

STATE OF CALIFORNIA
STANDARD AGREEMENT
 STD 213 (Rev 06/03)

AGREEMENT NUMBER

A-13- _____

REGISTRATION NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME

California Health Benefit Exchange

CONTRACTOR'S NAME

2. The term of this Agreement is: From the Date Signed by the State below for one (1) year from said Date.

3. The maximum amount of this Agreement is: Undefined

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.

Exhibit A – Scope of Work	11 Pages
Exhibit B – Budget Detail and Payment Provisions	3 Pages
Exhibit C – General Terms and Conditions	17 Pages
Exhibit D – Business Associates Agreement	12 Pages
Exhibit E – Branding Guidelines	3 Pages
Exhibit F – Schedule of Commissions	1 Pages
Exhibit G – Darfur Certification	1 Pages

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)

BY (Authorized Signature)

[Signature]

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

STATE OF CALIFORNIA

AGENCY NAME

California Health Benefit Exchange

BY (Authorized Signature)

[Signature]

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

David Maxwell-Jolly, Chief Deputy Executive Director, Strategy

ADDRESS

560 J Street, Suite 290, Sacramento, CA 95814

California Department of General Services Use Only

Exempt per:
Government Code Section 100505

**EXHIBIT A
(Agent Agreement)**

SCOPE OF WORK

This Agreement is made between the State of California, acting by and through the California Health Benefit Exchange, hereafter referred to as the “Exchange” and _____ an individual licensed by the California Department of Insurance to transact in health insurance and acting pursuant to the laws of the State of California, hereafter referred to as “Agent” or “Contractor” interchangeably.

Agent as it appears on license: _____
License Number/Expiration: _____ / ____ / ____
Federal ID number or SSN: ____ - ____ - ____
Business Phone: (____) ____ - ____
Business Fax: (____) ____ - ____
Email address: _____

A. Purpose:

The mission of the Exchange is to increase the number of insured Californians, improve health care quality, lower costs, and reduce health disparities through an innovative, competitive marketplace that empowers consumers to choose the health plan and providers that give them the best value.

The Exchange is creating a new marketplace that will assist individuals that may be eligible for Medi-Cal and will offer subsidized health care coverage in the form of premium assistance and cost sharing reductions to individuals and families with incomes between 138% - 400% of the Federal Poverty Level limits. Premium assistance and/or cost sharing reductions will only be available to consumers in California through the Exchange. Consumers will not be able to obtain premium assistance and/or cost sharing reductions through the private health insurance market. Regardless of whether a consumer is determined to be eligible for subsidies, the Exchange will provide access to coverage and premiums in an easy to access and understandable format at the same price that is available in the outside market.

The Exchange will operate a Small Business Health Options Program (SHOP) that offers small businesses and their employees, new health insurance options. The SHOP is designed specifically for employers with 50 or fewer eligible employees and offers affordable health coverage through of a variety of health insurance

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companies.¹ Through SHOP, both employers and their employees can choose the plans that fit their needs and their budgets.

Accordingly, the purpose of this Agreement is to secure the expertise of licensed agents to assist with the determining of eligibility of individuals for Medi-Cal or premium assistance and to assist in the enrollment of individuals into either the Individual Exchange or the SHOP.

The authority to enter into this Agreement arises from Government Code Section 100503, subparagraph (s), where the Exchange is directed to “Exercise all powers reasonably necessary to carry out and comply with the duties, responsibilities, and requirements of this act [California Patient Protection and Affordable Care Act] and the federal act [Patient Protection and Affordable Care Act (Public Law 111-148)].” Furthermore, under 45 Code of Federal Regulations section 155.220, the Secretary of the United States Health and Human Services has promulgated regulations allowing for the participation of Agents in the Exchange.

B. Definitions:

1. Agent(s): individuals who are licensed and in good standing as a life licensee under Insurance Code Section 1626 by the California Department of Insurance to transact in accident and health insurance.
2. Advance Payments of Premium Tax Credit (APTC): Payment of the tax credits authorized by 26 U.S.C. 36B and its implementing regulations, which are provided on an advance basis to an eligible individual enrolled in a QHP through an Exchange in accordance with Section 1412 of the Affordable Care Act.
3. California Health Care Eligibility, Enrollment & Retention System (CalHEERS): CalHEERS was created pursuant to Government Code Sections 100502 and 100503, as well as 42 U.S.C. 18031, to enable customers to apply for eligibility, enrollment, and reenrollment in QHPs through the Exchange as well as other Insurance Affordability Programs (IAPs) such as Medi-Cal.
4. Certified Insurance Agent: An Agent certified by the Exchange to transact in the individual and SHOP Exchanges.
5. Certified QHP: Any QHP that is selected by the Exchange and has entered into a contract with the Exchange for the provision of health insurance coverage for

¹ The Exchange may increase the number of employees in a small employer to 100. See Section 1304(b) of the Patient Protection and Affordable Care Act.

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enrollees who purchase health insurance coverage through the Individual and/or SHOP Exchanges.

6. Children's Health Insurance Program (CHIP): The programs established under the State plan adopted in accordance with title XXI of the Social Security Act to provide health insurance for children.
7. Consumer: A person or entity seeking information on eligibility and enrollment or seeking application assistance with a health insurance or health related product available through the Exchange. The term consumer includes, but is not limited to, an applicant, an application filer, authorized representative, employer, qualified employee, qualified employer, qualified individual, small employer, or enrollee as defined in Section 6410, Title 10, California Code of Regulations.
8. Employee: An individual as defined in Section 2791 of the Public Health Service Act (42 U.S.C. 300gg-91(d)(5)).
9. Employer: A person as defined in Section 2791 of the Public Health Service Act (42 U.S.C. 300gg-91(d)(6)), except that such term includes employers with one or more employees. All persons treated as a single employer under subsection (b), (c), (m), or (o) of Section 414 of IRC (26 U.S.C. § 414) are treated as one employer.
10. Individual and SHOP Exchanges: The programs administered by the Exchange pursuant to California Government Code § 100500 et seq., 42 U.S.C. 18031(b) of the federal Patient Protection Affordable Care Act and other applicable laws to furnish and to pay for health insurance plans for Qualified Individuals and Qualified Employers.
11. Individual Market: A market as defined in Section 1304(a)(2) of the Affordable Care Act.
12. Medi-Cal: Medi-Cal is administered by the California Department of Health Care Services. This program pays for a variety of medical services for children and adults with limited income and resources.
13. Qualified employee: An individual who is employed by a qualified employer and has been offered health insurance coverage by such qualified employer through the SHOP.
14. Qualified Employer: Qualified Employer has the same meaning as that term is defined in 42 U.S.C. 18032(f)(2) and 45 CFR 155.710.

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15. Qualified Health Plans (QHPs): QHP has the same meaning as that term is defined in Patient Protection and Affordable Care Act Section 1301, 42 U.S.C. 18021. If a Standalone Dental Plan is offered through the Exchange, another health plan offered through the Exchange shall not fail to be treated as a QHP solely because the plan does not offer coverage of benefits offered through the standalone plan under 42 U.S.C. 18022(b)(1)(J).
16. Qualified Individual: Qualified Individual is an individual who meets the requirements of 42 U.S.C. 18032(f)(1) and 45 CFR 155.305(a).
17. Small employer: An employer as defined in Section 1357.500(k) of California Health and Safety Code and in Section 10753(q) of California Insurance Code.

C. Scope of Work:

1. Licensure. Agent shall maintain licensure and good standing under Insurance Code Section 1626 by the California Department of Insurance to transact in accident and health insurance.
2. Certification. Agent shall comply with the certification standards set forth by the Exchange in the California Code of Regulations, Title 10, Article 6800 et seq. prior to assisting Consumers.
3. Due Diligence. Agent shall use commercially reasonable efforts to identify potential Consumers and solicit them to apply for QHPs sold through the Exchange.
4. Consumer Applications.
 - a. Agent shall comply with the rules of the Exchange relating to the completion of an eligibility verification and enrollment application through CalHEERS including, but not limited to, the single streamlined application to determine eligibility and to collect information necessary for:
 - i. Enrollment in a QHP;
 - ii. Advance payments of the premium tax credit;
 - iii. Cost-sharing reductions; and
 - iv. Enrollment in Medicaid or CHIP, where applicable;

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- b. In the case that a Consumer is or may be eligible for Medi-Cal or CHIP, Agent shall facilitate the enrollment of interested Consumers without undue delay. Agent will not be compensated for enrolling individuals in Medi-Cal.
 - c. Agent shall use best efforts to ensure that each application is fully and truthfully completed by the Consumer and the completed application fully and accurately reflects and discloses the circumstances of persons included in the application.
 - d. To allow for the proper processing of Agent's compensation, Agent must ensure the completion the following sections of each consumer's application to the Exchange:
 - i. Name and license number of the Certified Insurance Agent; and
 - ii. Agent's personal identification number for electronic applications or Agent's signature and date of signature for paper applications.
5. Same Level of Service for All. To ensure that no consumer is discriminated against, Agent shall provide the same level of service to all individuals regardless of age, disability, culture, sexual orientation, or gender identity and seek advice or experts when needed.
6. Representations. Agent shall represent the plans offered through the Exchange in accordance with the following, understanding that failure to comply with this section shall be deemed as a material breach of this Agreement and grounds for permanent decertification from the Exchange:
- a. Fairly and accurately present to Consumers all available enrollment options and prices regardless of the Agent's appointments with any health plan.
 - b. Agent agrees not to steer Consumers toward or against any of the QHPs sold by the Exchange on the basis of payment schedules or other consideration made to Agent.
 - c. Agent is not authorized to and agrees not to enter into, alter, deliver or terminate any coverage on behalf of the Exchange or any QHP, extend the time for payment of charges, or bind the Exchange or any QHP in any way.

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- d. Use best efforts to advise every Consumer that in no event will the Consumer have any coverage unless and until the Exchange has approved the application and payment has been received.
 - e. Agent shall not make any commitments on behalf of the Exchange or any QHP that have not been specifically approved in advance in writing by the Exchange or a QHP.
7. Agent shall not provide payment or other valuable consideration to subgrantees of the Exchange, Certified Enrollment Entities or Certified Enrollment Counselors defined under Article 8, Title 10 of the California Code of Regulations, and other community-based groups for referrals and/or enrollment services.
8. Compensation. Compensation shall be made in accordance with Exhibit B. Agent is an independent contractor and shall have no claim to compensation except as provided in Exhibit B and shall not be entitled to reimbursement from the Exchange for any expenses incurred in performing this Agreement. Agent further agrees that to the extent of any indebtedness of Agent to the Exchange, the Exchange shall have a first lien against any compensation due Agent, and such indebtedness may be deducted at the Exchange's option from compensation due Agent.
9. Acceptance of Payment. For the individual market, monies received by Agent shall be processed in accordance with Agent's agreement with the QHPs and, under no circumstances, shall be sent to the Exchange. For the SHOP, monies received by Agent for or on behalf of the Exchange shall be made payable to the Exchange and received by Agent in a fiduciary capacity. Monies received by Agent for the SHOP shall not be commingled by Agent with personal funds of Agent, and shall be remitted to the Exchange by no later than five (5) calendar days from the day of receipt.
10. Records. Agent shall maintain complete records (i) of all transactions pertaining to applications submitted to and accepted by the Exchange, (ii) as may be required by the California Department of Insurance, or California Department of Managed Health Care or any other governmental entity, and (iii) in connection with Agent's relationship with the Exchange. Any and all records described above or as may otherwise relate to Agent's activities in connection with Exchange business shall be accessible and available to representatives of the Exchange who may audit them from time to time while this Agreement is in effect or within one (1) year after termination thereof.

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11. Ongoing Service. Agent shall service Employers, Employees, and individuals enrolled in QHPs when Agent is the Agent of Record. Such service will include, but not be limited to, the following:

- a. Acting as liaison between these parties and the Exchange if requested by any of these parties;
- b. Assisting these parties to take the proper action in connection with Exchange coverage when there is a change of address, or other change of status;
- c. Assisting a family member/dependent to obtain coverage when he or she is no longer entitled to coverage as a family member – e.g., when a dependent child reaches the limiting age, or upon a divorce or dissolution of marriage; and
- d. Maintaining a working and current knowledge of QHPs offered through the Exchange and the ability to explain benefits and/or coverage.

12. Agent shall provide reasonable assistance to the Exchange in resolving any problems that may arise with new and existing Employers, Employees, or individuals enrolled in QHPs.

13. Agent of Record.

- a. For the Individual Market, Agent of Record policies are defined by agreement between Agent and the health plans. The Exchange does not define Agent of Record policies for participating QHPs.
- b. For the SHOP Exchange, Agent shall advise Employers that any Agent of Record changes must be made by providing the Exchange with a written request made by the Employer's authorized representative, which identifies the name, address, and if known, tax identification number of the new Agent of Record. Upon receipt of the Employer's request, the Exchange will notify the Employer's Agent of Record. For all Employers, the Exchange will honor the Employer's request on the first day of the month following the Exchange's receipt of the request, unless another future date is specified in the written request. The new Agent will be the Employer's designated Agent of Record.

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14. Privacy and Security. Agent shall Comply with the privacy and security standards established by the Exchange pursuant to 45 C.F.R. § 155.260;

15. Training Standards

- a. To ensure that all Agents are prepared to serve both the individual Exchange and SHOP, all Agents who carry out consumer assistance functions shall complete training in the following subjects prior to carrying out any consumer assistance functions:
 - i. QHPs (including the metal levels described at 45 C.F.R. § 156.140(b)), and how they operate, including benefits covered, payment processes, rights and processes for appeals and grievances, and contacting individual plans;
 - ii. The range of insurance affordability programs, including Medicaid, the Children's Health Insurance Program, and other public programs;
 - iii. The tax implications of enrollment decisions;
 - iv. Eligibility requirements for premium tax credits and cost-sharing reductions, and the impacts of premium tax credits on the cost of premiums;
 - v. Contact information for appropriate federal, state, and local agencies for consumers seeking additional information about specific coverage options not offered through the Exchange;
 - vi. Basic concepts about health insurance and the Exchange; the benefits of having health insurance and enrolling through an Exchange; and the individual responsibility to have health insurance;
 - vii. Eligibility and enrollment rules and procedures, including how to appeal an eligibility determination;
 - viii. Providing culturally and linguistically appropriate services;

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- ix. Ensuring physical and other accessibility for people with a full range of disabilities;
 - x. Understanding differences among health plans;
 - xi. Privacy and security standards applicable under 45 C.F.R. § 155.260 for handling and safeguarding consumers' personally identifiable information;
 - xii. Working effectively with individuals with limited English proficiency, people with a full range of disabilities, people of any gender identity, people of any sexual orientation, and vulnerable, rural, and underserved populations;
 - xiii. Customer service standards;
 - xiv. Outreach and education methods and strategies;
 - xv. Applicable administrative rules, processes, and systems related to Exchanges and QHPs; and
- b. Agent shall not perform any functions under this Agreement if more than twelve (12) months have passed since Agent passed the certification exam administered by the Exchange.
16. Agent shall not concurrently be certified as a Plan Based Enroller defined in Article 9, Title 10, of the California Code of Regulations.

D. Exchange Rights

- 1. Agent agrees that the Exchange reserves the right to do any of the following:
 - a. Reject any and all applications submitted by Agent; and
 - b. Discontinue, modify, or exercise all lawful rights in connection with any of its QHPs without liability to Agent.

E. Agent Appointment

- 1. Appointments for plans sold through the Exchange shall be made as follows:

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- a. Individual Market
 - i. The Exchange does not appoint Agents in the Individual Market. QHPs are responsible for maintaining a reasonable appointment process for appointing agents to sell QHPs in the Individual Market.
- b. SHOP Exchange
 - ii. The Exchange grants to Agent a non-exclusive, revocable appointment to enroll employers and employees in QHPs through CalHEERS for all plans sold in the SHOP. This appointment shall not limit or prohibit the Exchange from granting similar appointments to other Agents, and does not prohibit Agent from accepting appointments from any insurance companies.

17. Compliance with Governing Statutes:

- 1. The Contractor understands that all services rendered under this Agreement must comply with any applicable federal or state laws and regulations, including, but not limited to, the following:
 - a. The Patient Protection and Affordable Care Act of 2010 and any accompanying regulations promulgated thereunder;
 - b. California Code of Regulations, Title 10, Article 6800 et seq.
 - c. Sections 15438, 15439, and 100501 through 100521 of the Government Code;
 - d. Sections 1346.2 and 1366.6 of the Health and Safety Code; and
 - e. Sections 10112.3 and 10112.4 of the Insurance Code.

18. Consumer Messaging:

Agent agrees to use and be in compliance with the branding guidelines in Exhibit E.

19. Term

The term of this Agreement is for one year and shall be automatically renewed upon recertification of Agent annually.

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20. Project Representatives:

The State Program Representative for this project, during the term of this Agreement, shall be:

State Program Representative
Anne Gezi California Health Benefit Exchange 560 J Street, Suite 290 Sacramento, CA 95814 (916) 323-3765 T (916) 323-3569 F Anne.Gezi@Covered.ca.gov

DRAFT

**EXHIBIT B
(Agent Agreement)**

BUDGET DETAIL AND PAYMENT PROVISIONS

A. Payment

1. For sales in the Individual Exchange
 - a. QHPs are solely responsible for compensating agents for plans sold in the Individual Exchange. Compensation rates are set by QHPs and may vary depending on the terms and conditions established by agreement with Agent.
2. For sales in the SHOP
 - a. The Exchange shall pay Agents a percentage of the premium for each policy sold by Agent through the SHOP Exchange. The percentage shall be established by the "Schedule of Commissions" in place on the effective date of coverage. The "Schedule of Commissions" in Exhibit F is applicable to Contracts entered into on and after all parties sign this Agreement. The Exchange will provide Agent with an updated "Schedule of Commissions" whenever changes occur by posting such changes to <http://www.healthexchange.ca.gov/Pages/agents.aspx>. Changes made by the Exchange to the "Schedule of Commissions" will only apply to Exchange business with effective dates of coverage falling on or after the date the "Schedule of Commissions" was amended. Agent understands and agrees that no commissions will be paid for Individual Conversion Plan Contracts.
 - b. Commissions shall continue to be paid if and only if the Qualified Employer remains enrolled in the SHOP and Agent continues to meet the following conditions:
 - i. Maintain licensure and good standing with the California Department of Insurance.
 - ii. Agent maintains Certification with the Exchange per California Code of Regulations, Title 10, Article 6800 et seq. In the event that Agent's certification with the Exchange is renewed within sixty days of decertification, Agent shall be compensated retroactively and commissions reinstated.
 - iii. The Exchange does not terminate Agent's contract For Cause as described in Exhibit C, Section F, subsection 1.

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c. Commission Assignment Rights

- i. Agent may assign the right to commissions under this Agreement to another agent certified by the Exchange subject to the Exchange's prior written consent which shall not be unreasonably withheld. Agent shall provide at least thirty days prior written notice of the assignment. The Exchange shall pay the Assignee the commissions that would have been paid to Agent had the commission not been assigned.
- ii. The Assignee will be the Employer's Agent of Record with all the other rights and obligations thereunder.

B. Prompt Payment Clause:

Payment shall be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.

C. Non-resident Tax Withholdings:

Payments to all nonresidents may be subject to withholding. Non-resident payees performing services in California or receiving rent, lease, or royalty payments from property (real or personal) located in California shall have seven percent of their total payments withheld for state income taxes. No withholding is required, however, if total payments to the payee are \$1,500 or less for the calendar year.

EXHIBIT C
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GENERAL TERMS AND CONDITIONS

A. Approval:

This Agreement is of no force or effect until signed by both parties.

B. Amendment:

This Agreement may be amended by mutual consent of the parties. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by both parties. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.

C. Indemnification:

Contractor agrees to indemnify, defend and save harmless the State, its officers, trustees, agents and employees from any and all claims, losses, costs, liabilities, damages or deficiencies, including interest, penalties and attorneys' fees, which:

1. Arise out of, are due to, or are alleged to arise out of or be due to, a breach by the Contractor of any of its representations, warranties, covenants or other obligations contained in this Agreement, or
2. Are caused by or result from or are alleged to arise out of or result from, the Contractor's acts or omissions constituting bad faith, willful misfeasance, negligence or reckless disregard of its duties under this Agreement, or
3. Accrue or result, or are alleged to accrue or result, to any and all contractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement, or
4. Arise out of, are due to, or are alleged to arise out of or be due to, any claim or allegation of infringement, misappropriation or violation of any patent, copyright, trademark, trade secret, domain name or other intellectual property right comprising or involving any of the Subject Inventions, Prior Inventions or other Inventions provided in any way by Contractor and used, reproduced or otherwise exploited by the State in connection with any of the Agreement Programs or any Turnover thereof; or

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5. Arise out of, are due to or are alleged to arise out of or be due to, any violation of HIPAA, the HIPAA Regulations, HITECH Act, other security or privacy laws, or any other laws, by Contractor or any contractor or agent under Contractor 's control.

If and to the extent that the Contractor has knowledge of a claim that it believes may develop into an action that would be subject to this Agreement, the Contractor shall promptly notify the State of the claim.

Right to Tender or Undertake Defense. If the State is named a party in any judicial, administrative, or other proceeding arising out of or in connection with a breach of this Agreement or a matter for which the Contractor is obligated to indemnify the State under this Agreement, then the State shall have the option at any time to either (i) tender its defense to Contractor, in which case Contractor shall provide qualified attorneys, consultants, and other appropriate professionals to represent the State's interests at Contractor 's expense, or (ii) undertake its own defense, choosing the attorneys, consultants, and other appropriate professionals to represent its interests, in which case Contractor shall be responsible for and shall pay reasonable fees and expenses of such attorneys, consultants, and other appropriate professionals. If the State elects option (ii) above, the Contractor shall be afforded a reasonable opportunity to participate in the defense and attend the legal proceedings at its own expense; however, the State shall have sole control of the defense.

Right to Control Resolution. Notwithstanding that the State may have tendered its defense to the Contractor, neither party shall settle, compromise or resolve any claims, causes of action, liabilities or damages against the State without the consent of the other party, which consent shall not be unreasonably withheld. Any such resolution shall not relieve the Contractor of its obligation to indemnify the State.

D. Dispute Provisions:

1. The parties shall deal in good faith and attempt to resolve disputes informally. If the dispute persists, Contractor shall submit a written dispute notice to the Exchange Project Representative within 15 calendar days after the date of the action causing the dispute. The written dispute notice shall contain the following information:
 - a. The decision or issue under dispute;
 - b. The reason(s) Contractor believes the decision or position taken by the Exchange is in error (if applicable, reference pertinent Contract provisions);

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- c. Identification of all documents and substance of all oral communication which support Contractor's position; and
 - d. The dollar amount in dispute, if applicable.
2. The Exchange Project Representative, within 15 calendar days after receipt of the dispute notice, shall issue a written decision regarding the dispute. The written decision shall include the following information:
 - a. A description of the dispute;
 - b. A reference to pertinent Contract provisions, if applicable;
 - c. A statement of the factual areas of agreement or disagreement; and
 - d. A statement of the representative's decision with supporting rationale
3. If the Contractor is not satisfied with the decision of the Exchange Project Representative, the Contractor may, within 15 calendar days of the Exchange Project Representative's decision, submit a written appeal to the Exchange Executive Director. The Executive Director shall then issue a final decision on the dispute within 30 days after receiving Contractor's written appeal. If the Executive Director fails to render a final decision within 30 days after receipt of Contractor's written appeal, it shall be deemed a final decision adverse to the Contractor's contentions. The Executive Director's final decision shall be conclusive and binding regarding the dispute unless Contractor commences an action in a court of competent jurisdiction to contest such decision within 30 days following the date of the final decision.
4. Pending the final resolution of any dispute arising under, related to or involving this Agreement, Contractor agrees to diligently proceed with the performance of this Agreement, in accordance with the Exchange's instructions. Contractor's failure to diligently proceed in accordance with the Exchange's instructions shall be considered a material breach of this Agreement.

E. Modification

The Exchange may modify this Agreement upon thirty (30) days prior written notification. Any such modification shall not affect Agent's rights in connection with business written with effective dates prior to the effective date of modification of this Agreement.

F. Termination

EXHIBIT C
(Agent Agreement)

1. Termination For Cause:

The Exchange may terminate this Agreement and be relieved of any payments at any time. Upon notice from the Exchange terminating this Agreement for Cause, Contractor shall immediately discontinue all activities affected, unless the notice directs otherwise, and the Exchange may proceed with the work in any manner deemed proper by the Exchange. In such event, the Exchange shall not be liable to pay Contractor any compensation from the date of termination, and all costs to the Exchange shall be remitted to the Exchange within 30 days. The Exchange may, at its sole discretion, offer an opportunity to cure any breach prior to terminating for default. A failure to terminate this Agreement for cause shall not be a waiver of the right to do so with respect to any past, current or future default. Such right of termination shall be without prejudice to any other remedies available to the Exchange. The Exchange may terminate this Agreement for cause without prior written notice to Agent at any time for any of the following occurrences:

- a. The death of Agent;
- b. Revocation, suspension or expiration of Agent license by the California Department of Insurance ;
- c. Revocation, suspension or expiration of Agent's certification by the Exchange.
- d. Commission of a fraudulent, illegal, deceitful or dishonest act as determined the Exchange;
- e. Violation by Agent of any rule, policy, procedure or guideline of the Exchange;
- f. Termination of the Agent Agreement pursuant to the Business Associate Agreement, Exhibit D, Section II.
- g. Agent's failure to comply with any provision of this Agreement; or
- h. Threatening or acting in an abusive manner toward the Exchange or any of its employees, agents, or representatives, or Consumer.

2. Termination Without Cause:

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This Agreement may be terminated at any time by either party upon giving thirty (30) days prior written notice thereof to the other party. The effective date of termination shall be the first day of the month following the 30-day notice period unless said notice specifies a later date. In the instance that an Agent's contract is terminated Without Cause, Agent shall continue to be compensated in accordance with this Agreement after the date of termination unless the Agent of Record is changed as described in Exhibit A, Section C.

G. Independent Contractor:

In the performance of this Agreement, Contractor and the agents and employees of Contractor shall act in an independent capacity and not as officers or employees or agents of the State except for purposes of Civil Code Section 1798.24.

H. Contractor Certification Clauses:

1. Compliance:

Contractor certifies that it is in compliance and will remain in compliance with all applicable federal and state laws.

2. Nondiscrimination Clauses

In addition, Contractor certifies that it will comply with all Federal and state statutes and regulations relating to nondiscrimination. These include, but are not limited to, the following:

- a. Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), as amended, and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 C.F.R. Part 80), to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which Federal financial assistance is provided by the Department of Health and Human Services.
- b. Title IX of the Education Amendments of 1972 (Pub. L. 92-318), as amended, and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 C.F.R. Part 86), to the end that, in accordance with Title IX and the Regulation, no person in the United States shall, on the basis of sex, be excluded from participation

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in, be denied the benefits of, or be otherwise subjected to discrimination under any education program or activity for which Federal financial assistance is provided by the Department of Health and Human Services.

- c. Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended, and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 C.F.R. Part 84), to the end that, in accordance with Section 504 of that Act and the Regulation, no otherwise qualified individual with a disability in the United States shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity for which Federal financial assistance is provided by the Department of Health and Human Services.
- d. The Age Discrimination Act of 1975 (Pub. L. 94-135), as amended, and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 C.F.R. Part 91), to the end that, in accordance with the Act and the Regulation, no person in the United States shall, on the basis of age, be denied the benefits of, be excluded from participation in, or be subjected to discrimination under any program or activity for which Federal financial assistance is provided by the Department of Health and Human Services.
- e. Americans With Disabilities Act (ADA) of 1990, as amended, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA (42 U.S.C. 12101 et seq.).
- f. The Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (Title 2, California Code of Regulations, Section 7285 et seq.) require that 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, sexual orientation, race, color, ancestry, religious creed, national origin, physical disability (including HIV and 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 (over 40), marital status, and use of family and medical care leave pursuant to state or federal law. Contractor 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

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discrimination and harassment. 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; and

- g. The requirements of any other nondiscrimination statute(s) which may apply to this Agreement.

3. Conflict of Interest:

Contractor acknowledges that, in governmental agreements, even the appearance of a conflict of interest is harmful to the interest of the State. Thus, Contractor agrees to refrain from any practices, activities or relationships that could reasonably be considered to be in conflict with Contractor's fully performing his/her obligations to the State under the terms of this Contract. Contractor shall inquire about and require disclosure by its Staff and subcontractors of all activities that may create an appearance of conflict. In the event that Contractor is uncertain whether the appearance of a conflict of interest may reasonably exist, Contractor shall submit to the State Project Manager a full disclosure statement setting forth the relevant details of any activity which the Contractor reasonably believes may have the appearance of a conflict of interest for the State's consideration and direction. Failure to promptly submit a disclosure statement setting forth the relevant details for the State consideration and direction shall be grounds for Termination of this Contract.

4. Conflict Of Interest for Current or Former State Employees:

Contractor acknowledges the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, Contractor shall contact the State immediately for clarification.

a. Current State Employees:

- i. No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.

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- ii. No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

b. Former State Employees:

- i. For the two (2)-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transaction, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- ii. For the twelve (12)-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the twelve (12)-month period prior to his or her leaving state service.

If Contractor violates any provisions of the above paragraphs, such action by Contractor shall render this Agreement void.

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem.

5. Labor Code/Workers' Compensation:

Contractor acknowledges the provisions of law which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor agrees to comply with such provisions before commencing the performance of the work of this Agreement (Labor Code Section 3700).

6. Contractor Name Change:

Contractor acknowledges that an amendment is required to change the Contractor name as listed on this Agreement. Upon receipt of legal documentation of the name change the State shall process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

7. Air Or Water Pollution Violation:

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Contractor acknowledges that, under the State laws, Contractor shall not be:

- a. In violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district;
- b. Subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or
- c. Finally determined to be in violation or provisions of federal law relating to air or water pollution.

8. Drug-Free Workplace Requirements:

Contractor shall comply with the requirements of the Drug-Free Workplace Act of 1990 and shall 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 shall:
 - i. Receive a copy of the company's drug-free workplace policy statement; and
 - ii. Agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

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Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the State determines that any of the following has occurred: (1) Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (Govt Code Section 8350 et seq.)

9. National Labor Relations Board Certification:

Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two (2)-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. (PCC 10296) (Not applicable to public entities.)

10. Payee Data Record Form Std 204:

Contractor acknowledges that this form must be completed by all Contractors that are not another state agency or other government entity.

11. Computer Software Copyrights:

Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.

12. Activities Abroad

Contractor certifies that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

13. Covenant Against Contingent Fees

Contractor warrants that no person or selling agency has been employed or retained to solicit/secure this Agreement upon an agreement of understanding for a commission, percentage, brokerage, or contingent fee, except *bona fide* employees or *bona fide* established commercial or selling agencies retained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Exchange shall have the right to annul this Agreement without liability or in its discretion to deduct from the Agreement price or consideration, or

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otherwise recover, the full amount of such commission, percentage, and brokerage or contingent fee.

14. Child Support Compliance Act:

In accordance with the Child Support Compliance Act,

- a. Contractor acknowledges 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. 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.

15. Union Organizing:

By signing this Agreement, Contractor hereby acknowledges the applicability of Government Code Section 16645 through Section 16649 to this Agreement except to the extent any of those statutes are made inapplicable by the decision of the U. S. Supreme Court in Chamber of Commerce of U.S. v. Brown (2008) 554 U.S. 60.

16. Recycling Certification:

Contractor certifies in writing under penalty of perjury, if not exact, percentage of recycled content, both post-consumer waste and secondary waste as defined in the Public Contract Code, Sections 12200, in materials, goods, or supplies offered or products used in the performance of this Agreement, regardless of whether the product meets the required recycled product percentage as defined in the Public Contract Code, Section 12209. Contractor may certify that the product contains zero recycled content.

17. Resource Conservation and Recovery Act

Contractor certifies that preference shall be given to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA) at 40 CFR parts 247-254. (2 CFR 215.16)

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18. Antitrust Claims:

The Contractor by signing this Agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes sections set out below.

- a. The Government Code Chapter on Antitrust claims contains the following definitions:
 - i. "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
 - ii. "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.
- b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 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 bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.
- c. If an awarding body or public purchasing body 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 public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.
- d. Upon demand in writing by the assignor, the assignee shall, within one 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

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law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

19. Domestic Partners:

Notwithstanding any other provision of law, no state agency may enter into any contract for the acquisition of goods or services in the amount of one hundred thousand dollars (\$100,000) or more with a contractor who, in the provision of benefits, discriminates between employees with spouses and employees with domestic partners, or discriminates between employees with spouses or domestic partners of a different sex and employees with spouses or domestic partners of the same sex, or discriminates between same-sex and different-sex domestic partners of employees or between same-sex and different-sex spouses of employees. Contractor hereby certifies that it does not discriminate in any of the ways described in this paragraph.

I. Officials Not to Benefit

No members of or delegate of Congress or the State Legislature shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom. This provision shall not be construed to extend to this Agreement if made with a corporation for its general benefits.

J. Timeliness:

Time is of the essence in this Agreement.

K. Governing Law:

This Agreement shall be administered, construed, and enforced according to the laws of the State of California (without regard to any conflict of law's provisions) to the extent such laws have not been preempted by applicable federal law. Any suit brought hereunder (including any action to compel arbitration or to enforce any award or judgment rendered thereby) 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 personal jurisdiction over it and consents to service of process in any manner authorized by California law.

L. Severability:

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If any provision in this Agreement is invalid or unenforceable in any jurisdiction, the other provisions herein shall remain in full force and effect in such jurisdiction and shall be liberally construed in order to effectuate the purpose and intent of this Agreement, and the invalidity or unenforceability of any provision in this Agreement in any jurisdiction shall not affect the validity or enforceability of any such provision in any other jurisdiction.

M. Priority Hiring Considerations for Recipients Of Aid

If this Contractor is in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by this Agreement to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353. This requirement shall not interfere with or require a violation of a collective bargaining agreement, a federal affirmative action obligation for hiring disabled veterans of the Vietnam era, or nondiscrimination compliance laws of California and does not require the employment of unqualified recipients of aid.

N. Audit:

Contractor agrees that the Exchange and the California State Auditor's office, or their designated representatives, shall have the right to review and to copy any records and supporting documentation directly pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include the same right of the State to audit records and interview staff in any subcontract related to performance of this Agreement (GC 8546.7, PCC 10115 et seq., CCR Title 2, Section 1896).

O. Insurance Requirements

When Contractor submits a signed Agreement to the State, Contractor shall furnish to the State a certificate of insurance, stating that there is:

1. Errors and Omissions Insurance in force in an amount satisfactory to Exchange, but no less than \$1,000,000 per occurrence and \$1,000,000 aggregate limit of all claims filed in the policy year and from a carrier satisfactory to Exchange. The obtaining and maintenance of such insurance shall be a material requirement of this Agreement.

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P. Intellectual Property Rights:

1. All activities defined in the Statement of Work originated or prepared by Contractor pursuant to this Agreement including papers, reports, charts, and other documentation, but not including Contractor's administrative communications and records relating to this Agreement, shall upon delivery and acceptance by the Exchange become the exclusive property of the Exchange and may be copyrighted by the Exchange.
2. All inventions, discoveries or improvements of the techniques or programs or materials developed pursuant to this Agreement shall be the property of Exchange. The Exchange agrees to grant a nonexclusive royalty-free license for any such invention, discovery, or improvement to Contractor and further agrees that Contractor may sublicense additional persons on the same royalty-free basis.
3. This Agreement shall not preclude Contractor from developing materials outside this Agreement, which are competitive, irrespective of their similarity to materials which might be delivered to the Exchange pursuant to this Agreement. All preexisting intellectual property, copyrights, trademarks and products shall be the sole property of Contractor.

Q. Confidentiality:

Contractor agrees to protect the personal information of all individuals by following applicable federal and state privacy and security requirements.

All financial, statistical, personal, technical, and other data and information related to the Exchange's operations that are not publicly available and that become available to Contractor shall be protected during or after its relationship with the Exchange by Contractor from unauthorized use and disclosure. Contractor agrees that Contractor shall not use any Confidential Information for any purpose other than carrying out the provisions of the Agreement.

Confidential Information includes, but is not limited to, all proprietary information of the Exchange including without limitation: the Deliverables; trade secrets; know-how; concepts; methods; techniques; designs; drawings; specifications; computer programs, including the State's software; support materials; information regarding the State's business operations and plans; client, customer, or supplier lists; pricing information; marketing plans or information; or other records concerning the State's finances, contracts, services, or personnel.

At the conclusion of its relationship with the Exchange, Contractor shall return any and all records or copies of records relating to the Exchange, or its business, or it's

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Confidential Information. Contractor shall take such steps as may be reasonably necessary to prevent disclosure of Confidential Information to others and shall not disclose Confidential Information to others without the prior written consent of the Exchange. Contractor agrees that Confidential Information disclosed to it under the terms of this Agreement may be disclosed only to its employees or agents who have a need to know such Confidential Information.

This Agreement not to disclose Confidential Information will continue to apply after termination of this Agreement, and until such time as the Confidential Information becomes public knowledge through no fault of its own. Contractor will report to the Exchange any and all unauthorized disclosures of Confidential Information. Contractor acknowledges that any publication or disclosure of Confidential Information to others may cause immediate and irreparable harm to the Exchange, and if Contractor should publish or disclose Confidential Information to others, the Exchange shall be entitled to injunctive relief or any other remedies to which it is entitled under law or equity, without posting a bond.

R. Waiver of Breach

The waiver by the Exchange of any breach by Contractor of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by Contractor.

S. Resolution:

A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

T. Corporate Qualifications To Do Business In California:

1. Contractor acknowledges that, when agreements are to be performed in the state by corporations, the Exchange will verify that the Contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.
2. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate Contractor performing within the state not be subject to the franchise tax.

Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. The

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Exchange will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

U. Evaluation of Contractor

Contractor is hereby notified that the State will evaluate the Contractor's performance for compliance with the terms of this Agreement within 60 days of the termination of the Agreement. The evaluation shall be prepared on a "Contract/Contractor Evaluation," STD Form 4. Contractor shall be notified and sent a copy of the unsatisfactory evaluation within 15 days after its completion.

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Business Associate Agreement

This Business Associate Agreement (this "Agreement") dated _____, 2013, between the California Health Benefit Exchange ("Covered Entity") and _____ ("Business Associate") is entered into in accordance with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as codified at 42 USCA §1320d-d8, and its implementing regulations at 45 C.F.R. Parts 160, 162 and 164 (the "HIPAA Regulations"); and the Health Information Technology for Economic and Clinical Health Act, enacted as part of the American Recovery and Reinvestment Act of 2009, and its attendant regulations and guidance (the "HITECH Act").

Purpose of the Agreement

Business Associate provides certain services on behalf of Covered Entity that require the Covered Entity to disclose certain identifiable health information to Business Associate. The parties desire to enter into this Agreement to permit Business Associate to have access to such information and comply with the business associate requirements of HIPAA, the HIPAA Regulations, and the HITECH Act, as each may be amended from time to time in accordance with the terms and conditions set forth in this Agreement. The Parties (Business Associate and Covered Entity) hereby agree as follows:

Definitions: Unless otherwise specified, in this Agreement, all capitalized terms used in this Agreement not otherwise defined have the meaning established for the purposes of Title 45 parts 160 and 164 of the United States Code of Federal Regulations, as amended from time to time, and the HITECH Act.

I. Business Associate Obligations.

- 1. Applicable Law.** The terms and conditions set forth in this Agreement shall become effective on the later of the effective date of this Agreement, April 14, 2003, or any new mandatory compliance date established for HIPAA, the HIPAA Regulations and/or the HITECH Act. The parties acknowledge and agree that the HIPAA Regulations and HITECH Act may be amended and additional guidance and/or regulations may be issued after the date of the execution of this Agreement and may affect the parties' obligations under this Agreement ("Future Directives"). The parties agree to abide by such Future Directives as these Future Directives may affect the obligations of the parties. If Future Directives affect the obligations of the parties, then Covered Entity shall notify Business Associate of Future Directives in writing within thirty (30) days before Future Directives are effective. The notification of Business Associate by Covered Entity of Future Directives that affect the obligations of

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the parties related to the Business Associate relationship shall be considered amendments to this Agreement binding on both parties.

- 2. Permitted Uses and Disclosures.** Business Associate shall not, and shall ensure that its directors, officers, employees, contractors and agents do not, further use or disclose patient individually identifiable health information (“Protected Health Information” or “PHI”) received from or created for the Covered Entity in any manner that would violate the HIPAA Regulations, HITECH Act or Future Directives. Business Associate agrees to abide by the HIPAA Regulations with respect to the use or disclosure of Protected Health Information it creates, receives from, maintains, or electronically transmits for the Covered Entity as if the Business Associate were considered a health care provider under the HIPAA Regulations. Business Associate further agrees that it will not use or disclose Protected Health Information beyond the purposes set forth in the Agreement. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, the Covered Entity as specified in that certain Agreement between the parties, provided that such use or disclosure would not violate HIPAA, the HIPAA Regulations or the HITECH Act if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.
- 3. Compliance with Business Associate Agreement and HITECH Act.** Effective February 17, 2010, Business Associate may use and disclose PHI that is created or received by Business Associate from or on behalf of Covered Entity if such use or disclosure, respectively, complies with each applicable requirement of 45 C.F.R. § 164.504(e) and the HITECH Act. The additional requirements of Subtitle D of the HITECH Act that relate to privacy and that apply to covered entities also will apply to Business Associate and are incorporated into this Agreement by reference.
- 4. Use of PHI for Administrative Activities.** Notwithstanding Section 1.2 above, Business Associate may use or disclose PHI for management and administrative activities of Business Associate or to comply with the legal responsibilities of Business Associate; provided, however, the disclosure or use must be required by law or Business Associate must obtain reasonable assurances from the third party that receives the Protected Health Information that they will (i) treat the Protected Health Information confidentially and will only use or further disclose the Protected Health Information in a manner consistent with the purposes that the Protected Health Information was provided by Business Associate; and (ii) promptly report any breach of the confidentiality of the Protected Health Information to Business Associate. Provided further that, Business Associate will notify Covered Entity

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immediately upon receipt of a request for any disclosure of PHI required by law.

- 5. Accounting.** Business Associate agrees to document disclosures of PHI and collect information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and, if required by and upon the effective date of, Section 13405(c) of the HITECH Act and related regulatory guidance.

 - a) Business Associate agrees to provide to Covered Entity or an Individual upon Covered Entity's request, information collected in accordance with this Section, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and, if required by and upon the effective date of, Section 13405(c) of the HITECH Act and related regulatory guidance.
- 6. Restriction.** Effective February 17, 2010, and notwithstanding 45 C.F.R. § 164.522(a)(1)(ii), Business Associate must comply with an Individual's request under 45 C.F.R. § 164.522(a)(1)(i)(A) that Business Associate restrict the disclosure of PHI of the Individual if (1) except as otherwise required by law, the disclosure is to a health plan for purposes of carrying out payment or health care operations (and is not for purposes of carrying out treatment); and (2) the PHI pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full.
- 7. Fundraising.** Any written fundraising communication occurring on or after February 17, 2010 that is a health care operation shall, in a clear and conspicuous manner and consistent with guidance to be provided by the Secretary, provide an opportunity for the recipient of the communications to elect not to receive any further such communication. An election not to receive any further such communication shall be treated as a revocation of authorization under Section 45 C.F.R. § 164.508. However, no communication pursuant to this Section may be made by Business Associate without prior written authorization by Covered Entity.
- 8. Sale of PHI.** Upon the effective date of Section 13405(d) of the HITECH Act , Business Associate shall not directly or indirectly receive remuneration in exchange for PHI that is created or received by Business Associate from or on behalf of Covered Entity unless: (1) pursuant to an authorization by the Individual in accordance with 45 C.F.R. §164.508 that includes a specification for whether the PHI can be further exchanged for remuneration by the entity

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receiving PHI of that Individual; or (2) as provided in Section 13405(d)(2) of the HITECH Act and regulations to be issued by the Secretary, upon the effective date of such regulations. However, in no instance may Business Associate receive remuneration pursuant to this Section without Covered Entity's written authorization.

- 9. Marketing.** A communication occurring on or after February 17, 2010 by Business Associate that is described in the definition of marketing in 45 C.F.R. §164.501(1)(i), (ii) or (iii) for which Covered Entity receives or has received direct or indirect payment (excluding payment for treatment) in exchange for making such communication, shall not be considered a health care operation unless: (1) such communication describes only a drug or biologic that is currently being prescribed for the recipient of the communication and any payment received in exchange for making such a communication is reasonable in amount; or (2) the communication is made by Business Associate on behalf of the Covered Entity and the communication is otherwise consistent with this Agreement. However, no communication pursuant to this Section may be made by Business Associate without prior written authorization by Covered Entity.
- 10. Safeguarding the Privacy of PHI.** Business Associate agrees that it shall utilize physical, administrative and technical safeguards to ensure that PHI is not used or disclosed in any manner inconsistent with this Agreement or the purposes for which Business Associate received PHI from or created PHI for the Covered Entity. Business Associate further agrees to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of any PHI that Business Associate creates, receives, maintains or transmits electronically on behalf of Covered Entity under the Agreement. Upon request, Business Associate shall provide the Covered Entity with a written description of the physical, administrative and technical safeguards adopted by Business Associate to meet its obligations under this Section.
- 11. Security Safeguards.** Business Associate acknowledges that, effective February 17, 2010, 45 C.F.R. §§ 164.308, 164.310, 164.312 and 164.316 will apply to Business Associate in the same manner that such sections apply to covered entities and are incorporated into this Agreement by reference. The additional requirements of the HITECH Act that relate to security and that apply to covered entities also will apply to Business Associate and are incorporated into this Agreement by reference. Business Associate agrees to implement the technical safeguards provided in guidance issued annually by the Secretary for carrying out the obligations under the Code of Federal

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Regulation sections cited in this Section and the security standards in Subpart C of Part 164 of Title 45 of the Code of Federal Regulations.

12. Breach Notification. Business Associate agrees to implement response programs and record-keeping systems to enable Business Associate to comply with the requirements of this Section and 13402 of the HITECH Act and the regulations implementing such provisions, currently Subpart D of Part 164 of Title 45 of the Code of Federal Regulations, when Business Associate detects or becomes aware of unauthorized access to information systems or documents that contain PHI. Business Associate agrees to mitigate any effects of the inappropriate use or disclosure of PHI by Business Associate.

a) Business Associate agrees to notify Covered Entity, by facsimile or telephone, of any breach or suspected breach of its security related to areas, locations, systems, documents or electronic systems which contain unsecured PHI, including, without limitation, any Security Incident, instance of theft, fraud, deception, malfeasance, or use, access or disclosure of PHI which is inconsistent with the terms of this Agreement (an "Incident") immediately upon having reason to suspect that an Incident may have occurred, and typically prior to beginning the process of verifying that an Incident has occurred or determining the scope of any such Incident, and regardless of the potential risk of harm posed by the Incident. Notice shall be provided to the Covered Entity's representative designated in this Agreement. Upon discovery of a breach or suspected Incident, Business Associate shall take:

- i. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment; and
- ii. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.

b) In the event of any such Incident, Business Associate shall further provide to Covered Entity, in writing, such details concerning the Incident as Covered Entity may request, and shall cooperate with Covered Entity, its regulators and law enforcement to assist in regaining possession of such unsecured PHI and prevent its further unauthorized use, and take any necessary remedial actions as may be required by Covered Entity to prevent other or further Incidents.

c) If Covered Entity determines that it may need to notify any Individual(s) as a result of such Incident that is attributable to Business

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Associate's breach of its obligations under this Agreement, Business Associate shall bear all reasonable direct and indirect costs associated with such determination including, without limitation, the costs associated with providing notification to the affected Individuals, providing fraud monitoring or other services to affected Individuals and any forensic analysis required to determine the scope of the Incident.

d) In addition, Business Associate agrees to update the notice provided to Covered Entity under Section 12(a) of this Agreement of such Incident to include, to the extent possible and as soon as possible working in cooperation with Covered Entity, the identification of each Individual whose unsecured PHI has been, or is reasonably believed by Business Associate to have been accessed, acquired, used or disclosed during the Incident and any of the following information Covered Entity is required to include in its notice to the Individual pursuant to 45 C.F.R. §164.404(c):

- i. A brief description of what happened, including the date of the Incident and the date of discovery of the Incident, if known;
- ii. A description of the types of unsecured PHI that were involved in the Incident (e.g. Social Security number, full name, date of birth, address, diagnosis);
- iii. Any steps the Individual should take to protect themselves from potential harm resulting from the Incident;
- iv. A brief description of what is being done to investigate the Incident, mitigate the harm and protect against future Incidents; and
- v. Contact procedures for Individuals to ask questions or learn additional information which shall include a toll-free number, an e-mail address, Web site, or postal address (provided, Subsection v is only applicable if Covered Entity specifically requests Business Associate to establish contact procedures).

e) Such additional information must be submitted to Covered Entity immediately at the time the information becomes available to Business Associate.

f) If the cause of a breach of PHI is attributable to Business Associate or its agents, subcontractors or vendors, Business Associate is responsible for all required reporting of the breach as specified in 42 U.S.C. section 17932 and its implementing regulations, including, without limitation,

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notification to media outlets and to the Secretary of the Department of Health & Human Services. If a breach of unsecured PHI involves more than 500 residents of the State of California or its jurisdiction, Business Associate shall notify the Secretary of the breach immediately upon discovery of the breach. If Business Associate has reason to believe that duplicate reporting of the same breach or incident may occur because its subcontractors, agents or vendors may report the breach or incident to Covered Entity in addition to Business Associate, Business Associate shall notify Covered Entity, and Covered Entity and Business Associate may take appropriate action to prevent duplicate reporting.

13. Subcontractors and Agents of Business Associate. Business Associate agrees to enter into written contracts with any of its agents or independent contractors (collectively, "subcontractors") who receive PHI from Business Associate or create, maintain, or transmit electronically, PHI on behalf of the Covered Entity, as a subcontractor to Business Associate, and such contracts shall obligate Business Associate's subcontractors to abide by the same conditions and terms as are required of Business Associate under this Agreement. Upon request, Business Associate shall provide the Covered Entity with a copy of any written agreement or contract entered into by Business Associate and its subcontractors to meet the obligations of Business Associate under this Section.

a) Business Associate shall, upon knowledge of a material breach by a subcontractor of the subcontractor's obligations under its contract with Business Associate, either notify such subcontractor of such breach and provide an opportunity for subcontractor to cure the breach; or, in the event subcontractor fails to cure such breach or cure is not possible, Business Associate shall immediately terminate the contract with subcontractor.

b) To the extent that any of Business Associate's subcontractors will have access to any PHI that is created, maintained or transmitted electronically, Business Associate shall require such agents and subcontractors to agree to implement reasonable and appropriate safeguards to protect such electronic PHI.

14. Availability of Information to Covered Entity and Individuals. Business Associate agrees to provide access and information:

a) Business Associate shall provide access as may be required, and in the time and manner designated by Covered Entity (upon reasonable notice and during Business Associate's normal business hours) to PHI

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in a Designated Record Set, to Covered Entity (or, as directed by Covered Entity), to an Individual, in accordance with 45 CFR section 164.524. Designated Record Set means the group of records maintained for Covered Entity that includes medical, dental and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for Covered Entity health plans; or those records used to make decisions about individuals on behalf of Covered Entity. Business Associate shall use the forms and processes developed by Covered Entity for this purpose and shall respond to requests for access to records transmitted by Covered Entity within fifteen (15) calendar days of receipt of the request by producing the records or verifying that there are none.

- b) If Business Associate maintains an Electronic Health Record with PHI, and an individual requests a copy of such information in an electronic format, Business Associate shall provide such information in an electronic format to enable Covered Entity to fulfill its obligations under the HITECH Act, including but not limited to, 42 U.S.C. section 17935(e).
- c) If Business Associate receives data from Covered Entity that was provided to Covered Entity by the Social Security Administration, upon request by Covered Entity, Business Associate shall provide Covered Entity with a list of all employees, contractors and agents who have access to the Social Security data, including employees, contractors and agents of its subcontractors and agents.

15. Access by Covered Entity and Secretary of Health & Human Services.

Business Associate agrees to allow Covered Entity and the Secretary of the Department of Health & Human Services access to its books, records and internal practices with respect to the disclosure of PHI for the purposes of determining the Business Associate's compliance with the HIPAA Privacy Regulations. If Business Associate is the subject of an audit, compliance review, or complaint investigation by the Secretary or the Office of Civil Rights, U.S. Department of Health and Human Services, that is related to the performance of its obligations pursuant to this HIPAA Business Associate Agreement, Business Associate shall notify Covered Entity and provide Covered Entity with a copy of any PHI that Business Associate provides to the Secretary or the Office of Civil Rights concurrently with providing such PHI to the Secretary. Business Associate is responsible for any civil penalties assessed due to an audit or investigation of Business Associate, in accordance with 42 U.S.C. section 17934(c).

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II. Termination of Agreement.

- 1. Termination Upon Material Breach.** The Covered Entity may, in its sole discretion, terminate the Agreement, including this Agreement, upon determining that Business Associate violated a material term of this Agreement. If the Covered Entity makes such a determination, it shall inform Business Associate in writing that the Covered Entity is exercising its right to terminate this Agreement under this Section II.1 and such termination shall take effect immediately upon Business Associate receiving such notification of termination.
- 2. Reasonable Steps to Cure Material Breach.** At the Covered Entity's sole option, the Covered Entity may, upon written notice to Business Associate, allow Business Associate an opportunity to take prompt and reasonable steps to cure any violation of any material term of this Agreement to the complete satisfaction of the Covered Entity within ten (10) days of the date of written notice to Business Associate. Business Associate shall submit written documentation acceptable to the Covered Entity of the steps taken by Business Associate to cure any material violation. If Business Associate fails to cure a material breach within the specified time period, then the Covered Entity shall be entitled to terminate this Agreement under Section II.1 above, if feasible, or, if it is not feasible to terminate this Agreement, to report Business Associate's material breach to the Secretary of the Department of Health and Human Services.
- 3. Amendment.** Covered Entity may terminate this Agreement upon thirty (30) days written notice in the event (i) Business Associate does not promptly enter into negotiations to amend this Agreement when requested by Covered Entity pursuant to Section VI of this Agreement, or (ii) Business Associate does not enter into an amendment to this Agreement providing assurances regarding the safeguarding of PHI that Covered Entity, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA, the HIPAA Regulations and/or the HITECH Act.
- 4. Return of PHI to Covered Entity Upon Termination.** Upon termination of the Agreement for any reason, Business Associate shall return all PHI to the Covered Entity. The Covered Entity may request in writing that Business Associate destroy all PHI upon termination of this Agreement rather than returning PHI to the Covered Entity. If the return or destruction of PHI is not feasible upon termination of the Agreement, then Business Associate shall explain in writing, directed to the Covered Entity's Chief Privacy Officer, why such return or destruction is not feasible. If such return or destruction is not feasible, then Business Associate agrees that it shall extend its obligations

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under this Agreement to protect the PHI and limit the use or disclosure of PHI to the purposes, which make return or destruction of PHI infeasible.

III. Conflicts. The terms and conditions of this Agreement will override and control over any conflicting term or condition of other agreements between the parties. All non-conflicting terms and conditions of such agreements shall remain in full force and effect.

IV. No Third-Party Beneficiary Rights. Nothing express or implied in this Agreement is intended or shall be interpreted to create or confer any rights, remedies, obligations or liabilities whatsoever in any third party.

V. Notice. Except as otherwise provided in Section I.12(a), any notice permitted or required by this Agreement will be considered made on the date personally delivered in writing or mailed by certified mail, postage prepaid, to the other party at the address set forth in the execution portion of this Agreement.

VI. Amendment. The Parties agree to take such action as is necessary to implement the standards, requirements, and regulations of HIPAA, the HIPAA Regulations, the HITECH Act, and other applicable laws relating to the security or confidentiality of health information. Upon Covered Entity's request, Business Associate agrees to promptly enter into negotiations with Covered Entity concerning the terms of any amendment to the Agreement consistent with the standards, requirements and regulations of HIPAA, the HIPAA Regulations, the HITECH Act or other applicable laws.

VII. Relationship of the Parties. The Parties hereto acknowledge that Business Associate shall be and have the status of independent contractor in the performance of its obligations under the terms of this Agreement as to Covered Entity. Nothing in this Agreement shall be deemed or construed to create a joint venture or partnership between Covered Entity and Business Associate.

VIII. Indemnification.

- 1. Indemnification by Business Associate.** Business Associate shall protect, indemnify and hold harmless the Covered Entity, its officers and employees from all claims, suits, actions, attorney's fees, costs, expenses, damages,

EXHIBIT D
(Agent Agreement)

judgments or decrees arising out of the failure by Business Associate to comply with the requirements of this Agreement, the Privacy Regulations and all Future Directives; provided however that such indemnification shall be conditioned upon the Covered Entity giving prompt notice of any claims to Business Associate after discovery thereof and cooperating fully with Business Associate concerning the defense and settlement of claims.

IX. Miscellaneous.

1. **Exception to Limitations and Exclusions.** Business Associate's obligations under this Agreement and any breach by Business Associate of the obligations in this Agreement shall not be subject to any limitations on damages suffered by Covered Entity that may be specified in any agreement, invoice, statement of work or similar document setting forth the services Business Associate is providing to Covered Entity ("Contract"). No limitation or exclusion in any Contract shall limit Covered Entity's rights to recover from Business Associate damages, losses or sanctions suffered by Covered Entity to the extent of amounts recovered by, or sanctions awarded to, a third party which are caused by Business Associate's breach of the obligations in this Agreement, regardless of how such amounts or sanctions awarded to such third party are characterized.
2. **Assistance in Litigation or Administrative Proceedings.** Business Associate shall make itself and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under this Agreement, available to Covered Entity at no cost to Covered Entity to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officers or employees based upon claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves inactions or actions by the Business Associate, except where Business Associate or its subcontractor, employee or agent is a named adverse party.
3. **Modification.** This Agreement contains the entire understanding of the parties regarding the privacy and security obligations of Business Associate under HIPAA and will be modified only by a written document signed by each party.
4. **Waiver.** The waiver by Business Associate or Covered Entity of a breach of this Agreement will not operate as a waiver of any subsequent breach. No

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delay in acting with regard to any breach of this Agreement will be construed to be a waiver of the breach.

5. **Assignment.** This Agreement will not be assigned by Business Associate without prior written consent of the Covered Entity. This Agreement will be for the benefit of, and binding upon, the parties hereto and their respective successors and permitted assigns.
6. **Interpretation.** The terms and conditions in this Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the HIPAA regulations and applicable state laws. The parties agree that any ambiguity in the terms and conditions of this Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act and the HIPAA regulations.
7. **Governing Law.** The interpretation and enforcement of this Agreement will be governed by the laws of the State of California. Exclusive venue shall be in Sacramento County, California.
8. **Headings.** The section headings contained in this Agreement are for reference purposes only and will not affect the meaning of this Agreement.
9. **Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same.

EXHIBIT E
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MARKETING & BRANDING GUIDELINES

All references to the Exchange, Covered California, or Covered CA refer to the California Health Benefit Exchange.

Trademark and Brand Usage Guidelines for Communications and Web Sites

- a) Covered California Trademark Usage Guidelines can be found at www.CoveredCA.com.
- b) Covered California's brand and trademarks, as described below ("Covered California Marks") are valuable intellectual property and important assets of the organization. They must be used properly, and these Guidelines govern their use and reproduction. Agents offering Covered California QHP's and services may use Exchange Marks only in accordance with these Guidelines in web site content, design, and graphics, all promotional materials, and all internal and external communications.
- c) The improper or unauthorized use of Covered California Marks or other intellectual property is a violation of Covered California's rights and is strictly prohibited. Unauthorized use or misrepresentation of Covered California, the California Health Benefit Exchange is also a violation of state law Section 100510 to the Government Code, Section 1360.5 of the Health and Safety Code, and Section 790.03 of the Insurance Code.
- d) Section 100510 to the Government Code, Section 1360.5 of the Health and Safety Code, and Section 790.03 of the Insurance Code prohibits the following conduct: (j) Holding oneself out as representing, constituting, or otherwise providing services on behalf of the California Health Benefit Exchange established pursuant to Section 100500 et. seq of the Government Code without a valid agreement with the California Health Benefit Exchange to engage in those activities.
- e) The Exchange reserves the right to revise these Guidelines, and Agent will be bound to comply with the material contained in the updated Guidelines immediately upon receipt or other notification of the new Guidelines.

Disclaimer of Intellectual Property Ownership on Web Sites

Use of the Covered California Marks in external communications or a web site must be accompanied by the following disclaimer of ownership, which should be placed conspicuously in the materials or on the home page of each web site:

EXHIBIT E (Agent Agreement)

- a) “Covered California,” “California Health Benefit Exchange”, and the Covered California Logo are registered trademarks or service marks of Covered California, in the United States.

Web Site Identity

Each web site must also include the following disclosure statement:

- a) This web site is owned and maintained by [Agent Name], which is solely responsible for its content. This site is not maintained by or affiliated with Covered California, and Covered California bears no responsibility for its content. The e-mail addresses and telephone numbers that appear throughout this site belong to [Agent Name], and cannot be used to contact Covered California.
- b) This statement should appear on Agent’s home pages, as well as any “Who We Are” or “About Us” pages or other pages of similar purpose or content.

Logo May Not Be Used Without Written Permission

The Covered California Logo, and any other logo used to identify any product or service offered by Covered California, may not be used in any manner in materials or web sites created or maintained by Agents or by any third party without express written permission from Covered California.

Compliance with Usage Guidelines

In order to assure compliance and quality control, Exchange may request that Contractor provide samples of any marketing, advertising, or other materials that will include the Covered California Marks. The Exchange may, in its sole discretion, restrict any person or entity from using or displaying the Covered California Marks.

Improper Uses of Covered California’s Marks

Covered California’s Marks may not be presented or used:

- a) in a manner that suggests that editorial content has been authored by, or represents the views or opinions of, Covered California or its representatives, personnel or affiliates;
- b) in a manner that is misleading, defamatory, obscene, infringing or otherwise objectionable;

**EXHIBIT E
(Agent Agreement)**

- c) in connection with any material that infringes the trademark, copyright or any other rights of any third party;
- d) as part of a name of a product or service of a company or organization other than Covered California; or
- e) in a manner that infringes, derogates, dilutes, or impairs the rights of Covered California in such marks.

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**EXHIBIT F
(Agent Agreement)**

SCHEDULE OF COMMISSIONS

The following is the Schedule of Commissions for new SHOP business effective January 1, 2014 and later.*

1 st Year	6.5%
2 nd Year	6.2%
3 rd Year	5.9%
4 th Year	5.6%
5 th Year	5.3%
6+ Years	5.0%

*Note: When annualized premium for a particular case (group) reaches \$500,001 or more in a contract year, the commission rate is dropped to 1.0% for that case (group) only.

This Schedule of Commissions may be amended in the future. Any change would only apply to new business written on or after the effective date of the amendment.

Also available at <http://www.healthexchange.ca.gov/Pages/agents.aspx>

**EXHIBIT G
(Agent Agreement)**

DARFUR CONTRACTING ACT CERTIFICATION FORM

Pursuant to Public Contract Code section 10478, if a contractor within the previous three years has had business activities or other operations outside of the United States, it must certify that it is not a “scrutinized” company as defined in Public Contract Code section 10476.

Therefore, please insert your name and Federal ID Number or SSN and complete only one of the following three paragraphs (via initials for Paragraph # 1 or Paragraph # 2, or via initials and certification for Paragraph # 3):

<i>Agent Name (Printed)</i>	<i>Federal ID Number/SSN</i>
<i>Printed Name and Title of Person Initialing (for Options 1 or 2)</i>	

_____ 1. We/I do not currently have, and have not had within the previous three years, business activities
Initial or other operations outside of the United States.

OR

_____ 2. We/I are a scrutinized company as defined in Public Contract Code section 10476, but we have
Initial received written permission from the Department of General Services (DGS) to submit a bid or proposal pursuant to Public Contract Code section 10477(b). A copy of the written permission from DGS has been sent to the Exchange.

OR

_____ 3. We currently have, or we have had within the previous three years, business activities or other
Initial operations outside of the United States, certification but we certify below that we are not a scrutinized company below as defined in Public Contract Code section 10476.

CERTIFICATION For # 3.

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective proposer/bidder to the clause listed above in # 3. This certification is made under the laws of the State of California.

<i>By (Authorized Signature)</i>	
<i>Printed Name and Title of Person Signing</i>	
<i>Date Executed</i>	<i>Executed in the County and State of</i>