

Solicitation 25-017

Star Analytics Software

Bid Designation: Public



CalOptima

Bid 25-017

Star Analytics Software

Bid Number **25-017**
Bid Title **Star Analytics Software**

Bid Start Date **Oct 11, 2024 2:06:31 PM PDT**
Bid End Date **Dec 5, 2024 3:00:00 PM PST**
Question & Answer End Date **Nov 1, 2024 2:00:00 PM PDT**

Bid Contact **Lisa Ha**
657-900-1367
lisaha@caloptima.org

Contract Duration **One Time Purchase**
Contract Renewal **3 annual renewals**
Prices Good for **365 days**

Bid Comments **Please see attached documents.**

Item Response Form

Item **25-017-01-01 - 25-017 - Star Analytics Software**
Quantity **1 each**
Prices are not requested for this item.
Delivery Location **CalOptima**
City Parkway
505 City Parkway West
Orange CA 92868
Qty 1

Description
Please see attached documents

CalOptima
ATTACHMENT 5
REQUEST TO NEGOTIATE CONTRACT TERMS

RFP 25-017 - Star Analytics Software

This document must be completely filled out if Offeror is proposing contract changes.

Contract Section No.	Contract Page No.	Current Language	Proposed Language Change	Rationale for the Request	CalOptima Decision
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CONTRACT NO. «Contract Number» (“Contract”)
BETWEEN
ORANGE COUNTY HEALTH AUTHORITY, A PUBLIC AGENCY, dba
ORANGE PREVENTION & TREATMENT INTEGRATED MEDICAL ASSISTANCE, dba
CALOPTIMA HEALTH (“CalOptima”)
And
«Company Name»
 (“Contractor”)

This Contract is made and entered into as of [insert date] (“Effective Date”), by and between the Orange County Health Authority, a public agency dba CalOptima Health, (“CalOptima”) and «Company Name», a «Business Entity», hereinafter referred to as “Contractor.” CalOptima and Contractor may be referred to herein collectively as the “Parties” or each individually as a “Party.”

RECITALS

- A. CalOptima desires to retain a contractor to provide «Description», as described in the Scope of Work in Exhibit A;
- B. Contractor provides such services;
- C. Contractor represents and warrants that it has the requisite personnel and experience and is capable of performing such services;
- D. Contractor desires to perform these services for CalOptima; and
- E. CalOptima and Contractor desire to enter into this Contract on the terms and conditions set forth herein below.

NOW, THEREFORE, in consideration of their mutual and respective promises, and subject to the terms and conditions hereinafter set forth, the Parties agree as follows:

1. Documents Constituting Contract. “Contract Documents” include the following documents in the order of descending precedence: (i) this Contract, inclusive of all its exhibits and addenda; (ii) CalOptima’s Request for Proposals 25-017 (“RFP”), if applicable, inclusive of any CalOptima revisions and addenda prior to the Effective Date; (iii) Contractor’s best and final offer dated Insert Date of Best and Final Offer, if applicable, and; (iv) Contractor’s proposal dated Insert Date Contractor’s Response to RFP (“Proposal”). Any new terms and conditions attached to Contractor’s best and final offer, Proposal, invoices, or request for payment shall not be incorporated into the Contract Documents or be binding upon CalOptima unless expressly accepted by CalOptima in writing. All Contract Documents are incorporated into this Contract by this reference. Any changes to the Contract or the Contract Documents shall not be binding upon CalOptima except when specifically confirmed in writing by an authorized representative of CalOptima in accordance with Section 10, of this Contract. In the event of any conflict of provisions among the Contract and/or Contract Documents, the provisions shall prevail in the above-referenced descending order of precedence.
2. Scope of Work.
 - 2.1 Contractor shall perform the work in accordance with (i) this Contract, including the Scope of Work in Exhibit A, (ii) the Contract Documents, (iii) the applicable standards and requirements of the Centers for Medicare and Medicaid Services (“CMS”), the California Department of Health Care Services (“DHCS”), and the California Department of Managed Health Care (“DMHC”), and (iv) all applicable laws.

3. Insurance.

3.1 At Contractor's sole expense and prior to undertaking performance of services under this Contract and at all times during performance hereunder, Contractor shall maintain insurance policies and amounts set forth in Exhibit A, which shall be full-coverage insurance not subject to self-insurance provisions, in accordance with applicable laws and industry standards. Contractor shall not of its own initiative cause such insurance to be canceled or materially changed during the Term.

3.2 Within five (5) days of the Effective Date and prior to commencing performance of any services or its receipt of any compensation under the Contract, Contractor shall furnish to CalOptima with additional insured endorsements broker-issued Certificate(s) of Insurance showing the required insurance coverages for Contractor. Contractor's Certificates of Insurance shall additionally comply with the following:

3.2.1 CalOptima's officers, officials, directors, employees, agents, and volunteers are to be covered as additional insureds with respect to liability arising out of work or operations performed by or on behalf of Contractor, including materials, parts, or equipment furnished in connection with such work or operations. This provision applies to Contractor's General Liability policy, as applicable, and must be on ISO form CG 20 10 or equivalent.

3.2.2 For any claims related to this Contract, the Contractor's insurance coverage shall be primary insurance with respect to CalOptima, its officers, officials, directors, employees, agents, and volunteers. This provision applies to the Contractor's General Liability and Workers' Compensation and Employers' Liability policies, as applicable.

3.2.3 Contractor's insurance carrier agrees to waive all rights of subrogation against CalOptima and its elected or appointed officers, officials, directors, agents, and employees for losses paid under the terms of any policy which arise from work performed by the Contractor for CalOptima. This provision applies to the Contractor's General Liability and Workers' Compensation and Employers Liability policies.

3.2.4 Insurance is to be placed with insurers with a current A.M. Best rating of no less than A-VII, unless otherwise acceptable to CalOptima.

3.2.5 Contractor shall furnish CalOptima with original certificates and amendatory endorsements affecting coverage required by this Section 3.2 and Exhibit A. CalOptima reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications, at any time.

3.2.6 Any deductibles or self-insured retentions must be declared to and approved by CalOptima. CalOptima may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention or deductible.

3.2.7 All deductibles and retentions that the aforementioned policies contain are the responsibility of the Contractor and in no way shall CalOptima be responsible for payment of the deductibles/retentions.

3.2.8 If Contractor maintains higher limits than the minimums required in this Contract, CalOptima requires and shall be entitled to coverage for the higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to CalOptima.

3.2.9 Require the insurance carrier to provide thirty (30) days' prior written notice of cancellation to CalOptima.

3.3 If Contractor fails or refuses to maintain or produce proof of the insurance required by this Section 3 and Exhibit A, CalOptima may terminate this Contract upon written notice to Contractor. Such termination shall not affect Contractor's right to be paid for its time and materials expended prior to notification of termination. Contractor waives the right to receive compensation and agrees to indemnify CalOptima for any work performed prior to approval of insurance by CalOptima

3.4 The requirement for carrying the required insurance shall not derogate from the provisions for indemnification of CalOptima.

3.5 Contractor shall require each of its subcontractors who perform services related to this Contract, if any, to maintain insurance coverage that meets all of the requirements set forth in this Contract.

3.6 **"Occurrence"** means any event or related exposure to conditions that result in bodily injury or property damage.

4. Indemnification.

4.1 To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless CalOptima and its respective officers, directors, agents, volunteers, consultants and employees (individually and collectively referred to as "**Indemnified Parties**") against any and all claims, losses, demands, damages, costs, expenses, or liability arising out Contractor's, or its officers, employees, subcontractors, agents, or representatives', breach of this Contract, negligence, recklessness, or intentional conduct, except to the extent any such loss was caused by the gross negligence, recklessness, or intentional misconduct of CalOptima. Contractor shall defend the Indemnified Parties in any claim or action based upon any such alleged acts or omissions at its sole expense, which shall include all costs and fees, including attorneys' fees, cost of investigation, defense, and settlement or awards. CalOptima may make all reasonable decisions with respect to its representation in any legal proceeding. Contractor's duty to defend herein is wholly independent of and separate from the duty to indemnify and such duty to defend shall exist regardless of any ultimate liability of Contractor, save and except claims arising through the sole negligence or sole willful misconduct of CalOptima.

4.2 Contractor's obligation to indemnify hereunder is in addition to any liability Contractor may have to CalOptima for a breach by Contractor of any of the provisions of this Contract. Under no circumstances shall the insurance requirements and limits set forth in this Contract be construed to limit Contractor's indemnification and duty to defend obligation or other liability hereunder

4.3 Contractor's indemnification and duty to defend obligations shall survive the expiration or earlier termination of this Contract until such time as any action against the Indemnified Parties for such a matter indemnified hereunder is fully and finally barred by the applicable statute of limitations, including those set forth under the California Government Claims Act (Cal. Gov. Code §900 *et seq.*).

4.4 In the event of any conflict between this Section 4 and the indemnification provisions set forth elsewhere in the Contract, including any business associate agreement ("**BAA**") between the Parties, the indemnification provision(s) in the BAA or elsewhere in the Contract shall be interpreted to relate only to matters within the scope of the BAA or those other Contract provisions.

4.5 The terms of this Section 4 shall survive the termination of this Contract.

5. **Independent Contractor.** CalOptima and Contractor agree that Contractor, which shall include for purposes of this Section 5 all subcontractors, agents, and employees of the Contractor, in performance of this Contract, shall act in an independent capacity, and not as officers or employees of CalOptima. Contractor's relationship with CalOptima in the performance of this Contract is that of an independent contractor and nothing in this Contract shall be construed as creating a partnership, joint venture, or agency. Contractor's personnel performing services under this Contract shall be at all times under Contractor's exclusive direction and control and shall be employees of Contractor and not employees of CalOptima. Contractor shall pay all wages, salaries and other amounts due its employees, agents, and/or subcontractors in connection with this Contract and shall be responsible for all reports and obligations respecting them, such as social security, state and federal income tax withholding, other payroll taxes, unemployment compensation, workers' compensation, and similar matters. Contractor shall file all required returns related to such taxes, contributions, and payroll deductions.

6. **Personnel.**

- 6.1 **Contractor Staffing.** Contractor shall ensure that only fully qualified Contractor personnel are assigned to perform the services under the Contract, and such Contractor personnel shall perform services diligently and in a timely manner, according to the applicable professional and technical standards.
- 6.2 **Contractor Personnel Restrictions.** When on CalOptima's premises, Contractor personnel shall comply with CalOptima policies and procedures, including CalOptima's identification requirements (e.g., name badges).
- 6.3 Any CalOptima property damaged by Contractor, its subcontractor(s), or by the personnel of either, will be subject to repair or replacement by Contractor at no cost to CalOptima.
- 6.4 Neither Party shall actively solicit employees of the other Party for employment that directly or indirectly provided services under the Contract during the Term and for a period of one (1) year after termination.

7. **Compensation.**

- 7.1 CalOptima agrees to pay, and Contractor agrees to accept as full compensation for the faithful performance of this Contract, the rates, charges, and other payment terms identified in Exhibit B.
- 7.2 CalOptima will not reimburse Contractor any expenses incurred in connection with its performance of the services, unless such reimbursement is specifically authorized in Exhibit B. Each expense reimbursement request, when authorized in Exhibit B must include receipts or other suitable documentation.
- 7.3 Contractor's requests for payments and reimbursements must comply with the requirements set forth in Exhibit B. CalOptima will not make payment for work that fails to meet the standards of performance set forth in the Contract, including in Exhibit A. **CALOPTIMA SHALL NOT PAY ANY FEES, EXPENSES, OR COSTS WHATSOEVER INCURRED BY Contractor IN RENDERING ADDITIONAL SERVICES NOT AUTHORIZED IN WRITING BY CALOPTIMA UNDER THIS CONTRACT.**
- 7.4 In no event shall the total compensation payable to Contractor for the services performed under this Contract exceed the maximum cumulative payment obligation, as set forth in Exhibit B, without the express prior written authorization of CalOptima. **Contractor ACKNOWLEDGES AND AGREES THAT CALOPTIMA SHALL NOT BE LIABLE FOR ANY FEES, EXPENSES OR COMPENSATION IN EXCESS OF THE MAXIMUM CUMULATIVE PAYMENT OBLIGATION.**

7.5 The maximum cumulative payment obligation includes all applicable federal, state, and local taxes and duties, except sales tax, which is shown separately, if applicable. Contractor is responsible for submitting any withholding exemption forms (e.g., W-9) to CalOptima. Such forms and information should be furnished to CalOptima before payment is made. If taxes are required to be withheld on any amounts otherwise to be paid by CalOptima to Contractor due to Contractor's failure to timely submit such forms, CalOptima will deduct such taxes from the amount otherwise owed and pay them to the appropriate taxing authority and shall have no liability for or any obligation to refund any payments withheld.

8. Confidential Material.

8.1 During the Term, either Party may have access to confidential material or information ("Confidential Information") belonging to the other Party or the other Party's customers, vendors, or partners. Confidential Information includes the disclosing Party's computer programs and codes, business plans, customer/member lists and information, financial records, partnership arrangements, projections, methodologies, data, reports, agreements, intellectual property, trade secrets, licensing plans, and other proprietary information, or other information, materials, records, writings or data that is marked confidential or that due to its character and nature, a reasonable person under like circumstances would treat as confidential. CalOptima's Confidential Information also includes all user information, patient information, and clinical data that comes into CalOptima's possession, custody or control. Confidential Information will be used only for the purposes of this Contract and related internal administrative purposes. Each Party agrees to protect the other's Confidential Information at all times and in the same manner as each protects the confidentiality of its own confidential materials, but in no event with less than a reasonable standard of care.

8.2 For the purposes of Section 8.1, Confidential Information does not include information which: (i) is already known to the other Party at the time of disclosure; (ii) is or becomes publicly known through no wrongful act or failure of the receiving Party; (iii) is independently developed without use or benefit of the other Party's Confidential Information or proprietary information; (iv) is lawfully received from a third party that is not under and does not thereby breach an obligation of confidentiality; or (v) is a public record, not exempt from disclosure, pursuant to California Public Records Act, Government Code Section 6250 *et seq.*, applicable provisions of California Welfare and Institutions Code, or other state or federal laws, regardless of whether such information is marked as confidential or proprietary.

8.3 Disclosure of the Confidential Information will be restricted to the receiving Party's employees, consultants, suppliers, or agents, who are bound by confidentiality obligations no less stringent than those in this Section 8, on a "need to know" basis in connection with the services performed under this Contract. The receiving Party may disclose Confidential Information pursuant to legal, judicial, or administrative proceeding or otherwise as required by law; provided, however, that the receiving Party gives reasonable prior notice, if not prohibited by applicable law, to the disclosing Party and assists the disclosing Party, at the disclosing Party's expense, to obtain protective or other appropriate confidentiality orders, and further provided that a required disclosure of Confidential Information or proprietary information to an agency or court does not relieve the receiving Party of its confidentiality obligations with respect to the other Party.

8.4 Contractor shall establish and maintain environmental, safety, and facility procedures, data security procedures and other safeguards against the unauthorized access, destruction, loss, or alteration of CalOptima's Confidential Information in the possession, custody, or control of Contractor. Those security procedures and other safeguards shall be no less rigorous than those maintained by Contractor for its own information of a similar nature.

8.5 Upon written request of the disclosing Party, the receiving Party shall promptly return to the disclosing Party or destroy all documents, notes, and other tangible materials representing the disclosing Party's Confidential Information and all copies thereof. This obligation to return

materials or copies thereof does not extend to automatically generated computer backup or archival copies generated in the ordinary course of the receiving Party's information systems procedures, provided that the receiving Party shall make no further use of such copies.

- 8.6 If a breach of the obligations under this Section 8 occurs, the injured Party may be entitled to such injunctive relief and any and all other remedies available at law or in equity. This Section 8 in no way limits the liability or damages that may be assessed against a Party if another Party breaches any of the provisions of this Section 8.
- 8.7 For the purposes of Section 8.6 only, Confidential Information does not include protected health information ("PHI") or individually identifiable information, as defined by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and other privacy statutes or regulations. The access use and disclosure of PHI shall be governed by a BAA, which is Exhibit H to this Contract.
9. California Public Records Act. As a local public agency, CalOptima is subject to the California Public Records Act (California Government Code Sections 6250 *et seq.*) (the "PRA"). Contractor hereby acknowledges that any materials, documents, data, or similar items are subject to disclosure upon public request, unless exempt from disclosure under the provisions of the PRA. CalOptima may be required to reveal certain information pursuant to the PRA believed to be proprietary or confidential by Contractor. If Contractor discloses information that it believes to be proprietary or confidential to CalOptima, it shall mark such information as "Confidential," "Proprietary," or "Restricted" or other similar marking. Unless Contractor marks its materials as "Confidential," "Proprietary," or "Restricted," and also notifies CalOptima in writing that Contractor has so marked each piece of material, then CalOptima will not be responsible to take any actions to protect any Contractor's materials under the PRA that are not so marked. If CalOptima receives a request under the PRA that potentially encompasses Contractor materials that have been properly marked, CalOptima will provide Contractor with notice thereof to allow Contractor to take actions it deems appropriate to prevent disclosure of the marked material. Within five (5) days from receipt of CalOptima's notice, Contractor shall notify CalOptima if it intends to object to production of Contractor's information; otherwise CalOptima will respond to the PRA request according to the requirements of the PRA. Contractor agrees to defend, indemnify, and hold harmless CalOptima, its officers, agents, employees, members, subsidiaries, joint venture partners, and predecessors and successors in interest from and against any claim, action, proceeding, liability, loss, damage, cost, or expense, including attorneys' fees, and any costs awarded to the person or entity that sought Contractor's marked material, arising out of or related to CalOptima's failure to produce or provide the Contractor-marked material (collectively referred to for purposes of this Section 9 as "**Public Records Act Claim(s)**"). Contractor shall pay to CalOptima any expenses or charges relating to or arising from any such Public Record Act Claim(s) as they are incurred by CalOptima.
10. Modifications. CalOptima may modify the Contract upon written notice to Contractor at any time should such modification be required by CMS, DHCS, the DMHC, or applicable law or regulation ("Regulatory Amendment"). Any other modifications of the Contract that are not Regulatory Amendments shall be executed only by a written amendment to the Contract, signed by CalOptima and Contractor. Execution of amendments shall be contingent upon Contractor's notification to CalOptima, and CalOptima's approval, of any increase or decrease in the price of this Contract or in the time required for Contractor's performance.
11. Assignments.
 - 11.1 Contractor may not assign, transfer, or delegate any interest herein, either in whole or in part, without the prior written consent of CalOptima, which consent may be withheld in its sole discretion. If CalOptima provides such prior written consent, Contractor acknowledges and agrees that such assignment, transfer, or delegation may additionally be subject to the prior written approval of DHCS. Any assignment, transfer, or delegation made without CalOptima's express written consent shall be void.

11.2 For purposes of this Section 11, an assignment is: (1) the change of more than fifty percent (50%) of the ownership or equity interest in Contractor (whether in a single transaction or in a series of transactions); (2) the change of more than fifty percent (50%) of the directors or trustees of Contractor (whether in a single transaction or in a series of transactions); (3) the merger, reorganization, or consolidation of Contractor with another entity with respect to which Contractor is not the surviving entity; and/or (4) a change in the management of Contractor from management by persons appointed, elected or otherwise selected by the governing body of Contractor (e.g., the Board of Directors) to a third-party management person, company, group, team or other entity.

12. Subcontracts. Contractor may not subcontract or delegate its obligations or the performance of services under this Contract without CalOptima's prior written consent, which CalOptima may exercise in its sole discretion. CalOptima-approved subcontractors are listed in Addendum 2 to Exhibit A.

13. Term. This Contract shall commence on the Effective Date and shall continue in full force and effect through **«Current Expiration»** ("Initial Term"), unless earlier terminated as provided in this Contract. At the end of the Initial Term, CalOptima may, at its option, extend this Contract for up to two (2) additional consecutive one (1)-year terms ("Extended Terms"), provided that if CalOptima does not exercise its option to extend at the end of the Initial Term, or any Extended Term, the remaining option(s) shall automatically lapse. The Initial Term together with any Extended Terms constitute the "Term" of this Contract.

14. Termination.

14.1 Termination without Cause. CalOptima may terminate this Contract at any time, in whole or in part, for its convenience and without cause, by giving Contractor thirty (30) days' prior written notice. Upon termination, CalOptima shall pay Contractor all fees and other charges due and payable for services satisfactorily performed and accepted by CalOptima as of the termination date. Thereafter, Contractor shall have no further claims against CalOptima under this Contract.

14.2 Termination for Unavailability of Funds. In recognition that CalOptima is a governmental entity and its operations and budgets are determined on an annual basis, CalOptima shall have the right to terminate this Contract as follows:

14.2.1 CalOptima may terminate this Contract if it does not receive funding from the State of California or the federal government, as applicable, for any fiscal year.

14.2.2 In the event of termination under Section 14.2.1, CalOptima agrees to promptly pay Contractor all fees and other charges due and payable for services satisfactorily performed and accepted by CalOptima as of the termination date. Contractor shall not be entitled to payment for any other items, including lost or anticipated profit on work not performed, administrative costs, attorneys' fees, or consultants' fees.

14.3 Termination for Default. CalOptima may immediately terminate this Contract upon notice to Contractor for (i) Contractor's bankruptcy, (ii) if a federal or state proceeding for the relief of debtors is undertaken by or against Contractor; or (iii) if Contractor makes an assignment, as defined in Section 11, for the benefit of creditors ("Termination for Default").

14.4 Termination for Breach. Either Party may at its option, terminate this Contract by notice to the other Party if the other Party breaches one of its obligations under this Contract and fails to cure that breach or default within thirty (30) days after receiving notice identifying that breach, provided that the non-breaching party may terminate the Contract immediately upon written notice if the non-breaching Party reasonably determines that cure of the default within thirty (30) days is impossible. The rights described in this Section 14.4 to terminate this Contract shall be in addition to any other remedy available to the non-breaching Party, whether under this Contract or in law or equity, on account of that breach.

14.5 Notwithstanding the foregoing, CalOptima may terminate this Contract immediately upon Contractor's breach of Section 3 (Insurance) or Section 8 (Confidential Material).

14.6 Effect of Termination. Upon expiration or receipt of a termination notice under this Section 14:

14.6.1 Contractor shall promptly discontinue all services (unless CalOptima's notice directs otherwise) and deliver or otherwise make available to CALOPTIMA all documents, reports, software programs, and any other products, data and such other materials, equipment, and information, including Confidential Information, or equipment provided by CalOptima, as may have been accumulated by Contractor in performing this Contract, whether completed or in process. If Contractor personnel were granted access to CalOptima's premises and issued a badge or access card, such badge or access card shall be returned prior to departure.

14.6.2 CalOptima may take over the services and may award another party a contract to complete the services under this Contract.

14.6.3 In the event of termination under Sections 14..3, 14.4, or 14.5, either Party shall be liable for any and all reasonable costs incurred by the non-breaching Party as a result of such a termination.

15. Dispute Resolution

15.1 Meet and Confer. If either Party has a dispute arising under or related to this Contract, the Parties shall informally meet and confer to try and resolve the dispute. The Parties shall meet and confer within thirty (30) days of a written request submitted by either Party in an effort to settle any dispute. At each meet-and-confer meeting, each Party shall be represented by persons with final authority to settle the dispute. If either Party fails to meet within the thirty (30)-day period, that Party shall be deemed to have waived the meet-and-confer requirement, and at the other Party's option, the dispute may proceed immediately to arbitration under Section 15.2.

15.2 Subject to the California Government Claims Act (Cal. Gov. Code §900 *et seq.*) governing claims against public entities, either Party may submit the dispute for resolution exclusively through confidential, binding arbitration, instead of through trial by court or jury, in Orange County, California. The Parties may agree in writing prior to commencing the arbitration on the dispute resolution rules and arbitration service that will be used to resolve the dispute. If the Parties cannot reach such an agreement, the arbitration will be conducted by Judicial Arbitration and Mediation Services ("JAMS") in accordance with the commercial dispute rules then in effect for JAMS; provided, however, that this Contract shall control in instances where it conflicts with JAMS's (or the applicable arbitration service's) rules. The arbitration shall be conducted on an expedited basis by a single arbitrator. The Parties prefer that the arbitrator be a retired judge of the California Superior, Appellate, or Supreme Court or of a United States court sitting in California. If no such retired judge is available, the arbitrator may be an attorney with at least fifteen (15) years of experience, including at least five (5) years in managed health care. If the Parties are unable to agree on the arbitrator within thirty (30) days of the date that the arbitration service accepts the arbitration, the arbitrator shall be selected by the arbitration service from a list of four potential arbitrators (all of whom shall be on arbitration services' panel of arbitrators) submitted by the Parties, two from each side; provided, however, that nothing stated in this section shall prevent a Party from disqualifying an arbitrator based on a conflict of interest. In making decisions about discovery and case management, it is the Parties' express agreement and intent that the arbitrator at all times promote efficiency without denying either Party the ability to present relevant evidence. In reaching and issuing decisions, the arbitrator shall have no jurisdiction to make errors of law and/or legal reasoning. The Parties shall share the costs of arbitration equally, and each Party shall bear its own attorneys' fees and costs.

15.3 **Exclusive Remedy.** With the exception of any dispute that under applicable laws may not be settled through arbitration, arbitration under Section 15.2 is the exclusive method to resolve a dispute between the Parties arising out of or relating to this Contract that is not resolved through the meet-and-confer processes.

15.4 **Waiver.** By agreeing to binding arbitration as set forth in Section 15.2, the Parties acknowledge that they are waiving certain substantial rights and protections which otherwise may be available if a dispute between them was determined by litigation in a court, including the right to a jury trial, attorneys' fees, and certain rights of appeal.

16. **General Provisions.**

16.1 **Non-Exclusive Relationship.** This is a non-exclusive relationship between CalOptima and Contractor. CalOptima shall have the right to have any of the services that are the subject of this Contract performed by CalOptima personnel or enter into contractual arrangements with one or more contractors who can provide CalOptima with similar or like services.

16.2 **Compliance with Applicable Law and Policies.** Contractor warrants that, in the performance of this Contract, it shall, at its own expense, observe and comply with all applicable federal, state, and local laws, and CalOptima vendor policies relating to services under the Contract that are in effect when this Contract is signed or that come into effect during the Term and are available to Contractor on CalOptima's website.

16.3 **Names and Marks.** Neither Party shall use the name, logo or other proprietary mark of the other Party in any press release, advertising, promotional, marketing or similar publicly disseminated material without obtaining the other Party's express written approval of the material and consent to such use.

16.4 **Time is of the Essence.** Time is of the essence in performance of this Contract.

16.5 **Choice of Law.** This Contract shall be governed by and construed in accordance with all laws of the State of California. If any Party institutes legal proceedings to enforce or interpret this Contract, venue and jurisdiction shall be in the County of Orange, California.

16.6 **Force Majeure.** When satisfactory evidence of a cause beyond a Party's control is presented to the other Party, and nonperformance is unforeseeable, beyond the control, and not due to the fault of the Party not performing, a Party shall be excused from performing its obligations under this Contract during the time and to the extent that it is prevented from performing by such cause, including any incidence of fire, flood, acts of God, commandeering of material, products, plants or facilities by the federal, state or local governments, or a material act or omission by the other Party. A Party invoking this clause shall provide the other Party with prompt written notice of any delay or failure to perform that occurs by reason of force majeure. If the force majeure event continues for a period of 30 days, the Party unaffected by the force majeure event may terminate this Contract upon notice to the other Party.

16.7 **Notices.** All notices required or permitted under this Contract shall be in writing and shall be sent by registered or certified mail, postage prepaid, return receipt requested, or by any other overnight delivery service which delivers to the noticed destination and provides proof of delivery to the sender. All notices shall be effective when first received at the following addresses set forth below. Any notice not related to termination of this Contract may be submitted electronically to the address set forth below. Any Party whose address changes shall notify the other Party in writing.

To Contractor:	To CalOptima Health:
	CalOptima Health
	505 City Parkway West
	Orange, CA 92868
	Attention: «Contract Manager»
	Email: [enter email address]

16.8 **Notice of Labor Disputes.** Whenever Contractor has knowledge that any actual or potential labor dispute may delay this Contract, Contractor shall immediately notify and submit all relevant information to CalOptima.

16.9 **No Liability of County of Orange.** As required under Ordinance No. 3896 of the County of Orange, State of California, as amended, the Parties agree that the obligations of CalOptima under this Contract are solely the obligations of CalOptima, and the County of Orange, State of California, shall have no obligation or liability related to this Contract. [County of Orange Ordinance No 3896, codified in Orange County Municipal Code Section 4-11-7(a)]

16.10 **Entire Agreement.** This Contract, including all exhibits, addenda, and Contract Documents, contains the entire agreement between Contractor and CalOptima with respect to the subject matter of this Contract, and it supersedes all prior written or oral and all or contemporaneous oral agreements, representations, understandings, discussions, negotiations, and commitments between Contractor and CalOptima, whether express or implied, with respect to the subject matter of this Contract.

16.11 **Waiver.** Any failure of a Party to insist upon strict compliance with any provision of this Contract shall not be deemed a waiver of such provision or any other provision of this Contract. To be effective, a waiver must be in a writing that is signed and dated by the Parties. A waiver by either of the Parties of a breach of any of the covenants, conditions, or agreements to be performed by the other Party shall not be construed to be a waiver of any succeeding breach of the Contract or of any other covenant or condition of the Contract. Any information delivered, exchanged, or otherwise provided hereunder shall be delivered, exchanged, or otherwise provided in a manner that does not constitute a waiver of immunity or privilege under applicable law.

16.12 **Survival.** The following provisions of this Contract shall survive termination or expiration of this Contract: Sections 4 (Indemnification), 5 (Independent Contractor), 8 (Confidential Material), 9 (California Public Records Act), 14.6 (Effect of Termination), 15 (Dispute Resolution), 16.3 (Names and Marks), 16.5 (Choice of Law), 16.9 (No Liability of County of Orange), this Section 16.12, 16.14 (Interpretation), 16.15 (Third-Party Beneficiaries), 16.16 (Successors and Assigns) and any other Contract provisions that by their nature are intended to survive termination or expiration of this Contract.

16.13 **Severability.** If any section, subsection or provision of this Contract, or the application of such section, subsection or provision, is held invalid or unenforceable by any court of competent jurisdiction, the remainder of this Contract, other than that to which it is held invalid, shall remain in effect.

16.14 **Interpretation.** The terms of this Contract are the result of negotiation between the Parties. Accordingly, any rule of construction of contracts (including California Civil Code Section 1654) that ambiguities are to be construed against the drafting party shall not be employed in the interpretation of this Contract.

16.15 **Third Party Beneficiaries.** There are no intended third-party beneficiaries of this Contract. Nothing in this Contract shall be construed as conferring any rights on any other persons.

16.16 **Successors and Assigns.** Except as otherwise expressly provided in this Contract, this Contract will be binding on, and will inure to the benefit of, the successors and permitted assigns of the Parties. Nothing in this Contract is intended to confer upon any party other than the Parties or their respective successors and permitted assigns any rights or obligations under or by reason of this Contract, except as expressly provided in this Contract.

16.17 **Without Limitation.** Any reference in the Contract to “include(s)” or “including” means inclusion without limitation, unless otherwise distinguished within the text.

16.18 **Authority to Execute.** The persons executing this Contract on behalf of the Parties warrant that they are duly authorized to execute this Contract and that by executing this Contract the Parties are formally bound.

16.19 **Counterparts.** This Contract may be executed and delivered in one or more counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.

16.20 **Recitals and Exhibits.** The recitals, exhibits, and addenda attached to this Contract are made a part of the Contract by this reference.

[Signatures on following page]

IN WITNESS WHEREOF, these Parties have, by their duly authorized representatives, executed this Contract No. «Contract Number» on the day and year last shown below.

«Company Name»	CalOptima Health
By:	By:
Print Name:	Print Name:
Title:	Title:
Date:	Date:

By:	By:
Print Name:	Print Name:
Title:	Title:
Date:	Date:

EXHIBIT A
Scope of Work

This Exhibit A, including Addendum 1, describes the services that Contractor provides under the Contract. If there is any conflict or inconsistency between the other provisions of the Contract and this Exhibit A, this Exhibit A shall control.

1. Definitions.

- 1.1. **“CalOptima Content”** means all information and materials provided by CalOptima, its agents or employees (regardless of form) to Contractor under this Contract, including User information, patient information control (excluding patient information, if any, that is solely owned by the patient as provided by law), clinical data, as well as CalOptima trade secrets or proprietary information and any and all updates or modifications thereto and/or derivatives thereof made by Contractor for CalOptima.
- 1.2. **“Deliverable(s)”** means all the materials/services that Contractor provides under this Contract and that are designated as “Deliverable” under the Addendum 1 to Exhibit A.
- 1.3. **“Documentation”** means all operations and user manuals (operational, educational, and otherwise) made available by Contractor to CalOptima, any report, specification or other written work product produced by Contractor for or at the request of CalOptima, and all other written materials related to the Software or any of the Services, provided, that Documentation shall not include written materials relating to the source code (and not the binary code) of the Software.
- 1.4. **“Intellectual Property”** means patents, copyrights, trademarks, trade secrets, and other proprietary information.
- 1.5. **“Software”** means the software described in the Documentation and Contract Documents, including Addendum 1 to this Exhibit A, the RFP and Contractor’s best and final offer, that meets all of CalOptima’s business and clinical requirements set forth in the Contract Documents, including the RFP.
- 1.6. **“Software Updates”** means all error corrections, maintenance releases, updates, upgrades, revisions, modifications, and enhancements of the Software that Contractor makes generally available to its licensees and their authorized end users.
- 1.7. **“User”** means any authorized employee or contractor of CalOptima who use(s) the Software in connection with the authorized business and clinical activities of CalOptima under the Contract.

2. Services.

- 2.1. **Services.** Contractor shall provide the services set forth in this Exhibit A (“Services”). Services shall include Implementation Services, Hosting Services, Maintenance Services, and Support Services, as those terms are defined in this Section 2. CalOptima shall use Services and Software in compliance with the Contract, including the Contract Documents.
- 2.2. **Cooperation.** Contractor and CalOptima shall work together to implement the Services and Software. CalOptima will cooperate with Contractor and execute and deliver all documents, forms, or instruments reasonably necessary for Contractor to implement and render the Services and Software.
- 2.3. **Hosting Services.** Contractor shall provide hosting services for the Software to meet CalOptima’s business and clinical objectives in accordance with this Section 2.3, as well as the Contract Documents (“**Hosting Services**”). CalOptima’s authorized Users’ access to and use of the Software may be through an Internet website or through some other mutually agreed upon method of access.

2.3.1. User IDs and Passwords. Contractor shall provide Users with unique identification numbers and passwords upon CalOptima's request or enable CalOptima to create such User identification numbers and passwords within CalOptima's authorized use of the Software. Upon receipt of CalOptima's proper written notice to Contractor, Contractor shall immediately make all additions, changes, and deletions to the User identification numbers and passwords assigned to approved CalOptima personnel.

2.3.2. CalOptima Network Access. To the extent Contractor receives access to CalOptima's network, Contractor shall use such access solely to meet its obligations under the Contract.

2.3.3. URL Ownership. Each Party shall retain exclusive ownership of its respective URLs and Hyperlinks.

2.3.4. Safeguards and Security Backup. Contractor has established and will maintain an information security program containing appropriate administrative, technical and physical measures, including industry-standard Internet firewall technology, to protect CalOptima data against accidental or unlawful destruction, alteration, unauthorized disclosure, or access consistent with applicable laws. In addition, Contractor has established and shall maintain a commercially reasonable business continuity and disaster recovery plan and will follow such plan, including maintaining procedures for the reconstruction of lost CalOptima Content received or processed under this Contract and correcting, at CalOptima's request, any destruction, loss or alteration of any CalOptima Content caused by Contractor. Contractor shall employ an appropriate level of physical security at its data center, including fire and intruder alarms and avoidance systems, and other physical security appropriate for secure data processing. At a minimum, Contractor shall employ the following additional security methods and procedures:

2.3.4.1. *Access Controls.* Contractor shall only permit access to CalOptima Content in accordance with the terms of the Contract or as otherwise agreed by the Parties in writing.

2.3.4.2. *Patch Management / Anti-Virus Software.* Contractor shall appropriately manage its use of software patches in accordance with TRUSTe's Security Guidelines, as updated during the Term. In addition, Contractor shall employ the latest industry-standard anti-virus software at all times during the Term and as long as it maintains or otherwise possesses CalOptima Content.

2.3.4.3. *Data Isolation.* CalOptima Content shall be logically isolated from other of Contractor customers' data to further restrict unauthorized access using methods and procedures mutually agreed upon by Contractor and CalOptima.

2.3.4.4. *Network Isolation.* Contractor's data center shall have appropriate network segmenting of Contractor and CalOptima Content and CalOptima's systems at the data center.

2.3.4.5. *Restricted Access.* Contractor shall not access CalOptima Content except as necessary to comply with its obligations under the Contract or as may be required by law. All printed copies (if authorized) of CalOptima Content shall be kept to a minimum and shall be shredded at earliest convenience after they are no longer needed for the purpose for which they were authorized.

2.3.4.6. *Resource and System Monitoring.* Contractor shall provide a comprehensive system monitoring procedure to include server, network, and test PC monitoring, as appropriate.

2.3.4.7. *Disaster Recovery.* Each Party shall make commercially reasonable efforts to prepare for and otherwise recover from a natural disaster such that CalOptima is able to promptly restore normal business operations as rapidly as practical after a natural disaster to the extent such a disaster impacts Contractor's ability to perform its obligations under the Contract.

- 2.4. **Implementation Services.** Contractor shall provide all services necessary to configure and implement the Software in order to enable CalOptima and all of its authorized Users to access and use the Software for all of CalOptima's business and clinical requirements ("Implementation Services"). Contractor shall cooperate and communicate with CalOptima's designated technical contact in connection with the Implementation Services.
- 2.5. **Scheduling.** Contractor shall commence providing Hosting Services and Implementation Services as soon as practicable after the Effective Date, and in no event later than 30 days from the Effective Date. Contractor shall complete Implementation Services within 30 days of the Effective Date. Failure to meet any of these deadlines is a material breach of the Contract.
- 2.6. **Service Organization Control Reports.** Following completion of Implementation Services, Contractor will, at CalOptima's request and at no charge, provide CalOptima with copies of any routine Service Organization Control 1 reports ("SOC 1 Reports") (or any successor reports) directly related to the Software and already released to Contractor by the public accounting firm producing the report. SOC 1 Reports are Contractor's Confidential Information, and CalOptima will not distribute or allow any third party (other than its independent auditors) to use any such report without the prior written consent of Contractor. CalOptima will instruct its independent auditors or other approved third parties to keep such reports confidential.
- 2.7. **Training.** Contractor shall timely provide the training services necessary to train all Users and other personnel designated by CalOptima to enable such Users and personnel to be reasonably proficient in the use of the Software for all of CalOptima's business and clinical requirements.
- 2.8. **Acceptance Testing.** CalOptima shall use the Software for at least 30 days ("Acceptance Period") to determine if it meets CalOptima's business and clinical requirements. If CalOptima determines that the Software does not meet its business and clinical requirements during the Acceptance Period, Contractor shall have thirty (30) days from the date of receipt of such notification to rectify or resolve the issue. If Contractor corrects the issue within the thirty (30)-day period, Contractor shall resubmit the Software to CalOptima for continued acceptance testing to determine if it will meet CalOptima's business and clinical requirements. The Acceptance Period will extend by 45 days from the date the Contractor resubmits the Software for continued acceptance testing. If the Software operates through the Acceptance Period without a material issue, then the Software will be deemed accepted, and CalOptima shall provide Contractor with a notice of final acceptance. Otherwise, CalOptima may finally reject the Software and return any applicable materials to Contractor. Within thirty (30) days of such final rejection, Contractor shall refund all fees paid by CalOptima under the Contract and shall cooperate with CalOptima in connection with the necessary acts required when the Contract is terminated.
- 2.9. **Maintenance Services.** Contractor shall provide during the Term, without additional charge to CalOptima, those technical support and software maintenance services necessary for the Software to operate, and for CalOptima and Users to access and use the Software in accordance with CalOptima's business and clinical requirements ("Maintenance Services"). Maintenance Services include Contractor's obligation to provide to CalOptima error corrections, maintenance releases, updates, upgrades, and new versions of the Software that Contractor makes commercially available for the Software during the Term. Contractor neither promises nor warrants that a certain number of releases (or any release) will be made available during any particular time period.
- 2.10. **Technical Support.** Contractor shall provide CalOptima with access to sufficient numbers of Contractor's technical support personnel available 24/7 by telephone, instant chat, and e-mail to enable CalOptima and its authorized Users to obtain assistance with the operation and proper functioning of the Software whenever any issues, problems, or defects arise ("Support Services"). In addition, CalOptima shall have, at no additional charge, online access to Contractor's customer information network, if any, for online information and questions during the Term. The provision of such access shall in no way reduce Contractor's obligation to comply with any of its other support and maintenance obligations in this Exhibit A. Contractor shall provide to CalOptima telephone numbers and website addresses for the purpose of CalOptima accessing Contractor's non-public informational network. CalOptima shall not be charged an

additional fee to access such network or website, but CalOptima shall be responsible for any connect-time charges to CalOptima's public telecommunications carrier.

- 2.11. **Update Services.** Within ten (10) days of general commercial availability or such shorter period if the Software Update relates to a critical fix or functionality, Contractor shall notify CalOptima of all material Software Updates, describe in reasonable detail the effect of such Software Updates on the use or functionality of the updated Software, and provide the Software Updates to the Software at no additional cost to CalOptima. At the request of CalOptima, and when reasonably possible, Contractor shall perform a Software Update after CalOptima's standard business hours at no additional charge to CalOptima.
- 2.12. **Design of the Services.** Contractor will design the Services and Software, including the functions and processes applicable to the performance of the Services and Software, to assist the CalOptima in complying with its legal and regulatory requirements applicable to the Contract. Contractor will be responsible for the accuracy of such design. CalOptima shall be responsible for (i) how it uses the Software to comply with its legal and regulatory requirements and (ii) the consequences of any instructions that it gives or fails to give to Contractor, including as part of the implementation of the Software, provided Contractor follows such instructions.
- 2.13. **Service Levels.** Contractor shall perform all of its obligations related to Services at levels in accordance with the service levels set forth in Addendum 1 to this Exhibit A ("Service Levels"). Contractor shall measure and report (electronically) its performance each month against the Service Levels by no later than the last day of the following month. Contractor may fulfill the obligations under this Section 2.13 by providing CalOptima with access to such data and reports.

3. License.

- 3.1. **License Grant.** Subject to the terms and conditions of the Contract, Contractor hereby grants to CalOptima, and CalOptima hereby accepts from Contractor, a nontransferable, nonexclusive, terminable, perpetual license ("Software License") during the Term to use the Software and Documentation solely for CalOptima's business and clinical use. The Software may only be used by CalOptima and its Users. The license to CalOptima granted herein entitles CalOptima to grant sublicenses to Users, and CalOptima is responsible for such Users' compliance with the terms of the Contract.
- 3.2. **Reservation of Rights.** The Software is and will remain the sole and exclusive property of Contractor and those third parties from which any portion of the Software is licensed by Contractor, as applicable. Neither CalOptima nor any Users will acquire any title or ownership of the Software under or by reason of the Contract.

4. Intellectual Property.

- 4.1. **CalOptima Intellectual Property Rights.** All rights, title, and interests in and to CalOptima Content and Deliverables, including all Intellectual Property rights inherent therein and pertaining thereto, are owned exclusively by CalOptima or its licensors. CalOptima hereby grants to Contractor for the Term a non-exclusive, worldwide, non-transferable, royalty-free license to use, edit, modify, adapt, translate, exhibit, publish, reproduce, copy, and display the CalOptima Content for the sole purpose of providing the services under the Contract.
- 4.2. **Contractor Intellectual Property Rights.** Except for the rights expressly granted to CalOptima in this Contract, all rights, title, and interest in and to Contractor's software provided under the Contract, including all Intellectual Property rights inherent therein and pertaining thereto, are owned exclusively by Contractor or its licensors. Contractor grants to CalOptima for the Term a personal, non-exclusive, non-transferable, royalty-free license to use and access Contractor software for the purposes set forth in this Contract. CalOptima will not obscure, alter or remove any copyright, trademark, service mark or proprietary rights notices on any materials provided by Contractor in connection with the Contract and

will not copy, decompile, recompile, disassemble, reverse engineer, or make or distribute any other form of, or any derivative work from such Contractor materials.

- 4.3. **Ownership of Reports.** CalOptima will retain ownership of the content of reports and other materials that include CalOptima Content produced and delivered by Contractor under this Contract; provided, however, that Contractor will be the owner of the format of such reports. To the extent any such reports or other materials incorporate any Contractor proprietary information, Contractor (i) retains sole ownership of such proprietary information and (ii) provides the CalOptima a fully paid up, irrevocable, perpetual, royalty-free license to access and use same for the purposes set forth in this Contract.

5. Standard of Performance; Warranties.

- 5.1. Contractor agrees to perform all work under this Contract with the requisite skill and diligence consistent with professional standards for the industry and type of work performed under this Contract and pursuant to the governing laws, rules, and regulations of the industry.
- 5.2. If Contractor may subcontract for services under this Contract, then Contractor represents and warrants that any individual or entity acting as a subcontractor to this Contract has the appropriate skill and expertise to perform the subcontracted work and will comply with all applicable provisions of this Contract.
- 5.3. Contractor represents and warrants to CalOptima that all Documentation provided by Contractor shall be materially accurate and complete and shall be revised by Contractor on a timely basis at no cost to CalOptima to reflect such changes and updates to the Documentation.
- 5.4. Contractor represents and warrants that CalOptima shall receive free, good, and clear licensing rights to the Software and Documentation and that Contractor has full power and authority and has acquired all rights and licenses as necessary to license Software to CalOptima.
- 5.5. Contractor warrants that the software licensed, sold, and delivered to CalOptima conforms in all material respects with all applicable contractual commitments, including the Contract Documents and Documentation, and all express and implied warranties. Contractor warrants that any Software will operate free from defects and uninterrupted during the Term and the Software shall be capable of operating fully and correctly with the combination of the computer hardware, telecommunications equipment, and operating systems used by Contractor and CalOptima. Contractor shall at its own expense replace the Software or correct any error in the Software, provided that the Software has been properly installed and has not been modified by CalOptima without the permission of Contractor.
- 5.6. Contractor warrants that any items furnished to CalOptima under this Contract, including any Software licensed, sold, and delivered to CalOptima or the normal use or sale thereof, does not infringe on any United States letters patent, patent, trademark, copyright, or other intellectual property right. Contractor shall indemnify, hold harmless and defend, at its expense, any suit against CalOptima arising from or related to a breach of this Section 5.6 and shall pay costs and damages finally awarded in any such suit, provided that Contractor is notified in writing of the suit and given authority, information, and assistance at Contractor's expense for the defense of the suit. Contractor, at no expense to CalOptima, shall obtain for CalOptima the right to use and sell said item or software, or shall substitute an equivalent item or software acceptable to CalOptima and extend this patent indemnity thereto.
- 5.7. Contractor acknowledges and agrees that CalOptima and its authorized Users must have continued access to Software in order to provide health care payments and/or health care services in real time up to twenty-four (24) hours per day, seven (7) days per week, three hundred sixty-five (365) days per year. Accordingly, Contractor represents and warrants that Contractor will maintain sufficient backup servers and other computer hardware, backup application software, and database backups to enable Contractor to provide continuous, uninterrupted access to and use and operation of the Software.

5.8. Contractor represents and warrants that any and all Services shall only be provided by Contractor's employees working and residing within the United States of America.

5.9. Contractor represents and warrants that, as of the Effective Date, there is no action, suit, claim, investigation, arbitration, or legal proceeding of any kind that is pending, or to the best of Contractor's knowledge threatened against, by, or affecting Contractor, that if adversely determined could materially adversely affect the Software or restrict Contractor's ability to fully perform all of its obligations under the Contract. Contractor also knows of no basis for any such action, suit, claim, investigation or proceeding.

5.10. All of the representations, warranties and covenants of this Section 5 that are applicable to the Software shall be deemed to be made with respect to any modification, Software Updates, replacements, substitutes, or additional Software provided by Contractor to CalOptima under the Contract, including maintenance releases.

5.11. Contractor's warranties, together with its service guarantees, must run to CalOptima and its customers or users of the Software and Services, and must not be deemed exclusive. CalOptima's inspection, approval, acceptance, use of and payment for all or any part of the Software and Services must in no way affect its warranty rights whether or not a breach of warranty had become evident in time.

5.12. Contractor's obligations under this Section 5 are in addition to Contractor's other express or implied warranties and other obligations under this Contract or state law, and in no way diminish any other rights that CalOptima may have against Contractor for faulty materials, software, or work. CalOptima rejects any disclaimer by Contractor of any warranty, standard, implied or express, unless specifically agreed to in writing by both Parties.

6. Limitation Of Liability. EXCEPT FOR BREACHES OF CONFIDENTIALITY OBLIGATIONS UNDER THE CONTRACT, DAMAGES ARISING FROM PERSONAL INJURY OR INJURY TO PHYSICAL PROPERTY, INDEMNIFICATION OBLIGATIONS, THE OBLIGATION OF INSURANCE UNDER THE CONTRACT, OR AS OTHERWISE EXPRESSLY SET FORTH IN THIS EXHIBIT A, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY LOST PROFITS OR FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL OR INDIRECT DAMAGES ARISING FROM OR RELATED TO THE CONTRACT, REGARDLESS OF THE CAUSE OF ACTION, EVEN IF THE PARTIES HAVE BEEN APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES.

7. Insurance. Contractor shall maintain the following insurance policies during the Term:

7.1. Comprehensive General Liability Insurance, including Contractual, Independent Contractors, Products/Completed Operations and Personal Injury Liability, with the following minimum limits of liability:

7.1.1. Primary Bodily Injury Liability with limits of one million dollars (\$1,000,000) per Occurrence; and

7.1.2. Primary Property Damage Liability with limits of one million dollars \$1,000,000 per Occurrence, or combined single limits of liability for Primary Bodily Injury and Primary Property Damage of two million dollars (\$2,000,000) per Occurrence and in the aggregate.

7.2. If Contractor is on CalOptima's premises, Automobile Liability with the following minimum limits of liability:

7.2.1. Primary Bodily Injury Liability with limits of six hundred thousand dollars (\$600,000) per Occurrence; and

7.2.2. Primary Property Damage Liability with limits of six hundred thousand dollars (\$600,000) per occurrence or combined single limits of liability for Primary Bodily Injury and Primary Property

Damage of one million, two hundred thousand dollars (\$1,200,000) per Occurrence and in the aggregate.

- 7.3. Workers' Compensation Insurance within the limits established and required by the State of California.
- 7.4. Employer's Liability with limits of one million dollars (\$1,000,000).
- 7.5. Professional Liability with a combined single limit of at least one million dollars (\$1,000,000) per Occurrence and in the aggregate.
- 7.6. Electronic and Computer Crimes Insurance, Employee Fidelity Insurance, and Cyber Liability Insurance with limits of at least one million dollars (\$1,000,000).

8. **Transition.** Upon termination or expiration of the Contract, the contents of all historical patient data and any other CalOptima Content shall remain subject to the exclusive control and responsibility of CalOptima, and Contractor shall have no property or other rights in such data. Contractor shall, in good faith, reasonably assist CalOptima with any requested data conversion, migration, and transition to a substitute software solution at no additional cost to CalOptima.

9. **CalOptima Content.** Upon CalOptima's request and upon the expiration or termination of the Contract, Contractor shall promptly provide an electronic copy of all CalOptima Content to CalOptima in the format and with the file layouts reasonably requested by CalOptima at no additional charge to CalOptima. Upon CalOptima's written request, Contractor shall destroy all copies of the CalOptima Content in Contractor's possession, custody, or control. Contractor shall not withhold any CalOptima Content as a means of resolving any dispute. Contractor shall not use CalOptima Content for any purpose other than that of rendering Services under the Contract, nor shall Contractor sell, assign, lease, dispose of, or otherwise exploit CalOptima Content. Contractor shall not possess or assert any lien or other right against or to CalOptima Content.

EXHIBIT A
ADDENDUM 1
Software Description and Service Levels

1. **Software Description.**

[insert Software Description]

2. **Deliverables.**

[insert Service Levels]

3. **Service Levels.**

[insert Service Levels]

EXHIBIT A**Addendum 2**

The following is a list of subcontractors approved to perform Services under this Contract:

Subcontractor Name	Functions

EXHIBIT B
Payment

1. For Contractor's full and complete performance of its obligations under this Contract, CalOptima shall pay Contractor for fees and expenses in accordance with the provisions of this Exhibit B and subject to the maximum cumulative payment obligations specified below.
2. Contractor shall invoice CalOptima on a monthly basis for actual labor hours expended. The hourly rates, as defined below, are acknowledged to include Contractor's base labor rates, overhead and profit. Work completed shall be documented in a monthly progress report prepared by Contractor, which report shall accompany each invoice submitted by Contractor. Contractor shall also furnish such other information as may be requested by CalOptima to substantiate the validity of an invoice. At its sole discretion, CalOptima may decline to make full payment for any work and direct costs until such time as Contractor has documented, to CalOptima's satisfaction, that Contractor has fully completed all work required under this Contract and Contractor's performance is accepted by CalOptima. CalOptima's payment in full for any work shall not constitute CalOptima's final acceptance of Contractor's work under this Contract.
3. Contractor shall submit to CalOptima, to the attention of Accounts Payable, accountspayable@caloptima.org, an invoice at the conclusion of every month for the Services performed during the prior thirty (30) days. Each invoice shall cite Contract No. **«Contract Number»**; specify the number of hours worked; the specific dates the hours were worked; the description of work performed; the time period covered by the invoice and the amount of payment requested; and be accompanied by a progress report. CalOptima shall remit payment within thirty (30) days of receipt and approval of each invoice.
4. Notwithstanding any provisions of this Contract to the contrary, CalOptima and Contractor mutually agree that CalOptima's maximum cumulative payment obligation hereunder for work performed and/or products received on Exhibit A of this Contract shall not exceed **[Insert Maximum Cumulative Payment Amount, Written]** Dollars (\$**[Insert Maximum Cumulative Payment Amount, Number]**), including all amounts payable to Contractor for its direct labor and expenses, overhead costs, fixed fee, subcontracts, leases, materials, and costs arising from or due to termination of this Contract.
5. Contractor's fees for the goods and/or services provided under Exhibit A, Scope of Work, will be billed based upon completion of the milestones as set forth in the schedule(s) in Exhibit B-1. These fees are fixed for the duration of the Contract. Contractor agrees to extend these fees to CalOptima for a period of one (1) year after Contract termination. CalOptima shall not pay Contractor for time spent traveling.

EXHIBIT C
Regulatory Requirements

CalOptima is a public agency and is licensed by the DMHC. In addition, CalOptima arranges for the provision of Medi-Cal services to Medi-Cal beneficiaries under a contract with DHCS (“**DHCS Contract**”) and Medicare Advantage (“**MA**”) services to Medicare beneficiaries under a contract CMS (“**CMS Contract**”). This Exhibit C sets forth the statutory, regulatory, and contractual requirements that CalOptima must incorporate into the Contract as a public agency and DMHC-licensed health care plan with MA and Medi-Cal products.

1. Medi-Cal Requirements.

- 1.1. Compliance with Medi-Cal Standards. Contractor agrees that the Contract shall be governed by and construed in accordance with all laws and applicable regulations governing the DHCS Contract. Contractor shall comply with all applicable requirements of the Medi-Cal program and comply with all monitoring of the DHCS Contract and any other monitoring requests by DHCS.
- 1.2. Disclosure of Officers, Owners, Stockholders and Creditors. Pursuant to Exhibit E, Attachment 2, Section 33 (a) of the DHCS Contract and 42 C.F.R. Section 455.104, upon the Effective Date, on an annual basis, and within thirty (30) days of any changes, Contractor shall identify the names of the following persons by listing them on Exhibit D of this Contract and submitting the form to CalOptima:
 - 1.2.1. All officers and owners who own greater than five percent (5%) of the Contractor;
 - 1.2.2. All stockholders owning greater than five percent (5%) of any stock issued by Contractor; and
 - 1.2.3. All creditors of Contractor’s business if such interest is over five percent (5%).
- 1.3. Compliance with Employment and Labor Laws. Each Party shall, at its own expense, comply with all applicable laws in performing their respective obligations under the Contract, including, but not limited to, the National Labor Relations Act, the Americans With Disabilities Act, all applicable employment discrimination laws, overtime laws, tax laws, immigration laws, workers’ compensation laws, occupational safety and health laws, and unemployment insurance laws and any regulations related thereto. Contractor acknowledges and agrees that:
 - 1.3.1. Contractor and its subcontractors will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. Contractor and its subcontractors will take affirmative action to ensure that qualified applicants are employed and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, physical or mental handicap, disability, age, or status as a disabled veteran or veteran of the Vietnam era. Such action shall include the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and career development opportunities and selection for training, including apprenticeship. Contractor and its subcontractors agree to post in conspicuous places, available to employees and applicants for employment, notices provided by the federal government or DHCS, setting forth the provisions of the Equal Opportunity clause, Section 503 of the Rehabilitation Act of 1973, and the affirmative action clause required by the Vietnam Era Veterans’ Readjustment Assistance Act of 1974 (38 U.S.C. 4212). Such notices shall state Contractor and its subcontractors’ obligation to take affirmative action to employ and advance in employment qualified applicants without discrimination based on their race, color, religion, sex, national origin, physical or mental handicap, disability, age, or status as a disabled veteran or veteran of the Vietnam era and the rights of applicants and employees. [DHCS Contract, Exhibit D(f), Provision 1, Section A]
 - 1.3.2. Contractor and its subcontractors will, in all solicitations or advancements for employees placed by or on behalf of Contractor and its subcontractors, state that all qualified applicants will receive

consideration for employment without regard to race, color, religion, sex, national origin, physical or mental handicap, disability, age, or status as a disabled veteran or veteran of the Vietnam era. [DHCS Contract, Exhibit D(f), Provision 1, Section B]

- 1.3.3. Contractor and its subcontractors will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, to be provided by the federal government or the State of California, advising the labor union or workers' representative of Contractor and its subcontractors' commitments under this Section 1.3 and shall post copies of the notice in conspicuous places available to employees and applicants for employment. [DHCS Contract, Exhibit D(f), Provision 1, Section C]
- 1.3.4. Contractor and its subcontractors will comply with all provisions of and furnish all information and reports required by Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212), and of the Federal Executive Order No. 11246 as amended, including by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity", and as supplemented by regulation at 41 C.F.R. part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor", and of the rules, regulations, and relevant orders of the Secretary of Labor. [DHCS Contract, Exhibit D(f), Provision 1, Section D]
- 1.3.5. Contractor and its subcontractors will furnish all information and reports required by Federal Executive Order No. 11246, as amended, including by Executive Order 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity", and as supplemented by regulation at 41 C.F.R. part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor", and the Rehabilitation Act of 1973, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the State and its designated representatives and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders. [DHCS Contract, Exhibit D(f), Provision 1, Section E]
- 1.3.6. If Contractor and its subcontractors' do not comply with the requirements of this Section 1.3 or with any federal rules, regulations, or orders referenced herein, this Contract may be cancelled, terminated, or suspended in whole or in part, and Contractor and its subcontractors may be declared ineligible for further federal and state contracts, in accordance with procedures authorized in Federal Executive Order No. 11246, as amended, and such other sanctions may be imposed and remedies invoked as provided in Federal Executive Order No. 11246, as amended, including by Executive Order 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity", and as supplemented by regulation at 41 C.F.R. part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor", or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law. [DHCS Contract, Exhibit D(f), Provision 1, Section F]
- 1.3.7. Contractor and its subcontractors will include the provisions of this Section 1.3 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor, issued pursuant to Federal Executive Order No. 11246, as amended, including by Executive Order 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity", and as supplemented by regulation at 41 C.F.R. part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor", or Section 503 of the Rehabilitation Act of 1973 or (38 U.S.C. 4212) of the Vietnam Era Veteran's Readjustment Assistance Act, so that such provisions will be binding upon each subcontractor. Contractor and its subcontractors will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs or DHCS may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that if Contractor and its subcontractors become involved in, or are threatened with litigation by a subcontractor as a result of such direction by DHCS, Contractor and its subcontractors may request in writing to DHCS, which, in turn, may

request the United States to enter into such litigation to protect the interests of the State of California and of the United States. [DHCS Contract, Exhibit D(f), Provision 1.G]

1.4. Debarment and Suspension Certification.

- 1.4.1. By signing this Contract, the Contractor agrees to comply with any and all applicable federal suspension and debarment regulations, including, as applicable, 7 C.F.R. 3017, 45 C.F.R. 76, 40 C.F.R. 32, or 34 C.F.R. 85. [DHCS Contract, Exhibit D(f), Provision 20, Section A]
- 1.4.2. By signing this Contract, the Contractor certifies to the best of its knowledge and belief, that it and its principals:
 - 1.4.2.1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any state or federal department or agency; [DHCS Contract, Exhibit D(f), Provision 20, Section B.1]
 - 1.4.2.2. Have not within a three (3)-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; [DHCS Contract, Exhibit D(f), Provision 20, Section B.2]
 - 1.4.2.3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in Section 1.4.2.2 of this Exhibit C; [DHCS Contract, Exhibit D(f), Provision 20, Section B.3]
 - 1.4.2.4. Have not within a three (3)-year period preceding the Effective Date of this Contract had one or more public transactions (federal, state or local) terminated for cause or default; [DHCS Contract, Exhibit D(f), Provision 20, Section B.4]
 - 1.4.2.5. Have not and shall not knowingly enter into any lower-tier covered transaction with a person who is proposed for debarment under federal regulations (i.e., 48 C.F.R. 9, subpart 9.4), debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction, unless authorized by the State of California; and [DHCS Contract, Exhibit D(f), Provision 20, Section B.5]
 - 1.4.2.6. Will include a clause entitled, "Debarment and Suspension Certification" that sets forth the provisions herein in all lower-tier covered transactions and in all solicitations for lower-tier covered transactions. [DHCS Contract, Exhibit D(f), Provision 20, Section B.6]
- 1.4.3. If the Contractor is unable to certify to any of the statements in this certification, the Contractor shall submit an explanation to CalOptima. [DHCS Contract, Exhibit D(f), Provision 20, Section C]
- 1.4.4. The terms and definitions herein have the meanings set out in the Definitions and Coverage sections of the rules implementing Federal Executive Order 12549. [DHCS Contract, Exhibit D(f), Provision 20, Section D]
- 1.4.5. If the Contractor knowingly violates this certification, in addition to other remedies available to the federal government, CalOptima may terminate this Contract for cause or default. [DHCS Contract, Exhibit D(f), Provision 20, Section E]

1.5. Lobbying Restrictions and Disclosure Certification.**1.5.1. *Certification and Disclosure Requirements.***

- 1.5.1.1. If Contract is subject to 31 U.S.C. § 1352 and exceeds \$100,000 at any tier, Contractor and its subcontractors, as applicable, shall file a certification (in the form set forth in Exhibit E, consisting of one page, entitled “Certification Regarding Lobbying”) that Contractor and its subcontractors, as applicable, have not made, and will not make, any payment prohibited by Section 1.5.2 below. [DHCS Contract, Exhibit D(f), Provision 35, Section A.1; 31 U.S.C. § 1352]
- 1.5.1.2. Contractor and its subcontractors, as applicable, shall file a disclosure (in the form set forth in Exhibit E, entitled “Certification Regarding Lobbying”) if Contractor and its subcontractors, as applicable, have made or agreed to make any payment using non-appropriated funds (to include profits from any covered federal action) in connection with the Contract or a subcontract thereunder that would be prohibited under Section 1.5.2 below if paid for with appropriated funds. [DHCS Contract, Exhibit D(f), Provision 35, Section A.2]
- 1.5.1.3. Contractor and its subcontractors, as applicable, shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affect the accuracy of the information contained in any disclosure form previously filed by Contractor and its subcontractors, as applicable, under this Section 1.5.1. An event that materially affects the accuracy of the information reported includes: [DHCS Contract, Exhibit D(f), Provision 35, Section A.3]
 - 1.5.1.3.1. A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered federal action; [DHCS Contract, Exhibit D(f), Provision 35, Section A.3.a]
 - 1.5.1.3.2. A change in the person(s) or individual(s) influencing or attempting to influence a covered federal action; or [DHCS Contract, Exhibit D(f), Provision 35, Section A.3.b]
 - 1.5.1.3.3. A change in the officer(s), employee(s), or member(s) contacted for the purpose of influencing or attempting to influence a covered federal action. [DHCS Contract, Exhibit D(f), Provision 35, Section A.3.c]
 - 1.5.1.3.4. As applicable and required by this Section 1.5, Contractor’s subcontractors shall file a certification and a disclosure form, if required, to the next tier above. [DHCS Contract, Exhibit D(f), Provision 35, Section A.4]
 - 1.5.1.3.5. All disclosure forms (but not certifications) shall be forwarded from tier to tier until received by Contractor. Contractor shall forward all disclosure forms to CalOptima. [DHCS Contract, Exhibit D(f), Provision 35, Section A.5]

- 1.5.2. *Prohibition.* 31 U.S.C. § 1352 provides in part that no appropriated funds may be expended by the recipient of a federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any of the following covered federal actions: the awarding of any federal contract, the making of any federal grant, the making of any federal loan, entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement. [DHCS Contract, Exhibit D(f), Provision 35, Section B]

1.6. Verification of CalOptima Costs by Government. Until the expiration of ten (10) years after the later of furnishing of any service pursuant to this Contract or completion of any audit, or longer as required by applicable regulations, Contractor will make available, upon written request of CalOptima, the Secretary of Health and Human Services Office of Inspector General, the Comptroller General of the United States, the U.S. Department of Justice, DHCS, the DMHC, the Bureau of Medical Fraud, or any of their duly authorized representatives copies of this Contract and any financial statements, books, documents, records, patient care documentation, and other records or data of Contractor that pertain to any aspect of services performed, reconciliation of benefit liabilities, and determination of amounts payable under this Contract, or as are otherwise necessary to certify the nature and extent of costs incurred by CalOptima for such services. This provision shall also apply to any agreement with a Contractor subcontractor or an organization related to a Contractor subcontractor by control or common ownership. Contractor further agrees that regulating entities have the right to inspect, evaluate and audit any pertinent information and to facilitate the review of the items referenced herein, to make available its premises, physical facilities and equipment, records related to Medicare enrollees, and any additional relevant information that regulating entities may require. Contractor further agrees and acknowledges that this provision will be included in any and all agreements with Contractor's subcontractors. [DHCS Contract, Exhibit E, Attachment 2, Provision 20]

1.7. Confidentiality of Member Information.

1.7.1. If Contractor and its employees, agents, or subcontractors access or receive, whether intentionally or unintentionally, personally identifying information during the Term, Contractor and its employees, agents, and subcontractors shall protect from unauthorized disclosure, the names and other identifying information concerning persons either receiving services pursuant to this Contract, or persons whose names or identifying information become available or are disclosed to Contractor, its employees, agents, or subcontractors as a result of services performed under this Contract, except for statistical information not identifying any such person. Contractor and its employees, agents, or subcontractors shall not use such identifying information for any purpose other than carrying out the express terms of and Contractor's obligations under this Contract. Contractor and its employees, agents, or subcontractors shall promptly transmit to CalOptima all requests for disclosure of such identifying information, except requests for medical records in accordance with applicable law, not emanating from the CalOptima member. Contractor shall not disclose, except as otherwise specifically permitted by this Contract or authorized by the CalOptima member, any such identifying information to anyone other than DHCS or CalOptima without prior written authorization from CalOptima specifying that the information is releasable under Title 42 C.F.R. Section 431.300 *et seq.*, Section 14100.2, Welfare and Institutions Code, and regulations adopted there under. For purposes of this Section 1.7, identity shall include name, identifying number, symbol, or other identifying detail assigned to the individual, such as finger or voice print or a photograph. [DHCS Contract, Exhibit D(F), Provision 12, Exhibit E, Attachment 2, Provision 22, Section B]

1.7.2. Names of persons receiving public social services are confidential and are to be protected from unauthorized disclosure in accordance with Title 42 C.F.R. Section 431.300 *et seq.*, Section 14100.2, Welfare and Institutions Code, and regulations adopted thereunder. For the purpose of this Contract, all information, records, data, and data elements collected and maintained for the operation of the Contract and pertaining to CalOptima members shall be protected by Contractor from unauthorized disclosure. Contractor may release Medical Records in accordance with applicable law pertaining to the release of this type of information. Contractor is not required to report requests for Medical Records made in accordance with applicable law. With respect to any identifiable information concerning a CalOptima member under this Contract that is obtained by Contractor or its subcontractors, Contractor will, at the termination of this Contract, return all such information to CalOptima or maintain such information according to written procedures sent to the Contractor by CalOptima for this purpose. [DHCS Contract, Exhibit E, Attachment 2, Provision 22]

1.8. Member Hold Harmless. To the extent Contractor provides services or supplies to CalOptima members, Contractor hereby agrees that in no event, including nonpayment by CalOptima, the insolvency of CalOptima, or breach of the Contract, shall Contractor bill, charge, collect a deposit from, seek

compensation, remuneration or reimbursement from, or have any recourse against CalOptima members, persons acting on their behalf, or DHCS. Contractor further agrees that this hold harmless provision shall survive the termination of the Contract regardless of the cause giving rise to the termination, shall be construed to be for the benefit of CalOptima members, and that this provision supersedes any oral or written contrary agreement now existing or hereafter entered into between CalOptima or Contractor and a CalOptima member or persons acting on their behalf that relates to liability for payment for services under the Contract. [DHCS Contract, Exhibit A, Attachment 6, Provision 13, Section B.15; CMS Medicare Managed Care Manual Chapter 11, Section 100.4]

- 1.9. **Member Grievances.** Contractor shall cooperate with CalOptima's member grievances and appeals procedures as necessary for CalOptima to carry out its legal obligations. [DHCS Contract, Exhibit A, Attachment III § 4.6; 28 C.C.R. §§ 1300.68, 1300.68.01; 22 CCR § 53858; 43 C.F.R. § 438.402-424]
- 1.10. **Air and Water Pollution Requirements.** If this Contract or any subcontract thereunder is in excess of one hundred thousand dollars (\$100,000), Contractor agrees to comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 USC § 7401 *et seq.*), as amended, and the Federal Water Pollution Control Act (33 USC § 1251 *et seq.*), as amended. [DHCS Contract, Exhibit D(f), Provision 12]

2. **Medicare Requirements.**

- 2.1. Contractor expressly warrants that Contractor and Contractor's subcontractors, if any, shall comply with all applicable Medicare laws, regulations, and CMS instructions. Contractor further agrees and acknowledges that this provision will be included in all agreements with Contractor's subcontractors.
- 2.2. For any medical records or other health and enrollment information Contractor maintains with respect to Medicare enrollees, Contractor shall establish procedures to:
 - 2.2.1. Abide by all federal and state laws regarding confidentiality and disclosure of medical records and other health and enrollment information. Contractor shall safeguard the privacy of any information that identifies a particular enrollee and shall have procedures that specify: (a) the purposes for which the information will be used within Contractor's organization; and (b) to whom and for what purposes Contractor will disclose the information.
 - 2.2.2. Ensure that the medical information is used and released only in accordance with applicable federal or state law, or pursuant to court orders or subpoenas.
 - 2.2.3. Maintain the records and information in an accurate and timely manner.
- 2.3. Contractor shall comply with the reporting requirements provided in 42 C.F.R. § 422.516, as well as the encounter data submission requirements in 42 C.F.R. § 422.257.
- 2.4. For all contracts in the amount of \$100,000 or more, Contractor and Contractor's subcontractors, if any, shall comply with 41 C.F.R. 60-300.5(a) and 41 C.F.R. 60-741.5(a) as follows:
 - 2.4.1. Contractor and its subcontractors shall abide by the requirements of 41 C.F.R. § 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans. [41 C.F.R. § 60-300.5(d)]
 - 2.4.2. Contractor and its subcontractors shall abide by the requirements of 41 C.F.R. § 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities. [41 C.F.R. § 60-741.5(d)]

- 2.5. In addition to the termination provisions of Section 14 of the Contract, CalOptima may terminate the Contract if CMS or CalOptima determines that Contractor has not satisfactorily performed its obligations under the Contract. Under such circumstances, CalOptima may pay Contractor its allowable costs incurred to the date of termination. Thereafter, Contractor shall have no further claims against CalOptima for matters pertaining to this Contract.
- 2.6. While CalOptima maintains ultimate responsibility for adhering to and complying with all terms and conditions of the CMS Contract, Contractor shall comply with all such applicable requirements in the CMS Contract, at the direction of CalOptima.
- 2.7. Contractor shall ensure that the persons it employs or contracts with for the provision of services pursuant to the Contract are in good standing and not on the preclusion list, defined in 42 C.F.R. § 422.2. Contractor shall promptly disclose to CalOptima any exclusion or other event that makes a Contractor employee or subcontractor ineligible to perform work related to federal health care programs. Contractor agrees to be bound by the provisions set forth at 2 C.F.R. Part 376. [42 C.F.R. § 422.752(a)(8)]

3. Offshore Performance.

- 3.1. Due to security and identity protection concerns, direct services under this Contract shall not be performed by offshore subcontractors, unless otherwise authorized in writing by CalOptima prior to the provision of those services.
- 3.2. Contractor shall complete, sign, and return Exhibit G, “Attestation Concerning the Use of Offshore Subcontractors” as of the Effective Date and shall submit an executed Offshore Subcontractor Attestation to CalOptima no less than annually thereafter. Contractor represents and warrants that it has disclosed in Exhibit G any and all such offshore subcontractors and that it has obtained CalOptima’s written approval to use such offshore subcontractors prior to the Effective Date.
- 3.3. Any subcontract with an offshore entity under which the offshore entity will have access to any confidential CalOptima member or other protected health information must be approved in writing by CalOptima prior to execution of the subcontract. Contractor is required to submit future Offshore Contractor Attestations to CalOptima within thirty (30) calendar days after it has signed a contract with any subcontractor that may be using an offshore subcontractor to perform any related work.
- 3.4. Unless specifically stated otherwise in this Contract, the restrictions of this Section 3 do not apply to indirect or “overhead” services, or services that are incidental to the performance of the Contract.
- 3.5. The provisions of this Section 3 apply to work performed by subcontractors at all tiers.

4. Prohibited Interest.

- 4.1. Contractor shall comply with all applicable federal, state, and local laws and regulations pertaining to conflict-of-interest laws, including CalOptima’s Conflict of Interest Code, the California Political Reform Act (California Government Code § 81000 *et seq.*) and California Government Code § 1090 *et seq.* (collectively, the “**Conflict of Interest Laws**”).
- 4.2. Contractor covenants that, to the best of its knowledge during the Term, no director, officer, or employee of CalOptima during his or her tenure has any interest, direct or indirect, in this Contract or the proceeds thereof. Contractor further covenants that, for the Term, and consistent with the provisions of 22 C.C.R. § 53600(f), no state officer or state employee shall be employed in a management or contractor position by Contractor within one (1) year after the state officer or state employee has terminated state employment.
- 4.3. Contractor, and any person designated by Contractor to make or participate in making a governmental decision on behalf of CalOptima, is considered a “**Consultant**” pursuant to CalOptima’s Conflict of

Interest Code and shall be required to file a statement of economic interests (Fair Political Practices Commission Form 700) with CalOptima annually. [2 C.C.R. Section 18734]

- 4.4. Contractor understands that if this Contract is made in violation of California Government Code § 1090 *et seq.*, the entire Contract is voidable, Contractor will not be entitled to any compensation for services performed pursuant to this Contract, and Contractor will be required to reimburse CalOptima any sums paid to Contractor. Contractor further understands that Contractor may be subject to criminal prosecution for a violation of California Government Code § 1090.
- 4.5. If Contractor becomes aware of any facts that might reasonably be expected to either create a conflict of interest under the Conflict of Interest Laws or violate the provisions of this Section 4, Contractor shall immediately make full written disclosure of such acts to CalOptima. Full written disclosure shall include identification of all persons, entities, and businesses implicated and a complete description of all relevant circumstances.

5. **State Auditor Audit Disclosure.** Pursuant to California Government Code § 8546.7, if this Contract is more than ten thousand dollars (\$10,000), it is subject to examination and audit of the California State Auditor, at the request of CalOptima or as part of any audit of CalOptima for a period of three (3) years after final payment under this Contract. In addition to and notwithstanding any other right of access or inspection that may be otherwise set forth in this Contract, Contractor agrees that during the Term and for a period of three (3) years after its termination, CalOptima shall have access to and the right to examine any directly pertinent books, documents, invoices, and records of Contractor relating to services provided under this Contract. Where another right of access or inspection in this Contract provides for a period of greater than three (3) years, nothing herein shall be construed to shorten that time period. [Gov't Code § 8546.7]

EXHIBIT D
Medi-Cal Disclosure Form

Contractor Officer, Owner, Shareholder, and Creditor Information

Contractor's Business Name: _____

Business Entity Type: _____
(*Sole Proprietorship, Partnership, LLC, California Corporation, etc.*)

Business Address: _____

City: _____ State: _____ Zip: _____

Business Phone: _____ Email: : _____

President: _____ Contact Person: _____

Person(s) Signing Contract & Title: : _____

*Please provide names of owners, officers, stockholders, and creditors of Contractor's business if such interest is over 5%.

<u>Name</u>	<u>Officer Title or Ownership/Creditorship %</u>
_____	_____
_____	_____
_____	_____
_____	_____

BY SIGNING BELOW, THE UNDERSIGNED HEREBY CERTIFIES THAT THE ABOVE INFORMATION IS TRUE AND CORRECT TO THE BEST OF HIS OR HER KNOWLEDGE AND BELIEF.

Authorized Signature

Date

Name and Title

EXHIBIT E

STATE OF CALIFORNIA
DEPARTMENT OF HEALTH CARE SERVICES
CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making, awarding or entering into of this federal contract, federal grant, or cooperative agreement, and the extension, continuation, renewal, amendment, or modification of this federal contract, grant, or cooperative agreement.
- (2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency of the United States Government, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying Activities" in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants and cooperative agreements) of \$100,000 or more, and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C., any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Name of Contractor

Printed Name of Person Signing for Contractor

Contract/Grant Number

Signature of Person Signing for Contractor

Date

Title

After execution by or on behalf of Contractor, please return to:

Department of Health Care Services
Medi-Cal Managed Care Division
MS 4415, 1501 Capitol Avenue, Suite 71.4001
P.O. Box 997413
Sacramento, CA 95899-7413

CERTIFICATION REGARDING LOBBYING

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure)

Approved by OMB
0348-0046

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
<input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	<input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	<input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change For Material Change Only: Year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity:		5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
<input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known:		Congressional District, if known: _____
6. Federal Department/Agency:		7. Federal Program Name/Description: CDFA Number, if applicable: _____
8. Federal Action Number, if known:		9. Award Amount, if known: \$ _____
10. a. Name and Address of Lobbying Entity (If individual, last name, first name, MI):		b. Name and Address of Lobbying Entity (If individual, last name, first name, MI): (attach Continuation Sheet(s) SF-LLA, if necessary)
11. Amount of Payment (check all that apply): \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned		13. Type of Payment <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other, specify: _____
12. Form of Payment (check all that apply): <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind, specify: Nature _____ Value _____		Signature: _____
14. Brief Description of Services Performed or to be Performed and Dates(s) of Service, including Officer(s), Employee(s), or Member(s) Contracted for Payment indicated in item 11: (Attach Continuation Sheet(s) SF-LLL-A, if necessary)		Print Name: _____
15. Continuation Sheet(s) SF-LLL-A Attached:		<input type="checkbox"/> Yes <input type="checkbox"/> No
16. Information requested through this form is authorized by Title 31, U.S.C., Section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to Title 31, U.S.C., Section 1352. This information will be reported to the Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.		Title: _____
Federal Use Only		Telephone No.: _____ Date: _____ Authorized for Local Reproduction Standard Form-LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipients at the initiation or receipt of a covered federal action, or a material change to a previous filing, pursuant to Title 31, U.S.C., Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered federal action.
4. Enter the full name, address, city, state, and ZIP code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants, and contract awards under grants.
5. If the organization filing the report in Item 4 checks "Subawardee," then enter the full name, address, city, state, and ZIP code of the prime federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation United States Coast Guard.
7. Enter the federal program name or description for the covered federal action (Item 1). If known, enter the full Catalog of Federal Domestic Assistance (CDFA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action identified in Item 1 (e.g., Request for Proposals (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract grant, or loan award number; the application/proposal control number assigned by the federal agency). Include prefixes, e.g., "RFP-DE-90401."
9. For a covered federal action where there has been an award or loan commitment by the federal agency, enter the federal amount of the award/loan commitment for the prime entity identified in Item 4 or 5.
10. (a) Enter the full name, address, city, state, and ZIP code of the lobbying entity engaged by the reporting entity identified in Item 4 to influence the covered federal action.
 - (b) Enter the full names of the Individual(s) performing services and include full address if different from 10.(a). Enter last name, first name, and middle initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with federal officials. Identify the federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and renewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Office of Management and Budget, Paperwork Reduction Project, (0348-0046), Washington, DC 20503.

EXHIBIT F
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EXHIBIT G**Attestation Concerning the Use of Offshore Subcontractors**

If Organization offshores any protected health information (PHI) it must notify CalOptima prior to entering into or amending any agreement with an Offshore Subcontractor, and Contractor must complete the Offshore Subcontracting Attestation.

Which CalOptima program(s) does this form pertain to? Select all that apply.	<input type="checkbox"/> OneCare Connect	<input type="checkbox"/> PACE
	<input type="checkbox"/> OneCare	<input type="checkbox"/> Medi-Cal
Please check one of the following:		
<input type="checkbox"/> Our Organization does not offshore any protected health information. Please skip to Part V below		
<input type="checkbox"/> Our Organization does offshore protected health information. Please complete Offshore Subcontractor Attestation (Part I through Part V) below		

Part I — Offshore Subcontractor Information

Attestation	Response
Our Organization uses an offshore subcontractor or offshore staff to perform functions that support our contract with CalOptima	<input type="checkbox"/> Yes <input type="checkbox"/> No
<i>Offshore Subcontractor name:</i>	
<i>Offshore Subcontractor country:</i>	
<i>Offshore Subcontractor address:</i>	
<i>Describe offshore subcontractor functions:</i>	
<i>Proposed or actual effective date for offshore subcontractor (MM/DD/Year):</i>	

Part II — Precautions for Protected Health Information (PHI)

Question	Response
1. Describe the PHI that will be provided to the offshore subcontractor	
2. Explain why providing PHI is necessary to accomplish the offshore subcontractor's objectives:	
3. Describe alternatives considered to avoid providing PHI, and why each alternative was rejected:	



Part III — Attestation of Safeguards to Protect Beneficiary Information in the Offshore Subcontract

Attestation	Response
A. Offshore subcontracting arrangement has policies and procedures in place to ensure that Medicare beneficiary protected health information (PHI) and other personal information remains secure.	<input type="checkbox"/> Yes <input type="checkbox"/> No*
B. Offshore subcontracting arrangement prohibits subcontractor's access to Medicare data not associated with CalOptima's contract with the offshore subcontractor.	<input type="checkbox"/> Yes <input type="checkbox"/> No*
C. Offshore subcontracting arrangement has policies and procedures in place that allow for immediate termination of the subcontract upon discovery of a significant security breach.	<input type="checkbox"/> Yes <input type="checkbox"/> No*
D. Offshore subcontracting arrangement includes all required Medicare Part C and D language (e.g., record retention requirements, compliance with all Medicare Part C and D requirements, etc.)	<input type="checkbox"/> Yes <input type="checkbox"/> No*

Part IV — Attestation of Audit Requirements to Ensure Protection of PHI

Attestation	Response
A. Our Organization will conduct an annual audit of the offshore subcontractor/employee.	<input type="checkbox"/> Yes <input type="checkbox"/> No*
B. Audit results will be used by our Organization to evaluate the continuation of its relationship with the offshore subcontractor/employee.	<input type="checkbox"/> Yes <input type="checkbox"/> No*
C. Our Organization agrees to share offshore subcontractor's/employee's audit results with CalOptima or CMS upon request.	<input type="checkbox"/> Yes <input type="checkbox"/> No*

*Explanation required for all "no" responses to Part III and Part IV above:

Part V — Organization Information

By signing below, I hereby attest that the information contained herein is true, correct and complete.

Printed name of authorized person:	Title:
Email:	Phone #:
Signature:	Date:

Note: CalOptima's policies and procedures, CMS training module instructions for FWA, General Compliance, General HIPAA, CalOptima's Code of Conduct, CalOptima's Compliance Plan can be accessed at <https://www.caloptima.org/en/About/GeneralCompliance.aspx>

EXHIBIT H
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 CFR § 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; (iii) or 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, subawardees, 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

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).

EXECUTION

Subject to the execution of a Services Agreement or amendments thereto by Business Associate and CalOptima, this Business Associate Agreement shall become effective on the Effective Date.

In witness thereof, the parties have executed this Business Associate Agreement:

Business Associate

CalOptima

Print Name

Print Name

Signature

Signature

Title

Title

Date

Date

Print Name

Print Name

Signature

Signature

Title

Date

Title

Date

Rev. 08/2022

Contract No. **«Contract Number»**



CalOptima Health

REQUEST FOR PROPOSALS FOR

Star Analytics Software **RFP 25-017**

PROJECT DESCRIPTION

CalOptima is seeking proposals for a Software-as-a-Service (SaaS) Platform with advanced analytics to monitor and improve its CMS Star Ratings.

SCHEDULE

RFP	
Expected number of contracts to be awarded	1
Pre-proposal meeting date and time	NA
Is pre-proposal meeting mandatory?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Pre-proposal meeting link/location	NA
Deadline for Questions, Comments & Contract Exceptions	November 1, 2024
Proposal Due Date and Time	December 5, 2024 @ 3:00PM Pacific Standard Time
Interviews/Presentations	1/6/2025 – 1/10/2025
Vendor Selection (Tentative)	1/13/2025
CONTRACT	
Expected Duration of Initial Agreement	3 Years
Options to Extend	2 - one-year options
Pricing method	firm fixed price / PMPM / PMPY
DESIGNATED POINT OF CONTACT	
Name	Lisa Ha
Email	Lisaha@caloptima.org

While this proposal is ongoing, communication with CalOptima staff regarding it is prohibited except through the Designated Point of Contact.

Submit questions and proposals via BidSync.

If taking exception to any terms, use the Request to Negotiate Form and submit via e-mail to the Designated Point of Contact.



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SECTION 1 - INSTRUCTIONS TO PROPOSERS

1.1 Questions, Comments & Contract Exceptions

- 1.1.1 Submit all questions via BidSync, by the Deadline for Questions and Comments. Responses will be posted on BidSync as questions arrive. CalOptima may not be able to acknowledge questions and comments received after the deadline.
- 1.1.2 If taking exceptions or suggesting revisions to the attached contract, instead of submitting those through BidSync, use the attached Notice to Negotiate form and email it the Designated Point of Contact by the Deadline for Questions, Comments & Contract Exceptions. Identify specific sections and paragraph numbers to which exceptions are taken, as well as the rationale for the change. If requesting changes to language, identify specific words or phrases to be changed and provide new requested language. CalOptima will consider contract exception requests and if suggested modifications are accepted, the solicitation will be revised and an addendum will be posted with the revised terms. However, if sufficient proposals are received with few or no suggested modifications, CalOptima may accept the proposals with few requests and reject those with more.
- 1.1.3 Failure to take exceptions prior to the deadline stated or as otherwise directed will be deemed a waiver of any objection. CalOptima may determine non-responsive any proposals that are conditional or that include material exceptions to the specifications or terms.
- 1.1.4 Requests for complete replacement of the contract, or for replacement of the federal provisions, will not be granted and will render a proposal non-responsive.

1.2 Revisions to the Solicitation

CalOptima may cancel, revise, or reissue this solicitation, in whole or in part, for any reason. Revisions will be posted as addenda on BidSync. No other revision of this solicitation will be valid. Proposers are responsible for ensuring that they have received all addenda prior to submitting proposals.

1.3 Communication

- 1.3.1 Other than the Designated Point of Contact, no proposer or person acting on behalf of a prospective proposer may communicate with or discuss the details of the procurement process or any proposal with any officer, agent, or employee of CalOptima other than the Designated Point of Contact. This prohibition does not include mere administrative matters (e.g. due dates, etc.).
- 1.3.2 Outside of evaluation committee meetings, members of an evaluation committee and associated subject matter experts may not communicate about

matters involving deliberations or the details of an ongoing solicitation with co-workers, supervisors, directors, individuals in other departments, or other CalOptima staff that is not directly involved in evaluating proposals.

1.4 Pre-proposal conference and site visits (If Applicable)

- 1.4.1 If a pre-proposal conference is scheduled, and if The American with Disabilities Act (ADA) accommodations are required, submit a request for accommodations to the Designated Point of Contact.
- 1.4.2 Answers to questions will be posted as addenda on BidSync.
- 1.4.3 If the pre-proposal meeting is mandatory, proposers who did not attend the pre-proposal meeting will be disqualified.

1.5 Modification or Withdrawal of Proposal

Proposals may be withdrawn, modified, or replaced at any time prior to the Due Date and Time. After the Due Date and Time, proposals may not be modified unless requested by CalOptima.

1.6 Joint Proposals

If submitting a joint proposal, one entity will be fully responsible for performance under any resulting contract and other participants must be subcontractors. In addition, all entities in the joint proposal will be required to undergo the same background checks before CalOptima executes a contract.

1.7 Prohibited Prior Work

- 1.7.1 No person or entity may submit a proposal in response to this RFP if that person or entity has:
 - A. Been a single entity that drafted or directly assisted CalOptima in establishing specifications and requirements for this procurement, or
 - B. Has had access and exposure to information pertinent to this procurement that is not available to other proposers and that would provide an unfair competitive advantage.
- 1.7.2 Proposers that received assistance from any such person or entity will be disqualified.
- 1.7.3 This exclusion does not apply:
 - A. To general and non-specific advice or information offered to or requested by CalOptima to aid in developing the solicitation, as long as the participation was limited to conceptual, preliminary, or initial plans or

specifications and all potential proposers have access to the same information, including the conceptual, preliminary or initial plans;

- B. To comments made at a pre-proposal conference or to comments made subsequent to publication of the solicitation or if multiple sources were consulted for assistance prior to release of the solicitation.

1.8 Conflicts of interest

Proposers and subcontractors or subconsultants are eligible for contracts with CalOptima only if they are not currently, and will not, during the performance of the required services, participate in any other similar work involving a third-party with interests currently in conflict or likely to be in conflict with CalOptima's interests.

1.9 No Commitment

This RFP does not commit CalOptima to make an award, nor will CalOptima pay any costs incurred by proposers in the preparation and submission of proposals, or costs incurred in making necessary studies for the preparation of proposals.

1.10 Pricing

If a pricing sheet is provided, submit prices using the pricing sheet or as otherwise directed. Failure to submit prices as directed may result in the proposal being found non-responsive.

1.11 Estimated Quantities

If the solicitation results in an indefinite quantity or requirements contract, the actual amount of goods or services requested may be less than the maximum value of the contract and there is no guarantee, either expressed or implied, as to the actual quantity of goods and services that will be authorized under the contract.

1.12 Proposal Submission

- 1.12.1 Allow time for all documents to upload in BidSync. Failure to complete an upload may result in rejection of a proposal.
- 1.12.2 Complete all documents electronically. Other than signatures, hand-written responses, whether or not submitted electronically, may be rejected.
- 1.12.3 If directed to submit information as one or more PDF, Excel, or other electronic files, include the solicitation name and number in all filenames.
- 1.12.4 No proposals or modifications submitted by email or facsimile will be considered. Proposals not submitted by the Due Date and Time via BidSync may be rejected.

- 1.12.5 Proposals must be signed by a legally authorized representative of the entity submitting the proposal.

1.13 Ownership and Disclosure of Proposals and Materials

- 1.13.1 All opened proposals, including documents and materials submitted with proposals, become the property of CalOptima.
- 1.13.2 CalOptima is subject to California Public Records Act (California Government Code, Section 6250 *et. seq.*). With selected exceptions, the contents of any submissions will be treated as open records and will be open to inspection by interested parties after a contract is executed or CalOptima rejects all proposals.
- 1.13.3 If submitting confidential or proprietary information as part of a proposal, clearly delineate any limits on the use or distribution of that material in writing. Documents protected by law from public disclosure will not be disclosed if clearly marked with the word "Confidential" on each applicable page, with each confidential provision clearly identified. A mere list of confidential pages will not suffice to meet this requirement. Requests to treat the entire proposal as confidential will be rejected and will result in no part of the proposal being treated as confidential.
- 1.13.4 Trade secrets may be marked as confidential only to the extent they meet the requirements of the California Uniform Trade Secrets Act (CUTSA). Only information claimed to be a trade secret at the time of submittal to CalOptima and marked as confidential will be treated as a trade secret.

1.14 Electronic Signature and Consent

Submission of any materials in response to this RFP constitutes:

- 1.14.1 Consent to CalOptima's release of such materials without notice to the person or entity submitting the materials; and
- 1.14.2 Complete waiver of all claims against CalOptima and its officers, agents, and employees that CalOptima has violated a proposer's right to privacy, disclosed trade secrets, or caused damage by allowing the proposal or materials to be inspected; and
- 1.14.3 Agreement to hold CalOptima harmless for release of such information; and
- 1.14.4 Acknowledgement that CalOptima will not assert any privileges that may exist on behalf of the person or entity submitting the materials.

SECTION 2 - PROPOSAL EVALUATION AND CONTRACT AWARD

2.1 Determination of Responsiveness

- 2.1.1 Each proposal will be reviewed to determine whether it conforms to the instructions set forth in this solicitation. CalOptima, in its sole discretion, may waive minor irregularities in submissions if it determines that there will be no advantage provided to the proposer and no other proposer would suffer a disadvantage.
- 2.1.2 Failure to conform to any revisions in instructions or specifications may render a proposal non-responsive.
- 2.1.3 If a proposal is found nonresponsive, CalOptima will notify the proposer and the proposer will no longer be included in any activities or correspondence regarding the solicitation.

2.2 Proposal Evaluations

- 2.2.1 CalOptima will establish a committee to evaluate responsive proposals. Evaluations will be based on the criteria specified in the RFP as well as information gathered from background checks, oral presentations, and CalOptima's knowledge of the proposer.
- 2.2.2 After reviewing all responsive proposals, the evaluation committee may request clarifications and may recommend one or more top-ranked proposers for final negotiation of contract terms. Alternatively, CalOptima may invite top-scoring proposers for oral presentations, after which proposers may be allowed to amend their proposals and submit best and final offers. After final evaluations of proposals, presentations, and best and final offers, the evaluation committee may recommend one or more top-ranked proposers for final negotiation of contract terms.

2.3 Determination of Responsibility

Prior to awarding a contract, CalOptima will make a determination of a proposer's responsibility based on initial information submitted in the proposal, information submitted upon request by CalOptima, information resulting from CalOptima's inquiry of proposer's references and investigations into the proposer's background, and CalOptima's own knowledge of the proposer. CalOptima will take into consideration matters such as the proposer's integrity, compliance with public policy, record of past performance, and financial and technical resources. Proposers determined to be non-responsible and who cannot be made to be responsible within timelines set by CalOptima will not be considered further.

2.4 Contract Award

2.4.1 Award, if made, will be to the responsive, responsible firm that the evaluation committee concludes offering the best value to CalOptima for the services and goods described in this solicitation, or if applicable, for a specific portion of the services and goods described. Failure to award a contract to lowest cost proposer will not constitute a valid cause of action against CalOptima.

2.4.2 Debriefings, if requested, will only be provided after contract award.

2.5 Post Award Requirements

If selected for award, the selected consultant or contractor may be required to provide various forms and disclosures before a contract can be executed. Examples of requested forms and disclosures may include:

2.5.1 Forms

- A. Insurance certificates as outlined in the contract or PO if not already provided;
- B. W9 signed within the previous 6 months.

2.5.2 Disclosures

- A. All pending litigation and tax liens;
- B. Any criminal charges where the company and/or officers, and/or owners of over 10% of the company are defendants regarding the charges;
- C. Audited financial statements for the past three fiscal years, if requested;
- D. Samples, drawings, illustrations, and related items.

2.5.3 Staff agreements

If the work requires access to documents and materials that are confidential or unavailable to the general public, CalOptima may require execution of a non-disclosure or similar agreement prior to providing access to such materials. The selected proposer will be required to collect, store, and maintain such signed agreements for all staff that will have access to such materials.

SECTION 3 - PROPOSAL CONTENTS AND FORMAT

Proposals should demonstrate the experience, capacity, training, knowledge, and skills necessary to successfully perform the work described in this solicitation. The information may include: the financial capacity of the firm, the staff size, staff licenses and experience, competing demands on the resources of the firm and the individuals, and any other information that would enable CalOptima to make a fair assessment of a proposer's suitability.

Submit proposals in the following order. Number all pages.

3.1 Experience and Organizational Capability

3.1.1 Experience

Provide a summary of experience providing similar services, demonstrating the experience and capacity necessary to successfully perform the services required by this RFP. Include examples, descriptions of work completed, and outcomes, if known.

3.1.2 Organizational Capacity

Provide evidence of adequate human, organizational, technical, and professional resources and abilities to meet the needs of this solicitation. Include an organizational chart for organization responding to this solicitation and describe the organization's expertise and capability to complete the proposed work.

3.1.3 Key Personnel

If certain individuals are essential to the proposed work, they will be considered Key Personnel. Include their resumes, a description of their past work related to proposed services, and proposed role on the project team for the duration of the engagement. If CalOptima accepts the proposal, Key Personnel may not be replaced without CalOptima's approval and no substitutes may be made unless CalOptima accepts the substitute as substantially equivalent.

3.2 Proposed Services

- 3.2.1** Describe the services to be provided and a work plan for delivering the services. As applicable, include a detailed breakdown and description of the specific steps that will be followed to perform the services required by this RFP. Proposers may elect to include in this section any innovative methods or concepts that might be beneficial to CalOptima if the requirements established in this RFP are met. Include a proposed schedule for the completion of the services and the deliverables, including the start and end dates and intermediate delivery dates.
- 3.2.2** List the types of documents, materials, and resources required from CalOptima for completion of the services described in the RFP.

3.3 References

- 3.3.1** Provide at least three references for which similar services were provided. Include the name of the organization, telephone and email for one or more contacts, and a description of the specific services provided. Ensure that the information is current and accurate because if references cannot be contacted, the proposal may be rejected. If contractually prohibited from disclosing a client,

include sufficient detail regarding the work and the size of the organization to provide a demonstrated record of success in similar engagements.

3.4 Supplemental Services (optional)

List any related and recommended products or services not specified in this RFP that may be offered and that CalOptima might consider.

3.5 Supplementary Documents

As applicable, provide additional documents and materials in the following order:

- 3.5.1 Minimum Qualifications, using CalOptima forms if provided
- 3.5.2 Financial Documents, if requested.
- 3.5.3 Samples, drawings, illustrations and related items.

3.6 Price

- 3.6.1 Include a price proposal for the services to be provided and the total price for all services, inclusive of time in hours for the completion of each task and items which are normally referred to as reimbursable expenses, i.e., travel, meals, and lodging. Reimbursement will not be made for out of pocket or reimbursable expenses, which must be included in the total price. This total price will be used in determining scores for evaluation purposes.
- 3.6.2 If including any optional services or products, price and label such services or products as optional, and include those in an addendum. These optional services or products will not be used to evaluate the proposal or price.

3.7 Required Forms (Attached)

- 3.7.1 Authorized Signatures
- 3.7.2 Price Proposal Form
- 3.7.3 Levine Act documentation
- 3.7.4 Audit and Legal Questionnaire

SECTION 4 - PROTESTS

Protests that do not comply with the protest procedures outlined below will be rejected.

4.1 Protest Eligibility

- 4.1.1 Protests or objections may be filed regarding the procurement process, solicitation or addendum content, or contract award.

4.1.2 CalOptima will review only protests submitted by actual or prospective bidders. Protests by actual or prospective subcontractors will be rejected.

4.2 Protest Deadlines

File protests with any supplemental materials by 5 p.m. PST, as appropriate, on the deadlines set forth below. Failure to file by the relevant deadline constitutes a waiver of any protest on those grounds. Supplemental protest materials filed after the relevant deadline will not be considered unless CalOptima determines that there are extenuating circumstances.

- 4.2.1 If relating to the content of the solicitation or an addendum, file within five business days after the date CalOptima releases the solicitation or addendum with the revised content.
- 4.2.2 If relating to the intent to award, file within five business days following CalOptima's announcement of the awarded proposer.
- 4.2.3 The date of filing is the date CalOptima receives the protest, unless received after 5 p.m. PST or on a CalOptima non-business day, in which case the date of filing will be the next business day.

4.3 Protest Contents

- 4.3.1 Submit protests in writing to the Designated Point of Contact. Include all of the following:
 - A. Detailed grounds for the protest, supported with technical data, documentary evidence, names of witnesses, and other pertinent information related to the subject being protested; and
 - B. The law, rule, regulation, or policy upon which the protest is based, alleging a clear violation of a specific law, rule, regulation, or policy; and
 - C. If applicable, identification of any proprietary or confidential material, which must be indicated by stating on the front page of the protest document that proprietary material is included, and identifying the alleged proprietary information wherever it appears within the protest documents.
- 4.3.2 Protest documents will not be withheld from any interested party outside of CalOptima unless withholding the information is required by law or regulation. Identifying either the entire contents or the majority of contents of a protest as proprietary or confidential will result in no part of the protest being treated as proprietary or confidential by CalOptima.

SECTION 5 - PROPOSER CERTIFICATIONS

By submitting a proposal, each proposer certifies that:

- Its submission is not the result of collusion or any other activity that would tend to directly or indirectly influence the selection process; and
- It is able or will be able to comply with all requirements of this solicitation at the time of contract award; and
- All required licenses, certificates and permits are or will be valid at the time of contract award and will be kept valid for the duration of the contract; and
- Neither proposer, its employees, nor any affiliated firm providing goods and services contemplated by this solicitation has prepared the plans, specifications, or requirements for this solicitation, or has any other actual or potential conflict of interest;
- It is unaware of any financial or economic interest of any public officer or employee of CalOptima relating to this solicitation; and
- It is not presently debarred or declared ineligible for award of a contract by any federal agency or from participating in any federal healthcare programs.

CALOPTIMA LEVINE ACT DISCLOSURE STATEMENT

California Government Code section 84308, commonly referred to as the "Levine Act," precludes an Officer of a local government agency from participating in the award of a contract if he or she receives any political contributions totaling more than \$250 in the 12 months preceding the pendency of the contract award, and for three months following the final decision, from the person or company awarded the contract. This prohibition applies to contributions to the Officer or received by the office or on behalf of committee. The Levine Act also requires disclosure of such contributions by a party to be awarded a specific contract. Please refer to Attachment A to this Statement for the complete stator language.

Current members of the CalOptima Board of Directors are:

Isabel Becerra	Vicente Sarmiento	Maura Byron	Doug Chaffee
Blair Contratto	Norma Garcia Guillen	Cathy Green, R.N	Brian Helleland
Veronica Kelley, DSW, LCSW	Jose Mayorga, M.D.	Donal Wagner (Alternate)	

1. Have you or your company, or any agent on behalf of you or your company, made any political contribution of more than \$250 to any CalOptima Director(s) in the 12 months preceding the date of the issuance of this request for proposal or request for qualifications?

YES NO

If yes, please identify the Director(s)

2. Do you or your company, or agency on behalf of you or your company, anticipate or plan to make any political contributions of more than \$250 to any CalOptima Director(s) between the issuance of this request for proposal or request for qualifications and the award of the contract or in the three months following the award of the contract?

YES NO

If yes, please identify the Director(s)

Answering yes to either of the two questions does not preclude CalOptima from awarding a contract to your firm. It does, however, preclude the identified Director(s) from participating in the contract award process for this contract.

DATE

(SIGNATURE OF AUTHORIZED OFFICIAL)

(TYPE OR WRITE APPROPRIATE NAME, TITLE)

(TYPE OR WRITE NAME OF COMPANY)

AUDIT AND LEGAL QUESTIONNAIRE

1. Have you had any material disputes, including litigation with customers, provider groups, government entities, client groups and any other litigation with contingent liability of \$500,000 or more?

Yes No

If yes, state the results or status of the issue.

2. Is your company under investigation or being sued by any governmental agency?

Yes No

If yes, state the results or status of the issue.

3. Has your company been barred from participation in a publicly-funded health program (such as Medicare or Medicaid).

Yes No

If yes, explain the circumstances and status.

4. Provide details of any inquiry letters and/or negative audit results received from any state or federal agency or any outside business auditor.

5. Has your organization been audited in accordance with the Statements for Standards on Attestation Engagements (SSAE) 16, and were there any exceptions?

Yes No

If yes, explain the circumstances and status.

6. If not audited, explain.

SECTION 6 - SCOPE OF WORK

6.1 Overview and Background:

CalOptima Health aims to enhance its CMS Star Ratings performance and is seeking an advanced analytics software to assist in tracking, monitoring, and implementing strategies for improvement. CONTRACTOR will provide a targeted, multi-faceted approach to assist CalOptima Health in achieving this improvement goal.

CalOptima Health is rated annually by the Centers for Medicare and Medicaid Services (CMS) on quality related measures, including Healthcare Effectiveness Data and Information Set (HEDIS), Consumer Assessment of Healthcare Providers and Systems (CAHPS), and Health Outcomes Survey (HOS). Ratings are received for Part-C, Part-D, and Overall, each year. The results are used for the CMS Star Ratings of CalOptima Health's Medicare Advantage Dual-Special Needs Plan called OneCare (OC).

A. Current State:

For the 2024 CMS Star Ratings, OneCare received a 3.0 rating for Part-C, a 3.5 rating for Part-D, and a 3.0 rating overall. This showed improvement from the prior year ratings, however, is still a decrease from 2022 Stars when OneCare received a 3.5 rating for Part-C, a 4.5 rating for Part-D, and a 4.0 rating overall.

B. Desired Outcome:

CalOptima Health would like to see a minimum performance improvement in our OneCare Star Ratings from a 3 to a 4 overall rating.

C. Business Model:

OC is a unique Medicare Advantage Special Needs Plan that provides a full range of health care services to individuals eligible for both the Medicare and Medi-Cal programs. Administered by CalOptima Health, the Medi-Cal administrator for Orange County, OC combines the benefits of Medicare and Medi-Cal into one plan that includes physician visits, hospitalization, and pharmacy benefits.

Membership by Program:

Program	Members
One Care	17,333

Total 17,333

Membership data as of October 2024.

CalOptima Health's delivery system is comprised of CalOptima Health Community Network (CCN) and a network of nine contracted health networks

(HN). CCN is administered internally by CalOptima Health and is the 10th HN available for members to select, supplementing the existing HN delivery model and creating additional capacity. Through these HNs, CalOptima Health members have access to more than 1,100 Primary Care Providers. Physicians can affiliate with all 10 contracted HNs.

Physicians participating in the CalOptima Health program can serve members through CCN and/or a contracted HN. The HNs are responsible for reimbursing their contracted physicians. Each HN, within the confines of its CalOptima Health contract, establishes its own payment mechanisms, authorization rules, and other administrative processes. Physicians work with the HNs to coordinate services for HN members.

6.2 RFP Objective:

CalOptima Health is seeking a Software-as-a-Service (SaaS) platform with advanced analytics to monitor and improve its CMS Star Ratings. The platform should include implementation and offer post-implementation support requested by CalOptima.

6.3 Products / Services:

STAR RATINGS ANALYTICS PLATFORM:

- A. Usage: The Star Ratings Analytics Platform (“Star Tool”) will be used by CalOptima Health business users from various departments to monitor the progress of strategic initiatives aimed at improving CMS Star Ratings.
- B. Capabilities: The Stars Tool should enable business users to track year-over-year and month-over-month measure level performance for all CMS Star Ratings measures, including:
 - i. Monthly performance reporting
 - ii. Trend analysis
 - iii. Member-level gap data
 - iv. Year-end projections for both measure-level and overall performance projections
 - v. Identifying data discrepancies
 - vi. Targeted campaign development
 - vii. Monitoring the success of initiatives
- C. Required Features:
 - i. Measure level detail for all CMS Star Ratings measures
 - ii. Measure level and overall performance projections
 - iii. Support data uploads from multiple sources (e.g., medical claims, pharmacy claims, administrative data, HEDIS data)
 - iv. Predictive analytics to forecast future star ratings

- v. Measure level cut point projections for current and future Star Rating measurement years
- vi. Campaign tracking and performance
- vii. Create attainable targets for specific measures based on current data and past performance
- viii. Business self-service, “Low-Code/No-Code” platform for CalOptima Health business users to build queries and analyze data without any need for CONTRACTOR professional services or internal IT support
- ix. Preferred: Analysis of performance data with recommendations for improvement
- x. Preferred: Measure-level best practices for future initiatives

D. Security, Privacy, Data Exchange, and System Interface Requirements:

- i. Compliance with state and federal regulations, (e.g., Food and Drug Administration (FDA), Affordable Care Act (ACA), Centers for Medicare and Medicaid Services (CMS), the provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA))
- ii. Provide a HIPAA compliant platform and secure encryption texting capability to ensure the safe management of Protected Health Information (PHI) and other sensitive data
- iii. System interfaces should be compatible with RESTful / JSON APIs and flat file data interfaces
- iv. Secure data exchange between vendor and CalOptima Health. For e.g. batch data should be exchanged using SFTP protocol
- v. Support ingestion of responses and structured and unstructured information
- vi. Ability to use Optical Character Recognition (OCR) to ingest data from documents and forms
- vii. Support data record retention for ten (10) years at minimum
- viii. Successful Offeror agrees, upon termination of the relationship (regardless of which party terminates), to provide all information required for successful data transition files at no additional cost

E. Minimum Functional Requirements:

- i. Data Analytics (e.g., trending, comparative analysis)
- ii. Software monitoring and tracking for Star Program changes
- iii. Integration and system configuration capabilities
- iv. Data transfer
- v. Reporting Requirements
 - a. Dashboard reporting with graphical, at-a-glance key indicators for campaign progress and results
 - b. Summary reports shall be provided at the conclusion of each month that measures performance and outcomes
 - c. Ability to perform analytics on campaigns in progress

- d. Flexibility for summary or detailed reporting
- e. Reports should be in a format that allows results to be integrated into CalOptima Health systems
- f. Customization
- vi. Single sign on (SSO)

6.4 Contractor Responsibilities:

The successful contractor shall:

- A. Develop a project implementation work plan and schedule as part of the proposal.
- B. Maintain a log of risks, management issues, and mitigation strategies
- C. Validation of detailed business requirements
- D. Test and integrate the system with CalOptima Health's data sources.
- E. Test and ensure successful implementation of deployed software and equipment prior system launch
- F. Provide end-user training to business users and IT application support resources, via written guide manuals and/or webinars
- G. Provide system configuration and technical training to IT resources
- H. Provide live on-going support services 8am – 5pm Pacific Time, Monday - Friday
- I. Provide end-user reference guides

6.5 CalOptima Health Responsibilities:

CalOptima Health will:

- A. Provide accurate data files for implementation.
- B. Approve project timelines.
- C. Provide a point of contact to work with contractor.
- D. Coordinate meetings and assist with implementation as needed.

6.6 Deliverables:

Successful contractor shall:

- A. Provide and implement SaaS platform
- B. Provide ongoing support of platform.
- C. Present ongoing reports on findings, outcomes, and program performance.
- D. Optional: Provide recommendations for future campaigns and initiatives.
- E. Work with Enterprise Architecture team to create a system integration architecture diagram

6.7 Performance Measures and Guarantees:

- A. Response to queries within one (24 hours) business day.
- B. Weekly documentation and tracking of startup activities.
- C. Weekly status updates including metrics dashboard.
- D. Timely data refreshes.
- E. Acceptance of System Integration Test and User Acceptance Test.
- F. Completion of training materials and reference guides

6.8 Timelines

CalOptima Health expects the platform implementation to be completed within 30 days of the signed agreement.

SECTION 7 - EVALUATION CRITERIA

Proposals will be evaluated by an Evaluation Committee according to the following criteria.

- A. Price
- B. Overall experience in all the platform's core system functionality and implementation.

- C. Qualifications and experience of the proposed and key staff, including experience developing analytics platform software to assist in the monitoring and improvement of CMS Star Ratings for other public and health agencies, and deploying software.
- D. Experience in defining and developing analytics platform workflows in software application.



**ATTACHMENT 1 -
AUTHORIZED SIGNATURES**

Name of firm or organization		
List the name and title of those individuals in the organization who are authorized to execute proposals, contracts, and other documents and/or instruments on behalf of the organization. Specify if more than one signature is required.		
Name	Signature	Title
Name	Signature	Title
Name	Signature	Title

Organization's primary contact person regarding this RFP.

Name: _____

Title: _____

Phone number: _____

E-mail: _____

**ATTACHMENT 2 -
PRICE PROPOSAL**

Estimate the number of hours required for performance of each task and submit a proposed total cost for the services to be provided. The contract resulting from this RFP will be a fixed-price contract. However, in the event additional services may be requested, include hourly rates for staff that will be performing work on this project. Hourly rates must be inclusive of all administrative, travel, report production, general overhead, profit and related expenses.

Also submit a proposed schedule with milestones for the performance of the requirements of the RFP, including estimated milestones for implementation of recommendations resulting from the analysis.

Description	Unit of Measure	\$ Year 1	\$ Year 2	\$ Year 3	\$ Optional renewal year 4	\$ Optional renewal year 5
Implementation Cost	One Time Fixed Fee					
Platform – Per Member Per Month (PMPM)	Hourly					
Additional User	Annual Fixed					
Training Services or Per Package	Fixed					
Other						

**ATTACHMENT 3 -
SECURITY QUESTIONNAIRE**

Proposer is required to certify that it and any proposed subcontractors comply with the following security provisions. Complete the following questionnaire and explain how you propose to meet any exceptions.

1. Information Security Program, Policy & Procedures

- a. Is your security program based on an industry-recognized security framework? If so, specify the framework.
- b. Has the program been audited according to the security framework by a reputable 3rd party auditor? If so, provide the name of the firm and the date of the audit.
- c. Do you have documented information security policies and procedures? If so, list the titles of each policy.
- d. Does your security policy meet HIPAA requirements? Has it been audited by external auditor, and if so, when was it last audited?
- e. Do you have a formal information classification procedure? Describe how patient data would be categorized.

2. Personnel Security

- a. Has your organization formally appointed a central point of contact for security coordination, e.g. a designated information security officer and/or privacy officer? If so, who, and what is his or her position within the organization?
- b. Does your organization perform background checks to examine and access an employee's or contractor's work and criminal history?
- c. Do you work with third parties, such as IT service providers that have access to or store your sensitive information?
- d. In the event of a security incident with one of your third-party vendors, what is the policy for alert notifications, timeline for resolution, etc? If such a process exists, provide the document as part of your response as Proposal Exhibit: Third-party Security Event Notices

3. Network Security

- a. Provide a diagram of your firm's network configuration. Has your IT vendor provided information regarding how your sensitive information systems are protected?
- b. Are systems and networks that host, process and or transfer sensitive information "protected" (isolated or separated) from other systems and/or networks?
- c. Are internal and external networks separated by firewalls with access policies and rules?
- d. Is there a standard approach for protecting network devices to prevent unauthorized access/network related attacks and data-theft?

- e. Is sensitive information transferred to external recipients? If so, what controls are in place to protect sensitive information when transferred (e.g. with encryption?)
- f. How does your firm manage vulnerabilities and threats? How often are Vulnerability Assessments performed?
- g. What is the remediation process for vulnerabilities that are discovered?
- h. Are third party connections to your network monitored and reviewed to confirm authorized access and appropriate usage? How often does your firm attest third party network connectivity?
- i. What network security tools do you have in place? (i.e., DLP, IPS/IDS, Advanced Malware Detection, Web Content Filtering, etc.).
- j. Describe your methodology for tuning your security tools (i.e., DLP, IPS, Advanced Malware Detection, Web Content Filtering, etc.) How do you ensure your security tools are effective and up to date?
- k. Does your firm conduct annual internal and external penetration tests by a 3rd party?

4. Logical Access

- a. Do you have a formal access authorization process based on “least privilege” (employees are granted the least amount of access possible in order to perform their assigned duties) and need to know (access permissions are granted based upon the legitimate business need of the user to access the information)?
- b. How are systems and applications configured to allow access only to authorized individuals?
- c. Do you maintain a list of authorized users with access (administrative access) to operating systems?
- d. Does your firm’s system support mobile devices? If so, describe in detail how your firm can control mobile device access.
- e. Is sensitive information (e.g. social security numbers) masked or removed from, or encrypted within, documents and or websites before it is distributed?
- f. Is software installation restricted for desktops, laptops and servers? What type of system hardening does your firm perform?
- g. Is access to source application code restricted? If so, how? Is a list of authorized user maintained? How does your firm protect its source code?
- h. Are user IDs for your system uniquely identifiable?
- i. Do you have a process to review user accounts and related access? How does your firm do user attestation?

5. Operations Management

- a. Has antivirus software been deployed and installed on your computers and supporting systems (e.g., desktops, servers and gateways?)

- b. Are systems and networks monitored for security events? If so, describe monitoring in detail.
- c. Do procedures exist to protect documents, computer media (e.g., tapes, disks, CD-ROMs, etc.) from unauthorized disclosure, modification, removal, and destruction? Is sensitive data encrypted when stored on laptop, desktop and server hard drives, flash drives, backup tapes, etc.?
- d. Does your firm send backup tapes to an offsite vendor? If so, name the vendor.
- e. Are there security procedures for the decommissioning (replacement) of IT equipment and IT storage devices which contain or process sensitive information? If so, describe.
- f. Are development, test and production environments separated from operational IT environments to protect production (actively used) applications from inadvertent changes or disruption?
- g. Are duties separated, where appropriate, to reduce the opportunity for unauthorized modification, unintentional modification or misuse of the organization's IT assets?
- h. Do formal change management procedures exist for networks, systems, desktops, software releases, deployments, and software vulnerability (e.g., Virus or Spyware) patching activities?

6. Incident Management and Investigations

- a. Is a formalized and documented process in place for incidents and investigations?
- b. How do you identify, respond to and mitigate suspected or known security incidents?
- c. During the investigation of a security incident, is evidence properly collected and maintained?
- d. Are incidents identified, investigated, and reported according to applicable legal requirements?
- e. How are incidents escalated and communicated?

**ATTACHMENT 4 -
REQUEST TO NEGOTIATE**

**ATTACHMENT 5 -
STANDARD CONTRACT**

Question and Answers for Bid #25-017 - Star Analytics Software

Overall Bid Questions

There are no questions associated with this bid.

Question Deadline: Nov 1, 2024 2:00:00 PM PDT