

**Exhibit A
SCOPE OF WORK
Non- Exclusively Aligned Enrollment D-SNP**

1. Service Overview

This contract is being executed with this Contractor that is a Dual Eligible Special Needs Plan (D-SNP), <INSERT D-SNP LEGAL ENTITY NAME>, that will be referred to in this Contract as D-SNP Contractor.

This D-SNP Contract is a Care Coordination and benefit coordination agreement. D-SNP Contractor is responsible for coordinating the delivery of all benefits covered by both Medicare and Medi-Cal, including those benefits not covered by the Medicare Advantage health plan under whose authority the D-SNP Contractor operates. Coordination responsibility includes coordination of those Medi-Cal services that are delivered via Medi-Cal Fee-For-Service (FFS), managed care, or other Medi-Cal delivery systems. These Medi-Cal Services are defined in the contents of this D-SNP Contract.

2. Project Representatives

A. The project representatives during the term of this D-SNP Contract will be:

Department of Health Care Services	D-SNP Contractor
Managed Care Operations Division (MCOB) Attn: Manila Vongmany, Chief, Procurement & Contract Development Branch	California Attn: President
Telephone: (916) 449-5000 FAX: (916) 449-5090	Telephone: Email:

B. Direct all inquiries to:

Department of Health Care Services	D-SNP Contractor
Managed Care Operations Division Attn: Michelle Retke, Division Chief	Name: Attn: President
MS 4408 P.O. Box 997413 Sacramento, CA 95899-7413	
Telephone: (916) 449-5000 Fax: (916) 449-5090	Telephone: Email:

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Exhibit A SCOPE OF WORK

- C. Either party may make changes to the information above by giving written notice to the other party. Said changes shall not require an amendment to this D-SNP Contract.
3. See the following attachments for a detailed description of the services to be performed:
- A. Exhibit A: Scope of Work
 - B. Exhibit X

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Exhibit A, Attachment 1 COORDINATION OF CARE

1. Care Coordination

This D-SNP Contract is a Care Coordination and benefit coordination agreement between D-SNP Contractor and the California Department of Health Care Services (DHCS). D-SNP Contractor is responsible for coordinating the delivery of all benefits and services covered by both Medicare and Medi-Cal, including when Medi-Cal Services are delivered via Medi-Cal Fee-For-Service (FFS), managed care, or other Medi-Cal delivery systems. Without limitation, D-SNP Contractor shall coordinate care with providers and other entities for the Medi-Cal Services included in Exhibit A, Provision 1, Care Coordination, Paragraph A, below, and outlined in Exhibit H, when Medically Necessary for the Member. D-SNP Contractor is responsible for coordinating the Member's Medicare and Medi-Cal benefits and services including, but not limited to, discharge planning, disease management, and care management. D-SNP Contractor must notify Members that D-SNP Contractor, and not the Member, is responsible for coordination of the Member's Medi-Cal Services. D-SNP Contractor shall:

- A. Develop and implement care coordination procedures that are submitted to and approved by DHCS, for referral and coordination of care for Members who receive Medi-Cal Services through either the Medi-Cal managed care or FFS programs. Medi-Cal Services requiring referral and coordination of care by D-SNP Contractor are outlined in Exhibit H.
 - 1) For Medi-Cal managed care Members, Contractor's D-SNP will contact the Member's Medi-Cal Managed Care Health Plan (MCP) for provider information and for the coordination of Medi-Cal Services covered by the MCP. MCP contact information can be found at the following link:
<http://www.dhcs.ca.gov/individuals/Pages/MMCDHealthPlanDir.aspx>;
 - 2) For Medi-Cal FFS Members, D-SNP Contractor will contact DHCS for provider information and the coordination of Medi-Cal Services in FFS. DHCS contact information can be found at the following link:
https://www.dhcs.ca.gov/Pages/dhcs_contact.aspx;
 - 3) For coordination of behavioral health services, D-SNP Contractor will contact the Member's MCP and/or the county mental health plan (CMHP) for provider information and the coordination of behavioral health services. CMHP contact information can be found at the following link:

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Exhibit A, Attachment 1 COORDINATION OF CARE

<http://www.dhcs.ca.gov/individuals/Pages/MHPContactList.aspx>;

- 4) For coordination of In-Home Support Services (IHSS), D-SNP Contractor will contact the County IHSS Office. County IHSS Office contact information can be found at <https://www.cdss.ca.gov/inforesources/county-ihss-offices>;
 - 5) For coordination of Medi-Cal dental benefits, D-SNP Contractor will contact the DHCS Dental Administrative Service Organization (ASO) for provider information and the coordination of dental benefits. ASO contact information can be found at the following link: <https://smilecalifornia.org/contact-us/>;
 - 6) For coordination of Medi-Cal pharmacy benefits, D-SNP Contractor will contact Medi-Cal Rx, and contact information can be found at the following link: <https://med-calrx.dhcs.ca.gov/home/contact>; and
 - 7) D-SNP Contractor must additionally comply with State-specific Care Coordination requirements, which are fully outlined in the CalAIM Dual Eligible Special Needs Plan (D-SNP) Policy Guide available at: <https://www.dhcs.ca.gov/provgovpart/Pages/Dual-Special-Needs-Plans-%28D-SNP%29-Contract-and-Program-Guide.aspx>.
- B. Make a referral to the Member's Medi-Cal MCP, or county or State office listed in Paragraph A above, for follow-up and possible provision of Medi-Cal Services when a Member requests or D-SNP Contractor determines a Member may need a Medi-Cal Service that is not covered by D-SNP Contractor.
- C. D-SNP Contractor is not responsible for the provision of, or paying reimbursement for, any Medi-Cal Services. D-SNP Contractor shall maintain a current knowledge and familiarity of Medi-Cal Services through ongoing reviews of California laws, rules, policies, and further guidance as posted on the DHCS website. D-SNP Contractor shall timely coordinate Medi-Cal Services requiring referral and coordination of care as outlined in Exhibit H for its Members under this Contract.

This Provision details D-SNP Contractor's specific Medicare-Medi-Cal Care Coordination requirements. Medi-Cal Services are

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described in Title XIX of the Social Security Act, 42 CFR sections 440 and 441, the California Medicaid State Plan, Section 3.2, Provision 1 of this Attachment, the California CalAIM 1915(b) Waiver, Attachment III, the DHCS and Medi-Cal websites, and other relevant materials.

D. Information Sharing

- 1) D-SNP Contractor is responsible for complying with State policy implementing federal information sharing requirements for D-SNPs per 42 CFR 422.107(d)(1), for the purpose of coordinating Medicare and Medi-Cal covered services between settings of care. This State policy is in addition to federal requirements for hospitals regarding electronic notifications listed in 42 CFR 482.24(d). The goal of the information sharing policy is for D-SNP Contractor, either directly or through contracted providers or other entities, to timely notify the Member's MCP of hospital and Skilled Nursing Facilities (SNF) admissions particularly if the MCP is a different organization than the D-SNP. Timely notification supports the coordination of and referrals to Medicare and Medi-Cal Covered Services, including home and community-based services.
- 2) To the extent permissible under applicable federal and State law and regulations, and not inconsistent with the Member's expressed privacy preferences, D-SNP Contractor will require their contracted hospitals and SNFs to use a secure email data exchange through a Health Information Organization, or an electronic process approved by DHCS, to inform D-SNP Contractor and the Member's MCP in a timely manner of any hospital or SNF admissions for all Members.
 - a) D-SNP Contractor will require contracted hospitals to make this notification either immediately prior to, or at the time of, the Member's discharge or transfer from the hospital's inpatient services, if applicable.
 - b) As an alternative to the hospital's notification to the Member's MCP, D-SNP Contractor may notify the Member's MCP in the same timeframe and method referenced in Paragraph a) of any hospital admission, for all Members. D-SNP Contractor must coordinate any necessary Medicare and Medi-Cal services for the Member with the MCP.

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- c) To the extent permissible under applicable federal and State law and regulations, and not inconsistent with the Member's expressed privacy preferences, D-SNP Contractor will require their contracted SNFs to use a secure email, a data exchange through a Health Information Organization, or an electronic process approved by DHCS, to inform D-SNP Contractor and the Member's MCP of any SNF admission, discharge, or transfer for all Members. For SNF admissions, D-SNP Contractor will require contracted SNFs to make this notification within 48 hours after any SNF admission. For SNF discharges or transfers, D-SNP Contractor will require contracted SNFs to make this notification in advance if at all possible, or at the time of, the Member's discharge or transfer from the SNF.
 - d) As an alternative to the SNF's notification to the Member's MCP, D-SNP Contractor may notify the Member's MCP, in the same timeframe and method referenced in Paragraph c), of any SNF admission, discharge, or transfer for all Members. The D-SNP must coordinate any necessary Medicare and Medi-Cal services for the Member with the MCP.
 - e) In the event that the D-SNP Contractor authorizes another entity or entities to perform these notifications, D-SNP Contractor must retain responsibility for complying with this requirement. The D-SNP Contractor ultimately retains the responsibility for the notification requirements that are delegated to its contracted hospitals and SNFs.
 - f) For the first six (6) months of Contract Year 2023, DHCS may permit D-SNP Contractor to propose and implement an alternate approach and compliance plan to meet federal information sharing requirements, subject to DHCS and Centers for Medicare & Medicaid Services (CMS) review and approval. Further information will be available in the D-SNP Policy Guide.
- 3) D-SNP Contractor will coordinate care management for their Members and facilitate Member access to needed Long-Term Services and Supports to support care transitions.

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Exhibit A, Attachment 1 COORDINATION OF CARE

- 4) State guidance on this “Information Sharing Policy” will be provided through CalAIM Dual Eligible Special Needs Plan (D-SNP) Policy Guide available at <https://www.dhcs.ca.gov/provgovpart/Pages/Dual-Special-Needs-Plans-%28D-SNP%29-Contract-and-Program-Guide.aspx>.

2. Consumer Participation in Governance Boards

- A. D-SNP Contractor shall ensure consumer participation in governance boards that will provide regular feedback to D-SNP Contractor’s governing board on issues of plan management and Member care. D-SNP Contractor shall ensure that the committee:
 - 1) Meets at least quarterly throughout the plan year.
 - 2) Is comprised of Members, Member’s family members, and other caregivers that reflect the diversity of the D-SNP population, including individuals with disabilities.
- B. D-SNP Contractor is responsible for reporting their committee charter and membership to CMS, and DHCS annually through its DHCS contract manager. CMS and DHCS reserve the right to review and approve Enrollee membership. D-SNP Contractor can engage D-SNP enrollees in existing committees.

3. All Plan and Policy Letters

In addition to the terms and conditions of this Contract, D-SNP Contractor shall comply with State-specific departmental guidance in the CalAIM Dual Eligible Special Needs Plan (D-SNP) Policy Guide available at <https://www.dhcs.ca.gov/provgovpart/Pages/Dual-Special-Needs-Plans-%28D-SNP%29-Contract-and-Program-Guide.aspx>.

To the extent that State guidance conflicts with Medicare requirements or regulations, D-SNP Contractor shall comply with Medicare requirements and regulations. For purposes of this Provision, State guidance only conflicts with Medicare requirements or regulations to the extent that the guidance requires conduct that would violate Medicare requirements or regulations.

4. Coverage Area and Eligible Beneficiaries

- A. Members covered under this Contract shall include all Dual Eligible Beneficiaries who are already enrolled in the D-SNP in the following

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Exhibit A, Attachment 1 COORDINATION OF CARE

Service Area, inclusive of currently enrolled Partial Dual Eligible Beneficiaries:

XX County

- B. D-SNP Contractor may also enroll only Full-benefit Dual-Eligible Beneficiaries, which includes Qualified Medicare Beneficiaries Plus (QMB+), Specified Low-Income Medicare Beneficiaries Plus (SLMB+), and Other Full-benefit Dual-Eligible Beneficiaries only.
- C. D-SNP Contractor may newly enroll Full-benefit Dual-Eligible Beneficiaries, including QMB+, SLMB+, and Other Full-benefit Dual-Eligible Beneficiaries, who reside in the following county or counties to maximize the continuum of services available through both Medicare and Medi-Cal:

XX County *(omit Kings, Madera, and Fresno if included in service area) HealthNet's SMAC can include Kings, Madera, and Fresno*
- D. If D-SNP Contractor is operating in a Coordinated Care Initiative county, beginning with contract year 2023, Dual-Eligible Beneficiaries who are not already enrolled in a D-SNP for contract year 2022 may only enroll in a D-SNP that is affiliated with a MCP or a Subcontracted Delegate Health Plan operating in D-SNP Contractor's Service Area.

5. Certification and Enrollment Reporting

- A. D-SNP Contractor shall submit to DHCS a certification, signed by the Chief Operations Officer or similar executive officer, that attests to the number of Members enrolled in D-SNP Contractor's D-SNP as of the effective date of this Contract.
- B. By the fifth working day of each month during the term of this Contract, D-SNP Contractor shall submit a report, signed by the Chief Operations Officer or similar executive officer, to DHCS summarizing the previous month's Enrollment numbers.

6. Member Billing Prohibitions

- A. D-SNP Contractor and its contracted providers are prohibited from imposing cost-sharing requirements on Members that would exceed the amounts permitted under the California Medicaid State Plan, Section 1852(a)(7) of the Act, and 42 CFR section 422.504(g)(1)(iii). D-SNP Contractor shall not bill

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a Member with QMB benefits for Medicare cost sharing amounts, including deductibles, coinsurance, and copayments, in accordance with Section 1902(n)(3)(B) of the Social Security Act. Section 1902(n)(3)(B) of the Social Security Act prohibits a Medicare provider from billing a Member with QMB benefits for Medicare cost sharing amounts, including deductibles, coinsurance, and copayments.

- B. A Member with QMB benefits has no legal obligation to make further payment to a provider or to D-SNP Contractor for Medicare Part A or Part B cost sharing amounts. D-SNP Contractor's provider agreements shall specify that a contracted Medicare provider agrees to accept D-SNP Contractor's Medicare reimbursement as payments in full for services rendered to Members, or to bill Medi-Cal or the Member's Medi-Cal MCP as applicable for any additional Medicare payments that may be reimbursed by Medi-Cal. D-SNP Contractor's provider agreements shall require a contracted Medicare provider to comply with Welfare and Institutions Code Section 14019.4.

8. Provider Network Reporting Requirements

- A. D-SNP Contractor can obtain Medi-Cal participating providers by reviewing the California Health and Human Services Open Data Portal. The California Health and Human Services Open Data Portal can be found at: <https://data.chhs.ca.gov/dataset/profile-of-enrolled-medi-calfee-for-service-ffs-providers>. Alternatively, D-SNP Contractor can obtain the file from the affiliated Medi-Cal MCP.
- B. D-SNP Contractor will identify in its provider directory those providers that accept both Medicare and Medi-Cal (providers that are currently registered providers under Medi-Cal and are also within D-SNP Contractor's network).
- C. D-SNP Contractor will also comply with additional network guidance fully outlined in the CalAIM Dual Eligible Special Needs Plan (D-SNP) Policy Guide available at <https://www.dhcs.ca.gov/provgovpart/Pages/Dual-Special-Needs-Plans-%28D-SNP%29-Contract-and-Program-Guide.aspx>. Upon execution of this D-SNP Contract and annually thereafter, D-SNP Contractor shall submit to DHCS a report that outlines D-SNP Contractor's full Medi-Cal provider network within the defined Service Area.

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- D. D-SNP Contractor must comply with additional State-specific continuity of care protections for Members, including:
- 1) A 12-month continuity of care period for primary and specialty providers with whom the Member has a pre-existing relationship and who are willing to work with D-SNP Contractor; and
 - 2) Access to Medically Necessary Medicare-covered Durable Medical Equipment and medical supplies. In addition to complying with Medicare continuity of care requirements for these services and providers as outlined in 42 CFR 422.100(l)(2)(iii), D-SNP Contractor must comply with requirements outlined in the CalAIM Dual Eligible Special Needs Plan (D-SNP) Policy Guide available at <https://www.dhcs.ca.gov/provgovpart/Pages/Dual-Special-Needs-Plans-%28D-SNP%29-Contract-and-Program-Guide.aspx>

9. Medi-Cal and Medicare Eligibility Verification

- A. It is the responsibility of the D-SNP Contractor to:
- 1) Confirm Medicare Advantage and Medi-Cal eligibility;
 - 2) Verify Medi-Cal eligibility of a Member. To facilitate this verification, D-SNP Contractor will have real-time access to the Medi-Cal eligibility verification system;
- B. To obtain Medicare Advantage and Medi-Cal eligibility, D-SNP Contractor must validate eligibility through its existing on-line and/or batch Medicare and Medi-Cal eligibility user interfaces.
- C. D-SNP Contractor shall ensure appropriate training of plan personnel and providers regarding the use of the Medi-Cal eligibility verification system interface and the appropriate interpretation of its eligibility results.

10. Contract Term

This D-SNP Contract shall be effective from January 1, 2023 through December 31, 2023.

11. Termination

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Exhibit A, Attachment 1 COORDINATION OF CARE

DHCS retains the right to terminate this D-SNP Contract at any time for cause or no cause.

12. Compensation

The State of California and DHCS shall not provide any remuneration or other form of compensation for the performance of any duties or obligations provided under this D-SNP Contract.

13. Centers for Medicare & Medicaid Services (CMS) Documentation

- A. D-SNP Contractor shall submit to DHCS a complete and accurate copy of the Medicare Advantage bid as approved by CMS.
- B. If not included in the approved bid, D-SNP Contractor shall also provide to DHCS the following information, in a format as specified by DHCS, after execution of this Contract but no later than September 30, 2022, to the DHCS contract manager:
 - 1) The current approved model of care.
 - 2) A list of approved Supplemental Benefits included in the initial annual Medicare Advantage bid submission to CMS.
 - 3) A list of approved Supplemental Benefits.
- C. If D-SNP Contractor offers Supplemental Benefits, those services should be coordinated with the MCP to ensure the D-SNP tracks Member use of Supplemental Benefits and exhausts Supplemental Benefits prior to authorization of or referral for Medi-Cal benefits, including any Community Supports that the MCP is approved to offer.

14. Medicare Deeming Period

D-SNP Contractor is required to maintain enrollment for Members for at least a three-month deeming period following notification of the Member having lost Medi-Cal eligibility. This requirement does not preclude a D-SNP contractor from offering a longer deeming period.

15. Medicare Encounter Data Requirements

- A. D-SNP Contractor shall submit electronic records of all encounters, including encounters resulting in zero Medicare claims, monthly, in a mutually agreed upon format. Each encounter record should be

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specific to the Member and Provider, listing all the data elements required for each service. This data will provide DHCS with information on services paid for by Medicare.

- B. Reporting requirements and data elements shall not exceed those mandated by CMS for Medicare Advantage plans. Additional details are fully outlined in the CalAIM Dual Eligible Special Needs Plan (D-SNP) Policy Guide available at <https://www.dhcs.ca.gov/provgovpart/Pages/Dual-Special-Needs-Plans-%28D-SNP%29-Contract-and-Program-Guide.asp>.

16. Quality and Data Reporting

- A. D-SNP Contractor is responsible for reporting quality measures to DHCS. These quality measures are fully outlined in the CalAIM Dual Eligible Special Needs Plan (D-SNP) Policy Guide available at <https://www.dhcs.ca.gov/provgovpart/Pages/Dual-Special-Needs-Plans-%28D-SNP%29-Contract-and-Program-Guide.aspx>.
- B. This reporting will include:
 - 1) Selected Healthcare Effectiveness Data and Information Set (HEDIS) measures, calculated at the plan benefit package (PBP) level for the PBPs included in this contract;
 - 2) State-specific Care Coordination and LTSS process measures; and
- 3) State-specific dementia measures.

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Exhibit C GENERAL TERMS AND CONDITIONS

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. D-SNP Contractor may not commence performance until such approval has been obtained.
2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. ASSIGNMENT: This Agreement is not assignable by D-SNP Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. AUDIT: D-SNP Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. D-SNP Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. D-SNP Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. (Government Code Section 8546.7, Public Contract Code Section 10115 et seq., and California Code of Regulations, Title 2, Section 1896).
5. INDEMNIFICATION: D-SNP Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by D-SNP Contractor in the performance of this Agreement.
6. DISPUTES: D-SNP Contractor shall continue with the responsibilities under this Agreement during any dispute.

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Exhibit C GENERAL TERMS AND CONDITIONS

7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should D-SNP Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due D-SNP Contractor under this Agreement and the balance, if any, shall be paid to D-SNP Contractor upon demand.
8. INDEPENDENT CONTRACTOR: D-SNP Contractor, and the agents and employees of D-SNP Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.
9. RECYCLING CERTIFICATION: D-SNP Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Public Contract Code Section 12205).
10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, D-SNP Contractor shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. D-SNP Contractor shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. D-SNP Contractor shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. D-SNP Contractor shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

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**Exhibit C
GENERAL TERMS AND CONDITIONS**

11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 307 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.
12. TIMELINESS: Time is of the essence in this Agreement.
13. COMPENSATION:

[Intentionally Left Blank – Not applicable to this D-SNP Contract]
14. GOVERNING LAW: This D-SNP Contract is governed by and shall be interpreted in accordance with the laws of the State of California.
15. ANTITRUST CLAIMS:

[Intentionally Left Blank – Not applicable to this D-SNP Contract]
16. CHILD SUPPORT COMPLIANCE ACT:

[Intentionally Left Blank – Not applicable to this D-SNP Contract]
17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.
18. PRIORITY HIRING CONSIDERATIONS: If this D-SNP Contract includes services in excess of \$200,000, D-SNP Contractor shall give priority consideration in filling vacancies in positions funded by the D-SNP Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Public Contract Code Section 10353.

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Exhibit D(F) SPECIAL TERMS AND CONDITIONS

1. Federal Equal Opportunity Requirements

- A. D-SNP Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. D-SNP Contractor will take affirmative action to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and career development opportunities and selection for training, including apprenticeship. D-SNP Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Federal Government or DHCS, setting forth the provisions of the Equal Opportunity clause, Section 503 of the Rehabilitation Act of 1973 and the affirmative action clause required by the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 USC 4212). Such notices shall state D-SNP Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified applicants without discrimination based on their race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era and the rights of applicants and employees.
- B. D-SNP Contractor will, in all solicitations or advancements for employees placed by or on behalf of D-SNP Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era.
- C. D-SNP Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, to be provided by the Federal Government or the State, advising the labor union or workers' representative of D-SNP Contractor's commitments under the provisions herein and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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Exhibit D(F) SPECIAL TERMS AND CONDITIONS

- D. D-SNP Contractor will comply with all provisions of and furnish all information and reports required by Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 USC 4212) and of the Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity', and as supplemented by regulation at 41 CFR 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and of the rules, regulations, and relevant orders of the Secretary of Labor.
- E. D-SNP Contractor will furnish all information and reports required by Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and the Rehabilitation Act of 1973, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the State and its designated representatives and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- F. In the event of D-SNP Contractor's noncompliance with the requirements of the provisions herein or with any federal rules, regulations, or orders which are referenced herein, this D-SNP Contract may be cancelled, terminated, or suspended in whole or in part and D-SNP Contractor may be declared ineligible for further federal and State contracts in accordance with procedures authorized in Federal Executive Order No. 11246 as amended and such other sanctions may be imposed and remedies invoked as provided in Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

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Exhibit D(F) SPECIAL TERMS AND CONDITIONS

G. D-SNP Contractor will include the Provisions of Paragraphs A through G in every purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or Section 503 of the Rehabilitation Act of 1973 or (38 USC 4212) of the Vietnam Era Veteran's Readjustment Assistance Act, so that such provisions will be binding upon each vendor. D-SNP Contractor will take such action with respect to any purchase order as the Director of the Office of Federal Contract Compliance Programs or DHCS may direct as a means of enforcing such provisions including sanctions for noncompliance provided, however, that in the event D-SNP Contractor becomes involved in, or is threatened with litigation by a vendor as a result of such direction by DHCS, D-SNP Contractor may request in writing to DHCS, who, in turn, may request the United States to enter into such litigation to protect the interests of the State and of the United States.

2. Travel and Per Diem Reimbursement

[Intentionally Left Blank – Not applicable to this D-SNP Contract]

3. Procurement Rules

[Intentionally Left Blank – Not applicable to this D-SNP Contract]

4. Equipment Ownership / Inventory / Disposition

[Intentionally Left Blank – Not applicable to this D-SNP Contract]

5. Subcontract Requirements

[Intentionally Left Blank – Not applicable to this D-SNP Contract]

6. Income Restrictions

[Intentionally Left Blank – Not applicable to this D-SNP Contract]

7. Audit and Record Retention

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Exhibit D(F) SPECIAL TERMS AND CONDITIONS

[Intentionally Left Blank – Not applicable to this D-SNP Contract]

8. Site Inspection

The State, through any authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed. If any inspection or evaluation is made of the premises of D-SNP Contractor, D-SNP Contractor shall provide all reasonable facilities and assistance for the safety and convenience of the authorized representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

9. Federal Contract Funds

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

10. Intellectual Property Rights

[Intentionally Left Blank – Not applicable to this D-SNP Contract]

Boilerplate Non-EAE

Exhibit D(F) SPECIAL TERMS AND CONDITIONS

11. Air or Water Pollution Requirements

Any federally funded agreement in excess of \$100,000 must comply with the following provisions unless said agreement is exempt under 40 CFR 15.5:

- A. Government contractors agree to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act [42 USC 1857(h)], Section 508 of the clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).
- B. Institutions of higher education, hospitals, nonprofit organizations and commercial businesses agree to comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 USC 7401 et seq.), as amended, and the Federal Water Pollution Control Act (33 USC 1251 et seq.), as amended.

12. Prior Approval of Training Seminars, Workshops or Conferences

[Intentionally Left Blank – Not applicable to this D-SNP Contract]

13. Confidentiality of Information

- A. D-SNP Contractor and its employees, agents shall protect from unauthorized disclosure names and other identifying information concerning persons either receiving services pursuant to this D-SNP Contract or persons whose names or identifying information become available or are disclosed to D-SNP Contractor, its employees or agents as a result of services performed under this D-SNP Contract, except for statistical information not identifying any such person.
- B. D-SNP Contractor and its employees or agents shall not use such identifying information for any purpose other than carrying out D-SNP Contractor's obligations under this D-SNP Contract.
- C. D-SNP Contractor and its employees, or agents shall promptly transmit to the DHCS program contract manager all requests for disclosure of such identifying information not emanating from the client or person.
- D. D-SNP Contractor shall not disclose, except as otherwise specifically permitted by this Contract or authorized by the client, any such identifying information to anyone other than DHCS without prior written authorization from the DHCS program contract manager.

Boilerplate Non-EAE

Exhibit D(F) SPECIAL TERMS AND CONDITIONS

- E. For purposes of this Provision, identity shall include, but not be limited to name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.
- F. As deemed applicable by DHCS, this Provision may be supplemented by additional terms and conditions covering personal health information (PHI) or personal, sensitive, and/or confidential information (PSCI). Said terms and conditions will be outlined in one or more exhibits that will either be attached to this D-SNP Contract or incorporated into this D-SNP Contract by reference.

14. Documents, Publications and Written Reports

[Intentionally Left Blank – Not applicable to this D-SNP Contract]

15. Dispute Resolution Process

[Intentionally Left Blank – Not applicable to this D-SNP Contract]

16. Financial and Compliance Audit Requirements

[Intentionally Left Blank – Not applicable to this D-SNP Contract]

17. Human Subjects Use Requirements

By signing this D-SNP Contract, D-SNP Contractor agrees that if any performance under this D-SNP Contract includes any tests or examination of materials derived from the human body for the purpose of providing information, diagnosis, prevention, treatment or assessment of disease, impairment, or health of a human being, all locations at which such examinations are performed shall meet the requirements of 42 USC 263a (CLIA) and the regulations thereto.

18. Novation Requirements

[Intentionally Left Blank – Not applicable to this D-SNP Contract]

19. Debarment and Suspension Certification

- A. By signing this D-SNP Contract, D-SNP Contractor agrees to comply with applicable Federal suspension and debarment regulations including, but not limited to 7 CFR 3017, 45 CFR 76, 40 CFR 32, or 34 CFR 85.

Boilerplate Non-EAE

Exhibit D(F) SPECIAL TERMS AND CONDITIONS

- B. By signing this D-SNP Contract, D-SNP Contractor certifies to the best of its knowledge and belief, that it and its principals:
- 1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
 - 2) Have not within a three-year period preceding this D-SNP Contract have been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, State or local) transaction or contract under a public transaction; violation of federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - 3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, State or local) with commission of any of the offenses enumerated in Subprovision B.(2) herein;
 - 4) Have not within a three-year period preceding this D-SNP Contract had one or more public transactions (federal, State or local) terminated for cause or default;
 - 5) Shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under federal regulations (i.e., 48 CFR 9, subpart 9.4), debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction, unless authorized by the State; and
 - 6) Will include a clause entitled, "Debarment and Suspension Certification" that essentially sets forth the provisions herein, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- C. If D-SNP Contractor is unable to certify to any of the statements in this certification, the Contractor shall submit an explanation to the DHCS program funding this D-SNP Contract.
- D. The terms and definitions herein have the meanings set out in the Definitions and Coverage sections of the rules implementing Federal Executive Order 12549.

Boilerplate Non-EAE

Exhibit D(F) SPECIAL TERMS AND CONDITIONS

- E. If D-SNP Contractor knowingly violates this certification, in addition to other remedies available to the Federal Government, the DHCS may terminate this D-SNP Contract for cause or default.

20. Smoke-Free Workplace Certification

- A. Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where Women, Infants, and Children (WIC) coupons are redeemed.
- B. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible party.
- C. By signing this D-SNP Contract, D-SNP Contractor certifies that it will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act. The prohibitions herein are effective December 26, 1994.

21. Covenant Against Contingent Fees

D-SNP Contractor warrants that no person or selling agency has been employed or retained to solicit/secure this D-SNP Contract upon an agreement of understanding for a commission, percentage, brokerage, or contingent fee, except *bona fide* employees or *bona fide* established commercial or selling agencies retained by D-SNP Contractor for the purpose of securing business. For breach or violation of this warranty, DHCS shall have the right to annul this D-SNP Contract without liability or in its discretion to deduct from the D-SNP Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, and brokerage or contingent fee.

Boilerplate Non-EAE

Exhibit D(F) SPECIAL TERMS AND CONDITIONS

22. Payment Withholds

[Intentionally Left Blank – Not applicable to this D-SNP Contract]

23. Performance Evaluation

DHCS may, at its discretion, evaluate the performance of D-SNP Contractor at the conclusion of this D-SNP Contract. If performance is evaluated, the evaluation shall not be a public record and shall remain on file with DHCS. Negative performance evaluations may be considered by DHCS prior to making future contract awards.

24. Officials Not to Benefit

No members of or delegate of Congress or the State Legislature shall be admitted to any share or part of this D-SNP Contract, or to any benefit that may arise therefrom. This Provision shall not be construed to extend to this D-SNP Contract if made with a corporation for its general benefits.

25. Four-Digit Date Compliance

[Intentionally Left Blank – Not applicable to this D-SNP Contract]

26. Prohibited Use of State Funds for Software

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

27. Use of Small, Minority Owned and Women's Businesses

[Intentionally Left Blank – Not applicable to this D-SNP Contract]

28. Alien Ineligibility Certification

By signing this D-SNP Contract, D-SNP Contractor certifies that he/she is not an alien that is ineligible for State and local benefits, as defined in Subtitle B of the Personal Responsibility and Work Opportunity Act. (8 USC 1601, et. seq.)

29. Union Organizing

[Intentionally Left Blank – Not applicable to this D-SNP Contract]

Boilerplate-Non-EAE

Exhibit D(F) SPECIAL TERMS AND CONDITIONS

30. Contract Uniformity (Fringe Benefit Allowability)

[Intentionally Left Blank – Not applicable to this D-SNP Contract]

31. Lobbying Restrictions and Disclosure Certification

(Applicable to federally funded contracts in excess of \$100,000 per 31 USC Section 1352)

A. Certification and Disclosure Requirements

- 1) Each person (or recipient) who requests or receives a contract, grant, or sub-grant, which is subject to 31 USC Section 1352, and which exceeds \$100,000 at any tier, shall file a certification (in the form set forth in Attachment 1, consisting of one page, entitled “Certification Regarding Lobbying”) that the recipient has not made, and will not make, any payment prohibited by Paragraph B of this provision.
- 2) Each recipient shall file a disclosure (in the form set forth in Attachment 2, entitled “Standard Form-LLL ‘disclosure of Lobbying Activities’”) if such recipient has made or has agreed to make any payment using non appropriated funds (to include profits from any covered federal action) in connection with a contract or grant or any extension or amendment of that contract or grant, which would be prohibited under Paragraph b of this provision if paid for with appropriated funds.
- 3) Each recipient shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affect the accuracy of the information contained in any disclosure form previously filed by such person under Paragraph a(2) herein. An event that materially affects the accuracy of the information reported includes:
 - a) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered federal action;
 - b) A change in the person(s) or individuals(s) influencing or attempting to influence a covered federal action; or
 - c) A change in the officer(s), employee(s), or member(s) contacted for the purpose of influencing or attempting to influence a covered federal action.

Boilerplate-Non-EAE

Exhibit D(F)

SPECIAL TERMS AND CONDITIONS

- 4) Each person (or recipient) who requests or receives from a person referred to in Paragraph a(1) of this provision a contract, grant or sub-grant exceeding \$100,000 at any tier under a contract or grant shall file a certification, and a disclosure form, if required, to the next tier above.
- 5) All disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the person referred to in Paragraph a(1) of this provision. That person shall forward all disclosure forms to DHCS program contract manager.

B. Prohibition

Section 1352 of Title 31, USC, provides in part that no appropriated funds may be expended by the recipient of a federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered federal actions: the awarding of any federal contract, the making of any federal grant, the making of any federal loan, entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

Boilerplate Non-EAE

Exhibit E, Attachment 1 DEFINITIONS

As used in this D-SNP Contract, unless otherwise expressly provided or the context otherwise requires, the following definitions of terms will govern the construction of this D-SNP Contract:

1. **Care Coordination or Coordination of Care** means a process used by a person or team to assist Members in accessing Medicare and Medicaid services, as well as social, educational, and other support services, regardless of the funding source for the services. It is characterized by advocacy, communication, and resource management to promote quality, cost effectiveness, and positive outcomes.
2. **Centers for Medicare & Medicaid Services (CMS)** means the federal agency responsible for management of the Medicare and Medicaid programs.
3. **Confidential Information** means specific facts or documents identified as "confidential" by any law, regulations or contractual language.
4. **Covered Service(s) or covered service(s)**, as used in this Contract, means Care Coordination or Coordination of Care. This is the only service covered under this Contract.
5. **California Department of Health Care Services (DHCS)** means the single State Department responsible for administration of the federal Medicaid Program (referred to as Medi-Cal in California), California Children Services (CCS), Genetically Handicapped Persons Program (GHPP), Child Health and Disabilities Prevention (CHDP), and other health related programs.
6. **D-SNP Contract** means this written agreement between DHCS and the D-SNP Contractor.
7. **Department of Health and Human Services (DHHS)** means the federal agency responsible for management of the Medicare and Medicaid programs.
8. **Director** means the Director of the California Department of Health Care Services.
9. **Dual-Eligible Beneficiary** means an individual who is enrolled for benefits under Part A of Title 42 of the United States Code (commencing with Section 1395c) and Part B of Title 42 of the United States Code (commencing with Section 1395j) and/or is also eligible for medical assistance under the Medi-Cal State Plan.

Boilerplate Non-EAE

Exhibit E, Attachment 1 DEFINITIONS

10. **Enrollment** means the process by which a beneficiary eligible for enrollment as contained in Exhibit A, Attachment 1, Provision 4 becomes a Member of the Contractor's D-SNP.
11. **Facility** means any premise that is:
 - A. Owned, leased, used or operated directly or indirectly by or for Contractor or its affiliates for purposes related to this Contract, or
 - B. Maintained by a Provider to provide services on behalf of Contractor.
12. **Medi-Cal Managed Care Health Plan (MCP)** means a managed care health plan that contracts with the Department of Health Care Services for provision or arrangement of Medi-Cal benefits and services. For the purposes of this Contract, this includes Subcontracted Delegate Health Plans.
13. **Medi-Cal Fee-For-Service (FFS)** means the Medi-Cal delivery system in which Providers submit claims to and receive payments from DHCS for Medi-Cal Services rendered to Medi-Cal recipients.
14. **Medi-Cal Services** means all services covered by the Medi-Cal program as identified in Exhibit H, which is attached to this Contract.
15. **Medically Necessary or Medical Necessity** means reasonable and necessary medical services to protect life, to prevent significant illness or significant disability, or alleviate severe pain through the diagnosis or treatment of disease, illness, or injury, as required under W&I Code 14059.5(a) and Title 22 CCR Section 51303(a). Medically Necessary services includes Medi-Cal Services necessary to achieve age-appropriate growth and development, and attain, maintain, or regain functional capacity.
16. **Member** means any beneficiary who is enrolled in with D-SNP Contractor.
17. **Service Area** means the county or counties that D-SNP Contractor is approved to operate in under the terms of this D-SNP Contract. A Service Area may have designated zip codes (under the U.S. Postal Service) within a county that are approved by DHCS to operate under the terms of this D-SNP Contract.
18. **State** means the State of California.

Boilerplate Non-EAE

Exhibit E, Attachment 1 DEFINITIONS

19. **Subcontracted Delegate Health Plan** means a health care service plan that is a subcontractor of a Medi-Cal MCP, and that DHCS determines to have assumed the entire financial risk for all Medi-Cal services provided to a Dual-Eligible Beneficiary who is covered under the applicable comprehensive risk contract of the Medi-Cal MCP.
20. **Working day(s)** mean State calendar (State Appointment Calendar, Standard101) working day(s).

**Exhibit E, Attachment 2
PROGRAM TERMS AND CONDITIONS**

1. Governing Law

In addition to Exhibit C, Provision 14, Governing Law, D-SNP Contractor also agrees to the following:

- A. If it is necessary to interpret this D-SNP Contract, all applicable laws may be used as aids in interpreting the D-SNP Contract. However, the parties agree that any such applicable laws shall not be interpreted to create contractual obligations upon DHCS or D-SNP Contractor, unless such applicable laws are expressly incorporated into this D-SNP Contract in some section other than this provision, Governing Law. The parties agree that any remedies for DHCS' or D-SNP Contractor's non-compliance with laws not expressly incorporated into this D-SNP Contract, or any covenants implied to be part of this D-SNP Contract, shall not include money damages, but may include equitable remedies such as injunctive relief or specific performance. This D-SNP Contract is the product of mutual negotiation, and if any ambiguities should arise in the interpretation of this D-SNP Contract, both parties shall be deemed authors of this D-SNP Contract.

Any provision of this D-SNP Contract which is in conflict with current or future applicable federal or State laws or regulations is hereby amended to conform to the provisions of those laws and regulations. Such amendment of the D-SNP Contract shall be effective on the effective date of the statutes or regulations 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.

- B. Such amendment shall constitute grounds for termination of this D-SNP Contract in accordance with the procedures and provisions of Provision 17, Paragraph B, D-SNP Contractor-Initiated Termination below. The parties shall be bound by the terms of the amendment until the effective date of the termination.
- C. All existing Policy Guidance issued by DHCS, MMCD, or the current Managed Care Operations Division (MCO) can be viewed at <https://www.dhcs.ca.gov/provgovpart/Pages/Dual-Special-Needs-Plans-%28D-SNP%29-Contract-and-Program-Guide.aspx> and shall be complied with by D-SNP Contractor. All Policy Guidance issued by DHCS subsequent to the effective date of this D-SNP Contract

**Exhibit E, Attachment 2
PROGRAM TERMS AND CONDITIONS**

shall provide clarification of D-SNP Contractor's obligations pursuant to this D-SNP Contract, and may include instructions to D-SNP Contractor regarding implementation of mandated obligations pursuant to changes in State or federal statutes or regulations, or pursuant to judicial interpretation. In the event DHCS determines that there is an inconsistency between this D-SNP Contract and DHCS Policy Guidance, the D-SNP Contract shall prevail.

2. Entire Agreement

This written D-SNP Contract and any amendments shall constitute the entire agreement between the parties. No oral representations shall be binding on either party unless such representations are reduced to writing and made an amendment to the D-SNP Contract.

3. Amendment Process

In addition to Exhibit C, Provision 2, Amendment, D-SNP Contractor also agrees to the following:

Should either party, during the life of this D-SNP Contract, desire a change in this D-SNP Contract, that change shall be proposed in writing to the other party. The other party shall acknowledge receipt of the proposal within ten (10) calendar days of receipt of the proposal. The party proposing any such change shall have the right to withdraw the proposal any time prior to acceptance or rejection by the other party. Any proposal shall set forth an explanation of the reason and basis for the proposed change and the text of the desired amendment to this D-SNP Contract which would provide for the change. If the proposal is accepted, this D-SNP Contract shall be amended to provide for the change mutually agreed to by the parties on the condition that the amendment is approved by DHHS, and the State Department of Finance, if necessary.

4. Change Requirements

A. General Provisions

The parties recognize that during the life of this D-SNP Contract, the Medi-Cal Managed Care program will be a dynamic program requiring numerous changes to its operations and that the scope and complexity of changes will vary widely over the life of the D-SNP Contract. The parties agree that the development of a system which has the capability to implement such changes in an orderly and timely manner is of considerable importance.

**Exhibit E, Attachment 2
PROGRAM TERMS AND CONDITIONS**

B. D-SNP Contractor's Obligation to Implement

The D-SNP Contractor will make changes mandated by DHCS. In the case of mandated changes in regulations, statutes, federal guidelines, or judicial interpretation, DHCS may direct the D-SNP Contractor to immediately begin implementation of any change by issuing a change order. If DHCS issues a change order, the D-SNP Contractor will be obligated to implement the required changes while discussions are taking place. DHCS may, at any time, within the general scope of the D-SNP Contract, by written notice, issue change orders to the D-SNP Contract.

5. Delegation of Authority

DHCS intends to implement this D-SNP Contract through a single administrator, called the "Contracting Officer". The Director of DHCS will appoint the Contracting Officer. The Contracting Officer, on behalf of DHCS, will make all determinations and take all actions as are appropriate under this D-SNP Contract, subject to the limitations of applicable Federal and State laws and regulations. The Contracting Officer may delegate his/her authority to act to an authorized representative through written notice to D-SNP Contractor.

D-SNP Contractor will designate a single administrator; hereafter called the "Contractor's Representative". The Contractor's Representative, on behalf of D-SNP Contractor, will make all determinations and take all actions as are appropriate to implement this D-SNP Contract, subject to the limitations of the D-SNP Contract, federal and State laws and regulations. The Contractor's Representative may delegate their authority to act to an authorized representative through written notice to the Contracting Officer. The Contractor's Representative will be empowered to legally bind D-SNP Contractor to all agreements reached with DHCS. D-SNP Contractor shall designate Contractor's Representative in writing and shall notify the Contracting Officer in accordance with Exhibit E, Attachment 2, Provision 13, Notices.

6. Authority of the State

Sole authority to establish, define, or determine the reasonableness, the necessity and level and scope of Covered Services under the Medi-Cal program administered in this D-SNP Contract or coverage for such services, or the eligibility of the beneficiaries or providers to participate

**Exhibit E, Attachment 2
PROGRAM TERMS AND CONDITIONS**

in the Medi-Cal Program reside with DHCS. Sole authority to establish or interpret policy and its application related to the above areas will reside with DHCS.

D-SNP Contractor may not make any limitations, exclusions, or changes in Covered Services; any changes in definition or interpretation of Covered Services; or any changes in the administration of the D-SNP Contract related to the scope of Covered Services, allowable coverage for those Covered Services, or eligibility of beneficiaries or providers to participate in the program, without the express, written direction or approval of the Contracting Officer.

7. Fulfillment of Obligations

No covenant, condition, duty, obligation, or undertaking continued or made a part of this D-SNP Contract will be waived except by written agreement of the parties hereto, and forbearance or indulgence in any other form or manner by either party in any regard whatsoever will not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed or discharged by the party to which the same may apply; and, until performance or satisfaction of all covenants, conditions, duties, obligations, and undertakings is complete, the other party will have the right to invoke any remedy available under this D-SNP Contract, or under law, notwithstanding such forbearance or indulgence.

8. Prohibition Against Assignments or Delegation of D-SNP Contractor's Duties and Obligations Under this D-SNP Contract

D-SNP Contractor shall not negotiate or enter into any agreement to assign or delegate the duties and obligations under this D-SNP Contract. If D-SNP Contractor fails to comply with this Provision, DHCS may terminate the D-SNP Contract for cause in compliance with Exhibit E, Attachment 2, Provision 17.

9. Prohibition Against Novations

D-SNP Contractor and DHCS shall not enter any novation agreements. Contractor shall not propose any novation agreements nor shall DHCS agree to or act upon any proposal.

10. Obtaining DHCS Approval

D-SNP Contractor shall obtain written approval from DHCS prior to commencement of operation under this D-SNP Contract:

**Exhibit E, Attachment 2
PROGRAM TERMS AND CONDITIONS**

- A. Within five (5) working days of receipt, DHCS shall acknowledge in writing the receipt of any material sent to DHCS pursuant to this Provision.
- B. Within 60 calendar days of receipt, DHCS shall make all reasonable efforts to approve in writing the use of such material provided to DHCS pursuant to this Provision to provide D-SNP Contractor with a written explanation why its use is not approved, or provide a written estimated date of completion of DHCS' review process. If DHCS does not complete its review of submitted material within 60 calendar days of receipt, or within the estimated date of completion of DHCS review, D-SNP Contractor may elect to implement or use the material at D-SNP Contractor's sole risk and subject to possible subsequent disapproval by DHCS. This Provision shall not be construed to imply DHCS approval of any material that has not received written DHCS approval.

11. Program

DHCS reserves the right to review and approve any changes to D-SNP Contractor's protocols, policies, and procedures as specified in this D-SNP Contract.

12. Certifications

D-SNP Contractor shall comply with certification requirements set forth in 42 CFR 438.604 and 42 CFR 438.606.

In addition to Exhibit C, Provision 11, Certification Clauses, D-SNP Contractor also agrees to the following:

With respect to any report, invoice, record, papers, documents, books of account, or other Contract required data submitted, pursuant to the requirements of this D-SNP Contract, the D-SNP Contractor's Representative or their designee will certify, under penalty of perjury, that the report, invoice, record, papers, documents, books of account or other Contract required data is current, accurate, complete and in full compliance with legal and contractual requirements to the best of that individual's knowledge and belief, unless the requirement for such certification is expressly waived by DHCS in writing.

**Exhibit E, Attachment 2
PROGRAM TERMS AND CONDITIONS**

13. Notices

All notices to be given under this D-SNP Contract will be in writing and will be deemed to have been given when sent via certified mail or electronic mail (email). DHCS and D-SNP Contractor will designate email addresses for notices sent via email. Notices sent via certified mail must be addressed to the following DHCS and D-SNP Contractor:

California Department of Health Care Services Managed Care Operations Division Attn: Michelle Retke, Division Chief MS 4408 P.O. Box 997413 Sacramento, CA 95899-7413	[D-SNP Contractor Name] California Attn: [Name,] President Address City, State, Zip Code
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14. Term

The D-SNP Contract will become effective January 1, 2023, and will continue in full force and effect through December 31, 2023.

15. Service Area

The Service Area covered under this D-SNP Contract includes:

[XX] County

All D-SNP Contract provisions apply separately to each Service Area.

16. D-SNP Contract Extension

DHCS has the exclusive option to extend the term of this D-SNP Contract for any reason, in any county within the Service Area, with at least nine (9) months' written notice to D-SNP Contractor before the end of the D-SNP Contract term.

17. Termination for Cause and Other Terminations

In addition to Exhibit C, Provision 7, Termination for Cause, D-SNP Contractor also agrees to the following:

A. DHCS-Initiated Terminations

**Exhibit E, Attachment 2
PROGRAM TERMS AND CONDITIONS**

- 1) DHCS will terminate this D-SNP Contract in the event that the Director determines that the health and welfare of Members is jeopardized by the continuation of the D-SNP Contract. Termination pursuant to the requirements in this Provision's Paragraph A.1) will be effective immediately upon the provision of written notice provided by DHCS to D-SNP Contractor.
- 2) Termination for Cause
 - a) DHCS may terminate this D-SNP Contract should D-SNP Contractor fail to perform the requirements of this Contract. In the event of such termination, DHCS may proceed with providing the services required under this D-SNP Contract in any manner deemed proper by DHCS.
 - b) DHCS may terminate this D-SNP Contract in the event that D-SNP Contractor enters negotiations to change ownership or actually changes ownership, enters negotiations to assign or delegate its duties and obligations under this D-SNP Contract to another party or actually assigns or delegates its duties or obligations under the D-SNP Contract.
 - c) Should DHCS terminate this D-SNP Contract for cause under this Provision's Paragraph A.2) of this D-SNP Contract, DHCS will provide D-SNP Contractor with at least 60 calendar days' notice prior to the effective date of termination, unless potential beneficiary harm requires a shorter notice period. D-SNP Contractor agrees that this notice provision is reasonable.
 - d) DHCS shall terminate this D-SNP Contract under this Provision and pursuant to the provisions of Welfare and Institutions Code, Section 14197.7, and California Code of Regulations, Title 22, Section 53873.
- 3) DHCS may terminate this D-SNP Contract in the event that D-SNP Contractor enters negotiations to change ownership or actually changes ownership, enters negotiations to assign or delegate its duties and obligations under the contract to another party or actually assigns or delegates its duties or obligations under the D-SNP Contract.

**Exhibit E, Attachment 2
PROGRAM TERMS AND CONDITIONS**

B. D-SNP Contractor-Initiated Terminations

D-SNP Contractor may only terminate this D-SNP Contract when a change in contractual obligations is created by a State or federal change in the Medi-Cal program, or a lawsuit, that substantially alters the conditions under which the D-SNP Contractor entered into this D-SNP Contract, such that the D-SNP Contractor can demonstrate this to the satisfaction of DHCS.

C. Termination of Obligations

All obligations to provide services under this D-SNP Contract will automatically terminate on the date the operations period ends.

18. Disputes

D-SNP Contractor must comply with and exhaust the requirements of this Provision when it initiates a contract dispute with DHCS. In addition to Exhibit C, Provision 6, Disputes, D-SNP Contractor also agrees to the following:

This Disputes section will be used by the D-SNP Contractor as the means of seeking resolution of disputes on contractual issues.

A. Disputes Resolution by Negotiation

D-SNP Contractor agrees to make best efforts to resolve all contractual issues by negotiation and mutual agreement at the DHCS Contracting Officer level before appealing to the DHCS Office of Administrative Hearings and Appeals (OAHA). D-SNP Contractor must exhaust OAHA's appeal process before filing a writ in Sacramento County Superior Court. During the negotiations to resolve Contractor's issues, DHCS and Contractor may agree, in writing, to an extension of time for continuing negotiations to resolve Contractor's dispute before the decision of the DHCS Contracting Officer is issued.

B. Notice of Dispute

- 1) Within 30 calendar days from the date the alleged arises or otherwise becomes known to the D-SNP Contractor, the D-SNP Contractor must serve a written Notice of Dispute to the DHCS to the Contracting Officer. D-SNP Contractor's failure to serve its Notice of Dispute within 30 calendar days from the date the alleged dispute arises or otherwise becomes known to D-SNP Contractor constitutes a waiver

Exhibit E, Attachment 2
PROGRAM TERMS AND CONDITIONS

of all issues raised in D-SNP Contractor's Notice of Dispute.

- 2) D-SNP Contractor's Notice of Dispute must include, based on the most accurate and substantiating information then available to D-SNP Contractor, the following:
 - a) That it is a dispute subject to the procedures set forth in this Provision.
 - b) The date, nature, and circumstances of the conduct which is subject of the dispute.
 - c) The names, phone numbers, functions, and conduct of each D-SNP Contractor and DHCS/State official or employee involved in or knowledgeable about the alleged issue that is the subject of the dispute.
 - d) The identification of any substantiating documents and the substances of any oral communications that are relevant to the alleged conduct. Copies of all identified documents will be attached.
 - e) Copies of all substantiating documentation and any other evidence.
 - f) The factual and legal bases supporting Contractor's Notice of Dispute.
 - g) The cost impact to D-SNP Contractor directly attributable to the alleged conduct, if any.
 - h) D-SNP Contractor's desired remedy:
- 3) The required documentation set forth above, in this Provision's Paragraph B.2), will serve as the basis for any subsequent appeal.
- 4) After D-SNP Contractor submits its Notice of Dispute with all accurate available substantiating documentation, D-SNP Contractor will comply with the requirements of Title 22, CCR, Section 53851(d) and diligently continue performance of this D-SNP Contract, including compliance with contract requirements that are the subject of, or related to, D-SNP Contractor's Notice of Dispute.

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- 5) If D-SNP Contractor requests and DHCS agrees, D-SNP Contractor's Notice of Dispute may be decided by an Alternate Dispute Officer (ADO). DHCS will designate an ADO who was not directly involved in the alleged conduct that prompted D-SNP Contractor's Notice of Dispute.
- 6) Any appeal of the DHCS Contracting Officer or ADO's decision to OAHA or a write seeking review of OAHA's decision in Sacramento County Superior Court is limited to the issues and arguments set forth and properly documented in D-SNP Contractor's Notice of Dispute, that were not waived or resolved.

C. The DHCS Contracting Officer's or ADO's Decision

Any disputes concerning performance of this D-SNP Contract shall be decided by the DHCS Contracting Officer or the ADO in a written decision stating the factual basis for the decision. Within 30 calendar days of receipt of a Notice of Dispute, the Contracting Officer or the ADO shall either:

- 1) Find in favor of D-SNP Contractor, in which case the DHCS Contracting Officer or ADO may correct the earlier conduct which caused D-SNP Contractor to file a dispute; or
- 2) Deny D-SNP Contractor's dispute and, where necessary, direct the manner of future performance; or
- 3) Request additional substantiating documentation in the event the information in D-SNP Contractor's notification is inadequate to permit a decision to be made under Paragraphs B.2) or C.1) above. If the DHCS Contracting Officer or ADO determines that additional substantiating information is required, they will provide D-SNP Contractor with a written request identifying the issue(s) requiring additional substantiating documentation. D-SNP Contractor must provide that additional substantiating documentation no later than 30 calendar days from receipt of the request. Upon receipt of this additional requested substantiating information, the DHCS Contracting Officer or ADO shall have 30 calendar days to issue a decision. Failure to supply additional substantiating information requested by the DHCS Contracting Officer or ADO, or otherwise notify the DHCS Contracting Officer or ADO that no additional documents exist, within the time period specified above

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shall constitute D-SNP Contractor's waiver of issues raised in D-SNP Contractor's Notice of Dispute.

A copy of the decision shall be served on D-SNP Contractor.

D. Appeal of Contracting Officer's or Alternate Dispute Officer's Decision

- 1) D-SNP Contractor shall have 30 calendar days following the receipt of the DHCS Contracting Officer or ADO's decision to appeal the decision to the Director, through the OAHA. All of D-SNP Contractor's appeals shall be governed by Health and Safety Code, section 100171, except Government Code section 11511 will not apply.
- 2) All of D-SNP Contractor's appeals shall be in writing and shall be filed with the OAHA and a copy sent to the Chief Counsel of DHCS and the DHCS Contract Manager. D-SNP Contractor's appeal shall be deemed filed on the date it is received by the OAHA. D-SNP Contractor's appeal shall specifically set forth the unresolved issue(s) that remain in dispute and issues that have not been waived because of D-SNP Contractor's failure to provide all substantiating documentation to DHCS, as specified in Paragraph C of this Provision, and include D-SNP Contractor's contentions as to those issues. Additionally, D-SNP Contractor's appeal shall be limited to those issues raised in its Notice of Dispute filed pursuant to Paragraph B, Notification of Dispute that have not been resolved or waived.
- 3) Contractor has the burden of proof of demonstrating that its position is correct and must show by a preponderance of evidence that:
 - a) DHCS acted improperly such that it breached this Contract; and
 - b) D-SNP Contractor sustained a cost impact directly related to DHCS' breach.
- 4) OAHA's jurisdiction is limited to issues and arguments raised in the Notice of Dispute that were not waived either by the untimely filing of the Notice of Dispute or Statement of Disputed Issues, or by D-SNP Contractor's failure to provide all requested substantiating documentation requested by the DHCS Contracting Officer or ADO or otherwise resolved by Contractor and DHCS.

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E. No Obligation to Pay Interest

If D-SNP Contractor prevails on its Notice of Dispute pursuant to a DHCS Contracting Officer's or ADO's decision, an OAHA decision, or an order or decision issued by the Sacramento County Superior Court or any California court of appeal, DHCS will not be required to pay interest on any amounts found to be due or owing to D-SNP Contractor arising out of the Notice of Dispute or any subsequent litigation.

F. D-SNP Contractor Duty to Perform

D-SNP Contractor must comply with all requirements of 22 CCR section 53851(d) and all obligations under this D-SNP Contract, including continuing D-SNP Contract requirements that are the subject of, or related to, D-SNP Contractor's Notice of Dispute until there is a final decision from the DHCS Contracting Officer, the ADO or a decision on an appeal in Sacramento County Superior Court or any California court of appeal.

G. Waiver of Claims

D-SNP Contractor waives all claims or issues if it fails to timely submit a Notice of Dispute with all substantiating documents within the timeframes set forth in Paragraph B of this Provision. D-SNP Contractor also waives all claims or issues set forth in its Notice of Dispute if it fails to timely submit all additional substantiating documentation within 30 calendar days at the DHCS Contracting Officer or ADO's request. D-SNP Contractor also waives all claims or issues set forth in its Notice of Dispute if it fails to timely appeal the DHCS Contracting Officer or ADO's decision in the manner and within the time specified in this Provision 18. D-SNP Contractor's waiver includes all damages whether direct or consequential in nature.

19. Audit

In addition to Exhibit C, Provision 4, Audit, D-SNP Contractor also agrees to the following:

D-SNP Contractor will maintain such books and records necessary to disclose how D-SNP Contractor discharged its obligations under this D-SNP Contract. These books and records will disclose the quantity of Covered Services provided under this D-SNP Contract, the quality of those services, the manner for those services, the persons eligible to

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receive Covered Services, and the manner in which D-SNP Contractor administered its daily business.

A. Books and Records

These books and records will include, but are not limited to, all physical records originated or prepared pursuant to the performance under this D-SNP Contract including working papers; reports submitted to DHCS; all medical records, medical charts and prescription files; and other documentation pertaining Covered Services rendered to Members.

B. Records Retention

Notwithstanding any other records retention time period set forth in this D-SNP Contract, these books and records will be maintained for a minimum of five years from the end of the current Fiscal Year in which the date of service occurred; in which the record or data was created or applied; and for which the financial record was created or the D-SNP Contract is terminated, or, in the event D-SNP Contractor has been duly notified that DHCS, Department of Health and Human Services (DHHS), Department of Justice (DOJ) or the Comptroller General of the United States, or their duly authorized representatives, have commenced an audit or investigation of the D-SNP Contract, until such time as the matter under audit or investigation has been resolved, whichever is later.

20. Inspection Rights

In addition to Exhibit D(F), Provision 8, Site Inspection, D-SNP Contractor also agrees to the following:

Through the end of the records retention period specified in Provision 23, Audit, Paragraph B, Records Retention above, D-SNP Contractor shall allow the DHCS, DHHS, the Comptroller General of the United States, DOJ Bureau of Medi-Cal Fraud, Department of Managed Health Care (DMHC), and other authorized State agencies, or their duly authorized representatives, including DHCS' external quality review organization contractor, to audit, inspect, monitor or otherwise evaluate the quality, appropriateness, and timeliness of services performed under this D-SNP Contract, and to inspect, evaluate, and audit any and all premises, books, records, equipment, contracts, computers, or other electronic systems and facilities maintained by D-SNP Contractor pertaining to these services at any time during normal business hours. Books and records include, but are not limited to, all physical records originated or prepared pursuant to the performance under this Contract, including working papers, reports, and

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books of account, medical records, prescription files, laboratory results, information systems and procedures, and any other documentation pertaining to medical and non-medical services rendered to Members. Upon request, through the end of the records retention period specified in Provision 23, Audit, Paragraph B, Records Retention above, D-SNP Contractor shall furnish any record, or copy of it, to DHCS or any other entity listed in this section, at D-SNP Contractor's sole expense.

A. Facility Inspections

DHCS shall conduct unannounced validation reviews on a number of the D-SNP Contractor's primary care sites, selected at DHCS' discretion, to verify compliance of these sites with DHCS requirements.

B. Access Requirements and State's Right to Monitor Authorized State and federal agencies will have the right to monitor all aspects of the D-SNP Contractor's operation for compliance with the provisions of this D-SNP Contract and applicable Federal and State laws and regulations. Such monitoring activities will include, but are not limited to, inspection and auditing of D-SNP Contractor and provider facilities, management systems and procedures, and books and records as the Director deems appropriate, at any time during the D-SNP Contractor's or other facility's normal business hours. The monitoring activities will be either announced or unannounced.

- 1) To assure compliance with the D-SNP Contract and for any other reasonable purpose, the State and its authorized representatives and designees will have the right to premises access, with or without notice to the D-SNP Contractor. This will include the MIS operations site or such other place where duties under the D-SNP Contract are being performed.
- 2) Staff designated by authorized State agencies will have access to all security areas and the D-SNP Contractor will provide reasonable facilities, cooperation and assistance to State representative(s) in the performance of their duties. Access will be undertaken in such a manner as to not unduly delay the work of the D-SNP Contractor.

21. Confidentiality of Information

In addition to Exhibit D(F), Provision 13, Confidentiality of Information, D-SNP Contractor also agrees to the following duties and responsibilities with respect to confidentiality of information and data:

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- A. Notwithstanding any other provision of this D-SNP Contract, names of persons receiving public social services are confidential and are to be protected from unauthorized disclosure in accordance with Title 42, CFR, Section 431.300 et seq., Welfare and Institutions Code, Section 14100.2, and regulations adopted thereunder. For the purpose of this D-SNP Contract, all information, records, data, and data elements collected and maintained for the operation of the D-SNP Contract and pertaining to Members shall be protected by D-SNP Contractor from unauthorized disclosure.

D-SNP Contractor may release medical records in accordance with applicable law pertaining to the release of this type of information. D-SNP Contractor is not required to report requests for Medical Records made in accordance with applicable law. Exhibit G is hereby incorporated into this contract by reference.

- B. With respect to any identifiable information concerning a Member under this D-SNP Contract that is obtained by D-SNP Contractor, D-SNP Contractor:
- 1) Will not use any such information for any purpose other than carrying out the express terms of this D-SNP Contract;
 - 2) Will promptly transmit to DHCS all requests for disclosure of such information, except requests for medical records in accordance with applicable law;
 - 3) Will not disclose, except as otherwise specifically permitted by this D-SNP Contract, any such information to any party other than DHCS without DHCS' prior written authorization specifying that the information is releasable under 42 CFR, Section 431.300 et seq., Welfare and Institutions Code, Section 14100.2, and regulations adopted thereunder; and
 - 4) Will, at the termination of this D-SNP Contract, return all such information to DHCS or maintain such information according to written procedures sent to D-SNP Contractor by DHCS for this purpose.

22. Third-Party Tort and Workers' Compensation Liability

D-SNP Contractor shall identify and notify DHCS' Third Party Liability and Recovery Branch of all instances or cases in which D-SNP Contractor believes an action by the Medi-Cal Member involving casualty insurance or tort or Workers' Compensation liability of a third party could result in recovery by the Member of funds to which DHCS has lien rights under

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Welfare and Institutions Code Article 3.5 (commencing with Section 14124.70), Part 3, Division 9, D-SNP Contractor shall make no claim for recovery of the value of case management rendered to a Member in such cases or instances and such case or instance shall be referred to DHCS' Third Party Liability and Recovery Branch within ten (10) calendar days of discovery. To assist DHCS in exercising its responsibility for such recoveries, D-SNP Contractor shall meet the following requirements:

- A. If DHCS requests service information and/or copies of reports for Covered Services to an individual Member, D-SNP Contractor shall deliver the requested information within 30 calendar days of the request.
- B. Information to be delivered shall contain the following data items:
 - 1) Member name.
 - 2) Full 14-digit Medi-Cal number.
 - 3) Social Security Number.
 - 4) Date of birth.
 - 5) Diagnosis code and description of illness/injury (if known).
 - 6) Procedure code and/or description of services rendered (if known).
- C. D-SNP Contractor shall identify to DHCS' Third Party Liability and Recovery Branch the name, address and telephone number of the person responsible for receiving and complying with requests for mandatory and/or optional at-risk service information.
- D. If D-SNP Contractor receives any requests from attorneys, insurers, or beneficiaries for copies of referrals, D-SNP Contractor shall refer the request to the Third Party Liability and Recovery Branch with the information contained in Paragraph B above, and shall provide the name, address and telephone number of the requesting party.
- E. Use the TPLManagedCare@dhcs.ca.gov inbox for all communications regarding D-SNP Contractor's service and utilization information, and paid invoices and claims submissions, to submit questions or comments related to the preparation and submission of these reports, and for issues related to accessing the secure file transfer protocol folders.

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23. Records Related To Recovery for Litigation

- A. Upon request by DHCS, D-SNP Contractor shall timely gather, preserve and provide to DHCS, in the form and manner specified by DHCS, any information specified by DHCS, subject to any lawful privileges, in D-SNP Contractor's possession, relating to threatened or pending litigation by or against DHCS.
- B. If D-SNP Contractor asserts that any requested documents are covered by a privilege, D-SNP Contractor shall:
 - 1) Identify such privileged documents with sufficient particularity to reasonably identify the document while retaining the privilege; and
 - 2) State the privilege being claimed that supports withholding production of the document.
- C. Such a request shall include, but is not limited to, a response to a request for documents submitted by any party in any litigation by or against DHCS. D-SNP Contractor acknowledges that time may be of the essence in responding to such request. D-SNP Contractor shall use all reasonable efforts to immediately notify DHCS of any subpoenas, document production requests, or requests for records, received by D-SNP Contractor related to this D-SNP Contract entered into under this D-SNP Contract.

24. Equal Opportunity Employer

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

25. Discrimination Prohibitions

- A. Member Discrimination Prohibition

D-SNP Contractor shall not unlawfully discriminate against

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Members or beneficiaries eligible for enrollment into Contractor's D-SNP on the basis of sex, race, color, religion, ancestry, national origin, creed, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information marital status, gender, gender identity, marital status, gender, gender identity, sexual orientation, or identification with any other persons or groups defined in Penal Code 422.56, in accordance with the statutes identified in Exhibit E, Attachment 2, Provision 26 below, rules and regulations promulgated pursuant thereto, or as otherwise provided by law or regulations. For the purpose of this D-SNP Contract, discrimination may include, but is not limited to, the following:

- 1) Denying any Member case any Covered Services;
- 2) Providing to a Member any Covered Service which is different, or is provided in a different manner or at a different time from that provided to other Members under this Contract except where medically indicated;
- 3) Subjecting a Member to segregation or separate treatment in any manner related to the receipt of any Covered Service;
- 4) Restricting a Member in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any Covered Service, treating a Member or a beneficiary eligible for enrollment into the Contractor's D-SNP differently from others in determining whether he or she satisfies any admission, Enrollment, quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any Covered Service;
- 5) The assignment of times or places for the provision of services on the basis of the sex, race, color, religion, ancestry, national origin, creed, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, gender, gender identity, sexual orientation, or identification with any other persons or groups defined in Penal Code 422.56.
- 6) Failing to make Auxiliary Aids available, or to make reasonable Accommodations in policies, practices, or procedures, when necessary to avoid discrimination on the basis of disability;

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- 7) Failing to ensure meaningful access to programs and activities for Limited English Proficient (LEP) Members and Potential Enrollees.
- 8) D-SNP Contractor shall take affirmative action to ensure that Members are provided Covered Services without regard to sex, race, color, religion, ancestry, national origin, creed, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, gender, gender identity, sexual orientation, or identification with any other persons or groups defined in Penal Code 422.56, except as needed to provide equal access to Limited English Proficient (LEP) Members or Members with disabilities, or as medically indicated.
- 9) For the purposes of this section, physical handicap includes the carrying of a gene which may, under some circumstances, be associated with disability in that person's offspring, but which causes no adverse effects on the carrier. Such genes will include, but are not limited to, Tay-Sachs trait, sickle cell trait, thalassemia trait, and X-linked hemophilia.

B. Discrimination Related to Health Status

D-SNP Contractor shall not discriminate among eligible individuals on the basis of their health status requirements or requirements for health care services during enrollment, re-enrollment or disenrollment. D-SNP Contractor will not terminate the enrollment of an eligible individual based on an adverse change in the Member's health.

26. Federal and State Nondiscrimination Requirements

D-SNP Contractor shall comply with all applicable federal requirements in Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972 (regarding education programs and activities, as amended); the Age Discrimination Act of 1975; the Rehabilitation Act of 1973, as amended; Titles I and II of the Americans with Disabilities Act of 1990, as amended; Section 1557 of the Patient Protection and Affordable Care Act of 2010; and federal implementing regulations issued under the above-listed statutes. D-SNP Contractor shall also comply with California nondiscrimination requirements, including, without limitation, the Unruh Civil Rights Act, Sections 7405 and 11135 of the Government Code, Section 14029.91 of the Welfare and Institutions Code, and state implementing

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regulations.

27. Discrimination Grievances

D-SNP Contractor shall process a grievance for discrimination as required by APL 21-004, and in accordance with federal and State nondiscrimination law as stated in 45 CFR § 84.7; 34 CFR § 106.8; 28 CFR § 35.107; and W&I Code § 14029.91(e)(4).

- A. D-SNP Contractor shall designate a discrimination grievance coordinator responsible for ensuring compliance with federal and State nondiscrimination requirements, and investigating discrimination grievances related to any action that would be prohibited by, or out of compliance with, federal or State nondiscrimination law.
- B. D-SNP Contractor shall adopt procedures to ensure the prompt and equitable resolution of discrimination grievances by D-SNP Contractor. D-SNP Contractor shall not require a Member or potential enrollee to file a discrimination Grievance with D-SNP Contractor before filing with the DHCS Office of Civil Rights or the U.S. Health and Human Services Office for Civil Rights.
- C. Within ten calendar days of mailing a discrimination grievance resolution letter, D-SNP Contractor shall submit the following information regarding the discrimination grievance in a secure format to the DHCS Office of Civil Rights:
 - 1) The original discrimination grievance;
 - 2) The provider's or other accused party's response to the discrimination grievance;
 - 3) Contact information for the personnel primarily responsible for investigating and responding to the discrimination grievance on behalf of D-SNP Contractor;
 - 4) Contact information for the person filing the discrimination grievance, and for the provider or other accused party that is the subject of the discrimination grievance;
 - 5) All correspondence with the person filing the discrimination grievance regarding the discrimination grievance, including, but not limited to, the

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- 6) discrimination grievance acknowledgment letter and resolution letter; and
- 7) The results of D-SNP Contractor's investigation, copies of any corrective action taken, and any other information that is relevant to the allegation(s) of discrimination.

28. Nondiscrimination Notice and Language Taglines

- A. D-SNP Contractor shall post (1) a DHCS-approved nondiscrimination notice, and (2) language taglines in a conspicuously visible font size in English, the threshold languages, and at least the top 15 non-English languages in the State, and any other languages, as determined by DHCS, explaining the availability of free language assistance services, including written translation and oral interpretation, and information on how to request Auxiliary Aids and services, including materials in alternative formats. The nondiscrimination notice and taglines shall include D-SNP Contractor's toll-free and TTY/TDD telephone number for obtaining these services, and shall be posted in the Member Services Guide/Evidence of Coverage, and in all Member information, informational notices, and materials critical to obtaining services targeted to Members, potential Members, applicants, and members of the public, in accordance with APL 21-004 and APL 22-002, 42 CFR section 438.10(d)(2)-(3), and W&I Code section 14029.91(f) and 14029.92(c).
- B. D-SNP Contractor's nondiscrimination notice shall include all information required by W&I Code section 14029.91(e) and APL 21-004, any additional information required by DHCS, and shall provide information on how to file a discrimination grievance with:
 - 1) Both D-SNP Contractor and the DHCS Office of Civil Rights, if there is a concern of discrimination in the Medi-Cal program based on sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, gender, gender identity, or sexual orientation or identification with any other persons or groups defined in Penal Code 422.56. (W&I Code section 14029.91(e); H&S Code section 11135; and
 - 2) The United States Department of Health and Human Services Office for Civil Rights if there is a concern of discrimination based on race, color, national origin, sex, age, or disability.

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per W & I Code section 14029.91(e).

29. Small Business Participation and Disabled Veteran Business Enterprises (DVBE) Reporting Requirements

- A. D-SNP Contractor must comply with applicable requirements of California law relating to Disabled Veteran Business Enterprises (DVBE) commencing at Public Contract Code section 10230.
- B. If for this D-SNP Contract, D-SNP Contractor made a commitment to achieve small business participation, then D-SNP Contractor must annually and within 60 calendar days of receiving final payment under this D-SNP Contract report to DHCS the actual percentage of small business participation that was achieved per Government Code section 14841.
- C. If for this D-SNP Contract, D-SNP Contractor made a commitment to achieve DVBE participation, then D-SNP Contractor must annually and within 60 calendar days of receiving final payment under this D-SNP Contract certify in a report to DHCS the following:
 - 1) The total amount Contractor received under the Contract;
 - 2) The name and address of the DVBE(s) that participated in the performance of the Contract;
 - 3) The amount each DVBE received from Contractor;
 - 4) That all payments under the Contract have been made to the DVBE; and
 - 5) The actual percentage of DVBE participation that was achieved, per Mil. & Vets. Code section 999.5(d), and Government Code section 14841.

30. Word Usage

Unless the context of this D-SNP Contract clearly requires otherwise, (a) the plural and singular numbers shall each be deemed to include the other; (b) the masculine, feminine, and neuter genders shall each be deemed to include the others; (c) "shall," "will," "must," or "agrees" are mandatory, and "may" is permissive; (d) "or" is not exclusive; and (e) "includes" and "including" are not limiting.

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31. Federal False Claims Act Compliance

Effective January 1, 2007, D-SNP Contractor shall comply with 42 USC Section 1396a (a)(68), Employee Education About False Claims Recovery, as a condition of receiving payments under this D-SNP Contract. Upon request by DHCS, D-SNP Contractor shall demonstrate compliance with this provision, which may include providing DHCS with copies of D-SNP Contractor's applicable written policies and procedures and any relevant employee handbook excerpts.

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Exhibit G
BUSINESS ASSOCIATE ADDENDUM

1. This Agreement has been determined to constitute a business associate relationship under the Health Insurance Portability and Accountability Act (HIPAA) and its implementing privacy and security regulations at 45 Code of Federal Regulations, Parts 160 and 164 (collectively, and as used in this Agreement)
2. The term “Agreement” as used in this document refers to and includes both this Business Associate Addendum and the contract to which this Business Associate Agreement is attached as an exhibit, if any.
3. For purposes of this Agreement, the term “Business Associate” shall have the same meaning as set forth in 45 CFR section 160.103.
4. The Department of Health Care Services (DHCS) intends that Business Associate may create, receive, maintain, transmit or aggregate certain information pursuant to the terms of this Agreement, some of which information may constitute Protected Health Information (PHI) and/or confidential information protected by Federal and/or state laws.
 - 4.1 As used in this Agreement and unless otherwise stated, 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.
 - 4.2 As used in this Agreement, the term “confidential information” refers to information not otherwise defined as PHI in Section 4.1 of this Agreement, but to which state and/or federal privacy and/or security protections apply.
5. D-SNP Contractor (however named elsewhere in this Agreement) is the Business Associate of DHCS acting on DHCS's behalf and provides services or arranges, performs or assists in the performance of functions or activities on behalf of DHCS, and may create, receive, maintain, transmit, aggregate, use or disclose PHI (collectively, “use or disclose PHI”) in order to fulfill Business Associate’s obligations under this Agreement. DHCS and Business Associate are each a party to this Agreement and are collectively referred to as the “parties.”
6. The terms used in this Agreement, but not otherwise defined, shall have the same meanings as those terms in HIPAA. Any reference to statutory or regulatory language shall be to such language as in effect or as amended.
7. **Permitted Uses and Disclosures of PHI by Business Associate.** Except as otherwise indicated in this Agreement, Business Associate may use or disclose PHI only to perform functions, activities or services specified in this Agreement

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BUSINESS ASSOCIATE ADDENDUM

on behalf of DHCS, provided that such use or disclosure would not violate HIPAA if done by DHCS.

7.1 Specific Use and Disclosure Provisions. Except as otherwise indicated in this Agreement, Business Associate may use and disclose PHI if necessary for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate. Business Associate may disclose PHI for this purpose if the disclosure is required by law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware that the confidentiality of the information has been breached.

8. Compliance with Other Applicable Law

8.1 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 PHI or other confidential information covered under this Agreement beyond those provided through HIPAA, Business Associate agrees:

8.1.1 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

8.1.2 To treat any violation of such additional and/or more protective standards as a breach or security incident, as appropriate, pursuant to Section 18. of this Agreement.

8.2 Examples of laws that provide additional and/or stricter privacy protections to certain types of PHI and/or confidential information, as defined in Section 4. of this 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.

8.3 If Business Associate is a Qualified Service Organization (QSO) as defined in 42 CFR section 2.11, Business Associate agrees to be bound by and comply with subdivisions (2)(i) and (2)(ii) under the definition of QSO in 42 CFR section 2.11.

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BUSINESS ASSOCIATE ADDENDUM

9. Additional Responsibilities of Business Associate

9.1 Nondisclosure. Business Associate shall not use or disclose PHI or other confidential information other than as permitted or required by this Agreement or as required by law.

9.2 Safeguards and Security.

9.2.1 Business Associate shall use safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI and other confidential data and comply, where applicable, with subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of the information other than as provided for by this Agreement. Such safeguards shall be, at a minimum, at Federal Information Processing Standards (FIPS) Publication 199 protection levels.

9.2.2 Business Associate shall, at a minimum, utilize an industry-recognized security framework when selecting and implementing its security controls, and shall maintain continuous compliance with its selected framework as it may be updated from time to time. Examples of industry-recognized security frameworks include but are not limited to

9.2.2.1 NIST SP 800-53 – National Institute of Standards and Technology Special Publication 800-53

9.2.2.2 FedRAMP – Federal Risk and Authorization Management Program

9.2.2.3 PCI – PCI Security Standards Council

9.2.2.4 ISO/IEC 27002 – International Organization for Standardization / International Electrotechnical Commission standard 27002

9.2.2.5 IRS PUB 1075 – Internal Revenue Service Publication 1075

9.2.2.6 HITRUST CSF – HITRUST Common Security Framework

9.2.3 Business Associate shall maintain, at a minimum, industry standards for transmission and storage of PHI and other confidential information.

9.2.4 Business Associate shall apply security patches and upgrades, and keep virus software up-to-date, on all systems on which PHI and other confidential information may be used.

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9.2.5 Business Associate shall ensure that all members of its workforce with access to PHI and/or other confidential information sign a

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confidentiality statement prior to access to such data. The statement must be renewed annually.

9.2.6 Business Associate shall identify the security official who is responsible for the development and implementation of the policies and procedures required by 45 CFR Part 164, Subpart C.

9.3 Business Associate's Agent. Business Associate shall ensure that any agents, subcontractors, subawardees, vendors or others (collectively, "agents") that use or disclose PHI and/or confidential information on behalf of Business Associate agree to the same restrictions and conditions that apply to Business Associate with respect to such PHI and/or confidential information.

10. Mitigation of Harmful Effects. Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI and other confidential information in violation of the requirements of this Agreement.

11. Access to PHI. Business Associate shall make PHI available in accordance with 45 CFR section 164.524.

12. Amendment of PHI. Business Associate shall make PHI available for amendment and incorporate any amendments to protected health information in accordance with 45 CFR section 164.526.

13. Accounting for Disclosures. Business Associate shall make available the information required to provide an accounting of disclosures in accordance with 45 CFR section 164.528.

14. Compliance with DHCS Obligations. To the extent Business Associate is to carry out an obligation of DHCS under 45 CFR Part 164, Subpart E, comply with the requirements of the subpart that apply to DHCS in the performance of such obligation.

15. Access to Practices, Books and Records. Business Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI on behalf of DHCS available to DHCS upon reasonable request, and to the federal Secretary of Health and Human Services for purposes of determining DHCS' compliance with 45 CFR Part 164, Subpart E.

16. Return or Destroy PHI on Termination; Survival. At termination of this Agreement, if feasible, Business Associate shall return or destroy all PHI and other confidential information received from, or created or received by Business Associate on behalf of, DHCS that Business Associate still maintains in any form and retain no copies of such information. If return or destruction is not feasible,

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Business Associate shall notify DHCS of the conditions that make the return or destruction infeasible, and DHCS and Business Associate shall determine the terms and conditions under which Business Associate may retain the PHI. If such return or destruction is not feasible, Business Associate shall extend the protections of this Agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

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

18. Breaches and Security Incidents. Business Associate shall implement reasonable systems for the discovery and prompt reporting of any breach or security incident, and take the following steps:

18.1 Notice to DHCS.

18.1.1 Business Associate shall notify DHCS **immediately** upon the discovery of a suspected breach or security incident that involves SSA data. This notification will be provided by email upon discovery of the breach. If Business Associate is unable to provide notification by email, then Business Associate shall provide notice by telephone to DHCS.

18.1.2 Business Associate shall notify DHCS **within 24 hours by email** (or by telephone if Business Associate is unable to email DHCS) of the discovery of:

18.1.2.1 Unsecured PHI if the PHI is reasonably believed to have been accessed or acquired by an unauthorized person;

18.1.2.2 Any suspected security incident which risks unauthorized access to PHI and/or other confidential information;

18.1.2.3 Any intrusion or unauthorized access, use or disclosure of PHI in violation of this Agreement; or

18.1.2.4 Potential loss of confidential data affecting this Agreement.

18.1.3 Notice shall be provided to the DHCS Program Contract Manager (as applicable), the DHCS Privacy Office, and the DHCS

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Information Security Office (collectively, "DHCS Contacts") using the DHCS Contact Information at Section 18.6. below.

Notice shall be made using the current DHCS "Privacy Incident Reporting Form" ("PIR Form"; the initial notice of a security incident or breach that is submitted is referred to as an "Initial PIR Form") and shall include all information known at the time the incident is reported. The form is available online at <http://www.dhcs.ca.gov/formsandpubs/laws/priv/Documents/Privacy-Incident-Report-PIR.pdf>.

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

18.1.3.1 Prompt action to mitigate any risks or damages involved with the security incident or breach; and

18.1.3.2 Any action pertaining to such unauthorized disclosure required by applicable Federal and State law.

18.2 Investigation. Business Associate shall immediately investigate such security incident or confidential breach.

18.3 Complete Report. To provide a complete report of the investigation to the DHCS contacts within ten (10) working days of the discovery of the security incident or breach. This "Final PIR" must include any applicable additional information not included in the Initial Form. The Final PIR Form shall include an assessment of all known factors relevant to a determination of whether a breach occurred under HIPAA and other applicable federal and state laws. The report shall also include a full, detailed corrective action plan, including its implementation date and information on mitigation measures taken to halt and/or contain the improper use or disclosure. If DHCS requests information in addition to that requested through the PIR form, Business Associate shall make reasonable efforts to provide DHCS with such information. A "Supplemental PIR" may be used to submit revised or additional information after the Final PIR is submitted. DHCS will review and approve or disapprove Business Associate'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 Business Associate's corrective action plan.

18.3.1 If Business Associate does not complete a Final PIR within the ten (10) working day timeframe, Business Associate shall request

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approval from DHCS within the ten (10) working day timeframe of a new submission timeframe for the Final PIR.

- 18.4 Notification of Individuals.** If the cause of a breach is attributable to Business Associate or its agents, Business Associate shall notify individuals accordingly and shall pay all costs of such notifications, as well as all costs associated with the breach. The notifications shall comply with applicable federal and state law. DHCS shall approve the time, manner and content of any such notifications and their review and approval must be obtained before the notifications are made.
- 18.5 Responsibility for Reporting of Breaches to Entities Other than DHCS.** If the cause of a breach of PHI is attributable to Business Associate or its subcontractors, Business Associate is responsible for all required reporting of the breach as required by applicable federal and state law.
- 18.6 DHCS Contact Information.** To direct communications to the above referenced DHCS staff, D-SNP Contractor shall initiate contact as indicated here. DHCS reserves the right to make changes to the contact information below by giving written notice to Business Associate. These changes shall not require an amendment to this Agreement.

DHCS Program Contract Manager	DHCS Privacy Office	DHCS Information Security Office
See the Scope of Work Exhibit for Program Contract Manager information. If this Business Associate Agreement is not attached as an exhibit to a contract, contact the DHCS signatory to this Agreement.	Privacy Office c/o: Office of HIPAA Compliance Department of Health Care Services P.O. Box 997413, MS 4722 Sacramento, CA 95899-7413 Email: incidents@dhcs.ca.gov Telephone: (916) 445-4646	Information Security Office DHCS Information Security Office P.O. Box 997413, MS 6400 Sacramento, CA 95899-7413 Email: incidents@dhcs.ca.gov

19. Responsibility of DHCS. DHCS agrees to not request the Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA and/or other applicable federal and/or state law.

20. Audits, Inspection and Enforcement

20.1 From time to time, DHCS may inspect the facilities, systems, books and records of Business Associate to monitor compliance with this Agreement. Business Associate shall promptly remedy any violation of this Agreement

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and shall certify the same to the DHCS Privacy Officer in writing. Whether or how DHCS exercises this provision shall not in any respect relieve Business Associate of its responsibility to comply with this Agreement.

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

21. Termination

21.1 Termination for Cause. Upon DHCS' knowledge of a violation of this Agreement by Business Associate, DHCS may in its discretion:

21.1.1 Provide an opportunity for Business Associate to cure the violation and terminate this Agreement if Business Associate does not do so within the time specified by DHCS; or

21.1.2 Terminate this Agreement if Business Associate has violated a material term of this Agreement.

21.2 Judicial or Administrative Proceedings. DHCS may terminate this Agreement if Business Associate is found to have violated HIPAA, or stipulates or consents to any such conclusion, in any judicial or administrative proceeding.

22. Miscellaneous Provisions

22.1 Disclaimer. DHCS makes no warranty or representation that compliance by Business Associate with this Agreement will satisfy Business Associate's business needs or compliance obligations. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI and other confidential information.

22.2. Amendment.

22.2.1 Any provision of this Agreement which is in conflict with current or future applicable Federal or State laws is hereby amended to conform to the provisions of those laws. Such amendment of this 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.

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22.2.2 Failure by Business Associate to take necessary actions required by amendments to this Agreement under Section 22.2.1 shall constitute a material violation of this Agreement.

22.3 Assistance in Litigation or Administrative Proceedings. Business Associate shall make itself and its employees and agents available to DHCS at no cost to DHCS to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against DHCS, its directors, officers and/or employees based upon claimed violation of HIPAA, which involve inactions or actions by the Business Associate.

22.4 No Third-Party Beneficiaries. Nothing in this Agreement is intended to or shall confer, upon any third person any rights or remedies whatsoever.

22.5 Interpretation. The terms and conditions in this Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA and other applicable laws.

22.6 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.