice, provided the Plan is given such notice from DHCS of such amendments. DELEGATE further understands and agrees that DELEGATE’s Program Documents must remain in compliance with the requirements of Health Plan’s Program requirements as amended from time to time. Where the amendment has a material impact on the cost incurred by DELEGATE for providing delegated services under this Delegation Agreement, Parties agree to enter into good faith negotiations to modify compensation set forth in the Agreement.
	3. Review of Program Documents. Health Plan shall conduct an annual review of DELEGATE’s Program Documents including policies and procedures, program description, work plan and other documents related to the Delegated Activities. Health Plan shall review, in advance, any proposed changes to DELEGATE’s Program Documents.
	4. On-Site Audit. At least annually, Health Plan shall conduct an on-site audit of DELEGATE’s performance of the Delegated Activities to evaluate DELEGATE’s compliance with Health Plan’s program requirements, the Medi-Cal Agreement, the requirements described in this Delegation Agreement, and with Government Agency requirements.
	5. Review of Reports. Health Plan shall review the reports submitted by DELEGATE as described in the Print Fulfillment SOW. Health Plan shall evaluate DELEGATE’s reports upon receipt and shall provide feedback to DELEGATE.
	6. Monitoring. Health Plan shall be responsible for monitoring this Delegation Agreement. The Delegation Agreement shall be monitored through Health Plan delegation oversight staff and the Health Plan compliance committee. Health Plan retains the right to evaluate DELEGATE’s overall performance on an annual basis and to conduct ongoing monitoring and oversight as required by law and government contract.
	7. Evaluation of Performance. Using the methods described above in this Section 4, Health Plan shall evaluate DELEGATE’s performance of the Delegated Activities. Evaluation of DELEGATE’s performance shall include the following:
		1. Determining the extent to which DELEGATE has performed in accordance with DELEGATE’s Program Documents, Health Plan’s program requirements, the Medi-Cal Agreement, and Government Agency requirements; and
		2. Evaluating the results, outcomes or effects of DELEGATE’s performance of the Delegated Activities in relation to Health Plan’s expectations including, but not limited to, using information contained in the periodic reports described in the Print Fulfillment SOW.
	8. Notification of Non-Compliance. Health Plan shall notify DELEGATE of any instance where, as a result of Health Plan’s oversight activities, Health Plan determines that DELEGATE’s performance is not in compliance with Health Plan’s program requirements, the Medi-Cal Agreement, and Government Agency requirements.
5. Compliance with Laws. At all times hereunder, DELEGATE represents and warrants that: (a) it shall comply with all laws and regulations applicable to its performance of the Delegated Activities; (b) it has all licenses, certifications, registrations and any other types of permits required by law to perform the Delegated Activities; and (c) personnel who carry out the Delegated Activities shall have appropriate training, and licensure, certification, registration or any other types of permits required by law. DELEGATE shall notify Health Plan within one (1) business day of making the determination that any of these representations was, is, or is reasonably likely to become inaccurate.
6. Assignment. DELEGATE shall not assign this Delegation Agreement, or any interest herein or obligation hereunder, without the prior written consent of Health Plan as provided in Section 15.5 of the Agreement.
7. Subcontracts.
	1. DELEGATE shall not subcontract the performance of all or any portion of the Delegated Activities contemplated hereby to any third party without the prior written consent of Health Plan and DHCS as provided herein.
	2. All subcontracts between DELEGATE and its subcontractors (“Downstream Subcontractors”) shall comply with the requirements and provisions set forth in Attachment B hereto.
8. Maintenance of Records. DELEGATE shall maintain all information and records reviewed or created in connection with performing the Delegated Activities in accordance the Agreement and the Medi-Cal Agreement and in a form acceptable to Health Plan and shall also permit Health Plan and Government Agencies to review and copy such information and records in accordance with the requirements of the law or Medi-Cal Program. DELEGATE agrees to permit access to all pertinent information and records by Government Agencies and accrediting bodies reviewing Health Plan.
9. Corrective Action. In the event Health Plan identifies any deficiencies in DELEGATE’s handling of any of the documented delegated functions set forth in Attachment A, Health Plan may require DELEGATE to implement a corrective action. If Health Plan has reason to believe DELEGATE has not carried out the Delegated Activities in accordance with the terms of this Delegation Agreement or in accordance with Health Plan’s reasonable performance expectations, Health Plan may take such steps as it deems necessary, including but not limited to those set forth in Section 13.1 of the Agreement and 3.6 of the Delegation Agreement.
10. Termination. This Delegation Agreement may be terminated prior to expiration of the term in accordance with the termination of the Agreement or, by either Party without cause, upon sixty (60) calendar days’ prior written notice to the other Party.
11. Consequences of Termination or Expiration. Upon any termination of this Delegation Agreement in accordance with any provision hereof, or upon expiration of this Delegation Agreement at the end of the term, the appointment shall terminate and all obligations of the Parties shall immediately terminate provided Health Plan shall be responsible for payment of any unpaid compensation due to DELEGATE with respect to periods prior to such termination. In the event both this Delegation Agreement and the Agreement are terminated or expire, the terms and conditions contained in the Agreement shall also apply.
12. Entire Agreement; Binding Effect. This Delegation Agreement along with the Agreement, and any exhibits or attachments thereto, including the Print Fulfillment SOW, together, contain the entire and final agreement between the Parties hereto with respect to the subject matter hereof. No provision hereof may be modified, amended, or waived in any manner whatsoever other than by a supplemental writing signed by the Parties hereto or their respective successors in interest. Subject to Sections 6 and 10, this Delegation Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, assigns, heirs, executors and legal representatives.

**ATTACHMENT A
Delegated Service Standards/Delegation Agreement with [Insert]**

This Attachment A confirms that Health Plan delegates the functions specified in the below Delegation Checklist to DELEGATE, an [insert organization type].

All delegated activities are to be performed in accordance with currently applicable federal and State laws, regulatory guidelines, accreditation standards, and Health Plan’s Medi-Cal Program contract with DHCS, as modified from time to time. DELEGATE agrees to be accountable for all responsibilities delegated by Health Plan and oversight of any sub-delegated activities, except as outlined in this Delegation Agreement.

Health Plan sets clear expectations for DELEGATE’s activities related to these functions as described in this Delegation Agreement and the Agreement to which it is attached and shall actively monitor performance relative to these expectations. Health Plan, however, retains ultimate responsibility to the state and federal regulators for the provision of print fulfillment services delivered to its Members and may reclaim the right to carry out any of the delegated functions and the administrative fees and other moneys associated with those functions at any time after notice of de-delegation. In the event deficiencies are identified through this oversight, DELEGATE will provide a specific corrective action plan acceptable to Health Plan. If DELEGATE does not comply with the corrective action plan within the specified timeframe, Health Plan will take necessary steps up to and including revocation of delegation in whole or part.

**Delegation Checklist**

| **Contractual Requirements** | **Delegated to Subcontractor** |
| --- | --- |
| **Plan Organization and Administration** | ☐ |
|  |  |
| **Financial Information** | ☐ |
|  |  |
| **Program Integrity and Compliance Program** | ☐ |
|  |  |
| **Management Information System** | ☐ |
|  |  |
| **Quality Improvement and Health Equity Transformation Program (QIHETP)** | ☐ |
|  |  |
| **Utilization Management Program** | ☐ |
|  |  |
| **Network Provider Agreements, Subcontractor Agreements, Downstream Subcontractor Agreement and Contractor’s Oversight Duties** | ☐ |
|  |  |
| **Provider Relations** | ☐ |
|  |  |
| **Provider Compensation Arrangements** | ☒ |
| Print Fulfillment, as described in Section 5 of the Agreement, including Continuous Improvement, Printing, Fulfillment, Reporting, Client Review Capabilities, Quality Assurance, Training and Project Management; Section 6, Change Control Process; Section 7, Incident Management; Section 8, Reports; Section 12, Data Security Audit; and Section 13, Transition and Claims Runout Services.  |  |
| **Marketing** | ☐ |
|  |  |
| **Enrollments and Disenrollments** | ☐ |
|  |  |
| **Population Health Management and Coordination of Care** | ☐ |
|  |  |
| **Enhanced Care Management (ECM)** | ☐ |
|  |  |
| **Community Supports** | ☐ |
|  |  |
| **Member Grievance and Appeal System** | ☐ |
|  |  |
| **Member Services** | ☐ |
|  |  |
| **Network and Access to Care** | ☐ |
|  |  |
| **Scope of Services** | ☐ |
|  |  |
| **Community Based Adult Services (CBAS)** | ☐ |
|  |  |
| **Mental Health and Substance Use Disorder Benefits**  | ☐ |
|  |  |
| **MOUs and Agreements with Third Parties** | ☐ |
|  |  |
| **Emergency Preparedness and Response** | ☐ |
|  |  |
| **Operations Deliverables and Requirements** | ☐ |
|  |  |
| **Program Terms and Requirements** | ☐ |
|  |  |

**ATTACHMENT B
Downstream Subcontract Requirements**

1. Subcontracts.
	1. All subcontracts between DELEGATE and DELEGATE’s Downstream Subcontractors shall be in writing, and shall be entered into, governed, and construed in accordance with all applicable laws and regulations governing the Agreement, including but not limited to the requirements of the Medi-Cal Agreement, Tile 42 CFR Section 438.230; Health and Safety Code Section 1340 et seq.; 28 CFR Section 1300.43 et seq.; Title 10, CCR, Section 1300 et seq.; W&I Code Section 14200 et seq.; Title 22, CCR, Section 53800 et seq.; and applicable federal and State laws and regulations.
	2. All subcontracts and their amendments will become effective only upon written approval by Health Plan (which consent Health Plan may grant or withhold in Health Plan’s sole and absolute discretion, and if required, DHCS). DELEGATE may require the immediate removal of any of Downstream Subcontractors from assignment under this Delegation Agreement if Health Plan is not satisfied with Downstream Subcontractor’s performance or if the subcontractor violates any terms or conditions under the Agreement or this Delegation Agreement.
	3. All subcontracts between DELEGATE and Downstream Subcontractor shall specify the obligations and functions undertaken by Downstream Subcontractor.
	4. All subcontracts shall specify the term of the subcontract or downstream subcontract agreement, including the beginning and end dates, as well as methods of extension, renegotiation, phase-out, if applicable, and termination.
	5. All subcontracts shall require Downstream Subcontractors to comply with all applicable requirements of the DHCS Medi-Cal Managed Care Program, pertaining to the obligations and functions undertaken, including but not limited to, all applicable Medicaid and Medi-Cal laws, regulations, sub-regulatory guidance, All Plan Letters, and the provisions of this Agreement.
	6. All subcontracts shall require Downstream Subcontractor to comply with all monitoring provisions of the Agreement and this Delegation Agreement and any monitoring requests by DHCS.
	7. Such subcontracts shall fully disclose the method and amount of compensation or other consideration per unit of service to be received by Downstream Subcontractor from DELEGATE.
	8. All subcontracts shall require Downstream Subcontractors to participate and cooperate in DELEGATE’s quality improvement system. Should the Downstream Subcontractor take on Quality Improvement activities, the subcontract shall include the following provisions, as applicable:
		1. Quality Improvement or Health Equity responsibilities, and specific subcontracted functions and activities of Downstream Subcontractor;
		2. The schedule for DELEGATE’s ongoing oversight, monitoring, and evaluation of Downstream Subcontractor, including quarterly reporting and an annual review of Downstream Subcontractor’s performance;
		3. Downstream Subcontractor’s reporting requirements and DELEGATE’s approval procedure of Downstream Subcontractor’s reports;
		4. Downstream Subcontractor’s obligation to report findings and actions of Quality Improvement or Health Equity activities at least quarterly to DELEGATE; and
		5. DELEGATE’s actions and remedies if Downstream Subcontractor’s obligations are not satisfactorily performed.
	9. DELEGATE shall maintain an adequate oversight procedure to ensure Downstream Subcontractor’s compliance with all Quality Improvement or Health Equity delegated activities that, at a minimum:
		1. Evaluates Downstream Subcontractor’s ability to perform the delegated activities, including an initial determination that Downstream Subcontractor have the administrative capacity, experience, and budgetary resources to fulfill their contractual obligations;
		2. Ensures Downstream Subcontractor meets Quality Improvement and Health Equity standards set forth in the Agreement; and
		3. Includes DELEGATE’s continuous monitoring, evaluation, and approval of its delegated functions to Downstream Subcontractor. DELEGATE shall make findings of its continuous monitoring and evaluation of Downstream Subcontractor available to DHCS at least annually, but more frequently when directed by DHCS.
	10. To the extent Downstream Subcontractor undertakes coordination or care obligations and functions for Members, DELEGATE shall enter into an agreement to share with Downstream Subcontractor any utilization data that DHCS has provided to PROVIDER. To the extent applicable, DELEGATE shall require that Downstream Subcontractor agrees to receive utilization data provided and use it solely for the purposes of Member care coordination.
	11. All subcontracts, to the extent applicable, shall require Downstream Subcontractor to assist DELEGATE in the transfer of the Member’s care as needed in order to comply with DHCS phase-out requirements in the event the Medi-Cal Agreement between Health Plan and DHCS is terminated for any reason.
	12. Subcontracts where Downstream Subcontractor is obligated to reimburse providers of Emergency Services shall include language comparable to the following:
		1. Subject to 42 CFR Section 422.113(b), Downstream Subcontractor is responsible for coverage and payment of Emergency Services, and must cover and pay for Emergency Services regardless of whether the provider that furnishes the services has a contract with Downstream Subcontractor. Downstream Subcontractor may not deny payment for treatment obtained when a Member had an Emergency Medical Condition, including cases in which the absence of immediate medical attention would not have had the outcomes specified in 42 CFR Section 438.114(a) of the definition of Emergency Medical Condition. Further, Downstream Subcontractor may not deny payment for treatment obtained when a representative of Downstream Subcontractor instructs the Member to seek Emergency Services. Emergency Services must not be subject to prior authorization by Downstream Subcontractor.
		2. Downstream Subcontractor may not limit what constitutes an Emergency Medical Condition on the basis of lists of diagnoses or symptoms or refuse to reimburse Emergency Services based on the emergency room provider, hospital, or fiscal agent not notifying the Member’s primary care provider, Health Plan, or DHCS of the Member’s screening and treatment for Emergency Services. A Member who has an Emergency Medical Condition may not be held liable for payment of subsequent screening and treatment needed to diagnose the specific condition or stabilize the Member.
		3. Downstream Subcontractor must reimburse providers for Emergency Services received by a Member from out-of-network providers. Payments to non-contracting providers must be for the treatment of the Emergency Medical Condition, including Medically Necessary inpatient services rendered to a Member until the Member’s condition has stabilized sufficiently to permit referral and transfer in accordance with instructions from Downstream Subcontractor or the Member is stabilized sufficiently to permit discharge. The attending emergency physician or provider treating the Member is responsible for determining whether the Member is sufficiently stabilized for transfer or discharge and that determination is binding on Downstream Subcontractor. Emergency services must not be subject to prior authorization by Downstream Subcontractor.
		4. At a minimum, Downstream Subcontractor must reimburse the non-contracting emergency department and, if applicable, its affiliated providers for physician services at the lowest level of the emergency department evaluation and management physician’s Current Procedural Terminology (CPT) codes, unless a higher level is clearly supported by documentation, and for the facility fee and diagnostic services such as laboratory and radiology.
		5. For all non-contracted Emergency Services providers, reimbursement by Downstream Subcontractor who is at risk for out-of-network Emergency Services for properly documented claims for services rendered by out-of-network provider pursuant to this provision must be made in accordance with Health & Safety Code Sections 1371 through 1371.36; 42 USC Section 1396u-2(f); and 42 USC Section 1396u-2(b)(2)(D). Downstream Subcontractor shall pay ninety (90) percent of clean claims from providers within thirty (30) calendar days of the date of receipt, and ninety-nine (99) percent of all clean claims from providers’ claims, within ninety (90) days of the date of receipt. For purposes of determining timeliness, the date of receipt shall be the date Downstream Subcontractor receives the claim, as indicated by Downstream Subcontractor’s date stamp on the claim. The date of Downstream Subcontractor’s payment shall be the date of Downstream Subcontractor’s check or other form of payment. Downstream Subcontractor shall maintain procedures for pre-payment and post-payment claims review, including review of any data associated with providers, Members, and the Covered Services for which payment is claimed. Downstream Subcontractor shall maintain sufficient claims processing, tracking, and payment systems capability to comply with applicable State and federal law, regulations, and Health Plan’s Medi-Cal Agreement with DHCS requirements, to determine the status of received claims and to estimate incurred and unreported claims (IBNR) amounts as specified by 28 CCR Section 1300.77.1 and 1300.77.2. Downstream Subcontractor shall be subject to any penalties and sanctions, including interest payments, provided by law if Downstream Subcontractor fails to meet the standards specified in this Subsection.
		6. Post-Stabilization Care Services are covered by and paid for in accordance with 42 CFR Section 422.113(c). Downstream Subcontractor is financially responsible for Post-Stabilization Care Services obtained within or outside of Downstream Subcontractor’s network that are authorized by Health Plan, DELEGATE, or a network provider.
		7. In accordance with 28 CCR Section 1300.71.4, Downstream Subcontractor must approve or disapprove a request for Post-Stabilization Care Services made by a provider on behalf of a Member within thirty (30) minutes of the request. If Downstream Subcontractor fails to approve or disapprove authorization within the required timeframe, the authorization is deemed approved.
		8. Downstream Subcontractor is also financially responsible for Post-Stabilization Care Services obtained within or outside Downstream Subcontractor’s network that are not authorized by Health Plan, DELEGATE, or a network provider, but administered to maintain, improve, or resolve the Member’s stabilized condition if Health Plan, DELEGATE, or network provider does not respond to a request for authorization within thirty (30) minutes; Health Plan, DELEGATE, or network provider cannot be contacted; or Health Plan, DELEGATE, or network provider and the treating physician cannot reach an agreement concerning the Member’s care. In this situation, the treating physician may continue with care of the patient until Health Plan, DELEGATE, or network provider is reached and assumes responsibility for the Member’s care or one of the criteria of 42 CFR Section 422.133(c)(3) is satisfied.
		9. Downstream Subcontractor’s financial responsibility for Post-Stabilization Care Services it has not authorized ends when a network provider with privileges at the treating hospital assumes responsibility for the Member's care, a network provider assumes responsibility for the Member's care through transfer, Downstream Subcontractor’s representative and the treating physician reach an agreement concerning the Member’s care; or the Member is discharged.
		10. Consistent with 42 CFR Sections 438.114(e), 422.113(c)(2), and 422.214, Downstream Subcontractor is financially responsible for payment of Post-Stabilization Care Services, following an emergency admission, at the hospital’s Medi-Cal Fee-For-Service payment rates for general acute care inpatient services rendered by a non-contracting, Medi-Cal certified hospital, unless a lower rate is agreed to in writing and signed by the hospital.
			1. For the purposes of this Section, the Medi-Cal Fee-For-Service payment amounts for dates of service when the Post-Stabilization Care Services were rendered must be the Medi-Cal Fee-For-Service payment method known as diagnosis-related groups, which for the purposes of this Subsection must apply to all acute care hospitals, including public hospitals that are reimbursed under the Certified Public Expenditure Basis methodology (W&I Code §14166 et seq.), less any associated direct or indirect medical education payments to the extent applicable.
			2. Payment made by Downstream Subcontractor to a hospital that accurately reflects the payment amounts required by this Subsection shall constitute payment in full, and must not be subject to subsequent adjustments or reconciliations by Downstream Subcontractor, except as provided by Medicaid law and regulations. A hospital’s tentative and final cost settlement processes required by 22 CCR Section 51536 shall not have any effect on payments made by Downstream Subcontractor pursuant to this Subsection.
		11. Disputed claims involving Emergency Services and/or Post-Stabilization Care Services may be submitted for resolution under provisions of W&I Code Section 14454 and 22 CCR Sections 53620 *et seq.* (except section 53698) to:

Department of Health Care Services

Office of Administrative Hearings and Appeals

3831 North Freeway Blvd, Suite 200

Sacramento, CA 95834

Downstream Subcontractor agrees to implement DHCS’ determination and reimburse the out-of-network provider within thirty (30) calendar days of the effective date of a decision that Contractor is liable for payment of a claim and must provide proof of reimbursement in such form as DHCS directs. Failure to reimburse the out-of-network provider within thirty (30) calendar days shall result in capitation offsets in accordance with W&I Code Sections 14454(c) and 14115.5 and 22 CCR Section 53702 and may subject Downstream Subcontractor to sanctions pursuant to W&I Code Section 14197.7.

* 1. DELEGATE shall inform Downstream Subcontractor of prospective requirements added by federal or State law or DHCS related to the Agreement and/or this Delegation Agreement that impact obligations and functions undertaken pursuant to the subcontract before the requirement(s) is effective, and obtain Downstream Subcontractor’s agreement to comply with the new requirements within thirty (30) calendar days of the effective date, unless otherwise instructed by DHCS.
	2. DELEGATE shall inform the Downstream Subcontractor taking on delegated functions of prospective requirements added by federal or State law or DHCS related to Health Plan’s Medi-Cal Agreement with DHCS that impact obligations and functions undertaken pursuant to the subcontract before the requirement is effective, and the agreement of the Downstream Subcontractor taking on delegated functions to comply with the new requirements within thirty (30) calendar days of the effective date, unless otherwise instructed by DHCS.
	3. All subcontracts shall require Downstream Subcontractor to notify DELEGATE within ten (10) working days of any suspected fraud, waste, or abuse, and shall allow DELEGATE to share such information with DHCS in accordance with the following requirements:
		1. Preliminary Fraud, Waste, and Abuse Reports. Downstream Subcontractor must file a preliminary report with DELEGATE for submission to Health Plan detailing any suspected Fraud, Waste, or Abuse identified by or reported to Downstream Subcontractor within ten (10) working days of Downstream Subcontractor’s discovery or notice of such Fraud, Waste, or Abuse. Downstream Subcontractor must submit a preliminary report in accordance with requirements set forth in an All Plan Letter or other similar instructions. Subsequent to the filing of the preliminary report, Downstream Subcontractor must promptly conduct a complete investigation of all reported or suspected Fraud, Waste, and Abuse activities.
		2. Completed Investigation Report. Within ten (10) working days of completing its Fraud, Waste, or Abuse investigation (including both Downstream Subcontractor-initiated and DHCS-initiated referrals), Downstream Subcontractor must submit a completed report to DELEGATE for submission to Health Plan. This report must include Downstream Subcontractor’s findings, actions taken, and include all documentation necessary to support any action.
		3. Quarterly Fraud, Waste, Abuse Status Report. Downstream Subcontractor must submit a quarterly report to DELEGATE for submission to Health Plan on all Fraud, Waste, and Abuse investigative activities ten (10) working days after the close of every calendar quarter. The quarterly report must contain the status of all preliminary, active, and completed investigations and must include both Downstream Subcontractor-initiated and DHCS-initiated referrals. In addition to quarterly reports, Downstream Subcontractor must provide updates and available documentation as requested from time to time.
		4. Manner of Report Submission. Downstream Subcontractor must electronically submit all Fraud, Waste, and Abuse reports in a manner prescribed by DELEGATE to comply with Health Plan and DHCS requirements. The required report must include but not be limited to the preliminary Fraud report, the completed investigation report, and the quarterly status report, including all supporting documents, and any additional documents requested, in a form and manner specified by DHCS through All Plan Letter, or other similar instructions.
		5. Downstream Subcontractor’s Obligation to Investigate State, Federal, and Other Medi-Cal Managed Care Plans’ Referrals of Fraud, Waste, and Abuse. DHCS may, from time to time, share with Downstream Subcontractor relevant Fraud, Waste, and Abuse referrals received from State and federal agencies and other Medi-Cal managed care plans. Downstream Subcontractor may also receive Fraud, Waste, and Abuse referrals directly from other federal agencies, State agencies (other than DHCS), and Medi-Cal managed care plans. Downstream Subcontractor must conduct a complete investigation of all Fraud, Waste, and Abuse referrals received from DHCS, other State and federal agencies, and other Medi-Cal managed care plans, relating to Health Plan’s Subcontractors, Downstream Subcontractors, and network providers. Downstream Subcontractor must submit a completed investigation report and a quarterly status report in connection with all DHCS, State and federal agency, and Medi-Cal managed care plan referrals of Fraud, Waste, and Abuse.
		6. Confidentiality. Downstream Subcontractor acknowledges that information shared by DHCS, other State and federal agencies, and other Medi-Cal managed care plans in connection with any Fraud, Waste, or Abuse referral must be considered confidential, until formal criminal proceedings are made public. Contractor further acknowledges that it is receiving this Confidential Information as a DHCS business associate in order to facilitate Contractor’s contractual obligations to maintain a Fraud, Waste, and Abuse prevention program. Contractor must receive and maintain this Confidential Information in its capacity as a Medi-Cal managed care plan and will use the Confidential Information only for conducting an investigation into any potential Fraud, Waste, or Abuse activities and in furtherance of any other program integrity activities.
	4. DELEGATE shall remain the prime contractor for the Covered Services and be responsible for the conduct and performance of each approved Downstream Subcontractor as if DELEGATE had performed all of the subcontracted Covered Services. DELEGATE acknowledges and agrees that it shall be solely responsible for paying Downstream Subcontractor(s) for all Covered Services provided by its Downstream Subcontractor(s), and to indemnify and hold harmless Health Plan, Members and DHCS for any mistake, failure, or breach of the Agreement or this Delegation Agreement committed by Downstream Subcontractor(s).
	5. DELEGATE shall require Downstream Subcontractor to maintain and make available to DHCS, upon request, copies of all contracts it enters into related to the performance of the obligations and functions undertaken pursuant to the subcontract, and to ensure such contracts are in writing.
	6. DELEGATE shall require Downstream Subcontractor to submit to DELEGATE, either directly or through a Subcontractor as applicable, complete, accurate, reasonable, and timely encounter data and provider data, and any other reports and data as needed by Health Plan in order for Health Plan to meet its reporting requirements to DHCS, within 10 calendar days following the end of each month or as mandated through federal law, and in a form and manner specified by DHCS. All encounter data must be submitted to Health Plan no later than 12 months from the date of service.
	7. All subcontracts shall require Downstream Subcontractor to timely gather, preserve, and provide to DHCS, CMS, DMFEA, and any authorized State or federal regulatory agencies, any records in subcontractor’s possession relating to threatened or pending litigation by or against DHCS. All subcontracts shall require Downstream Subcontractor to promptly provide DHCS with a copy of any documents provide to any party in any litigation by or against DHCS, and shall require Downstream Subcontractor to use best efforts to immediately notify DHCS of any subpoenas, document production requests, or requests for records received by Downstream Subcontractor related to this Agreement or the subcontractor agreement(s) entered into under this Agreement. All subcontracts shall require Downstream Subcontractors to make Downstream Subcontractor’s personnel and employees available to DHCS to authenticate documents, provide testimony as a witness, act as a “person most knowledgeable,” and assist in other ways as requested by DHCS, in connection with litigation, Public Records Act requests, subpoenas, inquiries, and/or audits by federal and State agencies and departments, and inquiries by third-parties, as requested by DHCS.
	8. Any subcontract arrangement entered into by DELEGATE for the delivery of Covered Services to Members shall be in writing, and DELEGATE shall ensure that subcontracts require that the Downstream Subcontractor: (a) make all premises, facilities, equipment, applicable books, records, contracts, computer, or other electronic systems related to this Agreement, available at reasonable times for audit, inspection, examination, or copying by DHCS, CMS, or the DHHS Inspector General, the Comptroller General, DOJ, and DMHC, or their designees, at all reasonable times at subcontractor’s or downstream subcontractor’s place of business or at such other mutually agreeable location in California; and (b) retain such books and all records and documents, including encounter data, in accordance with good business practices and generally accepted accounting principles for a term minimum of at least ten (10) years from the final date of the Medi-Cal Agreement between Health Plan and DHCS period or from the date of completion of any audit, whichever is later.
	9. Subcontracts entered into with Federally Qualified Health Centers (FQHCs), Rural Health Clinics (RHCs), and other clinics must satisfy all requirements set forth herein, as well as the requirements set forth in Health Plan’s Medi-Cal Agreement with DHCS. Such subcontracts shall include a provision stating that any negotiated and agreed-upon rate with an FQHC, RHC, or other clinic constitutes complete reimbursement and payment in-full for the Covered Services rendered to the Member.
	10. All subcontracts shall require Downstream Subcontractor to provide cultural competency, sensitivity, Health Equity, and diversity training(s) for Downstream Subcontractor’s staff at key points of contact with Members.
	11. All subcontracts shall require Downstream Subcontractor, to the extent that Downstream Subcontractor communicates with Members, to provide interpreter services for Members, and to comply with language assistance standards developed pursuant to Health & Safety Code Section 1367.04.
	12. DELEGATE shall notify DHCS in the event the subcontract with Downstream Subcontractor is amended or terminated for any reason.
	13. All subcontracts shall state that Downstream Subcontractor’s assignment or delegation of a subcontract is void unless prior written approval is obtained from DHCS.
	14. Downstream Subcontractors must:
		1. Provide written disclosure of any prohibited affiliation under 42 CFR, section 438.610
		2. Provide written disclosures of information and ownership and control as required under 42 CFR section 455.104; and
		3. Report and return any Overpayment to DHCS within 60 calendar days when it has identified any Capitated Payments or other payments I has received or paid in excess of the amounts specified in this Contract.
	15. Subcontractor and Downstream Subcontractor acknowledge that DHCS is a direct beneficiary of the Subcontractor Agreement or Downstream Subcontractor Agreement with respect to all obligations and functions undertaken pursuant to the Subcontractor Agreement or Downstream Subcontractor Agreement, and that DHCS may directly enforce any and all provisions of such agreements.
	16. Subcontractor and Downstream Subcontractor shall report directly to the Health Plan, or through the Subcontractor or Downstream Subcontractor, as applicable, when it has received an Overpayment; return the Overpayment to the Health Plan within 60 calendar days after the Overpayment was identified; and notify Contractor in writing of the reason for the Overpayment.