

# AGENCY ON AGING AREA 4

Nevada | Placer | Sacramento | Sierra | Sutter | Yolo | Yuba Counties

## Area Plan Terms & Conditions State Fiscal Year (SFY) 2024-2025

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# TERMS AND CONDITIONS

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## Article I. Definitions and Resolutions of Language Conflicts

- 1) “AAA4” or “A4AA” means the Area 4 Agency on Aging, dba Agency on Aging Area 4.
- 2) “Allocation” means the process of assigning a cost, or a group of costs, to one or more cost objective(s), in reasonable proportion to the benefit provided or other equitable relationship. The process may entail assigning a cost(s) directly to a final cost objective or through one or more intermediate cost objectives.
- 3) The term “Contract Agreement” shall mean the Request for Proposal, the Terms and Conditions, all Exhibits and Forms, the Scope of Work, Program Budget, attachments, amendments, and all other documents incorporated herein by reference.
- 4) The term “Contract Cycle” means the designated timeframe for which no additional RFPs are expected to be held for a particular service (the maximum allowable timeframe is 4 years).
- 5) “Contract Term” or “Contract Period” refers to the designated timeframe for a particular contact agreement, usually one year.
- 6) “Client Level Data” means all confidential, sensitive, or personal identifying information collected from former, current and prospective clients. Service Categories that require client level data be collected and submitted are called Registered Services; those that do not require client level data collection are called Non-Registered Services.
- 7) “Disallowed costs” means those charges determined to be unallowable, in accordance with the applicable Federal statutes, regulations, **r** the terms and conditions of the Federal award.

- 8) As used in this Contract Agreement, the term “equipment” shall refer only to capitalized property.
- 9) “FUNDED PARTNER” or “Principle Agent” means the entity to which funds are awarded under this Contract Agreement and which is accountable to AAA4 for use of these funds and is responsible for executing the provisions for services of this Contract Agreement.
- 10) “HHS” means the U.S. Department of Health and Human Services. “CFR” means Code of Federal Regulations. “CCR” means California Code of Regulations. “CGC” means California Government Code. “W & I” means Welfare and Institutions Code. “USC” means United States Code. “CPCC” means California Public Contract Code. “OMB” means Office of Management and Budget. “CCC” means California Civil Code. “OAA” means Older Americans Act.
- 11) “Indirect Costs” means costs incurred for a common or joint purpose benefiting more than one cost objective and not readily assignable to the cost objective specifically benefitted, without effort disproportionate to the results achieved.
- 12) “MFR” means the Monthly Financial Report of Expenditures/Request for Funds form.
- 13) “Questioned Costs” means a cost that is questioned by the auditor because of an audit finding which resulted from a violation or possible violation of a statute, regulation, or the terms and conditions of a Federal award, including for funds used to match Federal funds; where the costs, at the time of the audit, are not supported by adequate documentation; or where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in circumstances.
- 14) “Program income” is revenue generated by the FUNDED PARTNER or a Subcontractor from Contract Agreement-supported activities. “Program income” is:
  - 1) Voluntary contributions received from a participant or other party as a result of the services.
  - 2) Income from usage or rental fees of real or personal property acquired with grant funds, or funds provided under this Contract Agreement.
  - 3) Royalties received on patents and copyrights from Contract Agreement-supported activities.
  - 4) Proceeds from the sale of goods created under a Contract Agreement including the sale of AAA4 property and equipment.
- 15) “Recoverable cost” means the state and federal share of the questioned cost identified from an audit.

- 16) “Reimbursable item” also means “allowable cost” and “compensable item.”
- 17) “RFP” means Request for Proposals.
- 18) “State” and “Department” means the State of California and the California Department of Aging (CDA) interchangeably.
- 19) “Subcontractor” means the legal entity that receives funds from the FUNDED PARTNER to perform some or all necessary day to day service functions identified in this Contract Agreement. “Subcontract Agreement” means any form of legal agreement supported by funds from this Contract Agreement, including an agreement that the Contractor or Subcontractor would consider to be a contract, including vendor type Agreements for providing goods or services under this Agreement.
- 20) “Unique Entity Identification Number” (UEI) means a 12-character alphanumeric ID assigned to an entity generated by SAM.gov on April 4, 2022. As part of this transition, the DUNS number has been removed from SAM.gov and entity registration, searching, and data entry in SAM.gov now require use of the new Unique Entity ID.
- 21) “Vendor” means an entity selling goods or services to the FUNDED PARTNER or Subcontractor during the FUNDED PARTNER’S or Subcontractor’s performance of the Agreement. Guidance: OMB Circular A-133 Section 210.
- 22) In the event of inconsistency between the articles, attachments, or provisions which constitute this Contract Agreement, the following order of precedence shall apply:
  - 1) Terms and Conditions, Exhibits, and any amendments thereto;
  - 2) The Older Americans Act, and other applicable Federal statutes and their implementing regulations;
  - 3) Older Californians Act and other California State Codes and Regulations;
  - 4) Title 22 CCR § 7000 et. seq.
  - 5) Program Bulletins and other guidance issued by AAA4.
  - 6) Any other documentation incorporated herein by reference, including the federal HHS terms and conditions found in Part II of the HHS Grant Policy Statement (<http://www.hhs.gov/grants/grants/grants-policies-regulations/index.html>)
- 23) In the event that any provision of this Contract Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of the Contract Agreement have force and effect and shall not be affected thereby.

## Article II. Assurances

### A. Nondiscrimination

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

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

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

- 2) Equal Access to State-Funded Benefits, Program and Activities

The FUNDED PARTNER shall unless exempted, ensure compliance with the requirements of the California Government Code §11135 et. seq., and 2 CCR §11140 et. seq., which prohibit recipients of state financial assistance from discriminating against persons based on race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, or disability. (22 CCR § 98323) (Chapter 182, Stats. 2006)

- 3) The FUNDED PARTNER assures the AAA4 that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to ADA. (42 USC Sections 12101 et. seq.)

- 4) California Civil Rights Laws

The FUNDED PARTNER shall ensure compliance with the requirements of California Public Contract Code § 2010 by submitting a completed California Civil Rights Laws Certification prior to execution of this Contract Agreement.

The California Civil Rights Laws Certification ensures FUNDED PARTNER compliance with the Unruh Civil Rights Act (Cal. Civ. Code § 12960), and ensures that FUNDED PARTNER internal policies are not used in violation of California Civil Rights Laws.

- 5) The FUNDED PARTNER agrees to include these requirements in all contracts it enters into with Subcontractors to provide services pursuant to this Contract Agreement.

## B. Certifications Under Penalty of Perjury

- 1) By signing this Contract Agreement, the FUNDED PARTNER does swear under penalty of perjury that no more than one (1) final unappealable finding of contempt of court by a federal court has been issued against FUNDED PARTNER within the immediately preceding two-year period because of FUNDED PARTNER'S failure to comply with an order of a federal court which orders FUNDED PARTNER to comply with an order of the National Labor Relations Board.
- 2) By signing this Contract Agreement, the FUNDED PARTNER swears under penalty of perjury that the FUNDED PARTNER is not: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.
- 3) The FUNDED PARTNER'S signature affixed hereon shall constitute a certification under the penalty of perjury under the laws of the State of California that the FUNDED PARTNER, unless exempted, complied with the nondiscrimination program requirements of Government Code, Section 12990 (a-f) and Title 2, California Code of Regulations, Section 8103.

## C. Information Confidentiality and Security

This information Confidentiality and Security Requirements section sets forth information and privacy and security requirements the FUNDED PARTNER is obligated to follow with respect to all personal, confidential, and sensitive information (as define herein) disclosed to the FUNDED PARTNER, or collected, created, maintained, stored, transmitted, or used by the FUNDED PARTNER for or on behalf of AAA4 pursuant to this Contract Agreement. (Such personal, confidential, and sensitive information is referred to here as PSCI.) AAA4 and the FUNDED PARTNER desire to protect their privacy and provide for the security of PSCI pursuant to this section of the Contract Agreement and in compliance with state and federal laws applicable to PSCI.

The terms of this section shall apply to all contracts, subcontracts, and subawards made by the FUNDED PARTNER and services provided in accordance with this Contract Agreement. The FUNDED PARTNER shall require its agents, subcontractors, or independent consultants (collectively, agents) to conform to this section regarding PSCI.

1) Definitions

1) Breach:

- i) the unauthorized acquisition, access, use, or disclosure of AAA4 in a manner in which comprises the security, confidentiality, or integrity of the information; or
- ii) the same definition of “breach of the security system” set forth in California Civil Code section 1798.29, subdivision (f); or
- iii) the same as the definition of “breach” set forth in the Health Insurance Portability and Accountability Act Privacy Rule, 45 Code of Federal Regulations 164.402.

2) Confidential Information: Information that is exempt from disclosure under the provisions of the California Public Records Act (Government Code section 7920.000 Et seq.).

3) Disclosure: the release, transfer, provisions of, access to, or divulging in or any manner of information outside the entity holding the information.

4) PSCI: “personal information”, “sensitive information”, and “confidential information” (as these terms are defined herein).

5) Personal Information: Information that identifies or describes an individual, including, but not limited to, their name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history. It is AAA4’s policy to consider all information about individuals private unless such information is determined to be a public record. Personal Information also includes the following:

- i) Notice-Triggering Personal Information: Specific items of personal information (name plus Social Security number, driver license/California identification card number, or financial account number) that may trigger a requirement to notify individuals if it is acquired by an unauthorized person. For purposes of this provision, identity shall include, but not be limited to name, identifying number, symbol, or other identifying information assigned to the individual, such as finger or voice print or a photograph. See Civil Code section 1798.29.
- ii) Protected Health Information (PHI): The term “PHI” refers to and includes both “PHI” as defined at 45 CFR section 160.103 and Personal Information (PI) as defined in the Information Practices Act at California

Civil Code section 1798.3(a). PHI includes information in any form, including paper, oral, and electronic.

- 6) Public Information: Information that is not exempt from disclosure under the provisions of the California Public Records Act (Government Code sections 7920.000 Et seq.).
  - 7) Security Incident:
    - i) A breach or attempted breach; or
    - ii) The attempted or successful unauthorized access, disclosure, modification, or destruction of PSCI, in violation of any state or federal law or in a manner not permitted under this Contract Agreement; or
    - iii) the attempted or successful modification or destruction of, or interference with, the FUNDED PARTNER'S system operations in an information technology system, that negatively impacts the confidentiality, availability, or integrity of PSCI; or
    - iv) any event that is reasonably believed to have compromised the confidentiality, integrity, or availability of an information asset, system, process, data storage, or transmission. Furthermore, an information security incident may also include an event that constitutes a violation or imminent threat of violation of information security policies or procedures, including acceptable use policies.
  - 8) Sensitive Information: Information that requires special precautions to protect from unauthorized use, access, disclosure, modification, loss, or deletion. Sensitive Information may be either Public Information or Confidential Information. It is information that requires a higher-than-normal assurance of accuracy and completeness. Thus, the key factor for Sensitive Information is that of integrity. Typically, Sensitive Information includes records of agency financial transactions and regulatory actions.
- 2) Disclosure Restrictions
- The FUNDED PARTNER shall protect PSCI from unauthorized disclosure. The FUNDED PARTNER shall not disclose, except as otherwise specifically permitted by the Contract Agreement, any PSCI to anyone other than CDA and AAA4 personnel or programs without prior written authorization from the CDA and AAA4.
- 1) The FUNDED PARTNER and AAA4 mutually agree that the creation, receipt, maintenance, transmittal, and disclosure of data from AAA4 containing PHI shall be subject to the Health Insurance Portability and Accountability Act of 1996 and its implementing privacy and security regulations at 45 CFR Parts 160 and 164

(collectively and as used in this Agreement, HIPAA.). The FUNDED PARTNER agrees to provide the same, or greater, level of protection to CDA data that would be required if the FUNDED PARTNER were a Business Associate under HIPAA, regardless of whether the FUNDED PARTNER is or is not a Business Associate.

- 2) To the extent that other state and/or federal laws provide additional, stricter, and/or more protective (collectively, more protective) privacy and/or security protections to PSCI covered under this Contract Agreement beyond those provided through HIPAA, the FUNDED PARTNER agrees:
  - i) To comply with the more protective of the privacy and security standards set forth in applicable state or federal laws to the extent such standards provide a greater degree of protection and security than HIPAA or are otherwise more favorable to the individuals whose information is concerned; and
  - ii) To treat any violation of such additional and/or more protective standards as a breach or security incident, as appropriate.
  - iii) Examples of laws that provide additional and/or stricter privacy protections to certain types of PSCI, as defined in Section II.C.1 of this Contract Agreement, include, but are not limited to the Information Practices Act, California Civil Code sections 1798-1798.78, Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2, Welfare and Institutions Code section 5328, and California Health and Safety Code section 11845.5.
  - iv) If the FUNDED PARTNER is a Qualified Service Organization (QSO) as defined in 42 CFR section 2.11, the FUNDED PARTNER agrees to be bound by and comply with subdivisions (2)(i) and (2)(ii) of that section.

### 3) Use Restrictions

The FUNDED PARTNER shall not use any PSCI for any purpose other than performing the FUNDED PARTNER'S obligations under this Contract Agreement.

### 4) Safeguards and Security

The FUNDED PARTNER shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of PSCI including electronic PSCI that it creates, receives, maintains, uses, or transmits on behalf of AAA4 and CDA.

The FUNDED PARTNER shall develop and maintain a written information privacy and security program that includes administrative, technical, and physical safeguards appropriate to the size and complexity of the FUNDED PARTNER'S operations and the nature and scope of its activities. The FUNDED PARTNER'S administrative, technical, and physical safeguards shall include, at a minimum:

A. Technical Security Controls:

The FUNDED PARTNER shall, at a minimum, utilize a National Institute of Standards and Technology Special Publication (NIST SP) 800-53 compliant security framework when selecting and implementing its security controls and shall maintain continuous compliance with NIST SP 800-53 as it may be updated from time to time. The current version of NIST SP 800-53, Revision 5, is available online at <https://csrc.nist.gov/publications/detail/sp/800-53/rev-5/final>; updates will be available online at <https://csrc.nist.gov/publications/sp800>.

B. Removable Media Devices

All electronic files that contain PSCI data must be encrypted when stored on any removable media or portable device (i.e., USB thumb drives, floppies, CD/DVD, smart devices, tapes, etc.). PSCI must be encrypted, at a minimum, using a FIPS 140-2 certified algorithm or successor standards, such as Advanced Encryption Standard (AES), with a 128bit key or higher.

C. Patch Management:

The FUNDED PARTNER shall apply security patches and upgrades and keep virus software up to date on all systems which PHI and other confidential information may be used.

D. Confidentiality Statement:

All people that will be working with PSCI must sign a confidentiality statement that includes, at a minimum, General Use, Security and Privacy Safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by all people prior to accessing PSCI. The statement must be renewed annually. The FUNDED PARTNER shall retain each person's written confidentiality statement for AAA4 and CDA inspection for a period of six (6) years following contract termination.

E. Transmission and Storage of PSCI:

All persons that will be working with PSCI shall employ with FIPS 140-3 compliant encryption of PHI, at rest and in motion, unless it has been determined that such encryption is unreasonable and inappropriate based upon a risk assessment and equivalent alternative measures are in place and documented as such.

F. Minimum Necessary:

Only the minimum necessary amount of PSCI required to perform necessary business functions applicable to the terms of this Program Guide may be used, disclosed, copied, downloaded, or exported.

G. Antivirus Software:

All workstations, laptops and other systems that process and/or store PSCI must install and actively use a comprehensive anti-virus software solution with automatic updates scheduled at least daily.

H. Data Security:

PSCI will be stored separately from other customers' data. Data will be stored and processed within the continental United States, and remote access to data from outside the continental United States will be prohibited. Data will be encrypted such that unauthorized parties are unable to read the data within the database/data repositories or any backups.

5) Employee Training

All persons who assist in the performance of functions or activities on behalf of AAA4, or access or disclose PSCI, must complete information privacy and security training, at least annually, at the FUNDED PARTNER's expense. Each person who receives information privacy and security training must sign a certification, indicating the member's name and the date on which the training was completed. These certifications must be retained for a period of six (6) years following contract termination.

- 1) The FUNDED PARTNER's employees, its Subcontractors and Vendors, and volunteers handling PSCI must complete the Security Awareness Training module located on CDA's website, [www.aging.ca.gov](http://www.aging.ca.gov) within 30 days of the start date of Contract Agreement or within 30 days of the start date of any new employee, subcontractor, or volunteer. The FUNDED PARTNER must maintain certificates of completion on file and provide them to AAA4 and CDA upon request. Training may be provided on an individual basis or in groups. A sign-in sheet is acceptable documentation for group training in lieu of individual certificates.

6) Employee Discipline

Appropriate sanctions must be applied against persons who fail to comply with privacy policies and procedures or any provisions of these requirements, including termination of employment where appropriate.

7) Background Check

Before a person may access PSCI, a thorough background check of that person must be conducted, with evaluation of the results to assure that there is no indication that the person may present a risk to the security or integrity of confidential data or a risk for theft or misuse of confidential data. The FUNDED PARTNER shall retain each person's background check documentation for a period of three (3) years following contract termination.

A. Mailing:

Mailings of PSCI shall be sealed and secured from damage or inappropriate viewing of PSCI to the extent possible. Mailings which include 500 or more individually identifiable records of PSCI in a single package shall be sent using a tracked mailing method which includes verification of delivery and receipt, unless the prior written permission of AAA4 To use another method is obtained.

B. Security Officer:

The FUNDED PARTNER shall designate a Security Officer to oversee its data security program who will be responsible for carrying out its privacy and security programs and for communicating on security matters with AAA4 and CDA. This may be an existing employee, or a new position can be created to meet the requirement. It is even possible to outsource the duties of a HIPAA compliance officer on a temporary or permanent basis.

C. Mitigation of Harmful Effects:

The FUNDED PARTNER shall mitigate, to the extent practicable, any harmful effect that is known to the FUNDED PARTNER of a use or disclosure of PSCI and other confidential information in violation of the requirements of this Program Guide.

D. Access to, and Accounting For, Disclosure of PSCI

The FUNDED PARTNER shall document and make available to AAA4 and CDA or (at the direction of AAA4 and CDA) to an Individual such disclosures of PSCI and information related to such disclosures necessary to respond to a proper request by the subject Individual for an accounting of disclosures of personal information as required by 45 CFR section 164.524 or any applicable state or federal law.

8) Access to Practices, Books, and Records

The FUNDED PARTNER shall make its internal practices, books, and records relating to the use and disclosure of PSCI on behalf of AAA4 available to AAA4 upon reasonable request.

9) Special Provision for SSA Data

If the FUNDED PARTNER receives data from or on behalf of AAA4 that was verified by or provided by the Social Security Administration (SSA Data) and is subject to an agreement between AAA4 and SSA, the FUNDED PARTNER shall provide, upon request by AAA4, a list of all employees and agents who have access to such data, including employees and agents of its agents, to AAA4.

10) Breaches and Security Incidents

The FUNDED PARTNER shall implement reasonable systems for the discovery and prompt reporting of any breach or security incident, and take the following steps:

1) Notice to AAA4:

The FUNDED PARTNER shall notify AAA4 immediately by email or telephone of the discovery of:

- i) Unsecured PSCI if the PSCI is reasonably believed to have been accessed or acquired by an unauthorized person.
- ii) Any suspected security incident which risks unauthorized access to PSCI and/or other confidential information.
- iii) Any intrusion or unauthorized access, use, or disclosure of PSCI in violation of this Agreement; or
- iv) Potential loss of confidential data affecting this agreement.
- v) Notice via email shall be made using the current CDA 1025 "Information Security Incident Report" forms and shall include all information known at the time the incident is reported. The forms are available online at: [https://aging.ca.gov/Information\\_security/](https://aging.ca.gov/Information_security/)

Upon discovery of a breach or suspected security incident, intrusion, or unauthorized access, use or disclosure of PSCI, the FUNDED PARTNER shall take: Prompt corrective action to mitigate any risks or damages involved with the security incident or breach; and

- (1) Any action pertaining to such unauthorized disclosure is required by applicable Federal and State laws and regulations.

2) Investigation of Security Incident or Breach

The FUNDED PARTNER shall immediately investigate such security incident, breach, or unauthorized use or disclosure of PSCI.

### 3) Complete Report

The AAA shall provide a complete report of the investigation to AAA4 within (10) working days of the discovery of the breach or unauthorized use or disclosure. The complete report must include an assessment of all known factors relevant to a determination of whether a breach occurred under applicable federal and state laws. The report shall include a full, detailed corrective action plan including information on measures that were taken to halt and/or contain improper use or disclosure. If AAA4 and CDA requests information in addition to this report, the FUNDED PARTNER shall make reasonable efforts to provide AAA4 and CDA with such information. CDA, with the direction of AAA4 will review and approve or disapprove the FUNDED PARTNER's determination of whether a breach occurred, whether the security incident or breach is reportable to the appropriate entities, if individual notifications are required, and the FUNDED PARTNER's corrective action plan.

- i) If the AAA does not submit a complete report within the ten (10) working day timeframe, the FUNDED PARTNER shall request approval from AAA4 within the ten (10) working day timeframe of a new submission timeframe for the complete report.

### 4) Notification of Individuals

If the cause of a breach is attributable to the FUNDED PARTNER or its agents, the FUNDED PARTNER shall notify individuals accordingly and shall pay all costs of such notifications as well as any costs associated with the breach. The notifications shall comply with applicable federal and state law. AAA4 shall approve the time, manner, and content of any such notifications and their review and approval must be obtained before the notifications are made.

### 5) Responsibility for Reporting Breaches to Entities other than AAA4

If the cause of a breach of PSCI is attributable to the FUNDED PARTNER or its subcontractors, the FUNDED PARTNER is responsible for all required reporting of the breach as required by applicable federal and state law.

### 6) Submission of Sample Notification to Attorney General:

If notification to more than 500 individuals is required pursuant to California Civil Code section 1798.29, regardless of whether the FUNDED PARTNER is considered only a custodian and/or non-owner of the PSCI, the FUNDED PARTNER shall, at its sole expense and at the sole election of AAA4 and CDA, either:

- i) Electronically submit a single sample copy of the security breach notification, excluding any personally identifiable information, to the Attorney General pursuant to the format, content, and timeliness provisions of Section 1798.29, subdivision (e). The FUNDED PARTNER shall inform the AAA4 Security Privacy Officer of the time, manner, and content of any such submissions prior to the transmission of such submissions to the Attorney General; or
- ii) Cooperate with and assist AAA4 in its submission of a sample copy of the notification to the Attorney General.

#### 11) Contact Information

To direct communications to the above referenced AAA4 staff, the FUNDED PARTNER shall initiate contact as indicated herein. AAA4 reserves the right to make changes to the contact information below by giving written notice to the FUNDED PARTNERS.

#### **AAA4 Privacy and Security Officer**

Agency on Aging Area 4  
1401 El Camino Ave- STE 400  
Sacramento, CA 95815

Attn: Privacy and Security Officer  
Email: [Privacy@agencyonaging4.org](mailto:Privacy@agencyonaging4.org)  
Telephone: [\(916\) 486-1876](tel:(916)486-1876)

#### 12) Responsibility of AAA4

AAA4 agrees to not request the FUNDED PARTNER use or disclose PSCI in any manner that would not be permissible under HIPAA and/or other applicable federal and/or state law.

#### 13) Audits, Inspections, and Enforcement

##### 1) AAA4 Right to Inspect:

From time to time, AAA4 may inspect the facilities, systems, books, and records of the FUNDED PARTNER to monitor compliance with the safeguards required in the Information Confidentiality and Security Requirements (ICSR) section. The FUNDED PARTNER shall promptly

remedy any violation of any provision of this ICSR section. The fact that AAA4 inspects, or fails to inspect, or has the right to inspect, the FUNDED PARTNER's facilities, systems, and procedures does not relieve the FUNDED PARTNER of its responsibility to comply with this ICSR section.

2) Notification to AAA4 in Event the FUNDED PARTNER is Subject to Other Audit:

If the FUNDED PARTNER is the subject of an audit, compliance review, investigation, or any proceeding that is related to the performance of its obligations pursuant to the Agreement or is the subject of any judicial or administrative proceeding alleging a violation of HIPAA, the FUNDED PARTNER shall promptly notify AAA4 unless it is legally prohibited from doing so.

14) Miscellaneous Provisions

1) Disclaimer:

AAA4 makes no warranty or representation that compliance by the FUNDED PARTNER with this Contract Agreement will satisfy the FUNDED PARTNER's business needs or compliance obligations. The FUNDED PARTNER is solely responsible for all decisions made by the FUNDED PARTNER regarding the safeguarding of PSCI and other confidential information.

2) Amendment:

- i) Any provision of the Agreement which conflicts with current or future applicable federal or state laws is hereby amended to conform to the provisions of those laws. Such amendment of the Agreement shall be effective on the effective date of the laws necessitating it and shall be binding on the parties even though such amendment may not have been reduced to writing and formally agreed upon and executed by the parties.
- ii) Failure by the FUNDED PARTNER to take necessary actions required by amendments to the Agreement shall constitute a material violation.

3) No Third-Party Beneficiaries

- i) Nothing in this Agreement is intended to or shall confer upon any third person, any rights, or remedies whatsoever.

4) Interpretation

The terms and conditions in this Contract Agreement shall be interpreted as broadly as necessary to implement and comply with regulations and applicable laws. The parties agree that any ambiguity in the terms and conditions of this Agreement shall be resolved in favor of a meaning that complies and is consistent with federal and state laws and regulations.

5) No Waiver of Obligations

No change, waiver, or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation or shall prohibit enforcement of any obligation on any other occasion.

6) Return or Destruction of PSCI on Expiration or Termination

At expiration or termination of the Agreement, if feasible, the FUNDED PARTNER shall return or destroy all PSCI that the AAA4 still maintains in any form and retain no copies of such information. If return or destruction is not feasible, AAA4 and the FUNDED PARTNER shall determine the terms and conditions under which the FUNDED PARTNER may retain the PSCI.

7) Data Sanitization

All PSCI must be sanitized using NIST Special Publication 800-88 standard methods for data sanitization when the PSCI is no longer needed.

i) Survival

- (1) If return or destruction of PSCI is not feasible upon the completion or termination of the Agreement, the respective rights, and obligations of the FUNDED PARTNER under this Section shall survive the completion or termination of the Agreement between the FUNDED PARTNER and AAA4. The FUNDED PARTNER shall also limit further uses and disclosures of PSCI to those purposes that make the return or destruction of the information infeasible.

## D. Electronic Backups

The FUNDED PARTNER, its Subcontractors and Vendors, shall ensure that all electronic information pertaining to AAA4 is protected by performing regular backups of files and databases, and ensure the availability of information assets for continued business. The FUNDED PARTNER, its Subcontractors and Vendors, shall ensure that all data, files and backup files are encrypted. Backup files must be stored off-site or in the cloud.

## E. Website Presence

- 1) The FUNDED PARTNER shall regularly maintain and update their public website, ensuring accessibility, privacy/confidentiality policy, any required legal compliance, security, and appropriate search engine optimization, and include a link to the AAA4 website.
- 2) For those FUNDED PARTNERS who are a part of a designated or emerging Aging and Disability Resource Connection (ADRC), this includes a searchable database which includes public and private Long-Term Supportive Services (LTSS) programs, providers and benefits, or a link to a searchable database, and the appropriate and agreed upon protocols for an on-line presence.

## F. Telephone Communications

- 1) The FUNDED PARTNER shall ensure an effective and efficient telephone communication system which streamlines public access/inquiry and supports person-centered practices by staff who interact with the public.
- 2) For those FUNDED PARTNERS, who are part of a designated or emerging Aging and Disability Resource Connection (ADRC), this includes warm transfer capability, and the appropriate and agreed-upon protocols for communication strategies.

## G. Copyrights and Rights in Data

- 1) Copyrights
  - a) If any material funded by this Contract Agreement is subject to copyright, the State via AAA4 reserves the right to copyright such material and the FUNDED PARTNER agrees not to copyright such material, except as set forth in subdivisions D.2.b of this section.
  - b) The FUNDED PARTNER may request permission to copyright material by writing to the Director of the State Department of Aging via AAA4. The Director shall grant permission or give the reason for denying permission to the FUNDED PARTNER in writing within sixty (60) days of receipt of the request.
  - c) If the material is copyrighted with the consent of CDA via AAA4, the CDA reserves a royalty-free, non-exclusive and irrevocable license to reproduce, prepare derivative works, publish, distribute and use such materials, in whole or in part, and to authorize others to do so, provided written credit is given the author.

- d) The FUNDED PARTNER certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Contract Agreement for the acquisition, operation, or maintenance of computer software in violation of copyright laws.

## 2) Rights in Data

- a) The FUNDED PARTNER shall not publish or transfer any materials, as defined in (b) below, produced or resulting from activities supported by this Agreement without the express written consent of the CDA, via AAA4. That consent shall be given or denied after the written request is received by the CDA, via AAA4. AAA4 may request a copy of the material for review prior to approval of the request. This subsection is not intended to prohibit FUNDED PARTNERS from sharing identifying client information authorized by the participant or summary program information which is not client-specific.
- b) As used in this Contract Agreement, the term “subject data” means writings, sound recordings, pictorial reproductions, drawings, designs or graphic representations, procedural manuals, forms, diagrams, workflow charts, equipment descriptions, data files and data processing or computer programs, and works of any similar nature (whether or not copyrighted or copyrightable) which are first produced or developed under this Contract Agreement. The term does not include financial reports, cost analyses and similar information incidental to Contract Agreement administration.
- c) Subject only to the provisions of Article II., Section D., paragraph 1., the CDA via AAA4 may use, duplicate or disclose in any manner, and have or permit others to do so subject to State and federal law, all subject data delivered under this Contract Agreement.

## H. Public Education and Information

To maintain the integrity of the CDA brand, CDA's Office of Communications must approve the use of CDA's logo on all education and promotional materials. This includes the use of CDA's logo by CDA staff, partners, contractors, subrecipients, and subcontractors on all educational and promotional materials, media, press releases, and other materials. These are defined as:

**Educational materials:** inform an audience. Items may include brochures, posters, fact sheets, and activity books.

**Promotional materials:** promote, support, or enhance efforts that directly relate to the project objective. Items may include flyers.

**How to Request Permission to Use CDA Logo:**

Send the request to AAA4 and CDA's Communications Team at [communications@aging.ca.gov](mailto:communications@aging.ca.gov). The CDA Communications team aims to review and approve submissions promptly, typically within 10 days.

## I. Law, Policy, and Procedure, Licenses and Certificates

The FUNDED PARTNER agrees to administer this Contract Agreement and require any Subcontractors to administer their subcontracts in accordance with this Contract Agreement, and with all applicable local, State, and federal laws and regulations including, but not limited to, discrimination, wages and hours of employment, occupational safety, and to fire, safety, health, and sanitation regulations, directives, guidelines, and/or manuals related to this Contract Agreement and resolve all issues using good administrative practices and sound judgement. The FUNDED PARTNER and its subcontractors shall keep in effect all licenses, permits, notices, and certificates that are required by law.

## J. Standards of Work

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

## K. Conflict of Interest

- 1) The FUNDED PARTNER shall prevent employees, consultants or members of governing bodies from using their positions for purposes including, but not limited to, the selection of Subcontractors that are, or give the appearance of being, motivated by a desire for private gain for themselves or others, such as family, business or other ties. In the event that AAA4 determines that a conflict of interest exists, any increase in costs associated with the conflict of interest may be disallowed by AAA4 and such conflict may constitute grounds for termination of the Contract Agreement.
- 2) This provision shall not be construed to prohibit employment of persons with whom the FUNDED PARTNER officers, agents or employees have family, business, or other ties, so long as the employment of such persons does not result in a conflict of interest (real or apparent) or increased costs over those associated with the employment of any other equally qualified applicant, and such persons have successfully competed for employment with the other applicants on a merit basis.

## L. Payroll Taxes and Deductions

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

## M. Facility Construction or Repair

- 1) When applicable for purposes of construction or repair of facilities, the FUNDED PARTNER shall comply with the provisions contained in the following and shall include such provisions in any applicable agreements with subcontractors:
  - a. Copeland “Anti-Kickback” Act (18 USC 874, 40 USC 276c) (29 CFR, Part 3).
  - b. Davis-Bacon Act (40 USC 276a to 276a-7) (29 CFR, Part 5).
  - c. Contract Work Hours and Safety Standards Act (40 USC 327-333) (29 CFR, Part 5, 6, 7, and 8).
  - d. Executive Order 11246 of September 14, 1965, entitled “Equal Employment Opportunity” as amended by Executive Order 11375 of October 13, 1967, as supplemented in Department of Labor Regulations (41 CFR, Part 60).
- 2) The FUNDED PARTNER shall not use payment for construction, renovation, alteration, improvement, or repair of privately-owned property which would enhance the owner’s value of such property to the benefit of the owner except where permitted by law and by the State via AAA4.

## N. Contract Agreements in Excess of \$100,000

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

- 1) Clean Air Act, as amended [42 U.S.C. 7401]
- 2) Clean Water Act, as amended [33 USC 1251]
- 3) Federal Water Pollution Control Act, as amended [33 USC 1251 et seq]
- 4) Environmental Protection Agency Regulations [40 CFR, Part 29] [Executive Order 11738]
- 5) Benefits for Domestic Partners (Public Contract Code Section 10295.3).
- 6) California Civil Rights Laws (Public Contract Code Section 2010)

## O. Debarment, Suspension, and Other Responsibility Matters

The FUNDED PARTNER certifies to the best of its knowledge and belief, that it and its subcontractors [45 CFR 92.35]:

- 1) Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
- 2) Have not within a three-year period preceding this application 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 government entity (federal, State, or local) with commission of any of the offenses enumerated in part (2) of this certification;
- 4) Have not within a three-year period preceding this application had one or more public transactions (federal, State, or local) terminated for cause or default; and
- 5) FUNDED PARTNER shall report immediately to AAA4 in writing any incidents of alleged fraud and/or abuse by either FUNDED PARTNER or FUNDED PARTNER'S subcontractor. FUNDED PARTNER shall maintain any records, documents, or other evidence of fraud and abuse until otherwise notified by AAA4.
  - a. The FUNDED PARTNER agrees to timely execute any and all amendments to this Contract Agreement or other required documentation relating to their subcontractor's debarment/suspension status.

## P. Contract Agreement Authorization

- 1) If a public entity, the FUNDED PARTNER shall submit to AAA4 a copy of the resolution, order, or motion referencing the Contract Agreement number authorizing execution of this Contract Agreement. If a private nonprofit entity, the FUNDED PARTNER shall submit to AAA4 an authorization by the board of directors to execute this Contract Agreement, referencing this Contract Agreement number. For-Profit entities need to provide documented proof indicating the authorized signatory for the entity.

- 2) Documentation in the form of a resolution, order, motion, or authorization by the Board of the Funded Partner is required for the original and each subsequent amendment to this Contract Agreement. This requirement may also be met by a single resolution, order, motion, or authorization from the Board of the Funded Partner authorizing the Funded Partner Director or designee to execute the original and all subsequent amendments to this Agreement.

## Q. Provision of Services

- 1) The FUNDED PARTNER shall ensure the provision of services under this Contract Agreement, as specified by the Program Exhibit or the Scope of Work which are hereby incorporated by reference.
- 2) If a planned interruption of services occurs, the FUNDED PARTNER shall let AAA4 know at least 30 days before the event. If an unplanned interruption of service occurs, the FUNDED PARTNER shall immediately notify AAA4.

## R. Availability of Staff

- 1) The FUNDED PARTNER shall maintain adequate staff to meet all obligations under this Contract Agreement.
- 2) This staff shall be available to the AAA4 or the State for training and meetings which AAA4 may find necessary from time to time.

## S. UEI Number and Related Information

- 1) The Unique Entity Identifier changed from the DUNS Number to the Unique Entity ID (generated by SAM.gov) on April 4, 2022. The UEI number must be provided to AAA4 prior to the execution of this Agreement. FUNDED PARTNERS may register for a UEI number at <https://sam.gov/content/duns-uei>.
- 2) The FUNDED PARTNER must register the UEI number and maintain an "Active" status within the federal System for Award Management available online at: <https://www.sam.gov/portal/SAM/#1>.
- 3) If AAA4 or CDA cannot access or verify "Active" status the FUNDED PARTNER's UEI information, which is related to this federal subaward on the Federal Funding Accountability and Transparency Act Subaward Reporting System (SAM.gov) due to errors in the FUNDED PARTNER's data entry for its UEI number, the FUNDED PARTNER must immediately update the information as required.

## T. Administration

- 1) The FUNDED PARTNER shall be a public entity or private nonprofit entity. AAA4 must secure a waiver from CDA to award a Contract Agreement to a for-profit entity. If a private nonprofit entity, the FUNDED PARTNER shall be in good standing with the Secretary of State of California and shall maintain that status throughout the term of this Contract Agreement.
- 2) The FUNDED PARTNER shall ensure that any Subcontractors providing services under this Contract Agreement shall be of sound financial status. Any private, subcontracting corporation shall be in good standing with the Secretary of State of California and shall maintain that status throughout the term of the Contract Agreement.
- 3) Failure to maintain good standing by the FUNDED PARTNER shall result in any of the sanctions listed under the Contract Agreement Sanction Policy, Attachment B, until satisfactory status is restored.
- 4) The FUNDED PARTNER, its Subcontractors or Vendors acknowledge their employees, volunteers or Board or advisory members shall have no status as AAA4 employees, and shall have no authority to contract for, or on behalf of, or incur obligations either tangible or intangible on behalf of AAA4 without specific approval of AAA4's Executive Director.

## U. "S.W.A.G". or "Stuff we All Get"

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

## V. Advertising and Public Relations

To maintain the integrity of the CDA brand, CDA's Office of Communications must approve the use of CDA's logo on all advertising and public relations materials. This includes the use of CDA's logo by CDA staff, partners, contractors, subrecipients, and subcontractors on all media, press releases, and other materials. These are defined as:

**Media items:** may include print, radio, and television news, PSAs (public service announcements), advertisements, articles, blog posts, websites, and podcasts.

**How to Request Permission to Use CDA Logo:**

Send the request to AAA4 and CDA's Communications Team at [communications@aging.ca.gov](mailto:communications@aging.ca.gov). The CDA Communications team aims to review and approve submissions promptly, typically within 10 days.

## W. Copyrights/Trademarks

- 1) The AAA4 reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal or state government purposes the following:
  - a. The copyright/trademark in any work developed under a grant, sub grant or contract under a grant or sub grant.
  - b. Any rights of copyright/trademark to which a FUNDED PARTNER or subcontractor purchases ownership with grant funds.

## Article III. CONTRACT AGREEMENT REFERENCING

- A. The term (or period) of this Contract Agreement is July 1st through June 30 at which time the Contract Agreement expires, subject, however, to other circumstances as herein provided.

Contract Execution: This Contract Agreement must first be signed by the FUNDED PARTNER and returned to AAA4. The Agreement becomes fully executed when it is signed by the Executive Director of AAA4. The final date to submit a signed copy of this Contract Agreement to AAA4 is September 30<sup>th</sup>-or 90 days from the receipt of this Contract Agreement, whichever is first. A FUNDED PARTNER who fails to meet this deadline may be deemed non-responsive, and the Agreement may not be executed.

Commencement of Work: Should the FUNDED PARTNER or Subcontractor begin work in advance of receiving notice from AAA4 that the Contract Agreement is fully executed, that work may be considered as having been performed at risk as a mere volunteer and may not be reimbursed or compensated. Nevertheless, AAA4 has consistently reimbursed FUNDED PARTNERS for services rendered between July 1<sup>st</sup> and the date the Agreement is fully executed whenever said FUNDED PARTNER has acted in good faith and has abided by all the terms and conditions of their Contract Agreement.

- B. This Contract Agreement may be canceled or terminated by either party at any time with or without cause (See Article XVI. Termination).
- C. AAA4 reserves the right to non-renew Contract Agreements for years subsequent to the term of this Contract Agreement.

## Article V. FUNDS

Funding awarded under this Contract Agreement is made available under provisions of the Older Americans Act Amendments, Title III and/or Title VII, and California State appropriations, and has been approved by the AAA4 Governing Board

### A. Expenditure of Funds

- 1) The FUNDED PARTNER shall expend all funds received hereunder in accordance with this Contract Agreement.
- 2) Any reimbursement for authorized travel and per diem (i.e. travel, lodging, meals, and other incidentals) shall be at rates not to exceed those amounts paid by the State in accordance with Department of Personnel Administration's rules and regulations. Rates may be accessed on the State's website:

In State: Mileage/Per Diem (meals and incidentals)/Lodging

<https://www.calhr.ca.gov/employees/pages/travel-reimbursements.aspx>

Out of State: <http://hrmanual.calhr.ca.gov/Home/ManualItem/1/2201>

This is not to be construed as limiting the FUNDED PARTNER from paying any differences in costs, from funds other than those provided by AAA4, between the CalHR rates and any rates the FUNDED PARTNER is obligated to pay under other contractual agreements.

No travel outside the state of California shall be reimbursed unless prior written authorization is obtained from CDA via AAA4. [SCM 3.17.2.A(4)] The FUNDED PARTNER agrees to include these requirements in all contracts it enters into with subcontractors to provide services pursuant to this Contract Agreement.

- 3) AAA4 reserves the right to refuse payment to the FUNDED PARTNER or disallow costs for any expenditure, as determined by to be: out of compliance with this Contract Agreement, unrelated or inappropriate to contract activities, when adequate supporting documentation is not presented, or where prior approval was required, but was either not requested or not granted.

## B. Accountability of Funds

The FUNDED PARTNER shall maintain accounting records for funds received under the terms and conditions of this Contract Agreement. These records shall be separate from those for any other funds administered by the FUNDED PARTNER, and shall be maintained in accordance with Generally Accepted Accounting Principles and Procedures and the Office of Management and Budget Cost Principles.

## C. Unexpended Funds

Upon termination, cancellation, or expiration of this Contract Agreement, or dissolution of the entity, the FUNDED PARTNER shall return to AAA4 immediately upon written demand, any funds provided under this Contract Agreement, which are not payable for goods or services delivered prior to the termination, cancellation, or expiration of this Contract Agreement, or the dissolution of the entity.

## D. Availability of Funds

- 1) For the mutual benefit of both parties, and in order to avoid program and fiscal delays that would occur if this Contract Agreement were executed after that determination was made, it is understood between the parties that this Contract Agreement may have been written before ascertaining the availability of appropriations of State and/or federal funds.
- 2) This Contract Agreement is valid and enforceable only if sufficient funds are made available to CDA by the United States Government or by the Budget Acts of the appropriate fiscal years for the purposes of these programs. In addition, this Contract Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or to any statute enacted by the Congress that may affect the provisions, terms, or funding of this Contract Agreement in any manner.
- 3) In the event that insufficient funds are appropriated by the Legislature and/or Congress for any of these programs, this Contract Agreement may be terminated or amended to reflect any reduction in funds.
- 4) AAA4 reserves the right to increase and/or decrease funds available under this Contract Agreement to reflect any restrictions, limitations, or conditions as directed by the California Department of Aging.

## E. Reductions of Funds

- 1) If funding for any State fiscal year is reduced or deleted by the Department of Finance, Legislature, or Congress for the purposes of this Contract Agreement, AAA4 has the option to either:
  - a. Terminate the Contract Agreement pursuant to Article XVI. Termination, Section A.
  - b. Offer a Contract Amendment to reflect the reduced funding for this Contract Agreement.
- 2) In the event that AAA4 elects to offer a Contract Amendment, AAA4 reserves the right to determine (1) which Contract Agreements, if any, under this program shall be reduced and (2) some Contract Agreements may be reduced by a greater amount than others, and (3) the amount that any and or all of the Contract Agreements shall be reduced for the fiscal year.
- 3) AAA4 may reduce the amount of awarded funding if the FUNDED PARTNER is not meeting service objectives as listed in the scope(s) of services through the Sanction Policy (Attachment B), or if the spending pattern indicates that the FUNDED PARTNER will have unexpended funding at the end of the Agreement period. AAA4 will be the sole determinant of all reduction of AAA4 funding and will be reasonable in its determination.
- 4) The FUNDED PARTNER hereby expressly waives any and all claims against AAA4 for damages arising from the termination, suspension, or reduction of the funds provided by AAA4.
- 5) In the event of termination of this Contract Agreement for reduction, suspension or termination of funds to AAA4, the FUNDED PARTNER shall be compensated by AAA4 for completed services rendered prior to termination, subject to availability of funds, allowability of costs and audit verification.

## F. Increase of Awarded Funds

AAA4 may increase the amount of awarded funding, subsequent to execution of this Contract Agreement, if additional AAA4 funding becomes available. The FUNDED PARTNER may be required to increase the service objectives as listed in the scope(s) of service(s) to qualify for additional funding. Any such increase in funding will not be subject to a competitive process.

## G. Supplantment

AAA4 funds cannot be used to supplant (replace or take the place of) funds from non-Federal funding sources. State law prohibits recipients of federal funds from replacing state, local, or agency funds with federal funds. Existing funds for a project and its activities may not be displaced by federal funds and reallocated for other organizational expenses.

## H. Acknowledging AAA4 Funding

The FUNDED PARTNER shall acknowledge funding by AAA4 when resources are explained verbally or in writing, specifically in brochures, press releases, website acknowledgement, social media, etc., and shall acknowledge AAA4 by the use of signs on funded vehicle(s). Contact AAA4 for proper use of logo and specific guidelines.

## I. Interest Earned

FUNDED PARTNER may keep interest amounts up to \$500 per fiscal year for Local Government Agencies [45CFR 92.21(i)] and Non-Profit Organizations [45CFR 74.22 (l)], for administrative expenses. Interest earned on contract funds shall be identified as Non-Match Cash on Fiscal budgets.

## J. Program Income

- 1) Program Income must be reported and expended under the same terms and conditions as the program funds from which it is generated.
- 2) Program Income must be used to pay for current allowable costs of the program in the same fiscal year that the income was earned (except as noted in 4).
- 3) For Title III-B, III-C, III-D, III-E, VII Ombudsman, and VII Elder Abuse Prevention Programs: Program Income must be spent before the Contract Agreement funds (except as noted in 4) and may reduce the total amount of Contract Agreement funds payable to the FUNDED PARTNER.
- 4) For Title III-B, III-C, III-D, III-E, VII Ombudsman, and VII Elder Abuse Prevention Programs, if Program Income is earned in excess of the amount approved by AAA4 in the Contract Agreement budget, the excess amount may be deferred for use in the first quarter of the following Contract Agreement period, which is the last quarter of the federal fiscal year: July, August, and September.
- 5) If Program Income is deferred for use, it must be used by the last day of the federal fiscal year and reported when used.

- 6) Program Income may not be used to meet the matching requirements of this Agreement.
- 7) Program Income must be used to expand baseline services. Any voluntary contributions to the program must be used to expand the services for which the contributions were given and to supplement funds received under this Contract.

## K. Matching Contributions

- 1) Matching means cash or the value of Third-Party In-kind contributions and that portion of program and administrative costs funded (cash or Third Party In-kind) by the FUNDED PARTNER from other resources;
- 2) Other local resources include cash donations (not including program income) and cash generated from fundraising activities.
- 3) Non-matching contributions are local funding that does not qualify as matching contributions and/or is not being budgeted as matching contributions (e.g., Title V, overmatch, etc.)
- 4) Third-Party In-kind contributions are property or services provided to FUNDED PARTNER without charge, and which benefit a Contract Agreement-supported project or program. They must be contributed by non-federal parties;
- 5) Third-Party In-kind contributions count towards satisfying a matching requirement only where the payments would be otherwise allowable costs if FUNDED PARTNER were to pay for the costs;
- 6) Costs incurred by the FUNDED PARTNER must be verifiable from the records of the FUNDED PARTNER;
- 7) Costs must be allowable as outlined in the Office of Management and Budget (OMB) cost principles and may be cash or Third-Party In-kind contributions.

## L. Matching Requirements

- 1) The required minimum matching contributions for Title III-B and III-C Programs is ten percent (10%) of the combined total of Federal share and matching contribution. Program matching contributions for Title III-B and III-C can be pooled to meet the minimum requirement of ten percent (10%).

- a. Minimum matching requirements are calculated on net costs, which are total costs less program income, non-matching contributions, and State funds.
- 2) The required minimum program matching contributions for Title III-E is twenty-five percent (25%) of the combined total of Federal share and matching contribution. Program overmatch from Title III-B or III-C cannot be used to meet the program match requirement for III-E;
    - a. Minimum matching requirements are calculated on net costs, which are total costs less program income, non-matching contributions, and State funds.

## M. Indirect Costs

- 1) The maximum reimbursement amount allowable for indirect costs is 10% of FUNDED PARTNERS Modified Total Direct Costs (MTDC) (excluding Third Party In-kind contributions and nonexpendable equipment). Indirect costs exceeding the 10% maximum may be budgeted as in-kind for purposes of matching requirements. Funded Partners must receive prior approval from federal awarding agency prior to budgeting the excess indirect costs as in-kind.
- 2) FUNDED PARTNERS requesting reimbursement for indirect costs shall retain on file an approved indirect cost rate accepted by all federal awarding agencies or an allocation plan documenting the methodology used to determine the indirect costs.

## N. Financial Management Systems

The FUNDED PARTNER shall meet the following standards for its financial management systems, as stipulated in 45 CFR 92.20 (governmental) or 45 CFR, or Section 74.21 (non-profits) as well as those stipulated in [45CFR75.302] Financial management:

- 1) Financial Reporting
- 2) Accounting Records
- 3) Internal Control
- 4) Budgetary Control
- 5) Allowable Costs (written procedures)
- 6) Source Documentation
- 7) Cash Management (written procedures)
- 8) Complete Disclosure

## **Article IV. BUDGET AND BUDGET REVISION**

- A. Following approval by AAA4, the FUNDED PARTNER will be reimbursed for expenses only as itemized in the budget approved by AAA4 which is attached and hereby incorporated by reference.
- B. The Budget Summary must set forth in detail the reimbursable items, unit rates and extended total amounts for each line item. The FUNDED PARTNER budget shall include, at a minimum, the following items when reimbursable under this Contract Agreement.
- 1) Direct and overhead costs;
  - 2) Monthly, weekly, or hourly rates, as appropriate, and personnel classifications together with the percentage of personnel time to be charged to this Contract Agreement, as well as fringe benefits;
  - 3) Rental reimbursement items shall specify the unit rate, such as the rate per square foot;
  - 4) If purchase of equipment is a reimbursable item, the equipment to be purchased shall be specified;
  - 5) Any travel outside the State of California; and
  - 6) A detailed list of other operating expenses.
- AAA4 shall ensure that the FUNDED PARTNER shall submit a budget which shall be incorporated by reference into the Contract Agreement and will have, at a minimum, the categories listed in Section B above.
- C. The FUNDED PARTNER may make changes in budget allocations, subject to the following conditions:
- 1) The FUNDED PARTNER may transfer Contract Agreement funds from each line item within the approved program budget, without prior approval of AAA4, providing the amount of the change in that Cost Category does not exceed 20% OR \$2,500, whichever is greater.
- D. For Titles III-B, C, D, and E those six (6) Cost Categories are:
- 1) Personnel Costs
  - 2) Travel/Training
  - 3) Equipment
  - 4) Consultants
  - 5) Other Costs

6) Indirect Costs

Title C has two additional Cost Categories:

- 7) Catered Food
- 8) Raw Food

- i) The FUNDED PARTNER shall request prior approval from AAA4 for any TOTAL CHANGE in a Cost Category that is BOTH 20% or greater AND \$2,500 or more.
  - ii) The FUNDED PARTNER shall maintain a written record of all budget changes and clearly document Cost Category changes. The record shall include the date of the transfer, the amount, and the purpose and shall be submitted.
- E. The FUNDED PARTNER shall submit a proposed Budget Summary to AAA4 with this Contract Agreement or any other time as indicated and requested by AAA4.
- E. The final date to submit budget revisions is the last business day of the month of March of the Contract Agreement period unless otherwise specified by AAA4.

## **Article IV. Payment**

### **A. Monthly Reimbursement Payments**

- 1) The FUNDED PARTNER shall request payment monthly, on a reimbursement basis, and in arrears for actual expenses incurred, beginning with the July expenditure report.
- 2) The FUNDED PARTNER shall submit a Monthly Financial Report/Request for Funds (MFR) to be received at AAA4 by the 15<sup>th</sup> calendar day of each month.

### **B. Accruals**

Any accruals for any unpaid obligations at the end of the fiscal year are to be paid by FUNDED PARTNER within 30 days.

## **Article VIII. SUBCONTRACT AGREEMENTS**

- A. FUNDED PARTNER shall satisfy, settle, and resolve all administrative, programmatic, and fiscal aspects of the program(s), including issues that arise

out of any subcontracts, and shall not delegate or contract these responsibilities to any other entity. This includes, but is not limited to, disputes, claims, protests of award, or other matters of a contractual nature in accordance with Article II, Section E.

- B. FUNDED PARTNER shall retain the prime responsibility for all the terms and conditions set forth, including but not limited to, the responsibility for preserving the State's copyrights and rights in data in accordance with Article II Section D of this Contract Agreement, for handling property in accordance with Article XI of this Contract Agreement, and ensuring the keeping of, access to, availability and retention of records of Subcontractors in accordance with Article IX.
- C. The Subcontractor shall have no authority to contract for, or on behalf of, or incur obligations on behalf of the FUNDED PARTNER or AAA4.
- D. Copies of subcontracts shall be on file with the FUNDED PARTNER.
- F. The FUNDED PARTNER shall monitor the insurance requirements of its Subcontractors, in accordance with Article XV.
- G. The FUNDED PARTNER shall require all its Subcontractors to:
  - a. indemnify, defend and save harmless the FUNDED PARTNER, its officers, agents and employees from any and all claims and losses accruing to or resulting from any Subcontractors, suppliers, laborers and any other person, firm or corporation furnishing or supplying work services, materials or supplies in connection with any activities performed for which funds from this Contract Agreement were used; and
  - b. from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the subcontractor in the performance of this Contract Agreement.
- H. Where a program may be subcontracted to a for-profit organization, the FUNDED PARTNER should include in its contract with the for-profit entity a requirement for performance of a program specific audit of the subcontracted program by an independent audit firm.
- K. The FUNDED PARTNER shall immediately notify AAA4 of any changes to Subcontractors or subcontracted services within the term of this Contract Agreement.
- L. FUNDED PARTNER shall refer to the guidance in OMB Circular A-133 Section 210 in making a determination of whether a Subcontractor and/or Vendor

relationship exists. If a Vendor relationship exists, then the FUNDED PARTNER shall follow the Procurement requirements in the applicable OMB Circular.

## **Article IX. RECORDS**

- A. The FUNDED PARTNER shall maintain complete records (which shall include, but not be limited to, accounting records and tax returns, Contract Agreements, letters of agreement, insurance documentation in accordance with Article XV, Memorandums and/or Letters of Understanding, patient or client records, electronic files and non-profit board minutes) of its activities and expenditures hereunder in a form satisfactory to AAA4 and shall make all records pertaining to this Contract Agreement available for inspection and audit by AAA4 and the State or its duly authorized agents, at any time during normal business hours. All such records, including confidential records, must be maintained and made available by the FUNDED PARTNER: (a) until an audit has occurred and an audit resolution has been issued or unless otherwise authorized in writing by AAA4 Fiscal Department; (b) for such longer period, if any, as is required by applicable statute, by any other clause of this Contract Agreement, or by sections (B) and (C) of this Article, and (c) for such longer period as AAA4 deems necessary.
- B. If this Contract Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for the same periods as specified in section (A) above. The FUNDED PARTNER shall ensure that any resource directories and all client records remain the property of AAA4 upon termination of this Contract Agreement, and are returned to AAA4 or transferred to another FUNDED PARTNER as instructed by AAA4.
- C. In the event of any litigation, claim, negotiation, audit exception, or other action involving the records, all records relative to such action shall be maintained and made available until every action has been cleared to the satisfaction of AAA4 and so stated in writing to the FUNDED PARTNER.
- D. Adequate source documentation of each transaction shall be maintained relative to the allowability of expenditures reimbursed by AAA4 under this Contract Agreement. Source documentation includes, but is not limited to: vendor invoices, bank statements, cancelled checks, bank/credit card statements, contracts and agreements, employee time sheets, purchase orders, indirect cost allocation plans.

If the allowability of expenditures cannot be determined because records or documentation of the FUNDED PARTNER are non-existent or inadequate according to Generally Accepted Accounting Principles and Procedures, the

expenditures will be questioned in the audit and may be disallowed by AAA4 during the audit resolution process.

- E. The FUNDED PARTNER agrees that AAA4 or its delegates will have the right to review, obtain and copy all records pertaining to the performance of this Contract Agreement which shall include, but not be limited to, accounting records and tax returns, Contract Agreements, letters of agreement, insurance documentation in accordance with Article XV, Memorandums and/or Letters of Understanding, patient or client records, electronic files and non-profit board minutes. The FUNDED PARTNER agrees to provide AAA4 or its delegates with any relevant information requested within 10 working days of date of request. The FUNDED PARTNER shall permit AAA4 or its delegate's access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts and other material that may be relevant to a matter under investigation for the purpose of determining compliance with (GC 8546.7 et seq.). FUNDED PARTNER further agrees to maintain such records until a California Department of Aging audit of AAA4 has been completed and an audit resolution has been issued.
- F. After the authorized period has expired, confidential records shall be shredded and disposed of in a manner that will maintain confidentiality.

## **Article IX. REPORTS**

### **A. Technology Requirements**

FUNDED PARTNER must have at least one computer that will be used for data collection and fiscal reporting requirements with Windows 10 Professional operating system or newer; a processor of 2GZ or faster a continuous working DSL or better Internet connection; Microsoft Edge, Google Chrome or equivalent browser; Microsoft Office 2016 or newer.

### **B. Reports**

- 1) Reporting forms shall be reviewed for timeliness, completeness and accuracy of the information submitted by the FUNDED PARTNER'S appropriate staff prior to submission to AAA4. Incomplete forms shall be returned to the FUNDED PARTNER for completion. (In the event of changes in these forms, AAA4 shall advise the FUNDED PARTNER via written notice).

- 2) AAA4 and FUNDED PARTNER shall keep all reports on file, unless otherwise specified, in accordance with the program manual(s) or until the State deems the retention no longer necessary.

## C. Data Reporting

- 1) FUNDED PARTNERS providing services defined as Registered Services are required to collect and enter client level data in the AAA4 designated data collection application. Such client and service unit data entry must be completed by the 10<sup>th</sup> calendar day of each month during the Contract Agreement.
- 2) FUNDED PARTNERS providing services defined as Non-Registered Services are required to collect and submit personal client level data to AAA4 by the 10<sup>th</sup> calendar day of each month during the Contract Agreement. FUNDED PARTNERS may also be required to submit additional data at the request of AAA4.

Client level data is identified in the Registered and Non-Registered Services Minimum Client Data Requirements. FUNDED PARTNERS may develop client intake forms containing all AAA4 required data and that have been approved by AAA4.

## D. Fiscal Closeout Report

The FUNDED PARTNER shall submit a year-end fiscal closeout report for the period of July 1 – June 30. The fiscal closeout report shall be signed by a designated authorized signatory certifying the accuracy of the report. Final fiscal closeout report shall include actual accruals for any unpaid obligations; any corrections or adjustments necessary to bring report into agreement with balanced general ledger; adjustments for prepaid expenses to be partially credited to the current fiscal year and charged to the following fiscal year, such as insurance premiums. **The fiscal closeout report must be received by AAA4 as soon as possible, following the end of the fiscal year, but no later than July 15th. Any additional costs submitted after July 15th may not be reimbursed by AAA4.**

# Article IX. PROPERTY

## A. Property Guidelines

- 1) Unless otherwise provided for in this Article, property refers to all assets used in operation of this Agreement.
  - a. Property includes land, buildings, improvements, machinery, vehicles, furniture, tools, and intangibles, etc.
  - b. Property does not include consumable office supplies such as paper, pencils, printer cartridges, file folders, etc.
- 2) Property acquired under this agreement, which meets any of the following criteria is subject to the reporting requirements:
  - a. Has a normal useful life of at least one (1) year and has a unit acquisition cost of at least \$5,000 (a desktop or laptop setup, is considered a unit, if purchased as a unit).
  - b. All computing devices, regardless of cost (including but not limited to, workstations, servers, laptops, personal digital assistants, notebook computers, tablets, smartphones and cellphones).
  - c. All Portable electronic storage media, regardless of cost (including but not limited to, thumb/flash drives and portable hard drives).
- 3) Intangibles are property which lack physical substance but give valuable rights to the owner. Examples of intangible property include patents, copyrights, leases, and computer software. By contrast, hardware consists of tangible equipment (e.g., computer printer, terminal, etc.). Costs include all amounts incurred to acquire and to ready the intangible asset for its intended use. Typical intangible property costs include the purchase price, legal fees, and other costs incurred to obtain title to the asset.
- 4) The FUNDED PARTNER shall keep track of property purchased with funds from this Agreement, and submit to AAA4 annually with the Closeout, in electronic form, a cumulative inventory of all property furnished or purchased by the FUNDED PARTNER with funds awarded under the terms of this Agreement or any predecessor Agreement for the same purpose.

All contractors are required to submit a Program Property Inventory Certification annually, at the time of closeouts, to AAA4's FPFiscalandContracts TEAMS or as instructed by AAA4.

The FUNDED PARTNER shall record, at minimum, the following information when property is acquired:

- 1) Date acquired.

- 2) Item description (include model number).
- 3) CDA-issued tag number identifying it as State of California property.
- 4) Serial number (if applicable).
- 5) Purchase cost or other basis of valuation.
- 6) Fund source(s).

## B. Disposal of Property

- 1) Prior to disposal of any property purchased by the FUNDED PARTNER with funds from this Agreement or any predecessor Agreement, the FUNDED PARTNER must obtain approval from AAA4. Disposition, which includes sale, trade-in, discarding, or transfer to another agency may not occur until approval is received from the State and AAA4. The FUNDED PARTNER shall email to AAA4 the electronic version of the Request to Dispose of Property (CDA 248) to [fiscal@aagencyonaging4.org](mailto:fiscal@aagencyonaging4.org). AAA4 will then instruct the FUNDED PARTNER on disposition of the property. Once approval for disposal has been received from CDA and AAA4 has reported to CDA the Property Survey Report's (STD 152) Certification of Disposition, the item(s) shall be removed from the Contractor's inventory report. Property is not to be disposed of until both the CDA 248 and STD 152 have been approved by CDA. FUNDED PARTNER will be liable for repayment of purchase price of equipment if FUNDED PARTNER disposes of equipment without prior approval from CDA and AAA4.
  1. Once approval for disposal has been received, AAA4 will then instruct the FUNDED PARTNER on disposition of the property. including removing the item(s) from the FUNDED PARTNER's inventory report.
  2. The FUNDED PARTNER must remove all confidential, sensitive, or personal information from AAA4 property prior to disposal, including removal or destruction of data on computing devices with digital memory and storage capacity. This includes, but is not limited to magnetic tapes, flash drives, personal computers, personal digital assistants, cell or smart phones, multi-function printers, and laptops.

## C. Damage/Loss of Property

- 1) FUNDED PARTNER shall notify AAA4 within twenty-four (24) hours, by telephone, followed by written report, of any loss, damage, or theft of such property to AAA4 (if such damage has been a result of a crime, please notify the Police Department immediately). The FUNDED PARTNER shall prepare a written report to AAA4, with the following information:
  - a) An itemized list of the property lost, damaged, or stolen.
  - b) Date and description of the incident and/or copy of the Police Report.

- c) Description of disposal of damaged property, if applicable;
- d) Description of how property will be replaced and cost of replacement, if known.

With respect to all equipment utilized in conjunction with the Contract Agreement where AAA4 retains title as legal owner, the FUNDED PARTNER shall procure and maintain sufficient Property Insurance policy limits against any loss such as fire, theft, etc. as outlined in Article XV of this Contract Agreement. (2 CFR. Ch. 11 Section 215.31)

FUNDED PARTNER shall inform their insurance company of all newly acquired property purchased with AAA4 funds. In the event of a loss, if Property Insurance policy limits are insufficient, FUNDED PARTNER will be held accountable for the replacement of the AAA4 property.

- i. AAA4 reserves title to all AAA4 purchased or financed property not fully consumed in the performance of this Agreement, unless otherwise required by federal law or regulations or as otherwise agreed by the parties.
- ii. The FUNDED PARTNER shall exercise due care in the use, maintenance, protection, and preservation of such property during the period of the Agreement and shall assume responsibility for replacement or repair of such property during the period of the Agreement, or until the FUNDED PARTNER has complied with all written instructions from AAA4 regarding the final disposition of the property.
- iii. In the event of the FUNDED PARTNER's dissolution or upon termination of this Agreement, the FUNDED PARTNER shall provide a final property inventory to AAA4. AAA4 reserves the right to require the FUNDED PARTNER to transfer such property back to AAA4 or to another entity with the approval of CDA.
- iv. To exercise the above right, no later than one hundred twenty (120) days after termination of this Agreement or notification of the FUNDED PARTNER's dissolution, AAA4 will issue specific written disposition instructions to the FUNDED PARTNER.
- v. The FUNDED PARTNER shall use the property for the purpose for which it was intended under the Agreement. When no longer needed for that use, the FUNDED PARTNER shall use it, if needed, and with written approval of AAA4 for other purposes in this order:

1. For another CDA program providing the same or similar service.
2. For another CDA-funded program.

## D. Usage of Property

- 1) The FUNDED PARTNER may share use of the property and equipment or allow use by other programs, upon written approval from AAA4.
- 2) The FUNDED PARTNER shall not use equipment or supplies acquired under this Agreement with federal and/or State monies for personal gain or to usurp the competitive advantage of a privately-owned business entity.
- 3) If purchase of equipment is a reimbursable item, the equipment to be purchased will be specified in the Budget Summary.

## **Article XII. ACCESS**

The FUNDED PARTNER shall provide access to AAA4, the Bureau of State Audits, the Controller General of the United States, or any of their duly authorized federal and State representatives to any books, documents, papers, records and electronic files of the FUNDED PARTNER or subcontractor which are directly pertinent to this specific Contract Agreement for the purpose of audit, examination, excerpts, and transcriptions. The FUNDED PARTNER shall include this requirement in its subcontracts.

## **Article XIII. MONITORING, ASSESSMENT AND EVALUATION**

- A. Authorized AAA4 representatives shall have the right to monitor, assess, and evaluate the FUNDED PARTNER'S administrative, fiscal, and program performance pursuant to this Contract Agreement. Said monitoring, assessment, and evaluation may include, but is not limited to, administrative processes, policies and procurement, audits, inspections of project premises, inspection of food preparation sites, interviews of project staff and participants, and review of administrative documentation including nonprofit board minutes.
  - i. As a result of program monitoring, AAA4 reserves the right to offer technical assistance, cite errors or omissions, negotiate modification or revision of Scope of Service to assure all service requirements are met.

- B. The FUNDED PARTNER shall cooperate with AAA4 in the monitoring, assessment, and evaluation processes, which includes making any administrative, program and fiscal staff available during any scheduled process.
- C. The FUNDED PARTNER shall, upon request, make available client participation records and fiscal records which confirm all data contained in monthly performance and monthly financial reports (MFRs). The information shall be maintained in a neat and orderly manner. FUNDED PARTNER is responsible for maintaining supporting documentation including financial and statistical records, contracts, subcontracts or grant agreements, monitoring reports, and all other pertinent records until a California Department of Aging audit of AAA4 has been completed and an audit resolution has been issued.
- D. The FUNDED PARTNER shall demonstrate an ongoing mechanism for internal monitoring and evaluation of the program.
- E. The FUNDED PARTNER shall maintain formal procedures for obtaining the views of participants regarding service operations. Suggestions relative to program changes/modifications must receive appropriate consideration by FUNDED PARTNER. Acceptable methods for soliciting consumer input include, but are not limited to: suggestion box, project council/advisory group, client questionnaires, and interviews.

## **Article XIV. AUDIT/REVIEW REQUIREMENTS**

All Contract Agreements funded by AAA4, regardless of dollar amount or funding source (Federal and non-Federal), shall be subject to all of the following audit/review requirements:

### **A. Federal OMB Audit Requirements**

Federal OMB Audit Requirements (also known as Omni Circular or Super Circular) for Other Than For-Profit Contractors 45 CFR §75.501 requires that subrecipients that expend \$750,000 or more (from all Federal sources) in their fiscal year in Federal Awards shall have an annual single or program specific Audit in accordance with the OMB requirements. 45 CFR §75.514 sets forth the requirements for filing the Audit with the Federal Audit Clearinghouse (FAC). When filing with the FAC, FUNDED PARTNERS must also simultaneously submit 1 copy of the required Audit and forms to AAA4 as described in paragraph F of this section. The Catalog of Federal Domestic Assistance number (CFDA#) and related required information shall be included in the Audit. Audits shall be supplied by the due dates discussed in paragraph F of this section.

<b>CFDA NUMBER</b>	<b>Name</b>
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93.041	Older American Act Title VII- Elder Abuse Prevention
93.042	Older American Act Title VII- Ombudsman
93.043	Older American Act Title III- Preventive Health
93.044	Older American Act Title III- Supportive Services
93.045	Older American Act Title III- Congregate Meals
93.045	Older American Act Title III- Home-Delivered Meals
93.052	Older American Act Title III- Family Caregivers
93.053	Older American Act Nutrition Services Incentive Program

## B. Requirements for Non-Profit, For-Profit, Governmental and School District Contractors

- 1) In addition to the OMB requirements of paragraph B of this section, AAA4 requires FUNDED PARTNERS to provide annual Audited or Reviewed financial statement as follows:
  - a. Annual Audited financial statements and accompanying Auditor's report and notes are required from FUNDED PARTNERS when AAA4 has awarded contracts totaling \$150,000 or more for any twelve-month period. The Audited financial statements shall be prepared in accordance with Generally Accepted Accounting Principles (GAAP) and the Audit shall be performed by an independent Certified Public Accountant in accordance with Generally Accepted Auditing Standards (GAAS).
  - b. Annual Reviewed financial statements are required from FUNDED PARTNERS when AAA4 has awarded contracts totaling less than \$150,000, but more than \$25,000 for any twelve-month period. The Reviewed financial statements shall be prepared by an independent Certified Public Accountant in accordance with Statements on Standards for Accounting and Review Services issued by the AICPA. Audited financial statements may be substituted for Reviewed financial statements.
  - c. Should any deficiencies be noted in the Audit or Review FUNDED PARTNERS must submit an Action Plan with the Audit or Review detailing how the deficiencies will be addressed.
  - d. If management letters are issued by a Certified Public Accountant separate from the audit FUNDED PARTNERS are required to provide copies to AAA4 and submit corrective action plans to address findings or recommendations noted in the management letters.

## C. Term of the Audit or Review

The Audit or Review shall include the entire term of the Contract Agreement, along with a completed supplemental schedule 6F-SP-7A for each award received. If FUNDED PARTNER is not on the same fiscal year as AAA4, FUNDED PARTNER shall provide AAA4 with a reconciliation and supplementary information, prepared by the Certified Public Accountant performing the Audit or Review, which would be necessary/sufficient to tie the reports to the Contract Agreement term.

## D. Termination

If the Contract Agreement is terminated for any reason during the contract period, the Audit or Review shall cover the entire period of the Agreement for which services were provided.

## E. Submittal and Due Dates for Audits or Reviews

FUNDED PARTNERS shall provide to AAA4 one copy of the Audit or Review, as required in this section, due six months following the end of FUNDED PARTNER'S fiscal year. Audit or Review shall be sent electronically to AAA4 at: [fiscal@agencyonaging4.org](mailto:fiscal@agencyonaging4.org), or mailed to:

Area 4 Agency on Aging Attn: Fiscal Department 1401 El Camino Ave- STE 400 Sacramento, California, 95815 Email: <a href="mailto:fiscal@agencyonaging4.org">fiscal@agencyonaging4.org</a>
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## F. Request for Extension of Due Date

FUNDED PARTNERS may request an extension of the due date for the Audit or Review in writing and sent electronically to AAA4 at: [fiscal@agencyonaging4.org](mailto:fiscal@agencyonaging4.org). Such request shall include the reason for the delay and a specific date for the extension

## G. Audit Costs

The costs incurred in completing this requirement may be charged as follows:

- 1) FUNDED PARTNERS required to obtain a Single Audit in accordance with 45 CFR §75.501 may charge a proportionate share of the cost to the AAA4 grant.
- 2) The cost of Standard Financial Audits and Reviews may not be charged to the AAA4 grant.

## H. Audit Access/Review

- 1) AAA4 shall have access to all audit reports and supporting work papers of the FUNDED PARTNER and the option to perform additional work, as needed, including, but not limited to accounting records, vendor invoices, bank statements, cancelled checks, bank/credit card statements, contracts and agreements, employee timesheets, purchase orders, and indirect cost allocation plans.
- 2) Where the FUNDED PARTNER engages an independent Certified Public Accountant, the FUNDED PARTNER shall provide a clause:
  - a. Permitting access by allowing AAA4 the right to review and to copy any records with supporting documentation pertaining to the Performance of this Contract Agreement; and,
  - b. Maintaining such records for a period of three (3) years after final payment under this Contract Agreement or until a California Department of Aging (CDA) audit of AAA4 has been completed, whichever is longer.
- 3) FUNDED PARTNER shall cooperate with, and participate in, any further audits which may be required by AAA4 or CDA; including financial and compliance audits; and may include economy and efficiency and/or program results audits.
- 4) Failure to comply with these Audit/Review Requirements may exclude FUNDED PARTNER from eligibility for One-Time-Only (OTO) funding and other sanctions may also be imposed.

## **Article XV. INDEMNIFICATION AND HOLD HARMLESS, INSURANCE OR SELF-INSURANCE**

### A. Indemnification

To the fullest extent permitted by law, each of the Parties shall mutually indemnify, defend and hold harmless each of the other Parties, their respective governing boards, officers, directors, officials, employees, and authorized volunteers, agents, and contractors from and against any and all claims, demands, actions, losses, liabilities, damages, and all expenses and costs incidental thereto (collectively "Claims"), including cost of defense, settlement, arbitration, and reasonable attorneys' fees, resulting from injuries to or death of persons, including but not limited to employees of either Party hereto, and damage to or destruction of property or loss of use thereof, including but not limited to the property of either Party hereto, arising out of, pertaining

to, or resulting from the acts or omissions of their respective governing boards, officers, directors, officials, employees, authorized volunteers, agents, or contractors.

It is the intention of the Parties that the provisions of this indemnity be interpreted to impose on each Party responsibility to the other for the acts and omissions of their governing boards, officers, directors, officials, employees, authorized volunteers, agents or contractors. It is also the intention of the Parties that, where comparative fault is determined to have been contributory, principles of comparative fault will be followed and each Party shall bear the proportionate cost of any Claims attributable to the fault of that party, its governing board, officers, directors, officials, employees, authorized volunteers, agents, or contractors.

This indemnity shall not be limited by the types and amounts of insurance or self-insurance maintained by the Parties.

Nothing in this Indemnity shall be construed to create any duty to, any standard of care with reference to, or any liability or obligation, contractual or otherwise, to any third party.

The provisions of this Indemnity shall survive the expiration or termination of the Agreement.

## B. Insurance or Self-Insurance

Prior to commencement of any work under this Contract Agreement, the FUNDED PARTNER shall provide for the term of this Contract Agreement, evidence of insurance. If coverage is not in place by commencement of services, any services provided will not be reimbursed for the period when coverage is not in place.

Each party, at its sole cost and expense, shall carry insurance – or self-insure – its activities in connection with this Agreement, and obtain, keep in force and maintain, insurance or equivalent programs of self-insurance, for general liability, volunteer accident, workers compensation, property, professional liability, including privacy & security liability, crime, and business automobile liability adequate to cover its potential liabilities hereunder. FUNDED PARTNER agrees to provide the other thirty (30) days' advance written notice of any cancellation, termination or lapse of any of the insurance or self-insurance coverages. Failure to maintain insurance as required in this Agreement is a material breach of contract and may be grounds for termination of the Agreement.

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

Evidence of insurance or letters of self-insurance shall be in a form and content acceptable to AAA4. Insurance obtained through commercial carriers shall meet the following requirements:

- 1) The Certificate of Insurance shall provide that the insurer will not cancel the insured's coverage without thirty (30) days prior written notice to AAA4, or ten (10) days written notice if the reason for cancellation is for non-payment of insurance premium.
- 2) AAA4 shall be named the certificate holder and AAA4's address must be listed on the certificate.
- 3) Each certificate or letter of self-insurance must reference the correct Contract Agreement number as it relates to the appropriate fiscal year.
- 4) The Certificate of Insurance shall provide that AAA4 is included as additional insured, but only insofar as the operation under this Contract Agreement is concerned. Errors and Omissions coverage is exempt from this requirement.

A copy of each appropriate certificate of insurance, referencing this Contract Agreement number, or letter of self-insurance, shall be submitted to AAA4 with this Contract Agreement. Required insurance coverage includes:

- 1) **Commercial General Liability** of not less than \$1,000,000 per occurrence for bodily injury and property damage combined. Higher limits may be required by CDA in cases of higher than usual risks. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal and advertising injury, and liability assumed under an insured contract—at a minimum, coverage must be extended to all volunteers. Other policies that cover volunteers include Worker's Compensation and Volunteer Accident Insurance. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to FUNDED PARTNER'S limit of liability. If the policy contains an annual aggregate, this shall be at least double the per occurrence limit.
- 2) **Automobile Liability** with limits of not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of an automobile including owned, hired, and non-owned autos (including non-owned auto liability for volunteers and paid employees providing services supported by this Contract Agreement). If applicable, or unless otherwise amended by future regulation, FUNDED PARTNER or subcontractors shall comply with the Public Utilities Commission (PUC) General Order No. 115-F which requires higher levels of insurance for charter-party carriers of passengers and is based on seating capacity as follows:

- (a) \$750,000 if seating capacity is under 8
  - (b) \$1,500,000 if seating capacity is 8-15
  - (c) \$5,000,000 if seating capacity is over 15
- 3) **Workers' Compensation and Employer's Liability** coverage for all its employees who will be engaged in the performance of the Contract Agreement, including special coverage extensions where applicable (Labor Code Section 3700).
- 4) **Errors and Omissions or Professional Liability** of not less than \$1,000,000 Combined Single Limit per occurrence is required as it appropriately relates to the services rendered. The entity providing Ombudsman services must be insured for activities including, but not limited to, investigation of patient complaints.

The insurance provided herein shall be in effect at all times during the term of this Contract Agreement. In the event the insurance coverage expires during the term of this Contract Agreement the FUNDED PARTNER agrees to provide AAA4, at least thirty (30) days prior to the expiration date, a new certificate of insurance evidencing insurance coverage as provided herein for a period not less than the remaining Contract Agreement term or for a period not less than one (1) year. **In the event FUNDED PARTNER fails to keep in effect at all times said insurance coverage, AAA4 may, in addition to any other remedies it may have, terminate this Contract Agreement.**

AAA4 may determine that a FUNDED PARTNER may be considered "high risk" as described in 2 CFR 200.519 Criteria for Federal Program Risk for local governments and 45 CFR 74.14 for non-profits. If such a determination is made, the FUNDED PARTNER may be subject to special conditions or restrictions.

## **Article XVI. TERMINATION**

Either party may terminate this Contract Agreement, in whole or in part, with or without cause. At AAA4's discretion, sanctions may be imposed leading up to or in lieu of termination; refer to the Sanction Policy, Attachment B, for further clarification.

### **A. Termination without Cause (Cancellation)**

AAA4 may terminate performance of work under this Agreement, in whole or in part, without cause. If the termination is due to insufficient availability of funds, then the Notice of Termination shall be effective no less than thirty (30) days from the delivery of the Notice to the FUNDED PARTNER. Otherwise, the Notice of Termination shall

be effective no more than ninety (90) days from the delivery of the Notice to the FUNDED PARTNER.

## B. Termination for Cause

AAA4 may terminate performance of work under this Agreement, in whole or in part, for cause. If the grounds for termination are due to threat of life, health or safety of the public, then the termination shall take effect immediately. Otherwise, the Notice of Termination shall be effective no less than thirty (30) days from the delivery of the Notice to the FUNDED PARTNER. The grounds for termination for cause shall include, but are not limited to, the following:

- 1) A threat to life, health or safety of the public;
- 2) A violation of the law;
- 3) A failure to comply with any condition of this Contract Agreement, including but not limited to audit, insurance and reporting requirements;
- 4) Inadequate program performance or failure to make progress so as to endanger performance of this Contract Agreement;
- 5) Evidence that the FUNDED PARTNER is in such an unsatisfactory financial condition as to endanger performance of this Contract Agreement;
- 6) Delinquency in payment of taxes or payment of costs for performance of this Contract Agreement in the ordinary course of business;
- 7) Appointment of a trustee, receiver, or liquidator for all or a substantial part of the FUNDED PARTNER'S property, or institution of bankruptcy, reorganization, arrangement of liquidation proceedings by or against the FUNDED PARTNER;
- 8) Service of any writ of attachment, levy of execution, or commencement of garnishment proceedings against the FUNDED PARTNER'S assets or income;
- 9) The commission of an act of bankruptcy;
- 10) Finding of debarment or suspension (see Article II, Section K); and,
- 11) The FUNDED PARTNER'S organizational structure has materially changed.

## C. Voluntary Termination by the FUNDED PARTNER

Upon prior consent from AAA4's Executive Director, the FUNDED PARTNER may voluntarily negotiate a termination of this Contract Agreement with or without cause prior to its expiration date, and in that case the Notice of Termination shall be effective no less than thirty (30) days from the delivery of the Written Notice to AAA4. If appropriate and reasonable attempts to obtain prior consent from AAA4's Executive Director have failed, then no less than thirty (30) days prior to the anticipated last day of service, the FUNDED PARTNER shall submit a formal, written notification to AAA4 of their intent to cease the provision of services under this Agreement.

## D. Notice of Termination

A Notice of Termination may be submitted by either party and shall contain all of the following:

- 1) The scope of the termination (e.g., full or partial);
- 2) The final date services will be rendered (or are planned to be rendered);
- 3) The reason a decision to cease services has been made;
- 4) Any special requirements or requests regarding the termination itself;
- 5) A copy of AAA4's Appeal Process (if the Notice is submitted by AAA4).

In the event of a partial termination, the parties agree the remainder of this Contract Agreement shall be deemed to remain in effect and is not void.

After a Notice of Termination has been delivered to the FUNDED PARTNER by AAA4 or after such Notice has been submitted to AAA4 by the FUNDED PARTNER, then a contract closeout process will be initiated.

## Article XVII. CLOSEOUT PROCESS

Upon the discontinuation of this Contract Agreement and except as otherwise directed by AAA4, the FUNDED PARTNER agrees to:

- 1) Cooperate with AAA4 in the development of a Transition Plan which includes but is not limited to:
  - a) Notifying affected clients.
  - b) Identifying alternative resources.
  - c) Directing agencies that referred individuals to the impacted program/service.
  - d) Assessing the needs of affected clients and prioritizing them.
  - e) Obtaining immediate access to client contact information.
  - f) A detailed description of how clients will be transitioned.
- 2) Stop the provision of services under this Contract Agreement on the date specified by AAA4.
- 3) Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of work under the Transition Plan;
- 4) Terminate all orders and subcontracts, to the extent they relate to the discontinuation of services under this Contract Agreement;

- 5) Deliver to AAA4, in the manner, at the time, and to the extent directed by AAA4, the rights, titles and interests of the FUNDED PARTNER as applicable to this Contract Agreement;
- 6) Transfer title to AAA4 and deliver in the manner, at the times and to the extent directed by AAA4:
  - a. the fabricated or non-fabricated parts, work in process, completed work and supplies, equipment and other materials produced as a part of or acquired in connection with the performance of the work under this Contract Agreement.
  - b. the completed or partially completed plans, drawings, information and other property produced as a part of or acquired in connection with the performance of the work under this Contract Agreement.
- 7) If the discontinuation of services is due to a contract termination, then in addition to the items listed above the FUNDED PARTNER shall also submit to AAA4 a final request for funds, as described by AAA4. All costs to AAA4 shall be deducted from any sum due the FUNDED PARTNER under this Contract Agreement, and the balance, if any, shall be paid to the FUNDED PARTNER. Upon failure of the FUNDED PARTNER to submit a within a prescribed deadline, AAA4 may, on the basis of information available, pay the amount, if any, which it determines due to the FUNDED PARTNER.

## **Article XVIII. REMEDIES**

The FUNDED PARTNER agrees that any remedy provided in this Contract Agreement is in addition to and not in derogation of any other legal or equitable remedy available to AAA4 as a result of breach of this Contract Agreement by the FUNDED PARTNER, whether such breach occurs before or after completion of the project.

## **Article XIX. DISSOLUTION OF ENTITY**

The FUNDED PARTNER shall notify AAA4 immediately of any intention to discontinue existence of the entity or to bring an action for dissolution.

## **Article XX. AMENDMENTS, REVISIONS, WAIVERS OR MODIFICATIONS**

- 1) No amendments, revisions, waivers or modifications of any of the terms of this Contract Agreement shall be valid unless made in writing and approved as required. No oral understanding or agreement not incorporated in this Contract Agreement is binding on any of the parties.
- 2) Should either party during the term of this Contract Agreement desire a revision, waiver or modification in this Contract Agreement, such revision, waiver or modification shall be proposed in writing to the other party. The other party shall accept in writing within thirty (30) days of receipt of request or it shall be considered rejected, except those revisions, waivers or modifications put into effect under section (C), below. Once accepted, such revisions, waivers, or modifications shall require a Contract Agreement amendment through AAA4's amendment process to provide for the change mutually agreed to by the parties. The revision, waiver, or modification is not effective until the appropriate AAA4 processes have been completed.
- 3) AAA4 reserves the right to revise, waive, or modify the Contract Agreement to reflect any restrictions, limitations, or conditions enacted by Congress or the Legislature or as directed by the Department of Aging.
- 4) An amendment is required to change the FUNDED PARTNER'S name as listed on this Contract Agreement. Upon receipt of legal documentation of the name change, AAA4 will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
- 5) Requests for amendments, revisions, waiver or modifications affecting this Contract Agreement should be submitted via email to [contracts@agencyonaging4.org](mailto:contracts@agencyonaging4.org).

## **Article XXI. NOTICING**

- 1) Any notice to be given hereunder by either party to the other may be effected by personal delivery in writing or by registered or certified mail, overnight mail, postage prepaid, return receipt requested, or overnight mail, provided FUNDED PARTNER retains receipt, and shall be communicated as of actual receipt.
- 2) Notices mailed to AAA4 shall be addressed to: Area 4 Agency on Aging, 1401 El Camino Avenue, 4th Floor, Sacramento, CA 95815. Notices mailed to the FUNDED PARTNER shall be to the address indicated on the coversheet of this Contract Agreement.

- 3) The FUNDED PARTNER shall present the name of its contact for this Contract Agreement to AAA4. The FUNDED PARTNER shall immediately notify AAA4, in writing, of any change of its contacts or address.
- 4) Either party may change its address by written notice to the other party in accordance with this Article.

## **Article XXII. APPEAL PROCESS**

In the event of a Contract Agreement dispute or grievance regarding the terms and conditions of this Contract Agreement, both parties shall abide by the Appeals Procedure.

- 1) The FUNDED PARTNER shall continue with the responsibilities under this Contract Agreement during any dispute.
- 2) FUNDED PARTNER shall first discuss the matter informally with appropriate AAA4 staff. If the matter cannot be resolved, then the FUNDED PARTNER may, within fifteen (15) working days of the failed attempt, submit a written complaint to AAA4's Executive Director. The complaint must include:
  - a) A complete description of the issue(s) under dispute or protest;
  - b) The FUNDED PARTNER'S legal authority/basis for disputing or protesting the issue(s); and
  - c) A remedy the FUNDED PARTNER finds acceptable.

AAA4's Executive Director shall, within fifteen (15) working days after receipt of the FUNDED PARTNER'S written complaint, make a determination on the matter(s) and release a written decision including the reasons therefore. All written communication shall be pursuant to Article XX of this Contract Agreement.

- 3) If FUNDED PARTNER disagrees with the decision of AAA4's Executive Director, then the FUNDED PARTNER may, within ten (10) working days from the date of receipt of said decision, submit a written appeal to AAA4's Governing Board. The appeal must:
  - a) State the reason(s) the decision is unacceptable;
  - b) Include a copy of the original complaint or protest;
  - c) Include a copy of AAA4's Executive Director's decision; and

d) Provide all supporting document.

Appeal costs or costs associated with any court review are not reimbursable.

## **Article XXIII. GRIEVANCES**

FUNDED PARTNER must establish a written grievance process for reviewing and attempting to resolve complaints of clients. At a minimum, the process shall include all of the following:

- 1) Time frames within which a complaint will be acted upon;
- 2) Written notification to the complainant of the results of the review, including a statement that the complainant may appeal to AAA4 if dissatisfied with the results of the FUNDED PARTNER'S review;
- 3) Confidentiality provisions to protect the complainant's right to privacy. Only information relevant to the complaint may be released to the responding party without the individual's consent.
- 4) FUNDED PARTNER shall post notification of the grievance process in visible and accessible areas and in the primary languages of non-English speaking participants if more than 5% speak a language other than English. Homebound individuals shall be informed of the grievance process verbally and in writing. (Title 22 CFR § 7400)
- 5) At a minimum, the process shall include all of the following:
  - a) Timeframes within which a complaint will be acted upon.
  - b) Written notification to the complainant of the results of the review, including a statement that the complainant may appeal to AAA4 if dissatisfied with the results of the FUNDED PARTNER'S review.
  - c) Confidentiality provisions to protect the complainant's rights to privacy. Only information relevant to the complaint may be released to the responding party without the client's consent.

## **Article XXIV. INTERAGENCY COORDINATION/COOPERATION**

FUNDED PARTNER shall demonstrate efforts to initiate cooperative working agreements with other community agencies (i.e., ADRCs) providing services to older persons to establish a comprehensive, coordinated system of services that will facilitate access to, and utilization of, all existing services while reducing the incidence of service duplication. Acceptable methods of cooperation include, but are not limited to, letters of agreement, co-location and membership in interagency organizations. Services, whenever possible, must be provided at/or coordinated with focal points.

## **Article XXV. DIASTER ASSISTANCE PLANNING**

As part of the area-wide disaster assistance planning, FUNDED PARTNER shall:

- 1) Designate an Emergency Services Coordinator and Alternate and submit VIA Department Contact List.
- 2) Develop and maintain an Agency Disaster Plan (ADP). A template for a plan is available at <http://www.ready.gov>. The plan should be reviewed annually, revised as needed, and submitted to AAA4 as revisions are made.

For a complete list of items that need to be covered within the ADP, please refer to the Disaster Assistance Policy, Attachment D.

## **Article XXVI. PERSONNEL**

AAA4 will not reimburse salary costs associated with one staff member who is being supervised by, or subordinate to, a family member. In the event that family members are co-equal within an agency, or when one family member is paid and one is not, sufficient internal controls must exist in order to prevent possible conflict of interest or financial improprieties.

## **ATTACHMENT A- PERFORMANCE STANDARDS**

These performance standards outline Area 4 Agency on Aging's (AAA4's) expectations as to the fulfillment of the scope(s) of service contained in this contractual agreement. Minimally, these standards apply to the primary scope(s) for each service category as measured by the corresponding unit of service (e.g., meals, one-way rides, hours, etc.). If a service category is being provided in multiple counties, both county-level and aggregate performance shall be considered.

### **(A.) Classifications**

For the purposes of monitoring and evaluation, performance levels shall be classified as follows:

- Above-Range Performance occurs when the actual number of service units provided is equal to or greater than 125% of the scope of service for a given time period.
- Within-Range Performance occurs when the actual number of service units provided is between 85% and 125% of the scope of service for a given time period.
- Below-Range Performance occurs when the actual number of service units provided is equal to or less than 85% of the scope of service for a given time period.

### **(B.) Regular Monitoring Process by AAA4 Staff**

AAA4 staff collect and review performance data on a monthly basis. If AAA4 staff deem an issue has the potential to escalate into a compliance, performance or quality assurance problem unless some type of intervention takes place, then as soon as possible AAA4 staff will request the Funded Partner take corrective/preventative measures (see Part D below). Such measures will be commensurate with the severity of the situation, will be made in writing and will require a written response by a designated date.

### **(C.) Regular Evaluation Process by AAA4 Committee**

AAA4's Joint Program Evaluation Committee (JPEC) has primary responsibility for evaluating program performance. JPEC receives a comprehensive performance report from AAA4 staff on a quarterly basis. In addition, all pending requests, recommendations,

corrective actions and sanctions are reported to JPEC until such matters have been resolved.

Whenever JPEC convenes, new or further action may be suggested by staff before or during the meeting. No JPEC member is expected or otherwise obligated to approve a staff suggestion; JPEC may move an alternate action or no action at all. Any JPEC member may pose questions to staff and to designated representatives of a Funded Partner prior to casting a vote; however, failure of a Funded Partner to furnish a designated representative shall not, in and of itself, constitute sufficient cause to delay action by JPEC.

**(D.) Potential Corrective/Preventative Measures**

In an effort to achieve a more acceptable outcome than is otherwise anticipated, JPEC may recommend the AAA4 Governing Board take one or more corrective or preventative measures, including but not limited to:

- 1) Take No Action at this Time
- 2) Require a Special Report  
In this context, the term Special Report means a verbal presentation and/or a written statement to be provided by the Funded Partner at a specified time and place.
- 3) Adjust the Scope of Service  
A change of Scope must be reflected in the Contractual Agreement. If the contract has already been executed, then the change can be made during the annual renewal process or through a Contract Amendment. In any event, AAA4 and Funded Partner administrative deadlines and resources should be considered.
- 4) Place the Program(s) on Collaborative Oversight Status  
In this context, the term Collaborative Oversight means: a) JPEC will receive monthly updates from AAA4 Staff on the Funded Partner's performance until JPEC deems doing so is no longer necessary, and b) the Funded Partner's governing body will be notified of the reason for this action. The purpose of Collaborative Oversight is to help the Funded Partner meet performance standards without the need to consider a formal sanction.
- 5) Consider Formal Sanctions  
A sanction may include Probation, Withholding Funds, Suspension, a Funding Reduction or Contract Termination. As long as any formal sanction remains in place, the affected party is not in Good Standing with AAA4 and, consequently, the affected party is not eligible to receive one-time-only funding or funding augmentations and may not be able to renew a contractual agreement with AAA4 until the issue is resolved.  
{See AAA4 Sanction Policy for details}

In cases where the performance of a Funded Partner has been adversely affected by extenuating or unforeseen circumstances, AAA4 staff may suggest and/or JPEC may recommend that customary measures be lessened or foregone. Such cases include but are not limited to:

- No prior history of performance problems.
- A delay in AAA4's ability to reimburse a Funded Partner in a timely fashion due to corresponding delays in the federal or state budget processes;
- A substantial reduction or loss of revenue from AAA4 or from other sources;
- A significant disruption to a program's staff or volunteers due to a severe illness, condition or injury or due to a death;
- A disaster or emergency which obstructs the delivery of the service; or
- Another reason of comparable circumstance.

## **ATTACHMENT B- SANCTION POLICY**

The purpose of this Sanction Policy is to describe the formal methods Area 4 Agency on Aging (Agency) may use in seeking to assure that programs and services under its purview comply with all applicable laws, regulations, requirements and expectations. This Policy supersedes all prior Agency Bulletins, Notices, Memorandums and other communications which address the imposition of sanctions. This Policy shall be referenced in and included with agreements between AAA4 and its subcontractors as appropriate. This Policy shall also apply to programs and services administered directly by AAA4 itself.

### **A. SANCTION POLICY OBJECTIVES**

The basic objective of this Sanction Policy is to establish steps that can be implemented when less formal options are not deemed adequate to sufficiently protect the interests of the public, other subcontractors, the Agency or the funding sources involved. More specifically, the objectives are to:

1. Protect the interests of the recipients and beneficiaries of Agency-funded programs and services who are primarily older adults and family caregivers;
2. Assure programs and services are being administered efficiently and are also meeting quality/performance standards;
3. Hold subcontractors accountable to mutually agreed upon terms and conditions;
4. Preserve public funds through sound fiscal and legal practices; and,
5. To the extent practicable, prevent claims, suits or losses against the Agency.

### **B. CIRCUMSTANCES THAT MAY LEAD TO SANCTIONS**

Where less formal options have failed to remedy a matter or are otherwise not reasonably available, circumstances that may lead to the imposition of a sanction include but are not limited to:

1. Failure to comply with a corrective/preventative action imposed by Agency staff.

2. Failure to comply with routine data, contract or fiscal reporting procedures set by the Agency.
3. Failure to comply with any other Agency-specific term, condition, regulation or policy.
4. The provision of programs or services in a manner that is counter to the stated intent of the Agency, of a funding source or of a governmental body.
5. Failure to comply with any formal or informal action approved by the Agency's Governing Board.
6. Failure to comply with a term, condition, regulation or policy established by or through local, state or federal governmental bodies.
7. Evidence of a pattern of apparent disregard for the authority of the Agency, of funding sources or of a governmental body.
8. Evidence of such an unsatisfactory legal action or financial condition as to endanger fulfillment of an Agency agreement.
9. A violation of law.
10. Any other failure to perform in good faith.

#### C. POTENTIAL SANCTIONS

The Agency has identified five types of sanctions.

1. Probation  
Probation means the Agency is choosing to temporarily monitor and evaluate a program or service more stringently.
2. Withholding Funds  
When used as a sanction, the withholding of funds means the Agency is choosing to temporarily delay the honoring of a request for funds from a program or service.
3. Suspension  
A suspension means the Agency is choosing to temporarily withdraw the authority of a program or service to obligate and/or expend funds either in whole or in part. The Agency shall specify allowable costs resulting from obligations properly incurred before the effective date of the suspension and not in anticipation of it. A final determination of allowable costs will be made upon closeout of the affected program or service and will be subject to audit.
4. Reducing Funds  
When used as a sanction, a reduction in funding means the Agency is choosing to lower the amount of funds previously awarded. Ordinarily, reductions would be applied within the agreement period which typically

does not exceed one (1) state fiscal year. Nevertheless, when an agreement is subject to renewal, reductions may be carried forward into the subsequent agreement period.

5. Contract Termination

When used as a sanction, contract termination means that prior to the end of the agreement period, the Agency is choosing to rescind the authority of a program or service to obligate and/or expend funds. A termination requires completion of a transition plan describing how the needs of existing and prospective clients would be addressed.

In addition to the sanctions identified in this section, the Agency may also use any other remedies as may be legally available and appropriate.

D. SPECIAL CIRCUMSTANCES

In cases where a program or service has been adversely affected by extenuating or unforeseen circumstances, Agency staff may suggest and/or JPEC may recommend that a sanction be lessened or waived. Such cases include but are not limited to:

- No prior history of compliance difficulties.
- A substantial reduction or loss of revenue from the Agency or from other sources;
- A significant disruption to key staff or volunteers due to a severe illness, condition or injury or due to a death; or
- Another reason of comparable circumstance.

E. SANCTION PROCESS

By definition, the imposition of a formal sanction nullifies the Good Standing of the affected program or service with respect to the Agency. Programs or services that are not in Good Standing are not eligible to receive one-time-only funding or funding augmentations.

Barring deliberate Governing Board action to the contrary, the Agency would neither execute nor renew an agreement with a program or service that is not in Good Standing.

1. Imposing Sanctions

Ordinarily, Agency staff would present a matter to the Joint Program Evaluation Committee (JPEC) for review and discussion. JPEC would then make a recommendation for the Agency's Governing Board to consider. If it is not practical to convene a meeting of JPEC or if the matter requires immediate intervention, then the Agency's Executive Director is authorized to

impose Probation, to Withhold Funds and/or to Suspend the activities of a program or service without prior consent from the Agency's Governing Board.

## 2. Formal Notifications

Upon imposition of a sanction, the following notifications shall be made:

- a. The person(s) who has/have primary oversight of the program or service in question shall receive a written sanction notice from the Agency.
- b. With respect to each person in section "a." above, his/her immediate supervisor shall receive a written sanction notice from the Agency.
- c. Each of the members of the Agency's Joint Program Evaluation Committee (JPEC) shall be notified of the action.
- d. The Agency's Advisory Council Chair and Governing Board Chair shall be notified of the action, and the full membership of their respective bodies shall be notified during their next, regularly scheduled meeting.

## 3. Removing Sanctions

Except in the case of a Contract Termination, the Agency shall specify in writing each of the following:

- a. A description of the sanction that is being imposed.
- b. The date the sanction takes effect.
- c. The reason(s) the sanction is being imposed.
- d. The condition(s) which must be met for the Agency to consider removing the sanction and the deadline for meeting said condition(s).
- e. A copy of the Agency's Appeal Process.
- f. Any other information pertinent to the matter.

## F. APPEAL PROCESS

An Agency-funded program or service may appeal the imposition of any sanction in accordance with the following process:

1. If the sanction was not explicitly approved by the Joint Program Evaluation Committee (JPEC), then within 10 calendar days of receipt of notification of said sanction, the program or service may file a written appeal requesting a special hearing with JPEC. The Executive Director will consider the merits of the request, conduct any investigation necessary, and issue a decision in writing within 10 calendar days of receipt of the request. The Executive Director's decision whether to grant a special hearing with JPEC shall be final. If a special

hearing is held, then JPEC shall make a recommendation for Governing Board action.

2. If the sanction was explicitly approved by JPEC and subsequently upheld by the Governing Board, then within 15 calendar days of receipt of notification of said sanction, the program or service may file a written appeal requesting a reconsideration of the matter. The Executive Committee of the Governing Board will consider the merits of the request, conduct any investigation necessary, and issue a decision in writing within 15 calendar days of receipt of the request. The Executive Committee's decision shall be final. Within 30 calendar days, the program of service may file a petition with the California Department of Aging to request a review of the matter.

#### G. AMENDMENTS

This policy may be amended by resolution adopted by the Agency's Governing Board.

## **ATTACHMENT C- JOINT PROGRAM EVALUATION COMMITTEE POLICY**

The purpose of this policy statement is to clearly define the manner in which the Joint Program Evaluation Committee (JPEC) of Area 4 Agency on Aging (AAA4) shall carry out its functions as defined in the Rules of Procedure of the AAA4 Governing Board and in the AAA4 Advisory Council Bylaws and as referenced in the Performance Standards (Attachment A) and in the Sanction Policy (Attachment B). Furthermore, this statement shall supersede all prior AAA4 Bulletins, Notices, Memorandums and other communications which address the specific manner in which JPEC shall operate.

By the authorities set forth in AAA4's Agreement with the California Department of Aging to deliver state and federal programs as direct services of AAA4 and under subcontract between AAA4 and Funded Partners, henceforth and until further notice the Joint Program Evaluation Committee shall adhere to the following guidelines.

Meeting Schedule: Following the end of the first, second and third quarter of each State Fiscal Year (SFY), JPEC shall convene to consider any compliance concerns and to review the most recent quarterly and year-to-date performance numbers for all of the major AAA4-funded activities. Following the end of the fourth quarter of each SFY, JPEC shall convene to consider any compliance concerns and to review the year-end performance numbers for all of the major AAA4-funded activities. In addition to these four regular meetings, JPEC may also convene on an as-needed basis.

Written information to be Provided to JPEC: For all of the major activities funded by AAA4, current information regarding the subjects below shall be provided at each regular JPEC meeting. To the extent possible, all information shall be provided prior to the meeting.

- 1) Outstanding Achievement  
This section shall address the status of any active nominations for Outstanding Achievement.
- 2) Open matters  
This section shall address the status of matters under the purview of JPEC that have not yet been resolved, including but not limited to those involving Watch Status, special conditions, corrective actions, sanctions and contract closeouts.
- 3) New Providers/Programs  
This section shall provide information on "new" Funded Partners (i.e., entities that did not have standing agreements with AAA4 during the prior fiscal year), "new" Service Categories (i.e., programs that were not funded by AAA4 during the prior fiscal year), and "new" Provider – Program combinations in one or more counties that did not exist during the prior fiscal year.
- 4) Impacted Services

This section shall address wait-listed programs. AAA4 considers a Wait List to exist whenever a Funded Partner begins collecting and retaining information from prospective clients who cannot be served for an unknown period of time because the capacity of the program has been exceeded.

5) Quality Assurance

This section shall address any concerns pertaining to stated, reasonable or generally accepted expectations of customer service, professional conduct and/or ethical behavior. Quality Assurance topics may include but are not limited to measurable outcomes, complaints and formal grievances.

6) Compliance (Not including Performance)

This section shall address any concerns that may arise when a Funded Partner or AAA4 Direct Service does not abide by some portion of their Contractual Agreement, including but not limited to administrative, data and fiscal requirements.

7) Performance (Units of Service Only)

This section shall briefly explain below-range, within-range and above-range performance. The latest Performance Chart shall be attached as a separate document. The Chart is a detailed report with Service Category and County details for each Funded Partner and for AAA4 Direct Services, including but not limited to:

- a. The annual award amount;
- b. The annual cost/unit (current annual award ÷ annual units currently agreed to be provided);
- c. The year-to-date (YTD) number of actual service units provided;
- d. The performance percentage for each quarter (quarterly units actually provided ÷ quarterly units projected to be provided); and,
- e. The YTD performance percentage (YTD units provided ÷ YTD units projected to be provided).

The Year-End report shall also include:

- a. A narrative recap of any significant changes that occurred during the SFY which appear to have impacted year-end performance.
- b. A year-end comparison of the original number of unduplicated clients agreed to be served versus the actual number of unduplicated clients served.
- c. A year-end comparison of the original, average number of units per client versus the actual, average number of units per client.
- d. A year-end comparison of the original award amount versus the actual amount spent and/or unspent.
- e. A year-end comparison of the original cost per unit versus the actual cost per unit.

8) Next Steps

This section shall itemize all of the matters which are being brought before JPEC for action, and it shall subsequently be used to summarize the actions taken by JPEC in order to maintain a written record.

Meeting Procedures: On all items brought before JPEC, AAA4 Staff will provide a suggested action for the Committee's consideration. These suggestions shall be based upon relevant information available at the time, thus they may change before, during or after any given JPEC meeting.

Designated representatives from Funded Partners and from AAA4 Direct Services are welcome to attend JPEC meetings, and they shall be given an opportunity to briefly speak (or to have a brief, written statement read on their behalf) prior to votes being cast on matters which directly affect them.

JPEC members may pose questions to AAA4 Staff and/or to designated representatives during a Committee meeting; however, the failure to furnish a designated representative shall not, in and of itself, constitute sufficient cause to delay action by JPEC.

No JPEC member is expected or otherwise obligated to approve an AAA4 Staff suggestion or a request from a designated representative; JPEC may move an alternate action or no action at all. Once JPEC has adopted a recommendation by majority vote, that recommendation shall supersede the standing AAA4 Staff suggestion, and it shall be forwarded to the Governing Board.

If new, salient information becomes available *after* JPEC has made a recommendation on a matter but *before* the Governing Board has acted upon it, then AAA4 Staff shall present that information to the Board, along with an updated Staff suggestion if applicable.

Recognizing outstanding achievement: The mission of Agency on Aging \ Area 4 (AAA4) is *"to create and support opportunities that enhance the lives of Older Adults and their families to be safe, healthy and independent"* in home or community settings. Funded Partners that have made extraordinary efforts to successfully advance that overarching mission are deserving of special recognition and gratitude. Such efforts may be memorialized through the bestowal of an **Outstanding Achievement Award**. Awards shall be available in these broad categories:

- 1) Service Impact (Benefitting People in Measurable Ways)
- 2) Service Model (Outstanding Outreach, Program Evaluation and/or Use of Best Practices)
- 3) Staffing and/or Volunteers (Successful Recruiting, Hiring, Training, etc.)
- 4) Leadership (Consistent Vision, Readiness and Follow-Through within an Organization)
- 5) Administration (Maximizing Operational Accuracy and/or Efficiency)
- 6) Capital & Revenue (Attaining Long-Term Fiscal Sustainability)
- 7) Integration of AAA4 Special Priorities (Advancing a Common Goal such as Reducing Food Insecurity)
- 8) Advocacy (Being a Catalyst for Policy and/or Fiscal Change)
- 9) Awareness (Calling Attention to an Important Issue)
- 10) OTHER (As specified in the nomination)

Both organizations and individuals can be nominated in one or more of these categories. Nominations can only be made by an AAA4 Staff, Advisory Council or Governing Board member who does not have a direct relationship to the nominee that would constitute a conflict of interest. Nominations can be submitted at any time, and there is no limit to the number of nominations any one individual may submit. The nomination process shall follow the steps outlined below.

- a) First, the person wishing to make a nomination (the nominator) completes and submits an Outstanding Achievement Award Nomination Form.

- b) Second, AAA4's Executive Director screens the form to determine if there is a conflict of interest or if the basis for an award is not sufficiently substantiated. In either of these circumstances, the nomination is declined and returned to the nominator along with the reason for the determination. Otherwise, the nomination advances.
- c) Third, a copy of the nomination is sent to each member of the Joint Program Evaluation Committee (JPEC) for individual review within 30 calendar days of the send date. If less than two-thirds of said reviews recommend approval, then the nomination is declined and the Executive Director shall inform the nominator. If two-thirds or more of said reviews recommend approval, then the nomination advances.
- d) Fourth, a copy of the nomination is sent to each member of the Governing Board at least two weeks prior to the Board meeting at which the item will be addressed. If there is not unanimous consent among the voting members present at said meeting to approve the nomination, then the nomination is declined and the Executive Director shall inform the nominator. If there is unanimous consent, then approval shall be granted.
- e) Fifth, the nominator and the awardee shall both be notified and invited to personally give/receive an Outstanding Achievement Award during a subsequent Governing Board meeting. If the awardee is unable or unwilling to appear in person, then the Award shall be mailed or hand delivered to them.

Amendments to this Policy shall require AAA4 Governing Board approval.

***Approved by the Governing Board on September 12, 2014***

*Revised on November 9, 2018*

## ATTACHMENT D- DISASTER ASSISTANCE POLICY

The Agency Disaster Plan (ADP) shall include:

- 1) Business Continuity Plan (BCP) which should:
  - Emphasize communications, back-up systems for data emergency service delivery options, and transportation.
  - Include a system to track emergency expenditures, since they *may* be reimbursable.
- 2) A *Site Emergency Resource Survey* to assist AAA4 inventory resources within the service area that can be used to support older persons following a disaster.
- 3) A directory of critical local contacts in an emergency:
  - Establish working relationships, and where appropriate, letter of agreement or understanding, between your agency and contact organizations on the list (e.g., Office of Emergency Services).
  - Use agreements to clarify support roles and relationships in meeting the disaster needs of older individuals.
- 4) Other:
  - Conduct annual preparedness training of staff. Include “mock disaster drills” as resources allow.
  - Provide information and assistance to program participants and their caregivers to assist them in preparing for disasters. Resources are available at [www.ready.gov](http://www.ready.gov).

In addition to items 1 through 4 above, ELDERLY NUTRITION FUNDED PARTNERS shall:

- Where feasible and appropriate, provide emergency extended shelf-stable meals to program participants every six months.
- In the event of a local emergency, coordinate to ensure contact all affected program home delivered meal program participants and/or their emergency contacts to determine their safety.
- Where feasible and appropriate, make arrangements for the availability of meals to participants during a major disaster.
- Develop an emergency menu pattern template which provides the minimum required DRIs.

In addition to items 1 through 4 above, SENIOR INFORMATION & ASSISTANCE FUNDED PARTNERS shall:

- Have written procedures to assist the communities' older individuals during disasters, such as earthquakes or floods.
- Maintain a current and readable copy of non-web-based community resource database to be accessed and utilized at an alternate worksite.
  - If FUNDED PARTNER is a 211 service, establish a written agreement with other 211 services to provide service in the event the FUNDED PARTNER's ability to provide service is affected by the disaster or staff are evacuated.
- Assure that Information and Assistance staff have written procedures in place, and are trained at least annually, on how to handle emergencies. The training shall consist of:
  - Familiarity with telephone numbers of fire, police, and ambulance services for the geographic area served by the FUNDED PARTNER. These telephone numbers shall be posted near the telephone for easy access when an emergency arises.
  - Techniques to obtain vital information from older individuals and persons with disabilities who require emergency assistance.
  - Making written emergency procedure instructions available to all staff that have contact with older individuals or persons with disabilities.

In addition to items 1 through 4 above, IN-HOME FUNDED PARTNERS shall:

- In the event of a local emergency, contact all affected program participants and/or their emergency contacts to determine their safety.

"In-Home Funded Partners" are defined as any FUNDED PARTNER who goes into the homes of clients to provide assessments, repairs, modifications, etc.

This policy may be amended by resolution adopted by the Agency's Governing Board.