

Solicitation 24-051

Strategic Communications Services

Bid Designation: Public



CalOptima

Bid 24-051 Strategic Communications Services

Bid Number **24-051**
 Bid Title **Strategic Communications Services**

Bid Start Date **Mar 20, 2024 3:32:27 PM PDT**
 Bid End Date **Apr 11, 2024 2:00:00 PM PDT**
 Question & Answer End Date **Mar 28, 2024 7:00:00 AM PDT**

Bid Contact **Maria Medina**
mmedina@caloptima.org

Contract Duration **2 years**
 Contract Renewal **3 annual renewals**
 Prices Good for **120 days**

Bid Comments **CalOptima Health is seeking one or more Marketing and Advertising Agencies to provide communications and media services in support of strategic initiatives including CalAIM, Covered California, Medi-Cal Expansion, Medicare marketing, and brand awareness.**

Item Response Form

Item **24-051-01-01 - Strategic Communications Services**
 Quantity **1 each**
 Unit Price
 Delivery Location **CalOptima**
City Parkway
 505 City Parkway West
 Orange CA 92868
Qty 1

Description
Strategic Communications Services



CalOptima Health

03/20/2024

NOTICE OF REQUEST FOR PROPOSALS (RFP)

#24-051

GENERAL CONDITIONS AND INSTRUCTIONS TO OFFERORS

For

Strategic Communications Services

Key RFP Dates

Written Questions Due: 03/28/2024, 2:00 PM Pacific Time
Proposal Submittal Date: 04/11/2024, 2:00 PM Pacific Time

Inviting Request for Proposals (RFP) 24-051 for Strategic Communications Services

CalOptima Health invites Proposals from qualified Offerors to provide Strategic Communications services. Proposals shall be prepared and submitted in accordance with the requirements set forth in this RFP #24-051. **Proposals must be submitted via BidSync no later than 2:00 PM Pacific Time, 04/11/2024.**

Proposals, and amendments to Proposals received after the date and time specified above will be rejected by the BidSync program and will not be delivered to CalOptima Health.

CalOptima Health's Basic Philosophy: Contracting for Results

CalOptima Health's fundamental commitment is to contract for results. CalOptima Health defines a successful result as a generation of defined, measurable, and beneficial outcomes that satisfy the contract requirements and support CalOptima Health's mission and objectives. This RFP 24-051 describes what is required of the successful Offeror in terms of services, deliverables, performance measures and outcomes, and unless otherwise noted in this RFP, places the responsibility for how they are accomplished on the successful Offeror.

Contract Elements

The term "contract" means the contract awarded as a result of this RFP 24-051 and all exhibits thereto. (See RFP Attachment 4: CalOptima Health Sample Contract). The successful Offeror(s) will be required to accept a written contract in accordance with and included as a part thereof, this Request for Proposal, including all requirements, conditions and specifications contained therein. The Proposal, including all attachments and information on services, and associated pricing shall be binding and shall be incorporated into the written contract. At a minimum, the following documents will be incorporated into the contract:

- This RFP 24-051 and all attachments and exhibits.
- Any modifications, addendum or amendments issued in conjunction with this RFP 24-051.
- The successful Offeror's Proposal.

Should there be any conflict between RFP 24-051 and the contract, the terms and conditions of the contract shall prevail.

It should be noted that as a public agency, CalOptima Health is mandated by various government entities to incorporate many of the terms and conditions listed within the entities Contract, and is unable to modify them in any way.

CalOptima Health is permitting each Offeror to identify the terms of the Contract it would like to negotiate. Using Attachment 5 entitled "Request to Negotiate Contract Terms," Offerors must identify the Current Language, Proposed Language, and Rationale for the

Request. Note that any request to negotiate contract terms without a rationale will not be considered for negotiation. CalOptima Health will evaluate all requests and render a decision on each Contract term identified.

- **Please be advised** that Exhibit C of the attached Sample Contract includes regulatory requirements that CalOptima Health must follow as a public agency that receives federal funds and is regulated by the DMHC, DHCS, and CMS. Any contract resulting from this RFP must include these provisions as provided herein.
- If a "Request to Negotiate Contract Terms" form is not submitted with the proposal, the terms submitted in the Sample Contract will be in force.
- CalOptima Health will not review any changes marked on the Contract PDF that are not included on the "Request to Negotiate Contract Terms" form.
- CalOptima Health will also not review any additional terms & conditions submitted by Vendor on Vendor paper.
- Even if you currently have an existing contract with CalOptima Health or have had one in the past, the services within this RFP are considered separate and CalOptima Health will not add them to an existing agreement.
- Each deletion, addition, and modification, etc., to CalOptima Health's Sample Contract must be logged and submitted on the "Request to Negotiate Contract Terms" form. Failure to do so will result in your proposal being deemed non-responsive.
- CalOptima Health may disqualify and terminate negotiations with any Offeror that did not take exception to a given Sample Contract provision in its proposal and subsequently attempts to do so during negotiations. As such, it is in Offeror's best interest to have the Sample Contract reviewed by counsel prior to submitting a proposal.

The successful Offeror will be required to comply with all applicable equal opportunity laws and regulations.

Sincerely,

Maria Medina
Senior Buyer

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SECTION I: CALOPTIMA HEALTH BACKGROUND AND OVERVIEW

A. County Organized Health Systems (COHS) Background

The California State Medicaid (Medi-Cal) program came into existence in March 1966 as a fee-for-service health care delivery system. In May 1972, Medi-Cal beneficiaries began enrolling in managed care plans when the first Prepaid Health Plan (PHP) contract went into effect. Joining a PHP was voluntary and limited to those in a public assistance aid category.

In June 1983, a new type of managed care program, the County Organized Health System (COHS), became operational. The COHS managed care model ensures Med-Cal recipients access to comprehensive, cost-effective health care. Each COHS plan is sanctioned by the County Board of Supervisors and governed by an independent commission.

B. CalOptima Health Overview

CalOptima Health's Overview can be located by clicking on the following link and by selecting 'View CalOptima Health Fast Facts': <https://www.CalOptima Health.org/en/About/AboutCalOptima Health/FastFacts.aspx>

SECTION II: INSTRUCTIONS AND CONDITIONS

A. General Requirements

- 1.0 This RFP 24-051 contains a list of requirements for the successful Offeror. A qualified Offeror, for the purpose of this RFP 24-051, is an Offeror that can reliably, competently and independently provide the required services to CalOptima Health for the entire term of the agreement. The contract term is 2 years with 3, one year renewal options at CalOptima Health's discretion.
- 2.0 As required under Ordinance No. 3896 of the County of Orange, State of California, Offeror hereby acknowledges and agrees that the obligations of CalOptima Health under any resulting contract are solely the obligation of CalOptima Health, and the County of Orange, State of California, shall have no obligation or liability therefore.

B. Instructions and Conditions

1.0 Examination of Proposal Documents

- 1.1 Before submitting a Proposal, each Offeror represents that it has thoroughly examined and become familiar with the work required under this RFP 24-051 and it is capable of performing quality work to achieve CalOptima Health's objectives.
- 1.2 Each Offeror must be satisfied by personal examination, and by such other means as it may prefer, as to the actual conditions and requirements under which the contract will be performed.
- 1.3 CalOptima Health reserves the right to remove from its list for future RFPs, for an undetermined period of time, the name of any Offeror for failure to accept a contract, failure to respond to two consecutive RFPs and/or unsatisfactory performance. Please note that a "No Bid" is considered a response.

2.0 Addenda

CalOptima Health may make changes to the requirements of this RFP 24-051. Any CalOptima Health changes to the requirements will be made by written addendum to this RFP 24-051. Any written addenda issued pertaining to this RFP 24-051 shall be incorporated into the terms and conditions of any resulting contract. CalOptima Health will not be bound to any modifications to, or deviations from, the requirements set forth in this RFP 24-051 as the result of oral instruction. All addenda will be submitted by CalOptima Health via BidSync.

3.0 Procurement Schedule

The following table presents the anticipated schedule for this procurement. All dates are subject to change at CalOptima Health's discretion. Changes to the schedule will be communicated via an addendum to this RFP through BidSync.

| Event | Date |
|--|-------------------------|
| RFP 24-051 Issue Date | 03/20/2024 |
| Written Questions due from Offerors via BidSync | 03/28/2024 |
| Responses to Questions due from CalOptima Health via BidSync | 04/01/2024 |
| Proposals due from Offerors via BidSync | 04/11/2024 |
| Interviews/Reference Checks | 04/30/2024 - 05/02/2024 |
| Vendor Selection | 05/06/2024 |

4.0 Procurement Point-of-Contact

4.1 All communications relating to this RFP 24-051 must be directed to CalOptima Health's designated contact below:

Maria Medina
mmedina@caloptima.org
CalOptima Health Vendor Management Department
505 City Parkway West
Orange, CA 92868

4.2 Any and all communications relating to this RFP must be directed to the Vendor Management Point-of-Contact named above. Communications relating to this RFP between respondents and other CalOptima Health staff members concerning this RFP are strictly prohibited. Failure to comply with these requirements will result in Proposal disqualification.

5.0 Questions and Clarifications

5.1 If an Offeror desires an explanation or clarification of any kind regarding a provision of this RFP 24-051, the Offeror must generate a written request for such explanation or clarification through BidSync by 2:00 PM Pacific Time, 03/28/2024. Inquiries received after 2:00 PM Pacific Time, 03/28/2024 will not be responded to.

5.2 CalOptima Health responses will be communicated via BidSync, and will be sent no later than 5:00 PM Pacific Time, 04/01/2024.

6.0 Proposal Preparation

6.1 Proposals shall be typed in 12 point font and submitted via BidSync in a Word, Excel or PDF format. Do not provide zip files. Offerors should not include any unnecessarily elaborate or promotional material.

6.2 Information shall be presented and submitted through BidSync and must be submitted in the order in which it is requested. Please limit your responses to no more than five (5) documents. Each file name must contain your company name and RFP number. The responses must directly address the items requested in each requirement. Complete, concise and specific responses are required. Lengthy narrative is discouraged.

6.3 Letter of Transmittal

A mandatory Letter of Transmittal shall be included with the Proposal and must, at a minimum, contain the following:

- Identification of Offeror, including name, address and telephone number.
- Name, title, e-mail address and telephone number of Offeror's representative during the period of proposal evaluation.
- Proposed working relationship between Offeror and subcontractors, and if not applicable, indicate so.
- A statement to the effect that the Proposal shall remain valid for a period of not less than 120 calendar days from the Proposal due date.
- W9 signed within the past 6 Months.
- Signature of a person authorized to bind Offeror to the terms of the Proposal.
- Either a statement indicating no contract changes or submit a Request to Negotiate Contract Terms as presented in this RFP as Attachment 5.

7.0 Proposal Submittal

7.1 Date and Time

All Proposals must be submitted via BidSync and must be submitted no later than 2:00 PM Pacific Time, 04/11/2024. CalOptima Health recommends you begin the submission process well in advance of the proposal submission deadline to allow ample time for transmission.

7.2 Acceptance of Proposals

- 7.2.1 CalOptima Health reserves the right to accept or reject any and all proposals, or any item or part thereof, or to waive any informalities or irregularities in proposals.
- 7.2.2 CalOptima Health reserves the right to withdraw this RFP at any time without prior notice and CalOptima Health makes no representations that a contract will be awarded to any Offeror responding to this RFP.
- 7.2.3 CalOptima Health reserves the right to postpone proposal opening for its own convenience.

8.0 Pre-Contractual Expenses

8.1 Pre-contractual expenses are defined as expenses incurred by the Offeror in:

- preparing its proposal in response to this RFP;
- submitting its proposal to CalOptima Health;
- negotiating with CalOptima Health on any matter related to its proposal; or
- any other expenses incurred by the Offeror prior to date of award, if any, of the contract.

8.2 CalOptima Health shall not, in any event, be liable for any pre-contractual expenses incurred by Offeror in the preparation of its proposal. Offeror shall not include any such expenses as part of its proposal.

9.0 Joint Offers

Where two or more Offerors desire to submit a single proposal in response to this RFP 24-051, they should do so on a prime-subcontractor basis rather than as a joint venture. CalOptima Health intends to contract with a single firm and not with multiple firms doing business as a joint venture.

10.0 Non-Collusion Affidavit

As part of its Proposal, Offerors are required to complete and sign the Non-Collusion Affidavit provided as RFP Attachment 2. Proposals submitted to CalOptima Health without a fully executed copy of the Non-Collusion Affidavit will be considered non-responsive.

11.0 Contract Type and Term

- 11.1 It is anticipated that the contract resulting from this solicitation, if awarded, will be a firm-fixed price contract unless otherwise specified.
- 11.2 The anticipated initial term of any resulting agreement shall be for a period of 2 years, with an anticipated effective date of 06/01/2024, with 3 consecutive, one year renewal options at CalOptima Health's discretion.

12.0 Eligibility for Contract Award

CalOptima Health will not award this RFP or enter into a contract with any Offeror who is debarred, suspended or otherwise ineligible for the award of a contract or grant by any Federal agency or

from participating in Federal Healthcare Programs. By submission of this proposal, Offeror acknowledges and warrants that the Offeror and any of its officers, directors, owners, partners, or any person having primary management or supervisory responsibilities within the Offeror's business are not presently debarred, suspended, proposed for debarment or declared ineligible for the award of contracts by any Federal agency or from participating in any Federal healthcare programs. Offerors must complete RFP Attachment 3 entitled "Offeror Eligibility Certification" and submit as part of its proposal.

13.0 Withdrawal of Offers

Offers may be withdrawn only by signature of Offeror, provided the request is received by the person whose duty it is to open proposals prior to the time fixed for proposal opening. Each proposal opened will be considered to be a valid offer.

14.0 Use of Offeror Response and Accompanying Material

- 14.1 All materials submitted become the property of CalOptima Health and will not be returned. If the Offeror intends to submit confidential or proprietary information as part of the proposal, any limits on the use or distribution of that material should be clearly delineated in writing. However, CalOptima Health is a public agency and therefore subject to the California Public Records Act (California Government Code, Section 6250 et seq).
- 14.2 CalOptima Health will use reasonable precautions allowed by law to avoid disclosure of the Offeror proposal. CalOptima Health reserves the unrestricted right to copy and disseminate the Offeror proposals for internal review and for review by external advisors, at CalOptima Health's sole discretion.

15.0 Evaluation and Award of Contract

- 15.1 Issuance of this RFP 24-051 or receipt of proposals does not commit CalOptima Health to award a contract. CalOptima Health reserves the right to withdraw this RFP 24-051 at any time without further notice and, furthermore, makes no representation that any contract will be awarded to any Offeror responding to this RFP 24-051. CalOptima Health expressly reserves the right to postpone proposal opening for its own convenience; to accept or reject any or all proposals received in response to this RFP 24-051; to waive informalities and minor irregularities in bids received; to reject any and all proposals responding to this RFP 24-051 without indicating any reasons for such rejection; to negotiate with other than the selected Offeror should negotiations with the selected Offeror be terminated; to negotiate with more than one Offeror simultaneously or to cancel all or part of this RFP 24-051.
- 15.2 In no event will CalOptima Health be limited to selecting a successful Offeror based solely upon total cost submitted. Evaluation of the Proposals shall be generally based upon the reasonableness of price; experience in the market; capabilities of the Offeror to effectively complete the project requirements; financial stability and completeness of the Proposal response and the requested data. All proposals received as specified will be evaluated by CalOptima Health staff in accordance with the above criteria and additional sub-criteria that may be considered as relevant or pertinent by the evaluators.
- 15.3 In accordance with CalOptima Health's purchasing policy, CalOptima Health staff may select one or more responsive, responsible Offeror(s) whose Proposal(s) are most advantageous to CalOptima Health—price, quality and other factors considered.
- 15.4 False, incomplete, or unresponsive statements in connection with a Proposal may be cause for rejection. The evaluation and determination of fulfillment for the above requirements shall be

in CalOptima Health's sole judgment and this judgment shall be final. Any Proposal not meeting terms and conditions may be rejected.

- 15.5 Offerors who submit a proposal in response to this RFP 24-051 shall be notified in writing regarding whether its firm was awarded the contract or not. Such notification shall be made within a reasonable time after the date the contract is executed.

16.0 Contractual and Technical Exceptions/Deviations

- 16.1 CalOptima Health requires each Offeror to state any exceptions to or deviations from the requirements of this RFP 24-051, separating "technical" exceptions from "contractual" exceptions. Where Offeror wishes to propose alternative approaches to meeting CalOptima Health's technical requirements, these should be thoroughly explained.

- 16.2 CalOptima Health is permitting each Offeror to identify the terms of the Contract it would like to negotiate. Using Attachment 5 entitled "Request to Negotiate Contract Terms," Offerors must identify the Current Language, Proposed Language, and Rationale for the Request. Note that any request to negotiate contract terms without a rationale will not be considered for negotiation. CalOptima Health will evaluate all requests and render a decision on each Contract term identified.

- **Please be advised** that Exhibit C of the attached Sample Contract includes regulatory requirements that CalOptima Health must follow as a public agency that receives federal funds and is regulated by the DMHC, DHCS, and CMS. Any contract resulting from this RFP must include these provisions as provided herein.
- If a "Request to Negotiate Contract Terms" form is not submitted with the proposal, the terms submitted in the Sample Contract will be in force.
- CalOptima Health will not review any changes marked on the Contract PDF that are not included on the "Request to Negotiate Contract Terms" form.
- CalOptima Health will also not review any additional terms & conditions submitted by Vendor on Vendor paper.
- Even if you currently have an existing contract with CalOptima Health or have had one in the past, the services within this RFP are considered separate and CalOptima Health will not add them to an existing agreement.
- Each deletion, addition, and modification, etc., to CalOptima Health's Sample Contract must be logged and submitted on the "Request to Negotiate Contract Terms" form. Failure to do so will result in your proposal being deemed non-responsive.
- CalOptima Health may disqualify and terminate negotiations with any Offeror that did not take exception to a given Sample Contract provision in its proposal and subsequently attempts to do so during negotiations. As such, it is in Offeror's best interest to have the Sample Contract reviewed by counsel prior to submitting a proposal.

17.0 Appendices

Information considered by Offeror to be pertinent to this project and which has not been specifically solicited in any of the aforementioned sections may be placed in a separate appendix section. Offerors are cautioned, however, that this does not constitute an invitation to submit large amounts of extraneous materials; appendices should be relevant and brief.

18.0 Non-Solicitation of Employees

Neither CalOptima Health nor CONTRACTOR shall solicit nor hire any personnel of the other during the Term of this Contract, or for a period of one year following the termination of this Contract, without the consent of the other party.

SECTION III: TECHNICAL AND PRICE PROPOSAL REQUIREMENTS

A. Technical Proposal Requirements

1.0 Corporate Capabilities

1.1 Qualifications and Experience

- 1.1.1 Provide a brief profile of the firm, including the types of services offered; the year founded; form of the organization (corporation, partnership, sole proprietorship); number, size and location of offices; number of employees.
- 1.1.2 Briefly describe the background of the company, including the formation, implementation of new business, sales, mergers, acquisitions, ownership, current lines of business and intended future lines of business. If applicable, indicate action to prevent disruption of current and/or new business.
- 1.1.3 Identify the senior management staff and their length of time with the company. Identify management staff that would be directly involved with the CalOptima Health contract and their length of time with the company.
- 1.1.4 Identify three (3) references of clients similar in scope and complexity to that of CalOptima Health. References shall include the name, title, email address, and telephone number of the person at the client organization who is most knowledgeable about the work.
- 1.1.5 Indicate any past or current material disputes including litigation with customers, provider groups, government entities, client groups and any other litigation with contingent liability of \$500,000 or more. State the results or status of the dispute.
- 1.1.6 Is your company under investigation or being sued by any governmental agency? Has your company been barred from participation in a publicly-funded health program (such as Medicare or Medicaid)? If yes, provide a detailed explanation of the circumstances and status.
- 1.1.7 Provide details of any inquiry letters and/or negative audit results received from any state or federal agency or any outside business auditor.
- 1.1.8 Has your organization been audited in accordance with the Statements for Standards on Attestation Engagements (SSAE) 16 (formerly SAS 70 audit)? If yes, were any exceptions noted? If not audited, please explain.
- 1.1.9 If the respondent proposes to use subcontractor(s), it must describe any existing or ongoing relationships with the subcontractor(s); including project descriptions and the portions(s) of this RFP intended to be subcontracted.
- 1.1.10 Identify subcontractors by company name, address, contact person, telephone number and project function and describe Offeror's experience working with each subcontractor.

2.0 Information Processing System (Not Applicable)

3.0 Financial Management

- 3.1 Provide evidence of financial stability sufficient to demonstrate reasonable stability and solvency appropriate to the requirements of this procurement:

- 3.1.1 If the respondent is a corporation that is required to report to the Securities and Exchange Commission, it must submit its two most recent SEC Forms 10K, Annual Reports.
- 3.1.2 If the respondent is *not* a corporation that is required to report to the Securities and Exchange Commission, it must submit its current financial statement plus previous two (2) years of audited financial reports including all supplements, management discussion and analysis, and actuarial options.
 - 3.1.2.1 At a minimum, such financial statements and reports shall include: balance sheet; statement of income and expenses (also referred to as “statement of profit and loss”); statement of changes in financial position; cash flows; and capital expenditures.
- 3.1.3 If any change in ownership is anticipated during the twelve (12) months following the proposal due date, the respondent must describe the circumstances of such change and indicate when the change is likely to occur.
- 3.1.4 The respondent must identify any conditions (e.g., bankruptcy, pending litigation, planned office closures, impending merger) that may impede Offeror’s ability to complete the project.
- 3.2 Include a copy of your billing invoice as part of your firms’ proposal.

4.0 Proposed Staffing and Project Organization

- 4.1 Provide education, experience and applicable professional credentials of project staff.
- 4.2 Furnish brief resumes (not more than two [2] pages each) for the proposed Project Manager, Account Manager, and other key personnel.
- 4.3 Indicate adequacy of labor resources utilizing a table projecting the labor-hour allocation to the project by individual task.
- 4.4 Identify key personnel proposed to perform the work on the specified tasks and include major areas of subcontract work.
- 4.5 Include a project organization chart which clearly delineates communication/reporting relationships among the project staff.
- 4.6 Include a statement that key personnel will be available to the extent proposed for the duration of the project, acknowledging that no person designated as “key” to the project shall be removed or replaced without the prior written concurrence of CalOptima Health.
- 4.7 Identify the individuals who will be assisting with implementation, contract rollout, reporting and system questions. Include a list of qualifications and credentials for those individuals. Identify if any of these individuals continue in ongoing operation roles.
- 4.8 Describe the roles, responsibilities and deliverables of CalOptima Health and the Offeror during the implementation phase in a detailed work plan. The work plan must outline sequentially and describe the elements and activities that would be undertaken in completing the tasks; specify by name and job description, the person Offeror would assign to perform said task; the hourly rate of each person; rate for task identified; and include a schedule for completing the tasks in terms of elapsed weeks from the commencement date. Include details regarding the timeline needed before system is capable of being “live” for use after contract execution.

4.9 Describe in detail, the timeline dependencies for availability of required data feeds and interfaces to CalOptima Health systems in order to implement Offeror's system successfully based upon the timeline you propose.

4.10 What CalOptima Health resources are required by Offeror to meet the implementation timeframe?

B. Price Proposal Requirements

CalOptima's intention is to award a firm-fixed price contract. Offeror shall provide pricing as listed below in Section C.9 Pricing, for services provided, price guarantees and any other fees CalOptima may incur. Identify and list all and any fees or incidental costs which will be required by your company in order to meet the requirements of the Scope of Work.

The successful Offeror shall not be allowed to invoice CalOptima Health throughout the duration of any resulting contract for any pricing not listed within the following pricing form. Pricing data contained in other areas of the Offeror's Proposal will not be considered.

C. Scope of Work

1. Description of CalOptima Health

As the single largest insurer in Orange County, CalOptima Health administers health insurance through three major programs:

- Medi-Cal (California's Medicaid program) for low-income adults, children, families, seniors, and people with disabilities
- OneCare (HMO D-SNP) (a Medicare Advantage Dual Eligible Special Needs Plan) for low-income seniors and people with disabilities who qualify for both Medicare and Medi-Cal
- PACE (Program of All-Inclusive Care for the Elderly) for older adults, providing comprehensive health services through the CalOptima Health PACE center and other partners

CalOptima Health is a county organized health system (COHS), which is a model unique to California that is governed by a locally appointed Board of Directors. As a COHS, CalOptima Health is a public agency authorized by county, state, and federal actions.

In Orange County, CalOptima Health has an integral role in the health care safety net since there are no county-run hospitals or clinics. Therefore, CalOptima Health has a duty to maintain or expand access to care. Currently, CalOptima Health serves nearly 1 million members, which is about 1 in 3 Orange County residents, with a network of more than 10,300 primary care doctors and specialists and 44 acute and rehab hospitals. The majority of CalOptima Health's members live in Santa Ana, Anaheim, Garden Grove, Orange and Westminster. Our members come from diverse backgrounds, and the primary languages spoken are English, Spanish, Vietnamese, Farsi, Arabic, Korean and Chinese, among other languages.

CalOptima Health is unique in that we are both a public agency, upholding the public trust, and a health plan, seeking efficiency and member satisfaction. As both, CalOptima Health must:

- Make the best use of our resources, funding and expertise
- Solicit stakeholder input
- Ensure transparency in our governance procedures
- Be accountable for the decisions we make

2. **Project Objectives**

CalOptima Health is seeking one or more Marketing and Advertising Agencies to provide communications and media services in support of strategic initiatives including CalAIM, Covered California, Medi-Cal Expansion, Medicare marketing, and brand awareness. If your agency only specializes in some but not all of the services listed in Scope of Work section C.1-C.7, please submit a proposal clarifying which areas you are proposing to provide.

- Contractor will work with CalOptima Health to develop message strategies, branding, stakeholder engagements, and design and marketing services. The preferred contractor will have experience in print, direct mail, traditional media such as local newspapers, billboards, and radio, as well as digital marketing, and would be able to produce social media content - videos, graphics, and messaging, as well as streaming service advertising – e.g., Hulu, Amazon, YouTube, etc., and keyword searching – e.g. paid search, sponsored content, etc.

3. **Scope of Work**

For the campaigns on which CalOptima Health decides to engage the selected contractor, the contractor will develop fully integrated campaigns that include both short-term and long-term strategies. Campaigns will be designed to do one or more of the following: increase brand recognition, target potential enrollees, and support program launches/transitions. The campaigns will use multimedia approaches to best reach the target audience, based on recommendations made by the selected contractor. The timeline and duration of a campaign will be based on program enrollment periods and business needs. While not guaranteed, historically CalOptima Health has seen an influx in the need for communication assistance in early fall during member open enrollment and late spring as our budgets are being developed. However, we do anticipate usage throughout the year.

Contractor will create and provide a strategic communications roadmap that includes the following:

3.1 Community Support Cultivation

- 3.1.1 Community Engagement Strategy: Develop and implement a comprehensive strategy to foster meaningful engagement with diverse communities served by CalOptima Health including community needs, barriers to access, and opportunities for collaboration.
- 3.1.2 Event Planning and Management: Support organization and participation in community events, health fair, and outreach activities to increase awareness of CalOptima Health services and resources.
- 3.1.3 Stakeholder Relationship Management: Cultivate and maintain strong relationships with community organizations, local leaders, elected officials, and other stakeholders to build trust and support CalOptima Health's mission.
- 3.1.4 Multicultural Outreach: Tailor communications and engagement efforts to effectively reach and resonate with diverse cultural and linguistic groups within the community to ensure inclusivity and accessibility.
 - 3.1.4.1 As requested, prepare and produce materials in threshold languages that include English, Spanish, Vietnamese, Farsi, Arabic, Korean and Chinese. Written materials should be produced at a sixth grade reading level. CalOptima Health may elect provide the translation of the material that is produced by Contractor.

3.2 Crisis Communications

- 3.2.1 Emergency Response Plan: Develop and maintain a comprehensive crisis communications plan outlining protocols and procedures for responding to different types of emergencies and critical incidents CalOptima Health may encounter.
- 3.2.2 Spokesperson Training: Conduct media training for any internal CalOptima Health spokespersons, to ensure they are equipped to effectively communicate during crises.
- 3.2.3 Rapid Response: Upon notification by CalOptima Health, provide 24/7 availability for immediate response to crisis situations, including drafting press statements, coordinating media inquiries, and managing social media communications.
- 3.2.4 Issue Monitoring: Continuously monitor potential crises and emerging issues relevant to CalOptima Health, locally, statewide, and nationwide, and proactively address them to mitigate reputational risks.

3.3 Public Relations

- 3.3.1 Strategic Planning: Develop and implement strategic public relations tailored to CalOptima Health's overarching goals and specific initiatives including identification of target audiences, key messages, and communication channels.
- 3.3.2 Brand Management: Continuously monitor and maintain CalOptima Health's brand integrity across all communications platforms. This involves ensuring consistency in messaging, tone, and visual identity including social media.
- 3.3.3 Media Relations: Proactively engage with media outlets to secure coverage of CalOptima Health's activities, achievements, and initiatives. This includes drafting press releases, media pitches, and facilitating interviews when needed.
- 3.3.4 Content Creation: Generate content, including press releases, articles, quotes, op/eds, blog posts.
- 3.3.5 Monitor Analysis: Monitor media coverage and public sentiment related to CalOptima Health and provide reports and analysis to gauge the effectiveness of PR efforts and identify areas for improvement.

3.4 Creative Materials

- 3.4.1 Develop and execute creative concepts for use in multiple media, including outdoor/Out-of-home (OOH), print, digital, direct mail, radio, TV, social media, and promotional products.
- 3.4.2 Offer creative concepts to CalOptima Health for each campaign. Unless otherwise directed by CalOptima Health, offer at least 3 different creative concepts when making any initial creative presentation to CalOptima Health. Each concept must reflect a distinctly different tone, approach, and style, while still being sensitive to our population.
- 3.4.3 Perform all production services to develop and deliver appropriate creative materials in accordance with CalOptima Health's media schedule. Services may include creative concept, graphic design, photography, digital or electronic media creation.
- 3.4.4 Prepare all mechanical art or purchase all necessary artwork and photographs that are required to produce ads and other materials. Pass-through of these costs must be pre-approved by CalOptima Health).
- 3.4.5 Produce other collateral materials in support of CalOptima Health's campaigns.

- 3.5 Market Research and Testing
 - 3.5.1 Perform all research to support the effectiveness of CalOptima Health's marketing and advertising campaigns.
 - 3.5.2 Create and use a performance measurement system approved by CalOptima Health to measure, analyze and report results of all campaign activities.
- 3.6 Guidance on Media Placement for Marketing and Advertising Campaigns
 - 3.6.1 Working in collaboration with CalOptima Health, support the development of a media schedule quarterly (or more frequently if requested) and offer guidance regarding opportunities for CalOptima Health to take advantage of, such as discounts, special promotions, and added-value benefits.
 - 3.6.2 Evaluate and make recommendations to CalOptima Health about media placement.
 - 3.6.3 Provide input on how CalOptima Health may best measure the success of various media placements of the Marketing and Advertising Campaigns.
- 3.7 Account Services, Accountability/Transparency and Business Support:
 - 3.7.1 Provide account supervision, documentation, and monthly communication with CalOptima Health on the status and timeline of all projects. Provide account management reports, including progress reports and itemized budget reports with transparent pricing.
 - 3.7.2 Provide account services and account management, including meetings and consultation regarding marketing and advertising. At the direction of CalOptima Health, schedule meetings to be held virtually or at the CalOptima Health offices.

4. Contractor's Responsibilities

- 4.1 Develop campaign messages and artwork, as requested, using CalOptima Health's brand guidelines.
- 4.2 Assign a senior account manager to handle the CalOptima Health account.
- 4.3 Obtain written approval from the authorized CalOptima Health representative for all work performed.
- 4.4 Provide sufficient staff to meet a work schedule provided by CalOptima Health and be responsive to CalOptima Health's needs as requested.
- 4.5 Maintain close contact and provide status reports to the authorized CalOptima Health representative and CalOptima Health management as needed to ensure their full and accurate understanding of the proposed campaign strategy and objectives.
- 4.6 Advise CalOptima Health about emerging technologies and media channels and provide related consulting services about such resources, as appropriate.
- 4.7 Deliver all artwork created for CalOptima Health under this Scope of Work, as all of it is the property of CalOptima Health.
- 4.8 Deliver all artwork to CalOptima Health in Adobe InDesign, Adobe Illustrator or Adobe Photoshop or as otherwise instructed by CalOptima Health.
- 4.9 Develop a suggested marketing and advertising plan and budget for CalOptima Health's consideration and collaborate with the in-house staff to set a media schedule quarterly (or more frequently if requested).

- 4.10 Invoice CalOptima Health monthly for actual services expended. The work completed shall be documented and accompanied by each invoice submitted by the Contractor.

5. CalOptima Health's Responsibilities

- 5.1 Develop and provide the media schedule to Contractor.
- 5.2 Provide Contractor with the campaign objectives and general guidance in the development of CalOptima Health's Marketing and Advertising Campaigns.
- 5.3 Assign a staff member to work collaboratively with the Contractor in carrying out the campaign deliverables and tactics.
- 5.4 Maintain open communication with Contractor about changes in CalOptima Health's programs and/or initiatives, as they relate to the strategy and implementation of the Marketing and Advertising Campaigns.
- 5.5 Ensure payment is made to Contractor for actual services expended. At its sole discretion, CalOptima Health may decline to make full payment for any work and direct costs until such time as Contractor has documented, to CalOptima Health's satisfaction, that Contractor has fully completed all the work required.

6. Deliverables

- 6.1 Project plan and roadmap
- 6.2 Campaign Content and Message Guidance
- 6.3 Metrics on media outreaches
- 6.4 CalOptima Health Marketing and Advertising Campaigns
- 6.5 Market Research and Testing Reports
- 6.6 Guidance on Media Placement and Marketing Campaigns

7. Performance Measures

- 7.1 Complete campaign deliverables on time, as mutually agreed upon by both CalOptima Health and the Contractor. Specific completion dates and milestones will be established based on CalOptima Health's business and program needs.
- 7.2 Provide detailed reports regarding market research and testing deliverables, as mutually agreed upon by both CalOptima Health and the Contractor. Specific completion dates and milestones will be established based on CalOptima Health's business and program needs.
- 7.3 Provide metrics and strategies CalOptima Health can use to identify reach and penetration of campaign deliverables. This should include details regarding all applicable tactics, including but not limited to outdoor, print, digital, direct mail, radio, TV, social media, etc.

8. Timelines

CalOptima Health and the Contractor will determine deadlines for deliverables and schedule for coordination meetings based on agreed upon selected campaigns.

9. **Pricing**

CalOptima Health desires fixed fee pricing for this engagement. Pass-through payments to pre-approved partners are allowed. Payment will be issued with each deliverable based on the schedule below.

9.1 Perform all research to support the effectiveness of CalOptima Health's marketing and advertising campaigns.

9.2 Pricing request for RFP:

Review the sample campaigns (See RFP Attachment 8: Campaigns Sample) and provide a fixed fee cost of what those campaigns would be billed at if you were the selected vendor. Include estimated hours and tasks so we can evaluate process and staff level commitments. Include potential pass-throughs etc. If a fixed-fee price is not standard, also provide pricing for the sample campaigns based on your preferred method of pricing. However, alternative pricing is to be provided in addition to, not in lieu of the fixed fee pricing. Please also ensure your pricing is clear if you are only proposing partial services listed in SOW Section C.1-C.7.

9.3 Pricing request for RFP:

For any pricing outside of specific campaigns, i.e. rapid response, provide the hourly rates and titles for your staff that would be assigned to this contract. Annual estimate of 250 hours.

9.4 Pricing/Timing process for resulting contract:

When CalOptima Health has a specific campaign the Contractor is assigned, prior to any work commencing, Contractor must provide a fixed-fee price for all work outlined in the campaign. Once acceptable to both parties, the contract will be amended to add this new project, which will include tasks, timelines, deliverables and acceptance criteria, and anything additional to that specific campaign as determined by both parties.

Any ad hoc consulting, rapid response, reporting research, etc., will be billed monthly at the agreed upon hourly rates established in the contract for specific staff.

10. **Evaluation criteria:**

CalOptima Health will evaluate proposals based on:

- 10.1 Experience with Orange County media markets, media relations, stakeholder engagement, and content creation.
- 10.2 Overall experience in all media types and platforms
- 10.3 Experience in Scope of Work Sections C.1 – C.7 proposed.
- 10.4 Price
- 10.5 Knowledge of Orange County Healthcare landscape (preferred).
- 10.6 Having a physical location in Orange County (preferred).

11. **Proposal Content**

Proposals should include all the following:

- 11.1 Company Profile – provide background information and relevant demographics about your organization.

- 11.2 Project Experience – provide information on your experience as a digital marketing campaign manager with an emphasis on any experience with campaigns for customer enrollment and for medical-related projects.
- 11.3 Project Team – provide information about the staff that would be assigned to this engagement and any relevant descriptions of their roles and expertise related to the campaign.
- 11.4 Project Approach – explain your approach to managing a campaign through its various phases from storyboards and concept papers through completion, and why this approach would work.
- 11.5 Cost Saving Initiatives – describe any initiatives or creative strategies that you could engage that would maximize the available resources. Provide specific examples.
- 11.6 Project Management – explain how a project would be tracked, how you would report progress, and how you will interface with staff for content approvals, etc.
- 11.7 Analytics – explain how you would provide comprehensive analytics that would drive decision making for media spending and provide measurements of success for any digital campaigns.

RFP Attachment 1: Mandatory Offeror Acknowledgement

ACKNOWLEDGEMENT

In signing this Proposal, Offeror acknowledges receipt of the RFP 24-051 and the following addenda, if any (expand list as necessary):

Addendum no. _____ , Received on: _____

Addendum no. _____ , Received on: _____

Addendum no. _____ , Received on: _____

I acknowledge receipt of RFP 24-051 and addenda cited.

I hereby certify on behalf of _____ that the contents of this Proposal are, to the best of my ability, completely in compliance with all requirements of the RFP 24-051 and the terms and conditions of the contract, without exceptions, other than those expressly listed and explained in this Proposal. This Proposal is an irrevocable offer, which shall remain in full force and effect for 120 calendar days after the Proposal due date.

Company Name: _____

Address: _____

Telephone Number: _____

Signature Of Person Authorized To Bind Offeror: _____

Signatory's Name And Title: _____

Date Signed: _____

RFP Attachment 2: Mandatory Non-Collusion Affidavit

NON-COLLUSION AFFIDAVIT

_____, being first duly sworn, deposes and says that he or she is _____ of _____ the party making the foregoing Proposal that the Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the Proposal is genuine and not collusive or sham; that the Offeror has not directly or indirectly induced or solicited any other Offeror to put in a false or sham Proposal and has not directly or indirectly colluded, conspired, connived, or agreed with any Offeror or anyone else to put in a sham Proposal, or that anyone shall refrain from bidding; that the Offeror has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the Proposal price of the Offeror or any other Offeror or to fix any overhead, profit, or cost element of the Proposal price, or of that of any other Offeror, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the Proposal are true; and, further, that the Offeror has not, directly or indirectly, submitted his or her Proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Signature

Date

Title

RFP Attachment 3: Offeror Eligibility Certification

OFFEROR ELIGIBILITY CERTIFICATION

Offeror certifies, to the best of its knowledge and belief, that that offeror and/or any of its Principals:

- A. Are , are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contract by any Federal agency or from participating in any Federal healthcare programs;
- B. Have , have not , within a ten (10)-year period preceding this offer, been convicted of or had a civil judgement 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) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;
- C. Are , are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in Section (B); and
- D. Have , have not , within a ten (10)-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied.

For purposed of this certification, “Principal” means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g. general manager, plant manager, head of a division or business segment and similar positions).

By:

Name: _____

Title: _____

Company: _____

Date: _____

Revised February 2019

RFP Attachment 4: CalOptima Health Sample Contract

Please see documents section on BidSync for the Sample Contract.

RFP Attachment 5: Request to Negotiate Contract Terms

Please see documents section on BidSync for the Request to Negotiate Form.

RFP Attachment 6: Security Questionnaire

Offeror is required to certify that it (and any proposed subcontractors) comply with the following security provisions, as required in this RFP. Offeror must 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, please specify.
- b. Has the program been audited according to the security framework by a reputable 3rd party auditor? If so, please 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 in particular, how would patient data 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, whom, and what is their position within the organization?
- b. Does your organization perform background checks to examine and access an employees' 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. Is there a list maintained 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, please 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?

RFP Attachment 7: Campaign Contribution Disclosure

CALOPTIMA HEALTH 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 Health Board of Directors are:

| | | | |
|----------------|-----------------|----------------------------|------------------------|
| Debra Baetz | Doug Chaffee | Norma Garcia Guillen, J.D. | Trieu Tran, M.D. |
| Isabel Becerra | Blair Contratto | Jose Mayorga, M.D. | Don Wagner (Alternate) |
| Maura Byron | Clayton Corwin | Vicente Sarmiento | |

- 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 Health 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 Health 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 Health 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)

CALOPTIMA HEALTH LEVINE ACT DISCLOSURE STATEMENT
Attachment A
California Government Code Section 84308

- (a) The definitions set forth in this subdivision shall govern the interpretation of this section.
- (1) “Party” means any person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use.
 - (2) “Participant” means any person who is not a party but who actively supports or opposes a particular decision in a proceeding involving a license, permit, or other entitlement for use and who has a financial interest in the decision, as described in Government Code Section 87100 *et seq.* A person actively supports or opposes a particular in a proceeding that person lobbies in person the officers or employees of the agency, testifies in person before the agency, or otherwise acts to influence officers of the agency.
 - (3) “Agency” means an agency as defined in Government Code Section 82003 except that is does not include the courts or any agency in the judicial branch of government, the Legislature, the Board of Equalization, or constitutional officers. However, this section applies to any person who is a member of an exempted agency but is acting as a voting member of another agency.
 - (4) “Officer” means any elected or appointed officer of an agency, any alternate to an elected or appointed officer of an agency, and any candidate for elective office in an agency.
 - (5) “License, permit, or other entitlement for use” means all business, professional, trade and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor, or personal employment contracts), and all franchises.
 - (6) “Contribution” includes contributions to candidates and committees in federal, state, or local elections.
- (b) While a proceeding involving a license, permit, or other entitlement for use is pending, , and for 12 months following the date a final decision is rendered in the proceeding, an officer of an agency shall not accept, solicit, or direct a contribution of more than two hundred fifty dollars (\$250) from any party or a party’s agent, or from any participant or a participant’s agent if the officer knows or has reason to know that the participant has a financial interest, as that term is used in Government Code Section 87100 *et seq.* This prohibition shall apply regardless of whether the officer accepts, solicits, or directs the contribution on the officer’s own behalf, or on behalf of any other officer, or on behalf of any candidate for office or on behalf of any committee.
- (c) Prior to rendering any decision in a proceeding involving a license, permit, other entitlement for use pending before an agency, each officer of the agency who received a contribution within the preceding 12 months in an amount of more than two hundred fifty dollars (\$250) from a party or

from any participant shall disclose that fact on the record of the proceeding. An officer of an agency shall not make, participate in making, or in any way attempt to use the officer's official position to influence the decision in a proceeding involving a license, permit, or other entitlement for use pending before the agency if the officer has willfully or knowingly received a contribution in an amount of more than two hundred fifty dollars (\$250) within the preceding 12 months from a party or a party's agent, or from any participant or a participant's agent if the officer knows or has reason to know that the participant has a financial interest in the decision, as that term is described with respect to public officers in Government Code Section 87100 *et seq.*

- (d) (1) If an officer receives a contribution which would otherwise require disqualifications under this section, and returns the contribution within 30 days from the time the officer knows, or should have known, about the contribution and the proceeding involving a license, permit, or other entitlement for use, the officer shall be permitted to participate in the proceeding.

(2)(A) Subject to subparagraph (B), if an officer accepts, solicits, or directs a contribution of more than two hundred fifty dollars (\$250) during the 12 months after the date a final decision is rendered in the proceeding in violation of Section (b), the officer may cure the violation by returning the contribution, or the portion of the contribution in excess of two hundred fifty dollars (\$250), within 14 days of accepting, soliciting, or directing the contribution, whichever comes latest.

(2)(B) An officer may cure a violation as specified in Section (d)(2)(A) only if the officer did not knowingly and willfully accept, solicit, or direct the prohibited contribution.

(2)(C) An officer's controlled committee, or the officer if no controlled committee exists, shall maintain records of curing any violation pursuant to this paragraph.

- (e) (1) A party to a proceeding before an agency involving a license, permit, or other entitlement for use shall disclose on the record of the proceeding any contribution in an amount of more than two hundred fifty dollars (\$250) made within the preceding 12 months by the party, or the party's agent.

(2) A party, or agent to a party, to a proceeding involving a license, permit, or other entitlement for use pending before any agency and no participant, or his or her agent, in the proceeding shall make a contribution of more than two hundred fifty dollars (\$250) to any officer of that agency during the proceeding and for 12 months following the date a final decision is rendered by the agency in the proceeding.

(3) When a closed corporation is a party to, or a participant in, a proceeding involving a license, permit, or other entitlement for use pending before an agency, the majority shareholder is subject to the disclose and prohibition requirements specified in this Government Code Section 84308.

- (f) This section shall not be construed to imply that any contribution subject to being reported under this title shall not be so reported.

RFP Attachment 8: Campaigns Sample

Please see document section on BidSync for the Campaigns Sample.



Brand Awareness Campaign

Our Mission

To serve member health with excellence and dignity, respecting the value and needs of each person.

Our Vision

By 2027, remove barriers to health care access for our members, implement same-day treatment authorizations and real-time claims payments for our providers, and annually assess members' social determinants of health.

RFP 24-051
Attachment 8
Campaigns Sample

General Awareness and Brand Development Campaign – Scope of Work

Objective/Overview:

CalOptima Health has tasked CONTRACTOR with a General Awareness and Brand Development Campaign that will support enhanced recognition of the agency’s key role in the community, improve understanding of our values and vision, and contribute to the strategic priority of promoting CalOptima Health’s voice and influence. CONTRACTOR shall assist CalOptima Health with strategy, creative and consultative services to build and execute the campaign.

Deliverables:

Phase 1 – Brand Platform Development & Consulting High-Level Initiatives:

- Brand Discovery and Research Management
- Brand Strategy and Consulting
- Brand Messaging Development
- Brand Concept and Creative Platform Development
- Initial Design Platform, Brand Guidelines Development and Consulting

Phase 2 – Brand Campaign Creation & Execution High-level Initiatives:

- Tactical and Digital Consulting
- Tactical and Rollout Plan
- Brand Anthem Video Production
 - Video Production – Internal Use Only, Geared to Build Team Consensus & Excitement
- Internal High-Level Graphical Launch Support
 - Foundation Material for CalOptima Marketing Team (e.g., Banners & Email Templates)
- Video and Radio Spot Creative Development (Creative, Production & Licensing)
 - Targeting an External Audience
- OOH Creative Development (e.g., Billboards, Bus Kongs, Bus Shelters & Bus Wraps)
- Digital Creative Development (e.g., Social Ads – Static & Video & Digital Banners)
- Print Creative Development (e.g., Newspaper Ads)
- Transcreation of Video, Radio, OOH, Digital and Print Creative into Spanish and Vietnamese
- Development of a Brand Style Guide or Consulting on Existing Guide

KEY DELIVERABLES

PHASE 1: BRAND DISCOVERY, STRATEGY, CONSULTING & CREATIVE PLATFORM DEVELOPMENT

(Discover, Prescribe & Develop)

CONTRACTOR will engage CalOptima Health in our strategic process to develop the organization's brand strategy and creative brand platform, as well as providing initial high-level recommendations for optimal brand launch to reach community audiences and stakeholders (internal / external). We understand that time is of the essence, and we will work through our process to ensure your objectives are met within a timely manner. CONTRACTOR will conduct a thorough review of existing and current research and consultant recommendations (Research Partner) to gain a comprehensive understanding of where you've been thus far to reach your goals and target audiences most effectively. We will also conduct our own discovery and research, to uncover additional insights related to your competition, market perceptions, strengths, weaknesses, and opportunities. CONTRACTOR Health will facilitate the brand strategy and launch process for CalOptima to set the groundwork for success, for years to come. The three steps within Phase 1 include:

Step #1: Discover

- Upfront discovery by CONTRACTOR, thorough review of past / current brand positioning and existing research, and development of a discussion guide and planning questionnaire that CalOptima Health will complete.
 - CONTRACTOR will conduct a "pre-kickoff" conference call meeting with initial questions, in prep for virtual Teams/ in-person meetings (depends on scheduling/accessibility).
- Analysis of competitors (related to product offering and brand positioning / messaging), target audiences, existing brand image, goals, and opportunities.
- Engagement in brand discovery workshop meetings with CalOptima to discuss:
 - Where you've been as an organization, where you're going, how we'll get there
 - Past research and insights
 - Your product offerings, target audiences and process
 - Brand positioning, architecture, and key differentiators
 - Existing branding materials, locations, and legacy
 - Visual identity and messaging
 - Discussion and brainstorming of preliminary strategies and tactical ideas
 - Interviews with key stakeholders
 - Tools for measuring progress
 - Determination of next steps in the process
 - Creation of an in-depth post meeting report and follow-up
 - Follow-up with immediate, to-be-determined kickoff meeting action items

Step #2: Prescribe

- Presentation and analysis of initial strategic recommendations based on our findings.

RFP 24-051
Attachment 8
Campaigns Sample

- Creation of an initial brand messaging platform which will be used as the basis for messaging in marketing communications materials for overall brand as well as service lines.
- Preliminary, high-level tactical planning strategies and timeline to include: brand rollout, community outreach, internal communications, and high-level tactical considerations.

Step #3: Develop

- Development of the visual creative platform (presented as a “mood board”) to demonstrate graphic representations of the brand and tone. This platform could then be applied to future marketing materials, collateral, advertising, website, etc. to ensure brand consistency.
- Development of a brand “anthem” that communicates the soul and essence of the brand through the use of tone, language, and emotion. The anthem will be delivered in writing and verbally in an ad-like manner.
 - One (1) brand anthem will be developed
 - Two (2) rounds of revisions for the brand anthem
- Brand messaging platform, brand guidelines development and consulting.
- Initial creative conceptual campaign development.
 - Creative conceptual development for a campaign to launch / communicate the new brand. Campaigns are presented in “ad-like objects” which includes up to three (3) concepts with two (2) rounds of revisions for the chosen concept. These are conceptual “big ideas” for campaign themes and will include some headlines and minimal body copy to communicate the direction of the campaigns. Final execution of ads and campaign materials will be completed in Phase 2.
- Consulting related to providing high-level tactical marketing and media recommendations for campaign launch. Final media recommendations, tactical launch plans, timeline and measurement will be part of Phase 2 deliverables.

SUMMARY OF PHASE 1 DELIVERABLES

- Discovery, interviews and meetings, and review of current research materials
- Strategic branding, positioning, and messaging recommendations
- Creative platform development: brand anthem and mood board
- Creative conceptual development (“big ideas” to launch new campaign)
- Phase 1 brand guidelines development and consulting on a document for proper reference and usage of name, logo and brand messaging (final brand guidelines document including guidance for executional campaign items to be completed in Phase 2)

PHASE 2: TACTICAL EXECUTION PLANNING, CONSULTING & CREATIVE DEVELOPMENT (EXECUTION)

Step #4: Execute

General Market Creative Campaign Development & Production

CONTRACTOR Health will engage with CalOptima Health for the primary creative campaign development and production of the CalOptima Health brand launch campaign deliverables. This

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Campaigns Sample

includes an allowance for the following internal and external launch deliverables (subject to change based on final tactical plan):

- Internal campaign tactics (primarily production of a new brand anthem video – intended for internal use for launch. Additional graphical support for banner and email templates.
- Internal brand anthem video will be produced primarily with dynamic text, graphics, images, and existing video footage without custom or licensed footage, animations, or CGI in line with budget allowance.
 - Purpose is to generate internal awareness and excitement for the CalOptima Health brand launch from internal stakeholders during launch events, internal channels, etc.
- To accomplish our campaign objectives, external creative deliverables for use across general market media channels are currently projected as follows (but subject to change per the final strategic refinements and media planning process):
 - External :30 / :15 TV spots
 - One (1) :30 second TV spot (may include video / photoshoots at various CalOptima Health locations as budget allows and/or leverage brand anthem graphical assets as a basis of the spots).
 - One (1) :15 cut-down version of :30 spot.
 - :30 radio spot
 - One (1) :30 radio spot script, creative direction of VO talent, oversight of editing and finalization of spot.
 - OOH - out-of-home ads
 - Three (3) master OOH ads resized and formatted for various OOH formats (which may include printed bulletin and poster sized billboards, bus kongs, bus shelters, and digital billboards).
 - Includes up to 15 mechanical file variations.
 - Print ad
 - One full-page print ad
 - Digital display ads
 - Three (3) static master digital display ads resized into five (5) additional sizes each to accommodate standard digital media formats. Total of (18) total mechanical file variations.
 - Paid social
 - Three (3) master paid social ads, with corresponding imagery and copy formatted to spec for each social channel. Ads may feature video repurposed from :30 spot or still imagery from video, library, or stock. Includes up to 3 social ad variations for each master for a total of up to 12 social ad deliverables.
- The creative deliverables listed above shall include production of all budgeted ads and marketing tools into their final deliverable form and sizes for media placement, with final layout, copy and imagery, digital editing, etc.
- Production costs for campaigns listed above such as third-party video and radio production fees, talent, voiceover, stock photography and in-house production support services provided by Contractor will be applied to a TBD production allowance within the listed budget.

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Campaigns Sample

Cultural Infusion / Multicultural Creative Development & Production

This Scope of Work includes cultural infusion / multicultural creative direction and language transcreation for all marketing materials being transcreated into Spanish and Vietnamese, including:

- In-Language transcreation for finalized CalOptima Health concept
 - Following CONTRACTOR Health’s Cultural Infusion process, creative concepts will be transcreated by Contractor from English and presented in Spanish and Vietnamese.
 - In-language transcreation will develop further nuances to a general campaign theme that has already been vetted to be universal in nature.
 - Transcreated CalOptima Health concept will be reviewed and vetted with key stakeholders before creative development / production begins on internal and external creative deliverables.

Once the concept has been transcreated, multicultural transcreation for all campaign deliverables will begin. This will include:

- In-language transcreation for multicultural CalOptima brand campaign launch deliverables
 - To accomplish our campaign objectives, external transcreated deliverables (Spanish and Vietnamese) for use across multicultural market media channels are currently projected as follows (but subject to change per the final strategic refinements and tactical planning process):
 - External :30 (2) / :15 TV spots (2)
 - Two (2) :30 second TV spot and three (2) :15 cut-down versions of :30 spot.
 - To share footage from general market :30 / :15 TV spots, but adjusted to accommodate transcreation direction and in-language captions / VO.
 - :30 radio spots
 - Two (2) :30 radio spot scripts, creative direction of multicultural VO talent, oversight of editing and finalization of spots.
 - OOH (out-of-home) ads
 - Three (2) digital OOH ads (sizes TBD).
 - Print ads (2) (one transcreated / resized ad per language)
 - Digital display ads, (2) static versions for each language
 - Total of 4 master versions, then resized as needed for media placements up to 5 resizes per ad (up to a total of 24 display ad versions).
 - Paid social (3 versions for each language – total of 6 versions)
 - Two (2) master paid social ads with corresponding multicultural imagery and copy formatted to spec for FB/IG. Ads may feature video repurposed from :30 spot or still imagery from video, library, or stock. Includes a total of up to 6 multicultural social ad deliverables.

SUMMARY OF PHASE 2 DELIVERABLES

- Tactical Planning

**RFP 24-051
Attachment 8
Campaigns Sample**

- Brand Anthem Video asset to help engage and build consensus with internal stakeholders
- Internal graphic design support for internal banners & email templates
- Creative campaign development and production of general market external assets
- Cultural Infusion / Multicultural creative development and production of multicultural external assets

TIMELINE

| CalOptima Health Branding Initiative Work Plan & Schedule | | Oct | Nov | Dec | Jan 2023 | Feb | Mar | Apr thru Dec 2023 |
|---|--|-----|-----|-----|----------|-----|-----|-------------------|
| DISCOVER  | Stakeholder Interviews/Research, Target Audience Review, Competitive Review, CalOptima Health Brand Discovery Insights | → | | | | | | |
| PRESCRIBE  | CalOptima Health Directional Brand Strategy, Directional Positioning, and Directional Messaging Development | | → | | | | | |
| DEVELOP  | Brand Strategy Refinement, Brand Anthem/Big Idea/ Mood Board, Creative Campaign Concepting for CalOptima Health Brand Launch | | → | | | | | |
| | Creative Review: Internal Socialization/External Stakeholder Input | | | | → | | | |
| EXECUTE  | Tactical, Digital & Media Consulting, Creative Campaign Production, Finalize Media Plan, Develop Brand Style Guide | | | | → | | | |
| | Phased Campaign Internal/External Rollout & Media Consulting (2023 details TBD) | | | | | | → | |

- October 12, 2022, through March 31, 2023, but could be completed sooner based on client urgencies, staff utilization, efficiencies, and quicker timelines. Work beyond the above-referenced timeline will be estimated separately, for level of marketing activity required.

Focused on Healthy Stories



Your Health Is Everything to Us

Focused on healthy futures

◆ Access to Care ◆ Support Services ◆ Whole Person Health

As the largest health plan in Orange County, we know healthy futures depend on more than medical care. No matter your age, life circumstances affect health. We remove barriers that hold health back, supporting members in need with access to preventive care, housing services, food security and much more. Because your health is everything to us.

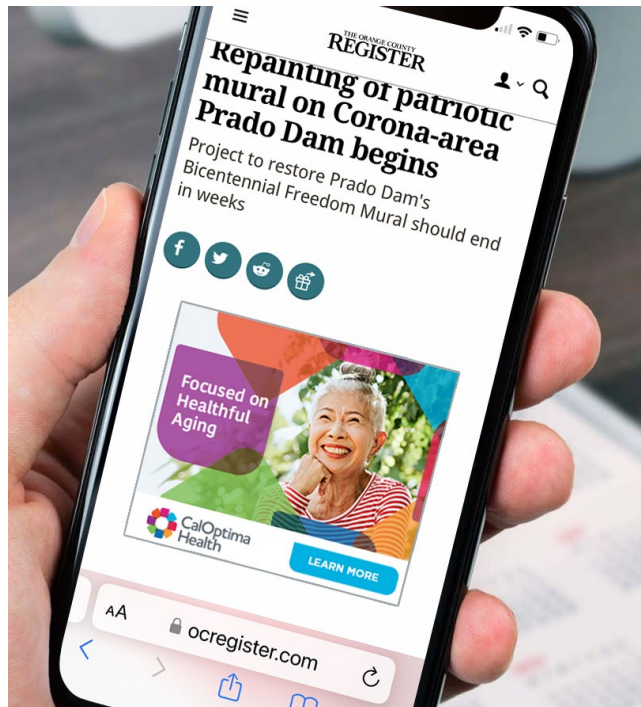
caloptima.org
CalOptima Health, A Public Agency

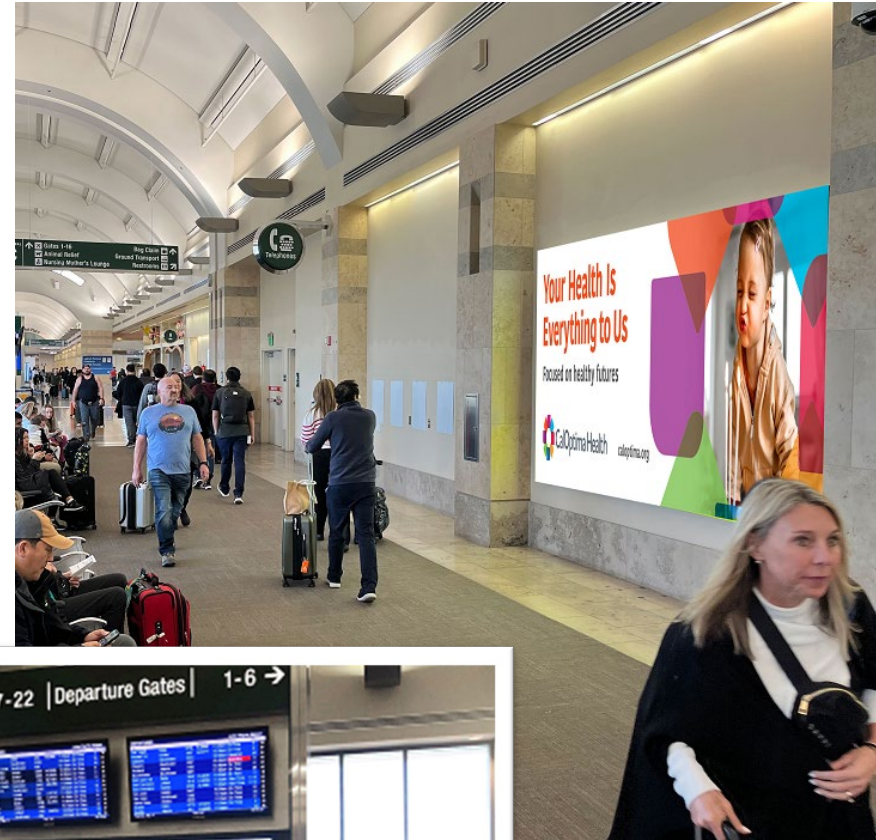


- This concept is inspired by our beautifully dynamic and powerful logo and accented by messages about whole person health

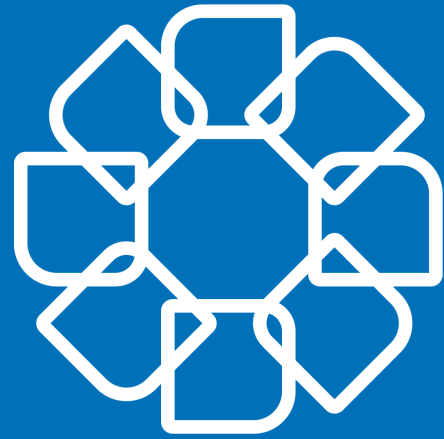
Campaign Executions

- Print advertising
 - Orange County Register
 - Daily Pilot/Times OC
 - Orange County Business Journal
 - Orange Coast Magazine
- Out-of-home advertising
 - Electronic and static billboards
 - OCTA bus exteriors, interiors and mobile ads
- Location-based advertising
 - John Wayne Airport
 - Brea Mall
 - Orange County Fair
- Digital advertising
 - Radio
 - Streaming TV
 - Display ads
 - Programmatic video
 - Facebook
 - Instagram
 - YouTube
- In-Language advertising
 - Excelsior and La Opinion
 - Nguoi Viet, Vien Dong and Viet Bao









CalOptima Health

Stay Connected With Us
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   @CalOptima

CalOptima
ATTACHMENT 5
REQUEST TO NEGOTIATE CONTRACT TERMS

RFP 24-051 for Strategic Communications Services - RFP Attachment No. 5: Request to Negotiate Form

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 |
|----------------------|-------------------|------------------|--------------------------|---------------------------|--------------------|
|----------------------|-------------------|------------------|--------------------------|---------------------------|--------------------|

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 signed below (“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 Communications and Media services, 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 Proposal 24-051 (“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 and Auto Liability policies, 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, Auto 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, Auto 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 1 to Exhibit A.

13. Term. This Contract shall commence on the Effective Date and shall continue in full force and effect through **TBD** ("**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 three (3) 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 ten (10) 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.

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: |

SAMPLE CONTRACT

EXHIBIT A
Scope of Work

1. Description of Work

RFP 24-051 SOW

2. Standard of Performance; Warranties.

- 2.1 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 rules and regulations of the industry.
- 2.2 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.
- 2.3 CONTRACTOR expressly warrants that all material and work will conform to applicable specifications, drawings, description and samples, including CalOptima's designs, drawings, and specifications, and will be merchantable, of good workmanship and material, and free from defect. CONTRACTOR further warrants that all material covered by this Contract, if any, which is the product of CONTRACTOR will be new and unused unless otherwise specified and shall be fit and sufficient for the purpose intended by CalOptima, as disclosed to CONTRACTOR. CONTRACTOR shall promptly make whatever adjustments or corrections that may be necessary to cure any defects, including repairs of any damage resulting from such defects. CalOptima shall give notice to CONTRACTOR of any observed defects. If CONTRACTOR fails to adjust, repair, correct, or perform other work made necessary by such defects, CalOptima may make such adjustments, repairs, and/or corrections and charge CONTRACTOR the costs incurred.
- 2.4 CONTRACTOR's warranties, together with its service guarantees, must run to CalOptima and its customers or users of the material and services, and must not be deemed exclusive. CalOptima's inspection, approval, acceptance, use of and payment for all or any part of the material and services must in no way affect its warranty rights whether or not a breach of warranty had become evident in time.
- 2.5 CONTRACTOR's obligations under this Section 2 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, equipment or work. CalOptima rejects any disclaimer by CONTRACTOR of any warranty, standard, implied or express, unless specifically agreed to in writing by both Parties.
- 2.6 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.

3. Record Ownership and Retention.

- 3.1 The originals of all letters, documents, reports, and any other products and data prepared or generated for the purposes of this Contract shall be delivered to and become the property of CalOptima at no cost to CalOptima and in a form accessible for CalOptima's use. Copies may be made for CONTRACTOR's records but shall not be furnished to others without written authorization from CalOptima. Such deliverables shall become the sole property of CalOptima and all rights in copyright therein shall be retained by CalOptima. CalOptima's ownership of these documents includes use of, reproduction or reuse of, and all incidental rights. CONTRACTOR shall provide all deliverables within a reasonable amount of time upon CalOptima's request, but in no event shall such time exceed thirty (30) calendar days unless otherwise specified by CalOptima.

3.2 CONTRACTOR hereby assigns to CalOptima all of its rights in all materials prepared by or on behalf of CalOptima under this Contract (“**Works**”), and this Contract shall be deemed a transfer to CalOptima of the sole and exclusive copyright of any copyrightable subject matter CONTRACTOR created in these Works. CONTRACTOR agrees to cause its agents and employees to execute any documents necessary to secure or perfect CalOptima’s legal rights and worldwide ownership in such materials, including documents relating to patent, trademark and copyright applications. Upon CalOptima’s request, CONTRACTOR will return or transfer all property and materials, including the Works, in CONTRACTOR’s possession or control belonging to CalOptima.

4. Required Insurance

4.1. Commercial General Liability, including contractual liability and coverage for independent contractors on an occurrence basis on an ISO form GC 00 01 or equivalent covering bodily injury and property damage with the following minimum liability limits:

4.1.1. Per occurrence: \$1,000,000

4.1.2. Personal Advertising Injury: \$1,000,000

4.1.3. Products Completed Operations: \$2,000,000

4.1.4. General Aggregate: \$2,000,000

4.2. If Contractor or subcontractors are on CalOptima’s premises or transporting CalOptima members or employees, Commercial Automobile Liability covering any auto, whether owned, lease, hired, or rented, on an ISO form CA 0001 or equivalent in the amount of \$1,000,000 combined single limit for bodily injury or property damage.

4.3. Worker’s Compensation and Employer’s Liability Policy written in accordance with applicable laws and providing coverage for all of CONTRACTOR’s employees:

4.3.1. The policy must provide statutory coverage for Worker’s Compensation.

4.3.2. The policy must also provide coverage for \$1,000,000 Employers’ Liability for each employee, each accident, and in the general aggregate.

4.4. Professional Liability insurance covering the CONTRACTOR’s professional errors and omissions with \$1,000,000 per occurrence and \$2,000,000 general aggregate.

4.5. Commercial crime policy covering employee theft and dishonesty, forgery and alteration, money orders and counterfeit currency, credit card fraud, wire transfer fraud, and theft of client property with \$1,000,000 limits per occurrence.

4.6. Cyber Liability insurance with the minimum limits of insurance listed below covering first and third-party claims involving privacy violations, data breaches, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. Such coverage shall provide for costs of legal fees, forensic expenses, regulatory fines and penalties, notification expenses, credit monitoring and ID theft repair, public relations expenses, and costs of liability and defense.

4.6.1. One Million (\$1,000,00.00) each occurrence/claim and One Million (\$1,000,00.00) aggregate.

4.7. “**Occurrence**” means any event or related exposure to conditions that result in bodily injury or property damage.

EXHIBIT A
Addendum 1

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

| Subcontractor Name | Functions |
|--------------------|-----------|
| | |
| | |
| | |

SAMPLE CONTRACT

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 at the rates set forth 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.
5. If CONTRACTOR incurs travel-related expenses under this Contract, CalOptima will only reimburse such expenses if CalOptima provides prior written approval of such expenses and those expenses are incurred and submitted in accordance with CalOptima Travel Policy (G.A.5004), as amended, which is incorporated into this Contract by this reference. CalOptima will make CalOptima Travel Policy (G.A.5004) available to CONTRACTOR upon written request.

EXHIBIT B-1
Payment Schedule

| Milestone | Completion Date | Fee |
|--------------|-----------------|-------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| TOTAL | | |

| Name | Title/Labor Category | Rate |
|-------|----------------------|-------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

SAMPLE CONTRACT

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 service 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, including 42 C.F.R. § 438.230; Health & Safety Code § 1340 *et seq.* (unless otherwise excluded under the DHCS Contract); 28 C.F.R. § 1300.43 *et seq.*; Welfare & Institutions Code § 14000 *et seq.*; and 22 C.C.R. §§ 53800 *et seq.*, 22 C.C.R. §§ 53900 *et seq.* CONTRACTOR and Subcontractors shall comply with all applicable requirements of the Medi-Cal program pertaining to its reporting requirements and other obligations under this Contract, including Medicaid and Medi-Cal laws and regulations, sub-regulatory guidance, DHCS all plan letters, and the DHCS Contract and comply with all monitoring of the DHCS Contract and any other monitoring requests by DHCS. CalOptima or DHCS may revoke any activity under this Contract, including terminating this Contract, if CONTRACTOR and/or its Subcontractors do not perform that activity in compliance with the requirements in this Exhibit C. [DHCS Contract, Exhibit A, Attachment III, § 3.1.5, subsections B.7-B.8, B.11, B.28; 42 C.F.R. § 438.230]
- 1.2. Disclosure of Officers, Owners, Stockholders and Creditors. Pursuant to Exhibit A, Attachment III, § 1.3.5 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.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.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.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.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.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.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.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.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.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.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), Provisions 20.b.(4)(5)]
 - 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.b.(6)]
 - 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.b.(7)]
- 1.4.3. If the CONTRACTOR is unable to certify any of the statements in this certification, the CONTRACTOR shall submit an explanation to CalOptima. [DHCS Contract, Exhibit D(f), Provision 20.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.d.]

1.4.5. If the CONTRACTOR knowingly violates this certification, in addition to other remedies available to the federal government, CONTRACTOR shall promptly notify CalOptima in writing, and CalOptima may terminate this Contract for cause. [DHCS Contract, Exhibit D(f), Provision 20.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 37.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 37.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 37.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 37.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 37.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 37.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 37.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 37.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 37.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 timely gather, preserve, and provide, 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. CONTRACTOR and Subcontractors must maintain all books and records in accordance with good business practices and generally accepted accounting principles. 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 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 Subcontractors. [DHCS Contract, Exhibit A, Attachment III, § 3.1.5, subsections B.12-B.15]

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 14; Exhibit E, § 1.1.23]

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 D(f), Provision 14; Exhibit E, § 1.1.23]

- 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 III, § 3.1.5, subsections A.13 and B.18; 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 C.C.R. § 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]
- 1.11. Effective Dates. This Contract and its amendments will become effective only as set forth in the DHCS Contract, which requires filing and approval by DHCS of template contracts and amendments. [DHCS Contract, Exhibit A, Attachment III, §§ 3.1.2, 3.1.5, subsection B.4]
- 1.12. Prospective Requirements. CalOptima will inform CONTRACTOR of prospective requirements added by the State, federal law, or DHCS to the DHCS Contract that would impact CONTRACTOR's obligations before the requirement becomes effective. CONTRACTOR agrees to comply with the new requirements within thirty (30) calendar days of the effective date, unless otherwise instructed by DHCS. CONTRACTOR will ensure Subcontractors are (i) informed of prospective requirements that would impact their obligations before the requirements become effective and (ii) agree to comply with new requirements within thirty (30) calendar days of the effective date, unless otherwise instructed by DHCS. [DHCS Contract, Exhibit A, Attachment III, § 3.1.5, subsections B.22 and B.23]
- 1.13. DHCS Beneficiary. CONTRACTOR expressly agrees and acknowledges that (i) DHCS is a direct beneficiary of the Contract and any Subcontractor agreement with respect to the obligations and functions undertaken under the Contract, and (ii) DHCS may directly enforce any and all provisions of the Contract or Subcontractor agreement. [DHCS Contract, Exhibit A, Attachment III, § 3.1.5, subsection B.29]
- 1.14. Termination. CONTRACTOR shall notify DHCS if this Contract or an agreement with a Subcontractor is amended or terminated for any reason. [DHCS Contract, Exhibit A, Attachment III, § 3.1.5, subsection B.17; APL 19-001, Attachment A, Requirement 13]
- 1.15. Cultural Competency. CONTRACTOR and Subcontractors must ensure that cultural competency, sensitivity, health equity, and diversity training is provided for CONTRACTOR's and Subcontractor's staff at key points of contact with CalOptima members, if applicable. [DHCS Contract, Exhibit A, Attachment III, § 3.1.5, subsection B.24]

- 1.16. Interpreter Services. CONTRACTOR and Subcontractors, to the extent they communicate with CalOptima members, will provide interpreter services for members and comply with language assistance standards developed pursuant to Health and Safety Code § 1367.04 [DHCS Contract, Exhibit A, Attachment III, § 3.1.5, subsection B.25]
- 1.17. Fraud Reporting. CONTRACTOR and Subcontractors must notify CalOptima within ten (10) business days of any suspected fraud, waste, or abuse, and CalOptima may share such information with DHCS in accordance with Exhibit A, Attachment III, Section 1.3.2 (D), Fraud and Abuse Reporting, of the DHCS Contract. [DHCS Contract, Exhibit A, Attachment III, § 3.1.5, subsection B.26]
- 1.18. Overpayment Reporting. CONTRACTOR and all Subcontractors must report directly to CalOptima, or through CONTRACTOR or Subcontractor, as applicable, when it has received an overpayment; return the overpayment to CalOptima within sixty (60) calendar days after the date the overpayment was identified; and notify CalOptima in writing of the reason for the overpayment. [42 C.F.R. § 438.608(d)(2); DHCS Contract, Exhibit A, Attachment III, § 3.1.5, subsection B.27]

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 cooperate with CalOptima as necessary for CalOptima to comply with the reporting requirements provided in Title 42 of the Code of Federal Regulations, including Sections 422.516 and 422.310.
- 2.4. 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.
- 2.5. 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:
- 2.5.1. 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)]
- 2.5.2. 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)]

- 2.6. In addition to the termination provisions of Section 14 of the Contract, CalOptima may terminate the Contract if CMS, DHCS, 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.
- 2.7. 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.
- 2.8. 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. [22 C.C.R. § 53600(d)]. 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 office 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

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 Proposal (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 reviewing 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

Not Applicable for this Contract

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 |
| Offshore Subcontractor name: | |
| Offshore Subcontractor country: | |
| Offshore Subcontractor address: | |
| Describe offshore subcontractor functions: | |
| Proposed or actual effective date for offshore subcontractor (MM/DD/Year): | |

| 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: <input type="text"/> | Title: <input type="text"/> |
| Email: <input type="text"/> | Phone #: <input type="text"/> |
| Signature: <input type="text"/> | Date: <input type="text"/> |

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 Addendum**

This Business Associate Addendum by and between CalOptima and Contractor, which for the purposes of this addendum shall be referred to as “**Business Associate**”, is effective as of the Effective Date of the Agreement

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.** Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in HIPAA, the HITECH Act, and 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 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). PHI includes information in any form, including paper, oral, and electronic.
- 1.16. **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.

- 1.17. **Secretary** means the Secretary of the U.S. Department of Health and Human Services or the Secretary's designee.
- 1.18. **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.
- 1.19. **Services** has the same meaning as in the Services Agreement(s).
- 1.20. **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).
- 1.21. **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 (collectively, "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, 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.
- 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.

6. Compliance with Other Applicable Law

- 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 of this Agreement, include, but are not limited to the Information Practices Act, California Civil Code §§ 1798-1798.78, 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.
- 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 an industry-recognized security framework when selecting and implementing its security controls, and shall maintain continuous compliance with its selected framework as it may be updated from time to time. Examples of industry-recognized security frameworks include but are not limited to:
- 7.2.2.1. NIST SP 800-53 - National Institute of Standards and Technology Special Publication 800-53
 - 7.2.2.2. FedRAMP - Federal Risk and Authorization Management Program
 - 7.2.2.3. PCI - PCI Security Standards Council
 - 7.2.2.4. ISO/ESC 27002 - International Organization for Standardization / International Electrotechnical Commission standard 27002
 - 7.2.2.6. IRS PUB 1075 - Internal Revenue Service Publication 1075
 - 7.2.2.7. HITRUST CSF - HITRUST Common Security Framework
- 7.2.3. Business Associate shall employ FIPS 140-2 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(c)(2)(ii).
 - 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. 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(c)(2)(ii).
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, 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. 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 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. The term PHI, as used in this Section, only refers to PHI as defined in 45 C.F.R. § 160.103. 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 (but beginning no earlier than April 14, 2003).

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 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, 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 or subcontractors 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 U.S. Department of Defense standards for data destruction DoD 5220.22-M (7 Pass) standard or by degaussing. Media may also be physically destroyed in accordance with 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 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:
- 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 data 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, 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;
- 17.4.1.3. The potential impacts of the incident, such as potential misuse of data, identity theft, etc.; and
- 17.4.1.4. A corrective action plan describing how Business Associate will

prevent reoccurrence of the incident in the future. Notwithstanding the foregoing, all corrective actions are subject to the approval of CalOptima and CalOptima's regulator(s), as applicable.

- 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, then CalOptima or, as required by CalOptima, Business Associate shall notify individuals accordingly. 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 subcontractors, 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 subcontractors or 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 subcontractors or 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 subcontractors or 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 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 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. Failure by Business Associate to take necessary actions required by amendments to this Agreement under Section 22.2.1 shall constitute a material violation of this Agreement.

22.3. **Assistance in Litigation or Administrative Proceedings.** Business Associate shall make itself and its employees and agents available to 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.

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

Title

Date

Date

Question and Answers for Bid #24-051 - Strategic Communications Services

Overall Bid Questions

There are no questions associated with this bid.

Question Deadline: Mar 28, 2024 7:00:00 AM PDT