

CALIFORNIA MENTAL HEALTH SERVICES AUTHORITY



Request For Statement of Qualifications

**Innovation Technology - Based Mental
Health Solutions**

Release Date: November 13, 2017

TABLE OF CONTENTS

Executive Summary	3
Description/Timeline	5
Focus	6
Components to Project	7
Instructions for Submitting Statement Qualifications	12
Experience	10
Supplemental Exhibits	
• Exhibit A - Cover for Statement of Qualifications	16
• Exhibit B - CalMHSA General Terms and Conditions	17
• Exhibit C - CalMHSA Business Association Agreement (BAA)	31

EXECUTIVE SUMMARY

The California Mental Health Services Authority (CalMHSA) is an independent administrative and fiscal government agency focused on the efficient delivery of California mental health projects. CalMHSA was established by California counties in June 2009, as a Joint Powers Authority (JPA). CalMHSA's member counties work together to develop, fund, and implement mental health services, projects, and educational programs; and implement these services at state, regional, and local levels. CalMHSA is headed by a separate Board of Directors composed of representatives of Member Counties and an Executive Committee comprised of officers and Statewide Regional Representatives. CalMHSA operates within the statutes governing JPA entities and complies with the Brown Act open meeting requirements.

California is the most populous state in the United States and third largest state by area, encompassing 163,696 square miles. There are 58 counties and 2 city programs in California, with Los Angeles as the county with the largest population, and San Bernardino as the largest county by area. Fifty-three counties, one city, and one JPA, are members of the CalMHSA at the time of release of this RFSQ.

On October 12, 2017, the CalMHSA Board approved entering into contracts with counties to provide administrative services and oversight for the implementation of a three-year Innovation project. This Request for Statement of Qualifications (RFSQ) is specifically designed to elicit qualifications from Respondents with the ability to provide and/or evaluate technological solutions which address a shared need of increasing access to mental health services for unserved and underserved groups; to reduce stigma and increase early intervention.

Through this RFSQ solicitation, CalMHSA seeks to ascertain the qualifications of individuals or organizations to implement a three-year innovation project that allows for virtual mental health care platforms, including the capacity to implement technology-based mental health solutions accessed through multi-factor devices (for example, 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 peer support, and decreased use of psychiatric hospitals and emergency services.

This project is intended to have the capacity to serve all fifty-eight California counties, however will be rolled out in phases based on time frame and number of counties participating during that particular time frame.

In order to meet the needs of all counties (taking into consideration size, geographical locations and population) individuals or organizations meeting the qualifications for services outlined in this RFSQ, will be placed on a list of interested and qualified Respondents. This list will be used by CalMHSA and Counties, when a contractual opportunity becomes available, at which time qualified respondent(s) will be notified.

Phase I of this project will serve both Kern and Los Angeles Counties. Phase II is intended to serve additional counties across the state.

1.0 Description

- 1.1 **THIS IS A REQUEST FOR QUALIFICATIONS ONLY.** This request for qualifications does not commit CalMHSA to contract for any supplies or services whatsoever. Further, CalMHSA is not at this time seeking proposals and will not accept unsolicited proposals. Responders are advised that CalMHSA will not pay for any information or administrative costs incurred in response to this RFSQ; all costs associated with responding to this RFSQ will be solely at the interested party's expense.
- 1.2 In order to meet the needs of all counties (taking into consideration size, geographical locations and population) individuals or organizations meeting the qualifications for services outlined in this RFSQ, will be placed on a list of interested and qualified Respondents. This list will be used by CalMHSA and Counties, when a contractual opportunity becomes available, at which time qualified respondent(s) will be notified.

2.0 Timeline

The California Mental Health Services Authority (CalMHSA) announces the release of this Request For Statement of Qualifications (RFSQ) for innovation technology-based Mental Health Solutions.

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|-----|--|----------------------------|
| 2.1 | Release Date for RFSQ: | November 13, 2017 |
| 2.2 | Last Day for Written Questions: | November 17, 2017 |
| 2.3 | Posting of Responses for Responders Questions | November 22, 2017 |
| 2.4 | Statement of Qualifications Due Date and Time: | November 30, 2017 |
| 2.5 | Anticipated Funding Per Award: | \$4 million - \$10 million |
| 2.6 | Number of Awards: | Multiple |
| 2.7 | Length of Project: | Three years |

3.0 Responses

- 3.1 Responses for this RFSQ are to be submitted as follows:

Laura Li
JPA Administrative Manager
3043 Gold Canal Drive, Suite 200
Rancho Cordova, CA 95670
Email: laura.li@calmhsa.org
Phone: (916) 859-4818

4.0 External Factors

External factors, including budgetary and resource constraints may affect the project. Any contract that may eventually be entered into with a provider would be subject to the availability of funds. As of the issuance of this RFSQ, CalMHSA anticipates that budgeted funds will be available to reasonably fulfill the project requirements.

5.0 Focus

The primary purpose of increasing access to mental health care and support and to promote early detection of mental health symptoms, or even predict the onset of mental illness. The Mental Health Services Oversight and Accountability Commission (MHSOAC) has approved this project as meeting the requirements of an Mental Health Services (MHSA) Act Innovation Plan, for the first two counties (Kern and Los Angeles), which is identified as Phase I. The MHSOAC is in process of reviewing and approving addition county plans, which is identified as Phase II.

This project will dismantle barriers to receiving mental health services by outreaching, engaging and treating individuals using approaches that build on increasingly familiar technology devices as a mode of connection and method of treatment to reach people who are likely to go either unserved or underserved by traditional mental health care. This project will utilize applications on smart phones, tablets or computers as a tool, engage, support and access treatment through the use of virtual innovative engagement strategies, care pathways and bidirectional feedback.

This project is a start to provide anticipated services statewide, in an effort to support the needs of California's counties, and their diverse geographic regions.

5.1 The Premise:

- Digital therapeutic technology platforms such as applications or websites that utilize trained peer to deliver support and manualized interventions will serve as a valuable service portal for individuals with mental health concerns, family members needing support and possibly an entry portal into the public mental health system.
- Developing and implementing an application that individuals can download and voluntarily agree to use that utilizes passive information, similar to the way a FitBit does, to help an individual self-identify changes in behavior, feelings or thought and suggest a course of action (increasing behavioral activation, talk to a friend, etc.)
- Suggest use of passive data which may help identify individual at risk of developing Schizophrenia or other mental health disorders and could play a role in reducing the functional impact of mental disorders.

5.2 Target Population:

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

- Individuals with sub-clinical mental health symptom presentations, including those early in the course of a mental health condition who may not recognize that they are experiencing symptoms, including college students.
- 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 support
- Family members with either children or adults suffering from mental illness who are seeking support
- Individuals at increased risk or in the early stages of a psychotic disorder.

6.0 Components for Project

6.1 Peer Chat and Digital Therapeutics Using Technology-Based Mental Health Solutions to Intervene and Offer Support: Utilize technology-based mental health solutions designed to engage, educate, assess and intervene with individuals experiencing symptoms of mental illness. *(Examples below)*

6.1.1. Virtual Peer chatting through trained and certified peers with lived experience.

6.1.2. 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.

6.1.3. Virtual chat options for parents with children engaged in the mental health system.

6.1.4. Virtual chat options for parents of adults with mental illness

6.1.5. Virtual manualized interventions, such as mindfulness exercises, cognitive behavioral or dialectical behavior interventions delivered in a simple, intuitive fashion.

6.1.6. Referral process for customers requiring face-to-face mental health services by County Department of Mental/Behavioral Health.

6.2 Virtual Evidence-Based Therapy Utilizing an AVATAR: 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. *(Examples below)*

6.2.1 Computerized-Cognitive Behavioral treatment, as well as other treatment constructed by clinical experts in the behavioral health field.

- 6.2.2. Interactive interface with the capability of customization and modification based on user's feedback.
- 6.2.3. Virtual peer chat options.
- 6.2.4. Referral process for customers requiring face-to-face mental health services by County Department of Mental/Behavioral Health Protocol to determine when a user may need to be referred for mental health assessment at the County Department of Mental/Behavioral Health, including when a user may require an emergent evaluation.
- 6.2.5. Creation of a directory for referrals to public mental health services.
- 6.2.6. 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.

6.3 Digital Phenotyping Using Passive Data for Early Detection and Intervention: Utilize passive sensory data to engage, educate and suggest behavioral activation strategies to users. *(Examples below)*

- 6.3.1. 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.
- 6.3.2. 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 used passive data collection to identify risk/symptoms or potential for relapse.

6.4 Community Engagement and Outreach Engaging Users and Promoting Use of Technology-Based Mental Health Solutions: Create a strategic approach to access points that will expose individuals to the technology-based mental health solutions. *(Examples below)*

- 6.4.1 Engaging school systems, including higher education, to promote use.
- 6.4.2. Engaging users through social media, the Departments of Mental/Behavioral Health websites and other digital platforms and approaches.

6.4.3. Engaging mental health organizations such as the National Alliance for Mental Illness (NAMI) groups to promote use.

6.4.4. Engage public locations such as libraries or parks in setting up kiosks or encouraging use.

6.5 Outcome Evaluation: Develop method and conduct outcome evaluations of all elements of the project, including measuring reach and clinical outcomes. (*Examples below*)

6.5.1. Changes in user's utilization of inpatient and emergency service.

6.5.2. Changes in the duration of untreated or under-treated mental illness.

6.5.3. Changes in ability for users to identify cognitive, emotional and behavioral changes and act to address them.

6.5.4. Changes in quality of life, as measured objectively and subjectively (by user and by indicators such as activity level, employment, school involvement, grades, etc.).

6.5.5. Measurement and evaluation of user wellbeing and social connectedness.

6.5.6. Comparative analyses of population level utilization data in participating counties over the life of the project to determine impact on various types of service utilization.

6.5.7. 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.

6.5.8. Analysis of how the technology suite is used as a source of information and is guiding interventions provided by mental health professionals.

6.5.9. 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.

6.5.10. Track and report number of users, including ethnicity, gender and preferred language.

7.0 Experience

Must have **proven** experience with online support, (including licensed professionals), Sensor Data and Digital Phenotyping, or other related technology-based mental health solution. Experience should include, but not limited to the following:

- 7.1. Bridging of Offline and Online Services
 - 7.1.1. Local Resource Listings
 - 7.1.2. Linked, Collaborative Care with Existing County Services and Nonprofits
 - 7.1.3. Customized Programs of on the Ground and Online Support Designed to Tackle Specific Issues (e.g. Abuse, Opioid Addiction, Suicide Prevention)
- 7.2. Online Support and Community
 - 7.2.1. Access to Support Various Languages
 - 7.2.2. 1 to 1 Peer Counseling, Available 24/7
 - 7.2.3. Group Support Chatrooms
 - 7.2.4. Access to Dedicated Group Discussions Led by Peer Support and Mental Health Professionals
 - 7.2.5. Forums on a Variety of Behavioral Health Topics
 - 7.2.6. Online, Licensed, Professional Therapists Offering Asynchronous Text Messaging Support
 - 7.2.7. Online, Licensed, Professional Therapists Offering Videochat Therapy
 - 7.2.8. Access to Artificial Intelligence-informed Virtual Assistant
 - 7.2.9. Access to Growth Paths Based on Supported Treatment Protocols
- 7.3. Sensor Data and Digital Phenotyping
 - 7.3.1. Assess Symptoms, Progress, and Early Warning Signs Through Real-time Monitoring of the Sensors on a Patient's Smartphone
 - 7.3.2. Data Empowered Outreach to Engage People in Counties who are at Risk and/or Suffering and Have Not Had Contact with the Healthcare System
 - 7.3.3. Retrospective Assessment to Analyze and Share Insights from New Patients

- 7.3.4. Personalized Assessment and Tailoring of Interventions
- 7.3.5. Passive Data Collection (no user interaction)
- 7.3.6. Continuous data collection in ecological settings (e.g. not episodic, in clinical settings)
- 7.4 Administration and Data Support
 - 7.4.1. Planning, Implementation, Marketing and Maintenance of the County Website, the Application, and all Associated Programs, add no additional burden to County Staff
 - 7.4.2. Customize Design, Look and Feel to Reflect Individual Counties
 - 7.4.3. Re-Design of Existing Websites to Streamline Access to Services and Embed Support
 - 7.4.4. Customizable Data Analytic Reports
 - 7.4.5. Outcome and Usage Metrics

8.0 Statement of Qualifications Must Address the Following (if Applicable):

- 8.1. If using Cognitive Behavioral Therapy (CBT) materials and/or any algorithms for intervention decisions, have materials, accessible to users, been certified to meet mental health requirements? If so, which board? How often are materials updated?
- 8.2. What are the disclaimers that a potential participant (patient – or curious individual) will have to agree before enrolling to a particular program, if any?
- 8.3. How do you ensure the individual enrolled and communicating is a healthcare professional and not a perpetrator that acts as one and may give incorrect advice?
- 8.4. Are communications between the peers and peers and clients stored? If so, where? How is communication safeguarded?
- 8.5. How is the user’s profile which may include or link to user’s actual real identity protected?
- 8.6. When a patient is enrolled in a program, some information is stored that will allow the user to continue from their previous session. How is this information protected?
- 8.7. In the event of a breach, what is your protocol? Who will assume the consequences?
- 8.8. If Respondent captures patient specific data, you will be required to enter into a Business Association Agreement (BAA) for HIPPA compliance requirements in order to protect the

patient. Will Respondent have a problem with entering into a BAA with CalMHSA and/or Counties?

- 8.9. Potential Respondents will be subject to an agreement with CalMHSA. General Terms and conditions for the agreement can be found in Exhibit B. As a potential Respondent, would you be able to enter into an agreement with terms as specified in Exhibit B. If so, please address in state of qualifications. If no concerns are raised and Respondent is offered a contract, changes will not be made to the terms already provided.

9.0 Respondents Questions

- 9.1. Respondents will have four days to submit questions, with responses to those questions being posted on November 22, 2017, on the CalMHSA website homepage (www.calmhsa.org).
- 9.2. Questions must be submitted via email to info@calmhsa.org, on or before November 17, 2017.
- 9.3. Questions submitted must cite the following:
- Page number
 - Section Number
 - Paragraph Number
 - Quote the passage that prompted the question

10.0 Instructions for Submitting Statements of Qualifications

- 10.1 Respondents shall submit the following of its Statement of Qualifications Package and any related information:
- One (1) Original Signed Copy
 - Ten (10) Copies
 - One (1) Electronic Copy in a PDF Format, on a Flash Drive

Statement of Qualifications Packages must be submitted in a sealed package, plainly marked in the upper left-hand corner with the name and address of Respondent, addressed to:

Laura Li
CalMHSA
3043 Gold Canal Drive, Suite 200
Rancho Cordova, CA 95670

- 10.2 It is the sole responsibility of each Respondent to assure the its Statement of Qualifications Package is delivered to the person and at the address shown above before the submission deadline. Respondents shall bear all risks associated with the use of mail

or other delivery service. No Facsimile (fax) or electronic mail (e-mail) of the Respondent's Package will be accepted.

10.3 Statement of Qualifications Formatting Requirements

- Text must be legible, typewritten, and double spaced;
- Type size must be either Calibri or Times Roman size 12 point. (Type size in charts, tables, graphs, and footnotes will not be considered in determining compliance.) Margins are at least one in each (left, right, top and bottom);
- Sequentially page-numbered and include the respondent's name at the top of each page;
- Organized in the sequence outlined in the sections indicated in item 10.4;
- Bound in a notebook, cover or binder;
- Correctly identified with the RFSQ and submittal deadline;
- Responsive to all RFSQ requirements;
- Typed on " 8 ½ by 11" paper;
- No more than 100 total pages, including required forms, appendices, requested plans and resumes.

10.4 Statement of Qualifications Content Layout

The information must include the following, in the following order:

- Cover for Statement of Qualifications
 - Must indicate Component for which Qualifications are being submitted (May submit for one or more components) (See Exhibit A for Cover)
- Section 1 - Executive Summary
- Section 2 – Statement of Qualifications
 - a. Background
 - Location
 - Location of Office of Direct Contact
 - Size by FTE
 - Years in Business
 - Organizational Structure
 - Audited Financial Statements
 - b. Qualification
 - c. Experience
- Section 3 – Address concerns, if any, related to Exhibit B and C.

11.0 CalMHSA Option to Reject Statement of Qualifications

CalMHSA, at its sole discretion, may reject any or all Statement of Qualifications submitted in response to this solicitation.

12.0 Truth and Accuracy of Representations

False, misleading, incomplete, or deceptively unresponsive statements in connection with a State of Qualifications shall be sufficient cause for rejection of the Qualifications Package. The evaluation and determination in this area shall be at CalMHSA's sole judgment and its judgement shall be final.

13.0 Notifications and Responder's Basis for Appeal

- 13.1. All Responders will be notified of their status, within ten (10) days of submittals.
- 13.2. If a Responder was not chosen to be placed on the list of qualified vendors for potential award, the Responder may appeal CalMHSA's decision based on the following:

- Requirements under Section(s) 9.0 and 10.0 were not met, or
- A conflict of Interest exists with a person or persons on the Review Panel

13.2.1. The Respondent has three (3) business days, from time of disqualification notice was received by Respondent, to file a written appeal with CalMHSA.

13.2.2. All appeals must be sent to CalMHSA at:

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

OR

Laura.li@calmhsa.org

13.2.3. After receiving an appeal, CalMHSA's Executive Director will provide a written decision. Before issuing a decision, the Executive Director may, but is not required to, seek additional information or engage in informal discussions in an attempt to resolve the issue. The written decision issued by the Executive Director will be deemed final as of the date transmitted to the appealing party.

13.2.4. If the Executive Director determines that the error identified by the appealing party has deprived that party from being listed as a qualified vendor, the Executive Director may revise the qualified vendors list to include appealing party.

- 13.3. As to next steps for qualified respondents, they will be notified in the event of a contractual opportunity. CalMHSA and Respondent(s) will work closely in each phase to address the technological needs of each county electing to participate in the project.

EXHIBIT A

STATEMENT OF QUALIFICATIONS COVER

RESPONDER: _____
ADDRESS: _____

Contact Person: _____ Title: _____
Phone Number: _____ Email Address: _____

Listed below are the Innovation Technology-Based Mental Health Solution Components, for which we are submitting our qualifications.

- Peer Chat and Digital Therapeutics Using Technology-Based Mental Health Solutions to Intervene and Offer Support**
- Virtual Evidence-Based Therapy Utilizing an AVATAR**
- Digital Phenotyping Using Passive Data for Early Detection and Intervention**
- Community Engagement and Outreach Engaging Users and Promoting Use of Technology-Based Mental Health Solutions**
- Outcome Evaluation**

Authorized Signor: _____ Date: _____

EXHIBIT B

CALMHSA CONTRACT GENERAL TERMS AND CONDITIONS

1. **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 in any capacity whatsoever and CalMHSA 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 harmless from any and all liability which CalMHSA may incur because of Contractor's failure to pay such amounts.

2. **INDEMNIFICATION:** To the fullest extent permitted by law, Contractor shall hold harmless, defend and indemnify CalMHSA, 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 attorneys' fees, arising out of or resulting from Contractor's performance under this Agreement, including the performance of the Contractor's sub Contractor, even if caused by or contributed to by the negligence of an indemnitee, except that Contractor shall have no obligation to indemnify damages resulting from the sole negligence or willful misconduct of any indemnitee. CalMHSA may participate in the defense of any such claim without relieving Contractor of any obligation hereunder.
3. **INSURANCE AND BOND:** Contractor and its sub Contractors 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:

- A. 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.
- B. 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.
- C. 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 C.
- D. 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.
- E. Each policy of insurance required in subsection B. above shall name CalMHSA and its 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 or its 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 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.
- F. Contractor shall notify CalMHSA in the event of material change in, or failure to renew each policy required under subsections A., B., or C.
- G. As to any policy of insurance required by this section, Contractor shall disclose any self-insured retention or deductible exceeding \$5,000. CalMHSA may require that an endorsement be obtained reducing or eliminating such self-insured retention or deductible as to the CalMHSA and its 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.

- H. Prior to commencing work, Contractor shall deliver to CalMHSA certificates of insurance and any required additional insured endorsements demonstrating compliance with these requirements. Upon request by CalMHSA, 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 may, at its sole discretion, secure such insurance in the name of and for the account of Contractor, and in such event Contractor shall reimburse CalMHSA upon demand for the cost thereof. Any failure of CalMHSA to require certificates of insurance and additional insured endorsements shall not operate as a waiver of these requirements.
- I. If Contractor does not include all sub Contractors as insureds under Contractor's own policies, Respondents shall provide County 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 and Contractor as additional insureds on the subcontractor's commercial general liability policy. Contractor shall obtain CalMHSA's prior review and approval of any subcontractor request for modification of the required insurance.

This section 3 shall not apply to a Contractor that is a California public entity.

4. CONFORMITY WITH LAW AND SAFETY:

- A. In performing services under this Agreement, Contractor and its sub Contractors 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 scope 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 sub Contractors performing work under this Agreement.
- B. 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.

- C. 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.
5. PAYMENT: For services performed in accordance with this Agreement, payment shall be made to Contractor as provided in Exhibit B. Other than as specified in Exhibit B, no additional amounts will be allowed or paid for expenses incurred during performance.
 6. TAXES: Payment of all applicable federal, state, and local taxes imposed on Contractor shall be the sole responsibility of Contractor.
 7. CHILD SUPPORT COMPLIANCE ACT: "For any Contract in excess of \$100,000, the Contractor acknowledges in accordance with Public Contract Code 7110, that:
 - A. The Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
 - B. The Contractor, to the best of its knowledge, is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department."
 8. OWNERSHIP OF DOCUMENTS AND MATERIALS: Any and all proposals, plans, specifications, designs, drawings, sketches, resource materials, curricula, training materials, renderings, models, reports and related documents (including computerized or electronic copies) first created pursuant to this Agreement, whether prepared by CalMHSA, Contractor, Contractor's sub Contractors or third parties at the request of Contractor (collectively, "Documents and Materials") shall be considered a work for hire owned by CalMHSA. This explicitly includes the electronic copies of all above stated

documentation. "Documents and Materials" does not include previously created materials acquired or produced by or on behalf of Contractor.

To the extent that the Documents and Materials fail to qualify as a work for hire, Contractor assigns to CalMHSA all copyright and other use rights in Documents and Materials. Contractor agrees to take such further steps as may be reasonably requested by CalMHSA to implement the aforesaid assignment. If for any reason said assignment is not effective, Contractor hereby grants CalMHSA and any assignee of CalMHSA an express royalty-free license to retain and use said Documents and Materials. CalMHSA's rights under this section shall apply regardless of the degree of completion of the Documents and Materials and whether or not Contractor's services as set forth in Exhibit A of this Agreement have been fully performed or paid for.

In Contractor's contracts with sub Contractors, Contractor shall expressly obligate them to grant CalMHSA the aforesaid rights as to Contractor's Documents and Materials. Contractor agrees to defend, indemnify and hold CalMHSA harmless from any damage caused by a failure of the Contractor to obtain such rights from its sub Contractors.

Contractor shall pay all royalties and license fees which may be due for any patented or copyrighted materials, methods or systems selected by the Contractor and incorporated into its work pursuant to this Agreement, and shall defend, indemnify and hold CalMHSA harmless from any claims for infringement of patent or copyright arising out of such selection. CalMHSA's rights under this Section 8 shall not extend to any computer software used to create such Documents and Materials.

Contractor shall be permitted to retain copies, including reproducible copies and computerized copies, of said Documents and Materials. CalMHSA shall grant to Contractor a non-exclusive license to use CalMHSA's interest in such copyrighted work first created in the performance of this Agreement. Subject to the provisions in Section 9 (Confidentiality), such license shall grant to Contractor a non-exclusive, right to publish, reproduce, distribute, use, and make derivative works of all or any part of the copyrighted work first created in the performance of this Agreement for non-commercial, research or education purposes, and Contractor may authorize others to do the same by or on behalf of Contractor for non-commercial purposes. This explicitly includes the electronic copies of such copyrighted works.

Contractor shall grant to CalMHSA a non-exclusive license to publish, reproduce, distribute, use, and make derivative works of all or any part of "Enhanced Works," which are derivative works created with CalMHSA funds based on materials to which Contractor previously owned the copyright.

In no event shall this Agreement be interpreted to grant an express or implied license, except as expressly granted herein. The parties will effectuate the provisions of this Section 8 at the conclusion of the term of this Agreement by execution of a separate

agreement that identifies the particular works being licensed, assigned or otherwise transferred pursuant to this Agreement.

9. CONFIDENTIALITY: Contractor agrees that any information, whether proprietary or not, made known to or discovered by it during the performance of or in connection with this Agreement will be kept confidential and not be disclosed to any other person. The Contractor agrees to immediately notify CalMHSA by notices provided in accordance with Section 10 of this Agreement, if it is requested to disclose any information made known to or discovered by it during the performance of or in connection with this Agreement. This provision shall remain fully effective five years after termination of services to CalMHSA hereunder.
10. 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.

11. **NON-DISCRIMINATION CLAUSE:** During the performance of this Agreement, Contractor and its sub Contractors 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 sub Contractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and sub Contractors 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 sub Contractors 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.

12. **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 any California county that is a source of funds paid under this Agreement.

13. **INSPECTION OF DOCUMENTS AND MATERIALS:** Contractor shall maintain and make available to CalMHSA for its inspection and use during the term of this Agreement, all Documents and Materials, as defined in Section 8 of this Agreement. Contractor's obligations under the preceding sentence shall continue for three years following termination or expiration of this Agreement or the completion of all work hereunder (as evidenced in writing by CalMHSA), and Contractor shall in no event dispose of, destroy, alter or mutilate said Documents and Materials, for three years following CalMHSA's last payment to Contractor under this Agreement.

It is the responsibility of Contractor to insure all documents and materials comply with applicable industry regulations and standards.

14. **TIME OF ESSENCE:** Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
15. **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 (see Section 22), 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.
16. **CHOICE OF LAW:** This Agreement shall be governed by the laws of the State of California.
17. **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.

18. 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.
19. HEADINGS herein are for convenience of reference only and shall in no way affect interpretation of the Agreement.
20. ADVERTISING OR PUBLICITY: Contractor shall not use the name of CalMHSA, its officers, directors, employees or agents, in advertising, social marketing campaigns, publicity releases or otherwise without securing the prior written consent of CalMHSA in each instance.
21. MODIFICATION OF AGREEMENT: This Agreement may be supplemented, amended or modified only by the mutual agreement of the parties, expressed in writing and signed by authorized representatives of both parties.
22. CORRECTION OF DEFICIENCIES: Failure of Contractor to comply with the provisions of this Agreement shall constitute a material breach. In the event of such a breach, CalMHSA may, at its sole discretion (and in addition to any other remedies available at law or under this Agreement):
 - A. Afford Contractor thereafter a time period within which to cure the breach, which period shall be established at the sole discretion of CalMHSA; and/or
 - B. Discontinue reimbursement to Contractor for and during the period in which Contractor is in breach, which reimbursement shall not be entitled to later recovery; and/or
 - C. Withhold funds pending duration of the breach; and/or
 - D. Offset against any monies billed by Contractor but yet unpaid by CalMHSA those monies disallowed pursuant to subdivision "b." of this section; and/or
 - E. Terminate this Agreement immediately.
23. SUBCONTRACTING/ASSIGNMENT: Contractor shall not assign this Agreement or its duties or obligations hereunder without CalMHSA's prior written approval. Contractor shall disclose subcontracts and sub Contractors to CalMHSA, which will be deemed to have

notice of those sub Contractors and subcontracts disclosed in the bid or proposal. CalMHSA shall have the right to object to the engagement and terms of engagement of any subcontractor who will perform work under this agreement. A copy of this Agreement shall be provided to any sub Contractors performing work under this Agreement, and such sub Contractors shall agree to comply with all applicable terms, including without limitation the duty to maintain records and make them available for inspection by CalMHSA consistent with the requirements of this Agreement.

- A. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this section shall confer no rights on any party and shall be null and void.
 - B. Contractor shall remain fully responsible for compliance by its sub Contractors with all the terms of this Agreement, and for all activities of its sub Contractors relating to this Agreement, regardless of the terms of any agreement between Contractor and its sub Contractors and regardless of whether CalMHSA approved the subcontract.
24. SURVIVAL: The obligations of this Agreement, which by their nature would continue beyond the termination on expiration of the Agreement, including without limitation, the obligations regarding Indemnification (Section 2), Ownership of Documents (Section 8), Confidentiality (Section 9), and Audits/Access to Records (Section 12), shall survive termination or expiration.
25. BUDGET CONTINGENCY CLAUSE: It is mutually understood that CalMHSA is funded by amounts that Counties voluntarily transfer or assign to it; 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:
- A. 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.
 - B. CalMHSA may alternatively offer an Agreement amendment to Contractor to reflect the reduced amount available.
26. 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.

27. AUTHORITY TO SIGN: By signing this agreement, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement.
28. 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 contract.
29. SUBSTITUTIONS: Contractor's key personnel as indicated in its proposal may not be substituted without notice to CalMHSA.
30. PROVISIONS RELATING TO DATA:
 - A. "Data" as used in this Agreement means recorded information, regardless of form or characteristics, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work; or be usable or be used to define a design or process; or support a premise or conclusion asserted in any deliverable document called for by this Contract. The data may be graphic or pictorial delineations in media, such as drawings or photographs, charts, tables, mathematical modes, collections or extrapolations of data or information, etc. It may be in machine form, as punched cards, magnetic tape, computer printouts, or may be retained in computer memory.
 - B. "Proprietary data" is such data as the Contractor has identified as being under the Contractor's control prior to commencement of performance of this Agreement and which has been reasonably demonstrated as being of a proprietary force and effect at the time this Agreement is commenced.
 - C. "Generated data" is that data which a Contractor has collected, collated, recorded, deduced, read out or postulated for utilization in the performance of this Agreement. Any electronic data processing program, model or software system developed or substantially modified by the Contractor in the performance of this Agreement at CalMHSA expense, together with complete documentation thereof, shall be treated in the same manner as generated data.
 - D. "Deliverable data" is that data which under terms of this Agreement is required to be delivered to CalMHSA.
 - E. Deliverable data shall be the property of CalMHSA. Proprietary data and generated data that does not constitute deliverable data shall be the property of Contractor. However, as to generated data, Contractor grants a no-cost, non-exclusive, non-transferable, irrevocable, royalty-free, worldwide, perpetual license to use, publish, translate, produce and to authorize others to produce, translate, publish and use the data, subject to any restrictions imposed by federal

and state laws protecting the confidentiality of private or individually identifiable medical information.

- F. Prior to the expiration of the three-year retention period stated in Section 12 above and before destroying any data, Contractor shall notify CalMHSA of any such contemplated action; and CalMHSA may within 30 days of said notification determine whether or not this data shall be further preserved. If it makes such a determination, CalMHSA shall pay the expense of further preserving this data. CalMHSA shall have unrestricted reasonable access to the data that is preserved in accordance with this Contract.

31. PUBLICATION OF EVALUATION DATA OR REPORTS:

- A. 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.
- B. 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.
- C. 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.
- D. Each subcontract shall contain the foregoing provisions related to the confidentiality of data and nondisclosure.
- E. 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 Respondents or sub Contractors 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.

- 32. 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.
- 33. 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:
 - A. 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
 - B. 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.

- 34. DISCLAIMER OF RESPONSIBILITY FOR CONTENT OF CONTRACTOR'S PUBLICATIONS:
 - A. CalMHSA will not be responsible for the content of Contractor's publications, whether electronic, broadcast, printed, or otherwise.
 - B. 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.

35. PROJECT MANAGER TERMINATION: In the event that the Project Manager that has been assigned by Contractor to this Agreement is involuntarily or voluntarily terminated during the course of performance, Contractor shall:
- A. Provide immediate (48 hours or less) notification to the CalMHSA Executive Director and Contract Manager assigned to the Agreement.
 - B. Submit a written Transition Plan and identify its interim Project Manager within fourteen calendar days.
 - C. Within 90 calendar days, identify its permanent Project Manager and arrange for a meeting between its permanent Project Manager and CalMHSA's Contract Manager.

[END OF GENERAL TERMS AND CONDITIONS]

EXHIBIT C

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

CalMHSA 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 CalMHSA 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. _____ is accessing this data under 45 CFR 164.512(b) for Public Health Activities. 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 CalMHSA 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 C.F.R. § 160.103, and in reference to the party to this Business Associate Agreement, "Covered Entity" shall mean CalMHSA.
- 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 Covered Entity's applicable 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 or Business Associate obtains reasonable assurances from the person to whom the Protected Health Information is disclosed (i.e., the recipient) that it will be held confidentially and Used or further Disclosed only as Required by Law or for the purposes for which it was disclosed to the recipient and the recipient notifies Business Associate of any instances of which it is aware in which the confidentiality of the Protected Health Information has been breached.
- 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 Sub Contractors 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 Sub Contractors of Unsecured Protected Health Information that is 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, 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 **Privacy Officer at: CalMHSA Privacy Officer, Laura Li, 3043 Gold Canal Drive, Suite 200, Rancho Cordova, CA, laura.li@calmhsa.org**, 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 SUBRESPONDENTS

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 CalMHSA.
- 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 Sub Contractors, 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 Sub Contractors 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 Sub Contractors, 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 Sub Contractors, 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 Sub Contractors, 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 Sub Contractors, 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 service 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 11, 14, and 18 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 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 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 6.6 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 return or destruction of Protected Health Information is not feasible or 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 for which destruction or return is infeasible or 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 Sub Contractors 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 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 That 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.

CaIMHSA

Signed: _____
Title: _____
Address: _____
Phone: _____

Name (Printed): _____
Date: _____
State: _____ Zip: _____
Email: _____

CONTRACTOR

Signed: _____
Title: _____
Address: _____
Phone: _____

Name (Printed): _____
Date: _____
State: _____ Zip: _____
Email: _____