



January 11, 2013

To: ALL INTERESTED PERSONS

Subject: Qualified Health Plan Model Contract- First Draft

Covered California welcomes comments on the first draft of the QHP Model Contract due January 17, 2013.

Please send your comments to: QHP@hbex.ca.gov using a subject line "QHP model contract".

Highlighted Subject Areas for Public Comment:

- Quality Improvement and Delivery System Reforms
- Reporting on Quality
- Ensuring Culturally and Linguistically Appropriate Care
- Fee Structure for Health Plans to Sustain the Exchange starting in 2015
- Plan Partnerships, Marketing and the "Rollover" Strategy
- Consumer Communication Requirements
- Performance Guarantees for Customer Service Requirements
- Language interpretation and translation requirements for QHPs and Network Providers
- Transparency Requirements for Consumer about Out of Network Benefits

COVERED CALIFORNIA QUALIFIED HEALTH PLAN CONTRACT

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RECITALS

- A. The Exchange issued a Final Qualified Health Plan Solicitation dated November 16, 2012, which is incorporated by this reference, to select Health Insurance Issuers to offer QHPs through the Exchange;
- B. Contractor submitted a proposal in response to the Solicitation (“Proposal”), which was dated (date), which includes all attachments from the Solicitation submitted by Contractor, which is incorporated by this reference;
- C. The Exchange evaluated all proposals and identified Contractor as an apparently successful Contractor;
- D. Contractor desires to enter into an agreement with the Exchange to provide the Exchange with the services described herein;
- E. The Exchange and Contractor have agreed that the terms and conditions of this Agreement shall govern Contractor’s furnishing services; and
- F. The Exchange issued a notice of intent to award the Agreement for the project to Contractor on (date); and
- G. The parties agree they will perform their respective obligations as described below in this Agreement.

DEFINITIONS

- A. Act – The federal Patient Protection and Affordable Care Act, (P.L. 111-148), as amended by the federal Health Care Education and Reconciliation Act of 2010 (P.L. 111-152), known collectively as the ACA.
- B. Administrative Manual – A collection of detailed administrative policies and procedures. The Exchange will update the Administrative Manual as needed to ensure that Contractor has access to the most current administrative policies and procedures.
- C. Adverse Events – Means errors in medical care that are clearly identifiable, preventable and serious in their consequences for patients and that indicate a potential problem in the safety and credibility of a health care facility.
- D. Agreement – Means this Standard Agreement, including attachments and documents incorporated by reference, entered into between the Exchange and Contractor, effective (date) through (date), and may be subsequently extended pursuant to the terms of this Agreement.

- E. Behavioral Health – That group of interdisciplinary services concerned with the prevention, diagnosis, treatment, and rehabilitation of mental health and substance abuse disorders.
- F. Board – Means the California Health Benefit Exchange Board.
- G. CA Act or CA ACA – Means the California Patient Protection and Affordable Care Act, AB 1602 and SB 900 (Chapter 655, Statutes of 2010 and Chapter 659, Statutes of 2010).
- H. Case Management – Contractor’s medical utilization and oversight systems that attempt to optimize the most effective available benefit coverage and resources for Plan Enrollees with complex and exceptional needs due to chronic or catastrophic illness or injury.
- I. CDI – The California Department of Insurance.
- J. Centers of Expertise/Excellence (COE) – Health care providers that have a Centers of Expertise or Centers of Excellence Agreement in effect with Contractor at the time services are rendered. Centers of Expertise agree to accept the Plan payment plus applicable Plan Enrollee co- payments as payment in full for covered services.
- K. Claims Processing Accuracy – The processing of Claims in accordance with the terms and conditions of, and those benefits available under, the Plans, and in accordance with Contractor’s standard procedures. Claims processing accuracy is equivalent to the number of Claims processed accurately in the sample of reviewed Claims divided by the total quantity of the sample of reviewed Claims.
- L. Confidentiality of Medical Information Act (CMIA) – Means the Confidentiality of Medical Information Act (California Civil Code section 56 et seq.) and the regulations issued pursuant thereto or as thereafter amended.
- M. Contract Year – The full twelve (12) month period commencing on the effective date and ending on the day immediately prior to the first anniversary thereof and each full consecutive twelve (12) month period thereafter during which the Agreement remains in effect.
- N. Contractor – Means a Health Insurance Issuer contracted with the Exchange to provide a Qualified Health Plan, its employees, agents, and authorized representatives.
- O. Covered Services – Means Medically Appropriate health services that are described in the EOC.
- P. Disease Management (DM) – A system of coordinated healthcare interventions and communications for populations with conditions in which self-care efforts are significant. Disease Management supports Participating Provider/Plan Enrollee or Employer relationships and planned care; emphasizes prevention to decrease disease exacerbations and complications, utilizing evidence-based practice guidelines and patient empowerment strategies; and evaluates clinical, humanistic, and economic outcomes on an ongoing basis with the goal of improving overall health.
- Q. DMHC – The California Department of Managed Health Care.

- R. Effective Date – The date on which a Plan’s coverage goes into effect.
- S. Effectuated Coverage – A change in access to benefits based on eligibility rules.
- T. Electronic Health Record (EHR) – A systematic collection of electronic health information about individual patients or populations. It is a record in digital format that is theoretically capable of being shared across different health care settings. EHRs may include a range of data, including demographics, medical history, medication and allergies, immunization status, laboratory test results, radiology images, vital signs, personal statistics like age and weight, and billing information.
- U. Eligibility Data – The information that establishes an Enrollee’s eligibility including, but not limited to: name, age, and Social Security Number.
- V. Eligibility File – The compilation of all Eligibility Data for an Enrollee or group of Enrollees into a single electronic format used to store or transmit the data.
- W. Employee – Means a “qualified employee,” as defined in 45 C.F.R. 155.20.
- X. Employer – Means a “qualified employer,” as defined in section 1312(f)(2) of the Act.
- Y. Encounter – Any service or bundle of related services provided to one Plan Enrollee by one Health Care Professional within one time period. Any services provided must be recorded in the Plan Enrollee’s health record.
- Z. Encounter Data – Means Encounter information Contractor can use to demonstrate the provision of services to Plan Enrollees.
- AA. Enrollee – Enrollee means qualified individual or an Employee enrolled in a QHP offered through the Exchange.
- BB. Evidence of Coverage (EOC) and Disclosure Form – The booklet(s) which describe(s) the benefits, exclusions, limitations, conditions, and the benefit levels of the applicable Plan(s).
- CC. Exchange –The California Health Benefit Exchange, its Governing Board, or its agents and employees. The Exchange is also known as, and does business as, Covered California.
- DD. Exclusive Provider Organization (EPO) – EPO shall have the same meaning as that term is defined in California Code of Regulations, title 10, Section 2699.6000(r).
- EE. Explanation of Benefits (EOB) – A statement sent from the Contractor to a Plan Enrollee or Employer listing services provided, amount billed, eligible expenses and payment made by the Plan.
- FF. Explanation of Payment (EOP) – A statement sent from the Contractor to Providers detailing payments made for medical services.

- GG. Family Member – Means an individual who is within an Enrollee’s or Employee’s family, as defined in 26 U.S.C. 36B(d)(1).
- HH. Formulary – A list of outpatient prescription drugs, selected by the Plan(s) and revised periodically, which are covered when prescribed by a Participating Physician and filled at a participating pharmacy.
- II. Grace Period – A specified time following the premium due date during which coverage remains in force and an Enrollee or Employer may pay the premium without penalty.
- JJ. Gross Premium – The agreed-upon premium rate, before applying any discounts.
- KK. Health Care Professional – An individual with current and appropriate licensure, certification, or accreditation in a medical or Behavioral Health profession, including without limitation, medical doctors (including psychiatrists), dentists, osteopathic physicians, psychologists, registered nurses, nurse practitioners, licensed practical nurses, certified medical assistants, licensed physician assistants, mental health professionals, chemical dependency counselors, clinical laboratory professionals, allied health care professionals, pharmacists, social workers, physical therapists, occupational therapists, and others to provide health care services.
- LL. Health Information Technology for Economic and Clinical Health Act (HITECH Act) – The Health Information Technology for Economic and Clinical Health Act, which was enacted as part of the American Recovery and Reinvestment Act of 2009, and the regulations issued pursuant thereto or as thereafter amended.
- MM. Health Insurance Issuer – Health Insurance Issuer has the same meaning as that term is defined in 42 U.S.C. 300gg-91 and 45 C.F.R. 144.103.
- NN. Health Insurance Portability and Accountability Act of 1996 (HIPAA) – The Health Insurance Portability and Accountability Act of 1996 and the regulations issued pursuant thereto or as thereafter amended.
- OO. Health Insurance Regulators: CDI and DMHC, as applicable.
- PP. Health Maintenance Organization (HMO) – A Health Care Service Plan (as that term is defined in California Health & Safety Code § 1345) holding a current license from and in good standing with DMHC.
- QQ. Health Plan Employer Data and Information Set (HEDIS) – The data as reported and updated annually by the National Committee for Quality Assurance (NCQA).
- RR. High Performance / High Efficiency Network – A network of Participating Providers selected based on criteria including the ability to provide quality and cost-efficient care.
- SS. Incurred But Not Reported (IBNR) – A report that outlines the estimated financial obligation for medical services that have been provided to Plan Enrollees but for which Claims have not yet been received.
- TT. Individual Exchange – Means the Exchange through which Qualified Individuals may purchase

Qualified Health Plans.

- UU. Individually Identifiable Health Information (IIHI) – Means “individually identifiable health information” as defined under HIPAA.
- VV. Integrated Healthcare Model (IHM) – An integrated model of health care delivery in which there is organizational/operational/policy infrastructure addressing patient care across the continuum of care, population management and improvements in care delivery, information technology (IT) infrastructure to support care delivery, adherence to evidence-based medicine (EBM) behaviors from all providers of care, and financial risk sharing incentives for the Plan, hospital, and medical group that drive continuous improvement in cost, quality, and service.
- WW. Leapfrog Group – A coalition of large health care purchasers, sponsored by the Business Roundtable, organized to use value-based purchasing principles to initiate improvements in patient safety in the healthcare industry and to provide consumer information to support more informed hospital choices.
- XX. Medical Group – A group of physicians or other Health Care Professionals that is clinically integrated, financially integrated, or that contract together to provide care to patients in a coordinated manner.
- YY. Medical Management – The process of properly allocating healthcare resources through programs such as Utilization Management and Case Management.
- ZZ. Medical Necessity (Medically Necessary) – Health care services and supplies as determined through the Plan’s review process to be reasonable, necessary, appropriate, and established as safe and effective for the diagnosis and/or treatment of a Plan Enrollee’s illness, injury, or condition. The Plan’s review processes are consistent with Contractor’s medical policy and the definition of medical necessity contained in the Plan’s EOC.
- AAA. Medical Policy and Technology Assessment – The process for reviewing and making decisions related to Medical Necessity and making experimental/investigational determinations for certain new medical technologies and/or procedures, and/or for new uses of existing technologies and/or procedures. The technologies include devices, biologics and specialty pharmaceuticals, and behavioral health services. Medical policies are intended to reflect the current scientific data and clinical thinking.
- BBB. Medically Appropriate – Services and medical supplies that are Medically Necessary and that are: (1) consistent with the symptoms of a health condition or treatment of a health condition, illness, or injury; (2) appropriate with regard to the most current standard of practice for the safe and effective assessment, treatment, or management of the applicable health condition, illness, or injury as determined by the relevant scientific community and professional bodies; (3) not solely for convenience of a Plan Enrollee or the Health Care Professional providing the services or supplies; and (4) more cost-effective than alternative services or supplies that could be employed for the safe and effective assessment, treatment, or management of the applicable health condition, illness, or injury under prevailing standards of scientific knowledge and clinical practice among practitioners with like credentials providing services in the State of California.
- CCC. Medicare – Refers to the program of medical care coverage set forth in Title XVIII of the Social Security Act as amended by Public Law 89-97 or as thereafter amended.

- DDD. Medicare Part D – Refers to the Medicare prescription drug program authorized under the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA), effective January 1, 2006, and corresponding regulations administered by the Centers for Medicare and Medicaid Services (CMS).
- EEE. Nurse Advice Line – Means an advice line staffed by registered nurses (RNs) who assess symptoms (using triage guidelines approved by the Plan to determine if and when the caller needs to be seen by a Provider); provide health information regarding diseases, medical procedures, medication usage and side effects; and give care advice for managing an illness or problem at home.
- FFF. Open Enrollment – The fixed time period as set forth in 45 C.F.R. 155.410 for individual applicants and Enrollees to initiate enrollment or to change enrollment from one health benefits plan to another.
- GGG. Participating Hospital – A hospital that, at the time of a Plan Enrollee's admission, has a contract in effect with Contractor to provide covered services to Enrollees.
- HHH. Participating Physician – A physician or a member of a Medical Group that has a contract in effect with Contractor to provide Services to Plan Enrollees.
- III. Participating Provider – An individual Health Care Professional, hospital, facility, entity, or other organization that provides medical, Behavioral Health, chemical dependency, or inpatient services or medical items or supplies and that, at the time care is rendered to a Plan Enrollee, has (or is a member of a Medical Group that has) a contract in effect with Contractor to provide Covered Services to Plan Enrollees and accept copayments for Covered Services.
- JJJ. Participation Fee – The user fee on Qualified Health Plans authorized under Section 1311(d)(5) of the Act, 45 CFR Sections 155.160(b)(1) and 156.50(b), and Government Code 100503(n) to support Exchange operations.
- KKK. Patient-Centered Medical Home (PCMH) – A health care setting that facilitates partnerships among individual patients, their PCP, other primary health providers, and when appropriate, the patient's family. Care is facilitated by registries, information technology, health information exchange, and other means to assure that patients get Medically Appropriate care in a culturally and linguistically appropriate manner in a Medically Appropriate, coordinated, and convenient manner and facility.
- LLL. Performance Guarantee – A financial assurance of service delivery at levels agreed upon between the Exchange and Contractor.
- MMM. Pharmacy Benefit Manager (PBM) – The vendor responsible for administering the Plan's outpatient prescription drug program. The PBM provides a retail pharmacy network, mail order pharmacy, specialty pharmacy services, and coverage management programs.
- NNN. Plan(s) – The Qualified Health Plans the Exchange has entered into a contract with a Health Insurance Issuer to provide, hereinafter referred to as the Plan(s).
- OOO. Plan Data – All the utilization, fiscal, and eligibility information gathered by Contractor about the Plans exclusive programs, policies, procedures, practices, systems and information developed by Contractor and used in the normal conduct of business.

PPP. Plan Enrollee – An Enrollee eligible for and receiving benefits under the Plan.

QQQ. Plan Year – Plan Year has the same definition as that term is defined in 45 C.F.R. 155.20.

RRR. Premium – Means the dollar amount payable by the Enrollee, Employer, or Employee to the Issuer to effectuate coverage.

SSS. Premium Rate – The monthly premium due during a plan year, as agreed upon by the parties.

TTT. Primary Care Physician (PCP) – A California licensed doctor of medicine or osteopathy who is a general practitioner, board-certified or eligible family practitioner, internist, obstetrician/gynecologist or pediatrician who has a contract with Contractor as a primary care physician and who has the primary responsibility for providing initial and primary health care services to Plan Enrollees, initiating referrals for specialist and hospital care, and maintaining the continuity of the Plan Enrollee's medical care.

UUU. Protected Health Information (PHI) – Health information related to an Enrollee as defined in HIPAA. PHI also includes "medical information" as defined by the California Confidentiality of Medical Information Act (CMIA) at California Civil Code section 56 et seq.

VVV. Provider – A licensed health care facility or as stipulated by local or international jurisdictions, a program, agency or health professional that delivers health care services.

WWW. Provider Claim(s) – Any bill, invoice, or statement from a specific Provider for health care services or supplies provided to Plan Enrollees.

XXX. Qualified Health Plan (QHP) – QHP has the same meaning as that term is defined in Government Code 100501(f).

YYY. Qualified Individual – Qualified Individual has the same meaning as that term is defined in Section 1312(f)(1) of the Act.

ZZZ. Quality Management and Improvement – The process for conducting outcome reviews, data analysis, policy evaluation, and technical assistance internally and externally to improve the quality of care to Plan Enrollees.

AAAA. Quarterly Business Review (QBR) – Quarterly in-person meetings between the Exchange and Contractor at Exchange headquarters to report and review program performance results including all services and components of the program, i.e., clinical, financial, contractual reporting requirements, customer service, appeals and any other program recommendations.

BBBB. Regulations – The regulations adopted by the Board. (California Code of Regulations, Title 10, Chapter 12, section 6400, et seq.)

CCCC. Risk-Adjusted Premiums – Actuarially calculated premiums utilizing risk adjustment.

DDDD. Risk-Based Capital (RBC) – The approach to determine the minimum level of capital needed for protection from insolvency, based on an organization’s size, structure, and retained risk. Factors in the RBC formula are applied to assets, premium, and expense items. The factors vary depending on the level of risk related to each item. The higher the risk related to the item, the higher the factor, and vice versa.

EEEE. Risk Adjustment – An actuarial tool used to calibrate premiums paid to Health Benefits Plans or carriers based on geographical differences in the cost of health care and the relative differences in the health risk characteristics of Enrollees enrolled in each plan. Risk adjustment establishes premiums, in part, by assuming an equal distribution of health risk among Health Benefits Plans in order to avoid penalizing Enrollees for enrolling in a Health Benefits Plan with higher than average health risk characteristics.

FFFF. Run-Out Claims – All claims presented and adjudicated after the end of a specified time period where the health care service was provided before the end of the specified time period.

GGGG. Service Area – Means a designated geographical area, approved by the Board. These areas are comprised of the ZIP codes listed in Attachments 2-A, 2-B, and 2-C.

HHHH. SHOP – Means the Small Business Health Options Program described in Government Code 100502(m).

IIII. Solicitation – The Qualified Health Plans Solicitation released on November 16, 2012.

JJJJ. Telemedicine – The ability of physicians and patients to connect via technology other than through Virtual Interactive Physician/Patient Capabilities, especially enabling rural and out-of-area patients to be seen by specialists remotely. For example, consultation between patients and remotely located specialists could occur at a local physician's office or facility where the specialist would interact with the patient via telephone, video chat, etc. Similarly, physicians in a remote location could be connected via technology to provide guidance to Health Care Professionals or interact directly with a patient in the emergency department of their local hospital.

KKKK. Upstreaming – The practice of loaning, transferring, investing, disbursing dividends and bonuses, or otherwise diverting funds, either directly or indirectly, from the Contractor to its parent corporation or affiliates. As used herein, the practice also includes “downstreaming” of funds to a subsidiary.

LLLL. Usual, Customary, and Reasonable (UCR) – A charge by a Provider, which is the Provider’s usual fee for a service that does not exceed the customary fee in the Provider’s geographic area, and is reasonable based on the circumstances. A customary fee is the amount that falls within a specified range of usual and reasonable charges for a given service billed by most Providers with similar training and experience.

MMMM. Utilization Management – Pre-service, concurrent or retrospective review which determines the Medical Necessity of hospital and skilled nursing facility admissions and selected outpatient medical services as specified in the EOC booklets.

NNNN. Utilization Review Accreditation Commission (URAC) – The independent and nonprofit organization that promotes health care quality through its accreditation and certification programs. It offers a wide range of quality benchmarking programs and services and validates health care industry

organizations on their commitment to quality and accountability.

OOOO. Virtual Interactive Physician/Patient Capabilities – Capabilities allowing Enrollees to have short encounters with a physician on a scheduled or urgent basis via telephone or video chat from the Enrollee’s home.

BUSINESS TERMS

1. Services to be Provided

Contractor agrees to provide for the Exchange services in accordance with the terms and conditions set forth herein.

2. Term of Agreement

The term of this Agreement shall commence on **Date**, or upon execution of the Agreement by all parties, whichever date is later, and end **Date**, unless terminated earlier or extended in accordance with the provisions of this Agreement.

3. Key Persons and Key Positions

- A. In case the parties have identified any member of Contractor’s staff who will play a significant administrative, policy, or consulting role as a “Key Person”, then Contractor shall not replace any such Key Person without prior Exchange approval, which approval will not be unreasonably withheld. The Exchange reserves the right to disapprove the continuing assignment of Key Persons provided to the Exchange under this Agreement. Contractor shall comply with the Exchange’s request and make every reasonable effort to provide a qualified replacement, subject to Exchange approval, within 30 days of the Exchange’s written request.
- B. In case the parties have identified any specific job title in Contractor’s organization that will play a significant role under this Agreement as a “Key Position” (regardless of whether the individual filling the position is a Key Person), then Contractor shall act speedily and diligently to fill any vacancies in such Key Position.

3. Dedicated Team

If Contractor has more than X Exchange Enrollees, Contractor shall have Exchange-dedicated service teams for

- A. Pre-sales, sales, and installations
- B. Ongoing billing and subsidy verification
- C. Claims payment
- D. Member services

4. Required Notice of Contractor Changes

Contractor shall notify the Exchange in writing within five (5) calendar days of the occurrence of any of the following events:

- A. Any of Contractor's representations and warranties, as set forth in this Agreement, cease to be true at any time during the term of this Agreement;
- B. There is any change in the majority ownership, control, or business structure of Contractor;
- C. There is any other change in Contractor's business, partnership or corporate organization that a reasonable person might believe could have a material impact on Contractor's performance of this Agreement or on the Exchange's rights under this Agreement;
- D. There is a vacancy in a Key Position;
- E. Contractor intends to replace any Key Person; or
- F. There is a replacement of a person in a Key Position.

Additionally, when possible, Contractor shall provide the Exchange with a minimum of ninety (90) days advance notice of any changes to the Account Management team. All written notices from Contractor pursuant to this section shall contain sufficient information to permit the Exchange to evaluate the changes under the same criteria that were used by the Exchange in its award of this Agreement to Contractor. Contractor agrees to provide the Exchange with such additional information as the Exchange may request. If Contractor requests confidential treatment for any information it provides, the Exchange shall treat the information as confidential, subject to applicable law.

5. Insurance Requirements

A. **Liability and Auto Insurance**

Contractor shall, at its sole cost and expense, obtain, and, during the term of this Agreement, maintain, in full force and effect, the insurance coverage described in this Section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the State of California and rated A- or higher by AM Best. Contractor shall include the Exchange, its Board, contractors, officers, employees, agents and volunteers, both individually and collectively, as an additional insured party in Contractor's Commercial General Liability and Automobile Liability insurance policies required hereunder, and such insurance shall apply as primary insurance for these additional insureds. The minimum acceptable limits shall be as indicated below:

- (i) Comprehensive General Liability or equivalent self-insurance covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;
- (ii) Comprehensive Business Automobile Liability (owned, hired, or non-owned vehicles) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than \$1 million per accident;
- (iii) Employers Liability insurance covering the risks of Contractor's Staff and employees' bodily injury by accident or disease with limits of not less than \$1 million per accident for bodily injury by accident and \$1 million per employee for bodily injury by disease and \$1 million disease policy limit;

- (iv) Umbrella policy providing excess limits over the primary General Liability, Automobile Liability and Employer's Liability policies in an amount not less than \$10 million per occurrence and in the aggregate;
- (v) Crime Coverage with coverage of not less than \$25 million single loss limit and \$25 million in the aggregate, which shall at a minimum cover occurrences falling in the following categories: Computer and Funds Transfer Fraud; Forgery; Money and Securities; and Employee Theft; and
- (vi) Professional Liability or Errors and Omissions, with coverage of not less than \$1 million per claim/\$2 million general aggregate.

B. Workers' Compensation Coverage

Prior to providing Services under this Agreement, Contractor shall, in full compliance with State law, provide or purchase, at its sole cost and expense, and this shall remain in full force and effect during the term of the Agreement, statutory California's workers' compensation coverage for its employees and Employer's Liability in the minimum amount required above. The Exchange will not be responsible for payment of premiums or for any other claim or benefit for Contractor, or any Subcontractor or employee of Contractor, which might arise under applicable laws during the performance of duties and Services under this Agreement. However, should Contractor fail to secure insurance coverage or fail to pay premiums on behalf of its employees, the Exchange may deduct the amount of premiums owing from the amounts payable to Contractor under this Agreement and transmit the same to the responsible State agency.

C. Subcontractors

Contractor shall require all Subcontractors to maintain insurance commensurate with the nature of such Subcontractors' work. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

D. Premiums

Premiums on all insurance policies shall be paid by Contractor or its Subcontractors. Such Commercial General Liability and Automobile Liability insurance policies provided for the Exchange and maintained pursuant to this Section shall expressly provide therein that the Exchange be named as additional insured, through a blanket additional insured endorsement. Contractor shall provide 30 Days' Notice of cancellation to the Exchange.

E. Insurance Documents

Contractor shall furnish to the Exchange copies of certificates of all required insurance prior to the Execution Date, and copies of renewal certificates of all required insurance within 30 Days after the renewal date. The Exchange reserves the right to review the insurance requirements contained herein once every five years to ensure that there is appropriate coverage that is in accordance with this Agreement.

F. Increased Coverage

The Exchange is to be notified by Contractor promptly if any aggregate insurance limit is exceeded. In such event, Contractor must purchase additional coverage to meet these requirements.

G. Primary Coverage

The Commercial General Liability and Automobile Liability insurance maintained by Contractor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State to the extent necessary for Contractor to meet its obligations under this Agreement and shall include a severability of interests (cross-liability) provision.

H. Continued Coverage

For Professional Liability Errors and Omissions coverage and Crime Coverage, Contractor shall continue such coverage for one year beyond the expiration or termination of this Agreement and provide the Exchange with certificates of insurance on an annual basis.

I. Cross-Liability

The Commercial General Liability and Automobile Liability insurance maintained by Contractor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the Exchange to the extent necessary for Contractor to meet its obligations under this Agreement and the General Liability policy and shall include a severability of interests (cross-liability) provision.

6. No Assignment or Delegation by Contractor

Contractor may not assign any rights under this Agreement to any person or delegate any duties under this Agreement to any subcontractor or other person without the prior written consent of the Exchange.

7. Attorneys' Fees and Costs

A. In the event of any litigation between the parties to enforce or interpret the provisions of this Agreement, the non-prevailing party shall, unless both parties agree, in writing, to the contrary, pay the attorneys' fees and costs of the prevailing party arising from such litigation, including reasonable attorneys' fees, allocated costs for services of in-house counsel, and court costs. These attorneys' fees and costs shall be in addition to any other relief to which the prevailing party may be entitled.

B. In any litigation in which the Exchange and Contractor are joint defendants, each party shall bear the cost of its own defense except as provided in Section 8, Indemnification.

8. Indemnification

Contractor shall indemnify, defend and hold harmless the State of California, the Exchange, and all of the officers, trustees, agents and employees of the foregoing, from and against any and all losses, costs, liabilities, damages or deficiencies, including interest, penalties and attorneys' fees, which

A. Arise out of or are due to a breach by Contractor of any of its representations, warranties, covenants or other obligations contained in this Agreement; or

- B. Are caused by or resulting from Contractor's acts or omissions constituting bad faith, willful misfeasance, negligence or reckless disregard of its duties under this Agreement; or
- C. Accrue or result to any of Contractor's subcontractors, materialmen, laborers or any other person, firm or corporation furnishing or supplying services, material or supplies in connection with the performance of this Agreement.

9. Dispute Resolution Process

- A. Except as set forth in subsection B of this section, if any dispute arising out of or in connection with this Agreement is not resolved within a reasonable period of time by Contractor and Exchange staff normally responsible for the administration of this Agreement, the parties shall attempt to resolve the dispute through executive level involvement. The Executive Officer of each party or his or her designated representative shall meet and confer to attempt to resolve the dispute. If the parties agree, a neutral third party mediator may be engaged to assist in dispute resolution at either the line employee level or the executive level, or both. If after expending reasonable efforts at executive level resolution of the dispute, no resolution can be reached, then either party may seek its rights and remedies in a court of competent jurisdiction.
- B. The Exchange shall not be required to follow the dispute resolution process set forth in this section before: (1) issuing any notice of termination for default under this Agreement and (2) barring Contractor from further access to Exchange computer systems and premises. However, neither party may seek its rights and remedies in court respecting any such notice of termination for default without first following the dispute resolution process stated in this section.
- C. The Exchange and Contractor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their responsibilities under this Agreement which are not affected by the dispute.

This section shall survive the termination or expiration of this Agreement.

10. Rights in Work Product

- A. All inventions, discoveries, intellectual property, technical communications and records originated or prepared by Contractor pursuant to this Agreement including papers, reports, charts, computer programs, and other Documentation of improvements thereto, and including Contractor's administrative communications and records relating to this Agreement (collectively, the "Work Product") shall be Contractor's exclusive property. The provisions of this subsection A may be revised in a Statement of Work.
- B. Software and other materials developed or otherwise obtained by or for Contractor or its affiliates independently of this Agreement or applicable purchase order ("Pre-Existing Materials") do not constitute Work Product. If Contractor creates derivative works of Pre-Existing Materials, the elements of such derivative works created pursuant to this Agreement constitute Work Product, but other elements do not. Nothing in this section will be construed to interfere with Contractor's or its affiliates' ownership of Pre-Existing Materials.
- C. The Exchange will have Government Purpose Rights to the Work Product as

deliverable or delivered to the Exchange hereunder. "Government Purpose Rights" are the unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive rights and licenses to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the work product. "Government Purpose Rights" also include the right to release or disclose the work product outside the Exchange for any State government purpose and to authorize recipients to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product for any State government purpose. Such recipients of the work Product may include, without limitation, State, Contractor, California local governments, the U.S. federal government, and the state and local governments of other states. "Government Purpose Rights" do not include any rights to use, modify, reproduce, perform, release, display, create derivative works from, or disclose the Work Product for any commercial purpose.

- D. Any work product developed by Contractor and designated confidential by the Exchange shall be protected by Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the Exchange. The identification of all such confidential data and information, as well as the Exchange's procedural requirements for protection of such data and information from unauthorized use and disclosure, shall be provided by the Exchange in writing to Contractor.
- E. The ideas, concepts, know-how, or techniques relating to computer systems, developed during the course of this Agreement by Contractor or jointly by Contractor and the State may be used by either party without obligation of notice or accounting.
- F. This Agreement shall not preclude Contractor from developing materials outside this Agreement that are competitive, irrespective of their similarity to materials which might be delivered to the State pursuant to this Agreement.

11. Intellectual Property in Deliverables; Intellectual Property Indemnity

- A. In case this Agreement calls for deliverables that incorporate intellectual property, Contractor represents and warrants that it either owns or has the right and authority to grant to the Exchange the rights in such deliverables stated in this Agreement for use in the U.S., without infringing the proprietary rights of others.
- B. Contractor agrees to indemnify and hold the Exchange harmless from any loss, damage or injury; to defend at its own expense any and all suits and actions; and to pay any judgments against the Exchange arising out of any alleged infringement of patent rights or copyrights enforceable in the U.S. or alleged misuse of trade secret information by such deliverables. Contractor's indemnification obligations under this section are subject to Contractor receiving prompt notice of the claim and being given the right to control the defense of such claim. This Subsection 11.B shall survive the expiration or termination of this Agreement.
- C. Contractor will have no liability to the Exchange pursuant to this section to the extent that:
 - (i) The claim of infringement is based upon the use of software, services, or deliverables provided by Contractor and paid for by the Exchange under this Agreement, in connection with or in combination with equipment, devices, or software not supplied by Contractor, if the infringement would not have occurred but for that connection or combination;
 - (ii) The claim of infringement is based upon the use of software, provided by Contractor

under this Agreement, in a manner for which the software was not designed, if the infringement would not have occurred but for that use;

- (iii) The claim of infringement is based upon the Exchange's modification to any deliverable or service provided by Contractor under this Agreement, if such infringement would not have occurred but for such modification; or,
- (iv) The claim of infringement arises out of Contractor's compliance with specifications, requirements, or directions provided by the Exchange, and such infringement would not have occurred but for such compliance.

12. Trademark and Service Marks

Both the Exchange and Contractor reserve the absolute right to control the use of their respective symbols, trademarks and service marks presently existing or hereafter established. Each party agrees that it will not use the other party's words, symbols, trademarks, service marks or other devices in advertising, promotional material or otherwise without the other party's prior written consent, and shall immediately cease any approved usage upon termination of the Agreement.

13. Inspection, Acceptance, and Rejection

- A. Contractor and its subcontractors will provide and maintain a quality assurance system acceptable to the Exchange covering deliverables and services under this Agreement and will tender to the Exchange only those deliverables that have been inspected and found to conform to this Agreement's requirements. Contractor will keep records evidencing inspections and their result, and will make these records available to the Exchange during performance under this Agreement and for three years after final payment. Contractor shall permit the Exchange to review procedures, practices, processes, and related documents to determine the acceptability of Contractor's quality assurance System or other similar business practices related to performance of the Agreement.
- B. All deliverables may be subject to inspection and test by the Exchange or its authorized representatives.
- C. Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to the Exchange. Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.
- D. All deliverables may be subject to final inspection, test, and acceptance by the Exchange at destination, notwithstanding any payment or inspection at source.
- E. The Exchange shall give written notice of rejection of deliverables delivered or services performed hereunder within a reasonable time after receipt of such deliverables or performance of such services. Such notice of rejection will state the respects in which the deliverables do not substantially conform to their specifications. If the Exchange does not provide such notice of rejection within sixty (60) days of delivery, such deliverables and services will be deemed to have been accepted. Acceptance by the Exchange will be final and irreversible, except as it relates to latent defects, fraud, and gross mistakes amounting to fraud. Acceptance shall not be construed to waive any warranty rights that the Exchange might have at law or by express reservation in this Agreement with respect to any nonconformity.

STATE AND FEDERAL REQUIREMENTS

14. Compliance

Contractor shall and shall cause all Subcontractors to take all actions necessary and appropriate to ensure that they comply with all applicable federal, state, and local laws, regulations, executive orders, ordinances and guidance including without limitation, the ACA and CA ACA; the Americans with Disabilities Act, the Anti-Kickback Statute, the Public Contracts Anti-Kickback Act, the Stark Law, Requirements for Practitioner Incentive Plans as set forth in 42 C.F.R. 422.208 and 422.210, and the Knox-Keene Health Care Service Plan Act of 1975 and/or California Insurance Code, as applicable. Contractor's code of conduct and its policies and procedures related to compliance with the above named laws are available at:

[Insert web location of Contractor's information.]

Provisions of the ACA and CA ACA applicable to QHPs and QHP issuers with which Contractor must comply include, but are not limited to, the following:

A. QHP Issuer Requirements

Contractor shall comply with all QHP Issuer Requirements listed in 45 C.F.R. 156.200(b), including procedural requirements, benefit design standards, licensed and in good standing requirements, quality improvement strategies, payment of fees, and risk adjustment program compliance.

B. Offering Requirements

- (i) In accordance with ACA Section 1302(d)(1), 45 C.F.R. 156.200(c), and Government Code 100503, Contractor must offer at least one QHP at every coverage level both inside and outside the Exchange, as well as a child-only plan available to individuals who have not attained the age of 21. QHPs and substantially similar plans as described in 45 C.F.R. 156.255(b) must be offered at the same rate whether offered inside or outside the Exchange.
- (ii) In accordance with Government Code 100503(f), Insurance Code 10112.3(c), and Health & Safety Code 1366.6(c), Qualified Health Plans certified and sold through the Exchange must also be offered outside the Exchange exactly as offered within the Exchange, under the same terms and conditions. In accordance with Health and Safety Code 1367.005(a) and Insurance Code 10112.27, this requirement applies solely to Qualified Health Plans that cover all Essential Health Benefits. Qualified Health Plans sold through the Exchange that have been permitted to exclude the pediatric dental Essential Health Benefit for purposes of accommodating a certified standalone dental plan that covers only the pediatric dental Essential Health Benefit are barred from sale outside the Exchange because they do not include coverage of all benefits required in the Essential Health Benefit categories.

Standalone dental plans that are certified to sell the pediatric dental Essential Health Benefit plans are not Qualified Health Plans for purposes of Government Code 100503(f) and as a result may not be offered or sold outside the Exchange.

C. Network Adequacy

Contractor's QHPs shall comply with the network adequacy standards in 45 C.F.R. 156.230.

D. Essential Community Providers

Contractor shall contract with essential community providers in numbers and at rates described in 45 C.F.R. 156.235.

E. Applications and Notices

Contractor shall provide applications and notices to Enrollees in accordance with 45 C.F.R. 156.250.

F. Rating Variations

Contractor shall comply with the premium variation provisions in 45 C.F.R. 156.255.

G. Accreditation

Contractor shall comply with the accreditation requirements in 45 C.F.R. 156.275.

H. Segregation of Funds

Contractor shall segregate funds for specified services in accordance with ACA Section 1303 and 45 C.F.R. 156.280. Contractor shall collect a single premium from Enrollees and Employers and shall segregate the funds through its own internal accounting mechanism.

I. Special Rules for Indians

- (i) Contractor shall cover items or services furnished through Indian Health Providers to Indians with no cost-sharing as described in ACA Section 1402(d)(2).
- (ii) Contractor shall not impose any cost-sharing on Indians under three hundred (300) percent of federal poverty level.
- (iii) Contractor shall provide monthly special enrollment periods for Indians enrolled through the Exchange.
- (iv) Contractor shall comply with Indian Health Care Improvement Act Sections 206 (25 U.S.C. 1621e) and 408 (25 U.S.C. 1647a).

J. Rate Information

Contractor shall submit to the Exchange a justification for any rate increase for QHPs before implementing such rate increase. Contractor shall prominently post this justification on its Web site. At least annually, Contractor shall provide the Exchange with information related to rates, covered benefits, and cost sharing, in accordance with 45 C.F.R. 155.1020.

K. Transparency in Coverage

Contractor shall provide the Exchange with all information identified in 45 C.F.R. 156.220, in the manner specified in that section. Contractor shall submit the required information to the Exchange in plain language, in accordance with 45 C.F.R. 155.1040.

L. Non-Discrimination

In accordance with ACA Section 1201 and 45 C.F.R. 156.200(e), Contractor shall not discriminate with respect to its QHP on the basis of race, color, national origin, disability, age, sex, gender identity, or sexual orientation.

M. Marketing Requirements

Contractor shall comply with all applicable state laws and regulations regarding marketing by Issuers. In accordance with ACA Section 1311(c)(1)(A) and 45 C.F.R. 156.225, Contractor shall not engage in marketing practices or benefit designs that have effect of discouraging enrollment in its QHPs by individuals with significant health needs.

N. Accessibility and Readability

Contractor shall provide all applications, forms, and notices to Enrollees and applicants in accordance with 45 C.F.R. 155.205(c), 155.230, and 156.250.

15. **Permits and Licenses**

Contractor shall carry out its duties and responsibilities herein in accordance with, be limited in the exercise of its rights by, and observe and comply with, all federal, state, city and county laws, rules or regulations affecting services under this Agreement. Contractor shall verify that Contractor holds a state health care service plan license or insurance certificate of authority. Contractor shall maintain in good standing with DMHC or CDI Contractor's license as a Health Care Service Plan or Health Insurer. Good standing means that Contractor has had no material fines, penalties levied, citations, or ongoing disputes with applicable licensing authorities nit he last two years. Contractor shall further procure and keep in full force and effect during the term of this Agreement any and all permits and licenses necessary to accomplish the work contemplated in this Agreement. If Contractor is either a foreign or domestic corporation it must be in good standing and must be qualified to do business in California currently and during the term of the Agreement.

16. **Books, Records, and Data Retention**

A. **Clinical Records**

Contractor shall maintain or require each Participating Provider to maintain a medical record keeping system adequate to fully disclose and document the medical condition of each Plan Enrollee and the extent of Provider services received by Plan Enrollees. Clinical records shall be retained for at least seven (7) years following the date of services for which any Claim is made. If an audit, litigation, research, evaluation or other action involving the records has not been concluded before the end of the seven (7) year minimum retention period, the clinical records must be retained until all issues arising out of the action have been resolved.

B. **Financial Records**

Financial records, supporting documents, statistical records and all other records pertinent to amounts paid to or by Contractor in connection with this Agreement shall be retained for at least seven (7) years from the date of submission of the final Claims payment. Contractor shall maintain accurate books, accounts, and records and prepare all financial statements in accordance with Generally Accepted Accounting Principles and statutory accounting principles, and in compliance with the regulations of any governmental or regulatory authority having jurisdiction over Contractor. Such books and records shall be kept in a secure location at the

Contractor's office(s), and books and records related to this Agreement shall be available for inspection and copying by the Exchange, Exchange representatives, and such consultants and specialists as designated by the Exchange, at any time during normal business hours. Contractor shall also ensure that related books and records of subcontractors shall be accurately maintained. If any audit, litigation, claim or other action has not been concluded before the end of the seven (7) year minimum retention period, the applicable financial records must be retained until all issues arising out of the action have been resolved.

- C. Contractor shall maintain adequate data concerning each of its transactions with Providers, the Exchange, and Plan Enrollees during the period this Agreement remains in force and will keep records of claims, including medical review and high dollar special audit claims, for a period of ten (10) years or for such length of time as required by federal or state law, whichever is longer. At the end of the ten (10) year retention period, at the option of the Exchange, records shall either be transferred to the Exchange at its request or destroyed. All such records are the property of the Exchange and must be returned to the Exchange or its authorized representatives upon demand.
- D. Contractor shall maintain historical claims data on-line for two (2) years from date that the Agreement is terminated. These records shall include, but are not limited to, the data elements necessary to produce Contractor, client, and Exchange-specific reports, such as amounts billed (allowed and paid), dates of service, procedure numbers, and deductible and Copayment amounts for each claim.
- E. Contractor shall maintain a separate back-up system for its electronic data processing functions and a duplicate data file which is stored off-site in a secured, controlled environment.
- F. Contract shall provide data describing participating providers in its QHP networks in a data format prescribed by the Exchange on a monthly basis to support the Exchange's centralized provider directory containing every QHP's network providers.

17. Examination and Audit

- A. During and for ten years after the term of this Agreement, Contractor shall permit the Bureau of State Audits, the Exchange and its authorized representative, and such consultants and specialists as needed, at all reasonable times during normal business hours to inspect and copy, at the expense of the Exchange, books and records of Contractor relating to its performance of this Agreement. Contractor's network discounts, and data and services agreements with network providers may be copied by Bureau of State Audits, the Exchange or its authorized representative for those hospitals and healthcare facilities from Contractor's provider network that have given Contractor expressed permission to disclose confidential Participating Provider contract information to the Exchange and for physicians notified by Contractor that Participating Provider contract information will be made available to the Exchange.
- B. Contractor shall be subject to examination and audit by the Bureau of State Audits, the Exchange, and Exchange authorized representatives during the term of this Agreement and for ten (10) years after the termination of this Agreement. Any examination or audit shall be confined to those matters connected with the performance of this Agreement, including, but not limited to, the costs of administering this Agreement and for compliance with applicable law. Contractor shall cooperate fully with the Bureau of State Audits, the Exchange and/or authorized audit/actuarial firms employed by the Exchange ("audit/actuarial firms") in connection with any examination or audit. All adjustments, payments, and/or reimbursements determined to be necessary by any examination or audit shall be made promptly to the appropriate party.

- (i) The Exchange may select one or more audit/actuarial firms to conduct examinations and audits authorized under this Agreement. The Exchange shall provide Contractor with written notice of the name, address, and principal contact for any audit/actuarial firm or firms it has selected. Said notice shall be provided no later than forty-five (45) days prior to the proposed commencement of an audit or examination.
 - (ii) Contractor may object to the selected audit/actuarial firm or firms by submitting in writing to the Exchange an explanation of why the selected audit/actuarial firm or firms are unacceptable. Said objections must be provided no later than seven (7) days prior to the proposed commencement of an audit or examination.
 - (iii) Contractor and the Exchange shall immediately meet and confer over any objections raised to the selected audit/actuarial firm or firms. If Contractor and the Exchange are unable to reach agreement, and Contractor continues to object to the audit/actuarial firm or firms selected by the Exchange, that firm or firms shall not be used. In such an event, the Exchange shall select, with reasonable consideration and accommodation of the grounds of Contractor's objections to the originally selected audit/actuarial firm or firms, a replacement audit/actuarial firm or firms, which shall conduct the audit or examination notwithstanding any further objections.
 - (iv) Notwithstanding its method of selection, source of payment, or any other factor, the selected audit/actuarial firm or firms shall be in contractual privity with Contractor for the purpose of entering and performing under a confidentiality agreement as described further in this section. If requested by Contractor, any selected audit/actuarial firm or firms shall enter into a reasonable confidentiality agreement prescribed by Contractor and agreed to by the Exchange prior to commencing any examination or audit activities. Any such confidentiality agreement may limit the dissemination of information to the selected audit/actuarial firm or firms and to the Exchange. However, nothing in the confidentiality agreement shall be construed or permitted to authorize the withholding from the Exchange of audit processes, reports, analyses, or conclusions.
 - (v) The selected audit/actuarial firm or firms shall have access to all agreements between Contractor and its Providers, including payment terms included within those agreements. The selected audit/actuarial firm or firms may provide to the Exchange opinions, analyses, comparisons or other summaries of Provider costs. Complete copies of any opinions, analyses, comparisons, summaries, or reports transmitted to the Exchange, shall be provided to Contractor within five (5) business days of their transmission to the Exchange.
 - (vi) Employees or agents of the Exchange, Exchange authorized representatives, and the Bureau of State Audits shall agree in writing to maintain the confidentiality of any trade secret or proprietary information of which it may become aware during the course of an audit. Contractor shall be an express third party beneficiary of such agreement.
- C. Contractor shall notify the Exchange, and make available, upon request, to the Exchange the results of final financial, market conduct, or special audits performed by the Department of Managed Health Care, the Department of Insurance, the Department of Health Care Services, and the U.S. Department of Health and Human Services and/or any other regulatory entity in a State or jurisdiction where Contractor serves Exchange Enrollees.
- D. Contractor shall provide, upon Exchange request, detailed documentation on the Exchange-specific rate development methodology. Contractor shall provide justification, documentation and support used to determine rate changes, including providing adequately supported cost projections.

Cost projections include factors impacting rate changes, assumptions, transactions and other information that affects the Exchange specific rate development process. Information pertaining to the key indicators driving the medical factors on trends in medical, pharmacy or other healthcare Provider costs may also be requested to support the assumptions made in forecasting and may be supported by information from the Plan's actuarial systems pertaining to the Exchange-specific account.

- F. The Exchange understands and agrees that Contractor shall only be obligated to provide access to such information to the extent that: (1) access to such information is permitted by applicable State and Federal law and regulation, including, but not limited to, State and Federal law or regulation relating to confidential or private information; and (2) it would not cause Contractor to breach the terms of any contract to which Contractor is a party.
- G. Contractor shall provide a business plan upon the Exchange's request addressing all of its key business operations and provide a general overview of cost control initiatives.
- H. Contractor shall provide upon the Exchange's request a copy of its most recent annual independent financial audit.
- I. Contractor shall provide the Exchange with five (5) copies of its annual Statement on Standards for Attestation Engagements (SSAE) 16 (formerly known as SAS 70 Type II) report each year. The SSAE 16 review and auditor reports will comply with American Institute of Certified Public Accountants' (AICPA) SSAE 16 standard, as amended, provided such report evidences third party review of Receiving Party's compliance with its obligations under this Agreement.
- J. Corrective Action

The Exchange, in its sole and absolute discretion, may impose sanctions if it determines that Contractor has acted or failed to act in accordance with the Performance Measures or in a manner proscribed by the Compliance Addendum attached hereto as Attachment [Insert Attachment Reference] and incorporated herein by this reference. Sanctions shall be as set forth in either the Performance Measures or in the Compliance Addendum. Imposition of sanctions under either the Performance Measures or Compliance Addendum shall be cumulative with other remedies available to the Exchange under the Agreement. Imposition of sanctions shall not be deemed an election of remedies and failure to impose sanctions shall not be deemed a waiver with respect to any violation that constitutes a breach of the Agreement.

18. Investigations

A. Purpose

The Parties desire to implement specific notification and related requirements for certain categories of third party requests, as set forth in this section, and, notwithstanding any provision of this Agreement to the contrary, this section is intended to specify the Parties' obligations related thereto.

B. Definitions

For purposes of this section, the following terms have the meanings set forth below:

- (i) "Investigation" shall mean any investigation, inquiry, request, or subpoena directed to or proceeding involving Contractor (or any of its employees, officers or directors) conducted by an Investigating Authority to the extent that the investigation, inquiry, request, proceeding, or subpoena directly or substantially relates to the Agreement, the obligations of the Parties under the Agreement, or the business relationship between the Parties or any of their employees, officers, or directors.

- (ii) "Investigating Authority" shall mean any federal, state, or local law enforcement authority (including, without limitation, the California Department of Justice, the Securities and Exchange Commission, any state or federal Grand Jury, or the United States Department of Justice).
- (iii) "Notice" shall mean Contractor's prompt, written notification directed to the Exchange of an Investigation or Request for Information that provides sufficient detail to advise the Exchange of the nature of the matter and, with respect to a Request for Information, includes a description of responsive documents being sought or provided.
- (iv) "Request for Information" shall mean a request from a third party, including, but not limited to, an Investigating Authority, directed to Contractor to provide documents pertaining directly to the Agreement or the relationship between the Parties or any of their employees, officers, or directors.

C. Contractor Obligations Regarding Investigations

Unless prohibited by order of the court, administrative agency, or other tribunal or regulatory authority having jurisdiction over the matter or by the laws and regulations governing the Investigation, inquiry, proceeding, subpoena or request, and subject to subsection F below, Contractor shall:

- (i) Provide the Exchange with Notice upon learning of an Investigation or receiving a Request for Information from an Investigating Authority.
- (ii) Identify responsive documents in Contractor's possession or control that Contractor has provided, or intends to provide, to the Investigating Authority conducting an Investigation in response to a Request for Information, and promptly provide to the Exchange copies of such documents or, in the Exchange's discretion, summaries of such documents, upon the Exchange's reasonable request. For purposes of the preceding sentence, the term "documents" includes responsive deposition transcripts and exhibits. Contractor may provide the Exchange access to such documents pursuant to reasonable and mutually agreeable restricted access rights, such as "attorney only" review at a convenient location or through other secure means, to enable authorized Exchange representatives to review such documents and to preserve the confidential nature of the documents being reviewed. In any event, however, Contractor will provide documents to authorized Exchange staff without such conditions to access to the extent such documents contain information pertaining exclusively to the Exchange. In addition, Contractor reserves the right to redact any pricing, client information, patient information or other confidential or proprietary information that does not directly relate to the Exchange or the Agreement that is contained in any such documents provided to the Exchange. The Exchange will be responsible to Contractor for the Exchange's authorized staff maintaining the confidentiality of documents disclosed under this section.
- (iii) In the event that Contractor is prohibited from providing the Exchange with the Notice or documents responsive to a Request for Information as set forth above, Contractor shall promptly request authorization from the Investigating Authority, or such other person or entity as may be appropriate, in order to permit providing such Notice promptly to the Exchange and shall take other reasonable measures as may be required to obtain authorization to provide such Notice or documents to the Exchange.
- (iv) Production of documents to an Investigating Authority shall not relieve Contractor of any

disclosure obligations otherwise required under this Agreement.

D. Exchange Obligations Regarding California Public Records Act Requests and Third Party Subpoenas

- (i) Upon receipt of a California Public Records Act or Freedom of Information Act request (collectively, "PRA") to disclose documents provided to the Exchange under subsection C above, the Exchange shall treat all such documents so designated by Contractor as confidential or proprietary and shall make all reasonable assertions of applicable exemptions to withhold such documents from disclosure. The Exchange shall notify Contractor promptly but in any event no less than five (5) business days prior to the required date of the Exchange's initial response to such a request as set forth in the PRA. Contractor may take such legal action as it deems appropriate, if any, to further protect the disclosure of the documents designated as confidential or proprietary and responsive to the request. In no event, however, shall the Exchange have an independent obligation to take legal action to prevent the production of documents that Contractor may deem to be confidential or proprietary, such obligation falling solely to Contractor, and nothing in this provision shall be deemed to supersede any other provision in the Agreement or otherwise place upon the Exchange an independent obligation to take such legal action. In the event the PRA requestor initiates legal action for disclosure of documents or Contractor initiates legal action to prevent their disclosure, the Exchange shall not produce documents provided to it under subsection C above and designated as confidential or proprietary until a final order or judgment has been entered requiring production of the documents. Contractor agrees to pay the reasonable attorneys' fees and expenses incurred by the Exchange as a result of any such legal action, including, to the extent applicable, any reasonable attorneys' fees and expenses of the requestor that the Exchange becomes legally obligated to pay under the PRA. The Exchange agrees to reasonably cooperate with Contractor in the selection of counsel for any such legal action and to reasonably cooperate in Contractor's efforts to prevent the disclosure of documents in any such legal action. Contractor shall not be required to exhaust the dispute resolution procedures of this Agreement prior to initiating any action it deems appropriate to protect its confidential or proprietary information disclosed to the Exchange pursuant to this section.
- (ii) Upon receipt by the Exchange of a third party subpoena or similar request for documents provided to the Exchange pursuant to this section, or in the event that a legal action is initiated against the Exchange for production of documents provided to the Exchange pursuant to this section, the Exchange shall treat all such documents designated by Contractor as confidential or proprietary as exempt from disclosure and shall reasonably cooperate with Contractor and make all reasonable assertions of applicable objections to prevent disclosure of documents. The Exchange shall notify Contractor promptly but in any event no less than five (5) business days prior to the required date of the Exchange's response to such subpoena or other request for information. Unless Contractor obtains an order from a court of competent jurisdiction precluding the production of documents requested, the Exchange may comply with the subpoena or other request. Nothing herein shall be construed to require the Exchange to initiate legal action to prevent production of documents subject to a subpoena or other request for information or to violate an order from a court of competent jurisdiction compelling the production of documents. E. Meet and Confer

Contractor agrees that, upon the written request of the Exchange, but not more often than quarterly, it shall meet and confer with authorized Exchange staff to discuss any of the matters described in this section and any other legal proceedings disclosed by Contractor and its affiliates in filings with the Securities and Exchange Commission.

F. Compliance with Law

- (i) Notwithstanding any other provision of this Agreement, the obligations in this section are not intended and shall not be construed to require that: (1) Contractor or the Exchange violate applicable federal or state securities or other laws and regulations, (2) Contractor or the Exchange violate the terms of any order issued in connection with any judicial, administrative or other legal proceeding, (3) Contractor violate the confidentiality provisions of any contract or confidentiality agreement to which Contractor is a party, or (4) Contractor waive its rights to the attorney-client privilege, work product privilege or other legal privilege or protection afforded to Contractor by applicable law, which would preclude the disclosure of documents or information in any Investigation or other legal proceeding. The parties agree that (3) above will not preclude compliance by Contractor with other disclosure requirements contained in this Agreement, and the parties further agree that (3) above will not preclude Contractor from providing documents pursuant to this section to authorized Exchange staff to the extent such documents contain information pertaining exclusively to the Exchange.
- (ii) Should any material, nonpublic information, as defined in applicable federal or state securities laws, be disclosed pursuant to this section, the Exchange expressly agrees to maintain such material, nonpublic information in confidence. If, however, the Exchange reasonably believes that any such disclosed information is material to the Exchange and therefore should be further disclosed by the Exchange to other parties, the Exchange will promptly notify Contractor, and the parties will, prior to any further disclosure by the Exchange, meet and confer to establish a mutually agreeable and reasonable method of disclosure consistent with applicable federal and state securities and other laws applicable to the parties. The Exchange hereby agrees to use material, nonpublic information that may be disclosed to it only for the purpose of its own review of the related matter and will not use such information or documents for the purpose of investment decisions or trading. The Exchange further agrees that all authorized representatives of the Exchange having access to any such material, non-public information will be advised of its confidential nature and instructed not to use such information or documents for the purpose of investment decisions or trading.

G. Dispute Resolution

The parties expressly agree that notwithstanding any other provision of this Agreement, the parties will attempt to resolve any disputes arising under this section pursuant to the Dispute Resolution Process outlined in Section 9, subdivision A, of this Agreement. If the parties are not able to resolve the dispute according to that process, the parties agree this provision shall be specifically enforceable by a court of competent jurisdiction.

19. Account Profit & Loss

Contractor shall provide an Account Profit & Loss report with Exchange-specific information within ninety (90) calendar days of the end of each Contract Year.

20. Financial Statements

Contractor shall provide to the Exchange the annual audited financial statements of Contractor and its parents and subsidiaries no later than forty-five (45) days after such reports are filed with the Securities and Exchange Commission and/or made public.

21. Compliance Plan

Contractor shall maintain an effective compliance program that meets the requirements of applicable

law and regulation. Contractor shall provide evidence of such compliance program as reasonably requested by the Exchange. Contractor shall timely and confidentially communicate to the Exchange any material concerns identified by Contractor or by a regulatory agency related to regulatory compliance as such may impact performance under this Agreement.

22. HIPAA, HITECH Act, and Other Applicable Provisions

The Exchange and Contractor acknowledge that Contractor is a covered entity (as defined within HIPAA) subject to the requirements of HIPAA and HITECH. With respect to certain administrative services described in the Statement of Work, the parties anticipate that Contractor also shall be a Business Associate (as defined within HIPAA). As a Business Associate, Contractor shall comply with all applicable provisions of HIPAA and the HITECH Act, and any other applicable laws or regulations. Below is an illustrative, but not exhaustive, list of topics covered by HIPAA, the HITECH Act, and other applicable laws or regulations. Nothing within paragraphs A through W limits the rights, duties, and/or obligations of the Exchange or Contractor under HIPAA, the HITECH Act, and other applicable laws or regulations.

A. Use of PHI

In carrying out its responsibilities, Contractor may use PHI (a) for Contractor's proper management and administrative services; or (b) to carry out the legal responsibilities of Contractor. However, under this Agreement, Contractor shall not use PHI received from the Exchange or any of its contracting vendors in any manner that would constitute a violation of HIPAA, the HITECH Act, or any other applicable laws or regulations.

B. Electronic Protected Health Information (EPHI)

The transmission of EPHI via computer systems and networks is increasingly prevalent. Transport or transmission of EPHI via, *inter alia*, laptops, compact discs, USB flash drives, memory cards, email, personal digital assistants, smart phones or any other portable storage media is expressly prohibited under this Agreement without specific written consent by the Exchange. Transmissions of EPHI outside of a firewalled computer system or network may not be sent unless encrypted under any circumstances. Contractor must abide by all provisions governing EPHI under HIPAA, the HITECH Act, or any other applicable laws or regulations.

C. Disclosure of PHI

Contractor shall not and shall ensure that its directors, officers, employees, contractors, and agents do not disclose PHI received from the Exchange or any of its contracting health plans in any manner that would constitute a violation of HIPAA, the HITECH Act, or any other applicable laws. However, Contractor may disclose PHI in a manner permitted pursuant to this Agreement or as required by law. To the extent Contractor discloses PHI to a third party, Contractor must obtain, prior to making any such disclosure: (a) written approval from the Exchange and the relevant health plan or the Individual who is the subject of such PHI for such disclosure; (b) reasonable assurances from the third party that such PHI will be held confidential as provided pursuant to this Agreement and only disclosed as required by law or for the purposes for which it was disclosed to such third party; and (c) an agreement from such third party to immediately notify Contractor of any breaches of the confidentiality of the PHI, to the extent it has obtained knowledge of such breach.

D. Safeguards Against Misuse of Information

Contractor agrees that it will implement all appropriate safeguards to prevent the unauthorized access, use, modification, or disclosure of PHI under HIPAA, the HITECH Act, or any other applicable laws or regulations, as well as this Section. Contractor agrees to implement administrative, physical, and technical safeguards (including written policies and procedures) that

reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that it creates, receives, maintains, or transmits on behalf of any Plan as required by HIPAA or the HITECH Act. At a minimum, Contractor shall implement and maintain the safeguards required under Attachment [Insert Attachment Reference]. Contractor agrees to report to the Exchange in writing any use or disclosure of the PHI not permitted under this Agreement. Contractor agrees to report to the Exchange any Security Incident, as that term is defined by HIPAA, of which Contractor becomes aware.

E. Reporting of Disclosures of PHI

In accordance with the HITECH Act, in the case of a breach, a contractor shall: (a) notify each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed; (b) notify the Exchange of such a breach, within (4) calendar days of becoming aware of a disclosure of unsecured PHI in violation of this Agreement; and (c) provide any other notice that is required under the HITECH Act.

In any case in which there has been an unauthorized disclosure of PHI that does not rise to the level of a breach, as set forth in the HITECH Act, the Contractor shall, nevertheless report any such disclosure to the Exchange and the relevant health plan within four (4) calendar days of becoming aware of such disclosure.

In addition to providing notice to the Exchange of a breach, Contractor will provide any required notice to individuals and applicable regulators on behalf of the Exchange at Contractor's expense.

F. Duty to Mitigate

Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI by Contractor in violation of HIPAA, the HITECH Act, or any other applicable laws or regulations, as well as this Section.

G. Agreements by Third Parties

Contractor shall enter into an agreement with any agent or subcontractor that will have access to PHI that is received from, or created or received by, Contractor on behalf of the Exchange or any of its contracting health plans pursuant to which such agent or subcontractor agrees to be bound by the same restrictions, terms and conditions that apply to Contractor pursuant to this Agreement with respect to such PHI.

H. Access to PHI

Within five (5) calendar days of a request by the Exchange for access to PHI about an individual, Contractor shall make available to the Exchange, or, as directed by the Exchange, to an individual such PHI for so long as such information is maintained.

In the event any individual requests access to PHI directly from Contractor, Contractor shall within two (2) calendar days forward such request to the Exchange and the relevant health plan.

In addition, Contractor will assist the Exchange in responding to requests by individuals that are made to the Exchange to invoke a right of access under HIPAA, the HITECH Act, or any other applicable laws or regulations, by performing the following functions:

Upon receipt of written notice (includes faxed and emailed notice) from the Exchange, Contractor will make available for inspection and obtaining copies by the Exchange or, at the Exchange's direction, by the individual (or the individual's personal representative), any PHI about the individual created or received for or from the Exchange in Contractor's custody or control, so that the Exchange may meet its access obligations under HIPAA, the HITECH Act, or any

other applicable laws or regulations. Contractor will make such information available in an electronic format where legally required, e.g., under the HITECH Act.

I. Electronic Transactions Rule

In conducting any electronic transaction that is subject to the Electronic Transactions Rule on behalf of any Plan, Contractor agrees to comply with all requirements of the Electronic Transactions Rule that would apply to the Plan if the Plan were conducting the transaction itself. Contractor agrees to ensure that any agent, including a subcontractor, of Contractor that conducts standard transactions with PHI of the Plan will comply with all of the requirements with the Electronic Transactions Rule that would apply to the Plan if the Plan were conducting the transaction itself. "Electronic Transactions Rule" means the federal regulations found at 45 CFR Part 162.

J. Workforce Training

Contractor shall not disclose PHI to any member of its workforce unless Contractor has trained such member in the relevant requirements of HIPAA as required by the HIPAA regulations. Contractor agrees to take appropriate disciplinary action against any member of its workforce who uses or discloses PHI in violation of this Agreement and applicable law.

K. Minimum Necessary Requirements

Contractor agrees to determine the minimum necessary type and amount of PHI required to perform its services and will comply with any regulations promulgated under HIPAA concerning the minimum necessary standard.

L. Availability of PHI for Amendment

Within ten (10) calendar days of receipt of a request from the Exchange, Contractor shall provide such information to the Exchange or the relevant health plan for amendment and incorporate any amendments in the PHI as directed or agreed to by the Exchange under HIPAA, the HITECH Act, or any other applicable laws or regulations.

M. Accounting for Disclosures

Within ten (10) calendar days of notice by the Exchange or any of its contracting health plans to Contractor that it has received a request for an accounting of disclosures of PHI regarding an individual during the six (6) years prior to the date on which the accounting was requested, Contractor shall make available to the Exchange such information as is in Contractor's possession and is required for the Exchange to make the accounting required under 45 CFR Section 164.528, other provisions within HIPAA, the HITECH Act, or any other applicable laws or regulations. At a minimum, Contractor shall provide the Exchange with the following information: (a) the date of the disclosure; (b) the name of the entity or person who received the PHI, and if known, the address of such entity or person; (c) a brief description of the PHI disclosed; and (d) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure.

In the event the request for an accounting is delivered directly to Contractor, Contractor shall, within two (2) calendar days, forward such request to the Exchange. It shall be the Exchange's responsibility to prepare and deliver any such accounting requested. Contractor hereby agrees to implement an appropriate record keeping process to enable it to comply with the requirements of this Section.

N. Availability of Books and Records

Contractor hereby agrees to make its internal practices, books and records relating to the use

and disclosure of PHI received from the Exchange, or created or received by Contractor on behalf of The Exchange available to the Exchange and to the Secretary of the Department of Health and Human Services (DHHS) for purposes of determining the Exchange's and Contractor's compliance with HIPAA.

O. Reporting Violations of Law

Contractor may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR Section 164.502(j)(2), other provisions within HIPAA, the HITECH Act, or any other applicable laws or regulations.

P. Notice of Privacy Practices

The Exchange shall notify Contractor of any limitation(s) in its notice of privacy practices in accordance with 45 CFR 164.520, other provisions within HIPAA, the HITECH Act, or any other applicable laws or regulations, to the extent that such limitation may affect Contractor's use or disclosure of PHI.

Q. Term

The Term of this Section shall be effective as of the term of this entire Agreement, and shall terminate when all of the PHI provided by the Exchange to Contractor, or created or received by Contractor on behalf of the Exchange, is destroyed or returned to the Exchange, in a manner that is acceptable to the Exchange. Or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Agreement and HIPAA, the HITECH Act, or any other applicable laws or regulations.

R. Amendment

Upon the enactment of any law or regulation affecting the use and/or disclosure of PHI, or the publication of any court decision relating to any such law, or the publication of any interpretive policy, opinion or guidance of any governmental agency charged with the enforcement of any such law or regulation, the Exchange may, by written notice to Contractor, amend this Agreement to comply with such law or regulation. If Contractor agrees with any such amendment, it shall so notify the Exchange in writing within thirty (30) calendar days of this notice. If the parties are unable to agree on an amendment within thirty (30) calendar days thereafter, the Exchange may terminate this Agreement on ten (10) calendar days written notice to Contractor.

S. Breach

Without limiting the rights of the parties pursuant to this Agreement, if Contractor breaches its obligations under this Section, the Exchange may, at its option: (a) exercise any of its rights of access and inspection under subsection N of this Section; (b) require Contractor to submit to a plan of monitoring and reporting, as the Exchange may determine necessary to maintain compliance with this Agreement and such plan shall be made part of this Agreement; or (c) notwithstanding any other provisions of this Agreement, terminate this Agreement, with or without opportunity to cure the breach.

The Exchange's remedies under this Section and any other part of this Agreement or provision of law shall be cumulative, and the exercise of any remedy shall not preclude the exercise of any other.

T. Breach of Unsecured PHI

"Unsecured PHI" means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of the United States Department of Health and Human Services website. "Breach" means the acquisition, access, use, or disclosure of PHI in a manner not permitted under 45 CFR Part 164, Subpart E which compromises the security or privacy of PHI.

In accordance with the requirements in 45 CFR 164.410, in the case of a Breach of Unsecured PHI, Contractor shall notify the Exchange of such a breach, within (4) calendar days of becoming aware of Breach involving Unsecured PHI.

In any case in which there has been an unauthorized disclosure of PHI that does not rise to the level of a breach, as set forth in 45 CFR 164.402, the Contractor shall, nevertheless report any such disclosure to the Exchange within four (4) calendar days of becoming aware of such disclosure.

(i) Notice to the Exchange required by this Paragraph T shall include: (i) to the extent possible, the names of the individual(s) whose PHI or Unsecured PHI has been, or is reasonably believed by Contractor to have been accessed, acquired, used or disclosed; (ii) a brief description of what happened including the date of the incident and the date of the discovery of the incident, if known; (iii) a description of the types of PHI that were involved in the incident; (iv) a brief description of what Contractor is doing or will be doing to investigate, to mitigate harm to the individual(s), and to protect against reoccurrences; and (v) any other information that the Exchange determines it needs to include in notifications to the individual(s) under 45 CFR § 164.404(c).

(ii) After receipt of notice, from any source, of a Breach involving Unsecured PHI used, disclosed, maintained, or otherwise possessed by Contractor or of a Breach for which Contractor is otherwise responsible, the Exchange exercising reasonable discretion, may: (i) require Contractor, at Contractor's sole expense, to use a written notice approved in advance by the Exchange to notify (a) the individual(s) affected by the Breach, in accordance with the notification requirements set forth in 45 CFR § 164.404 and, to the extent applicable, Cal Civ. Code

§ 1798.92, without unreasonable delay, but in no case later than sixty (60) days after discovery of the Breach; and (b) any other entities required to receive a notice under the HIPAA Regulations; or (ii) elect to provide notice to the individual(s) affected by the Breach and any other required notices. Contractor shall indemnify, hold harmless, and defend the Exchange from and against any and all costs (including mailing, labor, administrative costs, vendor charges, and any other costs determined to be reasonable by the Exchange in its sole discretion), losses,

penalties, fines, and liabilities arising from or associated with the Breach, including without limitation, (a) damages resulting from any action under Cal. Civ. Code 56.35 or 56.36, 1798.84; and (b) the costs of the Exchange actions taken to: (i) notify the affected individual(s) and other entities of and to respond to the Breach; (ii) mitigate harm to the affected individual(s); and (iii) respond to questions or requests for information about the Breach.

U. Procedure Upon Termination

Upon termination of this Agreement, Contractor shall return or destroy all PHI that it maintains in any form and shall retain no copies of such information or, if the parties agree that return or destruction is not feasible, Contractor shall continue to extend the protections of this Agreement, including, but not limited to, this Section, to such information and limit further use of the information to those purposes that make the return or destruction of the information not feasible for so long as Contractor maintains such PHI.

V. Survival

The respective rights and obligations of Contractor under this Section shall survive the termination of this Agreement.

W. Interpretation

Any ambiguity in this Agreement shall be resolved to permit the Exchange to comply with HIPAA, the HITECH Act, or any other applicable laws or regulations.

23. Protection of Information Assets

A. The following terms shall be given the meaning shown:

- (iii) **“Information Assets”** means any information, including Confidential Information, necessary to the operation of either party that is created, stored, transmitted, processed or managed on any hardware, software, network components, or any printed form.
- (iv) **“Confidential Information”** includes, but is not limited, to any information (whether oral, written, visual or fixed in any tangible medium of expression), relating to either party’s services, operations, systems, programs, inventions, techniques, suppliers, customers and prospective customers (excluding the Exchange), cost and pricing data, trade secrets, know-how, processes, plans, reports, designs and any other information of or relating to the business or either party, including Contractor’s programs, but does not include information that (a) was developed at the direction or request of the Exchange; (b) is described in the Evidence of Coverage booklets; (c) was known to the Receiving Party before it was disclosed to the Receiving Party by the Disclosing Party, (d) was or becomes available to the Receiving Party from a source other than the Disclosing Party, provided such fact is evidenced in writing and the source is not bound by a confidentiality obligation to Disclosing Party,

or (e) is developed by either party independently of the other party's confidential information, provided that such fact can be documented.

- (v) **“Disclosing Party”** means the party who sends Information Assets that it owns to the other party for the purposes outlined in this Agreement.
- (vi) **“Receiving Party”** means the party who receives Information Assets owned by the other.

- B. The Receiving Party shall hold all Information Assets of the Disclosing Party in trust and confidence and will not use any of the Disclosing Party's Information Assets for any purpose, except as set forth in this Agreement, or as otherwise required by law, regulation or compulsory process.
- C. The Receiving Party must take all reasonable and necessary steps to prevent the unauthorized disclosure, modification or destruction of the Disclosing Party's Information Assets. The Receiving Party must, at a minimum, use the same degree of care to protect the Disclosing Party's Information Assets that it uses to protect its own Information Assets.
- D. The Receiving Party agrees not to disclose the Disclosing Party's Information Assets to anyone, except to employees or third parties who require access to the Information Assets pursuant to this Agreement, but only where such third parties have signed agreements regarding the Information Assets containing terms that are equivalent to, or stricter than, the terms of this section, or as otherwise required by law.
- E. In the event the Receiving Party is requested to disclose the Disclosing Party's Information Assets pursuant to a request under the California Public Records Act (PRA), a summons, subpoena or in connection with any litigation, or to comply with any law, regulation, ruling or government or public agency request, the Receiving Party shall, to the extent it may do so lawfully, give the Disclosing Party timely notice of such requested disclosure and afford the Disclosing Party the opportunity to review the request before Receiving Party discloses the Information Assets. The Disclosing Party shall, in accordance with applicable law, have the right to take such action as it reasonably believes may be necessary to protect the Information Assets, and such action shall not be restricted by the dispute resolution process of this Agreement. If such request is pursuant to the PRA, the Exchange shall give Contractor sufficient notice to permit Contractor to consult with the Exchange prior to disclosure of any Confidential Information. This subdivision shall not apply to restrict disclosure of any information to the State of California or in connection with a dispute between the Exchange and Contractor or any audit or review conducted pursuant to this Agreement.
- F. The Receiving Party shall notify the Disclosing Party in writing of any unauthorized disclosure, modification or destruction of the Disclosing Party's Information Assets by the Receiving Party, its officers, directors, employees, contractors, agents or third parties. The Receiving Party shall make this notification promptly upon becoming aware of such disclosure, modification or destruction, but in any event, not later than four working days after becoming aware of the unauthorized disclosure, modification or destruction. After such notification, the Receiving Party agrees to cooperate reasonably, at the Receiving Party's expense, with the Disclosing Party to remedy or limit the unauthorized disclosure, modification or destruction and/or its effects.
- G. The Receiving Party understands and agrees the Disclosing Party may suffer immediate, irreparable harm in the event the Receiving Party fails to comply with any of its obligations under this Section, that monetary damages will be inadequate to compensate the Disclosing Party for such breach and that the Disclosing Party shall have the right to enforce this section by injunctive or other equitable remedies.

The provisions of this section shall survive the expiration or termination, for any reason, of this Agreement.

24. Protection of Personal Information

- A. Contractor and any person or entity, including, but not limited to, subcontractors acting on its behalf, shall maintain the confidentiality of all information and documents relating to Enrollees and Employers and shall ensure all Enrollee and Employer information is kept strictly confidential, and, as applicable, in accordance with federal and state law. All such information shall be treated as sensitive and proprietary, Contractor's confidentiality policies and procedures, applicable physician code of ethics, constitutional right of privacy, all applicable federal and state law and requirements of all applicable accrediting bodies.
- B. The Exchange shall be entitled to de-identified patient medical and pharmaceutical information in order to effectively oversee and administer the Plans.
- C. Contractor shall blind the identity of Enrollees when reporting data for training, research, publication, and/or marketing purposes unless a written release is obtained from the affected Enrollee or their authorized representatives. Contractor shall not release Enrollee information for such purposes if identities could reasonably be inferred from the information provided.
- D. Contractor shall comply with all Exchange Protection of Information policies as specified in accordance with the terms and conditions set forth herein and as detailed in Section X, Protection of Information Assets, including, but not limited to, executing non-disclosure agreements and other documents required by such policies and practices. Contractor shall also require any subcontractors to comply with all Exchange Protection of Information policies.
- E. To the extent that information subject to Protection of Information Assets, and this section, Protection of Personal Information, is also subject to HIPAA, HITECH Act, and Other Applicable Provisions, and in the event of a conflict or inconsistency between the requirements of the various applicable sections and attachments of this Agreement, Contractor shall comply with the provisions that provide the greatest protection against access, use or disclosure.

25. Nondiscrimination

During the performance of this Agreement, Contractor and its subcontractors, as well as their agents and employees, shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including Human Immunodeficiency Virus (HIV) and Acquired Immunodeficiency Syndrome (AIDS)), mental disability, medical condition (including health impairments related to or associated with a diagnosis of cancer for which a person has been rehabilitated or cured), age (40 or over), marital status, or use of family and medical care leave pursuant to federal law. Contractors and subcontractors, as well as their agents and employees,

shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors, as well as their agents and employees, shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900, et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0, et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a

part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

26. Statement of Compliance - Nondiscrimination

Contractor's signature affixed hereon and dated shall constitute a certification under the penalty of perjury under the laws of the State of California that Contractor has, unless exempted, complied with the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Code of Regulations, Section 8103, et seq.

27. Americans with Disabilities Act

By signing this Agreement, Contractor assures the Exchange that it complies with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C. 12101, et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

28. National Labor Relations Board Certification

Contractor, by signature hereto, does swear under penalty of perjury that no more than one final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court which orders Contractor to comply with an order of the National Labor Relations Board.

29. Drug-Free Workplace

Contractor hereby certifies under penalty of perjury under the laws of the State of California that Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350, et seq.) and will provide a drug-free workplace by taking the following actions:

- A. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- B. Establish a Drug-Free Awareness Program to inform employees about:
 - (i) The dangers of drug abuse in the workplace;
 - (ii) The person's or organization's policy of maintaining a drug-free workplace;
 - (iii) Any available counseling, rehabilitation and employee assistance programs; and,
 - (iv) Penalties that may be imposed upon employees for drug abuse violations.
- C. Every employee who works on the proposed Agreement will:
 - (i) Receive a copy of the company's drug-free policy statement; and,
 - (ii) Agree to abide by the terms of the company's statements as a condition of employment on the Agreement.

30. Child Support Compliance Act

For any contract in excess of \$100,000, the Contractor acknowledges in accordance therewith, that:

- A. The Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and,
- B. The Contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

31. Domestic Partners

Contractor certifies, for contracts in excess of \$100,000, that it is in compliance with Public Contract Code Section 10295.3 with regard to benefits for domestic partners.

32. Electronic Waste Recycling Act of 2003

The Contractor certifies that it complies with the requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with Section 42460 of the Public Resources Code, relating to hazardous and solid waste. Contractor shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.

33. Sweatfree Code of Conduct

- A. Contractor declares under penalty of perjury that no equipment, materials, or supplies furnished to the Exchange pursuant to the Agreement have been produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.
- B. Contractor agrees to cooperate fully in providing reasonable access to its records, documents, agents or employees, or premises if reasonably required by authorized officials of the State, the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under subsection A.

34. Recycling Certification

Contractor shall use, to the maximum extent economically feasible in the performance of the Agreement work, recycled products.

35. Benefit Determination Appeals

Contractor shall comply with state law respecting Enrollee appeals of benefit determinations.

ADMINISTRATIVE & OPERATIONAL REQUIREMENTS

36. Service Performance Guarantees

Contractor agrees to the Performance Measures set forth in Attachment 3, Performance Measures for Customer Service. Contractor shall submit to an annual review of Agreement compliance and operational performance, by an independent, third-party reviewer designated by the Exchange. Contractor and the Exchange shall share in the cost of these annual audits equally.

37. Disaster Recovery Plan

By February 28 of the current contract year, Contractor shall provide the Exchange with an annual summary of its disaster recovery plan as it relates to the Exchange and its Enrollees. This summary shall include:

- A. A general description of Contractor's disaster recovery plan.
- B. Specific details relating to how Contractor will safeguard Enrollees' enrollment records and deal with Enrollees who present to emergency rooms and other providers without their identification card during and after a disaster.
- C. Contractor's plan and timeline for reestablishing communication with Exchange staff after a disaster, including primary and backup contacts and contact information.
- D. Contractor's plan and timeline for resuming monthly data submission following a major disaster.
- E. A message for Enrollees related to what they should do if they are in a disaster area and need health care services.

38. Fraud and Abuse Detection and Prevention Reporting

By December 31 of each contract year, Contractor shall provide the Exchange with a description of its fraud and abuse detection and prevention programs and report total moneys recovered in the most recent 12-month period in relation to services provided to Exchange Enrollees. This description shall include an overview of fraud and abuse detection and prevention program activities conducted by Contractor and its contracted Providers, including any plans for changing, upgrading, or improving these programs.

39. Independent Medical Review

Contractor agrees to comply with the external independent medical review process that Enrollees can access when health care services have been denied, modified, delayed, or otherwise limited by Contractor or one of its contracting Providers.

40. Changing Service Area

Contractor agrees that it will not withdraw from any Service Area where Exchange Enrollees and

Employers are enrolled during any current annual term of this Agreement without Exchange approval. If Contractor experiences provider network disruptions or other similar circumstances that make it necessary for the Exchange Enrollees to change plans or Providers, Contractor agrees to provide advance notice to the Exchange and cooperate with the Exchange in planning for the orderly transfer of Exchange Enrollees as necessary. On an annual basis, and in conjunction with the establishment of Monthly Rates for each of the contract years, the Service Area listing set for in Attachments 2-A and 2-B shall be amended to reflect any changes in the Service Area of the health plan. Any such changes shall be effective as of January 1 of each of the contract years. In the event ZIP codes are added to the current Service Area by the US Postal Service, the parties agree such added ZIP codes shall be automatically included in the Service Area and shall be reflected in the next scheduled update of Attachments 2-A and 2-B.

41. Liability of Enrollee for Certain Charges

- A. Enrollees may receive covered services only from Participating Providers, except as otherwise provided in this Agreement.
- B. In the event Contractor fails to pay a Participating Provider, the Enrollee shall not be liable to the Participating Provider for any sums owed by Contractor.
- C. In the event Contractor fails to pay a non-Participating Provider or pays the non-Participating Provider less than the amount billed by the non-Participating Provider, the Enrollee may not, under the circumstances described herein, be held liable to the non-Participating Provider for the cost of services, except for authorized copayments. Contractor hereby acknowledges that the contract of participation between itself and its Providers need not be in writing, but may arise under the facts and circumstances of service delivery. Contractor hereby acknowledges that, even though it may not have signed a written contract with a particular Provider, it will be liable for payment if that Provider delivers covered emergency or urgent care services to an Enrollee or upon referral by an actual or ostensible agent of Contractor. Contractor hereby acknowledges that it is liable for payment to non-Participating Provider if the non-Participating Provider delivers, in conjunction with a Participating Provider, covered services authorized by the Contractor.

42. Services Non-Transferable

No person other than the Enrollee is entitled to receive hospital services and benefits and surgical and medical benefits furnished under this Agreement. Such right to services and benefits is not transferable.

43. Submission and Maintenance of Service Area ZIP Code Listing

- A. In the preparation of the Service Area Listing (Attachment 2), Contractor shall use commercially reasonable and mutually agreed upon US Postal Service ZIP code reference sources, including County codes and split ZIP codes, as specified by the Exchange. Split ZIP codes mean ZIP codes split across two rating regions and ZIP codes split across two counties, one of which may not be part of Contractor's licensed service area.
- B. Contractor shall submit the Service Area listing prior to the annual Open Enrollment period by the date specified by the Exchange and shall cooperate with the Exchange to resolve and ZIP code discrepancies within the time period specified by the Exchange. This

Service Area listing shall include a list of split ZIP codes that are part of Contractor's Service Area.

- (i) In the case of ZIP codes split across two rating regions, Enrollees shall be defaulted to the lower-cost region if Contractor is licensed to operate in that region. If Contractor is not licensed in the lower-cost region, then the Exchange shall not allow Enrollees to enroll in the Contractor's plan. If Contractor does not have a license to provide service in both counties covered by a split ZIP code, the Exchange will assign the Enrollees to the region in the plan's Service Area, even if it is the higher-cost region.
 - (ii) In the case of ZIP codes split across two or more counties where Contractor is licensed to operate only in one of the two counties, Enrollees shall be enrolled only in the Contractor's plan in the portion of the ZIP code within Contractor's licensed Service Area.
- C. Contractor shall maintain the accuracy of its Service Area listing (Attachment 2) during the term of this Agreement by immediately notifying the Exchange of any changes to the ZIP codes included in its Service Area listing of which Contractor becomes aware.
- D. If the Exchange notifies Contractor of any ZIP code changes that may affect Contractor's Service Area listing (Attachment 2), Contractor shall confirm whether these changes affect its Service Area listing within the reasonable time period specified by the Exchange.

44. Association Disclosure

The Exchange hereby expressly acknowledges its understanding that this Agreement constitutes a contract between the Exchange and Contractor. The Exchange further acknowledges and agrees that it has not entered into this Agreement based upon representations by any person other than Contractor and that no person, entity, or organization other than Contractor shall be held accountable or liable to a Provider for any of Contractor's obligations to the Exchange created under this Agreement. This paragraph shall not create any additional obligations whatsoever on the part of Contractor other than those obligations created under other provisions of this Agreement.

45. American Indians and Alaska Natives

- A. The Exchange shall determine whether applicants are eligible American Indians or Alaska Natives (Indians).
- B. Contractor shall cover items or services furnished through Indian Health Providers to Indians with no cost-sharing as described in ACA Section 1402(d)(2).
- C. Contractor shall not impose any cost-sharing on Indians under three hundred (300) percent of federal poverty level.
- D. Contractor shall provide monthly special enrollment periods for Indians enrolled through the Exchange.
- E. Contractor shall comply with Indian Health Care Improvement Act Sections 206 (25 U.S.C. 1621e) and 408 (25 U.S.C. 1647a).

46. Customer Service Obligations

Superior customer service is an Exchange priority. The Exchange and Contractor shall work closely together to ensure the needs of Exchange Enrollees are met. Contractor shall provide and maintain all systems to ensure record protection and uninterrupted service to the Exchange and its Enrollees.

A. Customer Service Call Center

- (i) Contractor shall operate a call center staffed by highly trained individuals to provide detailed benefit information, answer Enrollee questions about the QHP, and resolve claim and benefit issues.
- (ii) Contractor shall use a telephone system that includes welcome messages in English and Spanish. The customer service representatives staffing the call center shall include bilingual (English and Spanish) representatives, and shall be trained to contact the telephone interpreter service for other non-English speaking Enrollees.
- (iii) Translation/interpreter services shall be available for non-English speaking or hearing-impaired Enrollees during regular business hours. Contractor shall monitor the quality and accessibility of call center services on an ongoing basis. Contractor shall report to the Exchange, in a format and frequency to be determined by the Exchange, on the volume of calls received by the call center and Contractor's ability to meet the Performance Guarantees.
- (iv) Contractor shall maintain the hours of operation for the call center that are specified in the Administrative Manual. This shall include extended hours to correspond to the Exchange's call center hours during open enrollment periods.

B. Exchange Customer Service Transfers

During Contractor's regularly scheduled customer service hours, Contractor shall facilitate a live transfer (from the Exchange to Contractor) of customers who call the Exchange with issues or complaints that need to be addressed by Contractor.

- (i) Examples of issues or complaints include but are not limited to premium billing or claims issues; benefit coverage questions (before and after enrollment); complaints; network or provider details; and Issuer-specific questions or issues.
- (ii) Contractor shall refer Enrollees and applicants with questions regarding premium tax credit and Exchange eligibility determinations to the Exchange's website or Service Center, as appropriate.
- (iii) Contractor shall work with the Exchange to develop a mechanism to track handling and resolution of calls referred from the Exchange to Contractor (such as through the use of call reference numbers).

C. Customer Care

- (i) Contractor shall comply with the requirements of the Americans with Disabilities Act and provide culturally competent customer service to all Exchange enrollees.

- (ii) Contractor shall comply with HIPAA rules respecting privacy and security, as well as establish protocols for handling Exchange customers who have documented domestic violence or other security concerns. Contractor shall file these protocols with the Exchange yearly.

D. Notices

- (i) For all notices sent to Enrollees regarding rates, benefit design, network changes, or security/HIPAA references, Contractor shall submit an electronic copy to the Exchange at least five (5) business days in advance of the message transaction. If Contractor is unable to notify the Exchange in advance due to federal or state notice requirements, Contractor shall send the Exchange notification simultaneously.
- (ii) Contractor shall provide a link to the Exchange website on its website.
- (iii) When Contractor provides director contacts for getting membership assistance, Contractor shall also include the Exchange website for Exchange-related issues.
- (iv) All legally required notices sent by Contractor to Enrollees shall be translated into the thirteen (13) Medi-Cal threshold languages.
- (v) Contractor shall release notices in accordance with federal and state law and as specified in the Administrative Manual. All such notices shall meet the accessibility and readability standards in the Exchange regulations located in California Code of Regulations, Title 10, Sections 6400 et seq.

E. Issuer-Specific Information

- (i) Upon request, Contractor shall provide training materials and participate in Exchange customer service staff training.
- (ii) Contractor shall provide summary information about its administrative structure and the QHPs offered on the Exchange. This summary information will be used by Exchange customer service staff when referencing Contractor or QHP information. The Exchange will develop a form to collect uniform information from Contractor.

F. Customer Service Quality Performance Guarantees

Contractor shall monitor the quality and accessibility of the Enrollee call center services on an ongoing basis and report to the Exchange, in a format and frequency determined by the Exchange, on Contractor's ability to meet the Performance Guarantees for customer service.

G. Plan Materials

- (i) Contractor shall provide or make available to Enrollees Plan materials as directed by the Exchange, including but not limited to information brochures, the Summary Plan Description and related communication materials. Prior to use, all Plan materials shall be submitted to the Exchange for review and approval, including proposed updates or amendments.
- (ii) Enrollee materials shall be available in English and Spanish. Contractor shall translate all written materials for Enrollees into Spanish and any language representing the preferred mode of communication for 3,000 or more Enrollees as

indicated on the enrollment file. Contractor shall ensure that Enrollees who are unable to read the written materials have an alternate form of access to the contents of the written materials. Enrollee materials shall be written in plain language, as that term is defined in the Regulations. Plan materials that require Exchange review and approval before usage are those that communicate specific eligibility and enrollment information to Enrollees. Such materials include, but are not limited to,

- a. Welcome letters
- b. Billing notices and statements
- c. Notices of action
- d. Termination letters
- e. Other materials required by the Exchange.

(iii) New Enrollee Enrollment Packets

- a. Contractor shall mail enrollment packets to all new Enrollees within ten (10) business days of receiving enrollment verification from the Exchange. Contractor shall report to the Exchange, in a format and frequency determined by the Exchange, on the number and accuracy rate of identification cards that were sent to new Enrollees and Contractor's compliance with the Performance Guarantees set forth in this Agreement. The enrollment packet shall consist of the following:
 - i. Welcome letter;
 - ii. Enrollee ID card;
 - iii. Benefit summary;
 - iv. Pharmacy benefit information;
 - v. Nurse advice line information; and
 - vi. Other materials required by the Exchange.
- b. Contractor shall maintain sufficient numbers of enrollment packet materials, Summary Plan Descriptions, claim forms and other Plan-related documents in both English and Spanish to meet all requirements of this Agreement for timely mailing and delivery of Plan materials to Enrollees. Contractor shall be responsible for storing and stocking all materials.

(iv) Summary Plan Description

Contractor shall develop and maintain a Summary Plan Description which shall be available to Enrollees online and shall be sent to Enrollees on request. The Summary Plan Description online and the hard copy sent to Enrollees on request shall be available to Enrollees in English and Spanish. Contractor shall update the Summary Plan Description annually Contractor shall make the Summary Plan Description available to Enrollees at the time of their enrollment in the Plan, and annually thereafter at renewal if Plan benefits are modified, and as otherwise directed by the Exchange.

(v) Electronic Listing of Participating Providers

Contractor shall create and maintain an electronic listing of all Participating Providers and make it available online for Plan Enrollees, potential Enrollees, and Participating Providers, 24 hours a day, 7 days a week.

(vi) Enrollee Identification Card

No later than 10 days after receiving enrollment information from the Exchange, Contractor shall distribute to each Enrollee an identification card that is consistent with industry standards and approved by the Exchange.

(vii) Access to Medical Services Pending ID Card Receipt

Contractor shall promptly coordinate and ensure access to medical services for Enrollees who have not received ID cards but are eligible for services.

(viii) Explanation of Benefits

Contractor shall send each Enrollee, by mail, an Explanation of Benefits (EOB) for all Participating and Non-participating Provider services unless an Enrollee affirmatively asks for an electronic EOB.

(ix) Secure Plan Website for Enrollees and Providers

Contractor shall maintain a secure web site, 24 hours, 7 days a week. All content on the secure Enrollee website shall be available in English upon implementation of Plan and in Spanish within thirty (30) days after the Effective Date. The secure web site shall contain information about the Plan, including, but not limited to, the following:

- a. Cumulative benefit statements;
- b. Ability for Enrollees to view their claims status;
- c. Ability to respond via e-mail to customer service issues posed by Enrollees and Participating Providers;
- d. Ability to provide online eligibility and coverage information for Participating Providers;
- e. Support for Enrollees to receive Plan information by e-mail; and
- f. Enrollee education tools and literature to help Enrollees understand health costs and research condition information.

H. Standard Reports

Contractor shall submit standard reports as described below, pursuant to timelines, periodicity, rules, procedures, and policies established by the Exchange, which may be amended from time to time. The Exchange shall include the full list of standard reports in the Administrative Manual. Standard reports shall include, but are not limited to:

- (i) Enrollee customer service reports including phone demand and responsiveness, first call resolution, response to written correspondence, and number/accuracy/timeliness of ID card distribution;

- (ii) Nurse advice line volume, talk time, and topics discussed;
 - (iii) Use of Plan website;
 - (iv) Quality assurance activities;
 - (v) Any reports provided to the federal government and other customers;
 - (vi) Enrollment reports; and
 - (vii) Premiums collected.
- I. Limited Customer Service for Enrollees
Contractor shall provide limited customer service functions and customer service call center accessibility as mutually agreed by the Parties.
- J. Performance Guarantees for Subcontractors
Contractor shall, as applicable, ensure that all Subcontractors comply with all Agreement requirements and Performance Guarantees, including, but not limited to, those related to Customer Service. Subcontractor's failure to comply with Agreement requirements and all applicable Performance Guarantees shall result in specific remedies referenced in Attachment 3 applying to Subcontractor.
- K. Exchange Training of Staff
- (i) Contractor shall arrange for and conduct Exchange staff training regarding the administrative functions and operations including the systems used for the program in accordance with federal and state requirements.
 - (ii) Contractor shall provide the Exchange with a monthly calendar of Exchange staff trainings. Contractor shall make available training slots for Exchange staff upon request.
- L. Customer Service Training Process
Contractor shall demonstrate to the Exchange that it has in place initial and ongoing customer service protocols, training, and processes to appropriately interface with and participate in the Exchange. As part of this demonstration, Contractor shall permit the Exchange to inspect and review its training materials. The Exchange will share its customer service training modules with Contractor.

AGENTS

47. Agent and General Agent Commissions

- A. In the individual Exchange, Contractor must use the same agent compensation programs as it uses for business sold outside of the Exchange.
- B. For enrollment through the SHOP, Contractor agrees to a standard agent commission rate defined by the Exchange in the administrative manual. The Exchange will contract with multiple general agents to represent the SHOP beginning in 2014. Contractor agrees to a standard general agent override commission for authorized general agents.

- C. Contractor shall include Exchange business, including individual Exchange and SHOP business, in an agent's total enrollment count for payments for volume-based incentive payments and similar incentive programs.
- D. Effective January 1, 2014, in the event Contractor has grandfathered contracts with agents to pay them commissions at higher rates than the rate generally prevailing in the market, Contractor shall pay all agents, whether they sell individual products inside or outside the Exchange, the generally prevailing market rate.

48. Agent Appointments

- A. Contractor shall maintain a reasonable appointment process for appointing new agents that are trained and certified by the Exchange for Exchange products. Contractor shall accept agent appointments submitted by the SHOP on behalf of agents under a master agreement or a business entity on behalf of agents as permitted by State and Federal law. Contractor shall not appoint agents to sell products in the SHOP.
- B. In the individual Exchange, Contractor shall be responsible for appointing agents directly in accordance with its own independent practices and procedures.
- C. Contractor may appoint an agent to sell Exchange-based products only if the agent is certified by the Exchange.

NETWORK AND ESSENTIAL COMMUNITY PROVIDER ADEQUACY

49. Network Selection

Contractor shall submit to the Exchange, upon request, its criteria for selection of Physician Providers and its standards for the continuing education of Physician Providers and professional health care staff. Contractor shall give access to the Exchange any or all Participating Provider contracts, with or without payment terms, and shall submit copies of such contracts to the Exchange's audit/actuarial firms, including payment terms, in accordance with the audit provisions set forth herein.

50. Network Disruption Policy

- A. Contractor and the Exchange agree to the following policies and practices to ensure that the stability and continuity of Enrollees' health care is not disrupted by changes in Contractor's provider networks. It is further recognized that should disruptions occur, every reasonable effort is to be made by Contractor and its Participating Providers to minimize the amount of uncertainty, disruption, and inconvenience of Enrollees in preparation of and execution of the transition of care. Contractor agrees to maintain adequate records, satisfactory to the Exchange, documenting compliance with these requirements.
- B. Contractor shall make reasonable efforts to include language in all new or renewing Provider contracts starting that, in the event the contract terminates, through expiration at its termination date or by a party's exercise of termination rights, the Provider(s) will, unless otherwise agreed to by the Exchange, continue to treat all Exchange Enrollees on the same terms as if the contract continued in effect, through the end of the Enrollees' current benefit year (most often December 31).

- C. Contractor shall alert the Exchange of potential Provider disruption by telephone or electronic mail (email) as soon as possible. Once facts and details are known, Contractor will notify the Exchange in writing by email, facsimile, or letter. The following information for each Provider disruption shall be submitted:
- (i) Name of terminating Physician/Medical Group/IPA.
 - (ii) Name of county affected by the termination.
 - (iii) Number of physicians who are terminating.
 - (iv) Number of Exchange Enrollees affected by the termination by plan and by county.
 - (v) Effective date of termination.
 - (vi) Copy of notification letter sent to affected Enrollees.
 - (vii) Names of remaining Medical Groups/IPAs available to Enrollees and who are accepting new patients.
 - (viii) Changes to network Hospitals. Indicate the current Hospital and the remaining available Hospitals, distances, and availability of major service providers.
- D. In the event of a disruption in Contractor's Provider network without cause, Contractor will be liable for all costs incurred by the Exchange as a result of such disruption. In addition, the Exchange reserves the right to recoup from Contractor any administrative costs incurred by the Exchange's participating Employer Groups where network disruptions are of sufficient magnitude, above the mean for all plans, or are of an unacceptable frequency. The Exchange will determine costs.
- E. Contractor and the Exchange agree to meet and confer to determine what actions are necessary as a result of the disruption in Contractor's Provider network.

51. Alternate Arrangements

- A. Contractor agrees to make a reasonable effort to secure alternate arrangements for the provision of care by another Participating Provider without additional expense to the Enrollee under the following circumstances:
- (i) In the event a Participating Provider's contract is terminated; or
 - (ii) In the event a Participating Provider is unable or unwilling to provide care to any Enrollee, except as provided by this Agreement.

- B. If such alternate arrangements are not made available, or are not deemed satisfactory to the Exchange due to problems of access or quality of care, then Contractor agrees to provide all services and/or benefits of this Agreement to the Enrollee on a fee-for-service basis. In such an event, Contractor will reimburse Enrollees for such fees, less any deductible or copayment specified in this Agreement, and the limitation contained herein with respect to use of a Participating Provider shall be of no force or effect.
- C. If services or benefits are provided on a fee-for-service basis, they shall continue until any affected treatment plan has been completed or until such time as the patient agrees to obtain services from another Participating Provider for the same condition or treatment plan, his or her enrollment is terminated, or enrollment is transferred to another plan offered through the Exchange, whichever occurs first. In no case, however, will such fee-for-service arrangement continue beyond the term of this Agreement except as provided in this Agreement.
- D. The Exchange recognizes that PPOs have an out-of-network benefit and that certain providers will not participate. As long as this is clearly disclosed to the Enrollee and the Enrollee knowingly seeks care from a non-participating provider, the out-of-network benefit provisions may be applied by Contractor.

52. ACA and CA ACA Compliance

A. Network Adequacy

Contractor's QHPs shall comply with the network adequacy standards in 45 C.F.R. 156.230 and all state network adequacy requirements

B. Essential Community Providers

Contractor shall contract with essential community providers in numbers and at rates described in 45 C.F.R. 156.235.

53. Notice Regarding Participating Provider Network Changes

- A. Contractor shall notify the Exchange of any pending material change in the composition of its Participating Provider network, or its Participating Provider network contracts, at least sixty (60) calendar days prior to the implementation of such change or immediately upon Contractor's knowledge of change if knowledge is acquired in less than sixty (60) calendar days.
- B. Contractor shall advise Primary Care Physicians at least sixty (60) calendar days prior to the implementation of any termination of a contract, or immediately upon Contractor's knowledge of such termination, by either Contractor or any Participating Provider to whom the Primary Care Physician makes referrals. It shall be the responsibility of Contractor to assure that Primary Care Physicians do not make referrals to non-contracting Providers without prior approval of Contractor.
- C. If a Primary Care Physician terminates his or her contract, Contractor shall notify his or her patients who are Exchange enrollees that he or she will no longer be a contracting provider at least sixty (60) calendar days prior to the contract termination or immediately upon Contractor's knowledge of the termination if knowledge is acquired in less than sixty (60)

calendar days. Contractor shall make reasonable efforts to obtain the signature of the Primary Care Physician (or the authorized representative of the applicable contracted medical group or independent practice association) on such notification.

COMMUNICATIONS TO ENROLLEES

54. Information Mailed to Exchange Enrollees

Contractor shall provide the Exchange with at least one (1) copy, unless otherwise specified, of any information Contractor intends to mail to all Exchange Enrollees, including, but not limited to, Evidence of Coverage and disclosure forms, enrollee newsletters, new enrollee materials, health education materials, and special announcements.

- A. These copies shall be sent to:

California Health Benefit Exchange
560 J Street, Suite 290
Sacramento, CA 95814

- B. Contractor will provide copies of these documents to the Exchange for review and approval at least fourteen (14) business days prior to mailing to Enrollees.
- C. In the case of new enrollee materials which are mailed to Enrollees throughout the year, Contractor shall mail a sample of current new enrollee materials to the Exchange, as indicated above, 45 days prior to the plan year's Open Enrollment period.
- D. By January 31 of the current contract year, Contractor shall provide the Exchange with a schedule of enrollee mailings planned for the contract year and shall provide an updated schedule as necessary at least quarterly.

55. Grievance Process

Contractor shall establish and maintain a grievance process that shall comply with applicable provisions of the Health & Safety Code and Insurance Code. Contractor shall issue a written disposition of the grievance within thirty (30) days of its receipt of the enrollee's complaint.

- A. For grievances involving the delay, denial, or modification of health care services, Contractor's written responses to Enrollees shall describe the criteria used and the clinical reasons for its decision, including all criteria and clinical reasons related to medical necessity. If Contractor provides a decision that delays, denies, or modifies health care services because it is not a covered benefit under this Agreement, the decision shall clearly specify the provisions in the Evidence of Coverage booklet that excludes that coverage. Furthermore, Contractor shall provide an opportunity to reach a settlement.
- B. If the Enrollee has either completed Contractor's internal grievance process, or has participated in it for at least thirty (30) days, and if the issue is regarding an eligibility or a coverage decision, and the decision to deny or approve health care services is substantially based on a finding that the provision of a particular service is included or excluded as a covered benefit under the terms and conditions of the Evidence of Coverage booklet, the Enrollee may request an administrative hearing before the Exchange by the appeal procedures described in the Health & Safety Code and Insurance Code, as applicable. This type of decision does not include a plan's decision or contracting provider decision regarding a disputed health care service as described below.

- C. For coverage issues, Contractor will notify the Enrollee of his or her right to request review by the Department of Managed Health Care or the Department of Insurance, as applicable. In addition the Enrollee will be informed by Contractor that as an alternative to the hearing process, the Enrollee may submit the matter to Small Claims Court if the coverage dispute is within the jurisdictional limits.
- D. For a disputed health care service, the Enrollee may request an independent medical review from the Department of Managed Health Care or the Department of Insurance, as applicable. A disputed health care service issue concerns any health care service eligible for coverage and payment under the Evidence of Coverage booklet that has been delayed, denied, or modified in whole or in part due to a finding that the service is not medically necessary. A disputed health care service relates to the practice of medicine and is not a coverage issue, and includes decisions as to whether a particular service is experimental or investigational.
- E. If the Enrollee is dissatisfied with the outcome of the independent medical review process, the Enrollee may proceed directly to court. In the event the issue is one of malpractice or bad faith, the Enrollee may proceed directly to court.

56. Identification Cards

Identification cards are to be issued to the Enrollees in accordance with the standards set forth in Attachment 3 hereto. Possession of a Contractor identification card confers no right to services or benefits of this Agreement, as set forth in Section **X**, Persons Entitled to Benefit. Any person receiving services or benefits to which he or she is not then entitled pursuant to the provisions of this Agreement is chargeable therefore at prevailing rates. In the SHOP, Contractor shall include the Employer's name as communicated to the Exchange on Employees' identification cards.

57. Mailing Responsibility

- A. Contractor agrees to mail, or otherwise deliver, the open enrollment publications developed and printed by the Exchange to Enrollees prior to the Open Enrollment Period or special enrollment period. Contractor shall be responsible for the mailing and printing cost associated with these publications. Such mailings shall not include Employers and Enrollees who have notified the Exchange that they will not continue to purchase coverage through the Exchange for the following year.
- B. Contractor's financial responsibility for the mailing and printing costs shall be based upon Contractor's total Enrollee enrollment for each calendar year. Contractor will be invoiced for these costs, and Contractor will remit payment to the Exchange
- C. Contractor agrees to mail a postcard or brochure to all Enrollees informing them of their option to access the Evidence of Coverage online or request a hard copy. The post card or brochure must include the following options for obtaining an EOC:

- (i) Call a dedicated toll-free number to request a hard copy.
 - (ii) Provide the appropriate Internet address to access the electronic copy.
- D. Contractor must obtain the Exchange's approval of the post card or brochure prior to printing and mailing it to Enrollees.

58. Mailing Addresses

Contractor shall submit, upon request, and according to the Exchange's specifications, the mailing addresses or mailing address labels for the Exchange Enrollees enrolled in the plan.

59. Evidence of Coverage Booklet on Contractor's Web Site

If Contractor will continue offering Qualified Health Plans through the Exchange during the year following the term of this Agreement, Contractor shall make the Evidence of Coverage booklet for the next benefit year available on Contractor's web site no later than the first day of the Open Enrollment Period. The Evidence of Coverage booklet for the current benefit year shall remain on Contractor's web site through December 31 of the current benefit year.

60. Out-of-Network Services

- A. Contractor shall provide the Enrollee the amount it will pay for covered proposed non-emergent out-of-network services when requested by the Enrollee.
- B. Contractor shall require its network providers to inform every Enrollee when a network provider proposes to use a non-network provider or facility or to refer an Enrollee to a non-network provider or facility for proposed non-emergent covered services. Network providers shall disclose to the Enrollee who is proposing or considering using out of network non-emergent services if a non-network provider or facility will be used as part of the network provider's plan of care.

ELIGIBILITY AND ENROLLMENT: GENERAL PROVISIONS

61. Enrollment and Eligibility Information

The Exchange agrees to furnish copies or electronically provide all enrollment forms and enrollment change forms to Contractor. A completed and delivered enrollment form is effective as to the eligible persons listed thereon until termination of enrollment as provided herein. The parties agree that Contractor may rely upon the accuracy of current eligibility information as may be furnished by the Exchange during the term of this Agreement. Changes to eligibility information submitted by Employers or Enrollees shall be accepted only when confirmed by the Exchange.

62. Covered Services and Benefits

- A. Unless otherwise stated, the benefits and services described in the attached Evidence of Coverage and Disclosure Form booklets (Attachment 1-A for QHP Plan 1, Attachment 1-

B for QHP Plan 2, and Attachment C are hereby incorporated by reference as if fully set forth herein and shall apply for calendar year 2014). The parties understand that terms of coverage under this Agreement are fully set forth in these booklets.

- B. In the case of conflicts, terms of coverage set forth in the applicable Evidence of Coverage booklet shall be binding notwithstanding any provisions in the Agreement which are less favorable to the Enrollee.
- C. Upon notification by the Exchange that the booklet contains provisions that are in conflict with this Agreement, Contractor shall amend the booklet and/or provide notice of the changes to Enrollees.
- D. Changes to benefits and services may, as necessary, be made for each subsequent year to incorporate changes (1) required as a result of changes in state or federal law or regulations; (2) imposed by regulators; (3) required by the Exchange; or (4) recommended by Contractor and agreed to by the Exchange. Contractor will prepare new Evidence of Coverage booklets and, upon approval of the documents by the Exchange and the health insurance regulators, as necessary, may issue an addendum to this Agreement to add the documents as new Attachments 1-A, 1-B, 1-C, and 1-D for the new Agreement year. The projected cost of such benefit changes will be included in the cost of health care projections made in order to establish the monthly rates set forth in Attachment 6 hereto.

63. Reporting Requirements

Contractor shall comply with all reporting requirements in federal regulations, including, but not limited to, the requirements in Title 26 of the Code of Federal Regulations.

ENROLLMENT PROVISIONS FOR THE INDIVIDUAL EXCHANGE

64. Eligibility for Enrollment

All individuals who are eligible in accordance with the Act, CA ACA, and Regulations may enroll hereunder as permitted by law.

65. Conditions of Enrollment

- A. Each individual Enrollee who files a properly completed application during an Open Enrollment Period or any special enrollment period shall be deemed enrolled if all other eligibility conditions are met.
- B. Each individual Enrollee must reside within Contractor's Service Area.
- C. If an individual applicant fails to enroll during an Open Enrollment Period, then he or she may apply to enroll during a special enrollment period for which the individual has been determined eligible. In such case, the individual applicant's eligibility will be determined in accordance with the Exchange's special enrollment procedures.

- D. Contractor shall notify the Exchange if it determines that an individual Enrollee enrolled in Contractor's QHP does not meet the residence requirements within Contractor's Service Area.
- E. Each Enrollee is subject to Premium payment rules as set forth in the Financial Provisions of this Agreement.
- F. Contractor must reconcile enrollment information with premium payment information.
- G. Contractor shall abide by the Exchange's regulations (located at California Code of Regulations, Title 10, Section 6400 et seq.) with respect to eligibility and enrollment.

66. Commencement of Coverage

After an applicant fulfills the conditions of enrollment specified in Section X, coverage shall commence at 12:01 a.m. on the applicable date.

67. Individual Termination of Coverage

- A. Coverage may be terminated for individual Enrollees by voluntary cancellation.
- B. Coverage may be terminated for individual Enrollees because of loss of eligibility.
- C. Coverage will be terminated for individual Enrollees upon a change in enrollment.
- D. Coverage will be terminated for an individual's non-payment of premium, subject to applicable grace periods as further specified in the Administrative Manual.

68. Special Enrollment Periods

Subject to 45 C.F.R. § 155.420, some individual applicants may be eligible for special enrollment periods. Contractor agrees to accept new individual Enrollees who are eligible for a special enrollment period at the existing monthly rates set forth in this Agreement. In addition, in the event of a Provider Network disruption of another QHP issued by a different Contractor, Contractor agrees to accept new Enrollees at the existing monthly rates set forth in this Agreement.

69. Compliance with State and Federal Eligibility and Enrollment Provisions

Contractor shall comply with all federal and state eligibility and enrollment statutes and regulations, including, but not limited to, 45 C.F.R. Part 155 Subparts D and E and California Code of Regulations, Title 10, Sections 6400 et seq.

70. Consumer's Enrollment Period Trial Rights

If an individual Enrollee who has enrolled in a Qualified Health Plan is not satisfied with the Qualified Health Plan he or she is enrolled in for any reason, the Enrollee shall have sixty (60) calendar days from the effective date of coverage to change his or her Qualified Health Plan. The Enrollee shall notify the Exchange in writing or by telephone of his or her intent to disenroll from the Qualified Health Plan and to enroll into another Qualified Health Plan that is available in his or her Exchange Service Area. The Enrollee may not change actuarial metal tiers when exercising rights under this provision, but must enroll into another Qualified Health Plan at the same actuarial metal tier.

ENROLLMENT PROVISIONS FOR SHOP

71. Eligibility for Enrollment

All Employees, and their Family Members, of Employers who are eligible in accordance with the Act, CA ACA, and Regulations may enroll hereunder as permitted by law. Contractor shall accept SHOP enrollments from small businesses determined to be eligible for coverage in the SHOP in accordance with Exchange policies and State and Federal laws.

72. Conditions of Enrollment

- A. Each Employee of Employers who file a properly completed application in accordance with 45 C.F.R. Part 155, Subpart H shall be deemed enrolled. Contractor also shall accept SHOP applications from Employees' Family Members determined eligible for coverage by the Exchange.
- B. To be determined eligible, an Employer must have its principal business address or a primary worksite within Contractor's Service Area, subject to 45 C.F.R. 155.710.
- C. Contractor shall notify the Exchange if it determines that an Employee enrolled in Contractor's QHP does not meet the work requirements within Contractor's Service Area.
- D. Each Employee and Employer is subject to premium payment rules as set forth in the Financial Provisions of this Agreement.
- E. Contractor must reconcile enrollment information with premium payment information, as further detailed in the Administrative Manual.
- F. Contractor shall abide by the Exchange's regulations (located at California Code of Regulations, Title 10, Section 6400 et seq.) with respect to eligibility and enrollment.

72. Initial Group Applications

Contractor shall accept initial Group applications effective either on the 1st or 15th of a month with application timelines defined by the Exchange in the Administrative Manual.

73. Commencement of Coverage

After an applicant fulfills the conditions of enrollment specified in Section X, coverage shall commence at 12:01 a.m. on the applicable date. Contractor shall process and accept enrollments in accordance with the Exchange's policies and guidelines.

74. Termination of Coverage

- A. Coverage may be terminated for Employers and Employees by voluntary cancellation.
- B. Coverage may be terminated for Employers and Employees because of loss of eligibility.
- C. Coverage will be terminated for Employers and Employees upon a change in enrollment.
- D. Coverage may be terminated for non-payment of premiums, subject to applicable grace periods. Additionally, Contractor shall in some circumstances accept partial payment from an Employer and Employee, as further specified in the Administrative Manual.

75. Minimum Participation Rates

Contractor shall agree to minimum participation rates for Employers as defined by the Exchange in the Administrative Manual.

76. Federal and Cal-COBRA

Contractor shall comply with COBRA and Cal-COBRA

77. Off-Cycle Changes

Contractor shall accept changes to Employee and Dependent QHP enrollment other than during the Employer's Open Enrollment period for qualifying events as defined in Exchange policies and guidelines in the Administrative Manual.

GENERAL FINANCIAL PROVISIONS

78. Tax Reporting

The Exchange acknowledges and agrees that there may be tax reporting requirements as a result of normal business that will remain the Exchange's responsibility.

79. Funding Provisions

Contractor acknowledges and agrees that the terms of this Agreement are dependent upon the

availability of premium payments collected and that Contractor's responsibilities to provide insurance coverage to Enrollees in no way depends on the availability of federal or state funding. Contractor acknowledges and agrees that if Employers or Employees remit less than the full premium amount due, the amount remitted by the Exchange to Contractor for monthly premiums may be reduced accordingly.

80. Charges to Enrollees

Under no circumstances shall Contractor be entitled to collect from Enrollees and Employers above the premium amounts other than to recoup bank fees for non-sufficient funds transactions initiated by the Enrollee or Employer. Contractor shall provide its non-sufficient funds fee to the Exchange.

81. Delinquency and Termination Warnings and Notices

Contractor shall copy the Exchange on any delinquency or termination warning or notice sent to an Enrollee or Employer.

FINANCIAL PROVISIONS FOR THE INDIVIDUAL EXCHANGE

82. Schedule of Rates

- A. The Exchange and Contractor have agreed upon monthly premium rates. The Monthly Rates for plan year 2014-XXXX are set forth in [Attachment]. The premium amounts are based upon the total dollar amount necessary to support both the provision of insurance benefits by Contractor through a Qualified Health Plan and the Participation Fee.
- B. If the Term of this Agreement is longer than one year, the Monthly Rates for each subsequent year of the Agreement shall be established in accordance with the procedures set forth in [Attachment] hereto and the monthly rates set forth in [Attachment] will be superseded for the subsequent Agreement years by amendment as described in [Attachment].

83. Collection and Remittance

Contractor understands that Contractor is responsible for collection and the Enrollee is responsible for remittance of the agreed-upon premium rates in a timely manner. Contractor understands that individual Enrollees will remit their monthly premium payments directly to Contractor, and the Exchange will not aggregate premiums. Contractor further understands that the premium payment collected includes the Participation Fee due to the Exchange, which shall be billed and payable to the Exchange according to a schedule determined by the Exchange and specified in the Administrative Manual.

84. Consequences of Non-Payment of Premium

Contractor is responsible for enforcement of premium payment rules at its own expense, as outlined in the Evidence of Coverage, when an Enrollee fails to pay the premium in a timely manner as directed by the Enrollee policy agreement and in accordance with federal and state law. Enforcement includes but is not limited to delinquency and termination actions and notices, as well as grace period and partial payment rules. Additional rules, which will be further defined

in the Administrative Manual, may apply. Contractor shall notify the Exchange if it determines that an Enrollee has failed to pay the premium in a timely manner.

In the event Contractor terminates an Enrollee's coverage in a QHP because of non-payment of premiums, Enrollee no longer being eligible, fraud or misrepresentation, plan change, or QHP being decertified or no longer available, Contractor must include the Exchange-approved appeals language in its notice of termination of coverage to the Enrollee.

Contractor understands that the ACA and implementing regulations specify a grace period for individuals who receive the Premium Tax Credit through the Exchange and that the Knox-Keene Act and Insurance Code set a grace period for other individuals. Contractor agrees to abide by these grace periods.

FINANCIAL PROVISIONS FOR SHOP

85. Schedule of Rates

- A. The Exchange and Contractor have agreed upon monthly premium rates. The Monthly Rates for plan year 2014-XXXX are set forth in Attachment . The premium rates for SHOP are based upon the total dollar amount necessary to support the provision of insurance benefits by Contractor through a Qualified Health Plan and the Participation Fee, which in the SHOP includes a fee specified by the Exchange as necessary to support payment of Agent and General Agent commissions. Any Participation Fees due to the Exchange from Contractor shall be withheld by the Exchange before passing through any premium payments from Employers and Employees to Contractor.
- B. If the Term of this Agreement is longer than one year, the Monthly Rates for each subsequent year of the Agreement shall be established in accordance with the procedures set forth in Attachment hereto and the monthly rates set forth in Attachment will be superseded for the subsequent Agreement years by amendment as described in Attachment .
- C. Contractor shall be able to update rates no more than quarterly in accordance with a schedule to be determined by the Exchange
- D. Rates will be determined in accordance with Exchange policies, based on Federal and State law and outlined in the Administrative Manual.
- E. Rates for an Employer will be determined by Employer worksite.
- F. Rates for an Employer and all covered employees will be determined and frozen at initial enrollment or upon renewal for 12 months, until the next group renewal. Rates for all Employees including new Employees or Employees with qualifying events during the Employer Plan Year will be determined by the prevailing rates at group enrollment.

86. Collection and Remittance

Contractor understands that the Exchange is responsible for collection and the Employee and/or Employer is responsible for remittance of these monthly rates. The Exchange agrees to perform collection and aggregation of monthly premiums for Contractor and will remit said premiums, net of Participation Fees, including the fee associated with Agent and General Agent commissions to Contractor according to a schedule to be determined by the Exchange and included in the Administrative Manual.

87. Grace Period

Contractor understands that the Knox-Keene Act and Insurance Code set a grace period for the small group market. Contractor agrees to abide by these grace periods

QUALITY IMPROVEMENT AND DELIVERY SYSTEM REFORM

88. Primary Care and Preventive Services

- A. Contractor shall demonstrate to the Exchange that all new Enrollees are assigned to a Primary Care Provider or a Patient-Centered Medical Home within 45 days of enrollment. Contractor may offer an alternative approach to achieving this goal. The Exchange may substitute this requirement with an applicable HEDIS measure.
- B. Contractor shall demonstrate to the Exchange that at least **XX**% of new Enrollees receive a preventive services or equivalent visit within 120 days of enrollment. The Exchange may substitute this requirement with applicable HEDIS measures.

89. Enrollees with Existing Medical Needs

- A. Contractor shall identify Enrollees with chronic conditions and/or significant health needs and pro-actively arrange for these Enrollees to get needed care in a timely fashion.
- B. Contractor shall demonstrate to the Exchange its use of any or all of the following approaches: health assessment tools, data analytics and member self-identification to identify Enrollees most in need of timely treatment plans.
- C. Contractor must demonstrate its ability and mechanisms designed to identify all Enrollees with existing chronic conditions and significant health needs within 120 days of enrollment.
- D. Once such Enrollees are identified, Contractor must demonstrate that **XX** % of identified enrollees with chronic conditions or significant health needs are in a treatment plan within 60 days of identification.

90. Reporting Quality of Care Assessment

Contractor shall provide periodic reports that describe the types of care provided to Enrollees. Report requirements and formats will be outlined in the Administrative Manual.

Examples of these reports include:

- A. Claims and encounter data; volume by type of provider
- B. High-cost Enrollee reports

- C. Health Assessment Completion reports
- D. Preventive Services Visit reports
- E. Reports on episodes of care eligible for reinsurance reimbursement
- F. Out-of-network paid claims reports

91. Patient-Centered Care Initiatives and Enrollee Communication

- A. Contractor must provide Enrollees with current and real-time information on costs and quality of treatment provided (region-specific and provider-specific) including cost sharing incurred and remaining cost sharing.
- B. Contractor shall regularly communicate specific customized cost information to its enrollees which include out-of-pocket costs incurred or care used to date and progress towards satisfaction of deductible.
- C. Contractor shall use a clear and consumer-friendly Explanation of Benefits.
- D. Contractor shall adopt shared-decision-making practices for preference-sensitive conditions, including but not limited to breast cancer, prostate cancer, and knee and hip replacements, that feature patient-decision-making aids in addition to physician opinions and present trade-offs regarding quality or length of life. Contractor must report the percentage of Enrollees with identified health conditions above who received information that allowed the Enrollee to share in the decision-making process prior to agreeing to a treatment plan. These reports are due quarterly along with the other standard quality reports. The Exchange may substitute CAHPS measures for reporting on this requirement.
- E. Contractor must provide or make arrangements for language interpretation and translation services for its Enrollees at 1) point of care 2) contacting the QHP, and 3) accessing QHP providers.
- F. Contractor shall develop and deploy internal systems to ensure the availability of appropriate language proficiency at point of care and Enrollee support/services.

92. Quality and Access

- A. Contractor is encouraged to pursue new ways of increasing Enrollee access to medical care including robust telemedicine programs, delegation to nurse-practitioners and others. All programs must build in mechanisms to measure effectiveness.
- B. The Exchange shall work with Contractor to pilot innovative programs on a case-by-case basis.

93. Drug Formulary Changes

Contractor shall give the Exchange and its Enrollees prescribed a drug sixty (60) calendar days' written notice prior to the removal of the drug from formulary status. The notice shall also include a statement of the requirements of the Health & Safety Code and Insurance Code prohibiting Contractor from limiting or excluding coverage for a drug to an Enrollee if the drug had previously been approved for coverage by Contractor for a medical condition of the Enrollee, except under specified conditions. An exception to the notice requirement will be allowed when Contractor continues to cover a drug prescribed for an Enrollee without interruption and under the same conditions, including copayment and limits that existed prior to the removal of the drug from formulary status.

94. HEDIS Effectiveness of Care Performance Rates

Contractor shall collect and compile National Committee on Quality Assurance (NCQA)-approved Health Plan Employer Data and Information Set (HEDIS) Effectiveness of Care measure performance rates for its Exchange and Medicare populations.

95. CAHPS and HEDIS Score Reporting

Contractor shall report its scores on CAHPS and HEDIS measures, as required the Medi-Cal Managed Care Program.

96. Accreditation: National Committee on Quality Assurance or Utilization Review Accreditation Commission

- A. If Contractor does not already possess NCQA or URAC accreditation, Contractor shall obtain such accreditation no later than 2016.
- B. Contractor shall maintain its NCQA or URAC accreditation throughout the term of this Agreement. Contractor shall notify the Exchange of the date of any NCQA or URAC accreditation review scheduled during the period of this Agreement and the results of such review.
- C. Upon completion of any NCQA or URAC review conducted during the course of this Agreement, Contractor shall provide the Exchange with a copy of the NCQA or URAC Assessment Report within 45 days of receipt from NCQA or URAC.
- D. In addition to its overall NCQA or URAC accreditation rating, Contractor shall be expected to maintain a minimum rating of "accredited" in all of the current or future NCQA or URAC categories.
- E. If Contractor receives a rating of less than "accredited" in any NCQA or URAC category, Contractor shall notify the Exchange within three (3) business days of such rating(s) and is required to provide the Exchange with a written business plan identifying the corrective actions it is taking to raise the category rating to a level of at least "accredited." Contractor will provide its written corrective action plans to the Exchange within 45 days of receiving its initial NCQA or URAC ratings.

- F. Contractor shall request a follow up review by NCQA or URAC within twelve (12) months of the prior NCQA or URAC Assessment Report and provide a copy of the follow up assessment report to the Exchange within thirty (30) days of receipt. Contractor will continue to provide quarterly written reports to the Exchange regarding progress made on its corrective action plans. These quarterly reports will be provided to the Exchange until Contractor is able to raise all individual NCQA or URAC ratings to at least the “accredited” level. If Contractor currently possesses NCQA or URAC accreditation, in the event Contractor’s overall NCQA or URAC accreditation is ever suspended, revoked, or otherwise terminated, or in the event Contractor has undergone NCQA or URAC review prior to the expiration of its current NCQA or URAC accreditation and NCQA or URAC reaccreditation is suspended, revoked, or not granted at the time of expiration, Contractor shall notify the Exchange of NCQA’s or URAC’s findings within three (3) business days and shall be subject to the following:

- (viii) Within five (5) working days of written demand by the Exchange, Contractor shall remit to the Exchange the sum of \$100,000 for every 50,000 Exchange Enrollees. Contractor’s enrollment will additionally be frozen for the current benefit year and Contractor will not be eligible to contract with the Exchange in the next contract period, unless accreditation by NCQA or URAC is reacquired within six (6) months from the date accreditation is lost. The dollar amount calculated pursuant to this paragraph shall be refunded to Contractor within thirty (30) days of Contractor’s NCQA or URAC reaccreditation.
- (ix) If Contractor is not reaccredited by NCQA or URAC within six (6) months of the expiration of its last accreditation, the amount remitted pursuant to this section will not be refunded to Contractor and Contractor shall remit an additional and nonrefundable \$50,000 for every 50,000 Enrollees for every six (6) month period thereafter until NCQA or URAC grants accreditation.
- (x) If Contractor is not reaccredited by NCQA or URAC within twelve (12) months of the expiration of its last accreditation, Contractor shall remit an additional and nonrefundable \$100,000 for every 50,000 Enrollees for every six (6) month period thereafter until NCQA or URAC grants accreditation.

These standards shall not apply if Contractor does not currently possess NCQA or URAC accreditation.

97. Health Information Technology Implementation Reporting

By March 31 of the current contract year, Contractor shall provide the Exchange with a description of its current or planned efforts related to the implementation of health information technology within the plan and its providers in the manner specified by the Exchange.

98. Health Assessment

Contractor shall offer all Enrollees a Health Assessment either immediately after enrollment or as part of the first preventive visit.

The Exchange will require a core set of data elements to be included in each Qualified Health Plan’s Health Assessment tool on a phase-in basis in 2014.

Contractor will track the percentage of Exchange Enrollees that complete a Health Assessment (HA) during the 2014 plan year, report results quarterly, and document efforts to increase the percentage of Exchange Enrollees that complete an HA.

Contractor must plan, track, calculate, and report the total number of Enrollees who completed the HA during the 2014 plan year. The report due date will be mutually agreed upon between the Exchange and Contractor. The total number of Enrollees completing the HA will be calculated using the following formula:

(# completed) divided by (# eligible) equals (total completed)

99. Changes Related to Quality of Care

Contractor shall inform the Exchange of all changes related to quality of care, including, but not limited to, **X**, not less than six (6) months before the change takes effect.

MARKETING REQUIREMENTS AND PLAN PARTNERSHIP

100. Branding Documents

Contractor shall comply with Exchange policy respecting use of the Covered California logo on invoices, EOBs, ID cards, and notices as detailed in the Covered California Brand Guide Book.

101. Review of Marketing Materials

Contractor shall provide the Exchange with marketing material and all related collateral used in the individual market for Exchange and non-Exchange plans annually.

102. Marketing Plan

Contractor shall submit annual and quarterly updates of its marketing plans for Exchange review. The marketing plans shall include Contractor's proposed marketing approaches and shall provide samples of any planned marketing materials and related collateral as well as a marketing budget for both the Exchange and the outside individual market.

103. Exchange's Partnership Responsibilities

The Exchange recognizes that its success depends on a successful partnership with Contractor and other Issuers. To support Contractor and other Issuers in their marketing and enrollment efforts, the Exchange shall provide

- A. A Subsidy Calculator that can be embedded in any internet or intranet setting and that the Exchange will use for its own eligibility screenings, to ensure that all preliminary eligibility screenings use the same tool;

- B. Access to the Exchange's full quoting and enrollment system using iFrames or similar technologies so that Contractor's staff and certified agents and brokers can fully support enrollment of individuals who are eligible for subsidized coverage;
- C. A standard interface through which Contractor may electronically accept the initial binding payment (via credit card, debit card, or ACH);
- D. Access to the Exchange's marketing content management system, as appropriate;
- E. Streamlined eligibility and enrollment training for Contractor's staff and for licensed agents and brokers;
- F. A joint marketing fund where the Exchange, Contractor, and other Issuers can collaborate on marketing efforts designed to drive awareness and enrollment in the Exchange, with marketing plans subject to Exchange approval beginning in 2015; and
- G. Substantially extended customer service hours during open enrollment periods.

104. Contractor's Partnership Responsibilities

To support the collaborative marketing and enrollment effort, Contractor shall

- A. Agree to prominently display the Subsidy Calculator on its website and on all appropriate pages related to individual health insurance coverage;
- B. Agree to have its inside sales staff certified as Exchange agents and have those agents use the Exchange's quoting and enrollment system for those individuals who are eligible for subsidized coverage. In offering Exchange-based coverage, those agents shall disclose that Issuers other than Contractor also offer Qualified Health Plans through the Exchange;
- C. Agree to educate its agents that part of being an Exchange agent is to strive for annual recertification and that a prospective Enrollee's health status is irrelevant to advice provided with respect to health plan selection other than as it informs out-of-pocket calculation estimates;
- D. Agree to work with the Exchange to efficiently educate its agents and brokers about the Exchange's individual and small group marketplaces; and
- F. Agree to provide a financial interface at its own cost that allows an Exchange-certified agent to transfer binding premiums directly into Contractor's account.
- G. Cooperate with the Exchange to develop and implement an Enrollee retention plan. Contractor shall submit an Enrollee retention plan to the Exchange no later than March 1, 2014. Contractor shall submit to the Exchange a marketing plan that includes and details the objective of retaining Exchange-based enrollment.
- H. Be prepared to test interfaces with the Exchange's eligibility and enrollment system as of April 1, 2013.

RECERTIFICATION AND DECERTIFICATION

105. Decertification on Expiration Date

This Agreement shall terminate on the Expiration Date set forth on the signature page unless reduced to a shorter term under the provisions set forth herein and Contractor shall be deemed decertified upon termination if Contractor is not recertified in accordance with this Agreement. There shall be no automatic renewal of this Agreement or recertification upon expiration of the current term. Multiyear contracts shall include renewal requirements for each subsequent year beyond the first year.

106. Decertification for Default

- A. The Exchange may, by ten (10) calendar days' written notice to Contractor, and without prejudice to any other of Exchange remedies, decertify Contractor and terminate this Agreement because:
- (i) Contractor fails to fulfill its obligations under the Agreement;
 - (ii) Contractor institutes or has instituted against it insolvency, receivership, or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis;
 - (iii) Contractor no longer holds a license or certificate that is required for Contractor to perform its obligations under this Agreement and Contractor has not obtained such license or certificate within fourteen (14) calendar days after receipt of notice of default from the Exchange;
 - (iv) Contractor breaches any covenant, warranty, or obligation under this Agreement and such breach or default is not cured within fourteen (14) calendar days after receipt of notice of default from the Exchange;
 - (v) Contractor knowingly has a director, officer, partner, or person with a beneficial ownership of more than five percent (5%) of Contractor's equity or has an employment, consulting or other subcontractor agreement for the provision of items and services under this Agreement who is or has been (A) excluded, debarred, or suspended from participating in any federally funded health care program, (B) suspended or debarred from participation in any state contract or procurement process, or (C) convicted of a felony or misdemeanor (or entered a plea of nolo contendere) related to a crime or violation involving the acquisition or dispersal of funds or delivery of services to beneficiaries of any state or federal health care program;
 - (vi) The Exchange determines that the welfare of Enrollees is in jeopardy if this Agreement continues; or
 - (vii) Contractor fails to accept or execute an amendment to this Agreement required by a change in law or regulation and by virtue of which failure, the Exchange may be at risk of being found noncompliant with federal or state statutes or regulations.

107. Remedies in Case of Contractor Default

- A. The Exchange shall have all rights afforded by law in case of Contractor default, including but not limited to:
- (i) Decertification of Contractor and termination of this Agreement;
 - (iii) Recovery of Exchange damages caused by Contractor delay or non-performance;
 - (xi) Imposing sanctions under the Performance Measures or Compliance Requirements addenda;
 - (v) Specific performance of particular covenants made by Contractor hereunder; and
 - (viii) Initiating an action or proceeding for damages, declaratory or injunctive relief.

All remedies of the Exchange under this Agreement for Contractor default are cumulative to the extent permitted by law.

108. Additional Issues Relating to Contractor Default

- A. If the Exchange determines, based on reliable information, that there is a substantial probability that:
- (i) Contractor will be financially unable to continue performance under this Agreement; or,
 - (ii) Contractor will be in material breach of this Agreement in the next thirty (30) days,
- then the Exchange shall have the option to demand that Contractor provide the Exchange with a reasonable assurance of performance. Upon Contractor's receipt of such a demand from the Exchange, Contractor shall provide to the Exchange a reasonable assurance of performance responsive to the Exchange's demand. If Contractor fails to provide such an assurance within ten (10) days of the Exchange's demand, the failure shall constitute a breach by Contractor justifying termination of the Agreement by the Exchange.
- B. In case the Exchange elects to terminate this Agreement in whole or in part for Contractor's default, the Exchange shall give Contractor ten (10) days written notice of termination for default, specifying the default or defaults justifying the termination. The termination shall become effective after the expiration of such ten (10) day period if the defaults specified by the Exchange in its notice remain uncured at that time.
- C. In case Contractor is working on Exchange premises or has access to Exchange computer systems at the time the Exchange issues a notice of termination for default, the Exchange reserves the right to bar Contractor from further access to Exchange premises or computer systems immediately upon issuance of the notice. If Contractor is so barred but nevertheless reasonably believes that it can cure the default alleged by the Exchange within ten (10) days if the Exchange provides documentation and assistance to Contractor, then the Exchange shall offer Contractor such reasonable cooperation, so as to afford Contractor a reasonable opportunity to cure the

defaults alleged by the Exchange before the termination becomes effective. In addition, the ten (10) day period allowed for Contractor to attempt to cure the defaults alleged by the Exchange shall be reasonably extended to take into account the impact of Contractor's not having access to Exchange premises and computer systems.

- D. The Exchange shall be entitled to retain any amounts that the Exchange has properly withheld from invoices rendered by Contractor until final resolution of all claims by the parties against each other arising out of any Contractor default alleged by the Exchange.

109. Contractor Insolvency

Contractor shall notify the Exchange immediately in writing in the event that Contractor files any federal bankruptcy action or state receivership action, any federal bankruptcy or state receivership action is commenced against Contractor, Contractor is adjudicated bankrupt, or a receiver is appointed and qualifies. In case any of the foregoing events occurs, the Exchange may terminate this Agreement upon five (5) days written notice. If the Exchange does so, the Exchange shall have the right to recover damages from Contractor as though the Agreement had been terminated for Contractor default.

110. Assurance upon Decertification

- A. Upon the decertification of Contractor and termination of this Agreement, Contractor shall cooperate fully with the Exchange in order to effect an orderly transition of Enrollees to the Exchange or another Contractor as directed by the Exchange. This cooperation shall include, without limitation, attending such post-termination meetings, providing such information, communicating with affected Plan Enrollees, and/or cooperating with the Exchange and/or the succeeding Contractor, each as shall be reasonably requested by the Exchange.
- B. Upon notice of the termination of this Agreement, Contractor agrees to provide information to the Exchange and/or the succeeding Contractor in order to effect an orderly transition of Plan Enrollees to another Contractor, and in compliance with applicable Federal and State laws and regulations. Information shall be provided, at the Exchange's expense, by Contractor within the timeframes agreed upon by the Exchange and Contractor and in the form and manner agreed upon by the Exchange and Contractor.

111. Effect of Decertification

All duties and obligations of the Exchange and Contractor shall cease upon decertification of Contractor and termination of this Agreement, except that:

- A. Each party shall remain liable for any rights, obligations, or liabilities arising from activities carried on by it under this Agreement prior to the effective date of termination.
- B. Any Information Assets, as defined in Section X, furnished, and all copies thereof, will be returned promptly to the Disclosing Party, as defined in Section Y, or destroyed using reasonable measures to protect against unauthorized access to or use of the information in connection with its destruction, following the earlier of:

- (i) The termination of this Agreement,
- (ii) Receipt of a written request to return or destroy the Information Assets, or
- (iii) The termination of the business relationship between the Parties.

If both Parties agree that return or destruction of the Information Assets is not feasible, the Receiving Party will continue to extend the protections outlined herein to all Information Assets in its possession and will limit further use of that information to those purposes that make the return or destruction of the Information Assets not feasible. The Exchange reserves the right to inspect the storage, processes, and destruction of any Information Assets provided under this Agreement.

- C. Contractor shall cooperate fully to affect an orderly transfer of services to the Exchange or another Contractor if requested by the Exchange.
- D. Upon termination, Contractor, if offering an HMO, shall complete the processing of all claims for benefit payments under the Plan for services other than Capitated Services, and if offering a PPO, shall complete the processing of all medical claims for benefit payments under the Plan for services rendered on or before the termination date and received by Contractor for a period of time after the termination date as determined by the Exchange pursuant to Plan requirements.
- E. Contractor will provide information inserts or Explanation of Benefits messaging to communicate new Plan information to Plan Enrollees and Employers.
- F. Contractor will forward electronic and direct paper Claims to the new Contractor on the date and in the manner requested by the Exchange for a period of up to three (3) months following the termination date.
- G. Contractor shall provide customer service to support the processing of Claims for services rendered on or before the termination date for a period of two (2) months at a cost to be mutually agreed upon per Plan Enrollee.
- I. If so instructed by the Exchange in the termination notice, upon receipt of a termination notice Contractor shall promptly discontinue all services affected.
- J. Contractor will perform reasonable and necessary acts in keeping with industry standards to facilitate transfer of services herewith to the Exchange or the succeeding Contractor.
- K. Contractor will cooperate with the Exchange and any successor in good faith for the best interest of the Plan, Plan Enrollees, and Employers.
- M. Upon termination of Contractor, the Exchange shall conduct an accounting of amounts paid or payable and Enrollees enrolled during the month in which termination is effective, which shall be accomplished as follows:
 - (i) Mid-Month Termination: For a termination of this Agreement that occurs during the middle of any month, the premium for that month shall be apportioned on a *pro rata* basis. Contractor shall be entitled to premiums from Enrollees for the period of time prior to the date of termination and Enrollees shall be entitled to a refund of the balance of the month.

(iv) Responsibility to Complete Contractual Obligations: Contractor is responsible for completing submission and corrections to Encounter Data for services received by Plan Enrollees during the period of the Agreement. Contractor is responsible for submitting any outstanding financial or other reports required for services rendered or Claims paid during the term of the Agreement.

112. Coverage upon Decertification, Non-Recertification, or Reduction to the Term of this Agreement

- A. If termination, non-recertification, or a reduction to the Term of this Agreement results in the transfer of some or all Enrollees into any other health plan, then the terms of coverage under Contractor shall not be carried over to the replacement plan but rather the transferred Enrollees shall be entitled only to the extent of coverage offered through the replacement plan as of the effective date of transfer.
- B. Notwithstanding the foregoing, to the extent that an Enrollee qualifies for an extension of benefits due to hospitalization or disability pursuant to Health and Safety Code section 1399.62, such extension shall apply. For purposes of this Agreement, “disability” means that the Enrollee has been certified as being totally disabled by the Enrollee’s treating physician, and the certification is approved by Contractor. Such certification must be submitted for approval within thirty (30) calendar days from the date coverage is terminated.
- C. Recertification must be furnished by the treating Provider not less frequently than at sixty (60) calendar day intervals during the period that the extension of benefits is available. The extension of benefits shall be solely in connection with the condition causing total disability. This extension shall be provided for the shortest of the following periods:
 - (i) Until total disability ceases;
 - (ii) For a maximum period of twelve (12) months after the date of termination, subject to plan maximums; or
 - (iii) Until the Enrollee’s enrollment in a replacement plan.

113. Recertification

The Exchange will recertify Contractor on an annual basis in accordance with the ACA and its implementing regulations.

PARTICIPATION FEE

114. Participation Fee for Individual Exchange

- A. Contractor understands and agrees that under the Affordable Care Act and CA ACA, the Exchange may generate funds through Participation Fees on Qualified Health Plans both inside and outside of the Exchange, and that Contractor must remit Participation Fee payments to the Exchange as assessed per the specified schedule.
- B. Contractor further understands that the premiums it collects for Qualified Health Plans in the individual market include the Participation Fee due to the Exchange, which will be billed and payable to the Exchange according to a schedule to be determined by the Exchange and included in the Administrative Manual.
- C. Contractor is responsible for the timely payment of any Participation Fees to the Exchange. In the individual Exchange, the Participation Fee will be based upon a payment methodology based on a fixed per member per month charge on Contractor's Qualified Health Plans. Details on the Participation Fee methodologies are available in [Attachment]. Contractor's Participation Fee obligation will be determined by evaluating Contractor's current effective Qualified Health Plan enrollment and may be subject to adjustment to reflect enrollment adjustments that may occur. It will be Contractor's responsibility to pay all Participation Fees as billed. Additional rules, including but not limited to, the manner of payment, grace period, delinquency penalty, and termination due to breach are to be further defined in the Administrative Manual.
- D. Following Plan Year 2014, Participation Fee levels will be evaluated against then-current Exchange operational costs and adjusted pursuant to Government Code 100503(n).
- E. Participation Fee invoices will be issued prospectively to Contractor on the 15th of the month for the coming month. Participation Fee payments will be due on the 1st of the month the Participation Fee covers. For Participation Fees received after the 15th of the month in which the Participation Fee is due, the Exchange will charge Contractor a 1% per month late fee.
- F. The per member per month Participation Fee on Contractor for Enrollees in Contractor's Qualified Health Plans outside the Exchange will be 50% of the per member per month Participation Fee on the Qualified Health Plan enrollment inside the Exchange. Contractor shall calculate and report the Participation Fee due for Contractor's non-Exchange Qualified Health Plan enrollment and shall forward this Participation Fee to the Exchange along with invoiced Participation Fees from the Exchange for Exchange-based enrollment. Contractor agrees to an annual audit by the Exchange of Participation Fees generated from enrollment in Contractor's Qualified Health Plans outside the Exchange. In the case of material non-compliance with Participation Fee payments, audits may be performed more frequently than annually.

115. Participation Fee for SHOP

- A. Contractor understands and agrees that under the Affordable Care Act and CA ACA, the Exchange may generate funds through Participation Fees on Qualified Health Plans both inside and outside of the Exchange, and that Contractor must remit Participation Fee payments to the Exchange as assessed per the specified schedule.
- B. Contractor further understands that the Exchange is responsible for collecting

premiums from Employers and Employees. The Exchange will remit Employer and Employee premiums to Contractor, net of Participation Fees including Agent and General Agent commissions, according to a schedule to be determined by the Exchange and included in the Administrative Manual.

- C. Contractor is responsible for the timely payment of any Participation Fees as assessed by the Exchange. In the SHOP, the Participation Fee is based upon a percentage of monthly premiums collected by Contractor as established by the Exchange and set forth in [Attachment], plus a fee necessary to support projected Agent and General Agent commissions. Contractor's Participation Fee obligation will be determined by evaluating Contractor's current effective Qualified Health Plan enrollment, and may be subject to adjustment to reflect enrollment adjustments that may occur. It will be Contractor's responsibility to pay all Participation Fees as billed. Additional rules, including but not limited to, the manner of payment, grace period, delinquency penalty, and termination due to breach are to be further defined in the Administrative Manual.

116. Roll Over Program

- A. No later than August 1, 2013, Contractor shall submit for approval a transition plan for facilitating the transition of its current enrollees in individual coverage who may be eligible for subsidies in the Exchange.

(i) Contractor shall specify the proposed approach for the following populations:

- Subsidy-eligible non-group incumbents
- Subsidy-eligible COBRA incumbents
- All incumbents terminating coverage, including 25-year-old dependents

In addition, Contractor shall describe how it will identify, reach out to, and facilitate enrollment of subsidy-eligible individuals who respond to their normal marketing efforts.

- (ii) Contractor shall provide an estimate of the number of incumbents in each target population category above and the number of incumbent individuals in each grandfathered and non-grandfathered plan.
- (iii) Contractor shall describe how it will deploy the subsidy calculator provided by the Exchange for marketing purposes so as to estimate the level of federal subsidies that may be available to Enrollees.
- (iv) Contractor shall propose a plan for educating incumbents, minimizing market confusion, and easing the seamless transition of subsidy-eligible incumbents into Qualified Health Plans in the Exchange, along with customer service scripts and website presentations that inform subsidy-eligible incumbents of their options under the ACA and in the Exchange.

- B. Contractor shall attest to its commitment to fairly and affirmatively offering, marketing, and selling all products made available to all eligible Enrollees and Employees.

- C. The Exchange shall reduce the Participation Fee due from Contractor to the

Exchange during the calendar year 2014 for Enrollees with effective dates of coverage on or before February 1, 2014, as follows:

- (i) For subsidy-eligible non-group incumbents, subsidy-eligible COBRA incumbents, and all incumbents terminating coverage because of lack of continued eligibility attributable to aging out of a parent's plan, the applicable Participation Fee for that individual will be reduced by %.

117. Liquidated Damages

- A. The Exchange and Contractor agree that failed, delayed, and/or other performance not in compliance with the terms of this Agreement by Contractor will cause damages to the Exchange which may be uncertain and impractical or difficult to ascertain; and the Exchange shall assess, and Contractor promises to pay the Exchange in the event of such failed, delayed, and/or other performance not in accordance with the terms of this Agreement the amounts described in Attachment 3 as liquidated damages and not as penalties. The schedule of liquidated damages represents damages in conformity with California Civil Code Section 1671, incurred in case of failed, delayed, or other performance not in accordance with the terms of this Agreement.
- B. The parties acknowledge and agree that Contractor could incur liquidated damages for more than one event if Contractor fails to timely perform its obligations. Amounts due to the Exchange as liquidated damages may be deducted by the Exchange from any money payable to Contractor under this Agreement, or the Exchange may bill Contractor as a separate item therefor in addition to the Participation Fee.
- C. The assessment of liquidated damages shall not constitute a waiver or release of any other remedy the Exchange may have under this Agreement for Contractor's breach of this Agreement, including, without limitation, Contractor's right to terminate this Agreement, and the Exchange shall be entitled in its discretion to recover actual damages caused by Contractor's failure to perform its obligations under this Agreement. However, the Exchange will reduce such actual damages by the amounts of liquidated damages received for the same events causing the actual damages. Further, liquidated damages shall not apply to the extent that an event occurs under Section (Force Majeure).

REPRESENTATIONS AND WARRANTIES

118. No Conflicts or Consents

Contractor represents and warrants that neither the execution of this Agreement by Contractor, nor the acts contemplated hereby, nor compliance by Contractor with any provisions hereof will:

- A. Violate any provision of the charter documents of Contractor;
- B. Violate any statute or law or ordinance or any judgment, decree, order, regulation or rule of any court or governmental authority applicable to Contractor; or

- C. Violate, or be in conflict with, or constitute a default under, or permit the termination of, or require the consent of any person under, any agreement to which Contractor may be bound, the violation of which in the aggregate would have a material adverse effect on the properties, business, prospects, earnings, assets, liabilities, or condition (financial or otherwise) of Contractor.

119. Due Organization

Contractor represents and warrants that it is duly organized, validly existing, and in good standing under the laws of the State of its incorporation or organization.

120. Power and Authority

Contractor represents and warrants that:

- A. It has the power and authority to enter into this Agreement and to carry out its obligations hereunder;
- B. The execution of this Agreement has been duly authorized by Contractor and no other proceeding on the part of Contractor is necessary to authorize this Agreement; and,
- C. Contractor has completed, obtained, and performed all registrations, filings, approvals, authorizations, consents, or examinations required by any government or governmental authority for its acts contemplated by this Agreement.

121. Signature Authorization

The person signing this Agreement on behalf of Contractor warrants that he/she is an agent of Contractor and is duly authorized to enter into this Agreement on behalf of Contractor.

122. Assignment of Antitrust Actions

Pursuant to Government Code Sections 4552, 4553, and 4554, the following provisions are incorporated herein:

- A. In submitting a bid to the Exchange, the supplier offers and agrees that if the bid is accepted, it will assign to the Exchange 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. 15) or under the Cartwright Act (Chapter 2, 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 supplier for sale to the Exchange pursuant to the solicitation. Such assignment shall be made and become effective at the time the Exchange tenders final payment to the supplier.
- B. If the Exchange receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the Exchange any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the Exchange as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

- C. Upon demand in writing by the assignor, the assignee shall, within one (1) year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and
- (i) The assignee has not been injured thereby; or
 - (ii) The assignee declines to file a court action for the cause of action.

123. Provider Licenses

All of Contractor's Participating Providers are duly licensed or certified, as required by the laws of this state. Contractor routinely monitors its Participating Providers' licenses to ensure that they are current. Contractor's Participating Providers have no California Department of Public Health or Medical Board licensing restrictions.

124. Provider Insurance

Contractor's Participating Physicians are insured for malpractice, either independently or through Contractor, in a dollar amount sufficient for their practice and as may be required by law or accrediting entities. Contractor's Participating Providers also have liability insurance in a dollar amount appropriate for their business practice.

125. Physician/Hospital and Staff Turnover

Contractor maintains records of its staffing turnover. Contractor maintains records of the turnover of its Participating Physicians, health care professional staff, and Participating Hospitals. Contractor routinely monitors this turnover to ensure that it does not disrupt the delivery of quality care.

126. Credentialing

Contractor has in place credentialing requirements for its Participating Providers at least equal to those required by the National Committee on Quality Assurance (NCQA). Further, Contractor has an ongoing review process to ensure that its Participating Providers remain in compliance with the representations and warranties set forth in this Agreement. Each Participating Provider is in compliance with Contractor's credentialing requirements. A copy of these requirements will be submitted to the Exchange immediately upon request.

127. Utilization Review

Contractor has in place an appeal process that will allow Providers to challenge utilization review decisions that they believe will not serve the best interests of their patients. Contractor agrees that the appeal process will assure that the process of review will be neither arbitrary nor capricious, but fair and prompt. Contractor agrees that utilization review shall not operate to prevent or delay the delivery of emergency medical treatment.

CONTRACTOR INTEGRITY AND PROCESS INTEGRITY ISSUES

128. No Benefit from Recommendations

Contractor shall not directly or indirectly receive any benefit from recommendations made to the Exchange and shall disclose to the Exchange any personal investment or economic interest of Contractor which may be enhanced by the recommendations made to the Exchange.

Consistent with Public Contract Code Section 10365.5, neither Contractor, nor any of its subsidiaries, may submit a bid or be awarded a contract for the provision of services, procurement of goods or supplies, or any other related action which is required, suggested, or otherwise deemed to be appropriate in the end product that Contractor provides under this Agreement.

129. Conflict of Interest

All actual and potential Conflicts of Interests of the Contractor and each Key Person must be fully disclosed in writing. The Contractor shall explain in writing how it proposes to manage or mitigate all potential or actual Conflicts of Interests of the Contractor or any Key Persons. The disclosure requirements relating to Conflicts of Interests shall be interpreted broadly and in cases where the Contractor is unsure whether an actual or potential Conflict of Interest actually exists, the Contractor should nevertheless disclose the actual or potential Conflict of Interest of the Contractor or any Key Person. Such disclosures must be updated as changes in status occur as required by the terms of the Agreement, or otherwise in accordance with Exchange policy and or procedures relating to disclosure of Conflicts of Interest in effect during the term of such Agreement, but, in any event, no less than annually. In addition, at the time of an assignment or as soon thereafter as practicable, the Contractor shall disclose in writing all actual or potential Conflicts of Interest of the Contractor or any of its Key Persons related to such assignment.

All disclosures shall conform to Exchange policy and or procedures relating to disclosure of Conflicts of Interest in effect during the term of such Agreement and shall be specific enough in detail to allow the Exchange to knowingly and intelligently analyze the actual or potential Conflict of Interest. Disclosures should be made to the Exchange's Chief Technology Officer; General Counsel; and the Contract Manager.

A "Conflict of Interest" includes those circumstances that create or have the potential to create an actual or reasonably perceived conflict with the firm's and/or any Key Person's fiduciary duty of exclusive loyalty to the Exchange. A Conflict of Interest includes personal Conflicts of Interests of any Key Person or any Key Person's spouse, domestic partner, or dependent children.

In the event that Contractor or its Key Persons fails to disclose a Conflict of Interest and/or fails to receive a written waiver from the Exchange as required by this section, the Exchange, in its sole and absolute discretion, may penalize Contractor up to five percent (5%) of the total Agreement price.

Contractor acknowledges that certain of its employees named as Key Persons may be Consultants subject to the provisions of the Political Reform Act of California (Government Code Section 81000, et seq., and all regulations adopted thereunder, including, but not limited to, Title 2, California Code of Regulations, Section 18700) and Contractor shall comply promptly with any requirement thereunder. If required by law, Contractor shall require its Key Persons named and later all substitutions thereto to file Statements of Economic Interests in compliance with the Exchange's Conflict of Interest Code (Title 10, California Code of Regulations, Section 6400, et seq.).

Contractor acknowledges that if its Key Persons are required to file a Statement of Economic Interests, they are subject to the ethics training requirement found at Government Code Sections 11146 – 11146.4 that require new filers to satisfy the ethics training requirement within six (6) months of the commencement of the Agreement and at least once during each consecutive period of two (2) calendar years commencing on the first odd-numbered year thereafter.

130. Gift and Political Contributions Disclosure

Contractor must comply with Government Code Section 20152.5, as it exists and as amended by the Legislature and implemented by the Board of Administration from time to time, concerning gift and campaign disclosure policies. The existing code section is stated as follows:

No matter involving any vendor or contractor in their individual or any other capacity shall be considered during a closed session on any transaction involving the system unless, prior to the closed session, a written disclosure has been submitted by the vendor or contractor of any campaign contributions aggregating two hundred fifty dollars (\$250) or more and any gifts aggregating fifty dollars (\$50) or more in value that the vendor or contractor has made during the preceding calendar year to any member of the board or any officer or employee of the system. Failure to disclose the campaign contributions and gifts shall provide the basis for disqualification of the contractor or the vendor.

Contractor further agrees to abide by any and all gift policies, rules and regulations as Adopted by the Board.

131. Use of State Funds and Facilities

By signing this Agreement, Contractor hereby acknowledges the applicability of Government Code section 16645 through section 16649 to this Agreement and agrees to the following:

- A. Contractor will not assist, promote or deter union organizing by employees performing work on an Exchange or other State service contract, including a public works contract.
- B. No State funds received under the Agreement will be used to assist, promote or deter union organizing.
- C. Contractor will not, for any business conducted under this Agreement, use any other State property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the State property is equally available without charge to the general public for holding meetings.
- D. If Contractor incurs costs, or make expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no reimbursement from State funds has been sought for these costs, and that Contractor shall provide those records to the Attorney General upon request.

132. Upstreaming of Funds

Contractor shall not engage in the Upstreaming (or downstreaming) of funds.

133. Collection

Contractor shall not pursue collection of any delinquent monthly rates from the Exchange, but shall seek recovery only against the Employer or against an Enrollee who is responsible for directly paying for his/her coverage. Also, Contractor shall not pursue collection of any delinquent Enrollee copayments or direct premium payments from the Exchange, but shall seek recovery only against the Enrollee.

GENERAL PROVISIONS

134. Entitled Enrollees

Only Enrollees for whom the enrollment verification from the Exchange is actually received by Contractor are entitled to health services and benefits provided hereunder for the period. To be entitled to receive services or benefits, the Enrollee must, in fact, be in compliance with fiscal provisions subject to the Enrollee's policy. Acceptance of premium payments from an Employer or Enrollee does not in itself constitute effectuation or continuance of a benefit policy. Any person receiving services or benefits to which he or she is not then entitled pursuant to the policy between the person and Contractor and this Agreement is chargeable therefor at prevailing rates.

135. Creditable Coverage Certifications

Contractor agrees to provide Enrollees with all certifications of periods of creditable coverage that either a "health insurance issuer" or a "group health plan" must provide pursuant to the federal Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104-91) (HIPAA) or any applicable federal or state law or regulations implementing HIPAA.

136. Cumulative Remedies

The rights and remedies provided herein are cumulative and are not exclusive of any rights or remedies which any party may otherwise have at law or in equity.

137. Amendments

This Agreement may be amended only by mutual consent of the parties. Except as provided herein, no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

138. Time is of the Essence

Time is of the essence in this Agreement.

139. Independent Contractor

Contractor and Contractor's personnel shall operate as independent contractors and shall not be considered as employees or agents of the Exchange or the State of California.

140. Subcontractors

- A. Contractor shall perform the work contemplated with resources available within its own organization except for subcontracted work identified in this Agreement. No other portion of the work pertinent to this Agreement shall be subcontracted without written authorization by the Exchange. The subcontractor must be mutually agreed upon in advance by both parties.
- B. Contractor shall require any subcontractor to agree to be bound by all provisions of this Agreement unless the Exchange approves a waiver from this requirement.

141. Provision of Services

Contractor represents that as of the Effective Date, all services under this Agreement

shall be provided by Contractor and any subcontractor identified and approved by the Exchange. If at some time during the term of this Agreement, services are performed or provided by a subsidiary or affiliate of Contractor or any other Contractor subcontractor, such subsidiary, affiliate or subcontractor shall be obligated under Section X, Indemnification and Section Y, Examination and Audit.

142. Notice of Proceedings

Contractor shall promptly notify the Exchange in writing of any investigation, examination, or other proceeding involving Contractor or any Key Person commenced by any regulatory agency that a reasonable person might believe could materially affect Contractor's ability to perform Agreement.

143. Legal Actions

- A. Contractor shall advise the Exchange of all matters which come to its attention involving any threatened or commenced legal actions against the Plan or the Exchange or any threatened or commenced legal actions against Contractor.
- B. It is understood and agreed that Contractor shall fully and reasonably cooperate with the Exchange in its defense of actions arising out of matters related to services rendered under this Agreement. This includes providing staff and expert witnesses, at no additional cost to the Exchange, who may be needed to testify in any court or administrative proceeding.

144. Notices

Any notice or other written communication that may or must be given hereunder shall be deemed given when delivered personally, or if it is mailed, three (3) days after the date of mailing, unless delivery is by express mail, telecopy, or telegraph, and then upon the date of the confirmed receipt, to the following representatives:

For the Exchange: California Health Benefit Exchange
Attention: Contracts Officer
560 J Street, Suite 290
Sacramento, CA 95814
Telephone No. (916)
FAX No. (916)
Email:

For Contractor: Name:
Firm:
Address:
City, State, Zip Code:
Telephone No.
FAX No.

Either party hereto may, from time to time by notice in writing served upon the other as aforesaid, designate a different mailing address or a different or additional person to which all such notices or other communications thereafter are to be addressed.

145. Publicity

No publicity release or announcement concerning this Agreement or the transactions contemplated herein shall be issued by Contractor without advance written approval by the Exchange.

146. Force Majeure

Neither party to this Agreement shall be in default of its obligations hereunder for delay or failure in performing that arises out of causes beyond the control and without the fault or negligence of the offending party. Such causes may include, but are not restricted to, Acts of God or of the public enemy, acts of the State in its sovereign capacity, acts of the State Controller's Office or other State agency having an impact on the Exchange's ability to pay its obligations, acts of the State legislature, fires, floods, power failure, disabling strikes, epidemics, quarantine restrictions, and freight embargoes.

147. Additional Documents

Contractor and the Exchange agree to execute such additional documents, and perform such further acts, as may be reasonable and necessary to carry out the provisions of this Agreement.

148. Evaluation of Contractor

The performance by Contractor of the services set forth herein shall be evaluated by the Exchange one year from the effective date, and annually thereafter. In the event the annual review discloses a significant problem or pattern of problems as determined and documented by the Exchange, The Exchange shall have the right to conduct additional reviews within that year to review Contractor's compliance and operational performance. If for any reason, the Board determines that the Exchange's best interests are served by discontinuing the Agreement, the Agreement may be terminated pursuant to Section X, Termination at Option of the Exchange.

149. Binding Effect

This Agreement, any instrument or agreement executed pursuant to this Agreement, and the rights, covenants, conditions, and obligations of Contractor and the Exchange contained therein, shall be binding upon the parties and their successors, assigns, and legal representatives.

150. Titles/Section Headings

Titles or headings are not part of this Agreement, are for convenience of reference only, and shall have no effect on the construction or legal effect of this Agreement.

151. Severability

Should one or more provisions of this Agreement be held by any court to be invalid, void, or unenforceable, such provision(s) will be deemed to be restated to affect the original intentions of the parties as nearly as possible in accordance with applicable law. The remaining provisions shall nevertheless remain and continue in full force and effect.

152. Entire Agreement/Incorporated Documents/Order of Precedence

- A. This Agreement contains all representations and the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda, or agreements are replaced in total by this Agreement.
- B. This Agreement shall consist of:
 - (i) The terms of this Agreement;

- (ii) All attached documents, which are expressly incorporated herein;
 - (iii) The Solicitation, which is expressly incorporated herein; and,
 - (iv) The Response which is expressly incorporated herein.
- C. In the event there are any inconsistencies or ambiguities among the terms of this Agreement and incorporated documents, the following order of precedence shall be used:
- (i) Applicable laws;
 - (ii) The terms and conditions of this Agreement, including attachments;
 - (iii) The Administrative Manual
 - (iv) Change Orders
 - (v) The Solicitation;
 - (iv) The Response; and,
 - (v) Any other provisions, terms, or materials expressly incorporated herein.

153. Waivers

No delay on the part of either party in exercising any right, power, or privilege hereunder shall operate as a waiver thereof. No waiver on the part of either party of any right, power, or privilege hereunder, nor any single or partial exercise of any right, power, or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power, or privilege hereunder.

154. Incorporation of Amendments to Applicable Laws

Any references to sections of federal or state statutes or regulations shall be deemed to include a reference to any amendments thereof and any successor provisions thereto.

155. Choice of Law, Jurisdiction, and Venue

This Agreement shall be administered, construed, and enforced according to the laws of the State of California (without regard to any conflict of law provisions) to the extent such laws have not been preempted by applicable federal law. Any suit brought hereunder shall be brought in the state or federal courts sitting in Sacramento, California, the parties hereby waiving any claim or defense that such forum is not convenient or proper. Each party agrees that any such court shall have in personam jurisdiction over it and consents to service of process in any manner authorized by California law.

156. Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

157. Days

Wherever in this Agreement a set number of days is stated or allowed for a particular event to occur, the days are understood to include all calendar days, including weekends and holidays, unless otherwise specified.

158. Ambiguities Not Held Against Drafter

This Agreement having been freely and voluntarily negotiated by all parties, the rule that

ambiguous contractual provisions are construed against the drafter of the provision shall be inapplicable to this Agreement.

159. Clerical Error

No clerical error on the part of the Board, the Exchange, any employer, or Contractor shall operate to defeat or alter any terms of this Agreement or defeat or alter any of the rights, privileges or benefits of any Plan Enrollee or Employer.

160. Administration of Agreement

The Exchange may adopt policies, procedures, rules and interpretations to promote orderly and efficient administration of this Agreement and Contractor shall administer this Agreement in accordance therewith.

161. Joint and Several Liability

Contractor, its parent(s), subsidiaries and affiliates are jointly and severally liable to the Exchange for performance of all duties under this Agreement.

162. Cooperative Effort

Contractor recognizes that the success of the Plan depends upon the joint effort of Contractor and all its subcontractors and agrees to cooperate with the State Controller's Office (SCO), the State Treasurer's Office (STO), and the Exchange in the provision of services hereunder.

ATTACHMENTS

- 1. EVIDENCE OF COVERAGE AND DISCLOSURE FORM BOOKLET QHP A**

2. ZIP CODE LISTINGS for Geographic Service Areas Served by QHPs

3. PERFORMANCE GUARANTEES

Performance guarantees will be measured on a monthly basis. For failures to meet the performance guarantees described below, multiple reductions or additional fees may be imposed as liquidated damages for multiple failures in a single month. The maximum amount of monthly liquidated damages that may be imposed is 5% of the Participation Fee owed by Contractor in that month.

Additionally, as detailed below, superior performance in one performance guarantee may be a basis to offset the liquidated damages owed for failure to meet another performance guarantee in a given month.

Any amounts collected as liquidated damages under this Attachment shall be used for Exchange operations to reduce future collective Participation Fees.

A. Baseline Period

During the first three (3) months Contractor begins to take operational calls under this Agreement (baseline period), the parties will collaborate to evaluate and refine Performance Guarantees based upon the call volumes and arrival patterns established during the Baseline Period. Contractor shall take reasonable efforts to staff sufficiently during the Baseline Period to meet or exceed the Performance Guarantees listed below.

B. 800 Number

Contractor shall provide the Exchange a dedicated 1-800 number and staff to support Exchange Enrollees.

C. Reporting

Contractor shall provide the following minimum reports at the specified time and frequency at no additional charge to the Exchange:

- Switch reporting: daily, weekly, monthly, and annually.
- Phone statistics, performance guarantees reporting and operations reporting: daily, weekly, monthly, and annually.
- Accumulative monitoring scoring: weekly and monthly.
- Training reports: weekly.

Additionally, Contractor shall provide the Exchange with real-time access to its ACD system and provide the Exchange with the option to access remote monitoring.

D. Performance Measurement and Reporting

- Monthly Performance Report

Beginning the first full calendar month after the expiration of the Baseline Period, Contractor shall monitor and track its performance each month against the Performance Guarantees set forth below. Contractor shall provide detailed supporting information (as mutually agreed by the parties) for each Monthly Performance Report to the Exchange in electronic format.

- Measurement Rules

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Except as otherwise specified below in the Performance Guarantees table, the measurement period for each Performance Guarantee shall be one calendar month; all references to time of day shall be to Pacific Standard Time; all references to hours will be actual hours during a calendar day; and all references to days, months, and quarters shall be to calendar days, calendar months, and calendar quarters, respectively.

E. Performance Guarantees

- General

The Performance Guarantee table sets forth the categories of Performance Guarantees and their associated measurements. In performing its services under this Agreement, Contractor shall use commercially reasonable efforts to meet or exceed the Performance Guarantees.

- Root Cause Analysis/Corrective Action

If Contractor fails to meet any Performance Guarantees in any calendar month (whether or not the failure is excused), Contractor shall promptly (a) investigate and report on the root cause of the problem; (b) develop a corrective action plan (where applicable); (c) to the extent within Contractor's control, remedy the cause of the performance failure and resume meeting the affected Performance Guarantees; (d) implement and notify the Exchange of measures taken by Contractor to prevent recurrences if the performance failure is otherwise likely to recur; and (e) make written recommendations to the Exchange for improvements in procedures.

- Performance Guarantee Exceptions

Contractor shall not be responsible for any failure to meet a Performance Guarantee if and to the extent that the failure is excused pursuant to the Force Majeure clause or the failure is caused by the failure of the Exchange to properly or timely perform (or cause to be properly or timely performed), or the Exchange's delay in performing any responsibility, duty, or other obligation under this Agreement, provided that Contractor timely notifies the Exchange of the problem and uses commercially reasonable efforts to perform and meet the Performance Guarantees notwithstanding the Exchange's failure to perform or delay in performing.

If Contractor wishes to avail itself of one of these excuses, Contractor shall indicate in the applicable performance report delivered in the second month following the failure to meet such Performance Guarantee: (a) which Performance Guarantees are affected by the excuse; and (b) the circumstances that gave rise to the excuse in sufficient detail to permit the Exchange to evaluate whether Contractor's claim of excuse is valid. Notwithstanding anything to the contrary herein, in no event shall any failure to meet a Customer Satisfaction Performance Guarantee be excused.

- Agreed Adjustments/Service Level Relief

In addition, the Parties may agree on Performance Guarantee relief or adjustments to Performance Guarantees in connection with the Change Control Procedures or pursuant to a new and/or temporary Program.

- Performance Guarantee Defaults

If the Exchange elects to assess liquidated damages for failure to meet Performance Guarantees, it will so notify Contractor in writing within up to ninety (90) days after receipt of the Monthly Performance Report setting forth the performance level attained by Contractor for the calendar quarter to which the liquidated damages relate. If Contractor does not believe it is appropriate for the Exchange to assess liquidated damages for a particular calendar quarter or calendar year (as applicable), it shall so notify the Exchange in writing within thirty (30) days after receipt of the Exchange’s notice of assessment and, in such event, the Exchange will meet with Contractor to consider, in good faith, Contractor’s explanation of why it does not believe the assessment of liquidated damages to be appropriate; provided, however, that it is understood and agreed that the Exchange, acting in good faith, will make the final determination of whether or not to assess the liquidated damages.

- Service Level Credits

For certain of the performance standards set forth in the Performance Guarantee table, Contractor will have the opportunity to earn service level credit for superior performance (“Service Level Credits”). Service Level Credits will be measured as a percentage of the billable charges for the month at issue in which they are earned, as set forth in the Performance Guarantee table for superior performance. For any Service Level Credits that are earned by Contractor, Contractor shall have the right to offset liquidated damages by same percentages owed for a period of --- months after earning such credit.

- Performance Guarantees

Specified Performance Guarantees are set forth in the Chart below:

DESCRIPTION	STANDARD	SERVICE LEVEL CREDITS AND LIQUIDATED DAMAGES	METHODOLOGY
CUSTOMER SERVICE – ENROLLEES			
Telephone service level	80% of calls answered within 30 seconds	2%	Measured from ACD system
First call resolution	90% of Enrollee issues will be resolved within the same business day the issue was received	2%	

DESCRIPTION	STANDARD	SERVICE LEVEL CREDITS AND LIQUIDATED DAMAGES	METHODOLOGY
Abandonment rate	No more than 3% of incoming calls in a calendar month	2%	Calls abandoned/total number of calls in a calendar month
Customer satisfaction	92%	2%	Measured externally through Customer Survey
Quality Assurance	90%	1%	Measured internally by Quality Assurance Team
Line busy rate	No more than 0% in a calendar month	1%	
Voice mail response	90% of voicemails will be answered in 2 business days	2%	
Email and Correspondence Response Time	90% of emails and other written correspondence will be answered in 2 business days		
Resolution of Enrollee complaints	95% of Enrollee complaints resolved within 30 calendar days	2%	
SUBSCRIBER MATERIAL PRODUCTION AND DISTRIBUTION			

DESCRIPTION	STANDARD	SERVICE LEVEL CREDITS AND LIQUIDATED DAMAGES	METHODOLOGY
ID Cards	100% sent within 10 days of receiving enrollment information from the Exchange	1%	
New Enrollee Materials	100% sent within 10 days of receiving enrollment information from the Exchange	1%	
INTERFACE STANDARDS			
Confirmation File (999) of all enrollment and payment transactions	The Exchange will receive the 999 file within one business day of receipt of the 834/820 file 85% of the time within any given month		
Confirmation File (999) of all enrollment and payment transactions	The Exchange will receive the 999 file within three business days of receipt of the 834/820 file 99% of the time within any given month		
Effectuation of Enrollment File (834) upon receipt of member's initial payment	The Exchange will receive the 834 file within one business day of receipt of the member's initial payment file 85% of the time within any given month		

DESCRIPTION	STANDARD	SERVICE LEVEL CREDITS AND LIQUIDATED DAMAGES	METHODOLOGY
Effectuation of Enrollment File (834) upon receipt of member's initial payment	The Exchange will receive the 834 file within three business days of receipt of the member's initial payment 99% of the time within any given month		
Member Payment File (820) upon receipt of member's payment	The Exchange will receive the 820 file within one business day of receipt of the member's payment file 95% of the time within any given month		
Member Payment File (820) upon receipt of member's payment	The Exchange will receive the 820 file within three business days of receipt of the member's payment 99% of the time within any given month		
Enrollment Change File (834) upon non receipt of member's payment by due date, 30 day notice, and termination	The Exchange will receive the 834 file within one business day of receipt of change of the members status 95% of the time within any given month		

Qualified Health Plan Solicitation
 Attachment 3 Performance Guarantees

DESCRIPTION	STANDARD	SERVICE LEVEL CREDITS AND LIQUIDATED DAMAGES	METHODOLOGY
Enrollment Change File (834) upon non receipt of member's payment by due date, 30 day notice, and termination	The Exchange will receive the 834 file within three business days of receipt of change of the members status 99% of the time within any given month		

4. DATA SUBMISSION REQUIREMENTS

5. ANNUAL RATE SETTING METHODOLOGY

6. REQUIRED REPORTS

Contractor agrees to submit the following reports to the Exchange:

- A. SSAE Annual Audit Report
- B. Annual Account Profit and Loss Report
- C. Annual Audited Financial Statements
- D. Fraud and Abuse Detection and Prevention Programs
- E. Customer Service Reports, including
 - a. Customer call volumes
 - b. Telephone responsiveness
 - c. Responsiveness to written correspondence
 - d. Number, accuracy, and timeliness of ID card distribution
 - e. Nurse advice line volume, talk time, and topics discussed
 - f. Use of Contractor's website
- F. Quality Assurance Activities
- G. Enrollment Reports
- H. Non-Confidential Reports Provided to Government Entities and Large Employers, including reports delivered to relevant federal agencies such as CCIIO, HHS, IRS, or other federal entities pertaining to their participation as QHPs in the Exchange or are required for participation in federally operated transitional reinsurance, risk adjustment, and risk corridor programs
- I. CAHPS and HEDIS Scores
- J. Premiums Collected
- K. Tax Reports Required in the Internal Revenue Code and Regulations
- L. Health Information Technology Implementation Reports
- M. Monthly Non-Exchange Qualified Health Plan Assessment Reports
- N. Quality of Care Assessment Reports
- O. Provider Network Termination Report

7. 2014 HEDIS MEASURES PERFORMANCE RATES REPORTING

Contractor shall collect, compile and report National Committee on Quality Assurance (NCQA) Health Care Effectiveness Data and Information Set (HEDIS) Effectiveness of Care measure performance rates for its commercial and Medicare populations to The Exchange. Reported rates will be approved by an NCQA-certified HEDIS compliance auditor. Contractor shall report a single statewide rate for commercial HMO/POS and each Medicare HEDIS measure in a mutually agreed upon format.

- A. Contractor agrees that the final audited 2013 HEDIS performance rates (for 2012 performance) will be submitted to The Exchange by June 30, 2013.
- B. The Exchange will report summarized HEDIS results for Contractor in the annual Exchange report to Members.
- C. The Exchange will publicly report if Contractor fails to provide the Exchange with the final HEDIS rates by the above-specified date.
- D. For contract year 2014, Contractor will notify the Exchange, in writing, no later than 5:00 PM, PDT, on December 3, 2013, of the name and address of the NCQA-certified HEDIS compliance auditor who will audit its HEDIS performance rates in contract year 2014.

8. CONSUMER ASSESSMENT OF HEALTH PLANS (CAHPS) SURVEY

- A. Contractor shall assure that a survey is conducted of its Exchange Enrollees according to procedures specified by the Exchange. Contractor shall use the survey specified by the Exchange. The Exchange contracts with a survey vendor to administer its Enrollee satisfaction survey.
- B. Contractor agrees that Contractor will conduct the survey provided by the Exchange contracted survey vendor during each contract year.
 - 1. For the 2014 survey, Contractor shall provide data files for all The Exchange commercial members directly to the contractor no later than [Date to be determined], in a manner specified by the Exchange. For the following year's survey, the Exchange shall notify Contractor of the date by which data files must be provided to the survey vendor, and Contractor shall comply with those dates.
 - 2. The Exchange contracted survey vendor will select a random sample of at least 1,100 Enrollees and shall conduct and administer the Exchange CAHPS survey process.

9. TERMS AND CONDITIONS FOR ELECTRONIC COMMERCE

I. Purpose

The Exchange and Contractor will facilitate business transactions by electronic data transmitted through the Internet or other transmission medium using appropriate security. The Exchange and Contractor intend that transactions undertaken by electronically transmitting data will be as enforceable as transactions undertaken by hard copy.

II. Definitions

- A. "Acknowledgement" means an electronic indicator verifying receipt of data.
- B. "Agreement" means the Agreement for Group Coverage between the Exchange and Contractor effective January 1st of the current contract year.
- C. "Confidential information" means information that is exempt from disclosure under the provisions of the Government Code section 20230, the California Public Records Act (Government Code sections 6250-6265), the Information Practices Act (Civil Code sections 1789-1798.78), the Federal Privacy Act of 1974, HIPAA, or other applicable state or federal laws. For the purposes of this Agreement, personal information includes, but is not limited to, the name, Social Security number, physical description, home address, home telephone number, cellular phone number, education, finances, employment or medical history of all current and former employees or Enrollees of The Exchange and their respective beneficiaries and Family Members.
- D. "Data" means all the electronic data elements and code sets inherent in an electronic transaction and not related to the format of the transaction.
- "Data element" means the smallest named unit of information in a transaction.
 - "Code set" means any set of codes used to encode data elements, such as tables of terms and health plan codes.
 - "Electronic transaction" means exchanging data between two or more parties using any mode of electronic media.
- E. "Data Storage Provider (DSP)" means an external vendor who provides the hardware, software, storage and retrieval applications used to archive, backup, or otherwise maintain The Exchange health plan stored data.
- F. "Electronic data" means data that is recorded or transmitted electronically.
- G. "Electronic media" means the mode of electronic transmission, including the Internet, Extranet, leased lines, dial-up lines, private networks, and transmission that are physically moved from one location to another using magnetic tape, disk, or compact disk media.
- H. "Enrollee Data" means any personal or work-related benefits information, whether oral or recorded in any form or medium that (1) is created or received by a health plan, healthcare provider, public health authority, employer, contracting agency, healthcare clearinghouse, or third party and (2) related to the past, present, or future health plan coverage or healthcare benefits of an eligible individual and their Family Members; or the past, present, or future payment for the provision of health coverage and health care to an individual and their Family Members.
- I. "Exhibit" means the authorizing document for an electronic transmission. Exhibits set forth the categories of Data to be transmitted, the transaction sets, formats and other information relevant to the transmission. As business requirements dictate, Exhibits will

be executed between the parties and upon execution will be subject to these Terms and Conditions for Electronic Commerce.

III. System Operations

The Exchange and Contractor will each provide and maintain the equipment, hardware, software and services that it uses to transmit, receive and control electronic Data and transactions. Each party will periodically test and monitor such equipment, hardware, software and services to ensure that they are adequate to reliably transmit, receive and control electronic Data and transactions. Each party will be responsible for its own costs.

Contractor will provide or support the protection of processes, data, resources, and systems from exploitation, tampering, corruption, accidental, or malicious activities utilizing: prevention mechanisms, detection capability mechanisms, and self recovery mechanisms in the event of failure such that all systems recover to a secured state.

Contractor will provide or support mechanisms that ensure the availability of processes, data, resources, and systems. Availability mechanisms will include but not be limited to: regularly scheduled and/or critical upgrades, software patches, and malware protections, periodic backup of critical information assets, and recovery of information assets back to a secured operational state. Each party will be responsible for its own costs.

IV. Data Transactions

If one party electronically transmits Enrollee Data or other Data to the other party in accordance with the applicable Exhibit, the other party agrees to receive this Data. Any other transmission of information, or reporting requirements of the Agreement, is not subject to these Terms and Conditions for Electronic Commerce.

V. Means of Transmission

The Exchange and Health Plan Issuer will transmit Member Data or other Data directly to one another through an Internet Service Provider or some other electronic media. Each party will be solely responsible for the costs of any provider or electronic media source with which it contracts. Data that includes Social Security numbers is subject to confidential handling in accordance with the Privacy Act of 1974 and HIPAA. Electronic transmission of Social Security numbers shall only be via secure electronic media, including, but not limited to, encrypted file, electronic diskette, electronic tape, compact disc, or paper. Data containing Social Security numbers shall not be transmitted through non-secure electronic mail (e-mail) or other non-secure electronic medium.

Contractor agrees to transfer data using the Exchange preferred method of secure data transmission whether Secure File Transfer Protocol (SFTP) or other data encryption capability.

VI. Storage

If the Exchange's information switches from one location to another, Contractor is responsible for preserving the integrity of the information that is copied from the original site to the new site. When a vendor uses a data storage provider (DSP) to host Exchange information, the DSP must ensure accessibility, availability, integrity, confidentiality, consistency, security, compatibility and compliance with Exchange data formats and security practices.

VII. Retention

The Exchange and Contractor will retain a record of all transactions for at least 90 business

days after concluding each transaction. The parties will also retain transactions to the extent required by applicable law.

VIII. Destruction

Upon termination of Contractor as a participating Qualified Health Plan Issuer, Contractor will maintain Exchange records in accordance with applicable federal and state laws. Contractor shall continue to extend the protections of the Agreement to such information and limit further use of the information to those purposes that make the return or destruction of the information not feasible until such expiration date in which Contractor can lawfully destroy all critical system information that it maintains in any form and shall retain no copies of such information.

IX. Audit and Accountability

Contractor will implement audit and accountability control functions which include but are not limited to: implementation of mechanisms that enable system usage review, security event logging, collection, storage, and monitoring. Such control functions will also provide for the secure storage of audit logs, collect machine state and system usage information and all items required for forensic investigations.

X. Non-Repudiation

Both entities shall work together to develop a system to acknowledge each other's transmissions upon receipt.

XI. Signatures

Each authorized representative of the Exchange and Contractor will adopt a unique, verifiable digital identification consisting of symbols or codes to be transmitted with each transmission. Use of digital identification will be deemed for all purposes to constitute a "signature" and will have the same effect as a signature on a written document. Each authorized representative of a party will safeguard his or her digital identification.

XII. Transaction Security

All computerized files and related documents containing personal information, medical information, or other Enrollee Data which could be linked to an individual are considered Confidential Information.

The Exchange and Contractor will provide security measures to ensure that all data transmissions are authorized and protected from unauthorized access or loss. Each party is required to maintain the confidentiality of transactions and the Data therein in the same secured manner as it would maintain for a paper document of like kind and importance.

XIII. Non-Disclosure

Contractor agrees not to disclose electronic Data to any third parties or to any of its employees except employees or contractors who have signed non disclosure agreements with terms equivalent to, or stricter than, the terms of this Agreement, who have a need to know Confidential Information for the purposes described in this Agreement. Contractor will provide security controls for relevant functions that identify levels of authorization for individuals and systems for only those activities required to perform specified business and/or technical functions. Each of the parties shall take reasonable and necessary steps to prevent unauthorized disclosure of Confidential Information that is electronically maintained. Each

party agrees to promptly advise the other in writing of any misappropriation or misuse by any person of any electronic Confidential Information disclosed under this Agreement.

XIV. XIV. Receipt and Acceptance

A. Proper Receipt: Data shall not be deemed to have been properly received, and no Data shall give rise to any obligation, until accessible to the receiving party's Receipt Computer designated in the Exhibit. B. Verification: Upon receipt of any Data, the receiver shall promptly and properly transmit an acknowledgment in return, unless otherwise specified in the Exhibit. If no acknowledgment is received, the sender shall initiate appropriate inquiries within twenty-four (24) hours. An acknowledgement shall constitute conclusive evidence that Data has been properly received.

XV. Enforceability and Admissibility

Any Data properly transmitted pursuant to these Terms and Conditions for Electronic Commerce will, for all purposes: (a) be a "writing" or "in writing;" and, (b) constitute an "original" when printed from electronic records established and maintained in the ordinary course of business by the party providing the records.

Any Data signed pursuant to Section XI, "Signatures," and electronically transmitted pursuant to these Terms and Conditions for Electronic Commerce will be as legally sufficient as a written, signed, paper document exchanged between the parties, notwithstanding any legal requirement that the Data be in writing or signed. Data records introduced as evidence in any judicial, arbitration, mediation or administrative proceeding will be admissible to the same extent as business records maintained in written form.

The conduct of the parties pursuant to these Terms and Conditions for Electronic Commerce, including the use of Data properly transmitted hereunder, shall, for all legal purposes evidence a course of dealing and a course of performance accepted by the parties in advancing the purpose of these Terms and Conditions for Electronic Commerce.

XVI. Incidental and Consequential Damages

The Exchange or Contractor will not be liable to the other for any special, incidental or consequential damages arising from or as a result of any delay, omission or error in the electronic transmission or receipt of any transaction set pursuant to these Terms and Conditions for Electronic Commerce.

XVII. Nature of Agreement

These Terms and Conditions for Electronic Commerce do not express or imply any commitment to purchase or sell goods or services or conduct any other business transaction.

XVIII. Entire Agreement

These terms constitute the complete agreement of the electronic data transmission and supersede all prior representations or agreements, whether oral or written, with respect to such matters.