

# **ATTACHMENT J:**

## **FIRST 5 MEMORANDUM OF UNDERSTANDING**

**COVER PAGE**

## **Memorandum of Understanding**

### **between Orange County Health Authority, d.b.a. CalOptima Health and Children and Families Commission of Orange County**

This Memorandum of Understanding ("MOU") is entered into by Orange County Health Authority, a Public Agency, d.b.a. CalOptima Health ("MCP") and Children and Families Commission of Orange County ("First 5"), effective as of the first day following execution of this Contract by both parties ("Effective Date"). First 5, MCP, and MCP's relevant Subcontractors and/or Downstream Subcontractors are referred to herein as a "Party" and collectively as "Parties."

WHEREAS, MCP is required under the Medi-Cal Managed Care Contract, Exhibit A, Attachment III, to enter into this MOU, a binding and enforceable contractual agreement, to enable Medi-Cal beneficiaries enrolled, or eligible to enroll, in MCP ("Members") are able to access services and connect to a broader array of supports in a coordinated manner from MCP and First 5;

WHEREAS, First 5s were designed to "emphasize local decision making, to provide for greater local flexibility in designing delivery systems"<sup>1</sup> to support children prenatal to age five (5) and their families, and First 5s have broad authority to determine allocation of resources in response to local conditions and as prioritized in their respective strategic plan; and

WHEREAS, the Parties desire to ensure that Members receive services available and benefit from the prenatal to five (5) expertise and family-serving system knowledge and experience of First 5 through coordinating with MCP and to provide a process to continuously evaluate and improve the quality of care coordination provided.

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<sup>1</sup> Cal. Health & Safety Code sections 130100, et seq.

In consideration of the mutual agreements and promises hereinafter, the Parties agree as follows:

**1. Definitions.** Capitalized terms have the meaning ascribed by MCP's Medi-Cal Managed Care Contract with the California Department of Health Care Services ("DHCS"), unless otherwise defined herein. The Medi-Cal Managed Care Contract is available on the DHCS webpage at [www.dhcs.ca.gov](http://www.dhcs.ca.gov).

a. "MCP Responsible Person" means the person designated by MCP to oversee MCP coordination and communication with First 5 and ensure MCP's compliance with this MOU as described in Section 4 of this MOU. It is recommended that this person be in a leadership position with decision-making authority and authority to effectuate improvements in MCP practices.

b. "MCP-First 5 Liaison" means MCP's designated point of contact responsible for acting as the liaison between MCP and First 5 as described in Section 4 of this MOU. The MCP-First 5 Liaison must ensure the appropriate communication and care coordination are ongoing between the Parties, facilitate quarterly meetings in accordance with Section 9 of this MOU, and provide updates to the MCP Responsible Person and/or MCP compliance officer as appropriate.

c. "First 5 Responsible Person" means the person designated by First 5 to oversee coordination and communication with MCP and ensure First 5's compliance with this MOU as described in Section 5 of this MOU. It is recommended that this person be in a leadership position with decision-making authority and authority to effectuate improvements in First 5 practices.

d. "First 5 Liaison" means First 5's designated point of contact responsible for acting as the liaison between MCP and First 5 as described in Section 5 of this MOU. The First 5 Liaison should ensure the appropriate communication and care coordination are ongoing between the Parties, facilitate quarterly meetings in accordance with Section 9 of this MOU, and provide updates to the First 5 Responsible Person as appropriate.

e. "First 5 Services" means the services, supports, and efforts made by First 5 to facilitate the creation and implementation of an integrated, comprehensive, and coordinated system to enhance optimal early childhood development. First 5 Services may include, as determined solely by First 5, care navigation, developmental screenings, and pregnancy and postpartum supports, as well as system investments and partnerships to improve access to quality services, reduce barriers to care, and evaluate and analyze related data to inform strategies to improve quality care and, therefore, the conditions of children prenatal to five (5) years old within their jurisdiction.

f. "First 5 Providers" means organizations and individuals contracted with or receiving funding from First 5 to provide First 5 Services.

**2. Term.** This MOU is in effect as of the Effective Date and continues for a term of three (3) years or as amended in accordance with Section 14.f of this MOU.

**3. Services Covered by This MOU.** This MOU governs the coordination between First 5 and MCP for the delivery of services for Members who reside in First 5's jurisdiction and who may be eligible for First 5 Services and supports, as First 5 resources allow.

**4. MCP Obligations.**

a. **Provision of Covered Services.** MCP is responsible for authorizing Medically Necessary Covered Services and coordinating care for Members provided by MCP's Network Providers and other providers of carve-out programs, services, and benefits. MCP must support Members and/or their caregivers or legal guardian(s) in accessing medically necessary physical, behavioral, developmental, and dental health services for families and children, including those available under the Early and Periodic Screening, Diagnostic and Treatment benefit, such as periodic developmental and behavioral screening.

b. **Oversight Responsibility.** The Executive Director, Behavioral Health Integration, the designated MCP Responsible Person listed in Exhibit A of this MOU, is responsible for overseeing MCP's compliance with this MOU. The MCP Responsible Person must:

i. Meet at least quarterly with First 5, as required by Section 9 of this MOU;

ii. Report on MCP's compliance with the MOU to MCP's compliance officer no less frequently than quarterly. MCP's compliance officer is responsible for MOU compliance oversight reports as part of MCP's compliance program and must address any compliance deficiencies in accordance with MCP's compliance program policies;

iii. Ensure there is sufficient staff at MCP to support compliance with and management of this MOU;

iv. Ensure the appropriate levels of MCP leadership (i.e., persons with decision-making authority) are involved in implementation and oversight of the MOU engagements and ensure the appropriate levels of leadership from First 5 are invited to participate in the MOU engagements, as appropriate;

v. Ensure training and education regarding MOU provisions are conducted annually, and as otherwise described in Section 6 of this MOU, for MCP's

employees responsible for carrying out activities under this MOU and, as applicable, for Subcontractors, Downstream Subcontractors, and Network Providers; and

vi. Serve, or may designate a person at MCP to serve, as the MCP-First 5 Liaison, the point of contact and liaison with First 5. The MCP-First 5 Liaison is listed in Exhibit A of this MOU. MCP must notify First 5 of any changes to the MCP-First 5 Liaison in writing as soon as reasonably practical but no later than the date of change and must notify DHCS within five (5) Working Days of the change.

c. **Compliance by Subcontractors, Downstream Subcontractors, and Network Providers.** MCP must require and ensure that its Subcontractors, Downstream Subcontractors, and Network Providers, as applicable, comply with all applicable provisions of this MOU.

## **5. First 5 Obligations.**

a. **Provision of Services.** First 5 is responsible for First 5 Services and supports as appropriate and as resources allow.

b. **Oversight Responsibility.** The President/Chief Executive Officer, the designated First 5 Responsible Person, listed in Exhibit B of this MOU, is responsible for overseeing First 5's compliance with this MOU. The First 5 Responsible Person serves, or may designate a person to serve, as the designated First 5 Liaison, the point of contact and liaison with MCP. The First 5 Liaison is listed in Exhibit B of this MOU. The First 5 Liaison may be the same person as the Responsible Person. First 5 may designate a liaison by program or service line. First 5 must notify MCP of changes to the First 5 Liaison as soon as reasonably practical but no later than the date of change, except when such prior notification is not possible, in which case, notice should be provided within five (5) Working Days of the change.

## **6. Training and Education.**

a. To ensure compliance with this MOU, MCP must provide training and orientation for its employees who carry out responsibilities under this MOU and, as applicable, for MCP's Network Providers, Subcontractors, and Downstream Subcontractors who assist MCP with carrying out MCP's responsibilities under this MOU. The training must include information on MOU requirements, what services are provided or arranged for by each Party, and the policies and procedures outlined in this MOU. For persons or entities performing these responsibilities as of the Effective Date, MCP must provide this training within 60 working days of the Effective Date. Thereafter, MCP must provide this training prior to any such person or entity performing responsibilities under this MOU and to all such persons or entities at least annually thereafter. MCP must require its Subcontractors and Downstream Subcontractors to

provide training on relevant MOU requirements and First 5 programs and services to its Network Providers.

b. In accordance with health education standards required by the Medi-Cal Managed Care Contract, MCP must provide its Members and Network Providers with educational materials related to accessing Covered Services, including for services provided by First 5. In addition, MCP must provide its Network Providers with training on Medi-Cal for Kids and Teens services, utilizing the newly developed DHCS Medi-Cal for Kids and Teens Outreach and Education Toolkit as required by APL 23-005 or any subsequent version of the APL.

c. MCP must provide First 5, Members, and Network Providers with training and/or educational materials on how MCP's Covered Services and any carved-out services may be accessed, including during nonbusiness hours. For example, MCP and Network Providers should inform Members about First 5 programs and events. In turn, First 5 should share information about MCP open enrollment and services, such as through Medi-Cal for Kids and Teens.

## **7. Referrals.**

a. **Referral Process.** The Parties must work collaboratively to develop policies and procedures that ensure Members who may be eligible for First 5 Services are referred to First 5 and First 5 Providers, as applicable.

b. First 5 should facilitate referrals from MCP to First 5 Providers if First 5 services are appropriate and assist MCP with identifying the appropriate First 5 Providers for such referrals as needed.

c. The Parties should establish policies and procedures for how First 5 will notify MCP if First 5 and/or First 5 Providers are at capacity and are unable to accept Member referrals for First 5 Services. The policies and procedures should include notification to referred Members that First 5 Services are not currently available.

d. MCP must refer Members using a patient-centered, shared decision-making process.

e. First 5 should recommend best practices for successful engagement of eligible Members to MCP for MCP's Covered Services and Community Supports services or care management programs for which Members may qualify, including Enhanced Care Management ("ECM") or Complex Care Management ("CCM"). However, if First 5 is also an ECM Provider, provides Community Supports, or provides other services pursuant to a separate agreement between MCP and First 5, this MOU does not govern First 5's provision of ECM, Community Supports, or other services.

f. MCP must require that its CCM care managers, its Transitional Care

Services care managers, and contracted ECM Providers refer Members to First 5 as appropriate.

g. The Parties must work to identify and address barriers to eligible Members' use of Medi-Cal benefits for the prenatal to five (5) individuals and their families based on information provided and best practices recommended by First 5s.

**Closed Loop Referrals.** Effective July 1, 2025, MCP must develop a process to implement comply with DHCS guidance regarding closed loop referrals applicable Community Supports, ECM benefits, and/or community-based resources, as referenced in the CalAim Population Health Management Managements Policy Guide , DHCS All Plan Letter ("APL) 22-024, or any subsequent version of the APL, and set forth by DHCS through an APL or other, similar guidance. The Parties must work collaboratively to develop and implement a process to ensure that MCP complies with the applicable provisions of closed loop referrals guidance within 90 Working Days of issuance of this guidance. The Parties must establish a system that tracks cross-system referrals and meets all requirements as set forth by DHCS through and APL or other similar guidance.

#### **8. Care Coordination and Collaboration.**

a. The Parties must adopt policies and procedures for coordinating Members' access to care and services that incorporate all the requirements set forth in this MOU.

b. The Parties must discuss and address systematic and, to the extent possible, individual care coordination issues or barriers to care coordination efforts at least quarterly.

c. MCP must have policies and procedures in place to maintain collaboration with First 5 and to identify strategies to monitor and assess the effectiveness of this MOU.

d. When a Member enrolled in ECM also receives First 5 Services, the ECM Provider shall coordinate services with First 5 (as appropriate) or First 5 Providers to ensure the Member's needs are addressed. To support the ECM Provider, MCP must ensure that the Member's ECM Providers are aware of First 5 agencies and contacts and consult with, keep informed (as appropriate), and share data with (as appropriate) First 5 or the First 5 Provider that provides First 5 Services to the Member.

#### **9. Quarterly Meetings.**

a. The Parties must meet as frequently as necessary to ensure proper oversight of this MOU, but not less frequently than quarterly, to discuss community needs and how to partner to meet them and address care coordination, Quality Improvement ("QI") activities, QI outcomes, systemic and case-specific concerns, and communication with others within their organizations about such activities. These

meetings may be conducted virtually.

b. Within 30 Working Days after each quarterly meeting, MCP must post on its website the date and time the quarterly meeting occurred and, as applicable, distribute to meeting participants a summary of any follow-up action items or changes to processes that are necessary to fulfill MCP's obligations under the Medi-Cal Managed Care Contract and this MOU.

c. MCP must invite the First 5 Responsible Person and appropriate First 5 program executives to participate in MCP quarterly meetings to ensure appropriate committee representation, including a local presence, and to discuss and address care coordination and MOU-related issues. Subcontractors and Downstream Subcontractors should be permitted to participate in these meetings, as appropriate.

d. MCP must report to DHCS updates from quarterly meetings in a manner and at a frequency specified by DHCS.

e. **Local Representation.** MCP must participate, as appropriate, in meetings or engagements to which MCP is invited by First 5, such as local county meetings, local community forums, and First 5 engagements, to collaborate with First 5 in equity strategy and wellness and prevention activities. First 5 and First 5 Providers, as appropriate, are encouraged to participate in meetings, engagements, or committees to which they are invited by MCP.

f. MCP must engage First 5, as appropriate, in partnering with local community-based organizations and Network Providers serving families with young children.

## **10. Quality Improvement.**

The Parties must develop QI activities specifically for the oversight of the requirements of this MOU, including, without limitation, any applicable performance measures and QI initiatives, including those to prevent duplication of services and reports that track referrals, Member engagement, and service utilization. MCPs will share performance data on relevant maternal and child Managed Care Accountability Set ("MCAS") indicators as a tool for discussion and collaboration to improve engagement in care. MCP and First 5 will collaboratively develop and review progress on initiatives. MCP must document these QI activities in its policies and procedures. Where appropriate, MCP should include First 5 as a resource and partner in QI initiatives.

**11. Data Sharing and Confidentiality.** As applicable, appropriate, and feasible, the Parties must implement policies and procedures to ensure that the minimum necessary Member information and data for accomplishing the goals of this MOU are exchanged timely and maintained securely and confidentially, and in compliance with the requirements set forth below. The Parties must share information in compliance with

applicable law, which may include the Health Insurance Portability and Accountability Act and its implementing regulations, as amended (“HIPAA”), 42 Code of Federal Regulations Part 2, and other State and federal privacy laws.

a. **Data Exchange.** MCP must, and First 5 is encouraged to, share the minimum necessary data and information to facilitate referrals and coordinate care under this MOU. The Parties must have policies and procedures for supporting the timely and frequent exchange of Member information and data, which may include behavioral health and physical health data, including receipt of services from and engagement with First 5 Providers; for ensuring the confidentiality of exchanged information and data; and, if necessary, for obtaining Member consent. The minimum necessary information and data elements to be shared as agreed upon by the Parties are set forth in Exhibit C of this MOU. The Parties must annually review and, if appropriate, update Exhibit C of this MOU to facilitate sharing of information and data.

b. **Use of Data by MCP.** MCP must carefully consider data and information, including community and Member feedback, made available by First 5 to address Member needs, provide a broader understanding of the health needs and preferences of Members, and support more meaningful Member engagement.<sup>2</sup>

c. **Interoperability.** MCP must make available to Members their electronic health information held by MCP pursuant to 42 Code of Federal Regulations section 438.10 and in accordance with APL 22-026 or any subsequent version of the APL. MCP must make available an application programming interface that makes complete and accurate Network Provider directory information available through a public-facing digital endpoint on MCP’s website pursuant to 42 Code of Federal Regulations sections 438.242(b) and 438.10(h).

## 12. **Dispute Resolution.**

a. The Parties must agree to dispute resolution procedures such that, in the event of any dispute or difference of opinion regarding the Party responsible for service coverage arising out of or relating to this MOU, the Parties must attempt, in good faith, to promptly resolve the dispute mutually between themselves. MCP must, and First 5 should, document the agreed-upon dispute resolution procedures in policies and procedures. Pending resolution of any such dispute, the Parties must continue without delay to carry out all their responsibilities under this MOU, including providing Members with access to services under this MOU, unless this MOU is terminated. If the dispute cannot be resolved within 15 working days of initiating such dispute or such other period as may be mutually agreed to by the Parties in writing,

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<sup>2</sup> Per the CalAIM Population Health Management Policy Guide, “Risk Stratification and Segmentation (RSS) means the process of differentiating all Members into separate risk groups and/or meaningful subsets. RSS results in the categorization of all Members according to their care and risk needs at all levels and intensities.

either Party may pursue its available legal and equitable remedies under California law.

b. Disputes between MCP and First 5 that cannot be resolved in a good faith attempt between the Parties must be forwarded by MCP and may be forwarded by First 5 to DHCS. Until the dispute is resolved, the Parties may agree to an arrangement satisfactory to both Parties regarding how the services under dispute will be provided.

c. Nothing in this MOU or provision constitutes a waiver of any of the government claim filing requirements set forth in Title I, Division 3.6, of the California Government Code or as otherwise set forth in local, State, or federal law.

**13. Equal Treatment.**

a. Nothing in this MOU is intended to benefit or prioritize Members over persons served by First 5 who are not Members. Pursuant to Title VI, 42 United States Code section 2000d, et seq., First 5 cannot provide any service, financial aid, or other benefit to an individual that is different, or is provided in a different manner, from that provided to others by First 5.

b. First 5 is prohibited from directing or recommending that an individual choose or refrain from choosing a specific MCP, and MCP is prohibited from directing or recommending that an individual choose or refrain from choosing a specific First 5.

c. First 5 is prohibited from making decisions intended to benefit or disadvantage a specific MCP, and MCP is prohibited from making decisions intended to benefit or disadvantage a specific First 5.

**14. General.**

a. **MOU Posting.** MCP must post this executed MOU on its website.

b. **Documentation Requirements.** MCP must retain all documents demonstrating compliance with this MOU for at least ten (10) years as required by the Medi-Cal Managed Care Contract. If DHCS requests a review of any existing MOU, MCP must submit the requested MOU to DHCS within ten (10) Working Days of receipt of the request.

c. **Notice.** Any notice required or desired to be given pursuant to or in connection with this MOU must be given in writing, addressed to the noticed Party at the Notice Address set forth below the signature lines of this MOU. Notices must be (i) delivered in person to the Notice Address; (ii) delivered by messenger or overnight delivery service to the Notice Address; (iii) sent by regular United States mail, certified, return receipt requested, postage prepaid, to the Notice Address; or (iv) sent by email, with a copy sent by regular United States mail to the Notice Address. Notices given by in-person delivery, messenger, or overnight delivery service are deemed given upon actual delivery at the Notice Address. Notices given by email are deemed given the day following the day the email was sent. Notices given by regular United States mail,

certified, return receipt requested, postage prepaid, are deemed given on the date of delivery indicated on the return receipt. The Parties may change their addresses for purposes of receiving notice hereunder by giving notice of such change to each other in the manner provided for herein.

d. **Delegation.** MCP may delegate its obligations under this MOU to a Fully Delegated Subcontractor or Partially Delegated Subcontractor as permitted under the Medi-Cal Managed Care Contract, provided that such Fully Delegated Subcontractor or Partially Delegated Subcontractor is made a Party to this MOU. Further, MCP may enter into Subcontractor Agreements or Downstream Subcontractor Agreements that relate directly or indirectly to the performance of MCP's obligations under this MOU. Other than in these circumstances, MCP cannot delegate the obligations and duties contained in this MOU.

e. **Annual Review.** MCP must conduct an annual review of this MOU to determine whether any modifications, amendments, updates, or renewals of responsibilities and obligations outlined within are required. MCP must provide DHCS evidence of the annual review of this MOU and copies of any MOU modified or renewed as a result.

f. **Amendment.** This MOU may only be amended or modified by the Parties through a writing executed by the Parties. However, this MOU is deemed automatically amended or modified to incorporate any provisions amended or modified in the Medi-Cal Managed Care Contract, or as required by applicable law or any applicable guidance issued by a State or federal oversight entity.

g. **Governance.** This MOU is governed by and construed in accordance with the laws of the State of California.

h. **Independent Contractors.** No provision of this MOU is intended to create, nor is any provision deemed or construed to create, any relationship between First 5 and MCP other than that of independent entities contracting with each other hereunder solely for the purpose of effecting the provisions of this MOU. Neither First 5 nor MCP, nor any of their respective contractors, employees, agents, or representatives, is construed to be the contractor, employee, agent, or representative of the other.

i. **Counterpart Execution.** This MOU may be executed in counterparts, signed electronically and sent via PDF, each of which is deemed an original, but all of which, when taken together, constitute one and the same instrument.

j. **Superseding MOU.** This MOU constitutes the final and entire agreement between the Parties and supersedes any and all prior oral or written agreements, negotiations, or understandings between the Parties that conflict with the provisions set forth in this MOU. It is expressly understood and agreed that any prior written or oral agreement between the Parties pertaining to the subject matter herein is

hereby terminated by mutual agreement of the Parties.

(Remainder of this page intentionally left blank)

The Parties represent that they have authority to enter into this MOU on behalf of their respective entities and have executed this MOU as of the Effective Date.

**MCP CEO or Responsible Person**

**Signature:**   
Yunkyung Kim (Mar 31, 2026 10:49:33 PDT)

**Name:** Yunkyung Kim

**Title:** COO

**Date:** 03/31/2026

**First 5 Director or Responsible Person**

**Signature:**   
Kimberly Goll (Mar 27, 2026 16:41:08 PDT)

**Name:** Kimberly Goll

**Title:** President/ CEO

**Notice Address:** 1050 E. 17<sup>th</sup> Street Suite 230 Santa Ana CA. 92705

**Date:** 03/27/2026

## **Exhibits A -MCP Responsible Person (s)**

This Exhibit A lists the MCP individuals responsible for ensuring oversight and compliance of this MOU and applicable Program Exhibits. Capitalized terms in this Exhibit A will have the meaning ascribed to them by the MOU or the respective Program Exhibit.

### 1. **General MCP responsible individuals:**

- a. **MCP Responsible Person:** Carmen Nicole Katsarov, LPCC, CCM,  
Executive Director, Behavioral Health Integration  
[carmen.katsarov@caloptima.org](mailto:carmen.katsarov@caloptima.org)
- b. **MCP- First 5 Liaison:** Kimberly Goll, President/CEO First 5 Orange County  
[kim.goll@cfcoc.ocgov.com](mailto:kim.goll@cfcoc.ocgov.com)

## **Exhibit B – First 5 Responsible Person(s)**

This Exhibit B lists the First 5 individuals responsible for ensuring oversight and compliance of this MOU and applicable Program Exhibits. Capitalized terms in this Exhibit B will have the meaning ascribed to them by the MOU or the respective Program Exhibit.

1. **General First 5 responsible individuals:**

- a. **First 5 Responsible Person:** Kimbery Goll President/ CEO  
Kim.goll@cfcoc.ocgov.com
- b. **First 5 Liaison:** Tiffany Alva, Director of Partnerships and Government Affairs  
Tiffany.Alva@cfcoc.ocgov.com

## **Exhibit C**

### **Data Elements**

MCP and Agency will update referral processes and policies with additional data elements to address barriers and concerns related to referrals and ensure First 5 eligible Members receive appropriate First 5 Services and MCP's Covered Services.

**EXHIBIT D**  
**Business Associate Agreement**

This Business Associate Agreement by and between CalOptima and Contractor, which for the purposes of this Agreement shall be referred to as “**Business Associate**”, is effective as of the Effective Date of the Agreement or Memorandum of Understanding attached hereto.

**RECITALS**

WHEREAS, the Parties have executed an agreement(s) whereby Business Associate provides services to CalOptima, and Business Associate creates, receives, maintains, uses, transmits protected health information (“**PHI**”) in order to provide those services (“**Services Agreement(s)**”);

WHEREAS, as a covered entity, CalOptima is subject to the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act (“**HIPAA**”) of 1996, Public Law 104-191, and regulations promulgated thereunder, including the Standards for Privacy of Individually Identifiable Health Information at 45 Code of Federal Regulations (“**C.F.R.**”) Parts 160 and Subparts A and E of 45 C.F.R. Part 164 (“**Privacy Regulations**”) and the Security Standards for Electronic Protected Health Information (“**Security Regulations**”) at 45 C.F.R. Parts 160 and Subparts A and C of 45 C.F.R. Part 164, as amended by the Health Information Technology for Economic and Clinical Health Act (“**HITECH Act**”) of 2009, Public Law 111-5, and regulations promulgated thereunder including the Breach Notification Regulations at Subpart D of 45 C.F.R. Part 164, and is subject to certain state privacy laws;

WHEREAS, as a business associate, Business Associate is subject to certain provisions of HIPAA, and regulations promulgated thereunder, as required by the HITECH Act and regulations promulgated thereunder;

WHEREAS, CalOptima and Business Associate are required to enter into a contract in order to mandate certain protections for the privacy and security of PHI;

WHEREAS, CalOptima’s regulator(s) have adopted certain administrative, technical and physical safeguards deemed necessary and appropriate by it/them to safeguard regulators’ PHI and have required that CalOptima incorporate such requirements in its business associate agreements with subcontractors that require access to the regulators’ PHI;

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

1. **Definitions.** The terms in this section and otherwise defined in this Business Associate Agreement shall have the definitions set forth below for purposes of this Business Associate Agreement. Terms used, but not otherwise defined, in this Business Associate Agreement shall have the same meaning as those terms in HIPAA, the HITECH Act, the IPA (as defined below), and/or regulations promulgated thereunder.
  - 1.1. **Agreement** as used in this document means both this Business Associate Agreement and the Services Agreement to which this Business Associate Agreement applies, as specified in such Services Agreement.

- 1.2. **Breach** means, unless expressly excluded under 45 C.F.R. § 164.402, the acquisition, access, Use, or disclosure of PHI in a manner not permitted under Subpart E of 45 C.F.R. Part 164 which compromises the security or privacy of the PHI and as more particularly defined under 45 C.F.R. § 164.402.
- 1.3. **Business associate** has the meaning given such term in 45 C.F.R. § 160.103.
- 1.4. **Confidential Information** refers to information not otherwise defined as PHI in Section 1.15 below, but to which state and/or federal privacy and/or security protections apply.
- 1.5. **Data Aggregation** has the meaning given such term in 45 C.F.R. § 164.501.
- 1.6. **Designated Record Set** has the meaning given such term in 45 C.F.R. § 164.501.
- 1.7. **Disclose** and **Disclosure** mean the release, transfer, provision of access to, or divulging in any other manner of information outside the entity holding the information.
- 1.8. **Electronic Health Record** has the meaning given such term in 42 U.S.C. § 17921.
- 1.9. **Electronic Media** means:
  - 1.9.1. 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; or
  - 1.9.2. 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, because the information being exchanged did not exist in electronic form before the transmission.
- 1.10. **Electronic protected health information (“ePHI”)** means Individually Identifiable Health Information, including PHI, that is transmitted by or maintained in Electronic Media.
- 1.11. **Health Care Operations** has the meaning given such term in 45 C.F.R. § 164.501.
- 1.12. **Individual** means the person who is the subject of PHI and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
- 1.13. **Individually Identifiable Health Information** means health information, including demographic information collected from an Individual, that is created or received by a health care provider, health plan, employer or health care clearinghouse, and 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, that identifies the Individual or where there is a reasonable basis to believe the information can be used to identify the Individual, as set forth under 45 C.F.R. § 160.103.

- 1.14. **Information System** means an interconnected set of information resources under the same direct management control that shares common functionality. A system normally includes hardware, software, information, data, applications, communications, and people.
- 1.15. **Protected health information (“PHI”)**, as used in this Agreement and unless otherwise stated, refers to and includes both PHI as defined at 45 C.F.R. § 160.103 and personal information (“PI”) as defined in the Information Practices Act at California Civil Code § 1798.3(a) (“IPA”). PHI includes information in any form, including paper, oral, and electronic.
- 1.16. **Reproductive Health Care** means health care, as defined at 45 C.F.R. § 160.103, that affects the health of an Individual in all matters relating to the reproductive system and to its functions and processes.
- 1.17. **Required by Law** means a mandate contained in law that compels an entity to make a Use or Disclosure of PHI and that is enforceable in a court of law. Required by Law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing benefits.
- 1.18. **Secretary** means the Secretary of the U.S. Department of Health and Human Services or the Secretary’s designee.
- 1.19. **Security Incident** means the attempted or successful unauthorized access, Use, Disclosure, modification, or destruction of information or interference with system operations in an Information System.
- 1.20. **Services** has the same meaning as in the Services Agreement(s).
- 1.21. **Unsecured Protected Health Information (“Unsecured PHI”)** means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of technology or methodology specified by the Secretary in the guidance issued under 42 U.S.C. § 17932(h)(2).
- 1.22. **Use and Uses** mean, with respect to Individually Identifiable Health Information, the sharing, employment, application, utilization, examination or analysis of such information within the entity that maintains such information.
2. CalOptima intends that Business Associate may create, receive, maintain, transmit or aggregate certain information pursuant to the terms of this Agreement, some of which information may constitute PHI and/or Confidential Information protected by federal and/or state laws.
3. Business Associate is the business associate of CalOptima acting on CalOptima’s behalf and provides services or arranges, performs or assists in the performance of functions or activities on behalf of CalOptima, and may create, receive, maintain, transmit, aggregate, Use or Disclose PHI in order to fulfill Business Associate’s obligations under this Agreement.

4. **Permitted Uses and Disclosures of PHI by Business Associate.** Except as otherwise indicated in this Agreement, Business Associate may Use or Disclose PHI, inclusive of de-identified data derived from such PHI, only to perform functions, activities or services specified in this Agreement on behalf of CalOptima, provided that such Use or Disclosure would not violate HIPAA, including the Privacy Regulations, or other applicable laws if done by CalOptima.
  - 4.1. **Specific Use and Disclosure Provisions.** Except as otherwise indicated in this Agreement, Business Associate may Use and Disclose PHI if necessary for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate. Business Associate may Disclose PHI for this purpose if the Disclosure is Required by Law, or the Business Associate obtains reasonable assurances, in writing, from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware that the confidentiality of the information has been breached, unless such person is a treatment provider not acting as a business associate of Business Associate.
  - 4.2. **Data Aggregation.** If authorized as part of the Services provided to CalOptima under the Services Agreement, Business Associate may Use PHI to provide Data Aggregation services relating to the Health Care Operations of CalOptima.
5. **Prohibited Uses and Disclosures of PHI**
  - 5.1. **Restrictions on Certain Disclosures to Health Plans.** Business Associate shall not Disclose PHI about an Individual to a health plan for payment or Health Care Operations purposes if the PHI pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full and the Individual requests such restriction in accordance with HIPAA and the HITECH Act, including 45 C.F.R. § 164.522(a). The term PHI, as used in this Section, only refers to PHI as defined in 45 C.F.R. § 160.103.
  - 5.2. **Prohibition on Sale of PHI; No Remuneration.** Business Associate shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior written authorization of CalOptima and CalOptima’s regulator(s), as applicable, and then, only as permitted by HIPAA and the HITECH Act. The term PHI, as used in this Section, only refers to PHI as defined in 45 C.F.R. § 160.103.
  - 5.3. **Prohibition of Disclosure of PHI Related to Reproductive Health Care.** Business Associate shall comply with 45 C.F.R. Part 164, Subpart E regarding uses and disclosures of Reproductive Health Care-related information, including the following:
    - 5.3.1. Business Associate shall comply with requirements of 45 C.F.R. § 164.502(a)(5)(iii) and shall not Use or Disclose PHI related to lawful Reproductive Health Care for the purpose of (i) conducting a criminal, civil, or administrative investigation into any person for the mere act of seeking, obtaining, providing, or facilitating Reproductive Health Care; (ii) imposing criminal, civil, or administrative liability on any person for the mere act of seeking, obtaining, providing, or facilitating Reproductive Health Care; or (iii) to identify any person for any purpose previously described (each a “**Prohibited Purpose**”).
    - 5.3.2. To the extent applicable, if Business Associate receives a request for Reproductive Health Care-related information for a non-Prohibited Purpose that is otherwise

permissible under HIPAA, HITECH, the Privacy Regulations, and the Security Regulations, Business Associate shall obtain a valid attestation under 45 C.F.R. § 164.509 if the requested release of Reproductive Health Care-related information is for: (i) health oversight activities under 45 C.F.R. § 164.512(d); (ii) judicial or administrative proceedings under 45 C.F.R. § 164.512(e); (iii) disclosures for law enforcement purposes under 45 C.F.R. § 164.512(f); or (iv) disclosures about decedents to coroners and medical examiners under 45 C.F.R. § 164.512(g)(1).

## 6. **Compliance with Other Applicable Laws**

- 6.1. To the extent that other state and/or federal laws provide additional, stricter and/or more protective (collectively, “**more protective**”) privacy and/or security protections to PHI or other Confidential Information covered under this Agreement beyond those provided through HIPAA, Business Associate agrees:
  - 6.1.1. To comply with the more protective of the privacy and security standards set forth in applicable state or federal laws to the extent such standards provide a greater degree of protection and security than HIPAA or are otherwise more favorable to the Individuals whose information is concerned; and
  - 6.1.2. To treat any violation of such additional and/or more protective standards as a Breach or Security Incident, as appropriate, pursuant to Section 17 of this Agreement.
- 6.2. Examples of laws that provide additional and/or stricter privacy protections to certain types of PHI and/or Confidential Information, as defined in Section 1.4 of this Agreement, include, but are not limited to the IPA, California Civil Code §§ 1798-1798.78, California Confidentiality of Medical Information Act (“**CMIA**”), Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2, Welfare and Institutions Code § 5328, and California Health and Safety Code § 11845.5. Business Associate shall ensure that any Medical Information related to Sensitive Services (as those terms are defined under Civil Code § 56.05) received or accessed under the Agreement is kept confidential, segregated, and only disclosed, accessed, transferred, transmitted, or processed in accordance with CMIA requirements, including Civil Code §§ 56.10, 56.11, 56.107, 56.108, and 56.110, as applicable.
- 6.3. If Business Associate is a Qualified Service Organization (“**QSO**”) as defined in 42 C.F.R. § 2.11, Business Associate agrees to be bound by and comply with subdivisions (2)(i) and (2)(ii) under the definition of QSO in 42 C.F.R. § 2.11.

## 7. **Additional Responsibilities of Business Associate**

- 7.1. **Nondisclosure.** Business Associate shall not Use or Disclose PHI or other Confidential Information other than as permitted or required by this Agreement or as Required by Law.
- 7.2. **Safeguards and Security**
  - 7.2.1. Business Associate shall use safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI and other confidential data and comply, where applicable, with Subpart C of 45 C.F.R. Part 164 with respect to ePHI, to prevent Use or Disclosure of the information other than as provided for by this Agreement. Such safeguards shall be, at a minimum, at Federal Information Processing Standards (FIPS) Publication 199 protection levels. Business Associate shall implement reasonable and appropriate policies and

procedures to comply with the standards, implementation specifications and other requirements of Subpart C of 45 C.F.R. Part 164, in compliance with 45 C.F.R. § 164.316. Business Associate shall maintain a comprehensive written information privacy and security program that includes administrative, technical, and physical safeguards appropriate to the size and complexity of the Business Associate's operations and the nature and scope of its activities.

- 7.2.2. Business Associate shall, at a minimum, utilize a National Institute of Standards and Technology Special Publication (NIST SP) 800-53 compliant security framework when selecting and implementing its security controls, and shall maintain continuous compliance with NIST SP 800-53 as it may be updated from time to time.
- 7.2.3. Business Associate shall employ FIPS 140-3 compliant encryption of PHI at rest and in motion unless Business Associate determines it is not reasonable and appropriate to do so based upon a risk assessment, and equivalent alternative measures are in place and documented as such. Business Associate shall maintain, at a minimum, the most current industry standards for transmission and storage of PHI and other Confidential Information, including, but not limited to, encryption of all workstations, laptops, and removable media devices containing PHI and data transmissions of PHI.
- 7.2.4. Business Associate shall apply security patches and upgrades, and keep virus software up-to-date, on all systems on which PHI and other Confidential Information may be used.
- 7.2.5. Business Associate shall ensure that all members of its workforce with access to PHI and/or other Confidential Information sign a confidentiality statement prior to access to such data. The statement must be renewed annually.
- 7.2.6. Business Associate shall identify the security official who is responsible for the development and implementation of the policies and procedures required by 45 C.F.R. Part 164, Subpart C.

7.3. **Minimum Necessary.** With respect to any permitted Use, Disclosure, or request of PHI under this Agreement, Business Associate shall make reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purpose of such Use, Disclosure, or request respectively, as specified in 45 C.F.R. § 164.502(b).

7.4. **Business Associate's Agent.** Business Associate shall ensure that any agents, subcontractors, sub awardees, vendors or others (collectively, "**Agents**") that Use or Disclose PHI and/or Confidential Information on behalf of Business Associate agree through a written agreement to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such PHI and/or Confidential Information.

8. **Mitigation of Harmful Effects.** Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or disclosure of PHI and other Confidential Information in violation of the requirements of this Agreement.

9. **Access to PHI.** Except as otherwise provided in Section 9.1 below, Business Associate shall, to the extent CalOptima determines that any PHI constitutes a Designated Record Set, make the PHI

specified by CalOptima available to the Individual(s) identified by CalOptima as being entitled to access and copy that PHI. Business Associate shall provide such access for inspection of that PHI within fifteen (15) calendar days after receipt of request from CalOptima. Business Associate shall also provide copies of that PHI ten (10) calendar days after receipt of request from CalOptima. If Business Associate maintains an Electronic Health Record with PHI and an Individual requests a copy of such information in electronic format, Business Associate shall make such information available in that format as required under the HITECH Act and 45 C.F.R. § 164.524.

- 9.1. **Business Associate of CalOptima PACE.** This Section applies when Business Associate is a business associate of CalOptima in CalOptima’s capacity as a health care provider through CalOptima Program of All-Inclusive Care for the Elderly (“**CalOptima PACE**”). Business Associate shall, to the extent CalOptima determines that any PHI constitutes a Designated Record Set or patient records (as defined in California Health and Safety Code § 123105), make the PHI specified by CalOptima available to the Individual(s) identified by CalOptima as being entitled to access and copy that PHI. To enable compliance with California Health & Safety Code § 123110 and 45 C.F.R. § 164.524, Business Associate shall provide such access for inspection of that PHI within three (3) working days after receipt of request from CalOptima. Business Associate shall also provide copies of that PHI ten (10) calendar days after receipt of request from CalOptima.
10. **Amendment of PHI.** Business Associate shall, to the extent CalOptima determines that any PHI constitutes a Designated Record Set, make PHI available for amendment and incorporate any amendments to PHI in accordance with 45 C.F.R. § 164.526, as requested by CalOptima in the time and manner designated by CalOptima.
11. **Accounting of Disclosures.** Business Associate shall document and make available to CalOptima or (at the direction of CalOptima) to an Individual such disclosures of PHI and information related to such disclosures as necessary to respond to a proper request by the subject Individual for an accounting of disclosures of PHI in accordance with HIPAA, the HITECH Act and implementing regulations, including 45 C.F.R. § 164.528. Unless directed by CalOptima to make available to an Individual, Business Associate shall provide to CalOptima, within thirty (30) calendar days after receipt of request from CalOptima, information collected in accordance with this Section 11 to permit CalOptima to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. Any accounting provided by Business Associate under this Section shall include:
  - 11.1. The date of the disclosure;
  - 11.2. The name, and address if known, of the entity or person who received the PHI;
  - 11.3. A brief description of the PHI disclosed; and
  - 11.4. A brief statement of the purpose of the disclosure.

For each Disclosure that could require an accounting under this Section, Business Associate shall document the information enumerated above, and shall securely maintain the information for six (6) years from the date of the Disclosure.

12. **Compliance with HITECH Act.** Business Associate shall comply with the requirements of Title XIII, Subtitle D, of the HITECH Act, which are applicable to business associates, and shall comply with the regulations promulgated thereunder.
13. **Compliance with Obligations of CalOptima or DHCS.** To the extent Business Associate is to carry out an obligation of CalOptima or the California Department of Healthcare Services (“**DHCS**”) under

45 C.F.R. Part 164, Subpart E, Business Associate shall comply with the requirements of such Subpart E that apply to CalOptima or DHCS, as applicable, in the performance of such obligation.

14. **Access to Practices, Books and Records.** Business Associate shall make its internal practices, books, and records relating to the Use and disclosure of PHI on behalf of CalOptima available to CalOptima upon reasonable request, and to the DHCS and the Secretary for purposes of determining CalOptima's compliance with 45 C.F.R. Part 164, Subpart E. Business Associate also agrees to make its internal practices, books and records relating to the Use and Disclosure of PHI on behalf of CalOptima available to DHCS, CalOptima, and the Secretary for purposes of determining Business Associate's compliance with applicable requirements of HIPAA, the HITECH Act, CMIA, and implementing regulations. Business Associate shall immediately notify CalOptima of any requests made by DHCS or the Secretary and provide CalOptima with copies of any documents produced in response to such request.
15. **Return or Destroy PHI on Termination; Survival.** At termination of this Agreement, if feasible, Business Associate shall return to CalOptima or, if agreed to by CalOptima, destroy all PHI and other Confidential Information received from, or created or received by Business Associate on behalf of, CalOptima that Business Associate or its Agents still maintains in any form, and shall retain no copies of such information. If CalOptima elects destruction of PHI and/or other Confidential Information, Business Associate shall ensure such information is destroyed in accordance with the destruction methods specified in Sections 15.1 and 15.2 below and shall certify in writing to CalOptima that such information has been destroyed accordingly. If return or destruction is not feasible, Business Associate shall notify CalOptima of the conditions that make the return or destruction infeasible. Subject to the approval of CalOptima's regulator(s) if necessary, if such return or destruction is not feasible, CalOptima shall determine the terms and conditions under which Business Associate may retain the PHI. Business Associate shall also extend the protections of this Agreement to the information and limit further Uses and Disclosures to those purposes that make the return or destruction of the information infeasible.
  - 15.1 **Data Destruction.** Data destruction methods for CalOptima PHI or Confidential Information must conform to the NIST Special Publication 800-88. Other methods require prior written permission of CalOptima and, if necessary, CalOptima's regulator(s).
  - 15.2 **Destruction of Hard Copy Confidential Data.** CalOptima PHI or Confidential Information in hard copy form must be disposed of through confidential means, such as cross cut shredding and pulverizing.
16. **Special Provision for SSA Data.** If Business Associate receives data from or on behalf of CalOptima that was verified by or provided by the Social Security Administration ("**SSA Data**") and is subject to an agreement between DHCS and SSA, Business Associate shall provide, upon request by CalOptima, a list of all employees and Agents and employees who have access to such SSA Data, including employees and Agents of its Agents, to CalOptima.
17. **Breaches and Security Incidents.** Business Associate shall implement reasonable systems for the discovery and prompt reporting of any Breach or Security Incident, and take the following steps:
  - 17.1. **Notice to CalOptima**
    - 17.1.1. **Immediate Notice.** Business Associate shall notify CalOptima immediately upon the discovery of a suspected Breach or Security Incident that involves SSA Data. This notification will be provided by email upon discovery of the Breach. If Business Associate is unable to provide notification by email, then Business Associate shall provide notice by telephone to CalOptima.

- 17.1.2. **24-Hour Notice.** Business Associate shall notify CalOptima within 24 hours by email (or by telephone if Business Associate is unable to email CalOptima) of the discovery of the following, unless attributable to a treatment provider that is not acting as a business associate of Business Associate:
  - 17.1.2.1. Unsecured PHI if the PHI is reasonably believed to have been accessed or acquired by an unauthorized person;
  - 17.1.2.2. Any suspected Security Incident which risks unauthorized access to PHI and/or other Confidential Information;
  - 17.1.2.3. Any intrusion or unauthorized access, Use or Disclosure of PHI in violation of this Agreement; or
  - 17.1.2.4. Potential loss of confidential data affecting this Agreement.
- 17.1.3. Notice shall be provided to the CalOptima Privacy Officer (“**CalOptima Contact**”) using the CalOptima Contact Information at Section 17.7 below. Such notification by Business Associate shall comply with CalOptima’s form and content requirements for reporting privacy incident and shall include all information known at the time the incident is reported.
- 17.2. **Required Actions.** Upon discovery of a Breach or suspected Security Incident, intrusion or unauthorized access, use or disclosure of PHI, Business Associate shall take:
  - 17.2.1. Prompt action to mitigate any risks or damages involved with the Security Incident or Breach;
  - 17.2.2. Any action pertaining to such unauthorized disclosure required by applicable federal and state law; and
  - 17.2.3. Any corrective actions required by CalOptima or CalOptima’s regulator(s).
- 17.3. **Investigation.** Business Associate shall immediately investigate such Security Incident or confidential Breach. Business Associate shall comply with CalOptima’s additional form and content requirements for reporting such privacy incident.
  - 17.3.1. Incident details including the date of the incident and when it was discovered;
  - 17.3.2. The identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been accessed, acquired, used or disclosed during the Breach;
  - 17.3.3. The nature of the data elements involved and the extent of the data involved in the Breach;
  - 17.3.4. A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed PHI or confidential data;
  - 17.3.5. A description of where the PHI or confidential data is believed to have been improperly transmitted, sent, or utilized;

- 17.3.6. A description of the probable causes of the improper Use or Disclosure;
  - 17.3.7. Any other available information that the Business Associate is required to include in notification to the Individual under 45 C.F.R. § 164.404(c);
  - 17.3.8. Whether the PHI or confidential data that is the subject of the Security Incident, Breach, or unauthorized Use or Disclosure of PHI or confidential data included Unsecured PHI;
  - 17.3.9. Whether a law enforcement official has requested a delay in notification of Individuals of the Security Incident, Breach, or unauthorized Use or Disclosure of PHI or Confidential Information because such notification would impede a criminal investigation or damage national security and whether such notice is in writing; and
  - 17.3.10. Whether Section 13402 of the HITECH Act (codified at 42 U.S.C. § 17932), California Civil Code §§ 1798.29 or 1798.82, or any other federal or state laws requiring individual notifications of breaches are triggered.
- 17.4. **Complete Report.** Business Associate shall provide a complete written report of the investigation (“Final Report”) to the CalOptima Contact within seven (7) working days of the discovery of the Security Incident or Breach. Business Associate shall comply with CalOptima’s additional form and content requirements for reporting of such privacy incident.
- 17.4.1. The Final Report shall provide a comprehensive discussion of the matters identified in Section 17.3 above and the following:
    - 17.4.1.1. An assessment of all known factors relevant to a determination of whether a Breach occurred under HIPAA and other applicable federal and state laws;
    - 17.4.1.2. A full, detailed corrective action plan describing how Business Associate will prevent reoccurrence of the incident in the future, including its implementation date and information on mitigation measures taken to halt and/or contain the improper Use or Disclosure and to reduce the harmful effects of the Breach. All corrective actions are subject to the approval of CalOptima and CalOptima’s regulator(s), as applicable; and
    - 17.4.1.3. The potential impacts of the incident, such as potential misuse of data and identity theft.
  - 17.4.2. If CalOptima or CalOptima’s regulator(s) requests additional information, Business Associate shall make reasonable efforts to provide CalOptima with such information. A supplemental written report may be used to submit revised or additional information after the Final Report is submitted.
  - 17.4.3. CalOptima and CalOptima’s regulator(s), as applicable, will review and approve or disapprove Business Associate’s determination of whether a Breach occurred, whether the Security Incident or Breach is reportable to the appropriate entities, if individual notifications are required, and Business Associate’s corrective

action plan.

- 17.4.4. **New Submission Timeframe.** If Business Associate does not complete a Final Report within the seven (7) working day timeframe specified in Section 17.4 above, Business Associate shall request approval from CalOptima within the seven (7) working day timeframe of a new submission timeframe for the Final Report. Business Associate acknowledges that a new submission timeframe requires the approval of CalOptima and, if necessary, CalOptima's regulator(s).
- 17.5. **Notification of Individuals.** If the cause of a Breach is attributable to Business Associate or its Agents, other than when attributable to a treatment provider that is not acting as a business associate of Business Associate, Business Associate shall notify Individuals accordingly and pay all costs of such notifications, as well as costs associated with the Breach. The notifications shall comply with applicable federal and state law. All such notifications shall be coordinated with CalOptima. CalOptima and CalOptima regulator(s), as applicable, shall approve the time, manner and content of any such notifications. Business Associate acknowledges that such review and approval by CalOptima and CalOptima regulator(s), as applicable, must be obtained before the notifications are made.
- 17.6. **Responsibility for Reporting of Breaches to Entities Other than CalOptima.** If the cause of a Breach of PHI is attributable to Business Associate or its Agents, other than when attributable to a treatment provider that is not acting as a business associate of Business Associate, Business Associate agrees that CalOptima shall make all required reporting of the Breach as required by applicable federal and state law, including any required notifications to media outlets, the Secretary, and other government agency/regulator.
- 17.7. **CalOptima Contact Information.** To direct communications to CalOptima Privacy Officer, the Business Associate shall initiate contact as indicated here. CalOptima reserves the right to make changes to the contact information below by giving written notice to Business Associate. These changes shall not require an amendment to this Agreement.

**CalOptima Privacy Office**

Privacy Officer  
c/o: Office of Compliance  
CalOptima  
505 City Parkway West  
Orange, CA 92868

Email: [privacy@caloptima.org](mailto:privacy@caloptima.org)

Telephone: (714) 246-8400 (ask the operator to connect to Privacy Officer)

**18. Responsibilities of CalOptima**

- 18.1 CalOptima agrees to not request the Business Associate to Use or Disclose PHI in any manner that would not be permissible under HIPAA and/or other applicable federal and/or state law.
- 18.2 **Notification of SSA Data.** CalOptima shall notify Business Associate if Business Associate receives data that is SSA Data from or on behalf of CalOptima.
19. **Indemnification.** Business Associate will immediately indemnify and pay CalOptima for and hold it harmless from (i) any and all fees and expenses CalOptima incurs in investigating, responding to,

and/or mitigating a Breach of PHI or Confidential Information caused by Business Associate or its Agents; (ii) any damages, attorneys' fees, costs, liabilities or other sums actually incurred by CalOptima due to a claim, lawsuit, or demand by a third party arising out of a Breach of PHI or Confidential Information caused by Business Associate or its Agents; and/or (iii) for fines, assessments and/or civil penalties assessed or imposed against CalOptima by any government agency/regulator based on a Breach of PHI or Confidential Information caused by Business Associate or its Agents. Such fees and expenses may include, without limitation, attorneys' fees and costs and costs for computer security consultants, credit reporting agency services, postal or other delivery charges, notifications of Breach to Individuals and regulators, and required reporting of Breach. Acceptance by CalOptima of any insurance certificates and endorsements required under the Service Agreement(s) does not relieve Business Associate from liability under this indemnification provision. This provision shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply.

## 20. **Audits, Inspection and Enforcement**

- 20.1. From time to time, CalOptima and/or CalOptima's regulator(s) may inspect the facilities, systems, books and records of Business Associate to monitor compliance with this Agreement. Business Associate shall promptly remedy any violation of this Agreement and shall certify the same to the CalOptima Privacy Officer in writing. Whether or how CalOptima or CalOptima's regulator(s) exercises this provision shall not in any respect relieve Business Associate of its responsibility to comply with this Agreement.
- 20.2. If Business Associate is the subject of an audit, compliance review, investigation or any proceeding that is related to the performance of its obligations pursuant to this Agreement, or is the subject of any judicial or administrative proceeding alleging a violation of HIPAA, Business Associate shall promptly notify CalOptima unless it is legally prohibited from doing so.

## 21. **Term and Termination**

- 21.1 **Term.** This exhibit is effective as of the Effective Date and shall terminate when (i) the Services Agreement terminates, (ii) in accordance with this Section 21, or (iii) when all of the PHI provided by CalOptima to Business Associate, or created or received by Business Associate on behalf of CalOptima, is destroyed or returned to CalOptima, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in Section 15.
- 21.2 **Termination for Cause.** Upon CalOptima's knowledge of a violation of this Agreement by Business Associate, CalOptima may in its discretion:
  - 21.2.1. Provide an opportunity for Business Associate to cure the violation and terminate this Agreement if Business Associate does not do so within the time specified by CalOptima; or
  - 21.2.2. Terminate this Agreement if Business Associate has violated a material term of this Agreement.
- 21.3 **Judicial or Administrative Proceedings.** CalOptima may terminate this Agreement if Business Associate is found to have violated HIPAA, or stipulates or consents to any such conclusion, in any judicial or administrative proceeding.

## 22. Miscellaneous Provisions

- 22.1. **Disclaimer.** CalOptima makes no warranty or representation that compliance by Business Associate with this Agreement will satisfy Business Associate's business needs or compliance obligations. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI and other Confidential Information.
- 22.2. **Amendment**
- 22.2.1. Any provision of this Agreement which is in conflict with current or future applicable federal or state laws is hereby amended to conform to the provisions of those laws. Such amendment of this Agreement shall be effective on the effective date of the laws necessitating it, and shall be binding on the parties even though such amendment may not have been reduced to writing and formally agreed upon and executed by the parties.
- 22.2.2. In addition to automatic amendments under Section 22.2.1, CalOptima reserves the right to amend the Agreement at any time when such modifications are necessary to comply with changes in (i) applicable laws, (ii) CalOptima's contracts with government regulators, or (iii) in any requirements and conditions with which CalOptima must comply pursuant to its federally-approved Section 1915(b) waiver ("**Regulatory Change**"). CalOptima shall promptly notify Business Associate in writing of such Regulatory Changes in accordance with applicable federal and/or State requirements, and Business Associate shall comply with the new Regulatory Change requirements within thirty (30) days of the effective date of the Regulatory Change, unless otherwise instructed by a CalOptima government regulator.
- 22.2.3 Failure by Business Associate to take necessary actions required by amendments to this Agreement under Section 22.2.1 or 22.2.2 shall constitute a material violation of this Agreement.
- 22.3. **Assistance in Litigation or Administrative Proceedings.** Business Associate shall make itself and its employees and Agents available to CalOptima or CalOptima's regulator(s) at no cost to CalOptima or CalOptima's regulator(s), as applicable, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CalOptima or CalOptima's regulator(s), their respective directors, officers and/or employees based upon claimed violation of HIPAA, which involve inactions or actions by the Business Associate.
- 22.4. **No Third-Party Beneficiaries.** Nothing in this Agreement is intended to or shall confer, upon any third person any rights or remedies whatsoever.
- 22.5. **Interpretation.** The terms and conditions in this Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA and other applicable laws.
- 22.6. **No Waiver of Obligations.** No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.
- 22.7. **Statutory or Regulatory Reference.** Any reference to statutory or regulatory language in

this Agreement shall be to such language as in effect or as amended.

- 22.8. **Injunctive Relief.** Notwithstanding any rights or remedies provided in this Agreement, CalOptima retains all rights to seek injunctive relief to prevent or stop the unauthorized Use or Disclosure of PHI or Confidential Information by Business Associate or any agent, subcontractor, employee or third party that received PHI or Confidential Information, and Business Associate agrees that CalOptima may seek injunctive relief under this section without any requirement to prove actual monetary damage or post a bond or other security.
- 22.9 **Monitoring.** As applicable, Business Associate shall comply with monitoring requirements of CalOptima's contracts with regulator(s) or any other monitoring requests by CalOptima's regulator(s).