

Chairperson  
Judith A. Wenker



President and CEO  
Rudolph A. Johnson, III

**The Neighborhood House Association**

**REQUEST FOR PROPOSALS**

**for**

***Psychiatric Consultant Services***  
**Request # 2017-001**

**Issue Date:** January 13, 2017

**Response Due Date:** February 13, 2017, no later than 4:00 pm

**Purchasing Agent:** Jerome Gissendanner, 858.715.2642, Extension 183

**Request**

The Neighborhood House Association (NHA) is seeking qualified psychiatrists to provide on-site psychiatric services to a severely mentally ill adult population. Psychiatrists will provide diagnoses, treat various clients on different mental issues, perform evaluations, and formulate treatment plans, which include medication, prescription and psychiatric care of severely mentally ill adults. Services will be provided at NHA's Project Enable Outpatient Mental Health Program ("Project Enable"), located at 286 Euclid Avenue, Suite 102, San Diego, CA 92114. The program is funded by the County of San Diego Health & Human Services Agency Adult/Older Adult Mental Health Services.

NHA is not required to engage in a public bidding process to solicit proposals, quotes, information or statements of qualification. This process is not subject to protest or appeal.

*This Request is not an offer or commitment to purchase any goods or services or to award or enter into a contract.*

**Proposal Timelines**

|  |
|--|
| <b>RFP Release Date – January 13, 2017</b>       |
| <b>Last Day for Questions – January 30, 2017</b> |
| <b>Proposal Due Date February 13, 2017</b>       |

## Information on NHA

NHA is a California nonprofit public benefit corporation and recognized as a 501(c)(3) tax-exempt organization. NHA operates a multi-purpose human service agency that facilitates leadership in communities and assists individuals and families throughout San Diego County. NHA provides services that are designed to improve the quality of life through programs relating to child development, assisting seniors to live on their own, mental health services, housing and rental assistance, and related social services. Established in 1914 as a settlement House to serve the growing immigrant population and incorporated in 1923, NHA programs currently include:

|  |   |
|--|---|
| • Head Start   | • Adult Day Health Care                   |
| • Housing Counseling   | • Project Enable (Mental Health Services) |
| • HIV/AIDS Services  | • Senior Services Center                  |
| • Homework Center  | • Black Infant Health                     |
| • InnoVisions, Inc. (a social enterprise)                    | • Nutrition Services                      |
| • Project In-Reach (case mgmt. for incarcerated individuals) |   |

NHA has a corporate policy on equal opportunity contracting. Small, local, disadvantaged, women-owned, and ethnic minority-owned businesses are encouraged to submit responses to this Request.

One of NHA's largest programs, the Project Enable provides time-limited outpatient specialty mental health services to adults 18 years of age and older who are affected by serious and persistent mental illness and/or co-occurring disorders that interfere with their ability to function in key life roles, as parents, students, spouses and employees. The program strives to reduce psychiatric symptoms and the need for hospitalization while rehabilitating clients to their highest level of functioning. Services focus on stabilization and recovery goals with the expectation that with treatment, clients will effectively recover and graduate from the program. Comprehensive services include mental health assessment, medication management, short term individual and group therapy, rehabilitation counseling, case management and linkage to supportive community services.

This RFP endeavors to identify qualified psychiatrists to provide services for the Project Enable clinic.

For additional information, please refer to the NHA website: [www.neighborhoodhouse.org](http://www.neighborhoodhouse.org)

## Confidentiality

Respondent may have or may be provided access to NHA's proprietary items or confidential information, including but not limited to: all the information acquired by Respondent for the purpose of developing a response to this Request ("Confidential Information"). Respondent understands and agrees to maintain the confidentiality of NHA's Confidential Information in accordance with this RFP and any separate nondisclosure agreement(s) which expressly references the disclosure(s) between Respondent and NHA. At a minimum, Respondent agrees that it shall not make NHA's Confidential Information available to any third party without the written consent of NHA and that title and ownership of the Confidential Information provided by NHA to Respondent shall remain the exclusive property NHA.

Respondent agrees to immediately notify, in writing, NHA's authorized representative in the event Respondent determines or has reason to suspect a breach of this requirement.

## **Scope of Services for this Request**

### **DESCRIPTION OF GENERAL SCOPE OF WORK FOR PSYCHIATRIC CONSULTANT SERVICES**

NHA desires to engage the services of multiple service providers located within the San Diego County area, to provide psychiatric consultant services listed in Exhibit "A," "Scope of Services," attached to this Request for Proposal and incorporated by this reference for Project Enable located in San Diego County.

The Services must be performed in accordance with the specifications, terms and conditions of a written contract substantially similar to the "Specimen Contract", attached as EXHIBIT "D" and incorporated by this reference.

The projected start date for work on this project is March 1, 2017.

## **Response Requirements**

1. Completed and signed NHA Request Response Submittal Cover Sheet (EXHIBIT "C").
2. Detailed personal resume or curriculum vitae; or brief description of the firm or business entity, including firm history, number of employees, organization structure, ownership structure and expertise.
3. Detailed listing and description of experience including holistic and/or community service oriented practices, specialized training, computer skills and other information over the last 10 years that demonstrates the Respondent's expertise and capacity to provide the Services specified in this Request. This information may be included in the personal resume or curriculum vitae.
4. Degree from a U.S. accredited medical or osteopathic school or foreign studies certification equivalent to a degree in M.D. or D.O.
5. Completion of a successful psychiatric residency-training program and two years of psychiatric experience in a mental health clinic, program, or correctional facility.
6. Copy of current and valid license to practice medicine in California (M.D. or D.O.).
7. List of at least three (3) current and/or former references to which the Respondent has worked with to provide similar psychiatric services and their contact information (name and telephone or email address).
8. Clearly identify any business relationships that the Respondent believes may give rise to a conflict of interest if selected to provide the requested services.
9. A per hourly rate cost proposal for services listed in Scope of Services. Please submit the proposal as EXHIBIT "B," titled "Client Services Fee Agreement, Statement of Work & Fee Schedule." It is encouraged for applicants to research psychiatric compensation rates related to the Community Mental Health/non-profit sector for similar services requested, and to propose a flat hourly rate.

10. Proof of Professional Liability Insurance.
11. A valid National Provider Identification (NPI) Number.
12. Disclosure of any ongoing and/or expected litigation that Respondent is (or is expected to be) named a party to. If not applicable, Respondent must indicate such in its submittal.
13. One (1) Copy of W-9 Form
14. Four (4) Copies of the Proposal (1) Original (3) Copies

### Preferred

1. Previous experience in working with the County of San Diego Health and Human Services Agency and the CERNER online computer database system.
2. Previous medication monitoring experience.
3. Ability to supervise nurse practitioners.
4. Medicare Certification.
5. Bilingual (Spanish/English).

### Response Submittal Procedures

Prior to submitting a response, Respondent must carefully review this Request and any addenda subsequently issued. Respondent is responsible for seeking any clarification or information needed to respond. Respondent is solely responsible for any deficiencies in the response submitted. Respondent is solely responsible for all costs, direct or indirect, incurred responding to this Request. NHA will incur no obligation or liability in connection with the submittal of a response.

***Alternates/Deviations.*** Respondent may recommend, for NHA's consideration, alternate or additional services or material not identified in this Request or deviations from the Scope of Services in this Request that Respondent believes will enhance the specified Services or more successfully achieve the outcome sought by this Request. Any alternates or deviations must be separately listed and described; however, the submittal also must be responsive to the Scope of Services described in this Request.

***Proprietary Information.*** Certain documents in NHA's possession are subject to inspection and copying pursuant to the Federal Head Start regulations; however, the regulations do not require disclosure of proprietary information that constitutes a trade secret under California law. NHA will attempt to protect legitimate proprietary information included in any submittal, but shall not be liable for the disclosure of any proprietary information.

Proprietary information included with a response submittal must be separately bound and clearly labeled with the words "Confidential Proprietary Information." Appropriate reference to this separately bound information must be made in the body of the submittal. ***Marking the entire submittal as proprietary will result in it being rejected and returned to the Respondent participant unread.***

**Clarifications.** Requests for clarification of this Request must be directed to Jerome Gissendanner, Purchasing Agent, and submitted in writing, by facsimile to (858) 715-2671 or by e-mail to [jerome@neighborhoodhouse.org](mailto:jerome@neighborhoodhouse.org) prior to the submittal deadline.

**Questions & Answers.** All questions must be submitted in writing to Jerome Gissendanner, Purchasing Agent, and submitted in writing, by facsimile to (858) 715-2671 or by e-mail to [jerome@neighborhoodhouse.org](mailto:jerome@neighborhoodhouse.org) prior to the submittal deadline. No questions will be accepted after **January 30, 2017**

**Addenda.** Any material changes to this Request resulting from either a request for clarification or a business decision of NHA will be issued in written form in the same manner this Request was advertised. All changes in such addenda shall supersede or supplement this Request. Respondents are solely responsible for determining whether any addenda have been issued prior to submittal of a response.

**Response Submittal Package.** Respondent must submit the following documents in a sealed envelope:

- All of the information discussed in the Response Requirements Section, above.
- Four (4) copies of the Respondent's technical qualifications, four (4) copies of Respondent's pricing information (in a separately sealed envelope). These documents may become part of the contract.

**The envelope must be addressed as follows:**

The Neighborhood House Association  
Attn: Jerome Gissendanner, Purchasing Agent  
Procurement Division – Request #2017-001  
5660 Copley Drive  
San Diego, CA 92111

**Submittal Deadline.** Submittals must be received by **4:00 p.m. (PST) on January 30, 2017**

**Submittal Methods.** Submittals may be sent by U.S. or private delivery mail service or by personal delivery to NHA's Administrative Offices (5660 Copley Drive, San Diego, CA 92111). Submittal by e-mail, in PDF format, will be accepted provided the signed, original NHA Request Response Submittal Cover Sheet is received within twenty-four (24) hours after the submittal deadline. Proposals received after the submittal deadline may be rejected.

**Withdrawal of Submittal.** A Respondent may withdraw its proposal by written request at any time prior to the submittal deadline. NHA will destroy, not return, the submittal package.

Proposals may be deemed non-responsive and removed from further consideration if any of the following occur:

1. The proposal is not received timely in accordance with the terms of this RFP.
2. The proposal does not follow the specified format.

## NON-DISCRIMINATION

Respondent agrees that it will not discriminate against any employee or applicant for employment because of race, color, sex, national origin, religion, age, handicap or veteran status. Respondent will, where appropriate or required, take affirmative action to ensure that applicants are employed, and that employees are treated, during employment, without regard to race, color, sex, or national origin. Respondent will cooperate with NHA in using its best efforts to ensure that disadvantaged business enterprises are afforded the maximum opportunity to compete for subcontracts or work under this contract.

## Selection Process

It is NHA's goal to identify the Respondent most qualified to provide the Services. NHA will determine the most qualified Respondents ("Finalists"), at its sole discretion. Finalists shall be expected (i) to interview with NHA representatives and respond to questions regarding their submittal responses; and (ii) to attend an agency tour of NHA's various worksites.

NHA may elect to negotiate pricing with one or more of the Finalists. NHA, at its sole discretion, will make its final selection of the Finalist whose experience, expertise, reputation, capabilities, past performance, and cost is determined to be most advantageous to NHA.

**NHA's decision is final and is not subject to any form of administrative review, appeal or protest.**

## Notification of Award and Critical Deadlines

Closing Submission Date: Proposals must be submitted **no later than 4:00 p.m.** (Pacific Standard Time) on **February 13, 2017**

Upon conclusion of final negotiations with the successful Psychiatrist(s), all Respondents who submitted a proposal in response to this RFP will be informed in writing whether or not the evaluation committee recommended them to receive an award.

The initial contract will be awarded for a One (1) year period, subject to change and modification, at the discretion of NHA.

At the discretion of NHA, the awarded contract can be extended for four (4) additional one (1) year periods. The cost for the option periods will be agreed upon by NHA and the awarded party.

## Contracting Process

Neither this Request nor the selection of a Respondent will create a binding commitment on NHA. Upon completion of the selection process, NHA may award a contract to the party whom it elects to provide the Services in this Request. A binding commitment will only occur when a contract between NHA and the successful Respondent has been fully executed.

### **Disclaimers**

NHA anticipates a single contractor will be selected as a result of this Request; however, NHA reserves the right, in its sole discretion, to award contracts to multiple contractors. NHA further reserves the right, in its sole discretion, to reject any or all response submittals, waive any informalities in this process or the submittal requirements; and/or cancel, in whole or in part, this Request.

## **Attachments**

The following documents are attached hereto and incorporated herein by this reference.

- **EXHIBIT “A” – SCOPE OF SERVICES**
- **EXHIBIT “B” – CLIENT SERVICES FEE AGREEMENT STATEMENT OF WORK & FEE SCHEDULE**
- **EXHIBIT “C” – NHA REQUEST RESPONSE SUBMITTAL COVER SHEET**
- **EXHIBIT “D” – SPECIMEN CONTRACT**

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

The qualified consultant will be able to provide and meet the following clinical requirements:

- Responsible for the assessment and management of clients with mental health, substance abuse, and co-occurring conditions; assess diagnosis, plan, implement and evaluate psychiatric care for those receiving mental health services.
- Analyze and evaluate client data and/or examination findings to diagnose nature and extent of mental disorder.
- Prescribe, direct and administer psychotherapeutic or medications to treat mental, emotional, or behavioral disorders.
- Provide psychiatric consultation, medication management services, and education to psychiatric clients.
- Complete initial psychiatric evaluations for new clients, including an assessment for co-occurring disorders and/or a bio-psychosocial assessment as required.
- Assessments shall be provided as part of an integrated, bio-psychosocial, rehabilitation model in a culturally appropriate atmosphere of healing.
- Communicate effectively with a variety of individuals representing diverse cultures and backgrounds and function calmly in situations, which require a high degree of sensitivity, tact, and diplomacy.
- Prescribe psychotropic and related medications based on clinical indicators of a client's status, including results of diagnostic and lab test as appropriate to treat symptoms of psychiatric disorders and improve functional health status; administers/monitors the use of and notes reactions to psychotropic drugs and other medications.
- Monitor the physiological and psychological effects (and side effects) of the medications prescribed to program clients, on a regular basis, and make appropriate interventions and modifications when necessary.
- Conduct consultation with clients' family members, case managers, and/or caregivers.
- Collaborate with physicians, nurse practitioners, psychiatric nurses, psychologists, social workers and other professionals to discuss treatment plans and progress.
- Unless otherwise agreed to in writing by the agency, consultant will not be required to perform services on-call or after regular business hours.
- Perform timely, accurate, and concise documentation of client care.
- Assess clients in crises and facilitates prompt resolution via administering medication, crisis



counseling, and/or or referral to other services.

- Consult and collaborate with members of the treatment team to assist clients in obtaining, and making appropriate referrals for necessary or requested services, physicians, nurses, social workers, and counselors and other health professionals to assist clients in obtaining, and makes appropriate referrals for necessary or requested services.
- Participate in shared program operational responsibilities, such as utilization and transition reviews.
- Prepare a comprehensive health history of clients, records findings of assessments; and plans of care, follow-up examinations, and subsequent evaluations.
- Perform related work or duties as assigned.
- Conduct a minimum (3) three intakes per week.

**EXHIBIT "B"**

CLIENT SERVICES FEE AGREEMENT  
STATEMENT OF WORK & FEE SCHEDULE

[DETAILS TO BE PROVIDED BY RESPONDENT]



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**EXHIBIT "C"**

**REQUEST RESPONSE SUBMITTAL COVER SHEET**  
**NHA Request #2017-001**

The undersigned has carefully examined this entire RFP and familiarized themselves with all conditions pertinent to this Request. The undersigned hereby proposes to furnish all Services necessary to completely fulfill the Scope of Work without restriction for the time period.

Respondent Name: \_\_\_\_\_ Business Address: \_\_\_\_\_

Proprietorship  Partnership  Corporation  LLC  LLP State of Incorporation: \_\_\_\_\_

Tax Payer I.D./FEIN# \_\_\_\_\_ ; State Business License# \_\_\_\_\_

If Partnership, please list the general partner(s) \_\_\_\_\_

If LLC or LLP, list managing member(s)/partner(s) \_\_\_\_\_

Primary contact for this RFP Process \_\_\_\_\_

Title \_\_\_\_\_ Phone \_\_\_\_\_ Fax \_\_\_\_\_ Email \_\_\_\_\_

**Bid Offer Rate per Hour \$ \_\_\_\_\_**

Can Respondent commence work on the start date in the Request? \_\_\_\_\_ (Y/N). If no, when? \_\_\_\_\_

Has the Specimen Contract attached to the Request been reviewed? \_\_\_\_\_ (Y/N).

Are any terms unacceptable? \_\_\_\_\_ (Y/N).

If yes, please specify the section numbers. \_\_\_\_\_

Does Respondent seek to negotiate any terms? \_\_\_\_\_ (Y/N).

If yes, briefly describe the nature of the change(s) sought: \_\_\_\_\_

***CERTIFICATION***

I declare that the foregoing is true and correct and that I am authorized to submit the attached Response to \_\_\_\_\_ on behalf of \_\_\_\_\_.

Respondent's Authorized Representative:

Signature: \_\_\_\_\_ Print Name & Title: \_\_\_\_\_ Date: \_\_\_\_\_

**EXHIBIT “D”**  
**SPECIMEN CONTRACT**  
[28 pages]



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President and CEO  
Rudolph A. Johnson, III

# SPECIMEN AGREEMENT

This Standard Consultant Agreement (the “Agreement”) is entered into effective this [Effective Date], by and between The Neighborhood House Association, a California non-profit, public benefit corporation with its primary offices located at 5660 Copley Drive, San Diego, California 92111 (“NHA”), and [Consultant Name] (“Consultant”), whose contact information is set forth below:

[Name:]

[Telephone Number:]

[Address:]

[License Number:]

[Expiration date]

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## RECITALS

**WHEREAS**, NHA is contracted and funded through the county of San Diego Health and Human Services Agency (contract #548929) to provide a variety of comprehensive health and social services, including psychiatric day treatment, socialization, group and individual counseling, and outpatient treatment services for mentally disabled adults at NHA’s Project Enable Program;

**WHEREAS**, NHA desires to procure the services of a qualified professional to perform the below described “Scope of Work” at the Project Enable Program;

**WHEREAS**, Consultant has submitted its proposal, demonstrated its qualifications and was awarded the contract by NHA.

**NOW THEREFORE**, in consideration of the mutual covenants and conditions set forth herein, NHA and Consultant (collectively, the “Parties”) hereby agree as follows:

**TERM:** This Agreement will commence on [Start Date] and shall continue, until it automatically expires on [End Date]; unless terminated earlier by either Party upon thirty (30) days prior written notice. Notwithstanding the foregoing, this Agreement may be terminated at any time and without prior notice for Cause (as defined below). In the event of termination of this Agreement, compensation due Consultant shall be pro-rated to reflect the actual work completed at the time of termination; and Consultant agrees to immediately return any Confidential Information belonging to NHA. For the purposes of this Agreement, “Cause” shall mean conduct involving one (1) or more of the following: (i) any material failure of Consultant to render services to NHA in accordance with the terms and conditions of this Agreement; (ii) disloyalty, gross negligence, willful misconduct, dishonesty, fraud or breach of duty to NHA; (iii) deliberate disregard of the rules or policies of NHA; and/or (iv) any act or omission that induces any other vendor, provider, consultant, or contractor to breach a contract with NHA.

2. DUTIES OF CONSULTANT: Consultant shall provide medical and psychiatric consultation and medication services to psychiatric clients as set forth in EXHIBIT “A,” attached and incorporated by this reference (the “Services” or “Scope of Work”) and as set forth below:
  - 2.1. Consultant expressly acknowledges and agrees that any and all works, including research, reports, and/or deliverables, created by Consultant in the scope of providing the Services hereunder shall be considered “works made for hire” as defined in the United States Copyright Act; and, at all stages of development, shall be and remain the sole and exclusive property of NHA. Consultant further agrees to take all actions to execute and deliver all documents requested by NHA in order to evidence the assignment of Consultant’s rights in and to such proprietary works.
  - 2.2. Consultant represents and warrants that any work or service it provides to NHA pursuant to this Agreement shall not infringe the intellectual property rights of any third party.
  - 2.3. Consultant’s service hours (i) shall not exceed [Service Hours] hours during the term of this Agreement, without prior written approval. Consultant shall record all service hours worked in the time sheets approved by NHA’s Project Manager, identified in section 10 below. Services rendered shall be verified via Consultant’s time sheets.
  - 2.4. Consultant agrees to furnish, at its sole cost and expense, all costs required to complete the Services to be performed pursuant to this Agreement. Consultant will complete the same in a thorough and skillful manner in every respect to the satisfaction and approval of NHA, within the time specified in this Agreement and in strict accordance with the instructions and information contained in this Agreement, including without limitation the Scope of Work.
  - 2.15. Consultant shall comply with the County of San Diego’s Mandatory Clauses, attached hereto as Exhibit “B” and incorporated herein by reference.
3. COMPENSATION: The maximum compensation payable to Consultant pursuant to this Agreement shall not exceed [**Maximum Compensation**] payable as follows:
  - 3.1 NHA agrees to compensate Consultant for Services performed pursuant to this Agreement at the rate of [Rate] per hour.
  - 3.2 At no cost to Consultant, NHA agrees to provide reasonable access to non-medical, specialized training(s) deemed required, by NHA’s Project Manager, for effective performance of the Services at Project Enable (i.e. electronic health record and documentation training), as may be required from time-to-time. Consultant shall coordinate such trainings with NHA’s Project Manager.
  - 3.3 Consultant shall submit, to NHA’s Project Manager, a monthly invoice, by the tenth (10<sup>th</sup>) day of the following month, with a listing of all Services performed the previous month. Such invoice(s) shall include the dates, places, and times of Services being billed. NHA agrees to furnish payment(s) within ten (10) business days of receipt of an approved invoice; such approval shall not be unreasonably withheld. In the event of any disputed invoice, the Parties agree to work in good faith to resolve the discrepancy.
  - 3.4 Consultant understands and accepts that NHA is a nonprofit, public benefit corporation which operates primarily on public funds, granted for approved expenditures invoiced within the fiscal year (July 1st – June 30th). Accordingly, timely submission of invoices,

as provided above, is critical to ensure prompt and complete payment. In the event Consultant fails to submit its invoices as provided above, Consultant shall still be entitled to collect any and all outstanding amounts owed by submitting its outstanding invoice(s) to NHA not later than July 30 of each year, for the prior twelve (12) month period. In the event Consultant fails to invoice NHA on or before July 30 of each year, as contemplated in this Section, such outstanding amounts shall be automatically waived and deemed non collectable.

- 3.5 The amount set forth above constitutes the maximum compensation payable to Consultant for all Services provided by Consultant pursuant to this Agreement and NHA shall not be required to pay any amount in excess of such amounts for any reason, including, without limitation, (a) any loss or damage incurred by Consultant in connection with the performance of its obligations under this Agreement; (b) any unforeseen obstruction or difficulty encountered in the performance of Consultant's obligations under this Agreement; (c) any risks associated with the performance of Consultant's obligations under this Agreement; and (d) any unforeseen or unusual costs or expenses incurred by Consultant in connection with the performance of its obligations under this Agreement. Additionally, Consultant shall not be required to perform further Services under this Agreement in the event the above referenced maximum compensation is fully exhausted.
4. PROVISIONS DEEMED INSERTED: Each provision and clause required by law to be inserted in this Agreement shall be deemed to have been so inserted and this Agreement shall be read and enforced as though each such provision were included. If through mistake or otherwise any such provision is not inserted or is not correctly inserted, this Agreement shall be amended to make such insertion upon the application of either Party.
5. PERFORMANCE STANDARDS: Consultant agrees to perform the Services in a skillful, competent and professional manner in accordance with (a) the terms and conditions of this Agreement, including, without limitation, any specifications set forth in the Scope of Work; (b) recognized industry standards; and (c) all applicable federal, state and local laws, rules and regulations. All of Consultant's personnel performing work under this Agreement shall have such skill and experience in the applicable area as is reasonably necessary to perform all of Consultant's obligations under this Agreement in a timely, workmanlike and professional manner. Consultant agrees to ensure that it, and any of its contractors, agents, representatives and other personnel performing Services in connection with this Agreement, observe and comply with all security and safety policies of NHA at all times. Consultant shall be responsible to NHA for any errors or omissions in its performance of the Services.
- 5.1 Equal Opportunity. Consultant shall comply with the provisions of Title VII of the Civil Rights Act of 1964 in that Consultant shall not discriminate in any way that would deprive or intend to deprive any individual of opportunities because of such individual's race, color, religion, sex, national origin, age, handicap, medical condition, sexual orientation or marital status.
- 5.2 Drug & Alcohol-Free Workplace Policy. Consultant agrees to abide by NHA's drug & alcohol-free workplace policy which states:

“The unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited at The Neighborhood House Association, including its Head Start Centers and other worksites.”

5.3 Smoke-Free Workplace. Consultant agrees to abide by NHA's smoke free workplace policy which states:

“Smoking in the workplace is prohibited except in those locations that have been specifically designated as smoking areas. In situations where the preferences of smokers and nonsmokers are in direct conflict, the preferences of non-smokers will prevail.”

5.4 While performing Services, Consultant shall not engage in the following: (i) any political activities to further the election or defeat of any candidate for public office; (ii) any lobbying activity designed to support or defeat any legislation pending before any governmental entity; (iii) religious worship, instructions, or proselytization.

6. COMPLIANCE WITH LAWS: Consultant and each of its employees, contractors, agents, representatives and other personnel hired or retained by Consultant in connection with the performance of Consultant's obligations under this Agreement shall be fully informed of all federal, state and local laws, rules and regulations that affect or are applicable to the performance of Consultant's obligations under this Agreement, and shall at all times observe and comply with all such laws, rules and regulations, regardless of whether all or any of such laws, rules and regulations are referenced in this Agreement.

7. INSURANCE AND INDEMNIFICATION: Consultant shall, at its sole cost and expense, procure and maintain, throughout the term of this Agreement, the insurance set forth herein. All insurance policies shall be issued by an insurance company authorized by law to conduct business in the State of California, subject to NHA's approval. Prior to commencing performance of this Agreement, Consultant shall provide NHA original insurance policy documentation, including certificates evidencing the required coverage:

(a) Professional Liability Insurance. Consultant shall obtain medical malpractice, or professional liability insurance coverage with limits not less than One Million Dollars (\$1,000,000.00) single limit in the occurrence form, Three Million Dollars (\$3,000,000.00) aggregate limit, and providing coverage against claims for bodily injury or death arising out of medical services rendered by Consultant in the performance of this Agreement. Prior to commencing performance under this Agreement, Consultant shall provide NHA an original insurance certificate evidencing the required coverage.

(b) NHA and Consultant agree that the specified coverage or limits of insurance in no way limits the liability of Consultant. Consultant shall maintain the required insurance coverage and endorsement throughout the term of this Agreement.

(c) Consultant shall indemnify, defend and hold harmless the County of San Diego, NHA and each of its directors, officers, employees, agents, representatives and affiliates (including, without limitation, the administrators of NHA's employee benefit plans) from and against any and all claims (including third party claims), demands, actions, liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees) relating to or arising from: (i) any breach or default by Consultant of any of its representations, warranties or covenants set forth in this Agreement; (ii) any work or Service performed by Consultant under this Agreement; (iii) Consultant's use of the NHA workplace or NHA equipment; and (iv) Consultant's hiring, employment and/or management practices.



(d) NHA shall indemnify and hold harmless Consultant from and against all claims, damages, losses, and expenses including but not limited to attorneys' fees arising out of or resulting from Consultant's performance of the Services, provided that such claim, damage, loss or expense is not caused in whole or part by any negligent act or omission of Consultant, its subcontractors, or anyone directly or indirectly employed by Consultant whose acts may create liability, regardless of whether or not it is caused in part by a party indemnified hereunder.

8. **INDEPENDENT CONTRACTOR:** In providing services hereunder, Consultant shall, for all intents and purposes, be regarded as an independent contractor of NHA. Consultant shall be solely responsible for (i) all hiring/firing decisions; (ii) supervising its workers and working conditions; (iii) all taxes and applicable withholdings; (iv) wages and hours; and (v) other similar statutory obligations with respect to amounts paid by NHA to Consultant. Consultant is not an employee, partner or a joint venture participant of NHA, and Consultant has no right or authority to take any action or to enter into any contract or agreement on behalf of NHA or otherwise bind NHA in any manner, or incur any liability or make any representation on behalf of NHA.

Additionally, the Parties agree that NHA shall not have any right to control the manner, means or method by which Consultant performs its obligations under this Agreement; provided, however, that NHA shall be entitled (a) to determine the particular services to be performed by Consultant pursuant to this Agreement and to designate NHA's desired results of such services; (b) to determine the time and place for the performance of such services; and (c) to review and assess Consultant's performance of such services and the results thereof for the limited purposes of assuring that such services have been performed and such desired results have been obtained in a manner satisfactory to NHA.

9. **COMPENSATION OF CONSULTANT'S PERSONNEL:** Consultant shall be solely responsible for prompt payment of compensation to its personnel. Such prompt payment shall occur not later than thirty (30) days after Consultant receives payment from NHA pursuant to this Agreement and shall be paid out of such amounts as are paid to Consultant under this Agreement. Consultant shall pay and report, for all personnel assigned to perform any of the obligations of Consultant under this Agreement, all federal, state and local income tax withholding, social security taxes, and unemployment insurance applicable to such personnel. Consultant shall be solely responsible for any health or disability insurance, retirement benefits, or other welfare or pension benefits (if any) to which such personnel may be entitled.

10. **PROJECT MANAGER:** The Parties' respective designated representatives shall be the day-to-day contact persons during the performance of the Services provided under this Agreement. Consultant's Project Manager shall be its **[Consultant's Name]**. NHA's Project Manager shall be its **Director, Project Enable**. During the term of this Agreement Consultant agrees to communicate with NHA's Project Manager regarding the format of any final report(s) and deliverables, and the adequacy of the Services provided by Consultant. All submittals required of Consultant shall be delivered to NHA's Project Manager. However, NHA's Project Manager may not (a) award, renew, terminate or cancel this Agreement; (b) agree to, or sign any modifications to the Agreement; or (c) obligate NHA for payment outside the scope of the Agreement.

11. **FORCE MAJEURE:** Neither Party shall be liable or considered in default under this Agreement when the delay of performance (including NHA's failure to pay Consultant's compensation as contemplated in this Agreement) is caused by circumstances beyond its reasonable control and occurring without its fault or negligence, including failure of funding sources, suppliers, subcontractors and carriers, acts of civil or military authorities, national emergencies, fire, flood,

acts of God, insurrection, and war (any such event, a “Force Majeure Event”); provided, that the Party invoking this Section (the “Invoking Party”) immediately provides notice to the other Party and uses commercially reasonable efforts to resume its performance hereunder. The Party that receives notice of a Force Majeure Event from the Invoking Party may, at any time after the receipt of such notice, terminate this Agreement immediately upon written notice to the Invoking Party.

12. NON-EXCLUSIVITY: Consultant acknowledges and agrees that this Agreement does not grant Consultant the exclusive right or privilege to provide NHA with any or all of the Services that are the subject of this Agreement. NHA expressly reserves the right to contract with other Parties to obtain similar or identical services.
13. PUBLICITY: Consultant shall not publish or use NHA’s name in any of its advertising, sales, promotional or other publicity materials without the prior written consent of NHA.
14. ATTORNEY’S FEES: The prevailing Party as to any disputes relating to this Agreement shall be entitled to recover from the other Party all costs, expenses and actual attorneys’ fees incurred in connection with the enforcement or interpretation of, or any litigation or arbitration relating to this Agreement. Any judgment or order entered in any such action shall contain a specific provision providing for the recovery of attorneys’ fees and costs incurred in enforcing such judgment. For purposes of this paragraph, attorneys’ fees shall include, without limitation, fees incurred in the following: (a) post-judgment motions and appeals; (b) contempt proceedings; (c) garnishment, levee, debtor and third-party examinations; (d) discovery; and (e) bankruptcy proceedings, including without limitation, all motions, adversary proceedings and contested and uncontested matters in a case under Title 11 of the U.S. Code, where a party has appeared through counsel to protect its interests as a creditor under the Bankruptcy Code.
15. ENTIRE AGREEMENT OF THE PARTIES: The written terms and provisions of this Agreement and any documents attached and incorporated herein by reference, supersede any and all agreements, either oral or written, between the Parties hereto with respect to the subject matter hereof and contains all of the covenants and agreements between the Parties with respect to the subject matter herein. Each Party to this Agreement acknowledges that no representations, inducements, promises, or agreements (orally or written) have been made by any party, or anyone acting on behalf of any party, which are not embodied herein or incorporated herein by reference, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding. The provisions of this Agreement have been negotiated by the Parties and each hereby waives any presumption relating to the interpretation of any contract provision against the drafter.
16. AMENDMENTS AND WAIVERS: This Agreement may not be amended or modified, nor may any of its terms be waived, except by a written instrument signed by the Parties hereto. No failure or delay by either party in exercising any right under this Agreement shall operate as a waiver thereof or of any other right, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof, or of any other right. Each waiver or consent under any provision of this Agreement shall be effective only in the specific instance and for the specific purpose for which it was given.
17. SEVERABILITY: In the event any one or more of the provisions contained in this Agreement should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular

jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction), and the balance of this Agreement shall be interpreted as if such provisions were so excluded and shall be enforceable in accordance with its terms

18. **SURVIVAL**: The provisions set forth in Sections 2, 5, 7-9, 13, 17, and 27 of this Agreement shall survive the termination or expiration of this Agreement.
19. **PARTIES IN INTEREST**: This Agreement is enforceable only by Consultant and NHA. The terms of this Agreement are not a contract or assurance regarding compensation, continued employment or benefit of any kind to any of Consultant's personnel assigned to perform the obligations of Consultant under this Agreement, or any beneficiary of any such personnel, and no such personnel (or any beneficiary thereof) shall be deemed or considered a third-party beneficiary with respect to this Agreement.
20. **ASSIGNMENT**: Consultant may not assign this Agreement or any of its rights or obligations hereunder without the prior written consent of NHA. Any attempt by Consultant to assign any of its rights or obligations under this Agreement in violation of this Section shall be void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.
21. **HEADINGS**: The titles of the articles, sections, subsections, paragraphs and subparagraphs of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.
22. **COUNTERPARTS**: This Agreement may be executed in two (2) or more counterparts and by facsimile, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.
23. **GOVERNING LAW**: This Agreement shall be governed by and construed in accordance with the internal laws of the State of California applicable to a contract executed and performed in such state, without giving effect to the conflicts of laws principles thereof.
24. **SIGNATURE AUTHORITY**: If Consultant is a corporation, partnership, trust or other entity, the individual or individuals signing this Agreement on behalf of Consultant represents to NHA that he or she has full authority to do so, has received all required consents, and that his or her signature (together with the signature or signatures of any other individual signing below on behalf of such corporation, partnership, trust or other entity) is (are) the only signatures required to bind Consultant.
25. **NOTICES**: Any notice required by this Agreement must be in writing and shall be deemed to have been sufficiently communicated (i) when personally delivered; or (ii) on the second business day after mailing by overnight delivery, postage prepaid:

**to NHA addressed:**

Director, Project Enable  
The Neighborhood House Association  
286 Euclid Avenue, Suite 102  
San Diego, California 92114

**with copies to:**

Legal Department  
The Neighborhood House Association  
5660 Copley Drive  
San Diego, California 92111

**or to Consultant addressed:**

[Consultant's Address]

26. NO WAIVER OF BREACH OR DEFAULT. Either Party's failure to strictly and/or promptly enforce any of its rights, including but not limited to declaring a default, requiring cure of default, and/or terminating this Agreement, shall not operate as a waiver of the default or breach of either Party's rights, nor shall it defeat or affect in any way the rights of either Party, with respect to any such continuing or subsequent default or breach.
27. CONFIDENTIALITY: During the term of this Agreement, Consultant may have or may be provided access to NHA's proprietary items or confidential information, including but not limited to the information acquired pursuant to Sections 2 above ("Confidential Information"). Consultant agrees to maintain the confidentiality of NHA's Confidential Information in accordance with this Section, Article 14 of the attached Exhibit A, and any separate nondisclosure agreement(s) which expressly reference the disclosures between the Parties. At a minimum, Consultant agrees that it shall not make NHA's Confidential Information available to any third party without the written consent of NHA and that title and ownership of the Confidential Information provided by one (1) Party to the other shall remain the exclusive property of that Party who has the right to possess the Confidential Information. Upon the date of automatic expiration, or early termination, of this Agreement, Consultant agrees to immediately return any Confidential Information belonging to NHA.
28. BACKGROUND CHECK(S) AUTHORIZED: Consultant hereby certifies to NHA that it has no prior criminal convictions, including convictions of a serious or violent felony as defined by the Education Code Section 44830.1, or sex offense as defined in Education Code Section 44010, or controlled substance offense as defined by Education Code Section 44011. To the extent required to confirm such, Consultant hereby authorizes NHA (or qualified third-parties hired by NHA) to conduct relevant background checks, in accordance with the County of San Diego Board of Supervisors Policy C-28, and applicable law.
29. CONFLICTS OF INTEREST: Consultant represents to NHA that it is not aware of any current relationships with vendors or other professional groups conducting business with NHA that would be considered a conflict of interest for either party to this Agreement. It is further understood that any situation arising out of Consultant's acceptance of this Agreement, or during Consultant's performance of the Scope of Work, which may be perceived or questioned as a conflict of interest must be immediately disclosed to NHA's Project Manager.
30. PHYSICIAN-INDUSTRY RELATIONSHIP DISCLOSURES: Consultant shall have an ongoing duty to disclose, to NHA's Project Manager, all of its physician-industry/physician-pharma relationships, including but not limited to those where Consultant (i) has an interest in any company whose pharmaceutical product(s) are prescribed to NHA program participants, and (ii) where Consultant is compensated in the amount of \$2,000 (or more) annually.

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be signed in their names and on their behalf by the duly authorized representatives, effective the date first written above.

[Consultant]

**The Neighborhood House Association**

By \_\_\_\_\_  
[Consultant]  
Its: [Title]

By \_\_\_\_\_  
Rudolph A. Johnson, III  
Its: President and CEO

Approved as to form and legality:

\_\_\_\_\_  
Dwight D. Smith  
Executive VP, General Counsel  
The Neighborhood House Association

**EXHIBIT "A"**  
**SCOPE OF WORK**

Consultant shall provide the following services:

1. Conduct a minimum of 3 intakes per week.
2. Assess and manage clients with mental health, substance abuse, and co-occurring conditions; assess diagnosis, plan, implement and evaluate psychiatric care for those receiving mental health services.
3. Assessments shall be provided as part of an integrated, bio-psychosocial, rehabilitation model in a culturally appropriate atmosphere of healing.
4. Analyze and evaluate client data and/or examination findings to diagnose nature and extent of mental disorder.
5. Prescribe, direct and administer psychotherapeutic or medications to treat mental, emotional, or behavioral disorders.
6. Provide psychiatric consultation, medication management services, and education to psychiatric clients.
7. Complete initial psychiatric evaluations for new clients, including an assessment for co-occurring disorders and/or a bio-psychosocial assessment as required.
8. Communicate effectively with a variety of individuals representing diverse cultures and backgrounds and function calmly in situations, which require a high degree of sensitivity, tact, and diplomacy.
9. Prescribe psychotropic and related medications based on clinical indicators of a client's status, including results of diagnostic and lab test as appropriate to treat symptoms of psychiatric disorders and improve functional health status; administers/monitors the use of and notes reactions to psychotropic drugs and other medications.
10. Monitor the physiological and psychological effects (and side effects) of the medications prescribed to program clients, on a regular basis (4 to 12 weeks for routine clients), and make appropriate interventions and modifications when necessary.
11. Conduct consultation with clients' family members, case managers, and/or caregivers.
12. Collaborate with physicians, nurse practitioners, psychiatric nurses, psychologists, social workers and other professionals to discuss treatment plans and progress.
13. Unless otherwise agreed to in writing by the agency, consultant will not be required to perform services on-call or after regular business hours.
14. Perform timely, accurate, and concise documentation of client care.

15. Assess clients in crises and facilitates prompt resolution via administering medication, crisis counseling, and/or or referral to other services.
16. Consult and collaborate with members of the treatment team to assist clients in obtaining, and making appropriate referrals for necessary or requested services, physicians, nurses, social workers, and counselors and other health professionals to assist clients in obtaining, and makes appropriate referrals for necessary or requested services.
17. Participate in shared program operational responsibilities, such as utilization and transition reviews.
18. Prepare a comprehensive health history of clients, records findings of assessments; and plans of care, follow-up examinations, and subsequent evaluations.

**EXHIBIT “B”**  
**COUNTY OF SAN DIEGO MANDATORY CLAUSES**

**ARTICLE 3 DISENTANGLEMENT**

**3.1 General Obligations**

At NHA’s discretion, Contractor shall accomplish a complete transition of the services as set forth in this Agreement (for purposes of this Article 3.1, the services include those listed in Section 2 of the Agreement, entitled, “Duties of Consultant,” and shall be referred to as the “Disentangled Services”) being terminated from Contractor and the Subcontractors to NHA, or to any replacement provider designated by NHA, without any interruption of or adverse impact on the Disentangled Services or any other services provided by third parties. This process shall be referred to as the Disentanglement. Contractor shall fully cooperate with NHA and any new service provider and otherwise promptly take all steps, including, but not limited to providing to NHA or any new service provider all requested information or documentation, required to assist NHA in effecting a complete Disentanglement. Contractor shall provide all information or documentation regarding the Disentangled Services or as otherwise needed for Disentanglement, including, but not limited to, data conversion, client files, interface specifications, training staff assuming responsibility, and related professional services. Contractor shall provide for the prompt and orderly conclusion of all work required under the Agreement, as NHA may direct, including completion or partial completion of projects, documentation of work in process, and other measures to assure an orderly transition to NHA or NHA’s designee of the Disentangled Services. All Contractor work done as part of the Disentanglement shall be performed by Contractor and will be reimbursed by NHA at no more than Contractor’s costs, up to the total amount of this Agreement. Contractor shall not receive any additional or different compensation for the work otherwise required by the Agreement. Contractor’s obligation to provide the Services shall not cease until the earlier of the following: 1) The Disentanglement is satisfactory to NHA, including the performance by Contractor of all asset-transfers and other obligations of Contractor provided in this Paragraph, has been completed to NHA’s reasonable satisfaction or 2) twelve (12) months after the Expiration Date of the Agreement.

**3.2 Disentanglement Process**

The Disentanglement process shall begin on any of the following dates: (i) the date NHA notifies Contractor that no funds or insufficient funds have been appropriated so that the Term shall be terminated pursuant to the Agreement, and this Exhibit, Article 7; (ii) the date designated by NHA not earlier than sixty (60) days prior to the end of any initial or extended term that NHA has not elected to extend pursuant to the Agreement’s, Signature Page, Contract Term; or (iii) the date any Termination Notice is delivered, if NHA elects to terminate any or all of the Services pursuant to the Agreement, and this Exhibit, Article 7. Subject to the Agreement Contractor’s obligation to perform Disentangled Services, and NHA’s obligation to pay for Disentangled Services, shall expire: (A) when funds appropriated for payment under this Agreement are exhausted, as provided in Section 3 of the Agreement, entitled “Compensation”; (B) at the end of the initial or extended term set forth in Section 1 of the Agreement; or (C) on the Termination Date, pursuant to this Exhibit, Article 7 (with the applicable date on which Contractor’s obligation to perform the Services expires being referred to herein as the “Expiration Date”). Contractor and NHA shall discuss in good faith a plan for determining the nature and extent of Contractor’s Disentanglement obligations and for the transfer of the Disentangled Services in process provided, however, that Contractor’s obligation under this Agreement to provide all Disentangled Services shall not be lessened in any respect.

**3.3 Specific Obligations**

The Disentanglement shall include the performance of the following specific obligations:

**3.3.1 No Interruption or Adverse Impact**

Contractor shall cooperate with NHA and all of NHA’s other service providers to ensure a smooth transition at the time of Disentanglement, with no interruption of Disentangled Services or other work required under the Agreement, no adverse impact on the provision of Disentangled Services or other work required under the Agreement or NHA’s activities, no interruption of any services provided by third parties, and no adverse impact on the provision of services provided by third parties.

**3.3.2 Third-Party Authorizations**

Without limiting the obligations of Contractor pursuant to any other clause in Exhibit A herein, Contractor shall, subject to the terms of any third-party contracts, procure at no charge to NHA any third-party authorizations necessary to grant NHA the use and benefit of any third-party contracts between Contractor and third-party contractors used to provide the Disentangled Services, pending their assignment to NHA. Similarly, at NHA’s direction, Contractor shall obtain all legally necessary client consents or authorizations legally necessary to transfer client data to NHA or any new service provider.

**3.3.3 Return, Transfer and Removal of Assets**

**3.3.3.1** Contractor shall return to NHA all NHA assets in Contractor’s possession.

**3.3.3.2** NHA shall be entitled to purchase at net book value those Contractor assets used for the provision of Disentangled Services to or for NHA, other than those assets expressly identified by the Parties as not being subject to this provision. Contractor shall promptly remove from NHA’s premises, or the site of the work being performed by Contractor for NHA, any Contractor assets that NHA, or its designee, chooses not to purchase under this provision.

**3.3.4 Delivery of Documentation**

Contractor shall deliver to NHA or its designee, at NHA’s request, all documentation and data related to NHA, including, but not limited to, the NHA Data and client files, held by Contractor, and Contractor shall destroy all copies thereof not turned over to NHA, all at no charge to NHA. Notwithstanding the foregoing, Contractor may retain one (1) copy of the documentation and data, excluding NHA Data, for archival purposes or warranty support.

**3.4 Findings Confidential**. Any reports, information, data, etc., given to or prepared or assembled by Contractor under this Agreement which the NHA requests to be kept as confidential shall not be made available to any individual or organization by the Contractor without the prior written approval of the NHA.

**3.5 Publication, Reproduction or Use of Materials**. No material produced, in whole or in part, under this Agreement shall be subject to



copyright in the United States or in any other country. NHA shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement. All reports, data and other materials prepared under this Agreement shall be the property of NHA upon completion of this Agreement.

#### ARTICLE 7 TERMINATION

- 7.1 Termination For Default. Upon Contractor's breach of this Agreement, NHA shall have the right to terminate this Agreement, in whole or part. Prior to termination for default, NHA will send Contractor written notice specifying the cause. The notice will give Contractor ten (10) days from the date the notice is issued to cure the default or make progress satisfactory to NHA in curing the default, unless a different time is given in the notice. If NHA determines that the default contributes to the curtailment of an essential service or poses an immediate threat to life, health or property, NHA may terminate this Agreement immediately upon issuing oral or written notice to the Contractor without any prior notice or opportunity to cure. In the event of termination under this Article, all finished or unfinished documents, and other materials, prepared by Contractor under this Agreement shall become the sole and exclusive property of NHA.
- In the event of such termination, NHA may purchase or obtain the supplies or services elsewhere, and Contractor shall be liable for the difference between the prices set forth in the terminated order and the actual cost thereof to NHA. The prevailing market price shall be considered the fair repurchase price. Notwithstanding the above, Contractor shall not be relieved of liability to NHA for damages sustained by NHA by virtue of any breach of this Agreement by Contractor, and NHA may withhold any reimbursement to Contractor for the purpose of off-setting until such time as the exact amount of damages due NHA from Contractor is determined.
- If, after notice of termination of this Agreement under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, the rights and obligations of the parties shall, if this Agreement contains a clause providing for termination for convenience of NHA, be the same as if the notice of termination had been issued pursuant to such clause.
- 7.2 Damages For Delay. If Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as shall ensure its completion within the time specified in this Agreement, or any extension thereof, or fails to complete said work within such time, NHA will be entitled to the resulting damages caused by the delay. Damages will be the cost to NHA incurred as a result of continuing the current level and type of service over that cost that would be incurred had the Agreement segments been completed by the time frame stipulated and any other damages suffered by NHA.
- 7.3 NHA Exemption From Liability. In the event there is a reduction of funds made available by NHA to Contractor under this or subsequent Agreements, NHA and its board members, officers and employees shall incur no liability to Contractor and shall be held harmless from any and all claims, demands, losses, damages, injuries, or liabilities arising directly or from such action.
- 7.4 Full Cost Recovery Of Investigation And Audit Costs. Contractor shall reimburse NHA for all direct and indirect expenditures incurred in conducting an audit/investigation when Contractor is found in violation (material breach) of the terms of the Agreement. Reimbursement for such costs shall be withheld from any amounts due to Contractor pursuant to the payment terms of the Agreement, or from any other amounts due to Contractor from NHA.
- 7.5 Termination For Convenience. NHA may, by written notice stating the extent and effective date terminate this Agreement for convenience in whole or in part, at any time. NHA shall pay the Contractor as full compensation for work performed in accordance with the terms of this Contract until such termination:
- 7.5.1 The unit or pro rata price for any delivered and accepted portion of the work.
  - 7.5.2 A reasonable amount, as costs of termination, not otherwise recoverable from other sources by the Contractor as approved by NHA, with respect to the undelivered or unaccepted portion of the order, provided compensation hereunder shall in no event exceed the total price.
  - 7.5.3 In no event shall NHA be liable for any loss of profits on the resulting order or portion thereof so terminated.
  - 7.5.4 NHA's termination of this Agreement for convenience shall not preclude NHA from taking any action in law or equity against Contractor for:
    - 7.5.4.1 Improperly submitted claims, or
    - 7.5.4.2 Any failure to perform the work in accordance with the Statement of Work, or
    - 7.5.4.3 Any breach of any term or condition of the Agreement, or
    - 7.5.4.4 Any actions under any warranty, express or implied, or
    - 7.5.4.5 Any claim of professional negligence, or
    - 7.5.4.6 Any other matter arising from or related to this Agreement, whether known, knowable or unknown before, during or after the date of termination.
- 7.6 NHA reserves the right to terminate and/or prohibit, without prior notice, contractor and contractor's employees, subcontractors, or consultants from accessing NHA data systems, NHA owned software applications, including websites, domain names, platforms, physical files, and/or treating patients/clients.
- 7.7 Suspension Of Work. The Project Manager may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Project Manager determines appropriate for the convenience of the County and/or Government.
- 7.8 Remedies Not Exclusive. The rights and remedies of NHA provided in this article shall not be exclusive and are in addition to any other rights and remedies provided by law or under resulting order.

#### ARTICLE 8 COMPLIANCE WITH LAWS AND REGULATIONS

- 8.1 Compliance with Laws and Regulations. Contractor shall at all times perform its obligations hereunder in compliance with all applicable Federal, State, NHA, and local laws, rules, and regulations, current and hereinafter enacted, including facility and professional licensing and/or certification laws and keep in effect any and all licenses, permits, notices and certificates as are required. Contractor shall further comply with all laws applicable to wages and hours of employment, occupational safety, and to fire safety, health and sanitation.
- 8.2 Contractor Permits and License. Contractor certifies that it possesses and shall continue to maintain or shall cause to be obtained and maintained, at no cost to NHA, all approvals, permissions, permits, licenses, and other forms of documentation required for it and its

employees to comply with all existing foreign or domestic statutes, ordinances, and regulations, or other laws, that may be applicable to performance of services hereunder. NHA reserves the right to reasonably request and review all such applications, permits, and licenses prior to the commencement of any services hereunder.

- 8.3 Equal Opportunity.** Contractor shall comply with the provisions of [Title VII of the Civil Rights Act of 1964](#) in that it will not discriminate against any individual with respect to his or her compensation, terms, conditions, or privileges of employment nor shall Contractor discriminate in any way that would deprive or intend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee because of such individual's race, color, religion, sex, national origin, age, handicap, medical condition, sexual orientation or marital status.
- 8.4 Affirmative Action.** Each Contractor of services and supplies employing fifteen (15) or more full-time permanent employees, shall comply with the Affirmative Action Program for Vendors as set forth in [Article IIIk \(commencing at Section 84\)](#) of the San Diego County Administrative Code, which program is incorporated herein by reference. A copy of this Affirmative Action Program will be furnished upon request by County Contracting Officer or from the County of San Diego Internet web-site ([www.co.san-diego.ca.us](http://www.co.san-diego.ca.us)).
- 8.5 Non Discrimination.** Contractor shall ensure that services and facilities are provided without regard to ethnic group identification, race, color, nation origin, creed, religion, age, sex, or physical, mental disability, political affiliation and marital status in accordance with [Title IX of the Education Amendments of 1972](#); [Title VII of the Civil Rights Act of 1964](#) (42 U.S.C. 2000-d), the [Age Discrimination of 1975 \(42 U.S.C. 6101\)](#), [Article 9.5, Chapter 1, Part 1, Division 2, Title 2 \(Section 11135, et seq\) of the California Government Code, Title 9, Chapter 4, Subchapter 6 \(Section 10800, et seq.\) of the CCR](#) and [California Dept of Social Services Manual of Policies and Procedures \(CDSS MPP\) Division 21](#).
- 8.6 AIDS Discrimination.** Contractor shall not deny any person the full and equal enjoyment of, or impose less advantageous terms, or restrict the availability of, the use of any NHA facility or participation in any NHA funded or supported service or program on the grounds that such person has Acquired Immune Deficiency Syndrome, AIDS-related complex (ARC), or AIDS-related status (ARS), as those terms are defined in [Chapter 1, Section 32.1203, San Diego County Code of Regulatory Ordinances](#).
- 8.7 American With Disabilities Act (ADA) 1990.** Contractor shall not discriminate against qualified people with disabilities in employment, public services, transportation, public accommodations and telecommunications services in compliance with the Americans with Disabilities Act (ADA) and California Administrative Code Title 24.
- 8.8 Political Activities Prohibited.** None of the funds, provided directly or indirectly, under this Agreement shall be used for any political activities or to further the election or defeat of any candidate for public office. Contractor shall not utilize or allow its name to be utilized in any endorsement of any candidate for elected office. Neither the Agreement nor any funds provided thereunder shall be utilized in support of any partisan political activities, or activities for or against the election of a candidate for an elected office.
- 8.9 Lobbying.** Contractor agrees to comply with the lobbying ordinances of the County of San Diego and to assure that its officers and employees comply before any appearance before the County Board of Supervisors. Except as required by this Agreement, none of the funds provided under this Agreement shall be used for publicity or propaganda purposes designed to support or defeat any legislation pending before State and Federal Legislatures, the Board of Supervisors of the County, or before any other local governmental entity. This provision shall not preclude Contractor from seeking necessary permits, licenses and the like necessary for it to comply with the terms of this Agreement.
- 8.10 Religious Activity Prohibited.** There shall be no religious worship, instructions or proselytization as part of or in connection with the performance of this Agreement.
- 8.11 Drug and Alcohol-Free Workplace.** NHA, in recognition of individual rights to work in a safe, healthful and productive work place, has adopted a requirement for a drug and alcohol free work place, County of San Diego Drug and Alcohol Use [Policy C-25](#). This policy provides that all County-employed Contractors and Contractor employees shall assist in meeting this requirement.
- 8.11.1 As a material condition of this Agreement, the Contractor agrees that the Contractor and the Contractor employees, while performing service for NHA, on NHA property, or while using NHA equipment:
- 8.11.1.1 Shall not be in any way impaired because of being under the influence of alcohol or a drug.
- 8.11.1.2 Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal drug.
- 8.11.1.3 Shall not sell, offer, or provide alcohol or an illegal drug to another person; provided, however, that the foregoing restriction shall not be applicable to a Contractor or Contractor employee who as part of the performance of normal job duties and responsibilities prescribes or administers medically prescribed drugs.
- 8.11.2 Contractor shall inform all employees who are performing service for NHA on NHA property or using NHA equipment of the objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for NHA.
- 8.11.3 NHA may terminate for default or breach this Agreement, and any other Agreement the Contractor has with NHA, if the Contractor, or Contractor employees are determined by the Project Manager not to be in compliance with the conditions listed herein.
- 8.12 Board of Supervisors' Policies.** Contractor represents that it is familiar, and shall use its best efforts to comply, with the following policies of the Board of Supervisors:
- 8.12.1 Board Policy B-67, which encourages the County's Contractors to offer products made with recycled materials, reusable products, and products designed to be recycled to the County in response to the County's requirements; and
- 8.12.2 Board Policies B-53 and B-39a, which encourage the participation of small and disabled veterans' business enterprises in County procurements; and
- 8.12.3 [Zero Tolerance For Fraudulent Conduct In County Services](#). Contractor shall comply with County of San Diego Board of Supervisors Policy A-120 "Zero Tolerance for Fraudulent Conduct in County Services." There shall be "Zero Tolerance" for fraud committed by Contractors in the administration of County programs and the provision of County services. Upon proven instances of fraud committed by independent Contractors in connection with their performance under the Agreement, said Agreement shall be terminated; and
- 8.12.4 [Interlocking Directorate](#). In recognition of County Policy A-79, not-for-profit Contractors shall not subcontract with related for-profit subcontractors for which an interlocking relationship exist unless specifically authorized in writing by the Board of

Supervisors; and

- 8.12.5 Zero Tolerance In Coaching Medi-Cal Or Welfare Clients (Including Undocumented Immigrants). NHA, in recognition of its unique geographical location and the utilization of Welfare and Medi-Cal system by foreign nationals who are not legal residents of this county or country, has adopted a Zero Tolerance policy and shall aggressively prosecute employees and Contractors who coach Medi-Cal or Welfare clients (including undocumented immigrants), to obtain services for which they are not otherwise entitled.

As a material condition of this Agreement, Contractor agrees that the Contractor and Contractor's employees, while performing service for NHA, on NHA property or while using NHA equipment shall not:

- (a) in any way coach, instruct, advise, or guide any Medi-Cal or Welfare clients or prospective clients who are undocumented immigrants on ways to obtain or qualify for Medi-Cal assistance, for which they are not otherwise entitled.
- (b) support or provide funds to any organization engaged directly or indirectly in advising undocumented immigrants on ways to obtain or qualify for Medi-Cal assistance, for which they are not otherwise entitled.

Contractor shall inform all employees that are performing service for NHA on NHA property or using NHA equipment of the Zero Tolerance Policy as referenced herein.

NHA may terminate for default or breach this Agreement and any other Agreement Contractor has with NHA, if Contractor or Contractor employees are determined not to be in compliance with the conditions stated herein.

- 8.13 Cartwright Act. Following receipt of final payment under the Agreement, Contractor assigns to NHA all rights, title and interest in and to all causes of action it may have under [Section 4 of the Clayton Act \(15 U.S.C. Sec. 15\)](#) or under the [Cartwright act \(Chapter 1\) \(commencing with Section 16700\) of Part 2 of Division 7 of the Business and Professions Code](#), arising from purchases of goods, materials, or services by the Contractor for sale to NHA under this Agreement.

- 8.14 Hazardous Materials. Contractor shall comply with all Environmental Laws and all other laws, rules, regulations, and requirements regarding Hazardous Materials, health and safety, notices, and training. Contractor agrees that it will not store any Hazardous Materials at any NHA Facility for periods in excess of ninety (90) days or in violation of the applicable site storage limitations imposed by Environmental Law. Contractor agrees to take, at its expense, all actions necessary to protect third parties, including, without limitation, employees and agents of NHA, from any exposure to Hazardous Materials generated or utilized in its performance under this Agreement. Contractor agrees to report to the appropriate governmental agencies all discharges, releases, and spills of Hazardous Materials that are required to be reported by any Environmental Law and to immediately notify NHA of it. Contractor shall not be liable to NHA for NHA's failure to comply with, or violation of, any Environmental Law. As used in this section, the term "Environmental Laws" means any and all federal, state or local laws or ordinances, rules, decrees, orders, regulations or court decisions (including the so-called "common law"), including, but not limited to, the Resource Conservation and Recovery Act, relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions or other similar substances or conditions. As used in this section the term "Hazardous Materials" means any chemical, compound, material, substance or other matter that: (a) is a flammable, explosive, asbestos, radioactive nuclear medicine, vaccine, bacteria, virus, hazardous waste, toxic, overtly injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials; (b) is controlled, referred to, designated in or governed by any Environmental Laws; (c) gives rise to any reporting, notice or publication requirements under any Environmental Laws, or (d) is any other material or substance giving rise to any liability, responsibility or duty upon NHA or Lessee with respect to any third person under any Environmental Laws.

- 8.15 Debarment And Suspension. As a sub-grantee of federal funds under this Agreement, Contractor certifies that it, its principals, its employees and its subcontractors:

- 8.15.1 Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal Department or agency;
- 8.15.2 Have not within a 3-year period preceding this Agreement been convicted of or had a civil or administrative judgment rendered against them for the commission of fraud or a criminal offense or civil action in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction; violation of Federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property; physical, financial or sexual abuse or misconduct with a patient or client, or medical negligence or malpractice;
- 8.15.3 Are not presently indicted or otherwise criminally, civilly or administratively charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in the paragraph above; and
- 8.15.4 Have not within a 3-year period preceding this Agreement had one or more public transaction (Federal, State, or local) terminated for cause or default.

- 8.16 Display of Fraud Hotline Poster(s). As a material term and condition of this contract, Contractor shall:

- 8.16.1 Prominently display in common work areas within all business segments performing work under this contract County of San Diego Office of Ethics and Compliance Ethics Hotline posters;
- 8.16.2 Posters may be downloaded from the County Office of Ethics and Compliance <http://www.sdcounty.ca.gov/cao/oia.html>
- 8.16.3 Additionally, if Contractor maintains a company website as a method of providing information to employees, the Contractor shall display an electronic version of the poster(s) at the website
- 8.16.4 If the Contractor has implemented a business ethics and conduct awareness program, including a reporting mechanism, the Contractor need not display the County poster;
- 8.16.5 In the event Contractor subcontracts any of the work performed under this contract, Contractor include this clause in the subcontract(s) and shall take appropriate steps to ensure compliance by the subcontractor(s).

- 8.17 False Claims Acts: Contractor and all Subcontractors shall provide information on the Federal and State Claims Acts information annually to their employees providing services under this contract. The minimum acceptable information in may be found at [www.cosdcompliance.org](http://www.cosdcompliance.org)

**ARTICLE 9 CONFLICTS OF INTEREST; CONTRACTOR'S CONDUCT**

9.1 Conflicts of Interest. Contractor presently has no interest, including but not limited to other projects or independent Agreements, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The Contractor shall not employ any person having any such interest in the performance of this Agreement. Contractor shall not hire NHA's employees to perform any portion of the work or services provided for herein including secretarial, clerical and similar incidental services except upon the written approval of NHA. Without such written approval, performance of services under this Agreement by associates or employees of NHA shall not relieve Contractor from any responsibility under this Agreement.

9.1.1 California Political Reform Act and Government Code Section 1090 Et Seq. Contractor acknowledges that the California Political Reform Act ("Act"), Government Code section 81000 et seq., provides that Contractors hired by a public agency, such as County, may be deemed to be a "public official" subject to the Act if the Contractor advises the agency on decisions or actions to be taken by the agency. The Act requires such public officials to disqualify themselves from participating in any way in such decisions if they have any one of several specified "conflicts of interest" relating to the decision. To the extent the Act applies to Contractor, Contractor shall abide by the Act. In addition, Contractor acknowledges and shall abide by the conflict of interest restrictions imposed on public officials by Government Code section 1090 et seq.

9.2 Conduct of Contractor; Confidential Information.

9.2.1 Contractor shall inform NHA of all the Contractor's interests, if any, which are or which the Contractor believes to be incompatible with any interests of NHA.

9.2.2 The Contractor shall not, under circumstances that might reasonably be interpreted as an attempt to influence the recipient in the conduct of his duties, accept any gratuity or special favor from individuals or organizations with whom the Contractor is doing business or proposing to do business, in accomplishing the work under this Agreement.

9.2.3 Contractor shall not use for personal gain or make other improper use of confidential information, which is acquired in connection with his employment. In this connection, the term "confidential information" includes, but is not limited to, unpublished information relating to technological and scientific development; medical, personnel, or security records of the individuals; anticipated materials requirements or pricing actions; and knowledge of selections of Contractors or subcontractors in advance of official announcement.

9.2.4 The Contractor, or employees thereof, shall not offer directly or indirectly gifts, gratuity, favors, entertainment, or other items of monetary value to an employee or official of NHA.

9.2.5 Referrals. Contractor further covenants that no referrals of clients through Contractor's intake or referral process shall be made to the private practice of any person(s) employed by the Contractor.

9.3 Prohibited Agreements. As required by [Section 67 of the San Diego County Administrative Code](#), Contractor certifies that it is not in violation of the provisions of Section 67, and that Contractor is not, and will not subcontract with, any of the following:

9.3.1. Persons employed by NHA or of public agencies for which the Board of Supervisors is the governing body;

9.3.2. Profit-making firms or businesses in which employees described in sub-section 9.3.1, above, serve as officers, principals, partners, or major shareholders;

9.3.3. Persons who, within the immediately preceding twelve (12) months came within the provisions of the above sub-sections and who (1) were employed in positions of substantial responsibility in the area of service to be performed by the Agreement, or (2) participated in any way in developing the Agreement or its service specifications; and

9.3.4. Profit-making firms or businesses, in which the former employees described in sub-section 9.3.3 above, serve as officers, principals, partners, or major shareholders.

9.4 Limitation Of Future Agreements Or Grants. It is agreed by the parties to the Agreement that Contractor shall be restricted in its future Contracting with NHA to the manner described below. Except as specifically provided in this clause, Contractor shall be free to compete for business on an equal basis with other companies.

9.4.1 If Contractor, under the terms of the Agreement, or through the performance of tasks pursuant to this Agreement, is required to develop specifications or statements of work and such specifications or statements of work are to be incorporated into a solicitation, Contractor shall be ineligible to perform the work described within that solicitation as a prime or subcontractor under an ensuing NHA Agreement. It is further agreed, however, that NHA will not, as additional work, unilaterally require Contractor to prepare such specifications or statements of work under this Agreement.

9.4.2 Contractor may not apply for nor accept additional payments for the same services contained in the Statement of Work.

#### ARTICLE 10 INDEMNITY AND INSURANCE

10.1 Indemnity. NHA shall not be liable for, and Contractor shall defend and indemnify NHA and County of San Diego employees and agents (collectively "NHA Parties"), against any and all claims, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees and court costs (hereinafter collectively referred to as "Claims"), related to this Agreement or the work covered by this Agreement and arising either directly or indirectly from any act, error, omission or negligence of Contractor or its Contractors, licensees, agents, servants or employees, including, without limitation, Claims caused by the sole passive negligent act or the concurrent negligent act, error or omission, whether active or passive, of NHA Parties. Contractor shall have no obligation, however, to defend or indemnify NHA Parties from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the sole negligence or willful misconduct of NHA Parties.

10.2 Insurance. Prior to execution of this Agreement, Contractor must obtain at its own cost and expense, and keep in force and effect during the term of this Agreement, including all extensions, the insurance specified in Section 7 of the Agreement.

## ARTICLE 11 AUDIT AND INSPECTION OF RECORDS

NHA and the County of San Diego shall have the audit and inspection rights described in this section.

11.1 **Audit And Inspection.** Contractor agrees to maintain and/or make available within San Diego County accurate books and accounting records relative to all its activities under this Agreement. Authorized Federal, State, NHA, or County representatives shall have the right to monitor, assess, or evaluate Contractor's performance pursuant to this Agreement, said monitoring, assessments, or evaluations to include but not limited to audits, inspection of premises, reports, and interviews of project staff and participants.

At any time during normal business hours and as often as NHA may deem necessary, Contractor shall make available to NHA, State or Federal officials for examination all of its records with respect to all matters covered by this Agreement and will permit NHA, County, State or Federal officials to audit, examine and make excerpts or transcripts from such records, and to make audits of all invoices, materials, payrolls, records of personnel, information regarding clients receiving services, and other data relating to all matters covered by this Agreement. If an audit is conducted, it will be done in accordance with generally accepted government auditing standards as described in "Government Auditing Standards," published for the United States General Accountability Office or the Institute of Internal Auditors International Standards for the Professional Practice of Internal Auditing.

If any services performed hereunder are not in conformity with the specifications and requirements of this Agreement, NHA shall have the right to require the Contractor to perform the services in conformity with said specifications and requirements at no additional increase in total Agreement amount. When the services to be performed are of such nature that the difference cannot be corrected, NHA shall have the right to (1) require Contractor immediately to take all necessary steps to ensure future performance of the services in conformity with requirements of the Agreement, and (2) reduce the Agreement price to reflect the reduced value of the services performed. In the event Contractor fails to perform the services promptly or to take necessary steps to ensure future performance of the service in conformity with the specifications and requirements of the Agreement, NHA shall have the right to either (1) by Agreement or to otherwise have the services performed in conformity with the Agreement specifications and charge to Contractor any cost occasioned to NHA that is directly related to the performance of such services, or (2) terminate this Agreement for default as provided in the Termination clause.

11.2 **External Audits.** (Note: Health and Human Services (HHS) Contractors shall advise and provide the electronic audit copies to Agency Contract Support (ACS) at [acs.hhsa@sdcounty.ca.gov](mailto:acs.hhsa@sdcounty.ca.gov))

11.2.1 NHA shall be advised of all pending audits by State or Federal representatives regarding Contracted services identified in this Agreement within seventy-two (72) hours of the Contractor receiving notice of the audit.

11.2.2 Contractor shall provide NHA with a copy of the draft and final State or Federal audit reports within twenty four (24) hours of receiving them.

11.2.3 Contractor shall provide NHA a copy of the contractor's response to the draft and final State or Federal audit reports at the same time as response provided to the State or Federal representatives.

11.2.4 Contractor shall provide NHA a copy of the State or Federal audit's representative's response to the contractor's response within forty-eight (48) hours of receiving it. This will continue until the State or Federal auditors have accepted and closed the audit.

11.3 **Cost or Pricing Data.** If the Contractor submitted cost or pricing data in connection with the pricing of this Agreement or any change or modification thereto, unless such pricing was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities of the general public, or prices set by law or regulation, NHA and its representatives who are employees of NHA or its agent shall have the right to examine all books, records, documents and other data of the Contractor related to the negotiation pricing or performance of such Agreement, change or modification, for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted.

11.4 **Availability.** The materials described above shall be made available at the office of the Contractor, at all reasonable times, for inspection, audit or reproduction, until the expiration of three (3) years from the date of final payment under this Agreement, or by section 11.4.1 and 11.4.2, below:

11.4.1 If this Agreement is completely or partially terminated, the records relating to the work terminated shall be made available for a period of three (3) years from the date of any resulting final settlement.

11.4.2 Record which relate to appeals under the "Disputes" clause of this Agreement, or litigation or the settlement of claims arising out of the performance of this Agreement, shall be made available until such appeals, litigation, or claims have been disposed of, or three years after Agreement completion, whichever is longer. NHA shall keep the materials described above confidential unless otherwise required by law.

11.5 **Subcontract.** The Contractor shall insert a clause containing all the provisions of this Article 11 in all subcontracts hereunder except altered as necessary for proper identification of the Contracting parties and the County's Contracting officer under NHA's prime Agreement.

## ARTICLE 12 INSPECTION OF SERVICE

12.1 **Subject to Inspection.** All performance (including services, materials, supplies and equipment furnished or utilized in the performance of this Agreement, and workmanship in the performance of services) shall be subject to inspection and test by NHA at all times during the term of this Agreement. Contractor shall cooperate with any inspector assigned by NHA to permit the inspector to determine whether Contractor's performance conforms to the requirements of this Agreement. NHA shall perform such inspection in a manner as not to unduly interfere with Contractor's performance.

12.2 **Specification and Requirements.** If any services performed by Contractor do not conform to the specifications and requirements of this Agreement, NHA may require Contractor to re-perform the services until they conform to said specifications and requirements, at no additional cost, and NHA may withhold payment for such services until Contractor correctly performs them. When the services to be performed are of such a nature that Contractor's cannot correct its performance, the NHA shall have the right to (1) require the Contractor to immediately take all necessary steps to ensure future performance of services conforms to the requirements of this

Agreement, and (2) reduce the Agreement price to reflect the reduced value of the services received by NHA. In the event Contractor fails to promptly re-perform the services or to take necessary steps to ensure that future performance of the service conforms to the specifications and requirements of this Agreement, NHA shall have the right to either (1) without terminating this Agreement, have the services performed, by Agreement or otherwise, in conformance with the specifications of this Agreement, and charge Contractor, and/or withhold from payments due to Contractor, any costs incurred by NHA that are directly related to the performance of such services, or (2) terminate this Agreement for default.

#### ARTICLE 13 USE OF DOCUMENTS AND REPORTS

- 13.1 Findings Confidential. Any reports, information, data, etc., given to or prepared or assembled by Contractor under this Agreement which NHA requests to be kept as confidential shall not be made available to any individual or organization by the Contractor without the prior written approval of NHA.
- 13.2 Ownership, Publication, Reproduction And Use Of Material. All reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other material or properties produced under this Agreement shall be the sole and exclusive property of NHA. No such materials or properties produced in whole or in part under this Agreement shall be subject to private use, copyright or patent right by Contractor in the United States or in any other country without the express written consent of NHA. NHA shall have unrestricted authority to publish, disclose, distribute and otherwise use, copyright or patent, in whole or in part, any such reports, studies, data, statistics, forms or other materials or properties produced under this Agreement.
- 13.3 Confidentiality. NHA and Contractor agree to maintain the confidentiality of and take industry appropriate and legally required measures to prevent the unlawful disclosure of any information that is legally required to be kept confidential. Except as otherwise allowed by local, State or federal law or regulation and pursuant to this Section 13.3, NHA and Contractor agree to only disclose confidential records where the holder of the privilege, whether NHA, the Contractor or a third party, provides written permission authorizing the disclosure. Contractor understands that NHA and County must disclose certain records pursuant to the California Public Records Act ("the Act"). If Contractor demands that NHA not disclose requested records Contractor believes qualify for exception or exemption from disclosure pursuant to the Act, NHA will comply with Contractor's demand if Contractor identifies those records and the applicable exception(s) or exemption(s), in writing, within five (5) business days from receipt of NHA's notice to Contractor of the request for disclosure of records. If Contractor does not identify the records and reason(s) that it deems some or all of the records to be confidential, NHA may disclose those records at its sole discretion. Contractor agrees that its defense and indemnification obligations set forth in Article 10.1 of this Agreement extend to any Claim (as defined in Section 10.1) against NHA Parties (as defined in Article 10.1) for records the NHA withholds from disclosure at Contractor's direction. This Section 13.3 shall not prevent NHA or its agents or any other governmental entity from accessing the confidential records for the purpose of audits or program reviews if that access is legally permissible under the applicable local, State or federal laws or regulations. Similarly, NHA or its agent or designee may take possession of the record(s) where legally authorized to do so.
- NHA may identify, for purposes of clarification, certain laws and regulations that are specifically applicable to Contractor's work under this Agreement. Those laws and regulations may be set forth in the Agreement. NHA, however, is under no obligation to identify all applicable laws and regulations and assumes no liability for identifying confidentiality laws and regulations, if any, applicable to the work under this Agreement.
- 13.4 Maintenance Of Records. Contractor shall maintain all records and make them available within San Diego County for a minimum of three (3) years from the ending date of this Agreement unless NHA agrees in writing to an earlier disposition or longer where legally required or while under dispute. Contractor shall provide any requested records to NHA within 48-hours of the request.
- 13.5 Custody Of Records. NHA, at its option, may take custody of Contractor's client records upon Agreement termination or at such other time as NHA may deem necessary. NHA agrees that such custody will conform to applicable confidentiality provisions of State and Federal law. Said records shall be kept by NHA in an accessible location within San Diego County and shall be available to Contractor for examination and inspection.
- 13.6 Audit Requirement. Contractor shall annually engage a Licensed Certified Public Accountant to conduct an annual audit of their agency's operations. Contractors that expend \$500,000 or more of federal grant funds per year shall also have an audit conducted in compliance with Government Auditing Standards, which includes [Single Audit Act Amendments, Public Law 104-156](#), and [OMB Circular A-133](#) and 45 CFR part 74.26. Contractors that are commercial organizations (for-profit) are required to have a non-Federal audit if, during its fiscal year, it expended a total of \$500,000 or more under one or more HHS awards. 45 CFR part 74.26(d) incorporates the threshold and deadlines of OMB Circular A-133 but provides for-profit organizations two options regarding the type of audit that will satisfy the audit requirements. Contractor shall include a clause in any Agreement or Agreement Contractor enters into with an audit firm to provide access by NHA, State, Federal Government to the working papers of the independent auditor who prepare the audit for Contractor. Contractor shall submit two (2) copies of the annual audit report, the audit performed in accordance with [OMB Circular A-133](#), and the management letter to NHA fifteen (15) days after receipt from the independent Certified Public Accountant but no later than nine (9) months after the Contractor's fiscal year end.
- 13.7 Reports. Contractor shall submit reports required in the Agreement and additional reports as may be requested by NHA and agreed to by the Contractor. Format for the content of such reports may be developed by NHA. The timely submission of these reports is a necessary and material term and condition of this Agreement and Contractor agrees that failure to meet specified deadlines will be sufficient cause to withhold payment. Contractor shall submit to NHA within thirty (30) days of the termination of this Agreement a report detailing all work done pursuant to this Agreement by Contractor.
- 13.8 Evaluation Studies. Contractor shall participate as requested by NHA in research and/or evaluative studies designed to show the effectiveness and/or efficiency of Contractor services or to provide information about Contractor's project.

#### ARTICLE 14 INFORMATION PRIVACY AND SECURITY PROVISIONS

A. This Article is intended to protect the privacy and security of specified County information that Contractor may receive, access, or

transmit, under this Agreement. The County information covered under this Article consists of:

1. Protected Health Information (PHI), as defined under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA); and
2. Personal Information (PI) as defined under the California Civil Code Section 1798.3. Personal information may include data provided to the County by the State of California or by the Social Security Administration; and
3. Personally Identifiable Information (PII) as defined under the Information Exchange Agreement (IEA) between the State of California and the Social Security Administration (SSA), which incorporates the Computer Matching and Privacy Protection Agreement (CMPPA) between the SSA and the State of California's Health and Human Services Agency.

B. This Article consists of the following parts:

1. Article 14.1, Business Associate Agreement, which provides for the privacy and security of PHI as required by HIPAA;
2. Article 14.2, Privacy and Security of PI and PII, which provides for the privacy and security of PI/PII in accordance with:
  - a. The Agreement between the County and the State (and thereby the State and the Social Services Administration) with regards to protection of PI and PII. This includes the IEA and the CMPPA to the extent the Contractor accesses, receives, or transmits PI/PII under these Agreements; and
  - b. Civil Code Sections 1798.3 and 1798.29, also known as the California Information Practices Act (CIPA). Although CIPA does not apply to the County or its contractors directly, the County is required to extend CIPA terms to contractors if they use County PI/PII to accomplish a function on the County's behalf; and
3. Article 14.3, Data Security Requirements; and
4. Article 14.4, Miscellaneous.

#### **14.1 BUSINESS ASSOCIATE AGREEMENT**

##### **14.1.1 Recitals.**

14.1.1.1 This Business Associate Agreement ("BAA") constitutes a Business Associate relationship under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005, 42 U.S.C. section 17921 et seq., and their implementing privacy and security regulations at 45 CFR Parts 160 and 164. These provisions shall hereafter be collectively referred to as "HIPAA."

14.1.1.2 The County of San Diego ("County") wishes to disclose to the Contractor certain information pursuant to the terms of this BAA, some of which may constitute PHI, including PHI in electronic media ("ePHI") under Federal law.

14.1.1.3 As set forth in this BAA, Contractor, hereafter, is the Business Associate of County, acting on County's behalf and providing services, or performing or assisting in the performance of activities on behalf of County, which include creation, receipt, maintenance, transmittal, use or disclosure of PHI. County and Contractor are each a party to this BAA and are collectively referred to as the "parties."

14.1.1.4 The purpose of this BAA is to protect the privacy and security of the PHI and PI that may be created, received, maintained, transmitted, used or disclosed pursuant to this Agreement, and to comply with HIPAA, including, but not limited to, the requirement that County shall enter into a contract containing specific requirements with Contractor prior to the disclosure of PHI to Contractor, as set forth in HIPAA.

14.1.2 Definitions. Terms used, but not otherwise defined, in this BAA shall have the same meaning as those terms as are defined in 45 Code of Federal Regulations (CFR) section 160.103 and 164.501 (All regulatory references in this BAA are to Title 45 of the CFR unless otherwise specified).

14.1.2.1 "Breach" shall have the same meaning given to such term under HIPAA.

14.1.2.2 "Business Associate" shall have the same meaning as the term under HIPAA, and in reference to the party to this agreement, shall mean the Contractor.

14.1.2.3 "County" shall mean that part of County designated as the hybrid entity subject to the Standards for Privacy of Individually Identifiable Health Information set forth in sections 160 and Part 164, Subparts A and E and those parts of County designated as Business Associates of other entities subject to the Standards for Privacy of Individually Identifiable Health Information set forth in Parts 160 and 164, Subparts A and E.

14.1.2.4 "County PHI" shall have the same meaning as "Protected Health Information" (PHI) below, specific to PHI received from, or created, maintained, transmitted, used, disclosed, or received by Contractor, or its agents, on behalf of County, under this Agreement.

14.1.2.5 "Covered Entity" shall generally have the same meaning as the term "covered entity" at section 160.103, and in reference to the party to this BAA, shall mean County.

14.1.2.6 "Individual" shall have the same meaning as the term "individual" in section 164.501 and shall include a person who qualifies as a personal representative in accordance with section 164.502(g).

14.1.2.7 "Protected Health Information" (PHI) shall have the same meaning as the term "protected health information" in section 164.501 and is limited to information created or received by Contractor from or on behalf of County.

14.1.2.8 "Required by law" shall have the same meaning as the term "required by law" in section 164.501.

14.1.2.9 "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.

14.1.2.10 "Security incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of County PHI, or interference with system operations in an information system that processes, maintains or stores County PHI.

14.1.2.11 "Unsecured PHI" shall have the meaning given to such term under HIPAA and, 42 U.S.C., section 17932(h), and any guidance issued pursuant to such regulations.

##### **14.1.3 Responsibilities of Contractor.**

14.1.3.1 Permitted Uses and Disclosures of County PHI by Contractor. Contractor shall only use County PHI as required by the Contract or as required by Law. Any such use or disclosure shall, to the extent practicable, be limited to the limited data set as defined in section 164.512(2), or if needed, to the minimum necessary to accomplish the intended purpose of such use or disclosure in compliance with HIPAA.



- 14.1.3.1.1 Except as otherwise limited in this Contract, Contractor may use or disclose County PHI on behalf of, or to provide services to, County for the purposes outlined in Exhibit A, if such use or disclosure of PHI would not violate HIPAA if done by County.
- 14.1.3.1.2 Except as otherwise limited in the Contract, Contractor may use County PHI to provide Data Aggregation services to County as permitted by sections 164.504(e)(2)(i)(B).
- 14.1.3.2 Prohibited Uses and Disclosures.
- 14.1.3.2.1 Contractor shall not disclose County PHI to a health plan for payment or health care operations purposes if County 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 42 U.S.C. section 17935(a) and HIPAA.
- 14.1.3.2.2 Contractor shall not directly or indirectly receive remuneration in exchange for County PHI, except with the prior written consent of County and as permitted by 42 U.S.C. section 17935(d)(2).
- 14.1.3.3 Safeguards.
- 14.1.3.3.1 Contractor shall comply with HIPAA regarding any and all operations conducted on behalf of County under this Contract and shall use appropriate safeguards that comply with HIPAA to prevent the unauthorized use or disclosure of County PHI.
- 14.1.3.3.2 Contractor shall develop and maintain a written information privacy and security program that complies with HIPAA, and that includes administrative, physical, and technical safeguards appropriate to the size and complexity of the Contractor's operations and the nature and scope of its activities.
- 14.1.3.4 Security. Contractor shall ensure the continuous security of all computerized data systems and paper documents containing County PHI. These steps shall include, at a minimum:
- 14.1.3.4.1 Comply with all Standards put forth in Article 14.3, Data Security Requirements;
- 14.1.3.4.2 Achieve and maintain compliance with HIPAA; and
- 14.1.3.4.3 Provide a level and scope of security that is at least comparable to the level and scope of security established by the Office of Management and Budget in OMB Circular No. A-130, Appendix III - Security of Federal Automated Information Systems, which sets forth guidelines for automated information systems in Federal agencies
- 14.1.3.5 Mitigation of Harmful Effects. Contractor shall mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of County PHI by Contractor or its agents, including a subcontractor, and/or in violation of the requirements of the Contract.
- 14.1.3.6 Contractor's Agents and Subcontractors. Contractor shall ensure that any agent, including a subcontractor, to whom it provides County PHI, imposes the same conditions on such agents that apply to Contractor with respect to County PHI under this BAA, and that comply with all applicable provisions of HIPAA, including requirements that such agents implement reasonable and appropriate administrative, physical, and technical safeguards to protect County PHI. Contractor shall incorporate, when applicable, the relevant provisions of this BAA into each subcontract or sub-award to such agents, including the requirement that any security incidents or breaches of unsecured County PHI be reported to Contractor.
- 14.1.3.6.1 In accordance with section 164.504(e)(1)(ii), upon Contractor's knowledge of a material breach or violation by its subcontractor of the agreement between Contractor and the subcontractor, Contractor shall:
- 14.1.3.6.2 Provide an opportunity for the subcontractor to end the violation and terminate the agreement if the subcontractor does not end the violation within the time specified by County; or
- 14.1.3.6.3 Immediately terminate the agreement if the subcontractor has violated a material term of the agreement and cure is not possible.
- 14.1.3.7 Availability of Information to County. Contractor shall provide access to County PHI at the request of County, in the time and manner designated by County, pursuant to section 164.526.
- 14.1.3.7.1 Contractor shall use the forms and processes developed by County for this purpose and shall respond to all requests for access to records requested by County within forty-eight (48) hours of receipt of request by producing records or verifying there are none.
- 14.1.3.7.2 Contractor shall make internal practices, books, and records relating to the use and disclosure of County PHI received from, or created or received by Contractor on behalf of County available to County, or at the request of County to the Secretary, in a time and manner designated by County or the Secretary.
- 14.1.3.8 Cooperation with County. Contractor will cooperate and assist County to the extent necessary to ensure County's compliance with the applicable terms of HIPAA, such as, but not limited to:
- 14.1.3.8.1 Amendment of County PHI. Contractor shall make any required amendment(s) to County PHI that were requested by an Individual, in accordance with HIPAA. Contractor additionally shall make any amendments to County PHI as County directs or agrees to make pursuant to section 164.526. These amendments shall be made in the time and manner designated by County, and in no more than twenty (20) days.
- 14.1.3.8.2 Documentation of Disclosures. Contractor shall document disclosures of County PHI, respond to a request by an Individual for an accounting of disclosures of County PHI, and make these disclosures available to County or to an Individual at County's request, in accordance with HIPAA, including but not limited to sections 164.528, and 42 USC section 17935, and in the time and manner designated by County.
- 14.1.3.8.2.1 If Contractor maintains electronic health records as of January 2009, Contractor shall provide an accounting of disclosures including those for Treatment, Payment, and Healthcare Operations (TPO), effective January 2014. If Contractor acquires electronic health records for County after January 1, 2009, Contractor shall provide an accounting of disclosures, including those for TPO, effective with disclosures on or after the date the electronic health record is acquired, or on or after January 1, 2011, whichever date is later.
- 14.1.3.8.2.2 The electronic accounting of disclosures shall include the three (3) years prior to the request for an accounting. Contractor shall provide to County or an Individual, in the time and manner designated by County, but no more than sixty (60) calendar days, accounting of disclosures necessary to meet requirements in section 164.528.



14.1.3.9 Access to County PHI. Contractor shall provide Individuals access and copies of their County PHI, as required by HIPAA, to include:

14.1.3.9.1 If the Contractor maintains County PHI in an Electronic Health Record, and an Individual requests a copy of such information in an electronic format, Contractor shall provide the information in an electronic format, as required under HIPAA.

14.1.3.10 Reporting of Unauthorized Use or Disclosure. Contractor shall implement reasonable systems for the discovery of and prompt reporting to County of any use or disclosure, or suspected use or disclosure, of County PHI not provided for by the Contract and/or any transmission of unsecured County PHI, and to take the following steps.

14.1.3.10.1 Contractor shall provide all reports of Unauthorized Uses or Disclosures simultaneously to County Contracting Officer's Representative and Agency Privacy Officer.

14.1.3.10.2 Initial Report.

14.1.3.10.2.1 Contractor shall notify County immediately by telephone call plus email upon the discovery of a breach of unsecured County PHI in electronic media or in any other media if County PHI was, or is reasonably believed to have been, accessed or acquired by an unauthorized person, or upon the discovery of a suspected security incident that involves data provided to County by the Social Security Administration.

14.1.3.10.2.2 Contractor shall notify County by email within twenty-four (24) hours of the discovery of any suspected security incident or breach of County PHI in violation of this BAA, or potential loss of confidential data affecting this BAA.

14.1.3.10.2.3 A suspected security incident or breach shall be treated as discovered by Contractor as of the first day the breach or security incident is known, even if it is not confirmed, or by exercising reasonable diligence would have known, to any person (other than the person committing the breach) who is an employee, officer or other agent of Contractor.

14.1.3.10.2.4 Reporting shall additionally include emailing of the "County Privacy Incident Report" form within twenty-four (24) hours of any above incident, to include all information known at the time of the notification. Contractor shall use the most current version of this form, which is posted on County's website, [www.cosd.compliance.org](http://www.cosd.compliance.org).

14.1.3.10.3 Corrective Action. Upon discovery of a breach or suspected security incident, intrusion or unauthorized access, use or disclosure of County PHI, Contractor shall take prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment; and any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.

14.1.3.10.4 Investigation and Investigation Report. Contractor shall immediately investigate such security incident, breach, or unauthorized access, use or disclosure of County PHI. Within seventy-two (72) hours of the discovery, Contractor shall submit an updated "County Privacy Incident Report."

14.1.3.10.5 Complete Report. Contractor shall provide a complete report of the investigation within five (5) working days of the discovery of the breach or unauthorized use or disclosure. The report shall be submitted on County's "Privacy Incident Report" form and shall include an assessment of all known factors relevant to a determination of whether a breach occurred under applicable provisions of HIPAA and applicable state law. The report shall also include a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure. If County requests information in addition to that listed on the "Privacy Incident Report" form, Contractor shall make reasonable efforts to provide County with such information. County will review and approve the determination of whether a breach occurred, Individual notifications are required, and the corrective action plan is adequate.

14.1.3.10.6 Responsibilities for Notification of Breaches. If County determines that the cause of a breach of County PHI is attributable to Contractor or its subcontractors, agents or vendors, Contractor shall notify individuals of the breach or unauthorized use or disclosure when notification is required under Federal or State law and shall pay any costs of such notifications, as well as any costs associated with the breach. The notifications shall comply with the requirements set forth in 42 U.S.C. section 17932 and its implementing regulations, including, but not limited to, the requirements that:

14.1.3.10.6.1 Notifications be made to Individuals without unreasonable delay and in no event later than sixty (60) calendar days from the date the breach was discovered. County shall approve the time, manner and content of any such notifications before notifications are made.

14.1.3.10.6.2 Notifications be made to media outlets and to the Secretary, if a breach of unsecured County PHI involves more than five-hundred (500) residents of the State of California or its jurisdiction. County shall approve the time, manner and content of any such notifications before notifications are made.

14.1.3.11 Designation of Individuals.

14.1.3.11.1 Contractor shall designate a Privacy Officer to oversee its data privacy program who shall be responsible for carrying out the requirements of this section and for communicating on Privacy matters with County.

14.1.3.11.2 Contractor shall designate a Security Officer to oversee its data security program who shall be responsible for carrying out the requirements of this section and for communicating on Security matters with County.

14.1.4 Responsibilities of County.

14.1.4.1 County shall provide Contractor with the Notice of Privacy Practices that County produces in accordance with section 164.520, as well as any changes to such notice.

14.1.4.2 County shall provide Contractor with any changes in, or revocation of, permission by Individual to use or disclose County PHI, if such changes affect Contractor's permitted or required uses and disclosures.

14.1.4.3 County shall notify Contractor of any restriction to the use or disclosures of County PHI that County has agreed to in accordance with section 164.522.

14.1.4.4 County shall not request Contractor to use or disclose County PHI in any manner that would not be permissible under HIPAA if done by County.

## 14.2 PRIVACY AND SECURITY OF PERSONAL INFORMATION AND PERSONALLY IDENTIFIABLE INFORMATION

### 14.2.1 Recitals.

14.2.1.1 In addition to the Privacy and Security Rules under HIPAA, the County is subject to various other legal and contractual requirements with respect to the Personal Information (PI) and Personally Identifiable Information (PII) it maintains. These include the:

14.2.1.1.1 California Information Practices Act (CIPA) of 1977 (California Civil Code section 1798, et. seq.);

14.2.1.1.2 The Agreement between the Social Security Administration (SSA) and the State of California, known as the Information Exchange Agreement (IEA), which incorporates the Computer Matching and Privacy Protection Act Agreement (CMPPA) between the SSA and the California Health and Human Services Agency; and

14.2.1.1.3 Title 42 Code of Federal Regulations, Chapter 1, Subchapter A, Part 2.

14.2.1.2 The purpose of this Article 14.2 is to set forth Contractor's Privacy and Security obligations with respect to PI and PII that the Contractor may create, receive, maintain, use, or disclose for or on behalf of County pursuant to this Agreement. Specifically, this Article applies to PI and PII which is not Protected Health Information (PHI), as defined by HIPAA and therefore is not addressed in Article 14.1, the Business Associate Agreement of this Contract. To the extent that data is both PHI and PI, or both PHI and PII, both Sections 14.1 and 14.2 apply.

14.2.1.3 The IEA Agreement requires County to extend the IEA's terms to contractors who receive data provided to County from the SSA, or data provided to County from the SSA through the State of California. If contractor receives such data from County, Contractor must comply with the IEA Agreement.

14.2.2 Definitions. The terms used in this Article 14.2 shall have the same meaning as those terms have in the above referenced statutes and agreements. Any reference to statutory, regulatory, or contractual language shall be to such language currently in effect or as amended.

14.2.2.1 "Breach" shall have the same meaning given to such term under the IEA and CMPPA. It shall include a "PII loss," as defined in the CMPPA, and both a "Breach of the security of the system" and a "Notice Triggering Personal Information" event, as identified in CIPA (Civil Code section 1798.29).

14.2.2.2 "County" shall mean that part of County designated as the hybrid entity, subject to the Standards for Privacy of Individually Identifiable Health Information set forth in and those parts of County designated as Contractors of other entities subject to the Standards for Privacy of Individually Identifiable Health Information, as set forth in Part 160 and Part 164, Subparts A and E.

14.2.2.3 "County PII/PI" shall have the same meaning as Personally Identifiable Information/Personal Information as below, specific to PII/PI received by Contractor from County or acquired or created by Contractor in connection with performing the functions, activities, and services specified in this Article 14.2 on behalf of County.

14.2.2.4 "Individual" shall generally have the same meaning as the term "individual" in Title 45 Code of Federal Regulations, Section 164.501 and shall include a person who qualifies as a personal representative in accordance with Section 164.502(g).

14.2.2.5 "Personal Information" shall have the same meaning given to such term in CIPA, section 1798.3(a).

14.2.2.6 "Personally Identifiable Information" (PII) shall have the same meaning given to such term in the IEA and the CMPPA.

14.2.2.7 "Required by law" shall have the same meaning as the term "required by law" in 45 CFR section 164.501.

14.2.2.8 "Security incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of County PII/PI, or confidential data, or interference with system operations of an information system.

### 14.2.3 Responsibilities of Contractor.

14.2.3.1 Permitted Uses and Disclosures of County PII/PI by Contractor. Contractor shall only use County PII/PI to perform functions, activities, or services for or on behalf of County pursuant to this Contract, provided that such use or disclosure does not violate any applicable Federal or State law or regulation.

14.2.3.1.1 Confidentiality of Alcohol and Drug Abuse records. Contractor shall comply with all confidentiality requirements set forth in Title 42 Code of Federal Regulations, Chapter 1, Subchapter A, Part 2, as applicable.

14.2.3.2 Prohibited Uses and Disclosures. Contractor shall not use or disclose County PII/PI, other than as permitted or required by the Contract or as permitted or required by Law.

#### 14.2.3.3 Safeguards.

14.2.3.3.1 Contractor shall use appropriate and reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of County PII/PI and to prevent use or disclosure of County PII/PI, other than as provided for by this Contract.

14.2.3.3.2 Contractor shall develop and maintain a written information privacy and security program that includes administrative, physical, and technical safeguards appropriate to the size and complexity of the Contractor's operations and the nature and scope of its activities.

14.2.3.4 Security. Contractor shall take any and all steps necessary to ensure the continuous safety of all data systems containing County PII/PI. The Contractor shall, at a minimum:

14.2.3.4.1 Comply with all of the data system security precautions listed in Article 14.3, Data Security Requirements;

14.2.3.4.2 Provide a level and scope of security that is at least comparable to the level and scope of security established by the Office of Management and Budget in OMB Circular No. A-130, Appendix III - Security of Federal Automated Information Systems, which sets forth guidelines for automated information systems in Federal agencies; and

14.2.3.4.3 If the data includes County PII, Contractor shall also comply with the Privacy and Security requirements in the CMPPAA and the IEA.

14.2.3.5 Mitigation of Harmful Effects. To mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of County PII/PI by Contractor or its agents, in violation of this Article 14.2.

14.2.3.6 Contractor's Agents or Subcontractors. Contractor shall ensure that any agent, including a subcontractor that creates, receives, maintains, or transmits County PII/PI on behalf of the Contractor shall adhere to the same restrictions, conditions, and requirements that apply to the Contractor. Contractor shall incorporate, when applicable, the relevant provisions of this Article 14.2 into each subcontract or sub-award to such agents, subcontractors and vendors, including the requirements related to security

incidents or breaches of unsecured County PII/ PI.

14.2.3.7 Availability of Information. Contractor shall make County PII/PI available to County for purposes of oversight, inspection, amendment, and response to request for records, injunctions, judgments, and orders for production of County PII/PI. Contractor shall provide a list of all employees, contractors and agents who have access to County PII/PI, including employees, and agents of its subcontractors and agents, at the request of County. Contractor shall provide any requested records to County within forty-eight (48) hours of such request.

14.2.3.7.1 Internal Practices. Contractor shall make internal practices, books, and records relating to the use and disclosure of County PII/PI received from, or created or received by Contractor on behalf of County available to County, in a time and manner designated by County. Confidentiality shall not prevent County, its agents, or any other governmental entity from accessing such records if that access is legally permissible under the applicable Federal or State regulations.

14.2.3.8 Cooperation with County. Contractor will cooperate and assist County, in the time and manner designated by County, to ensure County's compliance with applicable Federal and State laws and regulations, such as, but not limited to CIPA. Contractor's cooperation shall include, but is not limited to: accounting of disclosures, correction of errors, production, disclosures of a security breach, and notice of such breach to affected individuals that involve County PII/PI and Contractor.

14.2.3.9 Reporting of Breaches and Security Incidents. Contractor shall implement reasonable systems for the discovery of, prompt reporting to County of, and prompt corrective action regarding any use or disclosure, or suspected use or disclosure, of County PII/PI not provided for by the Contract and/or any transmission of unsecured County PII/PI and shall take the following steps.

14.2.3.9.1 Contractor shall make all reporting of breaches and security incidents simultaneously to County Contracting Officer's Representative and Agency Privacy Officer.

14.2.3.9.2 Initial Reporting.

14.2.3.9.2.1 Reporting shall be immediate, by both telephone and email, upon the discovery of a breach of unsecured County PII/PI in electronic media or in any other media if County PII/PI was, or is reasonably believed to have been, accessed or acquired by an unauthorized person, or upon the discovery of a suspected security incident that involves data provided to County by the Social Security Administration.

14.2.3.9.2.2 Reporting shall be within twenty-four (24) hours by email of the discovery of any suspected security incident, intrusion or unauthorized access, use or disclosure of County PII/ PI in violation of this Article 14.2, or potential loss of confidential data affecting this Article 14.2.

14.2.3.9.2.3 A breach or suspected security incident shall be treated as discovered by Contractor as of the first day on which the breach is known, even if not confirmed, or by exercising reasonable diligence would have been known, to any person (other than the person committing the breach) who is an employee, officer or other agent of the Contractor.

14.2.3.9.2.4 Reporting shall additionally include emailing of the "County Privacy Incident Report" form within twenty-four (24) hours of any above incident, to include all information known at the time of the notification. Contractor shall use the most current version of this form, which is posted on County's website, [www.cosd.compliance.org](http://www.cosd.compliance.org).

14.2.3.9.3 Corrective Action. Upon discovery of a breach or suspected security incident, intrusion or unauthorized access, use or disclosure of County PII/PI, Contractor shall take prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment; and any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.

14.2.3.9.4 Investigation and Investigation Report. Contractor shall immediately investigate such security incident or breach. Within seventy-two (72) hours of the discovery, Contractor shall submit an updated "County Privacy Incident Report."

14.2.3.9.5 Complete Report. Contractor shall provide a complete report of the investigation within five (5) working days of the discovery of the breach or unauthorized use or disclosure. The report shall be submitted on County's "Privacy Incident Report" form and shall include an assessment of all known factors relevant to a determination of whether a breach occurred under applicable provisions of Federal and State law. The report shall also include a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure. If County requests information in addition to that listed on the "Privacy Incident Report" form, Contractor shall make reasonable efforts to provide County with such information. County will review and approve the determination of whether: a breach occurred, individual notifications are required, and the corrective action plan is adequate.

14.2.3.9.6 Responsibility for Reporting Breaches. If County determines that the cause of a breach of County PII/PI is attributable to Contractor or its subcontractors, agents or vendors, Contractor is responsible for all required reporting as specified under CIPA section 1798.29(a) and as may be required under IEA, as well as any other Federal or State law and shall pay any costs of such notifications, as well as any costs associated with the breach. County shall approve the time, manner, and content of any such notifications and County's review and approval must be obtained before the notifications are made. If the Contractor believes duplicate reporting of the same breach or incident may occur, because its subcontractors or agents may report the breach or incident to County as well, Contractor shall notify County and may take action to prevent duplicate reporting.

14.2.3.10 Designation of Individuals. Contractor shall appoint Privacy and Security officials who are accountable for compliance with this Article and for communicating Privacy and Security matters to County.

#### **14.3 DATA SECURITY REQUIREMENTS**

Contractor shall ensure the continuous security of all computerized data systems and paper documents containing County PHI and/or County PII/PI. These steps shall include, at a minimum:

14.3.1 Personnel Controls. Contractor shall ensure: all workforce members who assist in the performance of functions or activities on behalf of County, or access or disclose County PHI and/or County PII/PI, shall:

14.3.1.1 Have undergone a thorough Contractor background check, with evaluation of the results to assure that there is no indication that the worker may present a risk to the security, privacy, or integrity of County PHI and/or County PII/PI, prior to the workforce member obtaining access to County PHI and/or County PII/PI. The Contractor shall retain each workforce member's Contractor background check documentation for a period of three (3) years following contract termination.

14.3.1.2 Complete privacy and security training, at least annually, at Contractor's expense. Each workforce member who receives information privacy and security training shall sign a certification, indicating the workforce member's name and the date on which the training was completed. These certifications shall be retained for a period of six (6) years following contract termination, and shall be available to County upon request. Sign a confidentiality statement that includes, at a minimum, General Use, Security and Privacy Safeguards, Unacceptable Use, and Enforcement Policies. The statement shall be signed by the workforce member prior to access to County PHI and/or County PII /PI and shall be renewed annually. The Contractor shall retain each person's written confidentiality statement for County inspection for a period of six (6) years following contract termination.

14.3.1.3 Be appropriately sanctioned if they fail to comply with security and privacy policies and procedures, including termination of employment when appropriate.

14.3.2 Physical Security Controls. Contractor shall safeguard County PHI and/or County PII/PI from loss, theft, inadvertent disclosure, and therefore shall:

14.3.2.1 Ensure County PHI and/or County PII/PI is used and stored in an area that is physically safe from access by unauthorized persons during both working hours and nonworking hours;

14.3.2.2 Secure all areas of Contractor facilities where Contractor workers use or disclose County PHI and/or County PII/PI. The Contractor shall ensure that these secured areas are only accessed by authorized individuals with properly coded key cards, authorized door keys or other access authorization, and access to premises is by official identification;

14.3.2.3 Issue workers who assist in the administration of County PHI and/or County PII/PI identification badges and require workers to wear badges at facilities where County PHI and/or County PII/PI is stored or used;

14.3.2.4 Ensure each location where County PHI and/or County PII/PI is used or stored has procedures and controls that ensure an individual whose access to the facility is terminated:

14.3.2.4.1 Is promptly escorted from the facility by an authorized employee; and

14.3.2.4.2 Immediately has their access revoked to any and all County PHI and/or County PII/PI.

14.3.2.5 Ensure there are security guards or a monitored alarm system twenty-four (24) hours a day, seven (7) days a week at facilities where County PHI and/or County PII/PI is stored;

14.3.2.6 Ensure data centers with servers, data storage devices, and critical network infrastructure involved in the use or storage of County PHI and/or County PII/PI have perimeter security and access controls that limit access to only authorized Information Technology Staff. Visitors to the data center area must be escorted by authorized IT staff at all times;

14.3.2.7 Store paper records with County PHI and/or County PII/PI in locked spaces in any facilities that are multi-use, meaning that there are County PHI and/or County PII/PI functions and Contractor functions in one building in work areas that are not securely segregated. The contractor shall have policies that state workers shall not leave records with County PHI and/or County PII/PI unattended at any time in cars or airplanes and shall not check County PHI and/or County PII/PI on commercial flights; and

14.3.2.8 Use all reasonable means to prevent non-authorized personnel and visitors from having access to, control of, or viewing County PHI and/or County PII/PI.

14.3.3 Technical Controls. Contractor shall ensure:

14.3.3.1 All workstations, copiers, and laptops that process and/or store County PHI and/or County PII/PI shall:

14.3.3.1.1 Be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as Advanced Encryption Standard (AES). The encryption solution shall be full disk; and

14.3.3.1.2 Install and actively use comprehensive anti-virus software solution with automatic updates scheduled at least daily.

14.3.3.2 Have critical security patches applied, with system reboot if necessary. There shall be a documented patch management process which determines installation timeframe based on risk assessment and vendor recommendations. All applicable patches shall be installed within thirty (30) days of vendor release.

14.3.3.3 All servers containing unencrypted County PHI and/or County PII/PI shall have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.

14.3.3.4 Only the minimum necessary amount of County PHI and/or County PII/PI required to perform necessary business functions may be copied, downloaded, or exported.

14.3.3.5 All electronic files that contain County PHI and/or County PII/PI shall be encrypted when stored on any removable media or portable device (i.e. flash drives, cameras, mobile phones, CD/DVD, backup media, etc). Encryption shall be a FIPS 140-2 certified algorithm, which is 128bit or higher, such as AES.

14.3.3.6 All users shall be issued a unique user name for accessing County PHI and/or County PII/PI. Username shall be promptly disabled, deleted, or the password changed upon the transfer or termination of an employee with knowledge of the password, at maximum within twenty-four (24) hours.

14.3.3.6.1 Passwords shall be:

14.3.3.6.1.1 At least eight characters;

14.3.3.6.1.2 A non-dictionary word;

14.3.3.6.1.3 Changed at least every ninety (90) days;

14.3.3.6.1.4 Changed immediately if revealed or compromised; and

14.3.3.6.1.5 Composed of characters from at least three of the following four groups from the standard keyboard:

14.3.3.6.1.5.1 Upper case letters (A-Z)

14.3.3.6.1.5.2 Lower case letters (a-z)

14.3.3.6.1.5.3 Arabic numerals (0-9)

14.3.3.6.1.5.4 Non-alphanumeric characters (punctuation symbols)

14.3.3.6.2 Passwords shall not be shared and shall not be stored in readable format on the computer.

14.3.3.7 Appropriate management control and oversight, in conjunction with County of authorizing individual user access to County PHI and/or County PII/PI and over the process of maintaining access controls numbers and passwords.

14.3.3.8 When no longer needed, all County PHI and/or County PII/PI shall be wiped using the Gutmann or US Department of Defense (DoD) 5220.22-M (7 Pass) standard, or by degaussing. Media may also be physically destroyed in accordance with NIST Special Publication 800-88.

14.3.3.9 All systems providing access to, transport of, or storage of County PHI and/or County PII/PI shall:

14.3.3.9.1 Provide an automatic timeout, requiring re-authentication of the user session after no more than twenty (20) minutes of inactivity.

14.3.3.9.2 Display a warning banner stating that data is confidential systems are logged and system use is for business purposes only by authorized users. Users must be directed to log off the system if they do not agree with these requirements.

14.3.3.9.3 Maintain an automated audit trail that identifies the user or system process which initiates a request for County PHI and/or County PII/PI, or which alters County PHI and/or County PII/PI. The audit trail shall be date and time stamped, shall log both successful and failed accesses, shall be read only, and shall be restricted to authorized users. If County PHI and/or County PII/PI is stored in a database, database logging functionality shall be enabled. Audit trail data shall be archived for at least three (3) years after occurrence, and shall be available to County upon request.

14.3.3.9.4 Use role based access controls for all users, enforcing the principle of least privilege.

14.3.3.9.5 Be protected by a comprehensive intrusion detection and prevention solution if they are accessible via the internet.

14.3.3.10 All data transmissions of County PHI and/or County PII/PI outside the secure internal network shall be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files containing County PHI and/or County PII/PI can be encrypted. This requirement pertains to any type of County PII/PI in motion such as website access, file transfer, and E-Mail.

14.3.4 Audit Controls. Contractor shall ensure:

14.3.4.1 All systems processing and/or storing County PHI and/or County PII/PI shall have at least an annual system risk assessment/security review which provides assurance that administrative, physical, and technical controls are functioning effectively and providing adequate levels of protection. Reviews should include vulnerability scanning tools.

14.3.4.2 All systems processing and/or storing County PHI and/or County PII/PI shall have a routine procedure in place to review system logs for unauthorized access.

14.3.4.3 All systems processing and/or storing County PHI and/or County PII/PI shall have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.

14.3.4.4 Investigate anomalies in usage of County PHI and/or County PII/PI identified by County and report conclusions of such investigations and remediations to County.

14.4.4 Business Continuity / Disaster Recovery Controls

14.4.4.1 Contractor shall establish a documented plan to enable continuation of critical business processes and protection of the security of electronic County PHI and/or County PII/PI in the event of an emergency. Emergency means any circumstance or situation that causes normal computer operations to become unavailable for use in performing the work required under this Agreement for more than twenty-four (24) hours.

14.4.4.2 Contractor shall ensure Data Centers with servers, data storage devices, and critical network infrastructure involved in the use or storage of County PHI or PII/PI, must include sufficient environmental protection such as cooling, power, fire prevention, detection, and suppression.

14.4.4.3 Contractor shall have established documented procedures to backup County PHI and/or County PII/PI to maintain retrievable exact copies of County PHI and/or County PII/PI. The plan shall include a regular schedule for making backups, storing backups offsite, an inventory of backup media, and an estimate of the amount of time needed to restore County PHI and/or County PII/PI should it be lost. At a minimum, the schedule shall be a weekly full backup and monthly offsite storage of County data.

14.3.5 Paper Document Controls. Contractor shall ensure:

14.3.5.1 County PHI and/or County PII/PI in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or separate office inside a larger office. Unattended means that information is not being observed by an employee authorized to access the information. County PHI and/or County PII/PI in paper form shall not be left unattended at any time in vehicles and shall not be checked in baggage during commercial flights.

14.3.5.2 Visitors to areas where County PHI and/or County PII/PI are contained shall be escorted and County PHI and/or County PII/PI shall be kept out of sight while visitors are in the area.

14.3.5.3 County PHI and/or County PII/PI shall be disposed of through confidential means, such as cross cut shredding and pulverizing.

14.3.5.4 County PHI and/or County PII/PI shall not be removed from the premises of the Contractor except for identified routine business purposes or with express written permission of County.

14.3.5.5 Faxes containing County PHI and/or County PII/PI shall not be left unattended and fax machines shall be in secure areas. Fax cover sheets shall contain a confidentiality statement instructing persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending the fax.

14.3.5.6 Mailings of County PHI and/or County PII/PI shall be sealed and secured from damage or inappropriate viewing of County PHI and/or County PII/PI to the extent possible. Mailings which include 500 or more individually identifiable records of County PHI and/or County PII/PI in a single package shall be sent using a tracked mailing method which includes verification of delivery and receipt, unless the prior written permission of County's HHS Privacy Officer to use another method is obtained.

14.3.5.7 Contractor shall mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of

County PHI and/or County PII/PI by Contractor or its agents, including a subcontractor, and/or in violation of the requirements of the Contract.

#### 14.4 MISCELLANEOUS

14.4.1 Disclaimer. County makes no guarantee that compliance with this agreement will be satisfactory for the Contractor's own purposes.

14.4.2 Amendment. The Parties agree to take action as necessary to amend this Article 14 from time to time as is necessary for County to comply with the requirements of any and all applicable other Federal or State laws and regulations.

14.4.3 Judicial or Admin Proceedings. Contractor will notify County if it is named as a defendant in any criminal, civil, or administrative proceeding for a violation of any applicable security or privacy law.

14.4.4 Assistance in Litigation or Admin Proceedings. Contractor shall make itself and any of its agents available, at no cost to County, to testify, or otherwise, in the event of litigation or administrative proceedings commenced against County, its directors, officers, or employees, based on claimed violations of any applicable confidentiality, privacy, or security law or regulation, whether Federal or State, if that litigation or proceeding involves actions of Contractor or its agents, except those where Contractor or its Agents are named as an adverse party.

14.4.5 Interpretation. Any ambiguity in this Article 14 shall be resolved in favor of a meaning that permits County to comply with the applicable Federal or State law or regulation.

14.4.6 Conflict. If a conflict between any of the standards contained in any of these enumerated sources of standards is found, Contractor shall follow the most stringent standard. The most stringent means that safeguard which provides the highest level of protection to County PHI and/or County PII/PI from unauthorized disclosure.

14.4.7 Regulatory References. All references in this Article 14 to any regulation or law mean the regulation or law currently in effect, including those legal and regulatory changes that occur after the effective date of this Agreement.

14.4.8 Survival. The respective rights and obligations of Contractor and Contractor under this Article 14 shall survive the termination of the Contract.

14.4.9 No Waiver of Obligations. No change, waiver, or discharge of any liability or obligation hereunder or 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, an any other occasion.

14.4.10 Due Diligence. Contractor shall exercise due diligence and shall take reasonable steps to ensure that it remains in compliance with this Article 14 and is in compliance with all applicable Federal and State laws and regulations, and that its agents, subcontractors, and vendors are in compliance with their obligations as required by this Article 14.

14.4.11 Effect of Termination. Upon termination of the Contract, for any reason, with respect to any and all County PHI and/or County PII/PI received from County, or created or received by Contractor on behalf of County:

14.4.11.1 Contractor shall return or destroy all County PHI and/or County PII/PI and retain no copies of County PHI and/or County PII/PI, except County PHI and/or County PII/PI necessary for Contractor to continue its proper management and administration or to carry out its legal responsibilities, as mutually agreed upon by the Parties.

14.4.11.2 Upon mutual agreement of the Parties that return or destruction of County PHI and/or County PII/PI is infeasible, Contractor shall extend the protections of this Article to such County PHI and/or County PII/PI for so long as Contractor maintains such County PHI and/or County PII/PI.

14.4.11.3 Contractor shall return to County or destroy, as determined by County, County PHI and/or County PII/PI retained by Contractor when it is no longer needed by Contractor for its proper management and administration or to carry out its legal responsibilities.

14.4.11.4 This provision shall apply to County PHI and/or County PII/PI that is in the possession of subcontractors or agents of Contractor.

#### ARTICLE 15 DISPUTES

Notwithstanding any provision of this Agreement to the contrary, the Project Manager shall decide any dispute concerning a question of fact arising out of this Agreement that is not otherwise disposed of by the parties within a reasonable period of time. The decision of the Project manager shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary or so grossly erroneous as necessarily to imply bad faith. Contractor shall proceed diligently with its performance hereunder pending resolution by the Project Manager of any such dispute. Nothing herein shall be construed as granting the Project manager or any other administrative official, representative or board authority to decide questions of law, or issues regarding the medical necessity of treatment or to pre-empt any medical practitioners' judgment regarding the medical necessity of treatment of patients in their care. The foregoing does not change NHA's ability to refuse to pay for services rendered if NHA disputes the medical necessity of care.

#### ARTICLE 16 GENERAL PROVISIONS

16.1 Assignment and Subcontracting. Contractor shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of NHA; NHA's consent shall not be unreasonably withheld. The Contractor shall make no Agreement with any party for furnishing any of the work or services herein contained without the prior written consent of NHA.

16.2 Contingency. This Agreement shall bind NHA only following its approval by its Board of Directors or when signed by NHA's President and CEO.

16.3 Entire Agreement. This Agreement, together with all Exhibits attached hereto and other agreements expressly referred to herein, constitute the entire agreement between the parties with respect to the subject matter contained herein. All prior or contemporaneous

agreements, understandings, representations, warranties and statements, oral or written, including any proposals from Contractor and requests for proposals from NHA, are superseded.

- 16.4 Sections and Exhibits. All sections and exhibits referred to herein are attached hereto and incorporated by reference.
- 16.5 Further Assurances. Parties agree to perform such further acts and to execute and deliver such additional documents and instruments as may be reasonably required in order to carry out the provisions of this Agreement and the intentions of the parties.
- 16.6 Governing Law. This Agreement shall be governed, interpreted, construed and enforced in accordance with the laws of the State of California.
- 16.7 Headings. The Article captions, Clause and Section headings used in this Agreement are inserted for convenience of reference only and are not intended to define, limit or affect the construction or interpretation of any term or provision hereof.
- 16.8 Modification Waiver. Except as otherwise provided in Article 6, "Changes," above, no modification, waiver, amendment or discharge of this Agreement shall be valid unless the same is in writing and signed by both parties.
- 16.9 Neither Party Considered Drafter. Despite the possibility that one party may have prepared the initial draft of this Agreement or played the greater role in the physical preparation of subsequent drafts, neither party shall be deemed the drafter of this Agreement and that, in construing this Agreement in case of any claim that any provision hereof may be ambiguous, no such provision shall be construed in favor of one party on the ground that such provision was drafted by the other.
- 16.10 No Other Inducement. The making, execution and delivery of this Agreement by the parties hereto has been induced by no representations, statements, warranties or agreements other than those expressed herein.
- 16.11 Notices. See Section 25 of the Agreement for Notice instructions.
- 16.12 Severability. If any term, provision, covenant or condition of this Agreement is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term, provision, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 16.13 Successors. Subject to the limitations on assignment set forth in Clause 16.1 above, all terms of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective heirs, legal representatives, successors, and assigns.
- 16.14 Time. Time is of the essence of each provision of this Agreement.
- 16.15 Time Period Computation. All periods of time referred to in this Agreement shall include all Saturdays, Sundays and state or national holidays, unless the period of time specifies business days, provided that if the date or last date to perform any act or give any notice or approval shall fall on a Saturday, Sunday or State or national holiday, such act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or State or national holiday.
- 16.16 Waiver. The waiver by one party of the performance of any term, provision, covenant or condition shall not invalidate this Agreement, nor shall it be considered as a waiver by such party of any other term, provision, covenant or condition. Delay by any party in pursuing any remedy or in insisting upon full performance for any breach or failure of any term, provision, covenant or condition shall not prevent such party from later pursuing remedies or insisting upon full performance for the same or any similar breach or failure.
- 16.17 Third Party Beneficiaries Excluded. This agreement is intended solely for the benefit of NHA and its Contractor. Any benefit to any third party is incidental and does not confer on any third party to this Agreement any rights whatsoever regarding the performance of this Agreement. Any attempt to enforce provisions of this Agreement by third parties is specifically prohibited.
- 16.18 Publicity Announcements and Materials. All public announcements, including those issued on Contractor letterhead, and materials distributed to the community shall identify NHA and the County of San Diego as the funding source for Contracted programs identified in this Agreement. Copies of publicity materials related to Contracted programs identified in this Agreement shall be filed with the Project Manager. NHA shall be advised at least twenty four (24) hours in advance of all locally generated press releases and media events regarding Contracted services identified in this Agreement. Alcohol and Drug Prevention Services Contractors shall notify the Project Manager or designee at least five (5) business days in advance of all Contractor generated media releases and media events regarding Contracted services identified in this Agreement.
- 16.19 Critical Incidents. Contractor shall have written plans or protocols and provide employee training for handling critical incidents involving instances of violence or threat of violence directed toward staff or clients, breach of confidentiality, fraud, unethical conduct, or instances of staff or client drug and/or alcohol use at the program. Contractor shall report all such incidents to the Project Manager within one work day of their occurrence.
- 16.20 Responsiveness to Community Concerns. Contractor shall notify NHA within forty eight (48) hours of receipt of any material complaints including but not limited to complaints referring to issues of abuse or quality of care, submitted to Contractor verbally or in writing, regarding the operation of Contractor's program or facility under this agreement. Contractor shall take appropriate steps to acknowledge receipt of said complaint(s) from individuals or organizations. Contractor shall take appropriate steps to utilize appropriate forums to address or resolve any such complaints received. Nothing in this provision shall be interpreted to preclude Contractor from engaging in any legally authorized use of its facility, property or business as approved, permitted or licensed by the applicable authority.
- 16.21 Criminal Background Check Requirements. Contractor shall ensure that criminal background checks are required and completed prior to employment or placement of contractor staff and volunteers in compliance with any licensing, certification, or funding requirements, which may be higher than the minimum standard described herein. At a minimum, background checks shall be in compliance with Board of Supervisors policy C-28 and are required for any contractor staff or volunteer assigned to sensitive positions funded by this contract. Sensitive positions are those that: (1) physically supervise minors or vulnerable adults; (2) have unsupervised physical contact with minors or vulnerable adults; and/or (3) have a fiduciary responsibility to any NHA client, or direct access to, or control over, bank accounts or accounts with financial institutions of any client.
- 16.21.1 Criminal Background Check. Contractor shall have a documented process to review criminal history of candidates for employment or volunteers under this Agreement that will be in sensitive positions as defined in paragraph 16.21.4. At a minimum, Contractor shall check the California criminal history records, or state of residence for out-of-state candidates. Contractor shall review the information and determine if criminal history demonstrates behavior that could create an increased risk of harm to clients. Contractor shall document review of criminal background findings and consideration of criminal history in the selection of a candidate. (Example: Documented consideration of factors such as: If there is a conviction

- in the criminal history, how long ago did it occur? What were the charges? What was the individual convicted of and what was the level of conviction? If selected, where would the individual work and is the conviction relevant to the position?).
- 16.21.2 Contractor shall either utilize a subsequent arrest notification service during employee or volunteers' tenure or perform criminal history annually.
- 16.21.3 Contractor shall keep the documentation of their review and consideration of the individual's criminal history on file in accordance with paragraph 13.3 "Maintenance of Records."
- 16.21.4 Definitions
- A. Activities of Daily Living: The basic tasks of everyday life, such as eating, bathing, dressing, toileting, and transferring.
  - B. Minor: Individuals under the age of eighteen (18) years old.
  - C. Sensitive Position: A job with responsibilities that can be criminally abused at great harm to the contract or the clients served. All positions that (1) physically supervise minors or vulnerable adults, (2) have unsupervised physical contact with minors or vulnerable adults, or (3) have fiduciary responsibility to an NHA client or direct access to, or control over client bank accounts, or serve in a financial capacity to an NHA client.
  - D. Vulnerable Adult: (1) Individuals age eighteen (18) years or older, who require assistance with activities of daily living and who may be put at risk of abuse during service provision; (2) Individuals age eighteen (18) years or older who have a permanent or temporary limited physical and/or mental capacity that which may put them at risk of abuse during service provision because it renders them: unable to make decisions for themselves, unable to physically defend themselves, or unaware of physical abuse or other harm that could be perpetrated against them.
  - E. Volunteer: A person who performs a service willingly and without pay.
- 16.22 Health Insurance. Contractor shall ask any client if the client or any minor(s) for whom they are responsible have health insurance coverage. If the response is "no" for client or minor(s) the Contractor shall refer the client to Covered California at <https://www.coveredca.com/> or to 1-800-300-1506.