



Los Angeles County
DEPARTMENT OF MENTAL HEALTH

JONATHAN E. SHERIN, M.D., Ph.D.
DIRECTOR

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

February 20, 2018

14 February 20, 2018

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

A handwritten signature in black ink, appearing to read "Celia Zavala".

CELIA ZAVALA
ACTING EXECUTIVE OFFICER

Dear Supervisors:

**APPROVAL TO ENTER INTO A PARTICIPATION AGREEMENT WITH THE CALIFORNIA MENTAL
HEALTH SERVICES AUTHORITY TO FUND THE TECHNOLOGY-BASED MENTAL HEALTH
SOLUTIONS PROGRAM
AND
AUTHORIZATION TO PARTICIPATE AS AN INTENDED THIRD PARTY BENEFICIARY ON THE
SELECTED
VENDOR AGREEMENTS
AND
APPROVAL OF AN APPROPRIATION ADJUSTMENT FOR FISCAL YEAR 2017-18
(ALL SUPERVISORIAL DISTRICTS)
(4 VOTES)**

SUBJECT

Request approval of an Appropriation Adjustment, and to enter into a Participation Agreement with the California Mental Health Services Authority, governed by a Joint Powers Agreement, to coordinate the development of technology-based mental health solutions for participating Counties and authorize the Department of Mental Health to participate as an intended third party beneficiary on the selected vendor agreements.

IT IS RECOMMENDED THAT THE BOARD:

1. Approve and authorize the Department of Mental Health's Chief Deputy Director of Administrative Operations (Chief Deputy Director), or his designee, to prepare, sign, and execute a Participation Agreement (Agreement), substantially similar to Attachment I, with the California Mental Health Services Authority (CalMHSA) for the development of technology-based mental health solutions. This agreement will be effective upon Board of Supervisor's approval and extend through

June 30, 2021, or until such time that the funds allocated for this project are fully expended, whichever comes first. The Total Contract Amount (TCA) for the project is \$33 million and will be fully funded by State Mental Health Services Act (MHSA) revenue.

2. Delegate authority to the Chief Deputy Director, or his designee, to sign future amendments or modifications to the CalMHSA Agreement, including amendments that extend the term, if appropriate, add related services, reflect federal, State, and County regulations and/or policy changes, and increase the TCA provided that, the County's total payment does not exceed an increase of 10 percent from the applicable TCA approved by your Board, subject to the prior review and approved as to form by County Counsel, with notice to the Board and the Chief Executive Officer (CEO).
3. Delegate authority to Department of Mental Health (DMH) to participate as an intended third party beneficiary on the vendor agreements that will be selected by CalMHSA as the result of a Request for Statement of Qualifications process for the development and implementation of technology-based mental health solutions.
4. Approve an Appropriation Adjustment (Attachment II) to transfer \$17,197,000 from Mental Health Services Act-Proposition 63 fund from the Committed Budget Uncertainties, to increase Other Charges to provide additional spending authority for CalMHSA to develop technology based mental health solutions.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Approval of Recommendation 1 will authorize the Chief Deputy Director, or his designee, to execute a Participation Agreement with CalMHSA to perform the overall administrative oversight, project management, and contract with one or more vendors to implement a technology-based project with distinct components as listed below.

Approval of the Recommendation 2 will allow the Chief Deputy Director, or his designee, to amend the Agreement to incorporate necessary changes and/or modify the TCA.

Approval of Recommendation 3 will allow DMH to participate as an intended third party beneficiary on the selected vendor agreements. This will enable DMH to enforce the vendor agreement's terms and conditions.

Recent research demonstrates that technology can be used to directly impact the provision of health and mental health services. DMH is seeking approval to use Innovation funds to implement a technology-based project. This project, led by CalMHSA and a number of California counties, including Los Angeles County, will bring interactive technology tools into the public mental health system through a highly innovative set or "suite" of applications designed to educate users on the signs and symptoms of mental illness, improve early identification of emotional/behavioral destabilization, connect individuals seeking help in real time, and increase user access to mental health services when needed.

The Technology-Based Mental Health Program aims to dismantle barriers to the access and receipt of mental health services by utilizing multifactor devices (i.e. computer, smartphone, tablet, etc.) as a mode of connection, early detection and treatment. The proposed technology – suite will enable individuals that are likely to go either unserved or underserved by traditional mental health care to receive care and support. It will also serve to reduce the stigma associated with mental

health treatment using virtual innovative engagement strategies, manualized virtual care pathways, and bidirectional feedback.

This project has five components as listed below. The first three components are technology based, while the last two components involve engagement efforts and evaluation of outcomes.

1. Peer Chat and Digital Therapeutics Using Technology-Based Mental Health Solutions to Intervene and Offer Support – this component will utilize technology-based mental health solutions designed to engage, educate, assess, and intervene with individuals experiencing symptoms of mental illness.
2. Virtual Evidence-Based Therapy Utilizing an AVATAR– this component provides virtual manualized evidence-based interventions delivered via an avatar, such as mindfulness exercises, cognitive behavioral or dialectical behavior interventions delivered in a simple, intuitive fashion.
3. Digital Phenotyping Using passive Data for Early Detection and Intervention – this component will utilize passive sensory data to engage, educate, and suggest behavioral activation strategies to users.
4. Community Engagement and Outreach Engaging Users and Promoting Use of Technology-Based Mental Health Solutions – this will create a strategic approach to access points that will expose individuals to the technology-based mental health solutions.
5. Outcome Evaluation – this will develop method and conduct outcome evaluations of all elements of the project, including measuring reach and clinical outcomes.

Implementation of Strategic Plan Goals

The recommended Board actions support the County's Strategy I.2 – Enhance Our Delivery of Comprehensive Interventions, Objective I.2.2, Streamline Access to Integrated Health Services; and Strategy III.2 - Embrace Digital Government for the Benefit of our Internal Customers and Communities, Objective III.2.3, Prioritize and Implement Technology Initiatives that Enhance Service Delivery and Efficiency.

FISCAL IMPACT/FINANCING

The Appropriation Adjustment will transfer \$17,197,000 from Mental Health Services Act-Proposition 63 fund - Committed Budget Uncertainties to Other Charges in the General Fund to provide additional spending authority for CalMHSA to develop technology based mental health solutions.

The Appropriation Adjustment is fully funded with State MHSA revenue and will provide FY2017-18 funding for the Participation Agreement with CalMHSA.

The TCA for the Participation Agreement is \$33 million, fully funded by State MHSA revenue. The TCA includes an administration and project management fee for CalMHSA's effort and oversight of the project, and amounts for each of the five components of the project.

Funding for future fiscal years will be included in DMH's annual budget request process

There is no net County cost associated with the recommended action.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

CalMHSA is a Joint Powers Authority (JPA) under Government Code Section 6500 et seq. of counties and cities with mental health programs and provides administrative and fiscal services in support of and addresses common interests in the administration of such programs. Los Angeles County is a member county of CalMHSA.

CalMHSA was formed in July 2009 for the purpose of jointly developing and funding mental health services and education programs on a statewide, regional, or local basis. CalMHSA provides a mechanism to facilitate the efficient use of resources for multiple counties by maximizing group purchasing power for products, jointly developing requests for proposals and establishing contracts with providers to accomplish mutual goals, reducing administrative overhead, centralizing compliance with reporting requirements, sharing research information and strategies and negotiating cost-effective rates with various subcontractors Statewide.

On May 11, 2010, your Board authorized DMH to sign the CalMHSA Joint Exercise of Powers Agreement in order to jointly exercise powers with other participating counties and cities, who are members of CalMHSA, for the purpose of jointly developing and funding mental health services and education programs on a statewide, regional, or local basis.

Current CalMHSA county members are Butte, Calusa, Contra Costa, Fresno, Glenn, Imperial, Kern, Lake, Los Angeles, Madera, Marin, Modoc, Monterey, Orange, Placer, Riverside, Sacramento, San Bernardino, San Luis Obispo, Santa Clara, Santa Cruz, Solano, Sonoma, Stanislaus, Sutter/Yuba, Trinity, Ventura, and Yolo. Several of these counties have expressed interest in participating in co-funding this project and will officially contribute funds after completion of required county stakeholder processes and Mental Health Services Oversight and Accountability Commission (MHSOAC) approval. Los Angeles and Kern Counties received that approval on October 26, 2017.

The MHSOAC requires the county Innovation plans to be approved by the MHSOAC. Attachment I is the Participation Agreement format with CalMHSA that has been reviewed and approved as to form by County Counsel. This agreement contains a mutual indemnification provision which poses minimal risk. Public entities entering into an agreement are usually jointly and severally liable for any negligence arising from the performance of that agreement.

Attachment II is the Request for Appropriation Adjustment approved by the Auditor-Controller. DMH is seeking your Board's authority to participate as an intended third party beneficiary on the underlying vendor agreement, substantially similar to Attachment III, that CalMHSA will enter into with selected vendors for the technology suite components, and outreach and evaluation purposes. DMH will participate as an intended third party beneficiary on these vendor agreements to be able to enforce the terms and conditions. Although, CalMHSA will negotiate the agreement terms with individual vendors, most of the agreement's Information Technology provisions that are required by Los Angeles County, such as Confidentiality, Ownership of County Data, Data Destruction, and No Offshore Work will not be negotiable. However, the insurance amount for cyber security and technology errors and omissions may be negotiated for a lesser amount between CalMHSA and the selected vendor. Attachment II has been reviewed and approved as to form by County Counsel.

The Director of Mental Health currently serves on the Board of Directors of CalMHSA Joint Powers Agreement, but he is not compensated and does not benefit financially in any way from serving in that position. In addition, the Director did not participate in the approval process for this Agreement with CalMHSA.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

These actions will enable DMH to improve its services in the areas of prevention and early detection and intervention, stigma and discrimination reduction, suicide prevention and infusion of mental health services and help enhance these services to the population in Los Angeles County.

Respectfully submitted,

A handwritten signature in dark ink that reads "Gregory C. Polk". The signature is written in a cursive, flowing style.

GREGORY C. POLK
Chief Deputy Director

GP:sk

Enclosures

c: Chief Executive Officer
County Counsel
Executive Officer, Board of Supervisors
Chairperson, Mental Health Commission

Agreement No. 316-ITS-2018PA

CALIFORNIA MENTAL HEALTH SERVICES AUTHORITY**PARTICIPATION AGREEMENT FOR THE MENTAL HEALTH SERVICES ACT
INNOVATION PROGRAM**

1. THIS PARTICIPATION AGREEMENT is entered into on _____ by and between the California Mental Health Services Authority ("CalMHSA") and the County of Los Angeles, a political subdivision of the State of California, through its Los Angeles County Department of Mental Health; ("Participant") for participation in the Mental Health Services Authority Innovation Program ("Program").
2. CalMHSA and Participant acknowledge that the Program will be governed by CalMHSA's Joint Powers Agreement and its Bylaws, and by this Participation Agreement. The following exhibits are intended to clarify how the provisions of those documents will be applied to this Program.

- ☒ Exhibit A Program Description
- ☒ Exhibit B General Terms and Conditions
- ☒ Exhibit C County-Specific Scope and Funding

3. The term of the Program is **February 20, 2018** through **June 30, 2021**.

4. Authorized Signatures:

CalMHSA

Signed: _____ Name (Printed): _____

Title: Executive Director/Chief Operating Officer Date: _____**Participant:** Los Angeles County

Signed: _____ Name (Printed): _____

Title: _____ Date: _____

EXHIBIT A PROGRAM DESCRIPTION

I. Name of Program – Mental Health Services Act Innovation Program

II. Program Overview

CalMHSA will assist participating counties to act jointly or in coordination to introduce new mental health practices, make changes to existing practices in the mental health field, or apply promising community-driven practices that have been successful in other fields. These efforts will be directed to increasing access to mental health services by underserved populations and the overall population, increasing quality of services, or promoting collaboration among agencies and communities.

III. Component Overview

Component 1 – Peer Chat

Goal – Utilize technology-based mental health solutions designed to engage, educate, assess and intervene with individuals experiencing symptoms of mental illness.

Implementation – In the implementation phase of this component, it is expected that *at minimum* the following will take place:

- Assessment of county needs
- Increase resources in order to effectively and efficiently address technical issues
- Customization of platform in order to interface with county websites
- Upon implementation the data will determine the direction of efforts and problem resolution. In order to move in the direction that data suggests, and quickly resolve problems, expert and dedicated staff will need to be hired/in place, to accelerate the development, measuring and learning process in order to meet the needs and objectives of the users and counties.

Component 2 – Virtual, Manualized Interventions by AVATAR

Goal – Virtual manualized evidence-based interventions delivered via an avatar, such as mindfulness exercises, cognitive behavioral or dialectical behavior interventions delivered in a simple, intuitive fashion.

Implementation - In the implementation phase of this component, it is expected that *at minimum* the following will take place:

- Assessment of county needs
- Increase in #of clinical experts in the behavioral health field
- Increase ability to customize interactive interface for all users
- Development of directory for referrals to public mental health services within each county, therefore requiring extensive outreach and research
- Increase staffing to meet the needs of anticipated additional users
- Customization of platform in order to interface with county websites

Component 3 – Digital Phenotyping

Goal – Utilize passive sensory data to engage, educate and suggest behavioral activation strategies to users.

Implementation - In the implementation phase of this component, it is expected that *at minimum* the following will take place:

- Assess county needs

- Increase expert staff to enhance its web-based analytics in order to better serve users
- Increase staff to effectively and efficiently address issues with users or technology
- Customization of platform in order to interface with county websites
- Increase ability to incorporate emerging research in mental health early detection

Component 4 – Community Engagement

Goal – Create a strategic approach to access points that will expose individuals to the technology-based mental health solutions.

Implementation - In the implementation phase of this component, it is expected that *at minimum* the following will take place:

- Assess county needs and expectations
- Increase marketing efforts to expose individuals to the new technology-based mental health solutions
- Development of a plan that will increase outreach and engagement efforts to include all school systems
- Development of strategies to mental health organization and public forums
- Customization of any potential platform in order to interface with county websites

Component 5 – Outcome Evaluation

Goal – Develop method and conduct outcome evaluations of all components to include measuring reach and clinical outcomes.

Implementation - In the implementation phase of this component, it is expected that *at minimum* the following will take place:

- Assess county needs and expectations
- Develop methodology for measuring reach and clinical outcomes for all components
- Develop methodology for conducting and outcomes evaluation for all components
- Increase analytical staff in order to effectively capture data from participating counties

EXHIBIT B GENERAL TERMS AND CONDITIONS

I. Definitions

The following words as used throughout this Participation Agreement shall be construed to have the following meaning, unless otherwise apparent from the context in which they are used:

- A. CalMHSA – California Mental Health Services Authority, a Joint Powers Authority (JPA) created by counties in 2009 at the instigation of the California Mental Health Directors Association to jointly develop and fund mental health services and education programs.
- B. Mental Health Services Division (MHSD) – The Division of the California Department of Health Care Services responsible for mental health functions.
- C. Member – A County (or JPA of two or more Counties) that has joined CalMHSA and executed the CalMHSA Joint Powers Agreement.
- D. Mental Health Services Act (MHSA) – A law initially known as Proposition 63 in the November 2004 election, that added sections to the Welfare and Institutions Code providing for, among other things, PEI Programs.
- E. Participant – Any County participating in the Program either as Member of CalMHSA or as Partner under a Memorandum of Understanding with CalMHSA.
- F. Program – The program identified in Exhibit A.

II. Responsibilities

- A. Responsibilities of CalMHSA:
 - 1. Act as fiscal and administrative agent for Program.
 - 2. Manage funds received consistent with the requirements of any applicable laws, regulations, guidelines and/or contractual obligations.
 - 3. Provide regular fiscal reports to Participant and/or other public agencies with a right to such reports.
 - 4. Submit plans, updates, and/or work plans for review and approval by Participant representative.
 - 5. Comply with CalMHSA's Joint Powers Agreement and Bylaws.
- B. Responsibilities of Participant:
 - 1. Provide funds for the Program as specified in Exhibit C at the beginning of each fiscal year identified in Exhibit C, County-Specific Scope and Funding.
 - 2. Identify a representative authorized to act for Participant and receive notices on behalf of Participant with regard to the Program.

3. Cooperate by providing CalMHSA with requested information and assistance in order to fulfill the purpose of the Program.
4. Provide feedback on Program performance.
5. Comply with applicable laws, regulations, guidelines, contractual agreements, JPAs, and bylaws.

III. Duration, Term, and Amendment

- A. The intention of the Program is to continue as long as Participant and other participants wish to act together to conduct Innovation projects. However, the obligation of Participant to pay funds is limited to the periods and amounts stated in Exhibit C, County-Specific Scope and Funding.
- B. This Agreement may be supplemented, amended or modified only by the mutual agreement of CalMHSA and Participant, expressed in writing and signed by authorized representatives of both parties.
- C. Participant may withdraw from the Program and terminate the Participation Agreement upon six (6) months' written notice. Notice shall be deemed served on the date of mailing.

IV. Withdrawal, Cancellation and Termination

- A. Upon cancellation, termination, or other conclusion of the Program, any funds remaining undisbursed shall be returned to the Participant. Unused funds paid for a joint effort will be returned pro rata to Participant in proportion to payments made. Adjustments may be made if disproportionate benefit was conveyed on particular Participant. Excess funds at the conclusion of county-specific efforts will be returned to the particular county that paid them.

VI. Fiscal Provisions

- A. Funding required from the Participants will not exceed the amount stated in Exhibit C-County-Specific Scope and Funding.
- B. County will provide the funding amount stated in Exhibit C - County Specific Scope and Funding which includes a one-time administrative fee. CalMHSA will invoice the County as delineated in Exhibit C.

V. Mutual Indemnification

To the fullest extent permitted by law, each party shall hold harmless, defend and indemnify the other party, including its governing board, employees and agents from and against any and all claims, losses, damages, liabilities, disallowances, recoupments, and expenses, including but not limited to reasonable attorneys' fees, arising out of or resulting from other's negligence in the performance of its obligations under this Agreement, including the performance of the other's subcontractors, except that each party shall have no obligation to indemnify the other for damages to the extent resulting from the negligence or willful misconduct of any indemnitee. Each party may participate in the defense of any such claim without relieving the other of any obligation hereunder.

EXHIBIT C COUNTY SPECIFIC SCOPE AND FUNDING

MHSA Innovation 3 Project – Increasing Access to Mental Health Services and Supports Utilizing a Suite of Technology-Based Mental Health Solutions

CalMHSA will be contracted to perform the overall administrative oversight, and will contract with one or more virtual mental health care providers with capacity to implement technology-based mental health solutions accessed through multifactor devices (for example, a computer, smartphone, etc.) to identify and engage individuals, provide automated screening and assessments and improve access to mental health and supportive services focused on prevention, early intervention, family support, social connectedness and decreased use of psychiatric hospitals and emergency services.

The innovation will be to test out and implement a group of technology-based mental health solutions that utilize passive data collection as a method to identify the early signal biomarkers for mental health symptoms and offer prompt, timely intervention.

The goals of this project include:

- Increase purpose, belonging and social connectedness for users
- Increase access to care needed and desired
- Reduce stigma associated with “mental illness” by promoting mental optimization
- Reduce time to recognition and acknowledgement that a symptom needs to be addressed and reduce time to receiving appropriate level of care.
- Increase ability to analyze and collect data from a variety of sources to improve mental health needs assessment and delivery of services.
- Advance outcome measurement through passive data analysis and comparison of passive and active data sets.

This would be a 3-year demonstration project.

Innovation Primary Purpose

Overall, the primary purpose of this Innovation project is to increase access to mental health care and support and to promote early detection of mental health symptoms, or even predict the onset of mental illness.

This project will dismantle barriers to receiving mental health services by utilizing multifactor devices as a mode of connection and treatment to reach people who are likely to go either unserved or underserved by traditional mental health care. It will also serve to reduce the stigma associated with mental health treatment using virtual innovative engagement strategies, care pathways and bidirectional feedback.

Target Population

The target population or intended beneficiaries or users of technology-based mental health solutions:

- Individuals with sub-clinical mental health symptom presentation, including those early in the course of a mental health condition who may not recognize that they are experiencing symptoms
- Individuals identified as at risk for developing mental health symptoms or who are at risk for relapsing back into mental illness
- Socially isolated individuals, including older adults at risk of depression
- High utilizers of inpatient psychiatric facilities
- Existing mental health clients seeking additional sources of support
- Family members with either children or adults suffering from mental illness who are seeking support.

Technology-Based Mental Health Solutions

The components of this Innovation project are as follows:

1. Utilize technology-based mental health solutions designed to engage, educate, assess and intervene with individuals experiencing symptoms of mental illness, including:
 - 1.1. Virtual Peer chatting through trained and certified peers with lived experience.
 - 1.2. Virtual communities of support for specific populations, such as family members of children or adults with mental illness, those experiencing depression, trauma and other populations.
 - 1.3. Virtual chat options for parents with children engaged in the mental health system.
 - 1.4. Virtual chat options for parents of adults with mental illness
 - 1.5. Virtual manualized interventions, such as mindfulness exercises, cognitive behavioral or dialectical behavior interventions delivered in a simple, intuitive fashion.
 - 1.6. Referral process for customers requiring face-to-face mental health services by LAC DMH.
2. Virtual manualized evidence-based interventions delivered via an avatar, such as mindfulness exercises, cognitive behavioral or dialectical behavior interventions delivered in a simple, intuitive fashion.
 - 2.1. Computerized-Cognitive Behavioral treatment, as well as other treatment constructed by clinical experts in the behavioral health field.
 - 2.2. Interactive interface with the capability of customization and modification based on user's feedback.
 - 2.3. Virtual peer chat options.
 - 2.4. Referral process for customers requiring face-to-face mental health services by LAC DMH

Protocol to determine when a user may need to be referred for mental health assessment at the LAC DMH, including when a user may require an emergent evaluation.

Creation of a directory for referrals to public mental health services.
 - 2.5. Virtual services that maintain system user identities anonymously and any identifying information is not displayed in any publicly available area of the

product(s). There should be an established protocol for addressing user's self-identification.

3. Utilize passive sensory data to engage, educate and suggest behavioral activation strategies to users, including:
 - 3.1. Incorporate passive data from mobile devices into an interactive approach to digital phenotyping where the technology analyzes factors associated with cell phone usage (passive data) and interacts with the user via pop-up or chat functionality that allows for the increased user understanding of thought and feeling states. Web-based analytics would inform targeted communications and recommended interventions.
 - 3.2. Incorporate emerging research in the field of mental health early detection to target individuals at risk of or experiencing early symptoms of mental illness and use passive data collection to identify risk/symptoms or potential for relapse.
4. Create a strategic approach to access points that will expose individuals to the technology-based mental health solutions described above, including:
 - 4.1. Engaging school systems, including higher education, to promote use
 - 4.2. Engaging users through social media, the DMH website and other digital platforms and approaches.
 - 4.3. Engaging mental health organizations such as the National Alliance for Mental Illness (NAMI) groups to promote use.
 - 4.4. Engaging senior centers and other key locations where senior adults are likely to congregate to promote use.
 - 4.5. Engage public locations such as libraries or parks in setting up kiosks or in encouraging use.
5. Develop method and conduct outcome evaluation of all elements of the project, including measuring reach and clinical outcomes.
 - 5.1. Changes in user's utilization of inpatient and emergency service.
 - 5.2. Changes in the duration of untreated or under-treated mental illness.
 - 5.3. Changes in ability for users to identify cognitive, emotional and behavioral changes and act to address them.
 - 5.4. Changes in quality of life, as measured objectively and subjectively (by user and by indicators such as activity level, employment, school involvement, grades, etc.).
 - 5.5. Measurement and evaluation of user wellbeing and social connectedness.
 - 5.6. Comparative analyses of population level utilization data in Los Angeles and other participating counties over the life of the project to determine impact on various types of service utilization.
 - 5.7. Changes in how user's with particular sorts of biomarkers (characteristics identified either through history or digital phenotyping analysis), respond to treatment options identified through this project.
 - 5.8. Analysis of how the technology suite is used as a source of information and is guiding interventions provided by mental health professionals.

- 5.9. Conduct an analysis of retrospective and prospective utilization of hospital resources from claims data and medical records data. The analysis shall incorporate disease risk stratification, digital phenotype and digital biomarker measurement, type of intervention and delay in receiving care. Quality of life impact will include, where applicable, school grades, graduation rates, job retention, and absenteeism.
- 5.10. Track and report number of users, including ethnicity, gender and preferred language.

Budget

| | |
|-------------------------------------|---------------------|
| Administrative Fee | \$2,627,860 |
| Technology Component #1 | \$9,100,000 |
| Technology Component #2 | \$5,272,140 |
| Technology Component #3 | \$8,000,000 |
| Technology Component #4 | \$4,000,000 |
| Technology Component #5, Evaluation | \$4,000,000 |
| Total | \$33,000,000 |

Los Angeles County will provide the funding amount stated below, which includes an administrative and project management fee. CalMHSA will invoice the County as follows:

| | |
|----------------------------------|--------------|
| Upon Execution of this Agreement | \$17,197,426 |
| FY18-19 | \$ 6,321,028 |
| FY19-20 | \$ 6,321,028 |
| FY 20-21 (partial) | \$ 3,160,518 |

In FY 18-19, FY19-20 and FY 20-21, CalMHSA will invoice the County in June of each year for payment in July of that fiscal year.

COUNTY OF LOS ANGELES

REQUEST FOR APPROPRIATION ADJUSTMENT

DEPARTMENT OF MENTAL HEALTH

DEPT'S.
NO. 435

[February 9, 2018]

AUDITOR-CONTROLLER:

THE FOLLOWING APPROPRIATION ADJUSTMENT IS DEEMED NECESSARY BY THIS DEPARTMENT. PLEASE CONFIRM THE ACCOUNTING ENTRIES AND AVAILABLE BALANCES AND FORWARD TO THE CHIEF EXECUTIVE OFFICER FOR HIS RECOMMENDATION OR ACTION.

ADJUSTMENT REQUESTED AND REASONS THEREFOR

FY 2017-18

4 - VOTES

SOURCES

MENTAL HEALTH SERVICES ACT (MHSA) FUND
BT1-3047
COMMITTED FOR BUDGET UNCERTAINTIES
DECREASE OBLIGATED FUND BALANCE \$17,197,000

DEPARTMENT OF MENTAL HEALTH
A01-MH-96-9911-20500
OPERATING TRANSFERS IN
INCREASE REVENUE \$17,197,000

SOURCES TOTAL: \$ 34,394,000

USES

MENTAL HEALTH SERVICES ACT (MHSA) FUND
BT1-MH-6100-41189
OTHER FUNANCING USES
INCREASE APPROPRIATION \$17,197,000

DEPARTMENT OF MENTAL HEALTH
A01-MH-5500-20500
OTHER CHARGES
INCREASE APPROPRIATION \$17,197,000

USES TOTAL: \$ 34,394,000

JUSTIFICATION

This appropriation adjustment is necessary to transfer \$17,197,000 from the Mental Health Services Act (MHSA) fund-Proposition 63-Committed for Budget Uncertainties to Other Charges to provide spending authority for California Mental Health Services Authority for technology-based mental health solution program.

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

*Robin Kay for
Jonathan Shein*
AUTHORIZED SIGNATURE MARGO MORALES, ADMINISTRATIVE DEPUTY

BOARD OF SUPERVISOR'S APPROVAL (AS REQUESTED/REVISED)

14 OF FEB 20 2018

Celia Zavala
CELIA ZAVALA
ACTING EXECUTIVE OFFICER

REFERRED TO THE CHIEF
EXECUTIVE OFFICER FOR ---☐ ACTION☒ RECOMMENDATION

AUDITOR-CONTROLLER

B.A. NO. 163

BY

Laufan
Feb. 8 20 18

☒ APPROVED AS REQUESTED☐ APPROVED AS REVISED

CHIEF EXECUTIVE OFFICER

BY

M. Morales
FEB 8 20 18

CALIFORNIA MENTAL HEALTH SERVICES AUTHORITY
"CalMHSA"
STANDARD SERVICES AGREEMENT AMENDMENT
MHSA INNOVATION 3 PROJECT TECHNOLOGY-BASED MENTAL HEALTH SOLUTIONS

This Agreement Amendment is a contract by and between the California Mental Health Services Authority ("CalMHSA") and _____ ("Contractor").

CalMHSA desires to obtain services which are more fully described in Exhibit B hereto ("Statement of Services"), and Contractor represents that it is willing and professionally qualified to provide such services to CalMHSA.

CalMHSA agrees to retain contractor to provide services, and Contractor accepts such engagement, on the basis of the Provisions stated in the following exhibits as follows:

- ☒ Article 1 – Statement of Work and Timeline
- ☒ Article 2 – Budget Form and Narrative
- ☒ Article 3 – General Terms and Conditions
- ☒ Exhibit A – CalMHSA Administration
- ☒ Exhibit B – Contractor's Administration
- ☒ Exhibit C – Business Associate Agreement Under Health Insurance Portability and Accountability Act of 1996 (HIPPA)
- ☒ Exhibit D – Contractor Acknowledgement and Confidentiality Agreement
- ☒ Exhibit E - Contractor Employee Acknowledgement and Confidentiality Agreement
- ☒ Exhibit F – Information Security and Privacy Requirements
- ☒ Exhibit G – Contractor Non-Employee Acknowledgement and Confidentiality Agreement
- ☒ Exhibit H – Intentionally Omitted
- ☒ Exhibit I – Protection of Electronic County PI, PHI, and MI (Data Encryption)
- ☒ Exhibit J – Contractor's Compliance with Encryption Requirements
- ☒ Exhibit K – The Confidentiality Oath (Non-LAC-DMH Workforce Members)
- ☒ Exhibit L – Agreement for Acceptable Use and Confidentiality of County Technology Resources
- ☒ Exhibit M – County Policy 5.200 (Contractor Protection of Electronic County Information)

Term: _____ 2018 – June 30, _____ **Funding Amount (not to exceed):** \$ _____

CalMHSA

Signed: _____ Name (Printed): Wayne Clark, Ph.D.
Title: CalMHSA Executive Director Date: _____
Address: c/o George Hills Company, 3043 Gold Canal Drive, Rancho Cordova, CA 95670
Phone: (916) 859-4800 Email: wayne.clark@calmhsa.org

Signed: _____ Name (Printed): Terence M. Rooney, Ph.D.
Title: CalMHSA President Date: _____

Contract Number
Contractor Name
Date

CONTRACTOR

Signed: _____ Name (Printed): _____
Title: _____ Date: _____
Address: _____
Phone: _____ Email: _____

Contract Number

Contractor Name

Date

Program Representatives

For CalMHSA:

Ann Collentine, MPPA, Deputy Director
CalMHSA c/o George Hills Co.
3043 Gold Canal Drive, Suite 200
Rancho Cordova, CA 95670
916-859-4800
916-859-4805 fax

For Contractor:

[To be determined]

OVERVIEW

Description

ARTICLE 1

STATEMENT OF WORK AND REPORTING TIMELINE

Deliverable No. 1: Deliverable Category

- 1.1. Deliverable
- 1.2. Deliverable
- 1.3. Deliverable
- 1.4. Deliverable

Deliverable No. 2: Deliverable Category

- 2.1 Deliverable
- 2.2 Deliverable
- 2.3 Deliverable

Deliverable No. 3: Deliverable Category

- 3.1 Deliverable
- 3.2 Deliverable
- 3.2 Deliverable

Deliverable No. 4: Deliverable Category

- 4.1 Deliverable
- 4.2 Deliverable
- 4.3 Deliverable

Deliverable No. 5: Networking and Collaboration

- 5.1 Leverage and partner, as appropriate, with other program partners to support Innovation Technology Suite goals and outcomes.

Deliverable No. 6: Contract Management

- 6.1 Participation in regular and ongoing contract management meetings as determined with Contract Manager.
- 6.2 Submit Quarterly Status of Deliverables Reports to CalMHSA.
- 6.3 Submit additional program/activity reports and data as determined by CalMHSA.
- 6.4 Submit Annual Report to CalMHSA at the end of each quarter addressing the following:
 - 1) Describe the accomplishments of each deliverable within the contract.
 - 2) Describe the external resources that were leveraged to complete activities

REPORTING TIMELINE

| Deliverables | | Reporting Fiscal Year 2017-18 | | | |
|--------------|-----------------------------------|----------------------------------|------|------|------|
| 1. | Deliverable –Deliverable Category | TF 1 | TF 2 | TF 3 | TF 4 |
| 1.1 | Deliverable | | | | |
| 1.2 | Deliverable | | | | |
| 1.3 | Deliverable | | | | |
| 1.4 | Deliverable | | | | |
| 1.5 | Deliverable | | | | |
| 1.6 | Deliverable | | | | |
| 2. | Deliverable –Deliverable Category | TF 1 | TF 2 | TF 3 | TF 4 |
| 2.1 | Deliverable | | | | |
| 2.2 | Deliverable | | | | |
| 2.3 | Deliverable | | | | |
| 2.4 | Deliverable | | | | |
| 2.5 | Deliverable | | | | |
| 3. | Deliverable –Deliverable Category | TF 1 | TF 2 | TF 3 | TF 4 |
| 3.1 | Deliverable | | | | |
| 3.2 | Deliverable | | | | |
| 3.3 | Deliverable | | | | |
| 3.4 | Deliverable | | | | |
| 4. | Deliverable –Deliverable Category | TF 1 | TF 2 | TF 3 | TF 4 |
| 4.1 | Deliverable | | | | |
| 4.2 | Deliverable | | | | |
| 4.3 | Deliverable | | | | |
| 4.4 | Deliverable | | | | |
| | | | | | |

Some program reporting will be required quarterly, using the following time frames:

Time Frame 1 (TF 1) – January 1, 2018 through March 31, 2018

Time Frame 2 (TF 2) - April 1, 2018 through June 30, 2018

Time Frame 3 (TF 3) – July 31, 2018 through September 30, 2018

Time Frame 4 (TF 4) – October 1, 2018 through December 31, 2018

The Quarterly Cost Reports are due each quarter as follows:

| | | |
|----|------------------------|--------------------------|
| Q1 | 1/1/2018 – 3/31/2018 | Delinquent on 5/31/2018 |
| Q2 | 4/1/2018 – 6/30/2018 | Delinquent on 8/31/2018 |
| Q3 | 7/1/2018 – 9/30/2018 | Delinquent on 11/30/2018 |
| Q4 | 10/1/2018 – 12/31/2018 | Delinquent on 2/28/2018 |

ARTICLE 2

BUDGET TERMS AND CONDITIONS

1. **FUNDING:** This Agreement will be funded from _____, 2018 through _____, 202___. Maximum payments by CalMHSA to Contractor under this Agreement shall not exceed the amount stated on the cover of this Agreement, including all expenses, and subject to the availability of funds. CalMHSA is not responsible for any fees or costs incurred above or beyond the contracted amount and shall have no obligation to purchase any specified amount of services or products.
2. **CONTRACT PAYMENT:** Having determined that an advance payment is essential for the effective implementation of this Agreement, CalMHSA will provide CONTRACTOR a prepayment of _____ %, \$000,000.00, of CONTRACTOR'S FY _____ Budget, fifteen (15) business days after CalMHSA has received a signed contract and all general requirements of the contract have been satisfied. CalMHSA's Deputy Director will give final approval for release of these funds.
3. **BUDGET:** The Budget, the Budget Narrative and Justification, and the Statement of Work, detail the services to be performed, products to be provided and expenses to be incurred under this Agreement. This Agreement is subject to fund availability. If it is determined funds are no longer available CalMHSA reserves the right to cancel the Agreement without penalty, as described in the Budget Contingency Clause (Section 25) of Article 3, General Terms and Conditions.
 - A. If the Deputy Director deems it necessary to reduce, revise or stop deliverables which results in reduced Statement of work, CalMHSA may hold or reduce the amount of funding under this Agreement.
 - B. Upon Contractor's request, CalMHSA's Deputy Director may approve transfers between line items. Such authorization must be in writing, and at the discretion of the Chief Operating Officer or Finance Director shall be reflected in an Agreement Amendment by an updated Budget form. Such transfers shall not result in an increase to the total budget.
4. **PAYMENT:** Contractor shall be paid only in accordance with a properly prepared invoice submitted to CalMHSA by Contractor. CalMHSA shall pay within thirty (30) working days from the date of receipt of a satisfactory invoice, subject to the conditions stated in Section 5 below. Payment shall be made to Contractor only after services have been rendered or delivery of materials or products, and acceptance has been made by CalMHSA. For this Agreement, submit the original invoice to the JPA Administrative Manager at the following:

JPA Administrative Manager
CalMHSA
3043 Gold Canal Drive, Suite 200
Rancho Cordova, CA 95670

Or

Email to: Laura.li@calmhsa.org.

- A. Each invoice shall contain a minimum of the following information: Contractor name, invoice number and date; remittance address and phone number; the service period; remittance address; Agreement account number (provided by CalMHSA), quantities, number of hours, item/activities descriptions, unit prices, extensions, sales/use tax if applicable, and an invoice total. Contractor shall retain records of such expenditures for examination by CalMHSA, as required in Exhibit C, General Terms and Conditions.
 - B. If this Agreement provides for payment of indirect costs by CalMHSA, each invoice shall contain an explanation of how indirect costs are calculated. Indirect costs shall not exceed 15% of the total funding amount. CalMHSA does not require submission of documentation for indirect costs with invoices, but Contractor shall retain records of such costs for examination by CalMHSA, as required in Exhibit C, General Terms and Conditions.
 - C. Invoices shall be rendered in arrears.
5. **CONTRACTOR SUMMARY OF COSTS AND PAYMENTS:** If this Agreement calls for cost reimbursements by CalMHSA, for each quarter or portion thereof that this Agreement is in effect, Contractor shall submit to CalMHSA a summary of actual reimbursable Contractor costs and payments within sixty calendar days following the end of each fiscal quarter, and the expiration or termination of the Agreement, whichever occurs first, to reconcile costs and payments of Contractor. The final contract settlement for this Agreement shall be based on the actual allowable cost of services provided, and shall not exceed the maximum obligation of CalMHSA as stated for this Agreement. CalMHSA will withhold any monetary payments due the Contractor under this Agreement until the quarterly cost report(s) is (are) complete. No claims for reimbursement will be accepted by CalMHSA after the final cost report is submitted.
6. **PAYMENT WITHHOLDINGS:** CalMHSA may delay or withhold any monetary payments due to the Contractor for any of the following reasons (and in addition to any other remedies available at law or under this Agreement):
 - A. CalMHSA shall withhold any monetary payments due the Contractor until the quarterly cost report(s) referred to in Section 4 is (are) complete.
 - B. Payment may be withheld at the discretion of the CalMHSA Finance Director or designee due to material contract non-compliance, including audit disallowances, or non-compliance with Deliverables. Material non-compliance is the failure to timely complete a deliverable, and includes failure to make progress toward completion of a deliverable to an extent that timely completion becomes infeasible.
 - C. If there are repeated performance issues, CalMHSA may elect to withhold up to 15% of the contract amount until after final settlement as noted in item 6 below.

- D. CalMHSA will conduct a preliminary settlement under this Agreement based on the final summary of cost and payments report provided in response to Section 4. CalMHSA shall have the option:
1. To withhold payment, or any portion thereof, pending outcome of a termination audit to be conducted by CalMHSA;
 2. To offset such withholdings against any indebtedness of Contractor to CalMHSA.
6. FINAL SETTLEMENT: AUDIT: Contractor agrees to maintain and retain all appropriate records, and allow access to those records as provided in Article 3, General Terms and Conditions.
- A. Contractor agrees to furnish duly authorized representatives from CalMHSA and State of California access to records and to disclose to State of California and CalMHSA representatives all financial records necessary to review or audit Contract services and to evaluate the cost, quality, appropriateness and timeliness of services. CalMHSA or State of California representative shall provide a signed copy of a confidentiality statement similar to that provided for in Section 5328(e) of the Welfare and Institutions Code, when requesting access to any patient records. Contractor will retain said statement for its records.
 - B. If the appropriate court, federal or state agency, or CalMHSA, determines that all, or any part of, the payments made by CalMHSA to Contractor pursuant hereto are or were not reimbursable in accordance with this Agreement, or any other applicable provision of law, ordinance, code, regulation or contract, said payments shall be repaid on demand by Contractor to CalMHSA.
 - C. If there is a conflict between a State of California audit of the Agreement and a CalMHSA audit of the Agreement, the State of California audit shall control.
 - D. Prior to receiving final payment hereunder, Contractor shall submit a signed, written release discharging CalMHSA, its officers and staff, from all liabilities, obligations, and claims arising out of or under the Contract, except for any claims specifically described in detail in such release.
 - E. At the conclusion of the services to be provided hereunder this Agreement, and as part of the content to be delivered to the CALIFORNIA MENTAL HEALTH SERVICES AUTHORITY c/o GEORGE HILLS COMPANY, INC ("CalMHSA") and its agents pursuant to this Agreement, Contractor shall execute any documents necessary to effectuate the transfer of rights described in Section 8 of Exhibit C, General Terms and Conditions. Contractor shall also arrange for execution of any necessary documents by those subcontractors, if any, involved

Contract Number

Contractor Name

Date

in the development of work as to which CalMHSA is obtaining rights pursuant to this Agreement.

BUDGET FORM AND NARRATIVE

| | Request to CalMHSA | Optional In- Kind Match | TOTAL |
|---|-----------------------|----------------------------|-------|
| I. DIRECT COSTS | | | |
| A. PERSONNEL-ADMIN/SUPPORT STAFF | | | |
| 1. Program Staff | | | |
| 2. Administration/Support | | | |
| TOTAL PERSONNEL COSTS | | | |
| B. SERVICES AND SUPPLIES | | | |
| 1. Production/reproduction of materials | | | |
| 2. Office Supplies | | | |
| 3. Mileage | | | |
| 4. Other (Specify) | | | |
| TOTAL SERVICES AND SUPPLIES | | | |
| C. EQUIPMENT | | | |
| 1. Equipment | | | |
| 2. Equipment | | | |
| TOTAL EQUIPMENT | | | |
| D. FACILITIES | | | |
| 1. Facility Costs | | | |
| TOTAL FACILITIES | | | |
| E. CONTRACTORS | | | |
| 1. Specify | | | |
| 2. Specify | | | |
| TOTAL CONTRACTORS | | | |
| F. OTHER COSTS | | | |
| 1. Specify | | | |
| 2. Specify | | | |
| TOTAL OTHER COSTS | | | |
| G. TOTAL DIRECT COSTS | | | |
| TOTAL DIRECT COSTS | | | |
| II. INDIRECT COSTS (up to 15% of Total Direct Costs) | | | |
| A. Administrative Costs | | | |
| B. Total Other Indirect Costs | | | |
| TOTAL INDIRECT COSTS | | | |
| III. GRAND TOTAL | | | |
| GRAND TOTAL | | | |

BUDGET JUSTIFICATION NARRATIVE

(Request from CalMHSA, Not Including Match)

I. Direct Cost

A. PERSONNEL/ADMINISTRATIVE – STAFFING SUPPORT

1. Personnel – Program Staff \$
Description including cost calculations

2. Personnel – Administration/Support Staff \$
Description including cost calculations

B. SERVICES AND SUPPLIES \$

1. Production/reproduction of materials \$
Description

2. Office Supplies \$
Description

3. Mileage \$
Description

4. Other (Specify) \$
Description

C. EQUIPMENT \$

Description

D. FACILITY COSTS \$

Description

E. CONTRACTORS \$

Description including cost calculation per contractor

F. OTHER COSTS \$

Description

II. INDIRECT COST

A. ADMINISTRATIVE COSTS – \$

Description and indirect rate used

B. OTHER INDIRECT COSTS – \$

Description

TOTAL CALMHSA FUNDING – \$

Contract Number
Contractor Name
Date

ARTICLE 3

REQUIRED GENERAL TERMS AND CONIDITIONS

MHSA INNOVATION 3 PROJECT TECHNOLOGY-BASED MENTAL HEALTH SOLUTIONS

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| | |
|---|--|
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| B | CONTRACTOR’S ADMINISTRATION |
| C | BUSINESS ASSOCIATE AGREEMENT UNDER THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPAA) |
| D | CONTRACTOR ACKNOWLEDGEMENT AND CONFIDENTIALITY AGREEMENT |
| E | CONTRACTOR EMPLOYEE ACKNOWLEDGMENT AND CONFIDENTIALITY AGREEMENT |
| F | INFORMATION SECURITY AND PRIVACY REQUIREMENTS |
| G | CONTRACTOR NON-EMPLOYEE ACKNOWLEDGMENT AND CONFIDENTIALITY AGREEMENT |
| H | INTENTIONALLY OMITTED |
| I | PROTECTION OF ELECTRONIC COUNTY PI, PHI AND MI (DATA ENCRYPTION) |
| J | CONTRACTOR’S COMPLIANCE WITH ENCRYPTION REQUIREMENTS |
| K | THE CONFIDENTIALITY OATH (NON-LAC-DMH WORKFORCE MEMBERS) |
| L | AGREEMENT FOR ACCEPTABLE USE AND CONFIDENTIALITY OF COUNTY TECHNOLOGY RESOURCES |
| M | COUNTY POLICY 5.200 (CONTRACTOR PROTECTION OF ELECTRONIC COUNTY INFORMATION) |
| N | TERM OF USE DISCLAIMER |

1.0 APPLICABLE DOCUMENTS

Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M and N are attached to and form a part of this Contract. In the event of any conflict or inconsistency in the definition or interpretation of any word, responsibility, schedule, or the contents or description of any task, deliverable, goods, service, or other work, or otherwise between the base Contract and the Exhibits, or between Exhibits, such conflict or inconsistency shall be resolved by giving precedence first to the terms and conditions of the Contract and then to the Exhibits according to the following priority.

Standard Exhibits:

- 1.1 EXHIBIT A – CalMHSA’s Administration
- 1.2 EXHIBIT B – Contractor’s Administration
- 1.3 EXHIBIT C– Business Associate Agreement Under the Health Insurance Portability and Accountability Act of 1996
- 1.4 EXHIBIT D –Contractor Acknowledgement and Confidentiality Agreement
- 1.5 EXHIBIT E – Contractor Employee Acknowledgment and Confidentiality Agreement
- 1.6 EXHIBIT F – Information Security and Privacy Requirements
- 1.7 EXHIBIT G –Contractor Non-Employee Acknowledgment and Confidentiality Agreement
- 1.8 EXHIBIT H –Intentionally Omitted
- 1.9 EXHIBIT I – Protection of Electronic County PI, PHI and MI (Data Encryption)
- 1.10 EXHIBIT J – Contractor’s Compliance with Encryption Requirements
- 1.11 EXHIBIT K –The Confidentiality Oath (Non-LAC-DMH Workforce Members)
- 1.12 EXHIBIT L – Agreement for Acceptable Use and Confidentiality of County Technology Resources
- 1.13 EXHIBIT M –County Policy 5.200 (Contractor Protection of Electronic County Information)
- 1.14 EXHIBIT N Term of Use Disclaimer

This Contract constitutes the complete and exclusive statement of understanding between the parties, and supersedes all previous contracts, written and oral, and all communications between the parties relating to the subject matter of this Contract. No change to this Contract shall be valid unless prepared pursuant to Subparagraph 8.1 – Change Notices and Amendments and signed by both parties.

2.0 DEFINITIONS

The headings herein contained are for convenience and reference only and are not intended to define the scope of any provision thereof. The following words as used herein shall be construed to have the following meaning, unless otherwise apparent from the context in which they are used.

- 2.1 Additional Software:** Any function or module that is (i) not included in the System Software marketed by Contractor as of the effective date of the Contract, (ii) not related to the primary function for which the System Software is used by County, and (iii) not otherwise to be provided to County under this Contract as an Update to the System Software, which Contractor may provide upon County’s request therefor in the form of Optional Work in accordance with Sub-paragraph 4.8.

- 2.2 Contract:** This agreement executed between CalMHSA and Contractor. It sets forth the terms and conditions for the issuance and performance of all tasks, deliverables, services and other work including Article 1 (Statement of Work).
- 2.3 Contractor:** The sole proprietor, partnership, corporation or other person or entity that has entered into this Contract with CalMHSA for the benefit of the County.
- 2.4 Contractor Project Director:** The individual designated by the Contractor as principal officer to oversee contractual or administrative matters relating to this Contract that cannot be resolved by the Contractor's Project Manager.
- 2.5 Contractor Project Manager:** The individual designated by the Contractor to administer the Contract operations after the Contract award.
- 2.6 County:** County of Los Angeles.
- 2.7 County Deputy Director:** Person designated by County to manage the operations under this Contract.
- 2.8 County Data:** All of the County Confidential Information, data, records, and information of County to which Contractor has access, or otherwise provided to Contractor under this Contract.
- 2.9 CalMHSA Deputy Director:** Person designated by CalMHSA with authority for CalMHSA on contractual or administrative matters relating to this Contract that cannot be resolved by the CalMHSA's Project Manager.
- 2.10 CalMHSA Project Manager:** Person designated by CalMHSA's Project Director to manage the operations under this Contract. An alternate Project Manager designated by CalMHSA shall be referred to as Alternate Project Manager.
- 2.11 CalMHSA Project Monitor:** Person with responsibility to oversee the day to day activities of this Contract. Responsibility for inspections of any and all tasks, deliverables, goods, services and other work provided by the Contractor.
- 2.12 Day(s):** CalMHSA business day(s), unless otherwise specified.
- 2.13 Deficiency:** Defects in design, development, implementation, materials and/or workmanship, errors, omissions, deviations from published and/or mutually agreed upon standards or Specifications under this Contract which result in the System not performing in strict compliance with the provisions of this Contract and the Specifications.
- 2.14 Deliverable(s):** Whether singular or plural, shall mean items and/or services provided or to be provided by Contractor under this Contract identified as a deliverable, by designation, number, or context, in the Statement of Work, Article, Exhibit, Attachment, Schedule, or

any document associated with the foregoing, including numbered Deliverable(s) in Article 1 (Statement of Work).

- 2.15 Documentation:** All of Contractor's training course materials, system specifications and technical manuals, and all other user instructions regarding the capabilities, operation, and use of the System, including, but not limited to, online help screens contained in the System, and any revisions, supplements, or updates thereto.
- 2.16 Final Acceptance:** CalMHSA's written approval of the System as more fully described in Article 1 (Statement of Work).
- 2.17 Interface:** Either a computer program developed by, or licensed to, CalMHSA or Contractor to (a) translate or convert data from a CalMHSA or Contractor format into another format used at CalMHSA as a standard format; or (b) translate or convert data in a format used by CalMHSA or a third-party to a format supported at CalMHSA or vice versa.
- 2.18 Optional Work:** System Customizations and/or Professional Services, which may be provided by Contractor to CalMHSA upon CalMHSA's request and approval in accordance with Sub-paragraph 4.8.
- 2.19 Performance Requirements Summary (PRS):** Identifies the key performance indicators of the Contract that will be evaluated by the CalMHSA to assure the Contractor meets Contract performance standards.
- 2.20 Personally Identifiable Information:** Any information that identifies a person, including, but not limited to, name, address, email address, passwords, account numbers, social security numbers, credit card information, personal financial or healthcare information, personal preferences, demographic data, marketing data, credit data, or any other identification data. For the avoidance of doubt, Personally Identifiable Information shall include, but not be limited to, all "nonpublic personal information," as defined under the Gramm-Leach-Bliley Act (15 United States Code ("U.S.C.") §6801 et seq.).
- 2.21 Professional Services:** Services, including but not limited to, consulting services, additional training and/or customizations, which Contractor may provide upon CalMHSA's request therefore in the form of Optional Work in accordance with Sub-paragraph 4.8.
- 2.22 Quality Control Plan:** All necessary measures taken by the Contractor to ensure that the quality of service will meet the Contract requirements regarding timelines, accuracy, appearance, completeness, consistency, and conformity to the requirements set forth in the Statement of Work, Exhibit A.
- 2.23 Services:** Collectively, all functions, responsibilities, tasks, subtasks, deliverables, goods, and other services: (a) specifically identified in the Statement of Work; (b) identified in this Contract as being Contractor's responsibility; and (c) otherwise necessary to comply with the terms of this Contract. Without increasing the scope of the Services, if any component task, subtask, service, or function is: (i) an inherent or necessary part of the Services defined in subparts (a), (b), or (c) of this Sub-paragraph; or (ii) a customary part

of the Services defined in subparts (a), (b), or (c) of this Sub-paragraph, and not in conflict with Contractor's established methods of providing services; and, as to a service(s) within either subpart (i) and (ii) of this sentence above, is not specifically described in this Contract, then such service or function shall be deemed to be part of the Services. Any hardware and/or software provided to CalMHSA by Contractor pursuant to this Contract shall be deemed part of the Services.

- 2.24 Specifications:** Any and/or all of the following: (i) all functional and operational requirements and/or features included in the SOW; (ii) all requirements set forth in this Contract; (iii) the Documentation, to the extent not inconsistent with any of the foregoing; (iv) all specifications provided or made available by Contractor under this Contract, but only to the extent: (a) not inconsistent with any of the foregoing; and (b) acceptable to CalMHSA in its sole discretion; and (v) all written and/or electronic materials furnished or made available by or through Contractor regarding the System, including functionality, features, capacity, availability, response times, accuracy, or any other performance or other System criteria or any element of the System, but only to the extent not inconsistent with any of the foregoing.
- 2.25 System:** The System Software and Services, including all components and Documentation, collectively comprising the collections and accounts receivable system, as specified in the Contract.
- 2.26 System Customizations:** Collectively, System Enhancements, Additional Software and Programming Modifications.
- 2.27 System Software:** Individually each, and collectively all, of the computer programs provided by Contractor under this Contract, including as to each such program, the processes and routines used in the processing of data, the object code, Interfaces to be provided hereunder by Contractor, Updates, and any and all programs otherwise provided by Contractor under this Contract. All System Software and the components thereof shall be release versions, and shall not be test versions (e.g., alpha or beta test version), unless otherwise agreed to in writing by County.
- 2.28 Third Party Beneficiary:** An individual or entity who is not a party to this contract but which the parties expressly agree is the intended beneficiary of Contractor's performance, and who has a right to enforce the obligations of Contractor under this Agreement. For this contract, the Third-Party Beneficiary is the County of Los Angeles.
- 2.29 Third Party Software:** All software and content licensed, leased or otherwise obtained by Contractor from a third-party, and used with System or used for the performance of the Services.
- 2.30 Update(s):** Changes to the System Software, including but not limited to: (a) a bug fix, patch, or redistribution of the System Software that corrects an error as well as addresses common functional and performance issues; (b) an aggregation of fixes, updates, or significant new features, functionality or performance improvements (sometimes accompanied by a change in the reference to the System Software such as a change in the number to the left of the period in the version numbering format X.XX); or (c) any

modifications to the System Software designed to improve its operation, usefulness, or completeness that is made generally available by Contractor to its other customers.

2.31 Web Application: A web application and/or web page by which individuals shall download to access virtual chatrooms, virtual communities, and virtual manualized interventions, and obtain virtual referrals to face-to-face mental health services.

2.32 Work Product: All Deliverables and all concepts, inventions (whether or not protected under patent laws), works of authorship, information, new or useful art, combinations, discoveries, formulae, algorithms, specifications, manufacturing techniques, technical developments, systems, computer architecture, artwork, software, programming, applets, scripts, designs, procedures, processes, and methods of doing business, and any other media, materials, plans, reports, project plans, work plans, documentation, training materials, and other tangible objects produced by Contractor under this Contract. However, Work Product does not include (a) any intellectual property, including, without limitation, concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques, models, templates, the generalized features of the structure, sequence and organization of software, user interfaces and screen designs, utilities, routines, and tools, which may constitute or be contained in Work Product that was developed by Contractor prior to performance or independent of this Contract ("Background Intellectual Property") or (b) the System Software or any modifications thereto made by Contractor.

3.0 INDEPENDENT CONTRACTOR

It is understood and agreed that Contractor is an independent contractor, and no relationship of employer and employee is created by this Agreement. Contractor is not the agent or employee of CalMHSA or County in any capacity whatsoever and CalMHSA and County shall not be liable for any acts or omissions by Contractor nor for any obligations or liabilities incurred by Contractor.

Contractor shall have no claim under this Agreement or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance medical care, hospital care, retirement benefits, social security, disability, Workers' Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind.

Contractor shall be solely liable for and obligated to pay directly all applicable payroll taxes (including federal and state income taxes) or contributions for unemployment insurance or old age pensions or annuities which are imposed by any governmental entity in connection with labor used by Contractor or which are measured by wages, salaries or other remuneration paid to its officers, agents or employees. Contractor agrees to indemnify and hold CalMHSA and County harmless from any and all liability which they may incur because of Contractor's failure to pay such amounts.

4.0 SERVICES

4.1 The Contractor will provide and implement the System as specified in this Agreement. The Contractor will provide the Services, fulfill the obligations to CalMHSA, produce and deliver the Deliverables, and retain the responsibilities set forth in this Agreement, and

more specifically, Article 1 (Statement of Work) and in accordance with Attachment ____ (Service Levels and Performance Standards). Contractor shall provide the Services without causing a material disruption of CalMHSA's operations. If the Contractor provides any tasks, Deliverables, goods, services, or other work, other than as specified in this Agreement, the same shall be deemed to be a gratuitous effort on the part of the Contractor, and the Contractor shall have no claim whatsoever against CalMHSA.

4.2 Pursuant to the provisions of this Contract, the Contractor shall fully perform, complete and deliver on time, all tasks, deliverables, services and other work as set forth in herein, including but not limited to Article 1 (Statement of Work).

4.3 The Contractor agrees that the performance of work and Services pursuant to the requirements of this Contract shall conform to high professional standards as exist in the Contractor's profession or field of practice.

4.4 If the Contractor provides any tasks, Deliverables, goods, services, or other work other than as specified in this Contract, the same shall be deemed to be a gratuitous effort on the part of the Contractor, and the Contractor shall have no claim whatsoever against the County or CalMHSA.

4.5 Training: As part of the Services, Contractor shall provide the training to CalMHSA and County, and its personnel set forth in Article 1 (Statement of Work) at no additional charge to CalMHSA and County beyond the applicable training fees ("Training Fees"). In addition, County may participate, at no additional charge, in any training seminars that may be held, at Contractor's discretion, for the benefit of all customers and/or licensees.

4.6 Support Services: Contractor shall provide the support and maintenance services described in this Sub-paragraph 4.6 (Support Services) and Article 1 (Statement of Work), including Attachment ____ (Service Level and Performance Standards) (collectively, the "Support Services"). The Support Services shall commence on the Final Acceptance of the System. There shall be no additional charge to CalMHSA or County for on-site Support Services to remedy a breach of warranty, to correct a failure of the System to conform to the Specifications, or to fulfill Contractor's obligations pursuant to this Sub-paragraph 4.6 (Support Services).

4.7 Hosting Services

During the term of this Contract, Contractor shall provide the Licensed Software by hosting the Licensed Software on its hardware, equipment or applicable tools at its facilities ("**Hosting Services**") as set forth in this Contract and Article 1 (Statement of Work). In providing the Hosting Services, Contractor shall achieve the service levels and performance standards set forth in Attachment ____ (Service Level and Performance Standards) and this Contract (collectively, the "**Hosting Service Level**").

4.7.1 Contractor represents and warrants that in connection with this Contract Contractor shall not deliver for installation on County's systems any software or programming, whether created or developed by Contractor or a third party.

4.7.2 Contractor represents and warrants that during the term of this Contract Contractor will not withhold or suspend Hosting Services provided hereunder, for any reason, including but not limited to a dispute between the parties arising under this Contract.

4.8 Upon CalMHSA's written request and mutual approval pursuant to the terms of this Contract, Contractor shall provide Optional Work, including Additional Software, System Customizations and Professional Services, in accordance with this Sub-paragraph and Article 1 – Statement of Work, at the applicable pricing terms set forth in Article 2 - Pricing Schedule.

5.0 ADMINISTRATION OF CONTRACT – CALMHSA

A listing of all CalMHSA Administration referenced in the following subparagraphs is designated in Article 1 - CalMHSA's Administration. CalMHSA will notify the Contractor in writing of any change in the names or addresses shown.

CalMHSA Personnel

CalMHSA shall assign a Deputy Director and a Project Manager to provide overall management and coordination of the Contract and act as liaisons for CalMHSA. The CalMHSA Deputy Director shall provide information to the Contractor in areas relating to policy and procedural requirements and the CalMHSA Project Manager will monitor the Contractor's performance during the Term of the Contract. CalMHSA will inform the Contractor in writing of the name, address, and telephone number of the individuals designated to act as Project Director and Project Manager, or any alternate identified in Exhibit A - CalMHSA's Administration, of this Contract at the time the Contract is executed and notify the Contractor as changes occur.

5.1 CALMHSA'S DEPUTY DIRECTOR

5.1.1 CalMHSA's Deputy Director is designated in Exhibit A – CalMHSA's Administration. CalMHSA shall contact the Contractor in writing of any changes in the name or address of CalMHSA's Deputy Director.

5.1.2 CalMHSA's Deputy Director shall be responsible for ensuring that the objectives of this Contract are met and determining Contractor's compliance with the Contract and inspecting all tasks, deliverable, goods, services, or other work provided by or on behalf of Contractor.

5.1.3 CalMHSA's Deputy Director is responsible for providing overall direction to Contractor in the areas relating to the County policy, information requirements, and procedural requirements.

5.1.4 CalMHSA's Deputy Director is not authorized to make any changes in any of the terms and conditions of this Contract, except as permitted in accordance with Subparagraph 8.1, Change Notices and Amendments, of this Contract and is not authorized to further obligate the County in any respect whatsoever.

5.2 CalMHSA'S PROJECT MANAGER

5.2.1 The responsibilities of CalMHSA's Project Manager includes:

- As needed, requesting meetings with the Contractor's Project Manager; and
- Inspecting any and all tasks, deliverables, goods, services, or other work provided by or on behalf of the Contractor.

5.2.2 CalMHSA's Project Manager is not authorized to make any changes in any of the terms and conditions of this Contract and is not authorized to further obligate CalMHSA in any respect whatsoever.

5.3 CalMHSA'S PROJECT MONITOR

CalMHSA's Project Monitor is responsible for overseeing the day-to-day administration of this Contract. The Project Monitor reports to CalMHSA's Project Manager.

5.4 COUNTY'S DEPARTMENTAL INFORMATION SECURITY OFFICER (DISO)

The DISO is responsible for managing the planning, design, coordination, development, implementation, and maintenance of the County's information systems. Additionally, the DISO develops and implements CalMHSA IT security application, policies, standards, and procedures intended to prevent the unauthorized use, release, modification, loss, or destruction of data, and to ensure the integrity and security of the County's IT infrastructure.

6.0 ADMINISTRATION OF CONTRACT – CONTRACTOR

Contractor Personnel

The Contractor shall assign a sufficient number of employees to perform the required work. At least one employee on site shall be authorized to act for Contractor in every detail and must speak and understand English.

The Contractor shall be required to background check its employees as set forth in Subparagraph 6.6, Background and Security Investigations, of this Contract.

6.1 CONTRACTOR'S PROJECT DIRECTOR

6.1.1 The Contractor's Project Director shall be a full-time employee of the Contractor. The Contractor's Project Director shall be the principal officer in the Contractor's office to service the Contract and to act as a liaison for the Contractor in coordinating the performance under the Contract. CalMHSA must be provided in writing with the name, address, and telephone number of the

individual designated to act as the Project Director or any alternate identified in Exhibit B – Contractor's Administration, and provide a current copy of the person's resume at the time the Contract is executed and notify CalMHSA as changes occur.

6.1.2 The Contractor's Project Director shall be responsible for the Contractor's performance of all tasks, deliverables, goods, services or other work provided by or on behalf of the Contractor and ensuring Contractor's compliance with this Contract.

6.1.3 The Contractor's Project Director shall be available to meet and confer with CalMHSA's Deputy Director on an as needed basis, either in person or by telephone as mutually agreed by the parties, to review Contract performance and discuss Contract coordination. Such meetings shall be conducted at a time and place as mutually agreed by the parties.

6.2 CONTRACTOR'S PROJECT MANAGER

6.2.1 The Contractor's Project Manager is designated in Exhibit B - Contractor's Administration. The Contractor shall notify the County in writing of any change in the name or address of the Contractor's Project Manager.

6.2.2 The Contractor shall assign a Project Manager to act as liaison for the Contractor and have full authority to act on behalf of the Contractor in all matters related to the daily operation of the contract. The Project Manager shall be available on a daily basis Monday through Friday during the hours of 7:00 a.m. and 4:00 p.m. (Pacific Time) for telephone contact and to meet with CalMHSA personnel regarding the operation of the Contract.

6.3 NOTICE OF PERSONNEL CHANGES

The Contractor shall inform CalMHSA Deputy Director in writing of the names, addresses, and telephone numbers of the individuals designated to act as Project Manager and Alternate Project Manager at the time the Contract is implemented and as changes occurs during the term of the Contract. Such notification shall be made by the Contractor no later than five (5) days after a change occurs and shall include a current resume for the new person. CalMHSA shall have the right to approve the assignment or replacement of any personnel recommended by the Contractor.

6.4 APPROVAL OF CONTRACTOR'S STAFF

CalMHSA has the absolute right to approve or disapprove all of the Contractor's staff performing work hereunder and any proposed changes in the Contractor's staff, including, but not limited to, the Contractor's Project Manager.

6.5 CONTRACTOR'S STAFF IDENTIFICATION

6.5.1 The Contractor shall provide adequate staff to complete the Services.

6.5.2 The Contractor shall provide all staff assigned to this Contract with a photo identification badge when on CalMHSA premises in accordance with CalMHSA specifications. Specifications may change at the discretion of CalMHSA and the Contractor will be provided new specifications as required. The format and content of the badge is subject to CalMHSA's approval prior to the Contractor implementing the use of the badge. The Contractor staff, while on duty or when entering a CalMHSA facility or its grounds, shall prominently display the photo identification badge on the upper part of the body. Contractor personnel may be asked by a CalMHSA representative to leave a CalMHSA facility if they do not have the proper CalMHSA ID badge on their person and Contractor personnel must immediately comply with such request.

6.5.3 The Contractor shall notify CalMHSA within one day when staff is terminated from working under this Contract. The Contractor shall retrieve and immediately destroy the staff's CalMHSA photo identification badge at the time of removal from the Contract.

6.5.4 If CalMHSA requests the removal of the Contractor's staff, the Contractor is responsible to retrieve and immediately destroy the Contractor's staff's CalMHSA photo identification badge at the time of removal from working on the Contract.

6.6 BACKGROUND AND SECURITY INVESTIGATIONS

6.6.1 All Contractor staff performing work under this Contract shall undergo and pass, to the satisfaction of CalMHSA, a background investigation as a condition of beginning and continuing to work under this Contract. Such background investigation must be obtained through fingerprints submitted to the California Department of Justice (DOJ) to include state, local, and federal-level review which may include, but not limited to, criminal conviction information. Examples of disqualifying factors include, but are not limited to, bribery, robbery, theft, fraud, embezzlement, forgery, extortion and perjury, or possession, sale or attempt to sell a controlled substance, and possession, sale or attempt to sell stolen property, or any felony conviction or conviction of a misdemeanor involving moral turpitude, and job-related misdemeanor convictions. The fees associated with the background investigation shall be at the expense of the Contractor, regardless if the member of the Contractor's staff passes or fails the background investigation.

6.6.2 A member of Contractor's staff shall not begin to perform services under the Contract until he/she has successfully passed a background investigation to the satisfaction of CalMHSA. During the term of the Contract, if CalMHSA receives a subsequent disqualifying factor for a member of the Contractor's staff, CalMHSA

shall request that the member of the Contractor's staff be immediately removed from performing services under the Contract. Contractor shall comply with CalMHSA's request. CalMHSA will request the Contractor to advise the Contractor's staff member who did not pass the background investigation or who received a subsequent disqualifying factor to contact CalMHSA immediately to receive a copy of the Criminal Offender Record Information obtained from the DOJ through the DHS's background investigation.

- 6.6.3** CalMHSA may request that Contractor's employee(s) be immediately removed from working on this Contract at any time during the term of the Contract.
- 6.6.4** CalMHSA, in its sole discretion, may immediately deny or terminate facility access to any member of Contractor's staff that does not pass an investigation to the satisfaction of CalMHSA or whose background or conduct is incompatible with CalMHSA facility access.
- 6.6.5** Disqualification of any member of Contractor's staff pursuant to this Paragraph 6.6 shall not relieve Contractor of its obligation to complete all work in accordance with the terms and conditions of this Contract.
- 6.6.6** The Contractor shall provide background investigation check updates for all employees in accordance with this Paragraph 6.6 and when changes occur in staffing or as requested by CalMHSA. Contractor shall not allow employees to work on any job for CalMHSA prior to successfully passing the background investigation. In addition, if CalMHSA finds that a member of the Contractor's staff, who has not passed the background investigation, is dispatched to perform services under the Contract, the Contractor shall immediately remove the staff member upon request of CalMHSA.
- 6.6.7** Following a Contractor staff's clearance, when applicable, CalMHSA will notify Contractor of any subsequent background results affecting the Contractor staff's ability to work under this Contract.

6.7 NON-DISCRIMINATION CLAUSE

During the performance of this Agreement, Contractor and its subcontractors 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, sexual orientation, and use of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §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. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

6.8 CONFIDENTIALITY

- 6.8.1** The Contractor shall maintain the confidentiality of all records and information, including but not limited to, billing and sensitive financial information, County records, data and information, Personally Identifiable Information, County Data, any information relating to County's customers, users, patients, partners, or personnel, and any other data, records and information received, obtained and/or produced under the provisions of this Contract ("**County Confidential Information**") in accordance with all applicable Federal, State and local laws, rules, regulations, ordinances, directives, guidelines, policies and procedures relating to confidentiality, including, without limitation, the County policies concerning information technology security and the protection of confidential records and information.
- 6.8.2** Contractor agrees that all information supplied by its affiliates and agents to the County including, without limitation, (a) any information relating to County's customers, patients, business partners, or personnel; (b) Personally Identifiable Information; and (c) Protected Health Information, as specified in Exhibit C (Business Associate Agreement), will be deemed confidential and proprietary to the County, regardless of whether such information was disclosed intentionally or unintentionally or marked as "confidential" or "proprietary".
- 6.8.3** The Contractor's employees may use data received from the County only to perform functions as defined by this Contract.
- 6.8.4** Disclosures which are required by law, such as a court order, or which are made with the explicit written authorization of the County are allowable. Any other use or disclosure of data received requires the express approval in writing from the County. No work shall duplicate, disseminate or disclose any data except as allowed in this Contract.
- 6.8.5** Access to data received from the County shall be restricted only to workers who need the data to perform their official duties in the performance of this Contract.
- 6.8.6** Contractor employees who access, disclose or use the data for a purpose not authorized by this Contract may be subject to civil and criminal sanctions contained in applicable federal and state statutes.

- 6.8.7** The Contractor shall indemnify, defend, and hold harmless the County, its officers, employees, and agents, from and against any and all claims, demands, damages, liabilities, losses, costs and expenses, including, without limitation, defense costs, and legal, accounting and other expert, consulting, or professional fees, arising from, connected with, or related to any failure by Contractor, its officers, employees, agents, or subcontractors, to comply with this Paragraph 6.8, as determined by the County in its sole judgment. Any legal defense pursuant to the Contractor's indemnification obligations under this Paragraph 6.8 shall be conducted by the Contractor and performed by the Counsel selected by the Contractor and approved by the County. Notwithstanding the preceding sentence, the County shall have the right to participate in any such defense at its sole cost and expense, except that in the event the Contractor fails to provide County with a full and adequate defense, as determined by the County in its sole judgment, the County shall be entitled to retain its own counsel, including, without limitation, County Counsel, and to reimbursement from the Contractor for all costs and expenses incurred by the County in doing so. The Contractor shall not have the right to enter into any settlement, agree to any injunction, or make any admission, in each case, on behalf of the County without the County's prior written approval.
- 6.8.8** The Contractor shall inform all of its officers, employees, agents and subcontractors providing services hereunder of the confidentiality provisions of this Contract.
- 6.8.9** The Contractor shall inform all of its officers, employees, agents and subcontractors providing services hereunder of the confidentiality provisions of this Contract.
- 6.8.10** The Contractor shall sign and adhere to the provisions of the "Contractor Acknowledgement and Confidentiality Agreement", Exhibit D.
- 6.8.11** The Contractor shall cause each employee performing services covered by this Contract to sign and adhere to the provisions of the "Contractor Employee Acknowledgment and Confidentiality Agreement", Exhibit E.
- 6.8.12** The Contractor shall adhere to the "Information Security and Privacy Requirements" set forth in Exhibit F.
- 6.8.13** The Contractor shall cause each non-employee performing services covered by this Contract to sign and adhere to the provisions of the "Contractor Non-Employee Acknowledgment and Confidentiality Agreement", Exhibit G.
- 6.8.14** During the term of the Contract, the Contractor shall maintain an updated file of the signed forms and shall forward copies of all signed forms to the County Project Director whenever changes in personnel occur.
- 6.8.15** All of the County Data is deemed confidential, and shall be and remain the property of County and County shall retain exclusive rights and ownership

thereto. The County Data shall not be used by Contractor for any purpose other than as required under this Contract, nor shall such data or any part of such data be disclosed, sold, assigned, leased, or otherwise disposed of to third parties by Contractor or commercially exploited or otherwise used by or on behalf of Contractor, its officers, directors, employees, or agents.

6.8.16 In connection with this Contract and performance of the Services, Contractor may be provided or obtain, from County or otherwise, Personally Identifiable Information, pertaining to County's current and prospective personnel, directors and officers, agents, subcontractors, patients, and customers and may need to process such Personally Identifiable Information and/or transfer it, all subject to the restrictions set forth in this Contract and otherwise in compliance with all applicable foreign and domestic laws and regulations for the sole purpose of performing the Services. Without limiting any other warranty or obligation specified in this Contract, and in particular the confidentiality provisions of this Sub-Paragraph 6.8 (Confidentiality), during the Contract Term and thereafter in perpetuity, Contractor will not gather, store, log, archive, use, or otherwise retain any Personally Identifiable Information in any manner and will not disclose, distribute, sell, share, rent, or otherwise transfer any Personally Identifiable Information to any third party, except as expressly required to perform its obligations in this Contract or as Contractor may be expressly directed in advance in writing by County. Contractor represents and warrants that Contractor will use and process Personally Identifiable Information only in compliance with (a) this Contract, (b) County's then current privacy policy, and (c) all applicable local, state, and federal laws and regulations (including, but not limited to, current and future laws and regulations relating to spamming, privacy, confidentiality, data security, and consumer protection). Contractor will not retain any Personally Identifiable Information for any period longer than necessary for Contractor to fulfill its obligations under this Contract. As soon as Contractor no longer needs to retain such Personally Identifiable Information in order to perform its duties under this Contract, Contractor will promptly return or destroy or erase all originals and copies of such Personally Identifiable Information.

7.0 AUDITS ; ACCESS TO RECORDS

Contractor shall make available to CalMHSA for examination any and all ledgers, books of accounts, invoices, receipts, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursements charged to CalMHSA, including any indirect costs (pursuant to cost allocation plans or otherwise) charged to CalMHSA, and shall furnish to CalMHSA such other evidence or information as CalMHSA may require with regard to any such expenditure or disbursement charged by the Contractor.

Contractor shall maintain full and adequate records in accordance with CalMHSA requirements to show the actual costs incurred by the Contractor in the performance of this Agreement. To the extent that such costs include the expense of Contractor employees who also work for Contractor on other matters, Contractor shall cause the contemporaneous creation of records

showing how much time such employees spend on work under this Agreement as opposed to work on other matters. If such books and records are not kept and maintained by Contractor within the State of California, Contractor shall, upon request of CalMHSA, make such books and records available to CalMHSA for inspection at a location within the state or Contractor shall pay to CalMHSA the reasonable, and necessary costs incurred by CalMHSA in inspecting Contractor's books and records, including, but not limited to, travel, lodging and subsistence costs. Contractor shall provide such assistance as may be reasonably required in the course of such inspection. CalMHSA further reserves the right to examine and reexamine said books, records and data during the three year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by CalMHSA, and the Contractor shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for three years after CalMHSA makes the final or last payment or within three years after any pending issues between CalMHSA and Contractor with respect to this Agreement are closed, whichever is later.

The right of CalMHSA to inspect records of Contractor under this Agreement may also be exercised by the State of California and by County.

8.0 STANDARD TERMS AND CONDITIONS

8.1 CHANGE NOTICES AND AMENDMENTS

- 8.1.1** CalMHSA reserves the right to initiate change notices that either (i) **do not affect** the Contract Term or Contract Sum or payments and do not materially alter the Contract. All such changes shall be executed with a Change Notice to this Contract signed by the Contractor and by CalMHSA's Project Director. For any Optional Work requested by CalMHSA, following agreement on the scope of such Optional Work, a Change Notice shall be prepared and executed by each of: (a) CalMHSA's Project Director or designee, and (b) Contractor's authorized representative(s).
- 8.1.2** For any change, which affects the Contract Sum and/or SOW that does not materially alter the Contract, an Amendment to this Contract shall be prepared and executed by the Contractor and by CalMHSA.
- 8.1.3** For any change which affects the Contract Term, the Contract Sum and/or SOW under this Contract, that materially alters the Contract, an Amendment to this Contract shall be prepared and executed by the Contractor and by the Board of CalMHSA or its authorized designee
- 8.1.4** CalMHSA may at its sole discretion, authorize extensions of time as defined in Paragraph 4.0 - Term of Contract. The Contractor agrees that such extensions of time shall not change any other term or condition of this Contract during the period of such extensions.

- 8.1.5** Notices - All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox. Certified Mail: When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

Overnight Delivery: When delivered by overnight delivery (Federal Express/Airborne/United Parcel Service/DHL WorldWide Express) with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service. Facsimile transmission: When sent by facsimile to the last known facsimile number of the recipient known to the party giving notice, notice is effective on receipt, provided that (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Any notice given by facsimile shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a nonbusiness day.

Contact information for the purpose of giving notice is that stated in the Standard Service Agreement. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

Any party may change its address or facsimile number by giving the other party notice of the change in any manner permitted by this Agreement.

8.2 ASSIGNMENT AND DELEGATION

- 8.2.1** The Contractor shall not assign its rights or delegate its duties under this Contract, or both, whether in whole or in part, without the prior written consent of CalMHSA, in its discretion, and any attempted assignment or delegation without such consent shall be null and void. For purposes of this subparagraph, the County's consent shall require a written Amendment to the Contract, which is formally approved and executed by the parties. Any payments by CalMHSA to any approved delegatee or assignee on any claim under this Contract shall be deductible, at CalMHSA's sole discretion, against the claims, which the Contractor may have against CalMHSA.
- 8.2.2** Shareholders, partners, members, or other equity holders of Contractor may transfer, sell, exchange, assign, or divest themselves of any interest they may

have therein. However, in the event any such sale, transfer, exchange, assignment, or divestment is effected in such a way as to give majority control of Contractor to any person(s), corporation, partnership, or legal entity other than the majority controlling interest therein at the time of execution of the Contract, such disposition is an assignment requiring the prior written consent of CalMHSA in accordance with applicable provisions of this Contract.

- 8.2.3** Any assumption, assignment, delegation, or takeover of any of the Contractor's duties, responsibilities, obligations, or performance of same by any person or entity other than the Contractor, whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever without CalMHSA's express prior written approval, shall be a material breach of the Contract which may result in the termination of this Contract. In the event of such termination, CalMHSA shall be entitled to pursue the same remedies against Contractor as it could pursue in the event of default by Contractor.

8.3 WARRANTIES

- 8.3.1** The Contractor represents and warrants that the person executing this Contract for the Contractor is an authorized agent who has actual authority to bind the Contractor to each and every term, condition, and obligation of this Contract and that all requirements of the Contractor have been fulfilled to provide such actual authority.
- 8.3.2** The Services will be performed in a professional, competent, and timely manner by appropriately qualified Contractor personnel in accordance with this Contract and consistent with industry best practices.
- 8.3.3** The System shall conform to the Specifications and requirements set forth in this Contract without material deviations for the period commencing upon the effective date of the Contract and continuing through the expiration or termination of Maintenance and Support Services ("Warranty Period"). Contractor shall institute quality controls, including suitable testing procedures if any, to ensure that the System complies with the Specifications in a manner consistent with the highest applicable industry standards. Upon the County's reasonable request, the County shall have the right to review Contractor's quality controls in order to verify and/or improve the quality of the System. There is no existing pattern or repetition of customer complaints regarding the System Software, including functionality or performance issues, and that Contractor's engineers have not currently identified any repeating adverse impact on the System Software, including functionality or performance, for which the root cause is believed to be a flaw or defect in the System Software.
- 8.3.4** Contractor represents and warrants that Contractor shall not intentionally cause any unplanned interruption of the operations of, or accessibility to the System or any component through any device, method or means including, without

limitation, the use of any “virus”, “lockup”, “time bomb”, or “key lock”, “worm”, “back door” or “Trojan Horse” device or program, or any disabling code, which has the potential or capability of compromising the security of County’s Confidential Information or of causing any unplanned interruption of the operations of, or accessibility of the System or any component to County or any user or which could alter, destroy, or inhibit the use of the System or any component, or the data contained therein (collectively, “Disabling Device(s)”), which could block access to or prevent the use of the System or any component by County or users. Contractor represents, warrants, and agrees that it has not purposely placed, nor is it aware of, any Disabling Device in any System component provided to County under this Contract, nor shall Contractor knowingly permit any subsequently delivered or provided System component to contain any Disabling Device. In addition, Contractor shall prevent viruses from being incorporated or introduced into the System or Updates thereto prior to the installation onto the System and shall prevent any viruses from being incorporated or introduced in the process of Contractor’s performance of on-line support.

- 8.3.5** To the best of Contractor’s knowledge, County’s permitted use of the System will not infringe the intellectual property rights of any third party.
- 8.3.6** There is no pending or threatened litigation that would have a material adverse impact on its performance under the Contract. In addition, Contractor also represents and warrants that based on pending actions, claims, disputes, or other information, Contractor has no knowledge of a failure of the System Software to perform in accordance with the Specifications.
- 8.3.7** To the extent permissible under the applicable third-party Contracts, Contractor hereby assigns and agrees to deliver to County all representations and warranties received by Contractor from its third party licensors and suppliers, including hardware vendors.
- 8.3.8** During the Contract Term, Contractor shall not subordinate this Contract or any of its rights hereunder to any third party without the prior written consent of County, and without providing in such subordination instrument for non-disturbance of County’s use of the System (or any part thereof) in accordance with this Contract. This Contract and the System Software licensed or acquired herein, are neither subject to any liens, encumbrances, or pledges nor subordinate to any right or claim of any third party, including Contractor’s creditors. County is entitled to use the System without interruption. As of the date furnished, no statement contained in writing in the response to the request for proposals for the System contains any untrue statements about the prior experience or corporate description of Contractor, or omits any fact necessary to make such statement not misleading.
- 8.3.9** County’s remedies under the Contract for the breach of the warranties set forth in this Contract will include, but not be limited to, the repair or replacement by Contractor, at its own expense, of the non-conforming System Software and

other corrective measures afforded to County by Contractor under this Contract.

8.4 BUDGET CONTINGENCY CLAUSE

It is mutually understood that CalMHSA is funded by Counties and has no ability to tax or assess; therefore, this Agreement is subject to fund availability. If it is determined funds are no longer available CalMHSA reserves the right to proceed with one of the following:

CalMHSA may give notice to Contractor that this Agreement is cancelled and the Agreement shall no longer be in full force and effect. In the event of such cancellation, CalMHSA shall have no liability to pay further funds to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to further perform any provisions of this Agreement.

CalMHSA may alternatively offer an Agreement amendment to Contractor to reflect the reduced amount available.

8.5 TAXES

Payment of all applicable federal, state, and local taxes imposed on Contractor shall be the sole responsibility of Contractor.

8.6 SEVERABILITY

If a court of competent jurisdiction holds any provision of this Agreement, or the application of any provision or part to any person or circumstance, to be illegal, unenforceable, or invalid in whole or in part, the validity and enforceability of the remaining provisions, or portions or applications of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision or application.

8.7 COMPLAINTS

The Contractor shall develop, maintain and operate procedures for receiving, investigating and responding to complaints.

8.7.1 Within ten business days after the Contract effective date, the Contractor shall provide the County with the Contractor's policy for receiving, investigating and responding to user complaints.

8.7.2 The County will review the Contractor's policy and provide the Contractor with approval of said plan or with requested changes.

- 8.7.3** If the County requests changes in the Contractor's policy, the Contractor shall make such changes and resubmit the plan within five business days for County's approval.
- 8.7.4** If, at any time, the Contractor wishes to change the Contractor's policy, the Contractor shall submit proposed changes to the County for approval before implementation.
- 8.7.5** The Contractor shall preliminarily investigate all complaints and notify the County's Contract Administrator of the status of the investigation within five business days of receiving the complaint.
- 8.7.6** When complaints cannot be resolved informally, a system of follow-through shall be instituted which adheres to formal plans for specific actions and strict time deadlines.
- 8.7.7** Copies of all written responses shall be sent to the County's Contract Administrator within three business days of mailing to the complainant.

8.8 COUNTY'S QUALITY ASSURANCE PLAN

The County or its agent will evaluate the Contractor's performance under this Contract on not less than an annual basis. Such evaluation will include assessing the Contractor's compliance with all Contract terms and conditions and performance standards. The Contractor deficiencies which the County determines are severe or continuing and that may place performance of the Contract in jeopardy if not corrected will be reported to CalMHSA.

The report will include improvement/corrective action measures taken by CalMHSA and the Contractor. If improvement does not occur consistent with the corrective action measures, CalMHSA may terminate this Contract or impose other penalties as specified in this Contract.

- 8.9 CalMHSA** will request Contractor to provide CalMHSA a copy of Contractor's most recent compiled, reviewed or audited financial reports and may request updated reports during the term of the Agreement.

8.10 FACSIMILE REPRESENTATIONS

CalMHSA and the Contractor hereby agree to regard facsimile representations of original signatures of authorized officers of each party, when appearing in appropriate places on the Amendments and/or Change Notices prepared pursuant to Subparagraph 7.1, and received via communications facilities, as legally sufficient evidence that such original signatures have been affixed to Amendments and/or Change Notices to this Contract, such that the parties need not follow up facsimile transmissions of such documents with subsequent (non-facsimile) transmission of "original" versions of such documents.

8.11 CONFORMITY WITH LAW AND SAFETY

In performing services under this Agreement, Contractor and its subcontractors shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal, and local governing bodies and commissions, having jurisdiction over the Statement of services provided. Contractor shall indemnify and hold CalMHSA harmless from any and all liability, fines, penalties and consequences from any of Contractor's or subcontractor's failures to comply with such laws, ordinances, codes and regulations. If this Agreement concerns work that CalMHSA agreed to provide to the State or other government entity, Contractor shall also observe and comply with all applicable provisions of CalMHSA's contract with the State or other government entity, a copy of which shall be provided to Contractor, and which shall be furnished by Contractor to any subcontractors performing work under this Agreement.

Accidents: If a death, serious personal injury or substantial property damage occurs in connection with Contractor's performance under this Agreement, Contractor shall immediately notify CalMHSA's contract manager by telephone. Contractor shall promptly submit to CalMHSA a written report, in such form as may be required by CalMHSA of all accidents which occur in connection with this Agreement. This report must include the following information:

- (1) name and address of the injured or deceased person(s);
- (2) name and address of Contractor's subcontractor, if any;
- (3) name and address of Contractor's liability insurance carrier; and
- (4) a detailed description of the accident and whether any of CalMHSA's staff, equipment or materials were involved.

Contractor further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to CalMHSA the opportunity to review and inspect such evidence, including the scene of the accident.

8.12 FORCE MAJEURE

8.12.1 Neither party shall be liable for such party's failure to perform its obligations under and in accordance with this Contract, if such failure arises out of fires, floods, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by such party or any of such party's subcontractors), freight embargoes, or other similar events to those described above, but in every such case the failure to perform must be totally beyond the control and without any fault or negligence of such party (such events are referred to in this subparagraph as "force majeure event(s)").

8.12.2 Notwithstanding the foregoing, a default by a subcontractor of Contractor shall not constitute a force majeure event, unless such default arises out of causes beyond the control of both Contractor and such subcontractor, and without any

fault or negligence of either of them. In such case, Contractor shall not be liable for failure to perform, unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Contractor to meet the required performance schedule. As used in this subparagraph, the term “subcontractor” and “subcontractors” mean subcontractors at any tier.

8.12.3 In the event Contractor's failure to perform arises out of a force majeure event, Contractor agrees to use commercially reasonable best efforts to obtain goods or services from other sources, if applicable, and to otherwise mitigate the damages and reduce the delay caused by such force majeure event.

8.12.4 In the event a force majeure event continues for more than five (5) business days, CalMHSA may terminate this Contract by providing written notice to Contractor. Notwithstanding the foregoing, a force majeure event will not relieve Contractor of its obligations under Exhibit F Information Security and Privacy Requirements and Sub-Paragraph 6.8 (Confidentiality).

8.13 INDEMNIFICATION

8.13.1 The Contractor shall indemnify, defend, and hold harmless the County and CalMHSA, their Special Districts, elected and appointed officers, employees, agents, and volunteers (“County and CalMHSA Indemnitees”) from and against any and all liability including but not limited to, demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from and/or relating to this Contract, except for such loss or damage arising from the sole negligence or willful misconduct of the County and CalMHSA Indemnitees.

8.13.2 The Contractor shall indemnify, hold harmless and defend County and CalMHSA from and against any and all liability, damages, costs, and expenses, including, but not limited to, defense costs and attorneys' fees, for or by reason of any actual or alleged infringement of any third party's patent or copyright, or any actual or alleged unauthorized trade secret disclosure, arising from or related to the operation and utilization of the Contractor's System and/or Services under this Contract. County or CalMHSA shall inform the Contractor as soon as practicable of any claim or action alleging such infringement or unauthorized disclosure, and shall support the Contractor's defense and settlement thereof.

8.13.3 In the event any equipment, part thereof, or software product becomes the subject of any complaint, claim, or proceeding alleging infringement or unauthorized disclosure, such that County's or CalMHSA's continued use of such item is formally restrained, enjoined, or subjected to a risk of damages, the Contractor, at its sole expense, and providing that County's and CalMHSA's continued use of the system is not materially impeded, shall either: (a) Procure for County and CalMHSA all rights to continued use of the questioned equipment, part, or software product; or (b) Replace the questioned equipment, part, or

software product with a non-questioned item; or (c) Modify the questioned equipment, part, or software so that it is free of claims.

8.14 INSURANCE AND BOND COVERAGE

Contractor and its subcontractors on this Agreement shall purchase and maintain policies of insurance with an insurer or insurers, admitted in the State of California, and with a current A.M. Best's rating of no less than A-, which will protect Contractor and CalMHSA from claims arising out of Contractor's performance under this Agreement, regardless of whether such performance is by Contractor or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The aforementioned insurance shall include:

8.14.1 Technology Errors and Omissions

Insurance, including coverage for liabilities arising from errors, omissions, or negligent acts in rendering or failing to render computer or information technology services and technology products. Coverage for violation of software copyright should be included. Technology services should at a minimum include (1) systems analysis (2) systems programming (3) data processing (4) systems integration (5) outsourcing including outsourcing development and design (6) systems design, consulting, development and modification (7) training services relating to computer software or hardware (8) management, repair and maintenance of computer products, networks and systems (9) marketing, selling, servicing, distributing, installing and maintaining computer hardware or software (10) data entry, modification, verification, maintenance, storage, retrieval or preparation of data output, and any other services provided by the vendor with limits not less than \$10 million.

8.14.2 Privacy/Network Security (Cyber)

Liability coverage providing protection against liability for (1) privacy breaches (liability arising from the loss or disclosure of confidential information no matter how it occurs) (2) system breach (3) denial or loss of service (4) introduction, implantation, or spread of malicious software code (5) unauthorized access to or use of computer systems with limits not less than \$20 million. No exclusion/restriction for unencrypted portable devices/media may be on the policy.

8.14.3 Workers' Compensation

If Contractor has employees, Contractor shall carry workers' compensation insurance in accordance with the laws of the State of California, and such insurance shall waive subrogation against CalMHSA.

8.14.4 Automobile Liability and Commercial General Liability

Contractor shall carry automobile liability insurance including coverage for owned, non-owned, and hired autos. Contractor shall also carry commercial general liability insurance with coverage for liability assumed by contract. Such policies shall have limits of not less than \$1,000,000 per accident or occurrence. In the event this Agreement is for a total amount of \$5,000,000 or more, such policies shall have limits of at least \$2,000,000 per accident or occurrence.

8.14.5 Professional Liability

If applicable, Contractor shall carry professional liability insurance applicable to wrongful acts, errors or omissions that may cause financial loss to CalMHSA, including contractual liability, with limits of at least \$1,000,000 per claim, or at least \$2,000,000 per claim if the total amount of this Agreement exceeds \$5,000,000. Such insurance shall be maintained during the term of this Agreement and renewed for a period of at least five years thereafter. In the event that Contractor subcontracts any portion of Contractor's duties, Contractor shall require any such subcontractor to purchase and maintain insurance coverage as provided in this subsection 8.9.5.

8.14.6 Fidelity

If Contractor has employees with access to funds or financial accounts, Contractor shall maintain a commercial crime (fidelity) policy with third-party property and employee dishonesty coverage with a minimum limit of \$1,000,000.

Each policy of insurance required in subsection 8.14.4. above shall name CalMHSA and County as well as their agents, officers, governing board, and employees as additional insureds; shall state that, with respect to the operations of Contractor hereunder, such policy is primary and any insurance carried by CalMHSA and County or their agents, officers, governing board or employees is excess and non-contributory with such primary insurance; shall state that not less than thirty days' written notice shall be given to CalMHSA and County prior to cancellation; and, shall waive all rights of subrogation against the additional insureds. The additional insured endorsement issued on the commercial general liability policy shall be a CG 2010 or equivalent.

Contractor shall notify CalMHSA and County in the event of material change in, or failure to renew each policy required under this Section.

As to any policy of insurance required by this section, Contractor shall disclose any self-insured retention or deductible exceeding \$5,000. CalMHSA or County may require that an endorsement be obtained reducing or eliminating such self-insured retention or deductible as to the CalMHSA and County and their officers, agents, board and employees; or may require Contractor to provide a financial guarantee guaranteeing payment of any necessary expenses of investigation, costs of defense, settlement or judgments.

Prior to commencing work, Contractor shall deliver to CalMHSA and County certificates of insurance and any required additional insured endorsements demonstrating compliance with these requirements. Upon request by CalMHSA or County, Contractor shall provide copies of any required insurance policies within 10 working days. In the event Contractor fails to secure or maintain any required policy of insurance, CalMHSA or County may, at their sole discretion, secure such insurance in the name of and for the account of Contractor, and in such event Contractor shall reimburse CalMHSA or County upon demand for the cost thereof. Any failure of CalMHSA or County to require certificates of insurance and additional insured endorsements shall not operate as a waiver of these requirements.

If Contractor does not include all subcontractors as insureds under Contractor's own policies, Contractors shall provide County and CalMHSA with each subcontractor's separate evidence of insurance coverage. Contractor shall be responsible for verifying each subcontractor complies with the required insurance provisions herein, and shall require that each subcontractor name CalMHSA, County, and Contractor as additional insureds on the subcontractor's commercial general liability policy. Contractor shall obtain CalMHSA's and County's prior review and approval of any subcontractor request for modification of the required insurance.

This section shall not apply to a Contractor that is a California public entity.

8.15 LIQUIDATED DAMAGES

8.15.1 If, in the judgment of CalMHSA, or his/her designee, the Contractor is deemed to be non-compliant with the terms and obligations assumed hereby, CalMHSA, or his/her designee, at his/her option, in addition to, or in lieu of, other remedies provided herein, may withhold the entire monthly payment or deduct pro rata from the Contractor's invoice for work not performed. A description of the work not performed and the amount to be withheld or deducted from payments to the Contractor from CalMHSA, will be forwarded to the Contractor by CalMHSA, or his/her designee, in a written notice describing the reasons for said action.

8.15.2 If CalMHSA, or his/her designee, determines that there are Deficiencies in the performance of this Contract that CalMHSA, or his/her designee, deems are correctable by the Contractor over a certain time span, CalMHSA, or his/her designee, will provide a written notice to the Contractor to correct the Deficiency within specified time frames. Should the Contractor fail to correct Deficiencies within said time frame, CalMHSA, or his/her designee, may: (a) Deduct from the Contractor's payment, pro rata, those applicable portions of the Monthly Contract Amount; and/or (b) Deduct liquidated damages. The parties agree that it will be impracticable or extremely difficult to fix the extent of actual damages resulting from the failure of the Contractor to correct a deficiency within the specified time frame. The parties hereby agree that under the current circumstances a reasonable estimate of such damages is One Hundred Dollars (\$100) per day per infraction, or as specified in the Performance Requirements Summary (PRS) Chart, as defined in Appendix B2, Exhibit 2, hereunder, and that the Contractor shall be liable to CalMHSA for

liquidated damages in said amount. Said amount shall be deducted from the CalMHSA's payment to the Contractor; and/or (c) Upon giving five days' notice to the Contractor for failure to correct the Deficiencies, CalMHSA may correct any and all Deficiencies and the total costs incurred by CalMHSA for completion of the work by an alternate source, whether it be CalMHSA forces or separate private contractor, will be deducted and forfeited from the payment to the Contractor (or invoiced to the Contractor if no payment is due) from CalMHSA, as determined by CalMHSA.

8.15.3 The action noted in Subparagraph 7.10.2 shall not be construed as a penalty, but as adjustment of payment to the Contractor to recover the CalMHSA cost due to the failure of the Contractor to complete or comply with the provisions of this Contract.

8.15.4 This subparagraph shall not, in any manner, restrict or limit CalMHSA's right to damages for any breach of this Contract provided by law or as specified in the PRS or Sub-paragraph 7.10.2, and shall not, in any manner, restrict or limit CalMHSA's right to terminate this Contract as agreed to herein.

8.16 DISPUTE RESOLUTION PROCEDURE

It is the intent of the parties that all disputes arising under this Contract be resolved expeditiously, amicably, and at the level within each party's organization that is most knowledgeable about the disputed issue. The parties understand and agree that the procedures outlined in this Paragraph are not intended to supplant the routine handling of inquiries and complaints through informal contact with their respective managers. Accordingly, for purposes of the procedures set forth in this paragraph, a "dispute" shall mean any action, dispute, claim, or controversy of any kind, whether in contract or tort, statutory or common law, legal or equitable, now existing or hereafter arising under or in connection with, or in any way pertaining to this Contract.

8.16.1 Contractor and CalMHSA agree to act with urgency to mutually resolve any disputes which may arise with respect to this Contract. All such disputes shall be subject to the provisions of this Sub-Paragraph 8.16 (Dispute Resolution Procedure) (such provisions shall be collectively referred to as the "Dispute Resolution Procedure"). Time is of the essence in the resolution of disputes.

8.16.2 Contractor and CalMHSA agree that, the existence and details of a dispute notwithstanding, both parties shall continue without delay their performance hereunder, except for any performance which CalMHSA determines should be delayed as a result of such dispute.

8.16.3 If Contractor fails to continue without delay its performance hereunder which CalMHSA, in its sole discretion, determines should not be delayed as a result of such dispute, then any additional costs which may be incurred by Contractor or CalMHSA as a result of Contractor's failure to continue to so perform shall be borne by Contractor, and Contractor shall make no claim whatsoever against

CalMHSA for such costs. Contractor shall promptly reimburse County for such CalMHSA costs, as determined by CalMHSA, or CalMHSA may deduct all such additional costs from any amounts due to Contractor from CalMHSA.

- 8.16.4** If CalMHSA fails to continue without delay to perform its responsibilities under this Contract which CalMHSA determines should not be delayed as a result of such dispute, then any additional costs incurred by Contractor or CalMHSA as a result of CalMHSA's failure to continue to so perform shall be borne by CalMHSA, and CalMHSA shall make no claim whatsoever against Contractor for such costs. CalMHSA shall promptly reimburse Contractor for all such additional Contractor costs subject to the approval of such costs by CalMHSA.
- 8.16.5** In the event of any dispute between the parties with respect to this Contract, Contractor and CalMHSA shall submit the matter to their respective Project Managers for the purpose of endeavoring to resolve such dispute.
- 8.16.6** In the event that the Project Managers are unable to resolve the dispute within a reasonable time not to exceed ten (10) days from the date of submission of the dispute to them, then the matter shall be immediately submitted to the parties' respective Project Directors for further consideration and discussion to attempt to resolve the dispute.
- 8.16.7** In the event that the Project Directors are unable to resolve the dispute within a reasonable time not to exceed ten (10) days from the date of submission of the dispute to them, then the matter shall be immediately submitted to Contractor's president or equivalent and the Director, or his/her designee. These persons shall have ten (10) days to attempt to resolve the dispute.
- 8.16.8** In the event that at these levels, there is not a resolution of the dispute acceptable to both parties, then each party may assert its other rights and remedies provided under this Contract and/or its rights and remedies as provided by law.
- 8.16.9** All disputes utilizing this dispute resolution procedure shall be documented in writing by each party and shall state the specifics of each alleged dispute and all actions taken. The parties shall act in good faith to resolve all disputes. At all three (3) levels described in this Sub-Paragraph 8.16 (Dispute Resolution Procedure), the efforts to resolve a dispute shall be undertaken by conference between the parties' respective representatives, either orally, by face to face meeting or by telephone, or in writing by exchange of correspondence.
- 8.16.10** Notwithstanding any other provision of this Contract, CalMHSA's right to terminate this Contract or to seek injunctive relief to enforce the provisions of Sub-Paragraph 6.8 (Confidentiality) shall not be subject to this Dispute Resolution Procedure. The preceding sentence is intended only as a clarification of CalMHSA's rights and shall not be deemed to impair any claims that CalMHSA may have against Contractor or CalMHSA's rights to assert such claims after any such termination or such injunctive relief has been obtained.

- 8.16.11** Contractor shall bring to the attention of the CalMHSA's Project Manager and/or CalMHSA's Project Director any dispute between the CalMHSA and the Contractor regarding the performance of services as stated in this Contract.

8.17 EFFECT OF TERMINATION

- 8.17.1** In the event CalMHSA terminates this Contract in whole or in part as provided hereunder or upon the expiration of the Contract, as applicable, then, unless otherwise specified by CalMHSA in writing: (a) Contractor shall continue the performance of this Contract to the extent not terminated. (b) Contractor shall cease to perform the Services being terminated on the date and to the extent specified in such notice and provide to CalMHSA all completed Services and Services in progress, in a media reasonably requested by CalMHSA. (c) CalMHSA will pay to Contractor all sums due and payable to Contractor for Services properly performed through the effective date of such expiration or termination (prorated as appropriate). (d) Contractor shall return to CalMHSA all monies paid by CalMHSA, yet unearned by Contractor, including any prepaid fees if applicable. (e) Contractor shall promptly return to CalMHSA any and all of the County's Confidential Information that relates to the portion of the Contract or Services terminated by CalMHSA, including all County Data, in a media reasonably requested by CalMHSA.
- 8.17.2** Expiration or termination of this Contract for any reason will not release either party from any liabilities or obligations set forth in this Contract which (i) the parties have expressly agreed in writing will survive any such expiration or termination, or (ii) remain to be performed or by their nature would be intended to be applicable following any such expiration or termination.
- 8.17.3** Contractor understands and agrees that County has obligations that it cannot satisfy without use of the System provided to County hereunder or an equivalent system, and that a failure to satisfy such obligations could result in irreparable damage to County and the entities it serves. Therefore, Contractor agrees that in the event of any expiration or termination of this Contract, Contractor shall fully cooperate with CalMHSA in the transition of County to a new system, toward the end that there be no interruption of County's day to day operations due to the unavailability of the System during such transition.
- 8.17.4** For ninety (90) days prior to the expiration date of this Contract, or upon notice of termination of this Contract ("Transition Period"), Contractor shall assist the County in extracting and/or transitioning all County Data in the format determined by the County. The Transition Period may be modified as agreed upon in writing by the parties in a Change Order. In addition, upon the expiration or termination of this Contract, County may require Contractor to provide services in the form of Optional Work to assist County to transition System operations from Contractor to County or County's designated third party ("Transition Services"). Upon CalMHSA's request for Transition Services,

CalMHSA, County and Contractor agree to negotiate in good faith the scope of work and the price for such Transition Services. Contractor agrees that in the event that CalMHSA terminates the Contract for any breach by Contractor, Contractor shall perform Transition Services at no cost to CalMHSA. Contractor shall provide County with all of the Transition Services as provided in this Sub-paragraph 8.17.4. The duty of Contractor to provide such Transition Services shall be conditioned on CalMHSA continuing to comply with its obligations under the Contract, including payment of all applicable fees. Contractor shall have no right to withhold or limit its performance or any of such Transition Services on the basis of any alleged breach of this Contract by CalMHSA, other than a failure by CalMHSA to timely pay the amounts due and payable hereunder. County shall have the right to seek specific performance of this Sub-paragraph 8.17.4 in any court of competent jurisdiction and Contractor hereby waives any defense that damages are an adequate remedy. Compliance with this Sub-paragraph 8.17.4 by either party shall not constitute a waiver or estoppel with regard to any rights or remedies available to the parties.

8.17.5 CalMHSA shall have the rights set forth in Sub-paragraph 8.24 to access and use the Source Material as set forth therein, including without limitation the right to modify all source and object code versions of the System Software after such time as one of the Release Conditions described in Sub-paragraph 8.24.4 has occurred which would permit CalMHSA to use the Source Material.

8.17.6 Contractor shall promptly return to County any and all County Confidential Information, including County Data that relate to that portion of the Contract and Services terminated by CalMHSA.

8.18 USE OF COUNTY SEAL AND/OR LOGOS

The County and CalMHSA claim right, title, and interest in and to certain intellectual property, including but not limited to, the current and former seals and logos (hereafter collectively "Seals and Logos"). Contractor shall not reproduce, copy, distribute, republish, download, display, post, transmit, or make any other use of any kind whatsoever of the Seals and Logos, in any format or by any means whatsoever. At no time shall the Contractor in any manner (i) modify the Seals and Logos, or (ii) create derivative works of the Seals and Logos. The Contractor shall not in any manner sublicense, transfer or assign its rights, or delegate its duties, with respect to use of the Seals and Logos, whether in whole or in part, without the prior written consent of CalMHSA or the County, and any attempted sublicense, transfer, assignment or delegation without such consent shall be null and void.

8.19 PUBLICATION OF EVALUATION DATA OR REPORTS

Contractor shall not disclose data or documents or disseminate the contents of the final or any preliminary report without written permission of CalMHSA. However, all public entities shall comply with California Public Records Act (Government Code Sections

6250 et seq.) and the Freedom of Information Act (Title 5 of the United States Code Section 552), as applicable.

Permission to disclose information or documents on one occasion shall not authorize Contractor to further disclose such information or documents on any other occasions except as otherwise provided in the Contract or required by law.

If requested by CalMHSA, Contractor shall require each of its employees or officers who will be involved in the performance of this Contract to agree to the above terms in a form to be approved by CalMHSA and shall supply CalMHSA with evidence thereof.

Each subcontract shall contain the foregoing provisions related to the confidentiality of data and nondisclosure.

After any data or documents submitted has become a part of the public records of CalMHSA, Contractor may at its own expense and upon written approval by CalMHSA, publish or utilize the same data or documents but shall include the following Notice:

LEGAL NOTICE

This report was prepared as an account of work sponsored by the California Mental Health Services Authority (CalMHSA), but does not necessarily represent the views of CalMHSA or its staff except to the extent, if any, that it has formally been approved by CalMHSA. For information regarding any such action, communicate directly with CalMHSA's Executive Director. Neither CalMHSA, nor any officer or staff thereof, or any of its contractors or subcontractors makes any warranty, express or implied, or assumes any legal liability whatsoever for the contents of this document. Nor does any party represent that use of the data contained herein, would not infringe upon privately owned rights without obtaining permission or authorization from any party who has any rights in connection with the data.

8.20 ADVERTISING OR PUBLICITY

Contractor shall not use the name of CalMHSA or County, their officers, directors, employees or agents, in advertising, social marketing campaigns, publicity releases or otherwise without securing the prior written consent of CalMHSA or County in each instance.

8.21 DISCLAIMER OF RESPONSIBILITY FOR CONTENT OF CONTRACTOR'S PUBLICATIONS

CalMHSA will not be responsible for the content of Contractor's publications, whether electronic, broadcast, printed, or otherwise.

If Contractor allows members of the public to contribute to its website, blog, social media page, or other site, Contractor shall display a disclaimer substantially similar to the following:

All information, data, text, software, music, sound, photographs, video, messages, blog posts, user comments and other materials, whether publicly posted or privately transmitted, are the sole responsibility of the individual source of said content. Individuals using this site are entirely responsible for the content they upload, post, e-mail, transmit, or otherwise make available here. [Contractor] and CalMHSA are in no way responsible for the content posted here, and therefore cannot guarantee its accuracy, integrity, or quality. By using this site, you may be exposed to content that is offensive or objectionable. Under no circumstances are we liable for content that includes errors or omissions, or for loss or damage of any kind incurred as a result of using this site's content.

If CalMHSA is identified as a sponsor of the site, the disclaimer should mention both Contractor and CalMHSA, as in the example above.

8.21.1 Terms of Use Disclaimer. Terms of Use shall be applicable to all users and Contractor required to provide such disclaimer. Contractor must have Terms of Use Disclaimer as provided in Exhibit N, and/or use similar disclaimer with approval from CalMHSA.

8.22 PUBLIC HEARINGS

If public hearings on the subject matter dealt with in this Agreement are held within one year from the contract expiration date, Contractor shall make available to testify the personnel assigned to this Agreement at the hourly rates specified in the Contractor's proposed budget. CalMHSA shall reimburse Contractor for travel of said personnel at the contract rates for such testimony as may be requested by CalMHSA.

8.23 USE OF PUBLIC FUNDS

Contractor, including its officers and members, shall not use funds received from CalMHSA pursuant to this Agreement to support or pay for costs or expenses related to the following:

Campaigning or other partisan activities to advocate for either the election or defeat of any candidate for elective office, or for or against the passage of any proposition or ballot measure; or

Lobbying for either the passage or defeat of any legislation.

This provision is not intended and shall not be construed to limit any expression of a view, opinion, or position of any member of Contractor as an individual or private citizen, as long as public funds are not used; nor does this provision limit Contractor from merely reporting the results of a poll or survey of its membership.

8.24 LICENSE

8.24.1 License Grant. Subject to the terms and conditions of this Contract, Contractor grants to County perpetual, fully-paid, worldwide, non-exclusive license to use

the System Software and Documentation for County's business purposes and activities ("License") as part of the System. For the purposes of this Sub-Paragraph 8.24.1 (License Grant), the term "use" as it applies to System Software and the System means to copy, install, access, execute, operate, distribute, archive and run unlimited copies of the System Software and by an unlimited number of users for installation, test, development, production, support, archival, emergency restart, and disaster recovery purposes.

8.24.2 License Restrictions. The System Software shall not in any way be disassembled, decompiled or reverse engineered, nor shall any attempt to do same be undertaken or knowingly permitted by County, except to the extent permitted by applicable law or authorized by Contractor. County shall not remove, modify or obscure any copyright, trademark or other proprietary rights notice that appear on, or during the use of, the System Software.

8.24.3 Third Party Software. The Contractor shall not use any Third Party Software in the System without the prior written approval of the County to be granted or withheld in its sole discretion. In the event Contractor provides any Third Party Software to County in connection with this Contract, Contractor shall obtain, at Contractor's sole cost and expense, a fully paid-up, royalty-free, worldwide, perpetual, non-exclusive license for County and County's agents and assigns, to use the Third Party Software for County's business purposes and activities. For the avoidance of doubt, Contractor shall support and maintain, at no additional charge to County, all Third Party Software to the same extent as the System Software.

8.24.4 Source Code Escrow. Contractor has deposited a copy of the Source Material for the System Software with _____, a software escrow agent (the "Escrow Agent"), located at _____ (the "Escrow") pursuant to a written escrow agreement ("Escrow Agreement"). There shall be no charge to County for the maintenance of the Escrow for the purpose of this Contract. A copy of the Escrow Agreement shall be incorporated by reference into this Contract as Exhibit H (Escrow Agreement). Contractor shall continually update the Source Material by promptly depositing in the Escrow each new Update of the System Software. Contractor's duty to update the Source Material shall continue through the Contract Term. The Source Material will be held in the Escrow. The events upon which County shall have access to the Source Material shall include (collectively the "Release Conditions"): (a) the insolvency of Contractor; (b) the making of a general assignment by Contractor for the benefit of its creditors or a filing of a voluntary or involuntary petition in bankruptcy by or against Contractor that is not dismissed within thirty (30) days of the filing thereof; (c) as set forth in Sub-Paragraph 8.24.5 (Bankruptcy And Liquidation); (d) in the event Contractor ceases to maintain or support the System Software for reasons other than County's failure to pay for, or election not to receive, Contractor's Maintenance and Support Services, and no other qualified entity has assumed the obligation to maintain and support the System Software; (e) termination of this Contract for breach by Contractor; and (f) any other release conditions that may be specified under the Escrow Agreement. If a Release

Condition occurs, County may hire Contractor personnel to assist County with using and understanding the Source Material without being subject to **Sub-Paragraph 8.35 (Prohibition Against Inducement or Persuasion)**. The parties acknowledge that as a result of the passage of time alone, the deposited Source Material may be susceptible to loss of quality ("Natural Degeneration"). For the purpose of reducing the risk of Natural Degeneration, Contractor shall deposit with the Escrow Agent a new copy of all deposited Source Material at least once every year. In the event the Source Material or any part of it is destroyed or corrupted, upon County's request, Contractor shall provide a replacement copy of the Source Material. Upon the occurrence of a Release Condition County will, upon payment of the duplication cost and other handling charges of the Escrow Agent, be entitled to obtain a copy of such Source Material from the Escrow Agent. County shall be entitled to use the Source Material as needed to remedy the event of release and mitigate any damages arising from such event. Such use will include, but is not limited to, County's right to perform its own support and maintenance, alter or modify the Source Material, and/or obtain the benefits sought under this Contract. The Escrow Agent's responsibility in the event of a Release Condition will be to cause a copy of the Source Material, in the form as delivered by Contractor, to be promptly delivered to County at the appropriate time. Nothing herein relieves Contractor of its obligation to provide Support Services as required under this Contract. County acknowledges that any possession of the Source Material referred to herein is subject to the confidentiality and proprietary provisions of access to any third party, except to service, maintain, support, repair, operate, modify, or otherwise facilitate and continue the use and operation of the installed System Software as provided herein. Should use of the Source Material as provided in this Sub-paragraph 8.24.4 involve the use or practice of any patent, copyright, trade secret, trademark, or other proprietary information in which Contractor has an interest, Contractor, on behalf of itself and its assignees and successors, agree not to assert a claim for patent, copyright, trade secret, trademark, or other proprietary information infringement against County, provided use of the System Software and Source Material is in accordance with this Contract. Regardless of whether one of the Release Conditions occurs, County shall have the right, at County's sole expense, to require the Escrow Agent to verify the relevance, completeness, currency, accuracy, and functionality of the Source Material by, among other things, compiling the Source Material and performing test runs for comparison with the capabilities of the System Software. In the event such testing demonstrates the Source Material does not correspond to the System Software, Contractor shall reimburse County for all costs and fees incurred in said verification, compilation, and testing and immediately deposit the correct Source Material with the Escrow Agent.

8.24.5 Bankruptcy and Liquidation. In the event that Contractor shall: (1) make an assignment for the benefit of creditors or petition or apply to any tribunal for the appointment of a custodian, receiver, or trustee for all or a substantial part of its assets; (2) commence any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction whether now or hereafter in effect; (3) have had any such petition

or application filed or any such proceeding commenced against it in which an order for relief is entered or an adjudication or appointment is made, and which remains undismissed for a period of sixty (60) days or more; (4) take any corporate action indicating its consent to, approval of, or acquiescence in any such petition, application, proceeding, or order for relief or the appointment of a custodian, receiver, or trustee for all or substantial part of its assets; or (5) permit any such custodianship, receivership, or trusteeship to continue undischarged for a period of sixty (60) days or more, causing Contractor or any third party, including, without limitation, a trustee in bankruptcy, to be empowered under state or federal law to reject this Contract or any agreement supplementary hereto, County and CalMHSA shall have the following rights: (i) in the event of a rejection of this Contract or any agreement supplementary hereto, County and CalMHSA shall be permitted to retain and use any back-up or archival copies of the System Software under this Contract for the purpose of enabling it to mitigate damages caused to County or CalMHSA because of the rejection of this Contract; (ii) in the event of a rejection of this Contract or any agreement supplementary hereto, County or CalMHSA may elect to retain its rights under this Contract or any agreement supplementary hereto as provided in Section 365(n) of the Bankruptcy Code. Upon written request of County or CalMHSA to, as applicable, Contractor or the bankruptcy trustee or receiver, Contractor or such bankruptcy trustee or receiver shall not interfere with the rights of County or CalMHSA as provided in this Contract or in any agreement supplementary hereto to obtain the Source Material(s) from the bankruptcy trustee or from a third-party escrow agent and shall, if requested, cause a copy of such Source Material(s) to be available to County or CalMHSA; and (iii) in the event of a rejection of this Contract or any agreement supplementary hereto, County and CalMHSA may retain their rights under this Contract or any agreement supplementary hereto as provided in Section 365(n) of the Bankruptcy Code without prejudice to any of its rights under Section 503(b) of the Bankruptcy Code.

8.25 WORK PRODUCT AND BACKGROUND INTELLECTUAL PROPERTY

8.25.1 Ownership of County Data. All County Data provided or made accessible by County to Contractor is and shall remain the property of County. Upon termination or expiration of the Contract for any reason, or upon County's written request at any time, the Contractor shall provide County, at no additional cost and no later than fifteen (15) calendar days after the termination, expiration or the County's request, any County Data (including any County Data or information stored as part of the System) or other proprietary data belonging to the County stored within the System. Such data will be provided to the County on an external media drive in a platform-agnostic format or in any specific format reasonably requested by County. At the County's option, the Contractor shall destroy all originals and copies of all such data, and other related information or documents.

8.25.2 Ownership of Background Intellectual Property & System Software. Contractor retains all right, title and interest in and to any such Background Intellectual

Property and System Software (including any modifications thereto made by Contractor). However, to the extent Background Intellectual Property constitutes or is incorporated into Work Product or required for County to fully exploit such Work Product or the System, Contractor hereby grants to County a perpetual, irrevocable, fully paid up, royalty free, transferable, sub-licensable, worldwide, non-exclusive right and license to use, prepare derivative works, and otherwise fully exploit in connection with County's business, the Background Intellectual Property constituting or incorporated into the Work Product or otherwise delivered to County in connection with this Contract, and provided further that the Background Intellectual Property is not separately commercially exploited by County. Any and all Background Intellectual Property which Contractor desires to use hereunder, and which Contractor considers to be proprietary or confidential, must be specifically identified by Contractor to the County's Project Director as proprietary or confidential, and shall be plainly and prominently marked by Contractor as "PROPRIETARY" or "CONFIDENTIAL." Notwithstanding any other provision of this Contract, County shall not be obligated or liable in any way under this Contract for: (a) any disclosure of any materials which County is required to make under the California Public Records Act or otherwise by law; and (b) any Contractor proprietary and/or confidential materials not plainly and prominently marked with restrictive legends.

8.25.3 Ownership of Work Product. Contractor hereby assigns, transfers and conveys to County, exclusively and perpetually, all rights, titles, and interests throughout the world it may have or acquire in the Work Product, including without limitation all intellectual property or other proprietary rights (including without limitation copyrights, patents rights, trade secret right, rights of reproduction, trademark rights, rights of publicity, and the right to secure registrations, renewals, reissues, and extensions thereof) (collectively "Intellectual Property Right(s)") therein or otherwise arising from the performance of this Contract. No rights of any kind in and to the Work Product, including all Intellectual Property Rights, are reserved to or by the Contractor or will revert to Contractor. Contractor agrees to execute such further documents and to do such further acts, at County's expense, as may be necessary to perfect, register or enforce County's ownership of such rights, in whole or in part. If Contractor fails or refuses to execute any such documents, Contractor hereby appoints County as Contractor's attorney-in-fact (this appointment to be irrevocable and a power coupled with an interest) to act on Contractor's behalf and to execute such documents. Contractor hereby forever waives and agrees never to assert against County, its successors or licensees any and all "Moral Rights" Contractor may have in Work Product even after expiration or termination of this Contract.

8.26 DATA DESTRUCTION

The Contractor(s) and vendor(s) that have maintained, processed, or stored the County data and/or information, implied or expressed have the sole responsibility to certify that the data and information have been appropriately destroyed consistent with the

National Institute of Standards and Technology (NIST) Special Publication SP 800-88 titled *Guidelines for Media Sanitization*.

Available at: <http://csrc.nist.gov/publications/PubsDrafts.html#SP-800-88-Rev.%201>

The data and/or information may be stored on purchased, leased, or rented electronic storage equipment (e.g., printers, hard drives) and electronic devices (e.g., servers, workstations) that are geographically located within the County, or external to the County's boundaries. The County must receive within 10 business days, a signed document from the Contractor(s) and vendor(s) that certifies and validates the data and information were placed in one or more of the following stored states: unusable, unreadable, and indecipherable.

The Contractor or vendor shall certify that any County data stored on purchased, leased, or rented electronic storage equipment and electronic devices including, but not limited to, printers, hard drives, servers, and/or workstations are destroyed consistent with the current National Institute of Standard and Technology (NIST) Special Publication SP-800-88, *Guidelines for Media Sanitization*. The Contractor or vendor shall provide the County with a written certification within 10 business days of removal of any electronic storage equipment and devices that validates that any and all County data was destroyed and is unusable, unreadable, and/or undecipherable.

8.27 ACCEPTANCE

8.27.1 The System, the System Software, Services, Deliverables, and milestones (if applicable) shall be subject to acceptance, and acceptance testing by County, in its sole discretion, to verify that they satisfy CalMHSA's acceptance criteria ("Acceptance Test(s)") as more fully described in Article 1 (Statement of Work)("Acceptance Criteria").

8.27.2 Production Use shall not be deemed acceptance or Final Acceptance of the System Software, Services, Deliverables and milestones.

8.27.3 If the County's Deputy Director makes a good faith determination at any time that the System Software or the System (as a whole, or any component thereof), Services, Deliverables, and/or milestones has not successfully completed an Acceptance Test or has not achieved Final Acceptance (collectively referred to for purposes of this Sub-paragraph 8.27.3 as "Designated Test"), the County's Deputy Director shall promptly notify Contractor in writing of such failure, specifying with as much detail as possible the manner in which the System Software, Services, Deliverables, milestones, and/or System failed to pass the applicable Designated Test. Contractor shall immediately commence all reasonable efforts to complete, as quickly as possible, such necessary corrections, repairs, and modifications to the System Software, Services, Deliverables, milestones, and/or System as will permit the System Software, Services, Deliverables, milestones, and/or System to be ready for retesting. Contractor shall notify the County's Deputy Director in writing when such corrections, repairs, and modifications have been completed, and

the applicable Designated Test shall begin again. If, after the applicable Designated Test has been completed for a second time, the County's Deputy Director makes a good faith determination that the System Software, Services, Deliverables, milestones, and/or System again fails to pass the applicable Designated Test, the County's Deputy Director shall promptly notify Contractor in writing, specifying with as much detail as possible the manner in which the System Software, Services, Deliverables, milestones, and/or System failed to pass the applicable Designated Test. Contractor shall immediately commence all reasonable efforts to complete, as quickly as possible, such necessary corrections, repairs, and modifications to the System Software, Services, Deliverables, milestones, and/or System as will permit the System Software, Services, Deliverables, milestones, and/or System to be ready for retesting.

8.27.4 Such procedure shall continue until such time as County notifies Contractor in writing either: (i) of the successful completion of such Designated Test or (ii) that County has concluded, subject to the Dispute Resolution Procedure, that satisfactory progress toward such successful completion of such Designated Test is not being made, in which latter event, County shall have the right to make a determination, which shall be binding and conclusive on Contractor, that a non-curable default has occurred and to terminate this Contract in accordance with Sub-paragraph 8.43 (Termination for Default) on the basis of such non-curable default.

8.27.5 Such a termination by County may be, subject to the Dispute Resolution Procedure, as determined by County in its sole judgment: (i) a termination with respect to one or more of the components of the System Software; (ii) a termination of any part of Exhibit A (Statement of Work) relating to the System Software, Service(s), Deliverables(s), and/or milestone(s) that is (are) not performing or conforming as required herein; or (iii) if County believes the failure to pass the applicable Designated Test materially affects the functionality, performance, or desirability to County of the System as a whole, the entire Contract. In the event of a termination under this Sub-paragraph 8.27.5, County shall have the right to receive from Contractor, within ten (10) days of written notice of termination, reimbursement of all payments made to Contractor by County under this Contract for the component(s), System Software, Service(s), Deliverables(s), milestone(s), and/or System as to which the termination applies, or, if the entire Contract is terminated, all amounts paid by County to Contractor under this Contract. If the termination applies only to one or more System Software or System component(s), at County's sole option, any reimbursement due to it may be credited against other sums due and payable by County to Contractor. The foregoing is without prejudice to any other rights that may accrue to County or Contractor under the terms of this Contract or by law.

8.28 EARLY TERMINATION

CalMHSA reserves the right to suspend, terminate or abandon the execution of any work by Contractor without cause at any time upon giving to Contractor 30 days' written notice. In the event that CalMHSA should abandon, terminate or suspend Contractor's work without cause, Contractor shall be entitled to payment for services provided prior to the effective date of said suspension, termination or abandonment, computed consistently with the requirements of this contract. If CalMHSA terminates the Agreement because Contractor has failed to perform as required under the Agreement, CalMHSA may recover or deduct from amounts otherwise owing under the Agreement any costs it sustains resulting from Contractor's breach. Upon receipt of notice of termination, Contractor shall stop work as of the date specified, and transfer to CalMHSA any materials, reports or other products which, if the Agreement had been completed or continued, would have been required to be furnished to CalMHSA.

8.29 INTEGRATION/INTERFACING

Contractor shall be responsible for developing and delivering the Interfaces, identified in Exhibit A (Statement of Work) as part of the System Software. If the System Software is to be integrated/interfaced with other software, equipment, and/or systems provided by Contractor or at the direction of Contractor, including any customized enhancements and Work Product, the System Software shall not be deemed to have achieved Final Acceptance by CalMHSA and County until the System Software and such other systems have been successfully integrated/interfaced and accepted by CalMHSA and County in accordance with the terms of this Contract. For example, if Contractor is to provide System Software consisting of multiple modules or that includes enhancements, including Work Product, to the System Software, CalMHSA's and County's acceptance of the System Software, any individual module or enhancement shall not be final until CalMHSA and County accept all of the System Software and modules or enhancements integrated/interfaced together as a complete system resulting in the System, including the operation of the System Software on all equipment required for its use in conformance with the terms of this Contract. Contractor shall not obtain any ownership interest in any other systems merely because they were interfaced, integrated, or used with any System Software.

8.30 COMMUNICATION SYSTEMS AND ACCESS TO INFORMATION

During the term of this Contract, Contractor may receive access to County's software, computers, equipment, and electronic communications systems (in this Paragraph 8.30, "**County systems**"), including but not limited to voicemail, email, customer databases, and internet and intranet systems. Such County systems are intended for legitimate business use related to County's business. Contractor acknowledges that Contractor does not have any expectation of privacy as between Contractor and County in the use of or access to County systems and that all communications made with such County systems or equipment by or on behalf of Contractor are subject to County's scrutiny, use, and disclosure, in County's discretion. County reserves the right, for business purposes and activities, to monitor, review, audit, intercept, access, archive, and/or disclose materials sent over, received by or from, or stored in any of its electronic County systems. This includes, without limitation, email communications sent by users across the internet and intranet from and to any domain name owned or operated by County. This also includes,

without limitation, any electronic communication system that has been used to access any of County systems. Contractor further agrees that Contractor will use all appropriate security, such as, for example, encryption and passwords (Contractor must provide passwords and keys to County), to protect County Confidential Information from unauthorized disclosure (internally or externally) and that the use of such security does not give rise to any privacy rights in the communication as between Contractor and County. County reserves the right to override any security passwords to obtain access to voicemail, email, computer (and software or other applications) and/or computer disks on County systems. Contractor also acknowledges that County reserves the right, for any business purposes and activities, to search all work areas (e.g., offices, cubicles, desks, drawers, cabinets, computers, computer disks, and files) and all personal items brought onto County property or used to access County Confidential Information or County systems.

8.31 CONTINUOUS SYSTEM SOFTWARE SUPPORT

If Contractor assigns this Contract, is acquired, or is otherwise controlled by another individual or entity (collectively referred to as a “**Successor Event**”), such individual or entity shall provide Maintenance and Support Services in accordance with this Contract for at least three (3) years following the Successor Event, unless otherwise agreed to in writing by County. After such three (3) years or, if subsequent to the Successor Event, the System Software is not supported to at least the same level that Contractor supported the System Software prior to the Successor Event, because, for example, Contractor’s assignee chooses to support other products with similar functions or does not otherwise properly staff the support for the System Software, County, at its sole option, may elect to transfer the license of the System Software, without cost or penalty, to another similar product (“**Replacement Product**”) within Contractor’s assignee’s or successor’s product offering. For purposes of this Paragraph 8.31 (Continuous System Software Support), the term “controlled” shall mean the legal right to elect a majority of the directors of a corporation or similar officers of any other entity or to determine an entity’s general management policies through contract or otherwise. The assignee or successor, by taking benefit (including acceptance of any payment under this Contract) ratifies this Contract. All terms and conditions of this Contract shall continue in full force and effect for the Replacement Product. In addition, the following terms and conditions shall apply if County elects to transfer this license to a Replacement Product: (a) Any prepaid maintenance and support shall transfer in full force and effect for the balance of the Replacement Product’s maintenance and support term (or equivalent service) at no additional cost. If the prepaid moneys are greater than the Replacement Product’s maintenance and support fee for the same term, the credit balance will be applied to future maintenance and support fees or returned to County, at its option; (b) Any and all software offered separately and needed to fulfill the original System Software’s level of functionality shall be supplied by Contractor’s assignee or successor without additional cost or penalty and shall not affect the calculation of any maintenance and support fees; (c) Any services required for implementation of the Replacement Product shall be provided by Contractor’s assignee or successor without additional cost or penalty; (d) Contractor shall provide to County reasonable training for purposes of learning the Replacement Product at no cost to

County; (e) All license terms and conditions shall remain as granted herein with no additional fees imposed on County; and (f) The definition of System Software shall then mean and include the Replacement Product.

8.32 NO OFFSHORE WORK

All Services shall be performed and rendered within the continental United States. In particular, Contractor warrants that it will not transmit or make available any County Confidential Information, County's intellectual property or any County property to any entity or individual outside the continental United States.

8.33 CHOICE OF LAW

This Agreement shall be governed by the laws of the State of California.

8.34 WAIVER

No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

8.35 ENTIRE AGREEMENT

This Agreement, including all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall constitute the entire agreement between CalMHSA and Contractor relating to the subject matter of this Agreement. As used herein, Agreement refers to and includes any documents incorporated by reference and any exhibits or attachments. This Agreement supersedes and merges all previous understandings, and all other agreements, written or oral, between the parties and sets forth the entire understanding of the parties regarding the subject matter thereof. The Agreement may not be modified except by a written document signed by both parties.

8.36 SURVIVAL

In addition to any provisions of this Contract which specifically state that they will survive the termination or expiration of this Contract and any rights and obligations under this Contract which by their nature should survive, the following Paragraphs and Sub-paragraphs shall survive any termination or expiration of this Contract:

Paragraph 2.28 (Third Party Beneficiaries)
Paragraph 6.8 (Confidentiality)

| | |
|----------------|--------------------------------|
| Paragraph 8.13 | (Indemnification) |
| Paragraph 8.14 | (Insurance Coverage) |
| Paragraph 8.16 | (Dispute Resolution Procedure) |
| Paragraph 8.17 | (Effect of Termination) |
| Paragraph 8.24 | (License) |
| Paragraph 8.36 | (Survival) |

9.0 UNIQUE TERMS AND CONDITIONS (Each if applicable)

9.1 HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPAA)

- 9.1.1** The parties acknowledge the existence of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its implementing regulations. Contractor understands and agrees that, as a provider of medical treatment services, it is a “covered entity” under HIPAA and, as such, has obligations with respect to the confidentiality, privacy, and security of patients’ medical information, and must take certain steps to preserve the confidentiality of this information, both internally and externally, including the training of its staff and the establishment of proper procedures for the release of such information, including the use of appropriate consents and authorizations specified under HIPAA.
- 9.1.2** The parties acknowledge their separate and independent obligations with respect to HIPAA and that such obligations relate to transactions and code sets, privacy, and security. Contractor understands and agrees that it is separately and independently responsible for compliance with HIPAA in all these areas and that County has not undertaken any responsibility for compliance on contractor’s behalf. Contractor has not relied, and will not in any way rely, on County for legal advice or other representations with respect to contractor’s obligations under HIPAA but will independently seek its own counsel and take the necessary measures to comply with the law and its implementing regulations.
- 9.1.3** Contractor and County understand and agree that each is independently responsible for HIPAA compliance and agree to take all necessary and reasonable actions to comply with the requirements of the HIPAA laws and implementing regulations related to transactions and code sets, privacy, and security.
- 9.1.4** Each party further agrees that, should it fail to comply with its obligations under HIPAA, it shall indemnify and hold harmless the other party (including the other party’s officers, employees, and agents), for damages to the other party that are attributable to such failure.
- 9.1.5** Contractor and County understand and agree that HIPAA has imposed additional requirements as detailed below in subsections 9.1.5.1 through 9.1.5.6, regarding changes in DMH’s County’s information system.

- 9.1.5.1** County has a Guide to Procedure Codes available at <http://lacdmh.lacounty.gov/hipaa/index.html> which includes a “crosswalk” of DMH activity codes to Current Procedural Terminology (CPT) and Health Care Procedure Coding System (HCPCS) codes.
- 9.1.5.2** County has Electronic Data Interchange (EDI) Agreement forms available at (insert link here) and (insert link here) which includes information about the applicable HIPAA transactions that can be processed in the County’s Integrated System (IS) and the Integrated Behavioral Health Information System (IBHIS) respectively.
- 9.1.5.3** Contractor acknowledges and agrees clinical, demographic, administrative, financial, claims, and outcomes information will be exchanged between DMH and contract providers exclusively through the use of web based applications, EDI transactions and other County defined b2b (“Business-to-Business”) data collection and interoperability solutions in accordance with Paragraph 11 (Data Exchange) in Exhibit A (Statement of Work).
- 9.1.5.4** As County defines requirements for interfaces and determines the means by which information is to be exchanged between Contractor and County, (such as through B2B integration and/or EDI), County shall notify Contractor of the effective date(s) by which Contractor shall be required to implement each newly defined interface through County’s release of new and/or revised Companion Guides. New and/or revised Companion Guides shall be released prior to the effective date(s) upon which each newly defined interface is required in accordance with the schedule below and in accordance with County’s estimate of the effort required to implement each newly defined interface, unless earlier effective date(s) are imposed by law or regulation, or earlier effective dates(s) are established by mutual agreement between County and Contractor. Companion guides shall be made available at (insert link here). Once interfaces have been published, Contractors are required to demonstrate acceptable levels of capability by means of certification. County shall provide the means of certification along with guidelines for certifying. Contractors shall meet required certification guidelines prior to utilizing with any and all interfaces, by testing in collaboration with County. County shall provide a fully functional region where Contractor can develop, test and certify. The following time frames are specific to Contractor development, testing and implementation for all new interfaces:
- 9.1.5.4.1** 120 days for new interface(s) requiring major development and testing;

- 9.1.5.4.2** 90 days for new interface(s) requiring moderate development and testing; and
- 9.1.5.4.3** 60 days for new interface(s) requiring minimal development and testing.
- 9.1.5.5** Contractor acknowledges that County may modify interface(s) requirements as deemed required by County. County shall notify Contractor of the effective dates(s) by which Contractor shall be required to comply with each modified interface in accordance with County's revised requirements through County's release of revised Companion Guides. Revised Companion Guides shall be released prior to the effective date(s) upon which each modified interface is required in accordance with the schedule below, and in accordance with County's estimate of the effort required to implement each revised interface, unless earlier effective dates(s) are imposed by law or regulation, or earlier effective dates(s) are established by mutual agreement between County and Contractor. The following time frames are specific to Contractor enhancement(s)/modification(s), testing and implementation of existing interfaces:
- 9.1.5.5.1** 90 days for existing interface(s) requiring major development and testing;
- 9.1.5.5.2** 60 days for existing interface(s) that requiring moderate development and testing; and
- 9.1.5.5.3** 30 days for existing interface(s) requiring minimal development and testing.
- 9.1.5.5.4** Contractor agrees to comply with the exchange of all required interfaces specified by County and the method by which these transactions are to be exchanged between Contractor and County as of the effective date(s) specified by County.
- 9.1.5.6** County has Trading Partner Agent Authorization Agreements available at (insert link here) and (insert link here) which includes the Contractor's authorization to its Agent(s) to submit HIPAA compliant transactions on behalf of Contractor to the IS and IBHIS respectively.
- 9.1.6** Contractor understands that County operates an informational website <http://dmh.lacounty.gov/wps/portal/dmh> related to the services under this Agreement and the parties' HIPAA obligations, and agrees to undertake reasonable efforts to utilize said website to obtain updates, other information, and forms to assist Contractor in its performance.

- 9.1.7** Contractor understands and agrees that if it uses the services of an Agent in any capacity in order to receive, transmit, store or otherwise process Data or Data Transmissions or perform related activities, the Contractor shall be fully liable to DMH for any acts, failures or omissions of the Agent in providing said services as though they were the Contractor's own acts, failures, or omissions.
- 9.1.8** Contractor further understands and agrees that the terms and conditions of the current IS and IBHIS Trading Partner Agreements (TPA) available at http://lacdmh.lacounty.gov/hipaa/edi_homepage.html and http://lacdmh.lacounty.gov/hipaa/IBHIS_EDl_homepage.htm respectively, shall apply to this Agreement and that said Terms and Conditions are incorporated by reference as though fully set forth herein.
- 9.1.9** Contractor acknowledges that County participates in the Meaningful Use of Electronic Health Records Incentive Program (MU Program) under the HITECH Act which requires the annual submission of data documenting the compliance of eligible professionals with certain MU measures.
- 9.1.10** County and Contractor further understand and agree that mutual cooperation in the collection and reporting of MU Program measures may be required in cases in which both County and Contractor have employed or contracted the professional medical services of the same eligible professional during any calendar year in which the MU Program is in effect. In such cases, the requesting party shall deliver to the receiving party a letter on agency letterhead indicating the specific information requested, the format in which the information is to be delivered to the requesting party, and the required date of delivery of the information requested. The receiving party shall have 30 days from receipt of the request to deliver the requested information to the requesting party in the format specified by the requester.

9.2 TECHNOLOGY REQUIREMENTS

- 9.2.1** Contractor shall acquire, manage, and maintain Contractor's own information technology, infrastructure, platforms, systems and/or services in order to meet all requirements specified by County for interoperability (as stated in section 9.4.5.3).
- 9.2.2** Contractor shall ensure that each individual using electronic methods to sign electronic health records in the performance of work specified under this Agreement completes an Electronic Signature Agreement annually. The Electronic Signature Agreement shall be substantially similar to the sample available at http://lacdmh.lacounty.gov/hipaa/edi_homepage.html.
- 9.2.2.1** Contractor shall maintain a copy of each Electronic Signature Agreement and make them available for inspection by County upon request.

- 9.2.2.2** Contractor shall submit to County a Legal Entity Electronic Signature Certification to certify compliance with this provision of this Agreement. Contractors who implement electronic methods to sign electronic health records subsequent to the execution of this Agreement shall submit to County a Legal Entity Electronic Signature Certification immediately upon implementation. The Legal Entity Electronic Signature Certification to be used by Contractor is found at http://lacdmh.lacounty.gov/hipaa/edi_homepage.html.

9.3 CONTRACTOR PROTECTION OF ELECTRONIC COUNTY INFORMATION

The Board has recognized that the County must ensure that appropriate safeguards are in place to protect public data and avoid the penalties and fines that may be imposed when unprotected confidential/sensitive information is disclosed inappropriately. County Policy 5.200 “Contractor Protection of Electronic County Information” was adopted to protect personal information (PI), protected health information (PHI) and medical information (MI) electronically stored and/or transmitted by County contractors. Contractor agrees that it will comply with County Policy 5.200, as it now exist or as it might be modified in the future, as it relates to information acquired in the course of providing services during the term of this Contract.

- 9.3.1** Contractor shall comply with the encryption standards set forth in Exhibit I (Protection of Electronic County PI, PHI and MI (Data Encryption)) and submit Required Forms Exhibit J (Contractor’s Compliance with Encryption Requirements). Encryption requirements shall apply to all County PI, PHI and MI electronically stored or transmitted by Contractor and its subcontractors, irrespective of storage and/or transmission methodology.
- 9.3.2** Contractor shall comply with the Information Security Requirements set for in Exhibit F (Information Security and Privacy Requirements);
- 9.3.3** Contractor shall complete and submit to DMH The Confidentiality Oath (Non-LAC-DMH Workforce Members) Exhibit K to this Contract; and
- 9.3.4** Contractor shall sign, submit to DMH and comply with Agreement for Acceptable Use and Confidentiality of County Technology Resources, Exhibit L to this Contract.

[END OF GENERAL TERMS AND CONDITIONS]

EXHIBIT A
CALMHSA'S ADMINISTRATION

CONTRACT NO. _____

CALMHSA PROJECT DIRECTOR:

Name: _____

Title: _____

Address: _____

Telephone: _____ Facsimile: _____

E-Mail Address: _____

CALMHSA PROJECT MANAGER:

Name: _____

Title: _____

Address: _____

Telephone: _____ Facsimile: _____

E-Mail Address: _____

CALMHSA CONTRACT PROJECT MONITOR:

Name: _____

Title: _____

Address: _____

Telephone: _____ Facsimile: _____

E-Mail Address: _____

EXHIBIT B
CONTRACTOR'S ADMINISTRATION

CONTRACTOR'S NAME: _____

CONTRACT NO: _____

CONTRACTOR'S PROJECT DIRECTOR:

Name: _____

Title: _____

Address: _____

Telephone: _____

Facsimile: _____

E-Mail Address: _____

CONTRACTOR'S PROJECT MANAGER:

Name: _____

Title: _____

Address: _____

Telephone: _____

Facsimile: _____

E-Mail Address: _____

CONTRACTOR'S AUTHORIZED OFFICIAL(S)

Name: _____

Title: _____

Address: _____

Telephone: _____

Facsimile: _____

E-Mail Address: _____

Name: _____

Title: _____

Address: _____

Telephone: _____

Facsimile: _____

E-Mail Address: _____

Notices to Contractor shall be sent to the following:

Name: _____
Title: _____
Address: _____
Telephone: _____
Facsimile: _____
E-Mail Address: _____

EXHIBIT C
BUSINESS ASSOCIATE AGREEMENT UNDER THE HEALTH INSURANCE PORTABILITY AND
ACCOUNTABILITY ACT OF 1996 (HIPAA)

County is a Covered Entity as defined by, and subject to the requirements and prohibitions of, the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), and regulations promulgated thereunder, including the Privacy, Security, Breach Notification, and Enforcement Rules at 45 Code of Federal Regulations (C.F.R.) Parts 160 and 164 (collectively, the "HIPAA Rules").

Contractor performs or provides functions, activities or services to County that require Contractor in order to provide such functions, activities or services to create, access, receive, maintain, and/or transmit information that includes or that may include Protected Health Information, as defined by the HIPAA Rules. As such, Contractor is a Business Associate, as defined by the HIPAA Rules, and is therefore subject to those provisions of the HIPAA Rules that are applicable to Business Associates.

The HIPAA Rules require a written agreement ("Business Associate Agreement") between County and Contractor in order to mandate certain protections for the privacy and security of Protected Health Information, and these HIPAA Rules prohibit the disclosure to or use of Protected Health Information by Contractor if such an agreement is not in place.

This Business Associate Agreement and its provisions are intended to protect the privacy and provide for the security of Protected Health Information disclosed to or used by Contractor in compliance with the HIPAA Rules.

Therefore, the parties agree as follows:

1. Definitions

- 1.1 "Breach" has the same meaning as the term "breach" at 45 C.F.R. § 164.402.
- 1.2 "Business Associate" has the same meaning as the term "business associate" at 45 C.F.R. § 160.103. For the convenience of the parties, a "business associate" is a person or entity, other than a member of the workforce of covered entity, who performs functions or activities on behalf of, or provides certain services to, a covered entity that involve access by the business associate to Protected Health Information. A "business associate" also is a subcontractor that creates, receives, maintains, or transmits Protected Health Information on behalf of another business associate. And in reference to the party to this Business Associate Agreement "Business Associate" shall mean Contractor.
- 1.3 "Covered Entity" has the same meaning as the term "covered entity" at 45 CFR § 160.103, and in reference to the party to this Business Associate Agreement, "Covered Entity" shall mean County.

- 1.4 "Data Aggregation" has the same meaning as the term "data aggregation" at 45 C.F.R. § 164.501.
- 1.5 "De-identification" refers to the de-identification standard at 45 C.F.R. § 164.514.
- 1.6 "Designated Record Set" has the same meaning as the term "designated record set" at 45 C.F.R. § 164.501.
- 1.7 "Disclose" and "Disclosure" mean, with respect to Protected Health Information, the release, transfer, provision of access to, or divulging in any other manner of Protected Health Information outside Business Associate's internal operations or to other than its workforce. (See 45 C.F.R. § 160.103.)
- 1.8 "Electronic Health Record" means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff. (See 42 U.S. C. § 17921.)
- 1.9 "Electronic Media" has the same meaning as the term "electronic media" at 45 C.F.R. § 160.103. For the convenience of the parties, electronic media means (1) Electronic storage material on which data is or may be recorded electronically, including, for example, devices in computers (hard drives) and any removable/transportable digital memory medium, such as magnetic tape or disk, optical disk, or digital memory card; (2) Transmission media used to exchange information already in electronic storage media. Transmission media include, for example, the Internet, extranet or intranet, leased lines, dial-up lines, private networks, and the physical movement of removable/transportable electronic storage media. Certain transmissions, including of paper, via facsimile, and of voice, via telephone, are not considered to be transmissions via electronic media if the information being exchanged did not exist in electronic form immediately before the transmission.
- 1.10 "Electronic Protected Health Information" has the same meaning as the term "electronic protected health information" at 45 C.F.R. § 160.103, limited to Protected Health Information created or received by Business Associate from or on behalf of Covered Entity. For the convenience of the parties, Electronic Protected Health Information means Protected Health Information that is (i) transmitted by electronic media; (ii) maintained in electronic media.
- 1.11 "Health Care Operations" has the same meaning as the term "health care operations" at 45 C.F.R. § 164.501.
- 1.12 "Individual" has the same meaning as the term "individual" at 45 C.F.R. § 160.103. For the convenience of the parties, Individual means the person who is the subject of Protected Health Information and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502 (g).
- 1.13 "Law Enforcement Official" has the same meaning as the term "law enforcement official" at 45 C.F.R. § 164.103.
- 1.14 "Minimum Necessary" refers to the minimum necessary standard at 45 C.F.R. § 162.502 (b).

- 1.15 "Protected Health Information" has the same meaning as the term "protected health information" at 45 C.F.R. § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity. For the convenience of the parties, Protected Health Information includes information that (i) relates to the past, present or future physical or mental health or condition of an Individual; the provision of health care to an Individual, or the past, present or future payment for the provision of health care to an Individual; (ii) identifies the Individual (or for which there is a reasonable basis for believing that the information can be used to identify the Individual); and (iii) is created, received, maintained, or transmitted by Business Associate from or on behalf of Covered Entity, and includes Protected Health Information that is made accessible to Business Associate by Covered Entity. "Protected Health Information" includes Electronic Protected Health Information.
- 1.16 "Required by Law" " has the same meaning as the term "required by law" at 45 C.F.R. § 164.103.
- 1.17 "Secretary" has the same meaning as the term "secretary" at 45 C.F.R. § 160.103
- 1.18 "Security Incident" has the same meaning as the term "security incident" at 45 C.F.R. § 164.304.
- 1.19 "Services" means, unless otherwise specified, those functions, activities, or services in the applicable underlying Agreement, Contract, Master Agreement, Work Order, or Purchase Order or other service arrangement, with or without payment, that gives rise to Contractor's status as a Business Associate.
- 1.20 "Subcontractor" has the same meaning as the term "subcontractor" at 45 C.F.R. § 160.103.
- 1.21 "Unsecured Protected Health Information" has the same meaning as the term "unsecured protected health information" at 45 C.F.R. § 164.402.
- 1.22 "Use" or "Uses" means, with respect to Protected Health Information, the sharing, employment, application, utilization, examination or analysis of such Information within Business Associate's internal operations. (See 45 C.F.R § 164.103.)
- 1.23 Terms used, but not otherwise defined in this Business Associate Agreement, have the same meaning as those terms in the HIPAA Rules.

2. Permitted and Required Uses and Disclosures of Protected Health Information

- 2.1 Business Associate may only Use and/or Disclose Protected Health Information as necessary to perform Services, and/or as necessary to comply with the obligations of this Business Associate Agreement.
- 2.2 Business Associate may Use Protected Health Information for de-identification of the information if de-identification of the information is required to provide Services.
- 2.3 Business Associate may Use or Disclose Protected Health Information as Required by Law.
- 2.4 Business Associate shall make Uses and Disclosures and requests for Protected Health Information consistent with the applicable Covered Entity's Minimum Necessary policies and procedures.

- 2.5 Business Associate may Use Protected Health Information as necessary for the proper management and administration of its business or to carry out its legal responsibilities.
- 2.6 Business Associate may Disclose Protected Health Information as necessary for the proper management and administration of its business or to carry out its legal responsibilities, provided the Disclosure is Required by Law.
- 2.7 Business Associate may provide Data Aggregation services relating to Covered Entity's Health Care Operations if such Data Aggregation services are necessary in order to provide Services.

3. Prohibited Uses and Disclosures of Protected Health Information

- 3.1 Business Associate shall not Use or Disclose Protected Health Information other than as permitted or required by this Business Associate Agreement or as Required by Law.
- 3.2 Business Associate shall not Use or Disclose Protected Health Information in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by Covered Entity, except for the specific Uses and Disclosures set forth in Sections 2.5 and 2.6.
- 3.3 Business Associate shall not Use or Disclose Protected Health Information for de-identification of the information except as set forth in section 2.2.

4. Obligations to Safeguard Protected Health Information

- 4.1 Business Associate shall implement, use, and maintain appropriate safeguards to prevent the Use or Disclosure of Protected Health Information other than as provided for by this Business Associate Agreement.
- 4.2 Business Associate shall comply with Subpart C of 45 C.F.R Part 164 with respect to Electronic Protected Health Information, to prevent the Use or Disclosure of such information other than as provided for by this Business Associate Agreement.

5. Reporting Non-Permitted Uses or Disclosures, Security Incidents, and Breaches of Unsecured Protected Health Information

- 5.1 Business Associate shall report to Covered Entity any Use or Disclosure of Protected Health Information not permitted by this Business Associate Agreement, any Security Incident, and/ or any Breach of Unsecured Protected Health Information as further described in Sections 5.1.1, 5.1.2, and 5.1.3.
 - 5.1.1 Business Associate shall report to Covered Entity any Use or Disclosure of Protected Health Information by Business Associate, its employees, representatives, agents or Subcontractors not provided for by this Agreement of which Business Associate becomes aware.
 - 5.1.2 Business Associate shall report to Covered Entity any Security Incident of which Business Associate becomes aware.
 - 5.1.3 Business Associate shall report to Covered Entity any Breach by Business Associate, its employees, representatives, agents, workforce members, or Subcontractors of Unsecured

Protected Health Information that is known to Business Associate or, by exercising reasonable diligence, would have been known to Business Associate. Business Associate shall be deemed to have knowledge of a Breach of Unsecured Protected Health Information if the Breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the Breach, who is an employee, officer, or other agent of Business Associate, including a Subcontractor, as determined in accordance with the federal common law of agency.

5.2 Except as provided in Section 5.3, for any reporting required by Section 5.1, Business Associate shall provide, to the extent available, all information required by, and within the times frames specified in, Sections 5.2.1 and 5.2.2.

5.2.1 Business Associate shall make an immediate telephonic report upon discovery of the non-permitted Use or Disclosure of Protected Health Information, Security Incident or Breach of Unsecured Protected Health Information to (562) 940-3335 that minimally includes:

- (a) A brief description of what happened, including the date of the non-permitted Use or Disclosure, Security Incident, or Breach and the date of Discovery of the non-permitted Use or Disclosure, Security Incident, or Breach, if known;
- (b) The number of Individuals whose Protected Health Information is involved;
- (c) A description of the specific type of Protected Health Information involved in the non-permitted Use or Disclosure, Security Incident, or Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code or other types of information were involved);
- (d) The name and contact information for a person highly knowledgeable of the facts and circumstances of the non-permitted Use or Disclosure of PHI, Security Incident, or Breach

5.2.2 Business Associate shall make a written report without unreasonable delay and in no event later than three (3) business days from the date of discovery by Business Associate of the non-permitted Use or Disclosure of Protected Health Information, Security Incident, or Breach of Unsecured Protected Health Information and to the Chief HIPAA Privacy Officer at: Chief HIPAA Privacy Officer, Kenneth Hahn Hall of Administration, 500 West Temple Street, Suite 525, Los Angeles, California 90012, HIPAA@auditor.lacounty.gov, that includes, to the extent possible:

- (a) A brief description of what happened, including the date of the non-permitted Use or Disclosure, Security Incident, or Breach and the date of Discovery of the non-permitted Use or Disclosure, Security Incident, or Breach, if known;
- (b) The number of Individuals whose Protected Health Information is involved;
- (c) A description of the specific type of Protected Health Information involved in the non-permitted Use or Disclosure, Security Incident, or Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code or other types of information were involved);

- (d) The identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, Used, or Disclosed;
 - (e) Any other information necessary to conduct an assessment of whether notification to the Individual(s) under 45 C.F.R. § 164.404 is required;
 - (f) Any steps Business Associate believes that the Individual(s) could take to protect him or herself from potential harm from the non-permitted Use or Disclosure, Security Incident, or Breach;
 - (g) A brief description of what Business Associate is doing to investigate, to mitigate harm to the Individual(s), and to protect against any further similar occurrences; and
 - (h) The name and contact information for a person highly knowledgeable of the facts and circumstances of the non-permitted Use or Disclosure of PHI, Security Incident, or Breach.
- 5.2.3 If Business Associate is not able to provide the information specified in Section 5.2.1 or 5.2.2 at the time of the required report, Business Associate shall provide such information promptly thereafter as such information becomes available.
- 5.3 Business Associate may delay the notification required by Section 5.1.3, if a law enforcement official states to Business Associate that notification would impede a criminal investigation or cause damage to national security.
- 5.3.1 If the law enforcement official's statement is in writing and specifies the time for which a delay is required, Business Associate shall delay its reporting and/or notification obligation(s) for the time period specified by the official.
- 5.3.2 If the statement is made orally, Business Associate shall document the statement, including the identity of the official making the statement, and delay its reporting and/or notification obligation(s) temporarily and no longer than 30 days from the date of the oral statement, unless a written statement as described in Section 5.3.1 is submitted during that time.
- 6. Written Assurances of Subcontractors**
- 6.1 In accordance with 45 C.F.R. § 164.502 (e)(1)(ii) and § 164.308 (b)(2), if applicable, Business Associate shall ensure that any Subcontractor that creates, receives, maintains, or transmits Protected Health Information on behalf of Business Associate is made aware of its status as a Business Associate with respect to such information and that Subcontractor agrees in writing to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information.
- 6.2 Business Associate shall take reasonable steps to cure any material breach or violation by Subcontractor of the agreement required by Section 6.1.

- 6.3 If the steps required by Section 6.2 do not cure the breach or end the violation, Contractor shall terminate, if feasible, any arrangement with Subcontractor by which Subcontractor creates, receives, maintains, or transmits Protected Health Information on behalf of Business Associate.
- 6.4 If neither cure nor termination as set forth in Sections 6.2 and 6.3 is feasible, Business Associate shall immediately notify County.
- 6.5 Without limiting the requirements of Section 6.1, the agreement required by Section 6.1 (Subcontractor Business Associate Agreement) shall require Subcontractor to contemporaneously notify Covered Entity in the event of a Breach of Unsecured Protected Health Information.
- 6.6 Without limiting the requirements of Section 6.1, agreement required by Section 6.1 (Subcontractor Business Associate Agreement) shall include a provision requiring Subcontractor to destroy, or in the alternative to return to Business Associate, any Protected Health Information created, received, maintained, or transmitted by Subcontractor on behalf of Business Associate so as to enable Business Associate to comply with the provisions of Section 18.4.
- 6.7 Business Associate shall provide to Covered Entity, at Covered Entity's request, a copy of any and all Subcontractor Business Associate Agreements required by Section 6.1.
- 6.8 Sections 6.1 and 6.7 are not intended by the parties to limit in any way the scope of Business Associate's obligations related to Subcontracts or Subcontracting in the applicable underlying Agreement, Contract, Master Agreement, Work Order, Purchase Order, or other services arrangement, with or without payment, that gives rise to Contractor's status as a Business Associate.

7. Access to Protected Health Information

- 7.1 To the extent Covered Entity determines that Protected Health Information is maintained by Business Associate or its agents or Subcontractors in a Designated Record Set, Business Associate shall, within two (2) business days after receipt of a request from Covered Entity, make the Protected Health Information specified by Covered Entity available to the Individual(s) identified by Covered Entity as being entitled to access and shall provide such Individuals(s) or other person(s) designated by Covered Entity with a copy the specified Protected Health Information, in order for Covered Entity to meet the requirements of 45 C.F.R. § 164.524.
- 7.2 If any Individual requests access to Protected Health Information directly from Business Associate or its agents or Subcontractors, Business Associate shall notify Covered Entity in writing within two (2) days of the receipt of the request. Whether access shall be provided or denied shall be determined by Covered Entity.
- 7.3 To the extent that Business Associate maintains Protected Health Information that is subject to access as set forth above in one or more Designated Record Sets electronically and if the Individual requests an electronic copy of such information, Business Associate shall provide the Individual with access to the Protected Health Information in the electronic form and format requested by the Individual, if it is readily producible in such form and format; or, if not, in a readable electronic form and format as agreed to by Covered Entity and the Individual.

8. Amendment of Protected Health Information

- 8.1 To the extent Covered Entity determines that any Protected Health Information is maintained by Business Associate or its agents or Subcontractors in a Designated Record Set, Business Associate shall, within ten (10) business days after receipt of a written request from Covered Entity, make any amendments to such Protected Health Information that are requested by Covered Entity, in order for Covered Entity to meet the requirements of 45 C.F.R. § 164.526.
- 8.2 If any Individual requests an amendment to Protected Health Information directly from Business Associate or its agents or Subcontractors, Business Associate shall notify Covered Entity in writing within five (5) days of the receipt of the request. Whether an amendment shall be granted or denied shall be determined by Covered Entity.

9. Accounting of Disclosures of Protected Health Information

- 9.1 Business Associate shall maintain an accounting of each Disclosure of Protected Health Information made by Business Associate or its employees, agents, representatives or Subcontractors, as is determined by Covered Entity to be necessary in order to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.
- 9.1.1 Any accounting of disclosures provided by Business Associate under Section 9.1 shall include:
- (a) The date of the Disclosure;
 - (b) The name, and address if known, of the entity or person who received the Protected Health Information;
 - (c) A brief description of the Protected Health Information Disclosed; and
 - (d) A brief statement of the purpose of the Disclosure.
- 9.1.2 For each Disclosure that could require an accounting under Section 9.1, Business Associate shall document the information specified in Section 9.1.1, and shall maintain the information for six (6) years from the date of the Disclosure.
- 9.2 Business Associate shall provide to Covered Entity, within ten (10) business days after receipt of a written request from Covered Entity, information collected in accordance with Section 9.1.1 to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528
- 9.3 If any Individual requests an accounting of disclosures directly from Business Associate or its agents or Subcontractors, Business Associate shall notify Covered Entity in writing within five (5) days of the receipt of the request, and shall provide the requested accounting of disclosures to the Individual(s) within 30 days. The information provided in the accounting shall be in accordance with 45 C.F.R. § 164.528.

10. Compliance with Applicable HIPAA Rules

10.1 To the extent Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164, Business Associate shall comply with the requirements of Subpart E that apply to Covered Entity's performance of such obligation(s).

10.2 Business Associate shall comply with all HIPAA Rules applicable to Business Associate in the performance of Services.

11. Availability of Records

11.1 Business Associate shall make its internal practices, books, and records relating to the Use and Disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity available to the Secretary for purposes of determining Covered Entity's compliance with the Privacy and Security Regulations.

11.2 Unless prohibited by the Secretary, Business Associate shall immediately notify Covered Entity of any requests made by the Secretary and provide Covered Entity with copies of any documents produced in response to such request.

12. Mitigation of Harmful Effects

12.1 Business Associate shall mitigate, to the extent practicable, any harmful effect of a Use or Disclosure of Protected Health Information by Business Associate in violation of the requirements of this Business Associate Agreement that is known to Business Associate.

13. Breach Notification to Individuals

13.1 Business Associate shall, to the extent Covered Entity determines that there has been a Breach of Unsecured Protected Health Information by Business Associate, its employees, representatives, agents or Subcontractors, provide breach notification to the Individual in a manner that permits Covered Entity to comply with its obligations under 45 C.F.R. § 164.404.

13.1.1 Business Associate shall notify, subject to the review and approval of Covered Entity, each Individual whose Unsecured Protected Health Information has been, or is reasonably believed to have been, accessed, acquired, Used, or Disclosed as a result of any such Breach.

13.1.2 The notification provided by Business Associate shall be written in plain language, shall be subject to review and approval by Covered Entity, and shall include, to the extent possible:

- (a) A brief description of what happened, including the date of the Breach and the date of the Discovery of the Breach, if known;
- (b) A description of the types of Unsecured Protected Health Information that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
- (c) Any steps the Individual should take to protect him or herself from potential harm resulting from the Breach;

- (d) A brief description of what Business Associate is doing to investigate the Breach, to mitigate harm to Individual(s), and to protect against any further Breaches; and
 - (e) Contact procedures for Individual(s) to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.
- 13.2 Covered Entity, in its sole discretion, may elect to provide the notification required by Section 13.1 and/or to establish the contact procedures described in Section 13.1.2.
- 13.3 Business Associate shall reimburse Covered Entity any and all costs incurred by Covered Entity, in complying with Subpart D of 45 C.F.R. Part 164, including but not limited to costs of notification, internet posting, or media publication, as a result of Business Associate's Breach of Unsecured Protected Health Information; Covered Entity shall not be responsible for any costs incurred by Business Associate in providing the notification required by 13.1 or in establishing the contact procedures required by Section 13.1.2.

14. Indemnification

- 14.1 Business Associate shall indemnify, defend, and hold harmless Covered Entity, its Special Districts, elected and appointed officers, employees, and agents from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, expenses (including attorney and expert witness fees), and penalties and/or fines (including regulatory penalties and/or fines), arising from or connected with Business Associate's acts and/or omissions arising from and/or relating to this Business Associate Agreement, including, but not limited to, compliance and/or enforcement actions and/or activities, whether formal or informal, by the Secretary or by the Attorney General of the State of California.
- 14.2 Section 14.1 is not intended by the parties to limit in any way the scope of Business Associate's obligations related to Insurance and/or Indemnification in the applicable underlying Agreement, Contract, Master Agreement, Work Order, Purchase Order, or other services arrangement, with or without payment, that gives rise to Contractor's status as a Business Associate.

15. Obligations of Covered Entity

- 15.1 Covered Entity shall notify Business Associate of any current or future restrictions or limitations on the Use or Disclosure of Protected Health Information that would affect Business Associate's performance of the Services, and Business Associate shall thereafter restrict or limit its own Uses and Disclosures accordingly.
- 15.2 Covered Entity shall not request Business Associate to Use or Disclose Protected Health Information in any manner that would not be permissible under Subpart E of 45 C.F.R. Part 164 if done by Covered Entity, except to the extent that Business Associate may Use or Disclose Protected Health Information as provided in Sections 2.3, 2.5, and 2.6.

16. Term

- 16.1 Unless sooner terminated as set forth in Section 17, the term of this Business Associate Agreement shall be the same as the term of the applicable underlying Agreement, Contract,

Master Agreement, Work Order, Purchase Order, or other services arrangement, with or without payment, that gives rise to Contractor's status as a Business Associate.

- 16.2 Notwithstanding Section 16.1, Business Associate's obligations under Sections 18.1 to 18.4 shall survive the termination or expiration of this Business Associate Agreement.

17. Termination for Cause

- 17.1 In addition to and notwithstanding the termination provisions set forth in the applicable underlying Agreement, Contract, Master Agreement, Work Order, Purchase Order, or other services arrangement, with or without payment, that gives rise to Contractor's status as a Business Associate, if either party determines that the other party has violated a material term of this Business Associate Agreement, and the breaching party has not cured the breach or ended the violation within the time specified by the non-breaching party, which shall be reasonable given the nature of the breach and/or violation, the non-breaching party may terminate this Business Associate Agreement.
- 17.2 In addition to and notwithstanding the termination provisions set forth in the applicable underlying Agreement, Contract, Master Agreement, Work Order, Purchase Order, or services arrangement, with or without payment, that gives rise to Contractor's status as a Business Associate, if either party determines that the other party has violated a material term of this Business Associate Agreement, and cure is not feasible, the non-breaching party may terminate this Business Associate Agreement immediately.

18. Disposition of Protected Health Information Upon Termination or Expiration

- 18.1 Except as provided in Section 18.3, upon termination for any reason or expiration of this Business Associate Agreement, Business Associate shall return or, if agreed to by Covered entity, shall destroy as provided for in Section 18.2, all Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that Business Associate, including any Subcontractor, still maintains in any form. Business Associate shall retain no copies of the Protected Health Information.
- 18.2 Destruction for purposes of Section 18.2 and Section 6.1.2 shall mean that media on which the Protected Health Information is stored or recorded has been destroyed and/or electronic media have been cleared, purged, or destroyed in accordance with the use of a technology or methodology specified by the Secretary in guidance for rendering Protected Health Information unusable, unreadable, or indecipherable to unauthorized individuals.
- 18.3 Notwithstanding Section 18.1, in the event that Business Associate determines that any such Protected Health Information is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities, Business Associate may retain that Protected Health Information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities and shall return or destroy all other Protected Health Information.
- 18.3.1 Business Associate shall extend the protections of this Business Associate Agreement to such Protected Health Information, including continuing to use appropriate safeguards and continuing to comply with Subpart C of 45 C.F.R Part 164 with respect to Electronic Protected

Health Information, to prevent the Use or Disclosure of such information other than as provided for in Sections 2.5 and 2.6 for so long as such Protected Health Information is retained, and Business Associate shall not Use or Disclose such Protected Health Information other than for the purposes for which such Protected Health Information was retained.

- 18.3.2 Business Associate shall return or, if agreed to by Covered entity, destroy the Protected Health Information retained by Business Associate when it is no longer needed by Business Associate for Business Associate's proper management and administration or to carry out its legal responsibilities.
- 18.4 Business Associate shall ensure that all Protected Health Information created, maintained, or received by Subcontractors is returned or, if agreed to by Covered entity, destroyed as provided for in Section 18.2.

19. Audit, inspection, and Examination

- 19.1 Covered Entity reserves the right to conduct a reasonable inspection of the facilities, systems, information systems, books, records, agreements, and policies and procedures relating to the Use or Disclosure of Protected Health Information for the purpose of determining whether Business Associate is in compliance with the terms of this Business Associate Agreement and any non-compliance may be a basis for termination of this Business Associate Agreement and the applicable underlying Agreement, Contract, Master Agreement, Work Order, Purchase Order or other services arrangement, with or without payment, that gives rise to Contractor's status as a Business Associate, as provided for in Section 17.
- 19.2 Covered Entity and Business Associate shall mutually agree in advance upon the scope, timing, and location of any such inspection.
- 19.3 At Business Associate's request, and to the extent permitted by law, Covered Entity shall execute a nondisclosure agreement, upon terms and conditions mutually agreed to by the parties.
- 19.4 Covered Entity inspects, fails to inspect, or has the right to inspect as provided for in Section 19.1 does not relieve Business Associate of its responsibility to comply with this Business Associate Agreement and/or the HIPAA Rules or impose on Covered Entity any responsibility for Business Associate's compliance with any applicable HIPAA Rules.
- 19.5 Covered Entity's failure to detect, its detection but failure to notify Business Associate, or its detection but failure to require remediation by Business Associate of an unsatisfactory practice by Business Associate, shall not constitute acceptance of such practice or a waiver of Covered Entity's enforcement rights under this Business Associate Agreement or the applicable underlying Agreement, Contract, Master Agreement, Work Order, Purchase Order or other services arrangement, with or without payment, that gives rise to Contractor's status as a Business Associate.
- 19.6 Section 19.1 is not intended by the parties to limit in any way the scope of Business Associate's obligations related to Inspection and/or Audit and/or similar review in the applicable underlying Agreement, Contract, Master Agreement, Work Order, Purchase Order, or other services

arrangement, with or without payment, that gives rise to Contractor's status as a Business Associate.

20. Miscellaneous Provisions

- 20.1 Disclaimer. Covered Entity makes no warranty or representation that compliance by Business Associate with the terms and conditions of this Business Associate Agreement will be adequate or satisfactory to meet the business needs or legal obligations of Business Associate.
- 20.2 HIPAA Requirements. The Parties agree that the provisions under HIPAA Rules that are required by law to be incorporated into this Amendment are hereby incorporated into this Agreement.
- 20.3 No Third Party Beneficiaries. Nothing in this Business Associate Agreement shall confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- 20.4 Construction. In the event that a provision of this Business Associate Agreement is contrary to a provision of the applicable underlying Agreement, Contract, Master Agreement, Work Order, Purchase Order, or other services arrangement, with or without payment, that gives rise to Contractor's status as a Business Associate, the provision of this Business Associate Agreement shall control. Otherwise, this Business Associate Agreement shall be construed under, and in accordance with, the terms of the applicable underlying Agreement, Contract, Master Agreement, Work Order, Purchase Order or other services arrangement, with or without payment, that gives rise to Contractor's status as a Business Associate.
- 20.5 Regulatory References. A reference in this Business Associate Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- 20.6 Interpretation. Any ambiguity in this Business Associate Agreement shall be resolved in favor of a meaning that permits the parties to comply with the HIPAA Rules.
- 20.7 Amendment. The parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for Covered Entity or Business Associate to comply with the requirements of the HIPAA Rules and any other privacy laws governing Protected Health Information.

EXHIBIT D

CONTRACTOR ACKNOWLEDGEMENT AND CONFIDENTIALITY AGREEMENT

CONTRACTOR NAME _____ Contract No. _____

GENERAL INFORMATION:

The Contractor referenced above has entered into a contract with the County of Los Angeles to provide certain services to the County. The County requires the Corporation to sign this Contractor Acknowledgement and Confidentiality Agreement.

CONTRACTOR ACKNOWLEDGEMENT:

Contractor understands and agrees that the Contractor employees, consultants, Outsourced Vendors and independent contractors (Contractor's Staff) that will provide services in the above referenced agreement are Contractor's sole responsibility. Contractor understands and agrees that Contractor's Staff must rely exclusively upon Contractor for payment of salary and any and all other benefits payable by virtue of Contractor's Staff's performance of work under the above-referenced contract.

Contractor understands and agrees that Contractor's Staff are not employees of the County of Los Angeles for any purpose whatsoever and that Contractor's Staff do not have and will not acquire any rights or benefits of any kind from the County of Los Angeles by virtue of my performance of work under the above-referenced contract. Contractor understands and agrees that Contractor's Staff will not acquire any rights or benefits from the County of Los Angeles pursuant to any agreement between any person or entity and the County of Los Angeles.

CONFIDENTIALITY AGREEMENT:

Contractor and Contractor's Staff may be involved with work pertaining to services provided by the County of Los Angeles and, if so, Contractor and Contractor's Staff may have access to confidential data and information pertaining to persons and/or entities receiving services from the County. In addition, Contractor and Contractor's Staff may also have access to proprietary information supplied by other vendors doing business with the County of Los Angeles. The County has a legal obligation to protect all such confidential data and information in its possession, especially data and information concerning health, criminal, and welfare recipient records. Contractor and Contractor's Staff understand that if they are involved in County work, the County must ensure that Contractor and Contractor's Staff, will protect the confidentiality of such data and information. Consequently, Contractor must sign this Confidentiality Agreement as a condition of work to be provided by Contractor's Staff for the County.

Contractor and Contractor's Staff hereby agrees that they will not divulge to any unauthorized person any Protected Health Information (PHI) and confidential clinical data obtained while performing work pursuant to the above-referenced contract between Contractor and the County of Los Angeles. Contractor and Contractor's Staff agree to forward all requests for the release of any confidential clinical data or PHI received to County's Project Manager.

Contractor and Contractor's Staff agree to keep confidential all health, criminal, and welfare recipient records and all data and information pertaining to persons and/or entities receiving services from the County, design concepts, algorithms, programs, formats, documentation, Contractor proprietary information and all other original materials produced, created, or provided to Contractor and Contractor's Staff under the above-referenced contract. Contractor

and Contractor's Staff agree to protect these confidential materials against disclosure to other than Contractor or County employees who have a need to know the information. Contractor and Contractor's Staff agree that if proprietary information supplied by other County vendors is provided to me during this employment, Contractor and Contractor's Staff shall keep such information confidential.

Contractor and Contractor's Staff agree to report any and all violations of this agreement by Contractor and Contractor's Staff and/or by any other person of whom Contractor and Contractor's Staff become aware.

Contractor and Contractor's Staff acknowledge that violation of this agreement may subject Contractor and Contractor's Staff to civil and/or criminal action and that the County of Los Angeles may seek all possible legal redress.

SIGNATURE: _____ DATE: ____/____/____

PRINTED NAME: _____

POSITION: _____

EXHIBIT E

CONTRACTOR EMPLOYEE ACKNOWLEDGEMENT AND CONFIDENTIAL AGREEMENT

(Note – for Contractor’s record; shall be made available within three (3) business days upon DMH request)

Contractor Name _____ Contract No. _____

Employee Name _____

GENERAL INFORMATION:

Your employer referenced above has entered into a contract with the County of Los Angeles to provide certain services to the County. The County requires your signature on this Contractor Employee Acknowledgement and Confidentiality Agreement.

EMPLOYEE ACKNOWLEDGEMENT:

I understand and agree that the Contractor referenced above is my sole employer for purposes of the above-referenced contract. I understand and agree that I must rely exclusively upon my employer for payment of salary and any and all other benefits payable to me or on my behalf by virtue of my performance of work under the above-referenced contract.

I understand and agree that I am not an employee of the County of Los Angeles for any purpose whatsoever and that I do not have and will not acquire any rights or benefits of any kind from the County of Los Angeles by virtue of my performance of work under the above-referenced contract. I understand and agree that I do not have and will not acquire any rights or benefits from the County of Los Angeles pursuant to any agreement between any person or entity and the County of Los Angeles.

I understand and agree that I may be required to undergo a background and security investigation(s). I understand and agree that my continued performance of work under the above-referenced contract is contingent upon my passing, to the satisfaction of the County, any and all such investigations. I understand and agree that my failure to pass, to the satisfaction of the County, any such investigation shall result in my immediate release from performance under this and/or any future contract.

CONFIDENTIALITY AGREEMENT:

I may be involved with work pertaining to services provided by the County of Los Angeles and, if so, I may have access to confidential data and information pertaining to persons and/or entities receiving services from the County. In addition, I may also have access to proprietary information supplied by other vendors doing business with the County of Los Angeles. The County has a legal obligation to protect all such confidential data and information in its possession, especially data and information concerning health, criminal, and welfare recipient records. I understand that if I am involved in County work, the County must ensure that I, too, will protect the confidentiality of such data and information. Consequently, I

understand that I must sign this agreement as a condition of my work to be provided by my employer for the County. I have read this agreement and have taken due time to consider it prior to signing.

I hereby agree that I will not divulge to any unauthorized person any confidential clinical data or PHI obtained while performing work pursuant to the above-referenced contract between my employer and the County of Los Angeles. I agree to forward all requests for the release of any confidential clinical data or PHI received by me to my immediate supervisor.

I agree to keep confidential all health, criminal, and welfare recipient records and all data and information pertaining to persons and/or entities receiving services from the County, design concepts, algorithms, programs, formats, documentation, Contractor proprietary information and all other original materials produced, created, or provided to or by me under the above-referenced contract. I agree to protect these confidential materials against disclosure to other than my employer or County employees who have a need to know the information. I agree that if proprietary information supplied by other County vendors is provided to me during this employment, I shall keep such information confidential.

I agree to report to my immediate supervisor any and all violations of this agreement by myself and/or by any other person of whom I become aware. I agree to return all confidential materials to my immediate supervisor upon completion of this contract or termination of my employment with my employer, whichever occurs first.

SIGNATURE: _____ DATE: ____/____/____

PRINTED NAME: _____

POSITION: _____

EXHIBIT F

INFORMATION SECURITY AND PRIVACY REQUIREMENTS

This sets forth information security procedures to be established by Contractor before the effective date of the Agreement and maintained throughout the term of the Agreement. These procedures are in addition to the requirements of the Agreement and the Business Associate Agreement between the Parties. They present a minimum standard only. However, it is Contractor's sole obligation to: (i) implement appropriate measures to secure its systems and data, including Personal Information, Protected Health Information, and County Confidential Information, against internal and external threats and risks; and (ii) continuously review and revise those measures to address ongoing threats and risks. Failure to comply with the minimum standards set forth in this Exhibit F (Information Security Requirements) will constitute a material, non-curable breach of the Agreement by Contractor, entitling County, in addition to and cumulative of all other remedies available to it at law, in equity, or under the Agreement, to immediately terminate the Agreement. Unless specifically defined in this Exhibit, capitalized terms shall have the meanings set forth in the Agreement.

1. **Security Policy.** Contractor shall establish and maintain a formal, documented, mandated, company-wide information security program, including security policies, standards and procedures (collectively "**Information Security Policy**"). The Information Security Policy will be communicated to all Contractor personnel in a relevant, accessible, and understandable form and will be regularly reviewed and evaluated to ensure its operational effectiveness, compliance with all applicable laws and regulations, and to address new threats and risks.
2. **Personnel and Contractor Protections.** Contractor shall screen and conduct background checks on all Contractor personnel contacting County Confidential Information, including Personally Identifiable Information and Protected Health Information, for potential security risks and require all employees and contractors to sign an appropriate written confidentiality/non-disclosure agreement. All agreements with third-parties involving access to Contractor's systems and data, including all outsourcing arrangements and maintenance and support agreements (including facilities maintenance), shall specifically address security risks, controls, and procedures for information systems. Contractor shall supply each of its Contractor personnel with appropriate, ongoing training regarding information security procedures, risks, and threats. Contractor shall have an established set of procedures to ensure Contractor personnel promptly report actual and/or suspected breaches of security.
3. **Removable Media.** Except in the context of Contractor's routine back-ups or as otherwise specifically authorized by County in writing, Contractor shall institute strict physical and logical security controls to prevent transfer of Personally Identifiable Information and Protected Health Information to any form of Removable Media. For purposes of this Exhibit M (Information Security Requirements), "**Removable Media**" means portable or removable hard disks, floppy disks, USB memory drives, zip disks, optical disks, CDs, DVDs, digital film, digital cameras, memory cards (e.g., Secure Digital (SD), Memory Sticks (MS), CompactFlash (CF), Smart Media (SM), Multi Media Card (MMC), and XD-Picture Card (XD)), magnetic tape, and all other removable data storage media.

- 4. Storage, Transmission, and Destruction of Protected Health Information.** All Protected Health Information shall be rendered unusable, unreadable, or indecipherable to unauthorized individuals in accordance with HIPAA, as amended and supplemented by the HITECH Act. Without limiting the generality of the foregoing, Contractor will encrypt all electronic Protected Health Information (stored and during transmission) in accordance with HIPAA and the HITECH Act, as implemented by the U.S. Department of Health and Human Services. If Protected Health Information is no longer required to be retained by Contractor under the Agreement and applicable law, Contractor shall destroy such Protected Health Information by: (a) shredding or otherwise destroying paper, film, or other hard copy media so that the Protected Health Information cannot be read or otherwise cannot be reconstructed; and (b) clearing, purging, or destroying electronic media containing Protected Health Information consistent with NIST Special Publication 800-88, Guidelines for Media Sanitization¹ such that the Protected Health Information cannot be retrieved.
- 5. Data Control; Media Disposal and Servicing.** Subject to and without limiting the requirements under Section 4 (Storage, Transmission and Destruction of Protected Health Information), Personally Identifiable Information, Protected Health Information, and County Confidential Information: (i) may only be made available and accessible to those parties explicitly authorized under the Agreement or otherwise expressly Approved by County in writing; (ii) if transferred across the Internet, any wireless network (e.g., cellular, 802.11x, or similar technology), or other public or shared networks, must be protected using appropriate encryption technology as designated or Approved by County in writing; and (iii) if transferred using Removable Media (as defined above) must be sent via a bonded courier or protected using encryption technology designated or Approved by County in writing. The foregoing requirements shall apply to back-up data stored by Contractor at off-site facilities. In the event any hardware, storage media, or Removable Media must be disposed of or sent off-site for servicing, Contractor shall ensure all County Confidential Information, including Personally Identifiable Information and Protected Health Information, has been cleared, purged, or scrubbed from such hardware and/or media using industry best practices (e.g., NIST Special Publication 800-88, Guidelines for Media Sanitization²).
- 6. Hardware Return.** Upon termination or expiration of the Agreement or at any time upon County's request, Contractor will return all hardware, if any, provided by County containing Personally Identifiable Information, Protected Health Information, or County Confidential Information to County. The Personally Identifiable Information, Protected Health Information, and County Confidential Information shall not be removed or altered in any way. The hardware should be physically sealed and returned via a bonded courier or as otherwise directed by County. In the event the hardware containing County Confidential Information or Personally Identifiable Information is owned by Contractor or a third-party, a notarized statement, detailing the destruction method used and the data sets involved, the date of destruction, and the company or individual who performed the destruction will be sent to a designated County security representative within fifteen (15) days of termination or expiration of the Agreement or at any time upon County's request. Contractor's destruction or erasure of Personal Information and Protected Health Information pursuant to this Section shall be in compliance with industry Best

¹ Available at <http://www.csrc.nist.gov/>

² Available at <http://www.csrc.nist.gov/>

Practices (e.g., NIST Special Publication 800-88, Guidelines for Media Sanitization³).

- 7. Physical and Environmental Security.** Contractor facilities that process Personally Identifiable Information, Protected Health Information, or County Confidential Information will be housed in secure areas and protected by perimeter security such as barrier access controls (e.g., the use of guards and entry badges) that provide a physically secure environment from unauthorized access, damage, and interference.
- 8. Communications and Operational Management.** Contractor shall: (i) monitor and manage all of its information processing facilities, including, without limitation, implementing operational procedures, change management and incident response procedures; and (ii) deploy adequate anti-viral software and adequate back-up facilities to ensure essential business information can be promptly recovered in the event of a disaster or media failure; and (iii) ensure its operating procedures will be adequately documented and designed to protect information, computer media, and data from theft and unauthorized access.
- 9. Access Control.** Contractor shall implement formal procedures to control access to its systems, services, and data, including, but not limited to, user account management procedures and the following controls:
 - (i) Network access to both internal and external networked services shall be controlled, including, but not limited to, the use of properly configured firewalls;
 - (ii) Operating systems will be used to enforce access controls to computer resources including, but not limited to, authentication, authorization, and event logging;
 - (iii) Applications will include access control to limit user access to information and application system functions; and
 - (iv) All systems will be monitored to detect deviation from access control policies and identify suspicious activity. Contractor shall record, review and act upon all events in accordance with incident response policies set forth below.
- 10. Security Incident.** A "Security Incident" shall have the meaning given to such term in 45 C.F.R. § 164.304.
 - (i) Contractor will promptly notify (but in no event more than twenty-four (24) hours after the detection of a Security Incident) the designated County security contact by telephone and subsequently via written letter of any potential or actual security attacks or Security Incidents.
 - (ii) The notice shall include the approximate date and time of the occurrence and a summary of the relevant facts, including a description of measures being taken to address the occurrence. A Security Incident includes instances in which internal personnel access systems in excess of their user rights or use the system inappropriately.

³ Available at <http://www.csrc.nist.gov/>

- (iii) Contractor will provide a monthly report of all Security Incidents noting the actions taken. This will be provided via a written letter to the County security representative on or before the first (1st) week of each calendar month. County or its third-party designee may, but is not obligated, perform audits and security tests of Contractor's environment that may include, but are not limited to, interviews of relevant personnel, review of documentation, or technical inspection of systems, as they relate to the receipt, maintenance, use, retention, and authorized destruction of Personally Identifiable Information, Protected Health Information, and County Confidential Information.
- (iv) In the event County desires to conduct an unannounced penetration test, County shall provide contemporaneous notice to Contractor's Vice President of Audit, or such equivalent position. Any of County's regulators shall have the same right upon request. Contractor shall provide all information reasonably requested by County in connection with any such audits and shall provide reasonable access and assistance to County or its regulators upon request. Contractor agrees to comply with all reasonable recommendations that result from such inspections, tests, and audits within reasonable timeframes. County reserves the right to view, upon request, any original security reports that Contractor has undertaken on its behalf to assess Contractor's own network security. If requested, copies of these reports will be sent via bonded courier to the County security contact. Contractor will notify County of any new assessments.

11. Contractor Self Audit. Contractor will provide to County a summary of: (1) the results of any security audits, security reviews, or other relevant audits listed below, conducted by Contractor or a third-party; and (2) the corrective actions or modifications, if any, Contractor will implement in response to such audits. Relevant audits conducted by Contractor as of the Effective Date include:

- a) ISO 27001:2013 (Information Security Management) or FDA's Quality System Regulation, etc. – Contractor-Wide. A full recertification is conducted every three (3) years with surveillance audits annually.
 - (i) **External Audit** – Audit conducted by non-Contractor personnel, to assess Contractor's level of compliance to applicable regulations, standards, and contractual requirements.
 - (ii) **Internal Audit** – Audit conducted by qualified Contractor Personnel (or contracted designee) not responsible for the area of review, of Contractor organizations, operations, processes, and procedures, to assess compliance to and effectiveness of Contractor's Quality System ("**CQS**") in support of applicable regulations, standards, and requirements.
 - (iii) **Supplier Audit** – Quality audit conducted by qualified Contractor Personnel (or contracted designee) of product and service suppliers contracted by Contractor for internal or Contractor client use.
 - (iv) **Detailed findings**- are not published externally, but a summary of the report findings, and corrective actions, if any, will be made available to County as provided above and the ISO certificate is published

on _____

b) SSAE-16 (formerly known as SAS -70 II) – As to the Hosting Services only:

- (i) Audit spans a full twelve (12) months of operation and is produced annually.
- (ii) The resulting detailed report is available to County.

Detailed findings are not published externally, but a summary of the report findings, and corrective actions, if any, will be made available to County as provided above.

12. Security Audits. In addition to the audits described in Section 11 (Contractor Self Audit), during the term of this Agreement, County or its third-party designee may annually, or more frequently as agreed in writing by the Parties, request a security audit of Contractor's data center and systems. The audit will take place at a time mutually agreed to by the Parties, but in no event on a date more than ninety (90) days from the date of the request by County. County's request for security audit will specify the areas (e.g., Administrative, Physical and Technical) that are subject to the audit and may include but not limited to physical controls inspection, process reviews, policy reviews evidence of external and internal vulnerability scans, penetration tests results, evidence of code reviews, and evidence of system configuration and audit log reviews. County shall pay for all third-party costs associated with the audit. It is understood that summary data of the results may filtered to remove the specific information of other Contractor customers such as IP address, server names, etc.. Contractor shall cooperate with County in the development of the scope and methodology for the audit, and the timing and implementation of the audit. Any of the County's regulators shall have the same right upon request, to request an audit as described above. Contractor agrees to comply with all reasonable recommendations that result from such inspections, tests, and audits within reasonable timeframes.

13. Confidentiality

- a. Contractor agrees that all information supplied by its affiliates and agents to the County including, without limitation, (a) any information relating to County's customers, patients, business partners, or personnel; (b) Personally Identifiable Information (as defined below); and (c) Protected Health Information, as specified in Exhibit____(Business Associate Agreement), will be deemed confidential and proprietary to the County, regardless of whether such information was disclosed intentionally or unintentionally or marked as "confidential" or "proprietary" ("Confidential Information"). To be deemed "Confidential Information", trade secrets and mask works must be plainly and prominently marked with restrictive legends.
- b. **County Data.** All of the County Confidential Information, data, records, and information of County to which Contractor has access, or otherwise provided to Contractor under this Purchase Order ("County Data"), shall be and remain the property of County and County shall retain exclusive rights and ownership thereto. The County Data shall not be used by Contractor for any purpose other than as required under this Agreement, nor shall such data or any part of such data be disclosed, sold, assigned, leased, or otherwise disposed of, to third-parties by Contractor or commercially exploited or otherwise used by or on behalf of Contractor, its officers, directors, employees, or agents.

- c. **Non-Exclusive Equitable Remedy.** Contractor acknowledges and agrees that due to the unique nature of Confidential Information there can be no adequate remedy at law for any breach of its obligations hereunder, that any such breach or threatened breach may result in irreparable harm to County, and therefore, that upon any such breach or any threat thereof, County will be entitled to appropriate equitable remedies, and may seek injunctive relief from a court of competent jurisdiction without the necessity of proving actual loss, in addition to whatever remedies either of them might have at law or equity. Any breach of this Section 13 (Confidentiality) shall constitute a material breach of this Agreement and be grounds for immediate termination of this Agreement in the exclusive discretion of the County.
- d. **Personally Identifiable Information.** “Personally Identifiable Information” shall mean any information that identifies a person, including, but not limited to, name, address, email address, passwords, account numbers, social security numbers, credit card information, personal financial or healthcare information, personal preferences, demographic data, marketing data, credit data, or any other identification data. For the avoidance of doubt, Personally Identifiable Information shall include, but not be limited to, all “nonpublic personal information,” as defined under the Gramm-Leach-Bliley Act (15 United States Code (“U.S.C.”) §6801 et seq.), Protected Health Information, and “Personally Identifiable Information” as that term is defined in EU Data Protection Directive (Directive 95/46/EEC) on the protection of individuals with regard to processing of personal data and the free movement of such data.
- i. **Personally Identifiable Information:** In connection with this Agreement and performance of the services, Contractor may be provided or obtain, from County or otherwise, Personally Identifiable Information pertaining to County's current and prospective personnel, directors and officers, agents, investors, patients, and customers and may need to process such Personally Identifiable Information and/or transfer it, all subject to the restrictions set forth in this Agreement and otherwise in compliance with all applicable foreign and domestic laws and regulations for the sole purpose of performing the services.
- ii. **Treatment of Personally Identifiable Information:** Without limiting any other warranty or obligations specified in this Agreement, and in particular the confidential provisions of Section 13 (Confidentiality), during the Term of this Agreement and thereafter in perpetuity, Contractor will not gather, store, log, archive, use, or otherwise retain any Personally Identifiable Information in any manner and will not disclose, distribute, sell, share, rent, or otherwise retain any Personally Identifiable Information to any third-party, except as expressly required to perform its obligations in this Agreement or as Contractor may be expressly directed in advance in writing by County. Contractor represents and warrants that Contractor will use and process Personally Identifiable Information only in compliance with (a) this Agreement, (b) County's then current privacy policy, and (c) all applicable local, state, and federal laws and regulations (including, but not limited to, current and future laws and regulations relating to spamming, privacy,

confidentiality, data security, and consumer protection).

- iii. **Retention of Personally Identifiable Information:** Contractor will not retain any Personally Identifiable Information for any period longer than necessary for Contractor to fulfill its obligations under this Agreement. As soon as Contractor no longer needs to retain such Personally Identifiable Information in order to perform its duties under this Agreement, Contractor will promptly return or destroy or erase all originals and copies of such Personally Identifiable Information.
- e. **Return of Confidential Information.** On County's written request or upon expiration or termination of this Agreement for any reason, Contractor will promptly: (a) return or destroy, at County's option, all originals and copies of all documents and materials it has received containing County's Confidential Information; (b) if return or destruction is not permissible under applicable law, continue to protect such information in accordance with the terms of this Agreement; and (c) deliver or destroy, at County's option, all originals and copies of all summaries, records, descriptions, modifications, negatives, drawings, adoptions and other documents or materials, whether in writing or in machine-readable form, prepared by Contractor, prepared under its direction, or at its request, from the documents and materials referred to in Subsection 13(a), and provide a notarized written statement to County certifying that all documents and materials referred to in Subsections 13(a) and (b) have been delivered to County or destroyed, as requested by County. On termination or expiration of this Agreement, County shall return or destroy all Contractor Confidential Information (excluding items licensed to County hereunder or that are required for use of the Deliverables and/or the Licensed Software), at Contractor's option.

EXHIBIT G

CONTRACTOR NON-EMPLOYEE ACKNOWLEDGEMENT AND CONFIDENTIALITY AGREEMENT

(Note – for Contractor’s record; shall be made available within three (3) business days upon DMH request)

Contractor Name _____ Contract No. _____

Non-Employee Name _____

GENERAL INFORMATION:

The Contractor referenced above has entered into a contract with the County of Los Angeles to provide certain services to the County. The County requires your signature on this Contractor Non-Employee Acknowledgement and Confidentiality Agreement.

NON-EMPLOYEE ACKNOWLEDGEMENT:

I understand and agree that the Contractor referenced above has exclusive control for purposes of the above-referenced contract. I understand and agree that I must rely exclusively upon the Contractor referenced above for payment of salary and any and all other benefits payable to me or on my behalf by virtue of my performance of work under the above-referenced contract.

I understand and agree that I am not an employee of the County of Los Angeles for any purpose whatsoever and that I do not have and will not acquire any rights or benefits of any kind from the County of Los Angeles by virtue of my performance of work under the above-referenced contract. I understand and agree that I do not have and will not acquire any rights or benefits from the County of Los Angeles pursuant to any agreement between any person or entity and the County of Los Angeles.

I understand and agree that I may be required to undergo a background and security investigation(s). I understand and agree that my continued performance of work under the above-referenced contract is contingent upon my passing, to the satisfaction of the County, any and all such investigations. I understand and agree that my failure to pass, to the satisfaction of the County, any such investigation shall result in my immediate release from performance under this and/or any future contract.

CONFIDENTIALITY AGREEMENT:

I may be involved with work pertaining to services provided by the County of Los Angeles and, if so, I may have access to confidential data and information pertaining to persons and/or entities receiving services from the County. In addition, I may also have access to proprietary information supplied by other vendors doing business with the County of Los Angeles. The County has a legal obligation to protect all such confidential data and information in its possession, especially data and information concerning health, criminal, and welfare recipient records. I understand that if I am involved in County work, the County must ensure that I, too, will protect the confidentiality of such data and information. Consequently, I understand that I must sign this agreement as a condition of my work to be provided by the above-referenced Contractor for the County. I have read this agreement and have taken due time to consider it prior to signing.

I hereby agree that I will not divulge to any unauthorized person any confidential clinical data or PHI obtained while performing work pursuant to the above-referenced contract between the above-referenced Contractor and the County of Los Angeles. I agree to forward all requests for the release of any data or information received by me to the above-referenced Contractor.

I agree to keep confidential all health, criminal, and welfare recipient records and all data and information pertaining to persons and/or entities receiving services from the County, design concepts, algorithms, programs, formats, documentation, Contractor proprietary information, and all other original materials produced, created, or provided to or by me under the above-referenced contract. I agree to protect these confidential materials against disclosure to other than the above-referenced Contractor or County employees who have a need to know the information. I agree that if proprietary information supplied by other County vendors is provided to me, I shall keep such information confidential.

I agree to report to the above-referenced Contractor any and all violations of this agreement by myself and/or by any other person of whom I become aware. I agree to return all confidential materials to the above-referenced Contractor upon completion of this contract or termination of my services hereunder, whichever occurs first.

SIGNATURE: _____ DATE: ____/____/____

PRINTED NAME: _____

POSITION: _____

EXHIBIT H
INTENTIONALLY OMMITTED

EXHIBIT I

PROTECTION ELECTRONIC COUNTY PI, PHI, AND MI (DATA ENCRYPTION)

Contractor and Subcontractors that electronically transmit or store personal information (PI), protected health information (PHI) and/or medical information (MI) shall comply with the encryption standards set forth below. PI is defined in California Civil Code Section 1798.29(g). PHI is defined in Health Insurance Portability and Accountability Act of 1996 (HIPAA), and implementing regulations. MI is defined in California Civil Code Section 56.05(j).

1. Stored Data

Contractors' and Subcontractors' workstations and portable devices (e.g., mobile, wearables, tablets, thumb drives, external hard drives) require encryption (i.e. software and/or hardware) in accordance with: (a) Federal Information Processing Standard Publication (FIPS) 140-2; (b) National Institute of Standards and Technology (NIST) Special Publication 800-57 Recommendation for Key Management — Part 1: General (Revision 3); (c) NIST Special Publication 800-57.

Recommendation for Key Management — Part 2: Best Practices for Key Management Organization; and (d) NIST Special Publication 800-111 Guide to Storage Encryption Technologies for End User Devices. Advanced Encryption Standard (AES) with cipher strength of 256-bit is minimally required.

2. Transmitted Data

All transmitted (e.g. network) County PI, PHI and/or MI require encryption in accordance with: (a) NIST Special Publication 800-52 Guidelines for the Selection and Use of Transport Layer Security Implementations; and (b) NIST Special Publication 800-57 Recommendation for Key Management — Part 3: Application-Specific Key Management Guidance. Secure Sockets Layer (SSL) is minimally required with minimum cipher strength of 128-bit.

3. Certification

The County must receive within ten (10) business days of its request, a certification from Contractor (for itself and any Subcontractors) that certifies and validates compliance with the encryption standards set forth above. In addition, Contractor shall maintain a copy of any validation/attestation reports that its data encryption product(s) generate and such reports shall be subject to audit in accordance with the Contract. Failure on the part of the Contractor to comply with any of the provisions of this Exhibit (Data Encryption) shall constitute a material breach of this Contract upon which the County may terminate or suspend this Contract.

4. Compliance

The Proposer shall provide information about its encryption practices by completing Exhibit I "Proposer's Compliance with Encryption Requirements" questionnaire. By submitting, Proposer certifies that it will be in compliance with Los Angeles County Board of Supervisors Policy 5.200, Contractor Protection of Electronic County Information, at the commencement of any contract and during the term of any contract that may be awarded pursuant to this solicitation. The completed forms must be returned to DMH DISO within ten (10) business days to certify compliance.

EXHIBIT J

CONTRACTOR'S COMPLIANCE WITH ENCRYPTION REQUIREMENTS

Contract Agency Name: _____ Contract Number: _____

Contractor shall provide information about its encryption practices by completing this Exhibit. By submitting this Exhibit, Contractor certifies that it will be in compliance with Los Angeles County Board of Supervisors Policy 5.200, Contractor Protection of Electronic County Information, at the commencement of any contract and during the term of any contract that may be awarded.

| COMPLIANCE QUESTIONS | | | DOCUMENTATION | | |
|---|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| | YES | NO | N/A | YES | NO |
| 1 Will County data stored on your workstation(s) be encrypted? <i>If "NO", or N/A please explain.</i> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2 Will County data stored on your laptop(s) be encrypted? <i>If "NO", or N/A please explain.</i> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3 Will County data stored on removable media be encrypted? <i>If "NO", or N/A please explain.</i> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 4 Will County data be encrypted when transported? <i>If "NO", or N/A please explain.</i> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 5 Will Contractor maintain a copy of any validation / attestation reports generated by its encryption tools? <i>If "NO", or N/A please explain.</i> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 6 Will County data be stored on remote servers*? *Cloud storage, Software-as-a-Service or SaaS <i>Please provide public URL and hosting information for the server.</i> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Authorized Signatory Name (Print)

Authorized Signatory Official Title

Authorized Signatory Signature

Date

EXHIBIT K

THE CONFIDENTIAL OATH (NON-LAC-DMH WORKFORCE MEMBERS)

EXHIBIT L

COUNTY OF LOS ANGELES AGREEMENT FOR ACCEPTABLE USE AND CONFIDENTIALITY OF COUNTY INFORMATION TECHNOLOGY RESOURCES ANNUAL

As a County of Los Angeles (County) employee, contractor, subcontractor, volunteer, or other authorized user of County information technology (IT) resources, I understand that I occupy a position of trust. Furthermore, I shall use County IT resources in accordance with my Department's policies, standards, and procedures. I understand that County IT resources shall not be used for:

- For any unlawful purpose;
- For any purpose detrimental to the County or its interests;
- For personal financial gain;
- In any way that undermines or interferes with access to or use of County IT resources for official County purposes;
- In any way that hinders productivity, efficiency, customer service, or interferes with a County IT user's performance of his/her official job duties;

I shall maintain the confidentiality of County IT resources (e.g., business information, personal information, and confidential information).

This Agreement is required by Board of Supervisors Policy No. 6.101 – Use of County Information Technology Resources, which may be consulted directly at website <http://countypolicy.co.la.ca.us/6.101.htm>.

As used in this Agreement, the term "County IT resources" includes, without limitation, computers, systems, networks, software, and data, documentation and other information, owned, leased, managed, operated, or maintained by, or in the custody of, the County or non-County entities for County purposes. The definitions of the terms "County IT resources", "County IT user", "County IT security incident", "County Department", and "computing devices" are fully set forth in Board of Supervisors Policy No. 6.100 – Information Technology and Security Policy, which may be consulted directly at website <http://countypolicy.co.la.ca.us/6.100.htm>. The terms "personal information" and "confidential information" shall have the same meanings as set forth in Board of Supervisors Policy No. 3.040 – General Records Retention and Protection of Records Containing Personal and Confidential Information, which may be consulted directly at website <http://countypolicy.co.la.ca.us/3.040.htm>.

As a County IT user, I agree to the following:

1. Computer crimes: I am aware of California Penal Code Section 502(c) – Comprehensive Computer Data Access and Fraud Act (set forth, in part, below). I shall immediately report to my management any suspected misuse or crimes relating to County IT resources or otherwise.

2. No Expectation of Privacy: I do not expect any right to privacy concerning my activities related to County IT resources, including, without limitation, in anything I create, store, send, or receive using County IT resources. I understand that having no expectation to any right to privacy includes, for example, that my access and use of County IT resources may be monitored or investigated by authorized persons at any time, without notice or consent.
3. Activities related to County IT resources: I understand that my activities related to County IT resources (e.g., email, instant messaging, blogs, electronic files, County Internet services, and County systems) may be logged/stored, may be a public record, and are subject to audit and review, including, without limitation, periodic monitoring and/or investigation, by authorized persons at any time. I shall not either intentionally, or through negligence, damage, interfere with the operation of County IT resources. I shall neither, prevent authorized access, nor enable unauthorized access to County IT resources responsibly, professionally, ethically, and lawfully.
4. County IT security incident reporting: I shall notify the County Department's Help Desk and/or Departmental Information Security Officer (DISO) as soon as a County IT security incident is suspected.
5. Security access controls: I shall not subvert or bypass any security measure or system which has been implemented to control or restrict access to County IT resources and any related restricted work areas and facilities. I shall not share my computer identification codes and other authentication mechanisms (e.g., logon identification (ID), computer access codes, account codes, passwords, Secure ID cards/tokens, biometric logons, and smartcards).
6. Passwords: I shall not keep or maintain any unsecured record of my password(s) to access County IT resources, whether on paper, in an electronic file, or otherwise. I shall comply with all County and County Department policies relating to passwords. I shall immediately report to my management any compromise or suspected compromise of my password(s) and have the password(s) changed immediately.
7. Business purposes: I shall use County IT resources in accordance with my Department's policies, standards, and procedures.
8. Confidentiality: I shall not send, disseminate, or otherwise expose or disclose to any person or organization, any personal and/or confidential information, unless specifically authorized to do so by County management. This includes, without limitation information that is subject to Health Insurance Portability and Accountability Act of 1996, Health Information Technology for Economic and Clinical Health Act of 2009, or any other confidentiality or privacy legislation.
9. Computer virus and other malicious devices: I shall not intentionally introduce any malicious device (e.g., computer virus, spyware, worm, key logger, or malicious code), into any County IT resources. I shall not use County IT resources to intentionally introduce any malicious device into any County IT resources or any non-County IT systems or networks. I shall not disable, modify, or delete computer security software (e.g., antivirus software, antispyware

software, firewall software, and host intrusion prevention software) on County IT resources. I shall notify the County Department's Help Desk and/or DISO as soon as any item of County IT resources is suspected of being compromised by a malicious device.

10. Offensive materials: I shall not access, create, or distribute (e.g., via email) any offensive materials (e.g., text or images which are sexually explicit, racial, harmful, or insensitive) on County IT resources (e.g., over County-owned, leased, managed, operated, or maintained local or wide area networks; over the Internet; and over private networks), unless authorized to do so as a part of my assigned job duties (e.g., law enforcement). I shall report to my management any offensive materials observed or received by me on County IT resources.
11. Internet: I understand that the Internet is public and uncensored and contains many sites that may be considered offensive in both text and images. I shall use County Internet services in accordance with my Department's policies and procedures. I understand that my use of the County Internet services may be logged/stored, may be a public record, and are subject to audit and review, including, without limitation, periodic monitoring and/or investigation, by authorized persons at any time. I shall comply with all County Internet use policies, standards, and procedures. I understand that County Internet services may be filtered, but in my use of them, I may be exposed to offensive materials. I agree to hold County harmless from and against any and all liability and expense should I be inadvertently exposed to such offensive materials.
12. Electronic Communications: I understand that County electronic communications (e.g., email, text messages, etc.) created, sent, and/or stored using County electronic communications systems/applications/services are the property of the County. All such electronic communications may be logged/stored, may be a public record, and are subject to audit and review, including, without limitation, periodic monitoring and/or investigation, by authorized persons at any time, without notice or consent. I shall comply with all County electronic communications use policies and use proper business etiquette when communicating over County electronic communications systems/applications/services.
13. Public forums: I shall only use County IT resources to create, exchange, publish, distribute, or disclose in public forums (e.g., blog postings, bulletin boards, chat rooms, Twitter, Facebook, MySpace, and other social networking services) any information (e.g., personal information, confidential information, political lobbying, religious promotion, and opinions) in accordance with Department's policies, standards, and procedures.
14. Internet storage sites: I shall not store County information (i.e., personal, confidential (e.g., social security number, medical record), or otherwise sensitive (e.g., legislative data)) on any Internet storage site in accordance with Department's policies, standards, and procedures.
15. Copyrighted and other proprietary materials: I shall not copy or otherwise use any copyrighted or other proprietary County IT resources (e.g., licensed software and documentation, and data), except as permitted by the applicable license agreement and approved by designated County Department management. I shall not use County IT resources to infringe on copyrighted material.
16. Compliance with County ordinances, rules, regulations, policies, procedures, guidelines,

directives, and agreements: I shall comply with all applicable County ordinances, rules, regulations, policies, procedures, guidelines, directives, and agreements relating to County IT resources. These include, without limitation, Board of Supervisors Policy No.

16.100– Information Technology and Security Policy, Board of Supervisors Policy No. 1601 – Use of County Information Technology Resources, and Board of Supervisors Policy No. 3.040 – General Records Retention and Protection of Records Containing Personal and Confidential Information.

17. Disciplinary action and other actions and penalties for non-compliance: I understand that my non-compliance with any provision of this Agreement may result in disciplinary action and other actions (e.g., suspension, discharge, denial of access, and termination of contracts) as well as both civil and criminal penalties and that County may seek all possible legal redress.

CALIFORNIA PENAL CODE SECTION 502(c)
"COMPREHENSIVE COMPUTER DATA ACCESS AND FRAUD ACT"

Below is a section of the "Comprehensive Computer Data Access and Fraud Act" as it pertains specifically to this Agreement. California Penal Code Section 502(c) is incorporated in its entirety into this Agreement by reference, and all provisions of Penal Code Section 502(c) shall apply. For a complete copy, consult the Penal Code directly at website www.leginfo.ca.gov/.

502(c) Any person who commits any of the following acts is guilty of a public offense:

- (1) Knowingly accesses and without permission alters, damages, deletes, destroys, or otherwise uses any data, computer, computer system, or computer network in order to either (A) devise or execute any scheme or artifice to defraud, deceive, or extort, or (B) wrongfully control or obtain money, property, or data.
- (2) Knowingly accesses and without permission takes, copies, or makes use of any data from a computer, computer system, or computer network, or takes or copies any supporting documentation, whether existing or residing internal or external to a computer, computer system, or computer network.
- (3) Knowingly and without permission uses or causes to be used computer services.
- (4) Knowingly accesses and without permission adds, alters, damages, deletes, or destroys any data, computer software, or computer programs which reside or exist internal or external to a computer, computer system, or computer network.
- (5) Knowingly and without permission disrupts or causes the disruption of computer services or denies or causes the denial of computer services to an authorized user of a computer, computer system, or computer network.
- (6) Knowingly and without permission provides or assists in providing a means of accessing a computer, computer system, or computer network in violation of this

section.

- (7) Knowingly and without permission accesses or causes to be accessed any computer, computer system, or computer network.
- (8) Knowingly introduces any computer contaminant into any computer, computer system, or computer network.
- (9) Knowingly and without permission uses the Internet domain name of another individual, corporation, or entity in connection with the sending of one or more electronic mail messages, and thereby damages or causes damage to a computer, computer system, or computer network.

I HAVE READ AND UNDERSTAND THE ABOVE AGREEMENT:

County IT User's Name

County IT User's Signature

County IT User's Employee/ID Number

Date

Manager's Name

Manager's Signature

Manager's Title

Date

EXHIBIT M

COUNTY POLICY 5.200 (CONTRACTOR PROTECTION OF ELECTRONIC COUNTY INFORMATION)

5.200 - Contractor Protection of Electronic County Information

Effective Date: 07/19/16

PURPOSE

To establish minimum standards for the protection of County data which contains Personal Information (PI), Protected Health Information (PHI) and/or Medical Information (MI) that is electronically stored and/or transmitted by County of Los Angeles (County) contractors.

REFERENCE

May 27, 2014, Board Order, Agenda Item [No. 12](#) - Protecting Sensitive Personal and Protected Health Information

Board of Supervisors Policy No. 5.040 - Contractor Performance Evaluation

Board of Supervisors Policy No. 5.150 - Oversight Of Information Technology Contractors

Board of Supervisors Policy No. 6.100 - Information Technology and Security Policy

Board of Supervisors Policy No. 6.101 - Use of County Information Technology Resources, including Agreement for Acceptable Use and Confidentiality of County Information Technology Resources ([Acceptable Use Agreement](#))

Board of Supervisors Policy No. 6.107 - Information Technology Risk Assessment

Board of Supervisors Policy No. 6.108 - Auditing and Compliance

Board of Supervisors Policy No. 6.109 - Security Incident Reporting

Board of Supervisors Policy No. 6.110 - Protection of Information on Portable Computing Devices

[Health Insurance Portability and Accountability Act of 1996 \(HIPAA\), and implementing regulations](#)

[Health Information Technology for Economic and Clinical Health \(HITECH\) Act of 2009, and implementing regulations](#)

[California Civil Code Section 1798.29\(g\)](#)

[Confidentiality of Medical Information Act \(California Civil Code 56.05 et seq.\)](#)

[Contractor Protection of Electronic County Information Implementation Guidelines](#)

July 19, 2016 [Board Order No. 17](#)

POLICY

This policy is applicable to all County contractors and subcontractors that electronically store and/or transmit County PI, PHI and/or MI.

Security measures must be employed by all contractors and subcontractors to safeguard all County PI, PHI and/or MI electronically stored and/or transmitted by County contractors.

Encryption requirements shall apply to all County PI, PHI and MI electronically stored or transmitted by contractors and subcontractors, irrespective of storage and/or transmission methodology.

1. **Stored Data:** Contractors' and subcontractors' workstations and portable devices (e.g., mobile, wearables, tablets, thumb drives, external hard drives) require encryption (i.e. software and/or hardware) in accordance with:
 - a) Federal Information Processing Standard Publication (FIPS) 140-2; and
 - b) National Institute of Standards and Technology (NIST) Special Publication 800-57 Recommendation for Key Management - Part 1: General (Revision 3); and
 - c) NIST Special Publication 800-57 Recommendation for Key Management - Part 2: Best Practices for Key Management Organization; and
 - d) NIST Special Publication 800-111 Guide to Storage Encryption Technologies for End User Devices.

Advanced Encryption Standard (AES) with cipher strength of 256-bit is minimally required.

Contractors' and subcontractors' use of remote servers (e.g. cloud storage, Software-as-a-Service or SaaS) for storage of County PI, PHI and/or MI shall be subject to written pre-approval by the County's Chief Executive Office.

2. **Transmitted Data:** All transmitted (e.g. network) County PI, PHI and/or MI require encryption in accordance with:
 - a) NIST Special Publication 800-52 Guidelines for the Selection and Use of Transport Layer Security Implementations; and
 - b) NIST Special Publication 800-57 Recommendation for Key Management - Part 3: Application-Specific Key Management Guidance.

Secure Sockets Layer (SSL) is minimally required with minimum cipher strength of 128-bit.

The following policy language shall be incorporated in substantially similar form into all applicable County solicitation documents, contracts or amendments to certify that proposers or contractors will maintain certain encryption standards for the protection of electronically stored and/or transmitted County PI, PHI and MI:

Compliance with Contractor Protection of Electronic County Information - Data Encryption Standard

Any proposer/contractor that electronically transmits or stores personal information (PI), protected health information (PHI) and/or medical information (MI) shall comply with the encryption standards set forth below and incorporated in all contracts and amendments (collectively, the "Encryption

Standards"). PI is defined in California Civil Code Section 1798.29(g). PHI is defined in Health Insurance Portability and Accountability Act of 1996 (HIPAA), and implementing regulations. MI is defined in California Civil Code Section 56.05(j).

Encryption Standards

Stored Data

Contractors' and Subcontractors' workstations and portable devices that are used to access, store, receive, and/or transmit County PI, PHI or MI (e.g., mobile, wearables, tablets, thumb drives, external hard drives) require encryption (i.e. software and/or hardware) in accordance with: (a) Federal Information Processing Standard Publication (FIPS) 140-2; (b) National Institute of Standards and Technology (NIST) Special Publication 800-57 Recommendation for Key Management - Part 1: General (Revision 3); (c) NIST Special Publication 800-57 Recommendation for Key Management - Part 2: Best Practices for Key Management Organization; and (d) NIST Special Publication 800-111 Guide to Storage Encryption Technologies for End User Devices.

Advanced Encryption Standard (AES) with cipher strength of 256-bit is minimally required.

Contractors' and Subcontractors' use of remote servers (e.g. cloud storage, Software-as-a-Service or SaaS) for storage of County PI, PHI and/or MI shall be subject to written pre-approval by the County's Chief Executive Office.

Transmitted Data

All transmitted (e.g. network) County PI, PHI and/or MI require encryption in accordance with: (a) NIST Special Publication 800-52 Guidelines for the Selection and Use of Transport Layer Security Implementations; and (b) NIST Special Publication 800-57 Recommendation for Key Management - Part 3: Application-Specific Key Management Guidance.

Secure Sockets Layer (SSL) is minimally required with minimum cipher strength of 128-bit.

Definition Reference

As used in this policy, the phrase "personal information" shall have the same meaning as set forth in subdivision (g) of California Civil Code section 1798.29.

As used in this policy, the phrase "protected health information" shall have the same meaning as set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and implementing regulations.

As used in this policy, the phrase "medical information" shall have the same meaning as set forth in subdivision (j) of California Civil Code section 56.05.

Compliance

Each Contractor shall certify its compliance with the Policy prior to being awarded a Contract with the County and/or shall maintain compliance with this Policy during the term of the Contract and for as long as Contractor maintains or is in possession of County PI, PHI and/or MI. In addition to the foregoing certification, Contractor shall maintain any validation/attestation reports that the data encryption product generates and such reports shall be subject to audit in accordance with the Contract. County

departments will require any non-compliant contractor to develop and execute a corrective action plan. Contractors that fail to comply with this policy may be subject to suspension or termination of contractual agreements, denial of access to County IT resources, and/or other actions as deemed appropriate by the County.

Policy Exceptions

There are no exceptions to this policy, except as expressly approved by the Board of Supervisors.

RESPONSIBLE DEPARTMENT

Chief Executive Office

Internal Services Department

Auditor-Controller

County Counsel

DATE ISSUED/SUNSET DATE

| | |
|---------------------------|----------------------------|
| Issue Date: July 19, 2016 | Sunset Date: July 19, 2020 |
|---------------------------|----------------------------|

EXHIBIT N

TERM OF USE

Please read these Terms of Use (these "Terms of Use") carefully as they contain important information regarding your legal rights, remedies, and obligations. These include various limitations and exclusions, and a dispute resolution clause that governs how disputes will be resolved. These Terms of Use should be read together with, and incorporate our Privacy Policy and HIPAA Notice.

By accessing the _____ (website/mobile APP, API etc.) of _____ (Entity) , at [www._____.\(dot\)com](http://www._____.(dot)com); (the "Entity websites, etc."), you signify that you have read, understand, and agree to be bound by these Terms of Use regardless of whether or not you are a registered user of _____ (Entity). We reserve the right, at our sole discretion, to change, modify, add, or delete portions of these Terms of Use at any time without further notice. If we do this, we will post the changes to these Terms of Use on this page and will indicate at the top of this page the effective date of the revised Terms of Use. Your continued use of _____(Entity) services, including the _____ websites, after any such changes constitutes your acceptance of the new Terms of Use. If you do not agree to abide by these or any future terms, do not use or access, or continue to use or access _____ services, including those made available on the _____ websites. It is your responsibility to regularly check these Terms of Use and to review any changes.

General Service Description

(ENTITY) is a personalized and confidential online training program designed to help users learn about their potential issues and overcome life's challenges at their own pace and with the support of their peers through online discussions facilitated by the (ENTITY) websites platform (the "(ENTITY) platform"). Those users who use the (ENTITY) platform but do not register on the (ENTITY) websites are referenced herein as unregistered users ("Unregistered Users"). Those users who use the (ENTITY) platform and register on the (ENTITY) websites are referenced herein as registered users ("Registered Users", and, together with Unregistered Users, "Users"). Those peers who seek to provide support to Registered or Unregistered Users and have completed the (ENTITY) formal peer certification process (the "(ENTITY) Peer Certification Process") are referenced herein as program peers ("Program Peers"). Those peers who seek to provide support to Registered or Unregistered Users who have not completed the (ENTITY) Peer Certification Process but have completed an interactive process indicating that he/she has reviewed (ENTITY)'s internal training materials are referenced herein as user peers ("User Peers", and, together with Program Peers, "Peers"). For the avoidance of doubt, all Users and Peers who make use of the (ENTITY) websites or any other (ENTITY) Service (as defined below), including but not limited to the (ENTITY) platform, are subject to these Terms of Use. For the avoidance of doubt, by availing themselves or, or providing, as the case may be, any (ENTITY) Services (as defined below) Users and Peers acknowledge and agree that (i) Peers are not medical or any other health professionals, (ii) Peers are prohibited from holding themselves out as medical or any other health professional, and (iii) Users acknowledge that any advice they may receive from a Peer is not to be considered advice received from any medical or other health professional.

Eligibility

_____ (Entity) membership is void where prohibited. The services provided by (ENTITY), including those offered on the _____ websites (collectively referenced herein as "(ENTITY)'s Services"), are intended solely for Users who are eighteen (18) years of age or older or between the ages of 13-18 years old with parental consent. Any registration by, use of, or access to (ENTITY) Services by anyone under 18 without parental consent is unauthorized, unlicensed, and in violation of these Terms of Use. By using any (ENTITY) Service, you represent and warrant that you are eighteen (18) years of age or older, or between the ages of 13-18 years old with parental consent and that you agree to and will abide by all terms and conditions of these Terms of Use; and are not located in a country embargoed by the United States, or on the U.S. Treasury Department's list of Specially Designated Nationals, or not legally permitted to access our site or services. If (ENTITY) learns of a User who (a) is younger than 18, or 13-18 years old without parental consent, or (b) is barred or otherwise legally prohibited from accessing the Site or using the Services under the laws of the country in which the User resides or through which the User accesses the site then (ENTITY), at its sole discretion, can terminate that account.

Account Security & Registration Data

In consideration of your use of any (ENTITY) Service, you agree to and will:

1. Provide accurate, current, and complete information about you and your emergency contacts as prompted by any registration forms on the _____ (Entity) websites;
2. Maintain the security of your password and identification;
3. Maintain and promptly update your registration and any other information you provide to (ENTITY) in order to keep it accurate, current, and complete; and
4. Be fully responsible for all use of your (ENTITY) account and for any actions that take place using such account.

Disclosing Confidential Information to Other Users

Use of (ENTITY) Services is based on the confidentiality and anonymity of communications with other Users or Peers on our site. You are expressly prohibited from disclosing to another User or Peer your confidential information, such as information that could personally identify you, or any protected health information ("PHI") as defined in our HIPAA Notice during any use of the Services. Violation of these provisions will also result in termination of your account and use of the Services. To the extent you violate these Terms and share such information, User acknowledges that information may constitute PHI and you acknowledge and consent to sharing your submission with (ENTITY) and understand that any confidential information you share, may be captured and stored by (ENTITY) and used or disclosed as set forth in our Privacy Policy and HIPAA Notice.

Use of Services Without Account Registration

Some features on the _____ (Site, APP, etc.) can be used without registering for a (ENTITY) account, such as our online chat system. Users can use this feature anonymously. User may not use these anonymous chat services without agreeing to these Terms and Conditions, the Privacy Policy, and our HIPAA Notice. You are expressly forbidden from disclosing your confidential information, information that could personally identify you, or any protected health information ("PHI") as defined in our HIPAA Notice in any anonymous chat. To the extent you violate these Terms and share such information in an anonymous chat, you acknowledge that information submitted through this chat feature may constitute

PHI and you acknowledge and consent to sharing your submission with (ENTITY) and understand that any confidential information you share, may be captured and stored by (ENTITY) and used or disclosed as set forth in our Privacy Policy and HIPAA Notice. Violation of these provisions will also result in termination of your use of the Services.

(ENTITY) 's Proprietary Rights in Site Content

All content on the _____(ENTITY) websites and any other (ENTITY) Service including text, graphics, designs, pictures, video, information, software, music, sound, and their selection and arrangement ('content') are the proprietary property of (ENTITY), or its licensors, with all rights reserved. No content may be modified, copied, distributed, framed, reproduced, republished, downloaded, transmitted, or sold in any form by any means, in whole or in part, without the (ENTITY)'s prior written consent.

Any use of (ENTITY) Services, other than as specifically authorized herein, without the prior written consent of (ENTITY) is strictly prohibited and will automatically terminate the usage rights granted herein. Such unauthorized use may also violate applicable laws including copyright and trademark laws and applicable communications regulations and statutes. Unless explicitly stated herein, nothing in these Terms of Use shall be construed as conferring any license to intellectual property rights, whether by estoppel, implication or otherwise. The usage rights granted hereunder are revocable by (ENTITY) at any time without notice and with or without cause.

Trademarks and Service Marks

(ENTITY) and _____(ENTITY) websites and other company graphics, logos, designs, page headers, icons, scripts and service names are the trademarks and service marks, or trade dress of (ENTITY). (ENTITY)'s trademarks and trade dress may not be used in connection with any product or service in any manner that is likely to cause confusion and may not be copied, imitated, or used in whole or in part without prior written consent from (ENTITY).

User Conduct

The (ENTITY) Services are available for personal, non-commercial use only. You represent, warrant, and agree that no materials of any kind submitted through your (ENTITY) account or otherwise posted, transmitted, or shared by you on or through the _____ (ENTITY) websites will infringe upon the rights of any third party, including but not limited to copyright, trademark, privacy, publicity, or other personal or proprietary rights or contain libelous, defamatory or otherwise unlawful material.

Prohibited actions include, but are not limited to:

1. Use of any (ENTITY) Services in any unlawful manner or in any other manner that could damage, disable, or overburden or impair (ENTITY) or any of the (ENTITY) Services.
2. Use of automated scripts to collect information from or otherwise interact with (ENTITY) or (ENTITY) Services.
3. Sharing, posting, or otherwise making available any content that (ENTITY) deems to be harmful, threatening, unlawful, defamatory, infringing, abusive, inflammatory, harassing, vulgar, obscene, pornographic, fraudulent, invasive of privacy or publicity rights, hateful, or racially or ethnically objectionable.

4. Registration of more than one (ENTITY) account per person. You may not register for a (ENTITY) account on behalf of an individual other than yourself, and you may not register on behalf of any entity.
5. Posting or sharing private information of any third party, including addresses, phone numbers, email addresses, social security numbers, or credit card numbers or any protected health information ("PHI") as defined in our HIPAA Notice.
6. Solicitation of any personally identifying information from Peers or other Users.
7. Posting, sharing, transmitting, or otherwise making available any material that contains software viruses or any other computer code, files, or programs designed to interrupt, destroy, or limit the functionality of any computer software or hardware or telecommunications equipment.
8. Posting, sharing, transmitting, or otherwise making available any material that would constitute, encourage, or provide instructions for a criminal offense, violate the rights of any party, or that would otherwise create liability or violate any local, state, national, or international law.
9. Using or attempting to use another's (ENTITY) account, or creating a false (ENTITY) identity.
10. Take any actions that may undermine, disrupt or manipulate the integrity of the User feedback (rating) system on any (ENTITY) Service. (ENTITY) may change ratings policy at any time and without warning. (ENTITY) also reserves the right to exclude without explanation any rating that we think may compromise the integrity of the User feedback system.
11. Impersonate any person or entity, or make any false statement regarding his or her employment, agency or affiliation with any person or entity.
12. Stalk, threaten or harass any Peer or User or infringe upon or attempt to infringe upon their privacy.
13. Disclosing to another User or Peer, your confidential information, such as information that could personally identify you, or any protected health information ("PHI") as defined in our HIPAA Notice during any use of the Services.

Peer Conduct

IF A PEER DECIDES TO PROVIDE USERS SERVICES THROUGH THE USE OF (ENTITY), PEER MUST EXERCISE A REASONABLE STANDARD OF CARE, AT LEAST THE SAME AS PEER WOULD IN A SIMILAR TRANSACTION NOT CONDUCTED THROUGH THE INTERNET, OR THE STANDARD OF CARE MANDATED BY HIS OR HER PROFESSION, WHICHEVER IS HIGHER.

PEERS SHALL NOT HOLD THEMSELVES OUT AS MEDICAL OR ANY OTHER HEALTH PROFESSIONAL.

You will not provide any legal or medical advice or other advice or information which may only be lawfully rendered or provided by a licensed professional who has established a physician-patient relationship, attorney-client, or other relationship. Peer will be solely and fully liable for all conduct, services, advice, postings and transmissions on an (ENTITY) Service that are made under Peer's user name and password.

Peer agrees that any information or content that Peer posts or transmits through a (ENTITY) Service will not be considered Peer's confidential information, but rather this information, whether personal in nature or not, shall be owned by (ENTITY). Peer further agrees and consents to Peer's chats or transcripts, being captured in any format, controlled, processed and shared by (ENTITY) with third parties as designated solely by (ENTITY).

Peer will not impersonate any person or entity, or make any false statement regarding Peer's employment, agency or affiliation with any person or entity.

Peer will not stalk, threaten or harass Users or other Peers or invade or attempt to invade their privacy.

Peer will not violate, or aid or abet the violation of, any applicable local, state, national or international law, statute, ordinance, rule, regulation or ethical code.

Peer will not engage in conduct that is harmful, unethical, fraudulent, deceptive or offensive.

Peer will not encourage a User to disclose his or her confidential information, such as information that could personally identify the User, or any protected health information ("PHI") as defined in our HIPAA Notice to the Peer or other Users.

Peer will not disclose any information that was provided to Peer by a User and will use his or her best efforts to guard Users' privacy. Peer will not take any actions that violates our HIPAA notice.

Peer agrees to comply with all applicable laws regarding use of the (ENTITY) websites.

Peer will not engage in any acts or omissions that would constitute a violation of the 'User Conduct' section of these Terms of Use.

Account Termination

(ENTITY), in its sole discretion and for any reason, may terminate a User's or Peer's participation in any (ENTITY) Services and refuse any and all current or future use by Users or Peers of the (ENTITY) websites.

Third Party Websites and Content

The (ENTITY) websites contains links to other websites (Third Party Sites). Such Third Party Sites are not investigated, monitored, or checked for accuracy, appropriateness, or completeness by (ENTITY), and (ENTITY) is not responsible for any Third Party Sites accessed through the (ENTITY) websites or other (ENTITY) Services.

User Dashboard

The user dashboard offered on the (ENTITY) websites is used solely for self-help and communication purposes. The information you provide to (ENTITY) during your (ENTITY) registration process will supply information for your user dashboard. By using the (ENTITY) websites or any other (ENTITY) Service, you certify that all information provided by you to (ENTITY) through the registration process or your use of the (ENTITY) websites or other (ENTITY) Services is correct and accurate. You may not set up an account on behalf of another individual or entity. You are expressly forbidden from disclosing your confidential information such as information that could personally identify you, or any protected health information ("PHI") as defined in our HIPAA Notice in your account profile or anywhere on our Site. To the extent you violate these Terms and share such information on our Site or with another user, you also acknowledge that the information you provide on the user dashboard may constitute PHI and may be

captured by (ENTITY) Services. You expressly acknowledge that you have read and agree to our HIPAA Notice and consent to our use or disclosure of your PHI as set forth in the HIPAA Notice.

Disclaimers

Any (ENTITY) Services may be temporarily unavailable from time to time for maintenance and other reasons. (ENTITY) assumes no responsibility for any error, omission, interruption, deletion, defect, delay in operation or transmission, communication failure, or alteration of user communications. (ENTITY) is not responsible for any technical malfunction or other problems of any telephone network service, computer systems, servers or providers, computer equipment, software, failure of email on account of technical problems or traffic congestion on the Internet or at any site or combination thereof, including injury or damage to an (ENTITY) User's or Peer's computer or other hardware or software related to or resulting from using or downloading material in connection with (ENTITY)'s provision of services, including those offered on the (ENTITY) websites. (ENTITY) is not responsible for any loss or damage, including personal injury or death, resulting from anyone's use of (ENTITY)'s Services.

The (ENTITY) Services are voluntary methods for self-help. Participants understand that they are participating in the (ENTITY) programs offered as part of the (ENTITY) Services voluntarily. The (ENTITY) Services are not methods of emergency crisis management and are not intended to replace your current methods of physical and mental health care. In the event of an emergency, immediately call 911 or a suicide assistance hotline such as 1-800-273-TALK (8255).

The (ENTITY) Services, including those offered on the (ENTITY) websites, are provided 'as is' and 'where is' and (ENTITY) disclaims any and all representations and warranties, whether express or implied, including implied warranties of title, merchantability, fitness for a particular purpose or non-infringement. (ENTITY) does not guarantee and does not promise any specific results from use of (ENTITY)'s Services. By using (ENTITY)'s Services, you accept the terms contained in this disclaimer. You agree that any use you make of such services, advice, or answers is at your own risk and that (ENTITY) is not responsible for any damages or losses resulting from your reliance on information offered in connection with the provision of (ENTITY) Services. By using any of the (ENTITY) Services, you understand and expressly agree that (ENTITY) is not responsible for any information that you do or do not receive, and you expressly agree to hold (ENTITY) and its officers, directors, employees, other affiliates and agents harmless for any loss, harm, injury, or damage whatsoever resulting from or arising out of your participation in or use or reliance on any information or advice provided through (ENTITY) and/or any (ENTITY) Service.

Users acknowledge and agree that User Peers are neither employees nor agents nor representatives of (ENTITY), and (ENTITY) assumes no responsibility for any act or omission of any Peer. (ENTITY) makes no representation or warranty whatsoever as to (a) the accuracy or availability of the Peers or the (ENTITY) Platform, (b) the willingness or ability of any Peer to give advice, (d) whether a User will find a Peer's advice relevant, useful, accurate or satisfactory, (e) whether the advice of the Peer will be helpful, (f) whether the advice of the Listener will be responsive or relevant to the User's question, or (g) whether the Peer's advice will otherwise be suitable to the User's needs. (ENTITY) does not verify the skills, degrees, qualifications, credentials or background of any Peer. It is strongly recommended that the User independently verify the skills, degrees, qualifications, credentials and background of each Peer from whom he or she receives or contemplates to receive advice or services. The (ENTITY) Platform may include bulletin boards or chat landing pages ("(ENTITY) Boards") which allow Users to post questions to Peers regarding various topics and allow Listeners to volunteer answers to such questions. (ENTITY)

DOES NOT WARRANT THE VALIDITY, ACCURACY, OR AVAILABILITY OF ANY CONTENT OR PEER ADVICE PROVIDED AND (ENTITY) WILL NOT BE LIABLE FOR ANY DAMAGES SUSTAINED BY USER DUE TO RELIANCE ON ANY SUCH INFORMATION OR ADVICE. All communications between Peers and Users are NOT encrypted and thus may be subject to unauthorized interception and monitoring. The (ENTITY) Boards allow Users to post questions or service requests that can be viewed by all Users and Peers. Requests may be posted anonymously. All postings, descriptions, etc. on the (ENTITY) Boards are public.

(ENTITY) may elect, but is not required, to review a User's personal profile and amend any typing or spelling errors. (ENTITY) does not examine the validity or accuracy of the details in a User's personal profile or in any of the User's postings or transmissions. Without derogating from the above or any other term of these Terms of Use, (ENTITY) may, in its absolute discretion, refuse to post, transmit or remove any content uploaded by the User and/or remove any content violating these Terms of Use. User will bear all the risks associated with the uploading and transmitting of material while utilizing an (ENTITY) Service, including reliance on its accuracy, reliability or legality.

INFORMATION FURNISHED BY PEERS IS INTENDED FOR GENERAL INFORMATION PURPOSES ONLY. ANY CONSULTATION WITH A PEER VIA THE (ENTITY) PLATFORM CANNOT AND DOES NOT REPLACE A MEETING WITH A PROFESSIONAL. USER IS ENCOURAGED TO VERIFY THE INFORMATION FURNISHED BY PEERS. ANY RELIANCE ON SUCH INFORMATION IS DONE AT THE USER'S FULL AND SOLE RISK AND LIABILITY.

(ENTITY) does not represent or warrant that software, content, or materials included in the (ENTITY) Services are accurate, complete, reliable, current, or error-free or that any (ENTITY) Service is free of viruses or other harmful components. You understand and agree that you download or otherwise obtain content, material, data or software from or through the (ENTITY) Services, at your own discretion and risk and that you will be solely responsible for your use thereof and any damages, and any harm that may result, including but not limited to, damage to your computer or loss of data, images, photographic representations, and other visual elements (collectively, "Avatars")) do not necessarily purport to correspond to any specific individual or (ENTITY) employee or agent. Some usernames, Avatars, and profile information may constitute composite portrayals for illustration purposes or to protect identity.

(ENTITY) makes no representation that materials on this Site are appropriate or available for use in locations outside the United States. (ENTITY) follows HIPAA procedures for collecting and protecting PHI and we make no representation that such procedures are compliant with the laws of countries outside the United States. Access to this site from countries or territories where such access is illegal is prohibited. Those who choose to access this Site outside the United States do so on their own initiative and are responsible for compliance with local laws.

Submissions

You acknowledge and agree that any questions, comments, suggestions, ideas, feedback, or other information about (ENTITY) and/or the (ENTITY) Services are voluntarily provided by you to (ENTITY), are non-confidential, and shall become the sole property of (ENTITY). (ENTITY) shall own exclusive rights, including all intellectual property rights, to, and shall be entitled to the unrestricted use and dissemination of, these submissions for any purpose, commercial or otherwise, without acknowledgement or compensation to you.

Cancellation of Account

If a User or Peer decides to discontinue his or her use of any (ENTITY) Service and would like to cancel his/her registration, he/she must email name@address.com, include his/her name and request a cancellation of account. Peers who cancel their registration of accounts hereunder may nonetheless continue to be subject to other terms and conditions between such Peer and (ENTITY).

Contact

(ENTITY)

info@address.com

Entire Agreement

These Terms of Use, including the Privacy Policy, constitute the entire agreement between each User and (ENTITY) regarding the use of (ENTITY)'s Services, including the use of the (ENTITY) websites. For the avoidance of doubt, a Peer may be subject to other terms and conditions between such Peer and (ENTITY) other than these Terms and Conditions. The failure of (ENTITY) to exercise or enforce any right or provision of these Terms of Use shall not constitute a waiver of such right or provision in that or any other instance. If any provision of these Terms of Use is held invalid, the remainder of these Terms of Use shall continue in full force and effect. If any provision of these Terms of Use shall be deemed unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from these Terms of Use and shall not affect the validity and enforceability of any remaining provisions hereof.