

AGREEMENT
BETWEEN
THE CALIFORNIA HEALTH BENEFIT EXCHANGE
AND

**ADMINISTRATION OF THE SMALL BUSINESS HEALTH OPTIONS PROGRAM
(SHOP)**

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- Exhibit A - Financial Matters, Deliverables, and Services
- Exhibit B - Option B Software and Software Specific Terms
- Exhibit C - Service Level Agreements and Liquidated Damages
- Exhibit D - Software Source Code Escrow Agreement
- Exhibit E - Business Associate Agreement
- Exhibit F - Revisions to the Response

AGREEMENT

This Agreement (the "Agreement") is entered into as of the ___ day of _____, 201_ (the "Execution Date"), by and between the California Health Benefit Exchange (the "Exchange") and _____, a _____ [corporation] ("Contractor," as described further below).

RECITALS

The Exchange issued Solicitation #____ (the "Solicitation"), which was dated _____, which was amended on _____, 2012 and which is incorporated into this Agreement by this reference, to find a vendor to provide for the administration of the Small Business Health Options Program ("SHOP");

The Exchange is currently working with Accenture LLP ("Accenture") which will design, develop, implement, operate, and maintain software and equipment that is known as the California Healthcare Eligibility, Enrollment, and Retention System ("CalHEERS" or the "System") for the Exchange's health services programs;

Contractor submitted a proposal in response to the Solicitation, which was dated _____ and which is incorporated into this Agreement by this reference (the "Response");

The Exchange evaluated all proposals submitted and identified Contractor as the apparently successful contractor;

Contractor desires to enter into an agreement with the Exchange to provide the Exchange with Services and Deliverables (as these capitalized terms are defined further below);

If Contractor proposed to provide Option B Software and certain other Deliverables, such as Interfaces (as these capitalized terms are defined further below) to the Exchange, and the Exchange agrees to license such Option B Software and purchase such other Deliverables from Contractor, such Option B Software and other Deliverables shall be listed in Exhibit B to this Agreement and shall be subject to the terms of Exhibit B and the other parts of this Agreement; and

The Exchange and Contractor have agreed that the terms and conditions of this Agreement shall govern Contractor's furnishing Services and Software and other Deliverables, if applicable; and

The Exchange issued a notice of intent to award the Agreement for the project to Contractor on _____;

Exchange has received the required approvals from Federal agencies for the Agreement under the terms as described herein;

The parties acknowledge and agree that this Agreement is dependent upon the availability of State and/or Federal funding; and

The parties agree they will perform their respective obligations as described below in this Agreement.

Therefore, in consideration of the foregoing Recitals and the representations, warranties, promises and covenants as set forth below, the parties agree as follows:

1. Definitions. The following terms as used throughout this Agreement shall have the meanings as set forth below.

1.1 “Acceptance”: A Notice from the Exchange to Contractor that a Deliverable or Service has conformed to its applicable Acceptance Criteria in accordance with the processes described in Section 7.3.

1.2 “Acceptance Criteria”: The subset of Specifications against which each Deliverable shall be evaluated in accordance with Section 7.3, and which shall be described in DEDs, Change Orders and other Deliverables.

1.3 “Acceptance Tests”: The tests or reviews that are performed by the Exchange and that must be satisfied before Acceptance can occur as set forth in Section 7.3.

1.4 “Call Center”: The Site from which Contractor shall provide certain Services as described in this Agreement.

1.5 “Certification”: The Exchange’s receipt of Notice and detailed supporting information from Contractor that Contractor has completed a Deliverable or Service in accordance with its Acceptance Criteria or pre-tested a Deliverable or Service to confirm that it complies with its Acceptance Criteria, and confirmed the Deliverable or Service is ready for applicable Acceptance Tests.

1.6 “Change Order”: A written form that is provided in response to a Change Request, that is mutually agreed to in writing by the Exchange and Contractor, that modifies, deletes or adds to the Deliverables or Services, in whole or in part, and that is made in accordance with the terms of Section 14.

1.7 “Change Request”: A written form used to request a modification, deletion or addition to the Deliverables or Services, in whole or in part, made in accordance with the terms of Section 14.

1.8 “Charges”: The amount(s) to be paid for Services and Deliverables, in whole or in part, as described in Exhibit A.

1.9 “Confidential Information”: Various trade secrets and information of each party that either Contractor or the Exchange desires to protect against unrestricted disclosure, including without limitation; with respect to the Exchange, the Deliverables; protected health information; the Exchange's Data; the Custom Software; any nonpublic information or documentation concerning either party’s business or future products or plans that are learned by the other party during the performance of this Agreement; and information that is designated as confidential by the disclosing party. The following are also hereby designated the

Exchange's Confidential Information: assister, assister employee, customer, customer employee, client, client employee, and Exchange employee personal information, including but not limited to names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data and health information, and law enforcement records, and such other Confidential Information as is described in this definition and in Exhibit E.

1.10 "Configuration(s)": The setting up of the business rules and workflow of business decisions to be used to implement the specific business rules and workflow of the Exchange in the Software, without utilizing program language or database queries and the entering of data into tables that a software "rules engine" will process to determine workflow sequences, value limitation, and other variables, all without altering the Software source code.

1.11 "Contractor": _____, its employees, Subcontractors, staff and agents.

1.12 "Contractor Project Manager": The individual chosen by Contractor and approved by the Exchange with management responsibilities for Contractor, as described in Section 4.3.

1.13 "Custom Software": The modifications and changes to the Option B Software or newly developed software (including without limitation Interfaces) pursuant to Option B which is designed, developed or produced by Contractor or Subcontractors for the Exchange under the Agreement.

1.14 "Data": The Exchange's records, files, forms, data, and other information and documents in electronic or hard copy form.

1.15 "Day(s)": Calendar day(s), unless otherwise indicated.

1.16 "DED(s)": Deliverable expectation documents that include the Acceptance Criteria for each Deliverable or Service.

1.17 "Deficiency": A failure of a Deliverable or Service, or an omission, defect or deficiency in a Deliverable or Service, which causes it not to conform to its applicable Specification or which fails to conform to reasonable commercial or industry standards for appearance, format and quality or functionality.

1.18 "Deliverables": Contractor's work products which result from the Services, which are provided by Contractor to the Exchange (either independently or in concert with the Exchange or third parties) during the course of Contractor's performance under this Agreement, and which are described in Exhibit A, the Work Plan and Change Orders.

1.19 "Documentation": All operations, technical and other manuals used in conjunction with the Software, Services, and Data, in whole and in part, including without limitation manuals provided by licensors of Third-Party Software, and with Contractor's Equipment.

1.20 “Enhancements”: Updates, additions and modifications to, and new releases for the Software and Services, and all associated changes to the Documentation as a result of Enhancements, including but not limited to Enhancements produced by Change Orders.

1.21 “Equipment”: The computer hardware on which Software will operate, and all equipment, operating system software, firmware and physical materials required for and associated with their operation, including without limitation furniture and other materials at the Call Center and as described in the Response.

1.22 “Exchange Project Director”: The person designated by the Exchange to be responsible for financial and contractual matters regarding the Agreement, including but not limited to, the person to whom the Exchange’s signature authority has been delegated in writing and the person designated by the Exchange to be responsible for day-to-day management of the Exchange’s resources for the Project and monitoring the status of Contractor’s performance under the Agreement. The term includes, except as otherwise provided herein, an authorized representative of the Exchange Project Director acting within the limits of his/her authority.

1.23 “Federal Financial Participation”: The federal government’s share of an expenditure made by the Exchange under the Agreement.

1.24 “Function(s)”: A discrete capability or function of the Software as described in the Solicitation, Response, and Specifications.

1.25 “Go Live”: As described in the Work Plan, the event(s) that occurs after Acceptance of Services and Deliverables, in whole or in part, by the Exchange and the Exchange decides to put Services and Deliverables, in whole or in part, into Production.

1.26 “Implementation”: The process for making Services and Deliverables Operational for the Exchange. Implementation shall be completed when Contractor has completed the Implementation Services according to the Work Plan.

1.27 “Key Staff”: Contractor’s key personnel listed in Exhibit A.

1.28 “Maintenance”: Maintenance and support Services which shall be performed by Contractor for Software and Services and which are described as such in Section 9, the Solicitation, the Response and the Work Plan.

1.29 “Maximum Amount”: The maximum amount payable and paid by the Exchange to Contractor under this Agreement, as described in Exhibit A.

1.30 “Notice”: A written document given by a party to the other in accordance with Section 18.29.

1.31 “Object Code”: The binary code version of a Software program loaded into a computer’s memory to enable it to perform a program function.

1.32 “Operational”: The condition when a Software Deliverable or a Service is functional in accordance with applicable Specifications and used in Production.

1.33 “Operations”: Services which shall be performed by Contractor and which are described as such in the Solicitation, the Response and the Work Plan.

1.34 “Option A Software”: The Software that is used by Contractor to provide Services which are described as Option A in the Solicitation, including but not limited to Section 1.2, in accordance with the terms of this Agreement.

1.35 “Option B Software”: The Software that is used by Contractor to provide Services which are described as Option B in the Solicitation, including but not limited to Section 1.2, in accordance with the terms of this Agreement.

1.36 “Payment Events”: The events after which Contractor can issue invoices for the Charges, as described in Section 3.1 and Exhibit A.

1.37 “Pre-existing Software”: All Option A Software and Option B Software programs which were developed and owned by Contractor prior to the Execution Date or outside the scope of this Agreement, and any modifications thereof and derivative works based thereon; Third-Party Software used by Contractor under this Agreement as part of the Services; and the Documentation used to describe, maintain and use such Pre-existing Software, including such Third-Party Software.

1.38 “Production”: The use of Deliverables or Services in the Exchange’s production environment(s) and to perform its regular business operations.

1.39 “Project”: The Implementation, administration, and operation of the California Small Business Health Options Program, as described in the Solicitation, the Response, applicable Deliverables, the Work Plan, and the other parts of the Agreement.

1.40 “Property”: All Exchange Equipment, the Deliverables, and other Exchange and real and personal property.

1.41 “Schedule”: The dates described in a Work Plan for deadlines for performance of Services and other Project events and activities.

1.42 “Service Level Agreements”: The standards to which the Software shall perform and which Services and Deliverables will meet as described in Exhibit C.

1.43 “Services”: The tasks and services to be performed by Contractor, as described in the Agreement, including but not limited to the Solicitation, the Response, and Exhibit A.

1.44 “Site(s)”: The locations for the Equipment, Software, Exchange staff, and Staff.

1.45 “Software”: The software described in the Solicitation, Response, Exhibit A, Exhibit B, and Exhibit C, including but not limited to: Option A Software; Option B Software (if applicable); Custom Software; the Configuration; all Enhancements thereto; and Third-Party Software. Embedded code, firmware, internal code, microcode, and any other term referring to software that is residing in the Equipment and that is necessary for the proper operation of the Equipment is not included in this definition of Software. Software includes all prior, current, and future versions of the Software and all Deficiency corrections.

1.46 “Source Code”: The series of instructions to a computer for carrying out the various tasks that are performed by a computer program, expressed in a programming language that is easily comprehensible to appropriately trained persons and that translates such instructions into Object Code which then directs the computer to perform its functions.

1.47 “Specifications”: The technical, functional and other written specifications that define the requirements for the Project as described in the Solicitation, the Response, subsequent Deliverables which have received Acceptance, the Service Level Agreements, Change Orders, all applicable State and Federal laws and regulations, and the Documentation. The Specifications are, by this reference, made a part of this Agreement, as though completely set forth herein.

1.48 “Staff”: Contractor’s employees, Subcontractors and agents who shall provide the Services on behalf of Contractor.

1.49 “State”: The State of California.

1.50 “Subcontractor”: A person, partnership, or company, which is not in the employment of or owned by Contractor and which is performing Services under this Agreement under a separate agreement with and/or on behalf of Contractor.

1.51 “Support”: The technical and customer support Services which are described as such in the Solicitation, the Response and in the Work Plan.

1.52 “System Testing”: Testing that is performed on the Software and Services (in whole or in part) by Contractor before beginning Acceptance Tests on the Software and Services after Contractor has confirmed the readiness of the Software and Services for Acceptance Tests in accordance with the Agreement.

1.53 “Third-Party Software”: Software and Third-Party Documentation which are: (a) developed by third parties; (b) generally distributed for commercial use; (c) not specifically designed or developed for the Exchange, including without limitation operating system software, tools, utilities, and commercial-off-the-shelf software; and (d) supplied by Contractor for use with the Services pursuant to this Agreement.

1.54 “Uptime”: The time that SHOP is Operational, as measured 24-hours-a-day, Monday through Sunday, on a monthly basis, except for mutually agreed upon scheduled Operations and/or Maintenance activities. Uptime shall be as described in Exhibit C.

1.55 “User(s)”: Parties who will have use of and access to the Call Center, the Services, and, if applicable, Option B Software.

1.56 “Work Plan”: The overall plan and delineation of tasks, activities and events to be performed, Deliverables to be produced, Services to be provided, and associated resource requirements with regard to the Project. Each revised Work Plan shall be incorporated herein upon its Acceptance by Exchange.

2. Term.

2.1 Initial Term. The term for the Agreement shall begin on the Execution Date and shall continue for an initial term of three years following October 1, 2013, unless terminated earlier as provided in the Agreement.

2.2 Renewals. At the end of the initial term of this Agreement, the Exchange shall have options to extend the term for up to two, one year renewal terms.

3. Financial Matters.

3.1 Charges. Contractor shall have the right to issue an invoice for Services and Deliverables following the Payment Events. Subject to the Exchange’s receipt of a correct invoice, Contractor’s performing its obligations as required in the Agreement, and the Exchange’s exercise of its remedies, the Exchange shall pay the Charges for the Services and Deliverables, as described in Exhibit A within 45 Days of receipt of such an invoice issued in accordance with the Agreement.

3.2 Maximum Amount. The Maximum Amount shall be as set forth in Exhibit A.

3.3 Taxes. Contractor shall remit to the California Board of Equalization sales and use taxes to the extent they are applicable to Deliverables or Services provided by Contractor to the Exchange. Contractor may charge the Exchange for such sales and use taxes on such Deliverables or Services on applicable invoices, and the Exchange shall reimburse Contractor for such taxes. However, Contractor must pay all other applicable taxes under the Agreement including, but not limited to, taxes based on Contractor’s income or revenue, and personal property taxes levied or assessed on Contractor’s personal property to which the Exchange does not hold title.

3.4 Contractor Expenses. Contractor shall pay its out-of-pocket expenses which are incurred in connection with the Agreement unless otherwise indicated in a Change Order and agreed to in writing by the Exchange.

3.5 Invoices.

3.5.1 Contractor shall submit detailed, correct invoices in triplicate and in accordance with Exchange’s standard invoicing requirements or other procedures agreed to in writing by the parties to the Exchange Project Director for all Charges and other amounts to be paid by Exchange hereunder. Contractor shall not submit an invoice for Payment Events until

after their occurrence, except as provided in Exhibit A. All invoices submitted must meet with the approval of the Exchange Project Director or her or his designee prior to payment.

3.5.2 Invoices shall include all information reasonably requested by Exchange, including, without limitation, this Agreement name and reference number, Federal Tax Identification Number, itemization of each Deliverable or Service provided for which payment is requested, corresponding Exchange Acceptance dates for each Deliverable or Service, cross reference to the approved Payment Schedule, applicable sales and use taxes, the calculation of legal and regulatory bases for any such taxes, and total amount due. All hourly billable Services will include the date of Service, type of Services provided, number of hours required and the Charges.

3.5.3 The Exchange shall have the right to dispute any invoices submitted for payment by Contractor if the Exchange believes the Charges or other amounts are inaccurate or incorrect in any way. The Exchange shall provide a Notice to Contractor, specifying the reasons why the Exchange believes the Charges or other amounts are inaccurate or incorrect, but the Exchange shall not be in breach of the Agreement if it fails to provide Contractor such Notice.

3.6 Overpayments to Contractor. Contractor shall promptly, but in all cases within 30 Days, pay to the Exchange the full amount of any erroneous payment or overpayment upon Notice of an erroneous payment or overpayment to which Contractor is not entitled or when otherwise discovered by Contractor.

3.7 Credits. Any credits due the Exchange under this Agreement may be applied by the Exchange against Contractor's invoices with appropriate information attached, upon giving of Notice required herein, if any, by the Exchange to Contractor.

3.8 No Increases. Contractor shall not increase the Charges or Maximum Amount due from the Exchange under this Agreement for all Services and Deliverables during the term of this Agreement, except as otherwise specifically permitted in the Agreement. In addition, no cost of living adjustments shall be permitted in the Agreement.

3.9 Funding.

3.9.1 The parties acknowledge and agree that this Agreement is dependent upon the availability of State and/or federal funding. If funding to make payments in accordance with the provisions of this Agreement is not forthcoming from the State and/or federal governments for the Agreement, or is not allocated or allotted to the Exchange by the applicable State and/or federal governments for this Agreement for periodic payment in the current or any future fiscal period, then the obligations of the Exchange to make payments after the effective date of such non-allocation or non-funding, as provided in the notice, will cease and terminate as applicable.

3.9.2 If funding, to make payments in accordance with the provisions of this Agreement, is delayed or is reduced from the Exchange or from the State and/or federal governments for the Agreement, or is not allocated or allotted in full to the Exchange by State and/or federal governments for this Agreement for periodic payment in the current or any future

fiscal period, then the obligations of the Exchange to make payments will be delayed or be reduced accordingly or the Exchange shall have the right to terminate the Agreement as provided in Section or suspend the Project as provided in Section, but without a 30 Day limit. If such funding is reduced and the Exchange does not exercise such rights to terminate, the Exchange shall determine which aspects of the Agreement shall proceed and which Services shall be performed, with Contractor's Charges for such Services and Deliverables reduced proportionately. In these situations, the Exchange will pay Contractor for Services and Deliverables and certain of its costs in accordance with the terms of Section. Any obligation to pay by the Exchange will not extend beyond the end of the Exchange's then current funding period.

3.9.3 Contractor expressly agrees that no penalty or damages shall be applied to, or shall accrue to, the Exchange in the event that the necessary funding to pay under the terms of this Agreement is not available, not allocated, not allotted, delayed or reduced and the Exchange shall not be responsible for any costs, expenses or losses incurred by Contractor as a result of the Exchange's termination or suspension of the Agreement or reduction of Services. Notwithstanding California Government Code Section 927 et seq, Contractor shall not charge interest on late payments or terminate the Exchange due to the lack of a State budget, and Contractor shall continue to provide its Services if there is no State budget, even if payments are not being made to Contractor by the Exchange as a result.

3.10 Advance Payments Prohibited. No advance payment shall be made for Deliverables or Services furnished by Contractor pursuant to this Agreement.

3.11 No Additional Consideration. Except as expressly provided in Exhibit A, Contractor shall not be entitled to nor receive from the Exchange any additional consideration, compensation, salary, wages, or any other type of remuneration for Services rendered under this Agreement. Specifically, Contractor shall not be entitled by virtue of this Agreement to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays, or other paid leaves of absence of any type or kind whatsoever. In addition, Contractor shall not charge interest on any late payments, notwithstanding California Government Code Section 927 et seq.

4. Project Management.

4.1 Overall Responsibility. Contractor shall have responsibility for managing the Project in accordance with the requirements of the Agreement.

4.2 Reports and Meetings.

4.2.1 The Contractor Project Manager and other Key Staff shall participate in weekly status meetings with the Exchange Project Director and other members of the Exchange's Project team during the Project at times as mutually agreed upon in a Project management plan or as indicated in the Solicitation. These status meetings shall follow a preset agenda jointly prepared by the Contractor Project Manager and the Exchange Project Director, but will also allow both Contractor and the Exchange to discuss other issues that may concern either party.

4.2.2 Brief written status reports shall be provided by Contractor at least 24 hours prior to these weekly meetings. Status reports shall describe the previous week's activities, including Deficiencies encountered and their disposition, results of tests, whether or not deadlines were met, and any Deficiencies that may have arisen that need to be addressed before proceeding to the next activities. Also described will be the anticipated activities for the current week and any changes to Project risks and risk mitigations. These weekly status reports shall be Deliverables provided by Contractor in accordance with the Solicitation and Work Plan.

4.2.3 Contractor shall produce a monthly report summary that compares actual performance by Contractor of the Services (including but not limited to activities related to Deliverables) to budgeted Charges and dates in the Schedule. Contractor shall provide such monthly report summary for such Services to the Exchange. These monthly status reports shall be Deliverables provided by Contractor in accordance with the Solicitation and Work Plan.

4.2.4 As reasonably requested by the Exchange, the Contractor Project Manager shall assist the Exchange Project Director in preparing and shall prepare special reports and presentations related to the Project management. The Contractor Project Manager shall also provide or produce such reports or information as is reasonably requested by the Exchange Project Director regarding the Project.

4.2.5 Contractor senior management and Subcontractor senior management (in Contractor's discretion) shall meet on a calendar quarterly basis with executives of State sponsoring departments and the State Office of System Integration for the Contractor Project Manager to report on the status of the Project, progress in completing the Work Plan, issues and risks on the Project, and plans to resolve outstanding issues.

4.3 Contractor Project Manager.

4.3.1 Contractor shall assign to the Project a Contractor Project Manager of a management level sufficient to ensure timely responses from all Contractor personnel and whose resume and qualifications will be reviewed and must be approved by the Exchange prior to his or her appointment as Contractor Project Manager. The approval process may include, at the Exchange's discretion, an interview with the proposed original or any replacement Contractor Project Manager. The Contractor Project Manager shall be responsible for acting as a liaison with the Exchange Project Director.

4.3.2 Contractor represents and warrants that the Contractor Project Manager shall be fully qualified to perform the tasks required of that position under this Agreement. The Contractor Project Manager shall function as Contractor's authorized representative for all management and administrative matters not inconsistent with the provisions contained herein. The Contractor Project Manager shall have authority to make decisions and approve Change Orders.

4.3.3 If the Contractor Project Manager is removed or replaced, Contractor will promptly (and in all cases within 48 hours) provide Notice to the Exchange and submit a resume of another qualified candidate. Contractor must obtain approval of the replacement Contractor Project Manager from the Exchange, prior to his or her beginning work

on the Project. Contractor shall temporarily fill the Contractor Project Manager within seven Days of it being vacated and shall fill the position with a permanent fulltime replacement within 45 Days of the Contractor Project Manager's removal or departure.

4.4 Contractor Staff.

4.4.1 Prior to the Execution Date, Contractor shall have provided to the Exchange names of and resumes for Key Staff for the Project and their positions during the Project and while performing Services. Contractor shall also provide to the Exchange job descriptions for Key Staff positions.

4.4.2 Except in the case of a legally required leave of absence, sickness, death, termination of employment or unpaid leave of absence, Key Staff shall not be changed from the people who were described in Exhibit A and the Response without the prior written approval of the Exchange until completion of their assigned tasks, as described in the Work Plan or Go-Live of SHOP if such tasks are not so described in the Work Plan. During the term of the Agreement, the Exchange reserves the right to approve or disapprove Contractor's and any Subcontractor's Key Staff assigned to this Agreement, to approve or disapprove any proposed changes in Key Staff, or to require the removal or reassignment of any Contractor or Subcontractor Staff found unacceptable by the Exchange, subject to the Exchange's compliance with applicable laws. Contractor shall provide the Exchange with a resume of any member of its Key Staff or a Subcontractor's Key Staff assigned to or proposed to be assigned to any aspect of the performance of this Agreement prior to that person commencing to provide any Services.

4.4.3 All Staff proposed by Contractor as replacements for other Staff shall have comparable or greater skills, as determined by the Exchange, for performing the activities as performed by the Staff being replaced. Contractor assumes sole and full responsibility for its acts and the acts of its Staff. Contractor understands and agrees that the Exchange does not assume liability for the actions of the Staff. Contractor shall ensure that any transition to new Staff will not affect the Schedule or provision of Services set forth in this Agreement.

4.4.4 Contractor agrees that any claims on behalf of any person arising out of employment or alleged employment by Contractor (including, but not limited to, claims of discrimination against Contractor, its officers, or its agents) are the sole responsibility of Contractor and are not the responsibility of the Exchange. Contractor will indemnify, defend and hold the Exchange harmless from any and all such claims asserted against the Exchange. Any person who alleges a claim arising out of employment or alleged employment by Contractor will not be entitled to any compensation, rights, or benefits from the Exchange (including, but not limited to, tenure rights, medical and hospital care, sick and annual/vacation leave, severance pay, or retirement benefits).

4.5 The Exchange Project Director. The Contractor Project Manager's primary point of contact in matters of Project management shall be the Exchange Project Director. The Exchange Project Director or his or her designee or successor will manage this Agreement on behalf of the Exchange and will be the principal point of contact for the Contractor concerning Contractor's performance under this Agreement.

4.6 Reference and Background Checks. Due to the confidential nature of the information and materials which will be accessible to Contractor, the Exchange shall have the right to conduct reference checks and background checks on Contractor Staff to be used to provide the Services. The Exchange reserves the right in its sole discretion to reject any proposed Staff as a result of information produced by such reference checks, background checks, or additional sources of information. Both Contractor and the Exchange agree to maintain the confidentiality of information gathered under this provision and use it solely to promote the security of the Project or System or for other purposes as required by federal or State laws or regulations.

4.7 Records Retention and Access Requirements.

4.7.1 Contractor shall agree to the conditions of all applicable State and federal regulations, which are incorporated herein by this reference, regarding retention and access requirements relating to all financial and programmatic records, supporting documents, statistical records, and other records of this Agreement. In addition, Contractor shall agree to the terms which are set forth below regarding retention of records and access for State and federal government officials.

4.7.2 Contractor and its Subcontractors shall maintain books, records, documents and other evidence which sufficiently and properly reflects the accuracy of amounts billed to the Exchange during the performance of this Agreement and their compliance with applicable laws and regulations, and shall retain all such records for seven years after the expiration or termination of this Agreement. Records involving matters in litigation related to this Agreement shall be kept for one year following the termination of litigation, including all appeals if the litigation has not terminated within seven years from the date of expiration or termination of this Agreement.

4.7.3 All such records shall be subject at reasonable times and upon prior Notice to examination, inspection, copying, or audit by personnel so authorized by the Exchange Project Director and/or State and federal officials so authorized by law, rule, regulation or contract, when applicable. During the term of this Agreement, access to these items will be provided within Sacramento County, California at the Exchange's Office. During the seven year period after this Agreement term or one year term following litigation, delivery of and access to these items will be at no cost to the Exchange at its Office in Sacramento, California. Contractor shall be responsible for any audit exceptions or disallowed costs incurred by Contractor or any of its Subcontractors.

4.7.4 The records retention and review requirements of this Section 4.7 shall be included by Contractor in any of its subcontracts with Subcontractors. The Exchange's personnel shall be accompanied by Contractor personnel at all times during any examination, inspection, review or audit. Contractor shall make no charges to the Exchange for services rendered in connection with an audit requested by the Exchange.

4.7.5 As part of the Services, Contractor shall provide, upon the Exchange's request, a copy of those portions of Contractor's and its Subcontractors' internal audit reports relating to the Services provided to the Exchange under this Agreement.

4.7.6 Contractor shall undergo an annual SSAE No. 16 or successor audit throughout the term at Project Sites and Sites at which it is operating Equipment and Software. If any relevant exceptions are noted, Contractor shall correct those exceptions in a timely manner. Contractor shall provide a copy of the most recent such review or audit within 60 Days of its completion and Contractor's then current review or audit on the Execution Date.

4.8 Accounting Requirements. Contractor shall establish and maintain an accounting system with procedures and practices in accordance with generally accepted accounting principles. The accounting system shall maintain records pertaining to the Services and all other costs and expenditures made under this Agreement, and the costs properly applicable to the Agreement shall be readily ascertainable therefrom.

4.9 Supplemental Contracts.

4.9.1 The parties acknowledge that the System is being or shall be operated and maintained by Accenture as of the Execution Date. The Exchange may undertake or award supplemental contracts for work related to this Agreement, or any portion thereof. Contractor shall cooperate with Accenture, such other contractors and the Exchange in all such cases. Contractor shall ensure that all Subcontractors shall abide by this provision. It is understood and agreed by the parties hereto that Contractor shall not be responsible for the acts or failures to act of Accenture or any such other Exchange contractors or for any delays which may be caused by Accenture or any such other Exchange contractors, except that Contractor shall be responsible for delays of, or acts or failures to act of, Accenture and such other Exchange contractors to the extent such delays, or acts or failures to act are caused by or due to the fault of Contractor or its failure to mitigate the effect of such delays caused to such other Exchange contractors.

4.9.2 Contractor shall continue to perform its obligations that are not affected by such other Exchange contractors and shall mitigate any impact on Contractor from such delays caused by Exchange's other contractors, *e.g.*, redirecting its Staff to perform other tasks, to the extent reasonably possible. To the extent it cannot redirect staff and mitigate such impacts, then an adjustment, if any, to the Charges and/or Schedule may be made pursuant to Section 11 (Changes), if appropriate, based upon the Exchange Project Director's reasonable consideration of all relevant circumstances, including but not limited to Contractor's opportunity and efforts to mitigate the effect of the impact and if Exchange's failure to perform is not due to an event described in Section 18.20 (Force Majeure)

4.9.3 To the extent that Contractor has possession and control of Accenture's property, Contractor shall protect Accenture's property to the same extent that Contractor is required to protect the Property in Section 5.

4.9.4 Contractor shall treat as the Exchange's Confidential Information any information and Data which are made available by or received from Accenture by Contractor under this Agreement and which is of a type or nature that it would be defined as the Exchange's Confidential Information under this Agreement, including but not limited to information, Data, and other materials about Accenture's operations, its procedures, and its other confidential information and trade secrets. Contractor shall be solely responsible for any

Accenture property destroyed or damaged due to the negligent acts or omissions or willful misconduct of Contractor.

4.10 Inspections. State and federal agencies and their agents shall, at all reasonable times, have the right to enter Contractor's facilities, premises or such other places where duties under the Agreement are being provided to inspect, monitor, or otherwise evaluate Contractor's performance, compliance and/or quality assurance under this Agreement. Contractor and all Subcontractors must provide reasonable access to all facilities and assistance to the Exchange, State and federal Government authorized representatives and their agents. All inspections and evaluations shall be performed by Contractor in such a manner that they will not unduly delay work.

5. Services, Software, and Other Resources.

5.1 Performance of the Services. Contractor shall begin to perform the Services on the Execution Date. Contractor shall perform the Services as described in this Agreement.

5.2 Software.

5.2.1 Contractor shall provide and develop the Software required to perform its Services.

5.2.2 If Contractor proposed to provide Option B Software and certain other Deliverables, such as Interfaces, to the Exchange, and the Exchange agrees to license such Option B Software and to purchase such other Deliverables from Contractor, such Option B Software and other Deliverables shall be listed in Exhibit B to this Agreement and shall be subject to the terms of Exhibit B and the other parts of this Agreement.

5.2.3 However, if Contractor does not propose to provide Option B Software and other related Deliverables, or if the Exchange decides not to license Option B Software or acquire such other related Deliverables from Contractor, then Exhibit B shall not apply to this Agreement and the terms herein shall only apply to Option A Software.

5.2.4 Contractor shall provide the Exchange with a copy of the Source Code and updated associated technical Documentation for the Custom Software in its then-current condition within five business days of its Acceptance and within five business days of a request from the Exchange. Contractor shall provide such Source Code and Documentation at no additional cost on magnetic media in a format acceptable to the Exchange.

5.2.5 Contractor shall place the Source Code for the Option A Software and Option B Software, if applicable, in an escrow in accordance with the terms of Exhibit D. If the Exchange receives the Source Code for Software under the terms of Exhibit D, Contractor hereby grants to the Exchange a nonexclusive, perpetual, irrevocable, non-terminable, non-exclusive license at no charge to use, demonstrate, modify, prepare derivative works based on, and reproduce such Software for the State's internal business purposes. Contractor shall provide the Exchange with access to the Source Code and Documentation under conditions and as described in Exhibit D.

5.2.6 At its option and expense, the Exchange may request that the completeness and accuracy of any such Source Code and/or associated technical Documentation in the Source Code escrow be verified. Such verification will be conducted by the escrow agent or, upon at least ten business days' prior Notice to Contractor, a representative of the Exchange, after full disclosure to Contractor of information reasonably requested by Contractor about such representative. Unless otherwise agreed in writing by Contractor and the Exchange, verification will be performed on site at Contractor's premises, utilizing Contractor's equipment and software, at a time reasonably acceptable to Contractor. Contractor shall make technical and support personnel available as reasonably necessary for the verification. In the event the Source Code and/or associated technical Documentation in escrow is not accurate or complete, Contractor shall promptly correct such inaccuracies or incomplete escrow, but in all cases within 10 Days of discovering the inaccuracy or incompleteness.

5.3 Necessary Resources. Contractor shall provide the Staff and all other materials and resources necessary for the performance of the Services.

5.4 Changes in Performance. Charges shall be reduced to the extent that the Exchange performs obligations which are described in the Agreement as being performed by Contractor, as mutually agreed upon by the parties in accordance with Section 11.

5.5 Ownership.

5.5.1 The Exchange shall own all right, title and interest in and to its Confidential Information, the Exchange's intellectual property, and the Exchange Property. The Exchange shall have all ownership rights in software or modifications thereof and associated documentation designed, developed or installed with Federal Financial Participation under 45 CFR Section 95.617(a) and 45 CFR Section 92.34. Title to such software or modifications thereof, associated documentation, and Deliverables shall pass to the Exchange after Acceptance and payment for such Deliverables, subject to the Exchange's exercise of its remedies, and upon delivery if no such payment applies thereto.

5.5.2 Contractor shall take all actions necessary and transfer ownership of each Deliverable to the Exchange. Contractor agrees to assign, and hereby assigns, all copyright, patents, and trade secrets in such Deliverables to the Exchange. Contractor shall, at the expense of the Exchange, assist the Exchange or its nominees to obtain copyrights, trade secrets, and patents for all such Deliverables in the United States and any other countries. Contractor agrees to execute all papers and to give all facts known to it necessary to secure United States or foreign country copyrights and patents, and to transfer or cause to transfer to the Exchange all the right, title and interest in and to such Deliverables. Contractor also agrees to waive and not assert any moral rights it may have in any such works.

5.6 Use of Property. Any Property furnished to Contractor shall, unless otherwise provided herein, or approved in writing by the Exchange Project Director, be used only for the performance of its obligations under and subject to the terms of this Agreement.

5.7 Damage to Property. Contractor shall protect and be responsible for any loss, destruction, or damage to Property which results from or is caused by Contractor's acts

or omissions or from the failure on the part of Contractor to maintain and administer that Property in accordance with the terms of the Agreement. Notwithstanding anything to the contrary herein, Contractor shall be liable to the Exchange for any damages resulting from damage to Property, which damages result from or are caused by Contractor's acts or omissions. Contractor shall ensure that the Property is returned to the Exchange in like condition to that in which it was furnished to Contractor, reasonable wear and tear excepted. Contractor shall repair or make good any such damage, destruction or loss at any of the Exchange's Sites, and shall do so without requesting contribution or assistance from the Exchange.

5.8 Notice of Damage. Upon the loss of, destruction of, or damage to any of the Property, Contractor shall give Notice to the Exchange Project Director thereof and shall take all reasonable steps to protect that Property from further damage.

5.9 Surrender of Property. Contractor shall surrender to the Exchange all Property upon the earliest of expiration or termination of this Agreement, or the request of the Exchange.

5.10 The Exchange's Property. The Exchange will provide Contractor access to and use of the Exchange's Property as described in the Solicitation. Contractor's use of the Exchange's Property shall be subject to the Exchange's security, administrative and other requirements.

5.11 Data. Contractor shall provide the Exchange with a copy of the Data which is on the Equipment used for the Software within five business days of a request from the Exchange. Contractor shall provide such Data at no additional cost on magnetic media in a format acceptable to the Exchange.

6. Equipment and Call Center.

6.1 Contractor's Equipment. Contractor shall provide Equipment for Services as described in the Solicitation and Response.

6.2 The Exchange's Equipment. The Exchange and its Users shall provide equipment to use and access the Software and Call Center as described in the Solicitation and Response.

6.3 Call Center Facility. Contractor shall provide the Call Center facility as described in the Solicitation and Response.

6.4 Costs. Contractor shall be responsible for all costs related to the operation of the Call Center, including, but not limited to, leasehold improvements, utilities, security, telephone, office equipment, supplies, janitorial services, storage, transportation, insurance, fax and copy machine equipment and supplies, and the telephone system required to support help desk call routing and tracking.

6.5 Furnishings. Contractor shall provide furnishings including but not limited to furniture and general office equipment used in the Call Center. Any such furnishings needed in the Exchange's Sites will be provided by the Exchange.

7. Acceptance Process for Services and Deliverables.

7.1 General.

7.1.1 Contractor shall provide the Exchange with the Services and Deliverables according to the Work Plan and as described in the Solicitation, the Response, and other parts of this Agreement. Contractor shall utilize the Specifications, the DEDs, the Solicitation, the Response, Deliverables for which the Exchange has previously granted Acceptance, Contractor's professional knowledge, and this Agreement as the basis of subsequent Services and Deliverables.

7.1.2 All Services and Deliverables shall be subject to the Exchange's Acceptance, including without limitation Deliverables provided pursuant to Change Orders. The Exchange's review of Services and Deliverables shall be in accordance with the time frames therefor set forth in the Work Plan.

7.2 Work Plan.

7.2.1 The Work Plan will initially be included in the Response. Contractor shall produce and provide to the Exchange an update to the Work Plan as a Deliverable with input from the Exchange within 21 Days of the Execution Date. The Work Plan will be inclusive of the mutual expectations of Exchange and Contractor for completion of the Project in accordance with requirements described in the Agreement. Contractor will submit the Work Plan to the Exchange's Project Director for review and Acceptance within 21 Days of the Execution Date. The Work Plan shall be a Deliverable. In the event of failure of the parties to agree upon the update to the Work Plan and/or of the Exchange to give its Acceptance thereof within 45 Days of the Execution Date, the Exchange may invoke its right to immediately terminate this Agreement, without liability for such termination, in accordance with Section 17.2.

7.2.2 Contractor shall update the Work Plan regularly (no less than monthly) and as otherwise necessary throughout the Project to accurately reflect the status of activities, tasks, events, Services for the Project, and projected Schedule therefor. Contractor will present the updated Work Plan at a time agreed to by the parties in writing, and the updated Work Plan will highlight changes made from the prior Work Plan. Any such update changes are subject to Acceptance as a Deliverable by the Exchange Project Director prior to their final incorporation into the Work Plan. Any Work Plan change request which would result in an increased cost to Exchange shall be considered a Change Order. Any Work Plan change that would require an amendment to this Agreement shall be approved by the Exchange Executive Director. The Work Plan progress updates shall allow adequate time, in Exchange's reasonable judgment, for Exchange to review and comment on the updates, as well as any new or modified Deliverables described in Exhibit A, and revision or correction of Deliverables described in Exhibit A by Contractor. However, unless otherwise specifically agreed to in writing, Exchange's agreement on a change to the Work Plan will not relieve Contractor of liability from failures to perform its obligations as required herein. The Work Plan updates shall be incorporated into Exhibit A upon Acceptance by the Exchange.

7.2.3 The Schedule shall not change as a result of time required by Contractor to correct Deficiencies, unless otherwise agreed beforehand in writing by Exchange. The Schedule shall be extended on a day-to-day basis and a Change Order shall be issued pursuant to Section 10 if requested by Contractor to the extent that Exchange's review of a Deliverable and review of corrections of Deficiencies in accordance with the Acceptance process and Acceptance Test Plan is longer than described in the Work Plan. A Change Order shall be issued pursuant to Section 10 if requested by the Exchange to the extent that the Schedule is extended due to Contractor's failure to perform its obligations to correct Deficiencies in accordance with the Work Plan.

7.3 General Acceptance Process for Deliverables and Services.

7.3.1 Contractor must give Certification for each Deliverable and Service. Upon receipt of Certification from Contractor that the Deliverable or Service meets its Acceptance Criteria, the Exchange will, with Contractor's assistance and in accordance with the Change Order and other applicable Project documents, review or perform Acceptance Tests on the Deliverable or Service, as applicable, to determine whether it conforms to its Acceptance Criteria.

7.3.2 The Exchange will provide Acceptance for a Deliverable or Service if it conforms to its Acceptance Criteria. However, if the Deliverable or Services does not conform to its Acceptance Criteria, the Exchange will notify Contractor in an email or other document of Deficiencies used as the grounds for the Exchange's decision not to give Acceptance. Contractor shall correct Deficiencies and re-submit a corrected Deliverable to or re-perform the Service for the Exchange which will review or perform Acceptance Tests to verify whether the Deliverable or Service conforms to its Acceptance Criteria and in writing shall either give its Acceptance or reject it following such review or Acceptance Tests. Contractor's times for correcting Deficiencies and the Exchange's review shall be in accordance with the timeframes therefor set in the Work Plan and other Project documents. If time periods for correcting Deficiencies by Contractor and reviewing and retesting corrected Deliverables or re-performed Services are not in the Work Plan or another Project document, each such time period shall be ten business days.

7.3.3 If Contractor is unable to correct all Deficiencies within the number of Days indicated in the Work Plan following the scheduled Acceptance, or if no such date is in the Work Plan, within 30 Days from such scheduled Acceptance, the Exchange may, at its option: (a) continue reviewing or performing Acceptance Tests and require Contractor to continue until Deficiencies are corrected or eliminated; (b) request Contractor to provide, at its expense, a replacement Deliverable or Service for further review or Acceptance Tests; or (c) after completion of the process set forth in this Section 7.3 and providing Notice of default to Contractor, terminate this Agreement, in whole or in part as provided in Section 17.2.

7.4 Go-Live. After Acceptance of SHOP, the Exchange shall, with input from Contractor, determine whether SHOP is ready to Go-Live for the Exchange. If the Deliverables and Services required for Go-Live of SHOP have received Acceptance, but the Exchange decides to delay Go-Live for reasons beyond Contractor's reasonable control, and there are cost or Schedule impacts from such delay on Contractor, a Change Order shall be

issued pursuant to Section 10. After the Exchange decides to Go-Live for SHOP, Contractor shall provide Operations Services, Maintenance Services and other Services for the Exchange as described in Section 9 and the Solicitation and Response.

7.5 Interpretation of Deliverables. In the event of a contradiction, conflict, ambiguity or inconsistency in or between Deliverables and other documents that are part of this Agreement, including without limitation, a Deliverable that has already received Acceptance, the Solicitation and the Response, any such contradiction, conflict, ambiguity or inconsistency shall be resolved in favor of the latest Exchange-approved Deliverable except in the case where a previous documented requirement is inadvertently omitted or not addressed directly in a subsequent Deliverable. No requirements can be omitted from the Specifications without the written consent of the Exchange Project Director.

7.6 Restrictions on Use. Contractor shall not use or in any manner disseminate any Deliverable to any third party, or represent in any way Contractor ownership in any Deliverable, without the prior written permission of the Exchange. Contractor shall take all reasonable steps necessary to ensure that its agents, employees, or Subcontractors shall not copy or disclose, transmit or provide any Deliverable or any portion thereof, in any form, to any third party except as permitted in the Agreement.

8. Warranties.

8.1 Deliverables.

8.1.1 Contractor represents and warrants that each Deliverable shall conform to and perform in accordance with its applicable Specifications as provided herein following its Acceptance. Contractor shall promptly repair or replace each of the Deliverables that does not meet its Specifications as provided herein at no additional charge to the Exchange. If a Deliverable includes any products provided by third parties, such as Equipment, Third-Party Software, or network facilities, Contractor shall fully cooperate with and coordinate the work with such third parties and the Exchange to promptly repair and replace the Deliverables at no additional charge.

8.1.2 Contractor also represents that it has and warrants that it shall have the capability and capacity to produce the Deliverables it has agreed to provide to the Exchange, that it shall secure all Software licenses and maintenance agreements which are necessary to provide the Deliverables in accordance with the terms of the Agreement and which are assignable to the Exchange without the consent of the Software licensor, and that each Deliverable will be implemented into Production and supported by Contractor to meet the requirements in the Agreement. If additional Software licenses or Deliverables, including but not limited to Enhancements, are needed to Third-Party Software for Contractor to meet this representation and warranty, Contractor shall provide such Software licenses and Deliverables at no additional charge.

8.2 Services.

8.2.1 Contractor represents and warrants that: (a) it shall perform all Services required pursuant to this Agreement in accordance with applicable Specifications and in a professional manner, with high quality, knowledge and experience; and (b) time shall be of the essence in connection with performance of the Services. Contractor shall promptly re-perform Services which are not in compliance with such representations and warranties at no cost to the Exchange.

8.2.2 Contractor also represents and warrants that it shall secure all Software licenses and maintenance agreements necessary to provide the Services in accordance with the terms of the Agreement, and that each Service will be implemented into Production and supported by Contractor to meet the requirements in the Agreement. If additional Software licenses or Deliverables, including but not limited to Enhancements, are needed to Third-Party Software for Contractor to meet this representation and warranty, Contractor shall provide such Software licenses and Deliverables at no additional charge.

8.3 Legal and Regulatory Compliance. Contractor represents and warrants that: (a) the Services and Deliverables shall comply with all applicable federal and State laws, regulations, codes, standards and ordinances; (b) Contractor will at all times comply with all applicable worker's compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the fullest extent applicable; (c) Contractor shall comply with all applicable local safety and health clearances, including fire clearances, for each Site where Services are provided under the terms of this Agreement; and (d) Contractor will comply with all applicable health laws and regulations, including, but not limited to the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005, the Patient Protection and Affordable Care Act of 2010, Public Law 111-148, and regulations promulgated thereunder by the U.S. Department of Health and Human Services, 42 C.F.R. Part 2, and other applicable laws. In the event that Contractor violates such laws, regulations, codes, standards and ordinances, it shall be the sole responsibility of Contractor to comply with such laws, regulations, codes, standards and ordinances at no cost to the Exchange.

8.4 Authorization. Contractor represents and warrants that:

8.4.1 Contractor is a [_____ corporation] validly existing and in good standing under the laws of its state of incorporation and has all requisite power and authority to execute, deliver and perform its obligations under this Agreement;

8.4.2 It has the full power and authority to grant to the Exchange the rights described in this Agreement without violating any rights of any third party and that there is currently no actual or threatened suit by any such third party based on an alleged violation of such rights by Contractor;

8.4.3 The execution, delivery and performance of this Agreement has been duly authorized by Contractor and no approval, authorization or consent of any

governmental or regulatory agency is required to be obtained in order for Contractor to enter into this Agreement and perform its obligations under this Agreement;

8.4.4 The person executing this Agreement for Contractor has actual authority to bind Contractor to each and every term, condition and obligation to this Agreement, and that all requirements of Contractor have been fulfilled to provide such actual authority;

8.4.5 Contractor is duly authorized to conduct business in and is in good standing in each jurisdiction in which Contractor will conduct business in connection with this Agreement;

8.4.6 Contractor has obtained all licenses, certifications, permits, and authorizations necessary to perform the Services under this Agreement and currently is in good standing with all regulatory agencies that regulate any or all aspects of Contractor's performance of the Services; and

8.4.7 It shall comply with all applicable local, State, and federal licensing, accreditation and registration requirements and standards necessary in the performance of the Services; and Contractor will maintain all required certifications, licenses, permits, and authorizations during the term of this Agreement at its own expense.

8.5 Ability to Perform. Contractor represents and warrants that:

8.5.1 Contractor has the financial stability to carry out at least six months of Services during any period of this Agreement without reimbursement for the Services or expenses;

8.5.2 Contractor has the financial resources to fund the capital expenditures required under the Agreement without advances by the Exchange or assignment of any payments by the Exchange to a financing source; and

8.5.3 Each Subcontractor providing a substantial amount of the Services under this Agreement has the financial resources to carry out its duties under this Agreement.

8.6 Service Level Agreements.

8.6.1 Contractor warrants that it shall perform the Services, in whole and in part, in accordance with the Service Level Agreements.

8.6.2 Contractor and the Exchange will conduct tests for measuring and certifying the achievement of the Service Level Agreements. Contractor must implement all testing, measurement and monitoring tools and procedures required to measure and report Contractor's performance of the Software and Services against the applicable Service Level Agreements. Such testing, measurement and monitoring must permit reporting at a level of detail sufficient to verify compliance with the Service Level Agreements, and will be subject to audit by the Exchange. Contractor will provide the Exchange with information and access to all information or work product produced by such tools and procedures upon request for purposes of verification.

8.6.3 If the Services fail to meet all Service Level Agreements, Contractor shall modify, reconfigure, upgrade or replace Equipment, and/or Software at no cost to the Exchange and re-perform the failed Services in order to ensure that the Services comply with such Service Level Agreements.

8.7 Intellectual Property Rights

8.7.1 Contractor warrants that it is the owner of the Deliverables that are to be transferred and assigned to the Exchange in accordance with Section 5.5 without violating any rights of any third party.

8.7.2 Contractor represents that, as of the Execution Date, there is no actual or threatened suit by any such third party based on an alleged violation of the rights granted or licensed by Contractor to the Exchange hereunder.

8.7.3 Contractor warrants that the Deliverables shall not infringe or misappropriate any right of, and will be free of any claim of, any third person or entity based on a U.S. enforceable patent, copyright, trade secret, unfair trade practice, or other U.S. enforceable intellectual property right.

8.8 Disclaimers. WARRANTIES EXPRESSLY MADE IN THIS AGREEMENT ARE CONTRACTOR'S ONLY WARRANTIES CONCERNING THE SERVICES AND DELIVERABLES, AND ARE MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY.

9. Maintenance Services.

9.1 General Responsibilities. Contractor shall provide Maintenance Services as described in this Section 10. Contractor's Service responsibilities shall include but not be limited to the following while assisting the Exchange in supporting and maintaining the Software and Services:

9.1.1 Maintain the Software and Services in accordance with the Specifications and terms of this Agreement;

9.1.2 Repair or replace the Software and Services, or any portion thereof, that has Deficiencies as described in Exhibit C;

9.1.3 Re-perform any Service that fails to meet the requirements of this Agreement at no additional cost;

9.1.4 Coordinate with the Exchange all tasks related to correcting problems and Deficiencies connected with the Software and Services; and

9.1.5 Execute on-line diagnostics to assist in the identification and isolation of suspected Deficiencies.

9.2 Inquiry Assistance. Contractor shall respond to the Exchange inquiries as provided in Exhibit C with the following, as applicable:

9.2.1 Responses to questions relating to the Software and Services, including without limitation isolating problems to the Software, network, Data or Equipment;

9.2.2 The development, on a best efforts basis, of a temporary solution to or an emergency bypass of a Deficiency;

9.2.3 Corrections and repairs of errors, problems or Deficiencies with the Software and Services, to the extent technically feasible; and

9.2.4 Clarification of Documentation.

9.3 Database. Contractor shall maintain and make available online to the Exchange a database of all Change Requests, Deficiencies, other problems reported by the Exchange under Section 9.2 or known to Contractor in the Software and Services. The database shall include, as a minimum, the following:

9.3.1 Date and time Contractor was notified;

9.3.2 Date and time of inquiry response;

9.3.3 Time spent for resolution of Deficiencies;

9.3.4 Description of Deficiency;

9.3.5 Description of severity level of Deficiency, e.g., emergency;

9.3.6 Description of Deficiency resolution; and

9.3.7 Date of resolution.

9.4 Enhancements.

9.4.1 Contractor shall produce such Enhancements as the Exchange requests in a commercially reasonable time and form at an additional charge in accordance with the Change Order process described herein. Enhancements to correct any Deficiency for which Contractor is responsible shall be provided to the Exchange at no additional cost and without the need for a Change Order.

9.4.2 Contractor shall install all Enhancements in accordance with a Schedule mutually agreed to by the parties.

10. Changes.

10.1 Issuance of Change Requests. The Exchange may, at any time by a written Change Request, request changes within the scope of the Agreement. Such changes may include, without limitation, revisions to Deliverables and Services.

10.2 Contractor Response to Change Request. Contractor shall respond in writing to a Change Request within 20 Days of receipt, advising the Exchange of any costs and providing a Work Plan. When there is a cost impact, i.e., increase or decrease in Charges, Contractor shall advise the Exchange in writing of the increase or decrease involved, including a breakdown of the number of Staff hours by level of Contractor and the Exchange's personnel needed to effect this change. Contractor shall produce Deliverables and provide Services under Change Orders on a fixed price basis. The Exchange shall not pay Contractor for preparing Change Orders or preparing pricing and scheduling information in response to Change Requests issued by the Exchange.

10.3 Agreement on Change Order. The Contractor Project Manager and the Exchange Project Director shall negotiate in good faith and in a timely manner as to the price for amounts over the Maximum Amount specified in Exhibit A and the time to perform any Change Order. If the parties reach an agreement on a Change Order in writing, and the Change Order is executed by authorized representatives of the parties, the terms of this Agreement shall be modified accordingly. The parties will execute a formal Agreement amendment for any Change Order that increases or decreases the Maximum Amount. All Change Orders must be executed by the Exchange Project Director. In no event shall the Charges be increased nor shall time be extended in a Change Order to correct Deficiencies caused by Contractor.

10.4 Disagreement. If the parties are unable to reach an agreement in writing within 15 Days of Contractor's response to a Change Request, the Exchange Project Director may make a determination of the revised price and Schedule, and Contractor shall proceed with the work according to such price and schedule which shall be included in the resulting Change Order, subject to Contractor's right to appeal the Exchange Project Director's determination of the price and/or Schedule to the dispute resolution process under Section 15. Nothing in this Section 10.4 shall in any manner excuse Contractor from proceeding diligently with the Agreement as changed by the Change Order.

10.5 Termination. If Contractor fails or refuses to perform its Services pursuant to Section 10.4 or to an agreed and executed Change Order, Contractor shall be in material breach of this Agreement, and the Exchange shall have the right to terminate the Agreement for such a breach in accordance with Section 17.1.

10.6 Contractor Submission of Change Request. Contractor may also submit a Change Request to the Exchange to propose changes that should be made within the scope of the Agreement. Any such Change Request shall include proposed costs and a proposed schedule, including a breakdown of the number of Staff hours by level of Contractor and the Exchange personnel needed to effect this change. The Exchange shall respond to such Change Requests from Contractor within 20 Days of receipt. If the parties reach an agreement on a Change Order in writing, and the Change Order is executed by authorized representatives of the Parties, the terms of this Agreement shall be modified accordingly. If the parties are unable to reach an agreement in writing on a Change Request submitted by Contractor, the Exchange Project Director will be deemed to have rejected the Change Request.

11. Additional Rights and Remedies.

11.1 Withholding Payments. If Contractor fails to deliver Deliverables or to provide Services which satisfy Contractor's obligations hereunder, the Exchange shall have the right to withhold any payments due hereunder for such Deliverables and Services, and for Deliverables and Services which are affected or impacted by such failure. The Exchange may withhold any such payments due to Contractor, without penalty or work stoppage by Contractor, until such failure is cured.

11.2 Reductions in Payments Due. Amounts due the Exchange by Contractor, including but not limited to liquidated or other damages, or claims for damages, may be deducted or set-off by the Exchange from any money payable to Contractor pursuant to this Agreement. The Exchange shall provide Notice to Contractor of any such deduction or set-off and ten business days opportunity to cure the breach resulting in such damages or resolve the claims for damages prior to exercising such deductions or set-offs.

11.3 Liquidated Damages.

11.3.1 The Exchange and Contractor agree that failed, delayed, and/or other performance not in compliance with the terms of this Agreement by Contractor will cause damages to the Exchange which may be uncertain and impractical or difficult to ascertain; and the Exchange shall assess, and Contractor promises to pay the Exchange in the event of such failed, delayed, and/or other performance not in accordance with the terms of this Agreement, the amounts described in Exhibit C as liquidated damages and not as penalties. The schedule of liquidated damages represents damages in conformity with California Civil Code Section 1671, incurred in case of failed, delayed, or other performance not in accordance with the terms of this Agreement.

11.3.2 The parties acknowledge and agree that Contractor could incur liquidated damages for more than one event if Contractor fails to timely perform its obligations by each date. Amounts due the Exchange as liquidated damages may be deducted by the Exchange from any money payable to Contractor under this Agreement, or the Exchange may bill Contractor as a separate item therefor and Contractor shall promptly make payments on such bills.

11.3.3 The assessment of liquidated damages shall not constitute a waiver or release of any other remedy the Exchange may have under this Agreement for Contractor's breach of this Agreement, including without limitation, the Exchange's right to terminate this Agreement, and the Exchange shall be entitled in its discretion to recover actual damages caused by Contractor's failure to perform its obligations under this Agreement. However, the Exchange will reduce such actual damages by the amounts of liquidated damages received for the same events causing the actual damages. Further, liquidated damages shall not apply to the extent that an event occurs under Section 18.20 (Force Majeure) and shall be subject to the terms of Section 16.4.

11.4 Right to Assurance. If the Exchange, in good faith, has reason to believe that Contractor does not intend to, or is unable to perform or has refused to perform or

continue performing all material obligations under this Agreement, the Exchange may demand in writing that Contractor give a written assurance of intent to perform. Failure by Contractor to provide written assurance within the number of days specified in the demand (in no event less than five business days) may, at the Exchange's option, be the basis for terminating this Agreement under the terms and conditions or other rights and remedies available by law or provided by this Agreement.

11.5 Stop Work.

11.5.1 Issuance of Stop Work Order. The Exchange Project Director may, at any time, by written stop work order to Contractor, require Contractor to stop all or any part of the work called for by this Agreement for a period of up to 90 Days after the stop work order is delivered to Contractor, and for any further period to which the parties may agree. The stop work order shall be specifically identified as such and shall indicate it is issued under this Section. Upon receipt of the stop work order, Contractor shall immediately comply with its terms and take all steps necessary and feasible to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. The Work Plan shall be delayed on a Day-for-Day basis if the Exchange Project Director has issued a stop work order to Contractor and such stop work order is causing delays in completing Services in accordance with the Work Plan. The Work Plan may be delayed in addition to the Day-for-Day delays provided in the preceding sentence upon approval by the Exchange Project Director. Within a period of 90 Days after a stop work order is delivered to Contractor, or within any extension of that period to which the parties shall have agreed, the Exchange Project Director shall either:

11.5.1.1 Cancel the stop work order; or

11.5.1.2 Terminate the work covered by the stop work order as provided for in Section 17.1.

11.5.2 Cancellation of Stop Work Order. If a stop work order issued under this Section is canceled or the period of the stop work order or any extension thereof expires, Contractor shall resume work. The Exchange Project Director shall make a reasonable adjustment in the Schedule, the Charges prices, or both, and this Agreement shall be modified in writing accordingly, if:

11.5.2.1 The stop work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Agreement; and

11.5.2.2 Contractor asserts its right to an adjustment within 30 Days after the end of the period of work stoppage, provided that, if the Exchange Project Director decides that the facts justify the action, the Exchange Project Director may receive and act upon a proposal submitted at any time before final payment under this Agreement.

11.5.3 Remedies if Termination for Convenience. If a stop work order is not canceled and the work covered by the stop work order is terminated in accordance

with Section 17.7 (Termination for Convenience), the remedies provided in that Section shall apply.

11.5.4 Rights and Remedies for Termination for Default. If a stop work order is not canceled and the work covered by the stop work order is terminated under Section 17.2, the parties shall pursue their rights and remedies as described in this Agreement.

12. Insurance.

12.1 Liability and Auto Insurance. Contractor shall, at its sole cost and expense, obtain, and, during the term of this Agreement, maintain, in full force and effect, the insurance coverage described in this Section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the State of California and approved by the Exchange. Contractor shall include the Exchange, its Board, contractors, officers, employees, agents and volunteers, both individually and collectively, as a named insured party in Contractor's insurance policy obtained hereunder. Such insurance shall apply as primary insurance for these insureds. If Contractor fails to buy and maintain the insurance coverage described in this Section 12, the Exchange may terminate this Agreement under Section 17.1 (Termination for Contractor's Material Breach). The minimum acceptable limits shall be as indicated below with no deductible except as indicated below:

12.1.1 Comprehensive General Liability or equivalent self-insurance covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;

12.1.2 Comprehensive Business Automobile Liability (owned, hired, or non-owned vehicles) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than \$1 million per accident;

12.1.3 Employers Liability insurance covering the risks of Contractor's Staff and employees' bodily injury by accident or disease with limits of not less than \$1 million per accident for bodily injury by accident and \$1 million per employee for bodily injury by disease;

12.1.4 Fidelity bond(s) not less than \$5 million to cover the fraudulent and dishonest acts of employees

12.1.5 Errors and Omissions Insurance with limits not less than \$10 million to be in force and effect at all times which shall indemnify the Exchange for loss which may be incurred due to human error, computer error, machine error, or problems with non-common carrier telecommunication lines owned or leased by the Contractor, or equipment problems, whether caused by negligence, error, omission, or mistake by Contractor or any employee, officer, or agents thereof;

12.1.6 Premises Operation and Property Damage Insurance: a minimum of \$10 million per occurrence that indemnifies the Exchange against loss of money arising in transit or on the premises, at sites of contracts or as specified in the schedule or endorsed in the

policy. Such insurance shall cover loss of all instruments and cash, including foreign currency. Transit cover shall apply to transit to and from the bank, to and from the Exchange's premises or from one insured's premises to another. Cover for money in business premises shall relate to money in premises during business hours, money in premises outside business hours, money and the insured's sites of contracts during business hours, and money in locked safe or strong room on the premises outside business hours. This policy can also be extended to cover money in the custody of directors or senior managers.

12.1.7 Umbrella policy providing excess limits over the primary policies in an amount not less than \$3 million; and

12.1.8 Crime Coverage with coverage of not less than \$5 million single limit per occurrence and \$10 million in the aggregate, which shall at a minimum cover occurrences falling in the following categories: Computer and Funds Transfer Fraud; Forgery; Money and Securities; and Employee Dishonesty.

12.1.9 Professional Liability or Errors and Omissions, with coverage of not less than \$1 million per occurrence/\$2 million general aggregate.

12.2 Workers' Compensation Coverage. Prior to providing Services under this Agreement, Contractor shall, in full compliance with State law, provide or purchase, at its sole cost and expense, and this shall remain in full force and effect during the term of the Agreement, statutory California's workers' compensation coverage for its employees and Employer's Liability in the minimum amount of \$1 million per occurrence. This coverage should include the Exchange and its officers, representatives, agents, and employees as additional insureds. The Exchange will not be responsible for payment of premiums or for any other claim or benefit for Contractor, or any Subcontractor or employee of Contractor, which might arise under applicable laws during the performance of duties and Services under this Agreement. However, should Contractor fail to secure insurance coverage or fail to pay premiums on behalf of its employees, the Exchange may deduct the amount of premiums owing from the amounts payable to Contractor under this Agreement and transmit the same to the responsible State agency.

12.3 Subcontractors. Contractor shall include all Subcontractors as insured under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each Subcontractor. Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

12.4 Premiums. Premiums on all insurance policies shall be paid by Contractor or its Subcontractors. Such insurance policies provided for the Exchange pursuant to this Section shall expressly provide therein that the Exchange be named as additional insured, and that it shall not be revoked by the insurer until 30 Days' Notice of intended revocation thereof shall have first been given to the Exchange by such insurer.

12.5 Cancellation. Contractor's insurance policies shall not be canceled or non-renewed in scope of coverage without provision for equivalent substitute insurance and such

cancellation or nonrenewal shall not take place or reduced in scope of coverage until 30 business days' written Notice has been given to the Exchange Project Director, and Contractor has replacement insurance policy(ies) in place that satisfy the requirements set forth in this Section 12. Contractor's insurance policies shall not be reduced in scope without the Exchange's prior written consent.

12.6 Insurance Documents. Contractor shall furnish to the Exchange copies of certificates of all required insurance prior to the Execution Date, and copies of renewal certificates of all required insurance within 30 Days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this Section. Failure to provide these documents shall be grounds for immediate termination or suspension of this Agreement by the Exchange for material breach. The Exchange reserves the right to review the insurance requirements contained herein once every five years to ensure that there is appropriate coverage that is in accordance with this Agreement.

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

12.8 Primary Coverage. All insurance provided by Contractor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State and shall include a severability of interests (cross-liability) provision.

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

12.10 Cross-Liability. All insurance provided by Contractor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the Exchange and shall include a severability of interests (cross-liability) provision.

13. Confidential Information.

13.1 Protection Obligations.

13.1.1 Access and Protection. During the term of the Agreement, Contractor and the Exchange will have access to and become acquainted with each party's Confidential Information. The Exchange and Contractor, and each of their officers, employees, and authorized contractors and agents, shall maintain all Confidential Information of the other party in confidence and at least to the extent as it protects the confidentiality of its own proprietary information of like kind, but in no event with less than reasonable care. Neither party will at any time use, publish, reproduce or disclose any Confidential Information, except to authorized officers, employees, contractors and agents requiring such information under confidentiality requirements no less restrictive than this Section 13.1.1, as authorized in writing by the other party, as otherwise specifically permitted herein, or to perform its obligations as authorized hereunder. Both parties shall take all steps necessary, including without limitation oral and written instructions to all staff to safeguard, in accordance with applicable federal and

State law, regulation, codes, and this Section 13.1.1, the other party's Confidential Information against unauthorized disclosure, reproduction, publication or use, and to satisfy their obligations under this Agreement. Each party agrees that, prior to disclosing any Confidential Information of the other party to any third party, it will obtain from that third party a written acknowledgment that such third party will be bound by the same terms as specified in this Section 13.1.1 with respect to the Confidential Information. In addition to the requirements expressly stated in this Section 13.1.1, Contractor and its Subcontractors will comply with any applicable policy, rule, or reasonable requirement of the State and the federal government that relates to the safeguarding or disclosure of information relating to applicants and recipients of the Exchange's services, Contractor's Operations, or the Services performed by Contractor under this Agreement, including without limitation the terms of Exhibit E.

13.1.2 Security Requirements. Each party, and its officers, employees, subcontractors and agents shall at all times comply with all security standards, practices, and procedures which are equal to or exceed those of the Exchange and which the other party may establish from time-to-time, with respect to information and materials which come into each party's possession and to which such party gains access under this Agreement. Such information and materials include without limitation all Confidential Information.

13.2 Audit. The Exchange reserves the right to monitor, audit or investigate Contractor's use of the Exchange Confidential Information collected, used, or acquired by Contractor under this Agreement.

13.3 Return. Subject to record retention laws and Section 4.7, each party shall promptly return to the disclosing party, on termination or expiration, all of the disclosing party's Confidential Information, including copies thereof.

13.4 Injunctive Relief.

13.4.1 Contractor shall immediately report to the Exchange any and all unauthorized disclosures or uses of the Exchange's Confidential Information of which it or its Staff is aware or has knowledge. Contractor acknowledges that any publication or disclosure of the Exchange's Confidential Information to others may cause immediate and irreparable harm to the Exchange. If Contractor should publish or disclose such Confidential Information to others without authorization, the Exchange shall immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period.

13.4.2 The Exchange will immediately report to Contractor any and all unauthorized disclosures or uses of Contractor's Confidential Information of which the Exchange is aware or has knowledge. the Exchange acknowledges that any publication or disclosure of Contractor's Confidential Information to others may cause immediate and irreparable harm to Contractor. If the Exchange should publish or disclose such Confidential Information to others without authorization, Contractor shall immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period.

13.5 Exceptions. The following information shall not be considered Confidential Information for the purposes of this Agreement: information previously known when received from the other party and not subject to confidentiality obligations; information freely available to the general public; information which now is or hereafter becomes publicly known by other than a breach hereof; information which is developed by one party independently of any disclosures made by the other party of such information; or information which is disclosed by a party pursuant to subpoena or other legal process and is lawfully obtainable by the general public.

13.6 Public Records. Notwithstanding the above, Contractor acknowledges that this Agreement shall be a public record under State law. Any specific information that is claimed by Contractor to be Confidential Information must be clearly identified as such by Contractor. To the extent consistent with State law, including the California Public Records Act, the Exchange will maintain the confidentiality of all such information marked Confidential Information. If a request is made to view Contractor's Confidential Information, the Exchange will notify Contractor of the request and of the date that any such records will be released to the requester unless Contractor obtains a court order enjoining that disclosure or other appropriate remedy. If Contractor fails to obtain the court order enjoining disclosure prior to the deadline for responding to the request for documents, the Exchange may release the identified requested information on the date specified without penalty or liability. The Exchange reserves the right to also seek reimbursement for all costs and expenses incurred by the Exchange in their refusal to produce Contractor's confidential documents.

13.7 Compliance With State Requirements

13.7.1 As part of its nondisclosure obligations, Contractor shall comply and require its officers, employees and Subcontractors to comply with the provisions of Section 14100.2 of the California Welfare and Institutions Code, Title 22 of the California Code of Regulations, Section 51011, and all other statutory laws relating to privacy and confidentiality.

13.7.2 Contractor will keep confidential and not open to examination, for any purpose not directly connected with the administration of public social services, any applications and records concerning any individual made or kept by a public officer or agency in connection with the administration of the provision of Section 10850 of the Welfare and Institutions Code relating to any form of public social services.

13.7.3 Contractor shall inform all of its employees, agents, subcontractors and partners of the above provision and that any person knowingly and intentionally violating the provisions of this State law is guilty of misdemeanor.

13.8 Written Staff Agreements. Contractor agrees to cause Staff to which Contractor makes available (as permitted by this Agreement) the Exchange's Confidential Information and the State's Confidential Information to agree in writing to observe and perform all provisions of this Section 13 applicable to such Staff.

13.9 Subpoena. In the event that a subpoena or other legal process in any way concerning the Exchange's Confidential Information is served upon Contractor, then

Contractor agrees to notify the Exchange within 24 hours following receipt of such subpoena or other legal process and to cooperate with the Exchange in any lawful effort by the Exchange to contest the legal validity of such subpoena or other legal process. In the event that a subpoena or other legal process in any way concerning Contractor's Confidential Information is served upon the Exchange, then the Exchange agrees to notify Contractor within 24 hours following receipt of such subpoena or other legal process and to cooperate with Contractor in any lawful effort by Contractor to contest the legal validity of such subpoena or other legal process.

14. Dispute Resolution.

14.1 Good Faith Efforts. The parties shall attempt in good faith to promptly resolve any dispute, controversy or claim arising out of or relating to this Agreement through negotiations between senior management of the parties and their designees. If the dispute cannot be resolved within 15 Days of initiating such negotiations or such other time period mutually agreed to by the parties in writing, either party may terminate the dispute resolution negotiations.

14.2 Continued Performance. Contractor and the Exchange agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities and obligations under this Agreement and shall have the right to exercise their rights and remedies.

15. Additional Indemnifications.

15.1 Intellectual Property.

15.1.1 Except to the extent caused by the negligence or fault of the Exchange, Contractor shall, at its expense, defend with counsel reasonably approved by the Exchange, indemnify, and hold harmless the Exchange and their employees, officers, directors, contractors and agents, and the State from and against any third party claim or action against the Exchange which is based on a claim that any Deliverable or any part thereof under this Agreement infringes a patent, copyright, trademark, or other proprietary right or misappropriates a trade secret, and Contractor shall pay all losses, liabilities, damages, penalties, costs, fees (including reasonable attorneys' fees) and expenses caused by or arising from such claim. The Exchange shall promptly give Contractor notice of any such claim and shall cooperate in the defense of such claims at Contractor's expense. Notwithstanding the foregoing, the Exchange shall have the right to participate in the defense of any such action and employ their own counsel in connection therewith, but the fees and expenses of such counsel shall be at the expense of the Exchange unless:

15.1.1.1 the employment of such counsel shall have been authorized in writing by Contractor in connection with the defense of such action;

15.1.1.2 Contractor shall not have employed counsel to take charge of the defense of such action within a reasonable time after commencement of the action; or

15.1.1.3 the Exchange shall have reasonably concluded that there may be defenses available to them which are different from or additional to those available

to Contractor (in which case Contractor shall not have the right to direct the defense of such action on behalf of the Exchange), in any of which events such fees and expenses shall be borne by the Exchange.

15.1.2 In case the Deliverables or Services, or any one or part thereof, are in such action held to constitute an infringement or misappropriation, or the exercise of the Exchange's rights thereto is enjoined or restricted, Contractor shall, at its own expense and in the following order of priorities: (i) procure for the Exchange the right to continue using the Deliverables; (ii) modify the Deliverables or Services, as applicable, to comply with the Specifications and to not violate any intellectual property rights; (iii) or retrieve any or all Deliverables which are enjoined or restricted and other Deliverables designated by the Exchange upon receipt of notice from the Exchange and refund the Charges for such Deliverables.

15.1.3 Contractor shall not be liable to the extent claims of misappropriation of infringement arise from: (i) Contractor's compliance with any designs, Specifications or written instructions of the Exchange and Contractor could not have avoided such claims through alternative products; or (ii) any changes made by the Exchange or any third party authorized by the Exchange to make changes unless Contractor authorized such changes or gave instructions on how to make the changes or the Exchange did so based on the advice of Contractor.

15.2 General. To the maximum extent permitted by law and except to the extent caused by negligence of the Exchange, Contractor shall, at its expense, indemnify, defend with counsel reasonably approved by the Exchange, and hold harmless the Exchange, its employees, officers, directors, contractors and agents, from and against any losses, liabilities, damages, penalties, costs, obligations, fees, including without limitation reasonable attorneys' fees, and expenses from any claim, action, suit or judgment to the extent caused by or arising from: (a) the negligent acts or omissions or willful misconduct of Contractor, its officers, employees, agents, or Subcontractors, including but not limited for Property damage, bodily injury or death; (b) a breach or alleged breach of its obligations in Section 13; and (c) delays of, or acts or failures to act of, other Exchange contractors to the extent such delays, or acts or failures to act are caused by or due to the fault of Contractor or its failure to mitigate the effect of such delays caused to other Exchange contractors. In addition, Contractor shall be responsible for and shall indemnify the Exchange against any fines, penalties, sanctions, or disallowances which are imposed on the Exchange or Contractor and which arise from or are caused by any noncompliance with the federal or State laws, regulations, codes, policies and guidelines that affect or apply to Contractor's or its Subcontractors' performance of their obligations. The Exchange shall promptly give Contractor notice of such claims and shall cooperate in the defense of such claims at Contractor's expense.

16. Damages Disclaimers and Limitations.

16.1 The Exchange's Disclaimer of Damages. THE EXCHANGE SHALL NOT BE LIABLE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS AGREEMENT FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL

DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS AND LOST BUSINESS OPPORTUNITIES.

16.2 The Exchange's Limitation of Liability. IN NO EVENT SHALL THE EXCHANGE'S AGGREGATE LIABILITY TO CONTRACTOR UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS AGREEMENT, EXCEED THE MAXIMUM AMOUNT.

16.3 Contractor's Disclaimers of Damages. EXCEPT AS PROVIDED IN SECTION 16.5, CONTRACTOR SHALL NOT BE LIABLE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS AGREEMENT FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS AND LOST BUSINESS OPPORTUNITIES. THE DAMAGES SPECIFIED IN SECTIONS 4.7.3 (RECORDS RETENTION AND ACCESS REQUIREMENTS) AND 17.10 (ADDITIONAL TERMINATION REMEDIES) AND ARE NOT CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES AS THOSE TERMS ARE USED IN THIS SECTION.

16.4 Contractor's Limitation of Liability. EXCEPT AS PROVIDED IN SECTION 16.5, IN NO EVENT SHALL CONTRACTOR'S AGGREGATE LIABILITY TO THE EXCHANGE UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS AGREEMENT, EXCEED THE MAXIMUM AMOUNT.

16.5 Exceptions to Damages Limitations. THE DISCLAIMERS OF CERTAIN DAMAGES AND THE DAMAGES LIMITATIONS IN SECTIONS 16.3 AND 16.4: (A) SHALL NOT APPLY TO DAMAGES, EXPENSES, LOSSES, FEES, LIABILITIES, COSTS OR OTHER AMOUNTS ARISING FROM CONTRACTOR'S INDEMNIFICATION OBLIGATIONS; AND (B) SHALL EXCLUDE DAMAGES RESULTING FROM A REDUCTION OF FEDERAL FINANCIAL PARTICIPATION.

17. Termination.

17.1 Termination for Contractor's Material Breach. If Contractor fails to cure any material breaches of this Agreement which are described in a written Notice from the Exchange within 30 Days of such Notice, this Agreement may be terminated immediately, in whole or in part, by Notice from the Exchange.

17.2 Termination for Rejection of Deliverables. If Contractor is unable to correct Deficiencies in a Deliverable or Service, as described in Section 8.3, the Exchange shall have the right to immediately terminate this Agreement, in whole or in part, without penalty or liability to the Exchange, and return the Deliverable to Contractor and other Deliverables impacted or affected by the uncorrected Deliverable, including but not limited to the Software, in

whole or in part. If the Exchange terminates this Agreement, in whole or in part, under this Section, Contractor shall, within 20 Days thereafter, refund to the Exchange all payments made to Contractor for the returned Deliverables and other Deliverables impacted or affected by the uncorrected Deliverable.

17.3 Termination for Convenience.

17.3.1 In addition to its other rights to terminate, the Exchange may terminate this Agreement, in whole or in part for the Exchange's convenience, by a minimum of 30 Days' Notice to Contractor.

17.3.2 During this 30 Day period, Contractor shall wind down and cease its Services as quickly and efficiently as reasonably possible, without performing unnecessary Services or activities and by minimizing negative effects on the Exchange from such winding down and cessation of Services. If this Agreement is so terminated, the Exchange shall be liable only for payment in accordance with the terms of this Agreement for Services rendered in accordance with the requirements of this Agreement prior to the effective date of termination.

17.3.3 In case of such termination for convenience, the Exchange will pay to Contractor the agreed upon price, if separately stated, for Deliverables for which Acceptance has been given by the Exchange, amounts for Services provided prior to the date of termination for which no separate price is stated and which are not associated with or related to a specific Deliverable for which Acceptance has been given, and amounts for Deliverables which are in development but which have not received Acceptance. The amounts for such Services and Deliverables in development but not accepted will be costs actually and reasonably incurred by Contractor therefor, as based on the hourly rates in Exhibit A, but such costs shall be no greater than the final Charges for each Deliverable. In the case of termination for convenience, Contractor shall promptly refund any prepaid annual Charges. In addition, the Exchange agrees to compensate Contractor for reasonable and necessary costs that were incurred by Contractor on this Project, as a result of the Exchange's termination for convenience, for un-depreciated or unamortized equipment and software licenses, early termination of leases, and other reasonable and necessary Project-related expenses, subject to the Exchange's availability of State and Federal funds and receipt of supporting documentation from Contractor.

17.3.4 If it is determined for any reason the failure to perform is not within Contractor's control or not due to Contractor's fault, or negligence, the termination by the Exchange under Sections 17.1 or 17.2 shall be deemed to be a termination for convenience under Section 21.3.

17.4 Termination for Conflict of Interest. The Exchange may terminate this Agreement under Section 17.1 (Termination for Contractor's Material Breach) by Notice to Contractor if the Exchange determine, after due notice and examination, that Contractor has violated any laws regarding ethics in public acquisitions and procurement and performance of contracts, including but not limited to California Government Code Section 87100 et seq. and any creating a conflict of interest.

17.5 Termination for Withdrawal of Authority. In the event that the authority of the Exchange to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Agreement and prior to normal completion, the Exchange may terminate this Agreement under Section 17.3 (Termination for Convenience), in whole or in part. Except in the instance when a protest of the award of this Agreement to Contractor is successful, this Section shall not be construed so as to permit the Exchange to terminate this Agreement in order to acquire similar Services from a third party.

17.6 Termination for Non-allocation of Funds. If funds are not allocated to continue this Agreement in any future period, the Exchange may terminate this Agreement under Section 17.3 (Termination for Convenience). The Exchange will not be obligated to pay any further Charges for Services or Charges for such future period, but the Exchange shall make payments for Services, Deliverables and Contractor's costs as provided in Section 17.3.3, subject to the Exchange's availability of funding therefor. The Exchange agrees to Notice to Contractor of such non-allocation at the earliest reasonable time. No penalty shall accrue to the Exchange in the event this Section shall be exercised.

17.7 Termination for Insolvency. Exchange may, by Notice to Contractor and failure by Contractor to rectify any of the conditions described below in this Section within 30 Days following such notice, terminate this Agreement forthwith in the event Contractor shall be dissolved or shall sustain the loss, cancellation or forfeiture of its legal status or good standing by reason of any judicial, extra-judicial or administrative proceedings or Contractor shall:

17.7.1 Apply for or consent to the appointment of a receiver, trustee, or liquidator of Contractor for all or a substantial part of Contractor's assets;

17.7.2 Be able to, or admit in writing its inability to, pay its debts as they mature;

17.7.3 Make a general assignment for the benefit of creditors;

17.7.4 Be adjudicated bankrupt or insolvent;

17.7.5 File a voluntary petition in bankruptcy or a petition or answer seeking reorganization or an arrangement for the benefit of creditors or take advantage of any insolvency law in its capacity as a debtor;

17.7.6 Interpose an answer admitting the material allegations of the petition filed against Contractor in any bankruptcy, reorganization, receivership, insolvency or any similar proceedings; and/or

17.7.7 Take any action for the purpose of effecting any of the foregoing.

17.8 Termination for the Exchange's Nonpayment. Except to the extent the Exchange is exercising its remedies and subject to the application of Section 3.9, if the Exchange fails to pay Contractor undisputed and material Charges when due under the Agreement and fails to make such payments within 90 Days of receipt of Notice from Contractor of the failure to make such payments, Contractor may, by giving Notice to the Exchange,

terminate this Agreement as of a date specified in the Notice of termination. Contractor shall not have the right to terminate the Agreement for the Exchange's breach of the Agreement except as provided in this Section.

17.9 Termination Procedure.

17.9.1 After receipt of a Notice of termination in whole or in part, and except as otherwise directed by the Exchange, Contractor shall:

17.9.1.1 Stop work under this Agreement on the date, and to the extent specified, in the Notice;

17.9.1.2 Place no further orders or subcontracts for materials, Services, or facilities except as may be necessary for completion of such portion of the work under this Agreement that is not terminated;

17.9.1.3 As soon as practicable, but in no event longer than 30 Days after termination, terminate its orders and subcontracts related to the work which has been terminated and settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Exchange to the extent required, which approval or ratification shall be final for the purpose of this Section;

17.9.1.4 Complete performance of such part of this Agreement as shall not have been terminated by the Exchange;

17.9.1.5 Take such action as may be necessary, or as the Exchange Project Director may direct, for the protection and preservation of the Property related to this Agreement which is in the possession of Contractor and in which the Exchange has an interest;

17.9.1.6 Transfer title to the Exchange and deliver in the manner, at the times, and to the extent directed by the Exchange Project Director, any Property which is required to be furnished to the Exchange and which has been accepted or requested by the Exchange;

17.9.1.7 Assign or transfer real property and Equipment leases as requested by the Exchange; and

17.9.1.8 Provide written certification to the Exchange that Contractor has surrendered to the Exchange all such Property.

17.9.2 Upon expiration or termination of this Agreement, the Exchange, in addition to any other rights provided in this Agreement, may require Contractor to deliver to the Exchange any Property, including but not limited to Deliverables and Data, for such part of this Agreement as has been terminated.

17.9.3 Notwithstanding anything contained herein to the contrary, in the event this Agreement is terminated by the Exchange due to a material breach by Contractor of its

obligations hereunder or for the Exchange's convenience, the Exchange shall have the option to continue the use and operation of the Services and Software for a period of not more than 180 Days after the effective date of termination or expiration of this Agreement in order to identify and complete the transition to alternative software and services.

17.9.4 In addition, upon expiration of the Agreement or Contractor's receipt of notice of termination of the Agreement by the Exchange, Contractor shall provide any turnover assistance Services necessary to enable the Exchange or its designee to effectively close out the Agreement and move the work to another vendor or to perform the work by itself. The Exchange shall pay on a time and materials basis at rates in the Agreement for turnover assistance, subject to mutual written agreement on such work to be performed, and Contractor agrees that any of its out-of-pocket costs, which will be reimbursed by the Exchange, shall not be marked up to include profits. Within ten Days of receipt of the Notice of termination, Contractor shall provide, in machine readable form, an up-to-date, usable copy of the Data and a copy of all Documentation needed by the Exchange to utilize the Data. Contractor shall ensure that all consents or approvals to allow Contractor and Subcontractors to provide the assistance required following termination or expiration have been obtained, on a contingent basis, in advance and will be provided by the applicable third parties at no cost or delay to the Exchange.

17.10 Additional Termination Remedies. Notwithstanding anything to the contrary herein, in the event of termination of this Agreement by the Exchange under Section 17.1 , Section 17.2, or Section 17.4, the Exchange shall, in addition to its other available remedies, have the right to re-procure the Services and Deliverables that are the subject of this Agreement and, subject to Section 16.4, Contractor shall be liable for damages, including, but not limited to: (i) the cost difference between the original Agreement price for the Deliverables and/or Services and the replacement costs of such Deliverables and/or Services acquired from another contractor; and (ii) if applicable, all administrative costs directly related to the replacement of this Agreement, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, and staff time costs.

18. General Conditions.

18.1 Americans With Disabilities Act. Contractor shall comply with all applicable provisions of Title I (Employment) of the Americans with Disabilities Act. Contractor shall not discriminate on the basis of disability in connection with the Services, programs, and activities performed and provided under the Agreement, except public transportation services. In addition, Contractor is not required to provide special needs equipment at no further cost for the Exchange and its employees.

18.2 Antitrust Violations. Contractor and the Exchange recognize that overcharges resulting from antitrust violations are in actual economic practice usually borne by the Exchange. Therefore, Contractor hereby assigns to the Exchange any and all claims for such overcharges as to goods and services purchased in connection with this Agreement, except as to overcharges not passed on to the Exchange resulting from antitrust violations commencing after the date of the bid, quotation, or other event establishing the Charges under this Agreement.

18.3 Assignment. Contractor may not assign or transfer this Agreement or any of its rights hereunder, or delegate any of its duties hereunder, without the prior written consent of the Exchange Project Director, provided that any permitted assignment or delegation shall not operate to relieve Contractor of any of its duties and obligations hereunder, nor shall such assignment affect any remedies available to the Exchange that may arise from any breach of the provisions of this Agreement or warranties made herein including but not limited to, rights of setoff. The Exchange may assign this Agreement and may delegate its duties in whole or in part without the consent of Contractor. Any attempted assignment, transfer or delegation in contravention of this Section of the Agreement shall be null and void. This Agreement shall inure to the benefit of and be binding on the parties hereto and their permitted successors and assigns.

18.4 Authority. Neither party shall have authority to bind, obligate or commit the other party by any representation or promise without the prior written approval of the other party.

18.5 Binding Effect. Each party agrees that the Agreement binds it and each of its employees, agents, independent contractors, subcontractors, and representatives.

18.6 Business Registration. Contractor must be registered to conduct business in the State of California and with all applicable agencies, and Contractor shall provide the Exchange with a copy of its business license on or before the Execution Date of this Agreement.

18.7 Claims. Contractor must submit claims against the Exchange within the earlier of six months of the date upon which Contractor knew of the existence of the claim or six months from expiration or termination of the Agreement. No claim shall be allowed unless Notice of such claim has been given within the above described time period. Such claims must be submitted to the Exchange Project Director or his or her designee by Contractor in the form and with the certification prescribed by the Exchange Project Director or his or her designee. Upon failure of Contractor to submit its claim within the time allowed, all rights to seek amounts due on account of such claims shall be waived and forever barred.

18.8 Compliance With Civil Rights Laws.

18.8.1 No individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any program provided by this Contract because of race, color, creed, marital status, religion, gender, gender orientation, national origin, Vietnam era or disabled veteran's status, age, the presence of any sensory, mental or physical disability, or political affiliation or belief.

18.8.2 In the event of Contractor's noncompliance or refusal to comply with any civil rights or nondiscrimination law, regulation or policy, this Agreement may be rescinded, canceled or terminated in whole or in part under Section 17.1 (Termination for Contractor's Material Breach), and Contractor may be declared ineligible for further contracts with the Exchange. Contractor shall be given 30 Days in which to cure noncompliance. In

addition to the cancellation of this Agreement, Contractor may be subject to penalties under federal and State law.

18.9 Conflicts Between Documents; Order of Precedence. In the event that there is a conflict between the documents comprising the Agreement, the following order of precedence shall apply:

- 18.9.1** The terms and conditions in the body of this Agreement;
- 18.9.2** Change Orders;
- 18.9.3** Exhibit A (Financial Matters, Deliverables, and Services);
- 18.9.4** Exhibit B (Option B Software and Software Specific Terms);
- 18.9.5** Exhibit C (Service Level Agreements and Liquidated Damages);
- 18.9.6** Exhibit D (Escrow Agreement);
- 18.9.7** Exhibit E (Business Associate Agreement);
- 18.9.8** The Solicitation; and
- 18.9.9** The Response, as amended by Exhibit F.

18.10 Conflicts of Interest. Contractor, by entering into the Agreement with the Exchange to perform or provide work, Services or materials, has thereby covenanted that it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any interest, which conflicts in any manner or degree with the work, services or materials required to be performed and/or provided under the Agreement and that it shall not employ any person or agent having any such interests. In the event that Contractor or its agents, employees or representatives hereafter acquires such a conflict of interest, it shall immediately disclose such interest to the Exchange and take action immediately to eliminate the conflict or to withdraw from the Agreement, as the Exchange may require.

18.11 Cooperation of Parties. The parties agree to fully cooperate with each other in connection with the performance of their respective obligations and covenants under this Agreement.

18.12 Copeland Anti-Kickback Act. Contractor acknowledges and agrees that: (a) it is subject to the Copeland Anti-Kickback Act, Title 18 U.S.C. Section 874; and (b) Contractor shall be fined not more than \$5,000 or imprisoned not more than five years, or both if, by force, intimidation, or threat of procuring dismissal from employment, or by any other manner whatsoever, Contractor induces any person employed in the construction, prosecution, completion or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under his contract of employment. Contractor also acknowledges and agrees that: (a) Contractor and each Subcontractor are subject to Title 40, U.S.C. (as amended) Sec.

276c, Regulations governing contractors and subcontractors; (b) each week Contractor shall furnish the Exchange with a statement with respect to the wages paid each Contractor and Subcontractor employee during the preceding week; and (c) Section 1001 of Title 18 of the United States Code (Criminal Code and Criminal Procedure) shall apply to such statements.

18.13 Covenant Against Contingent Fees.

18.13.1 Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon any contract or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or a bona fide established commercial or selling agency of Contractor.

18.13.2 In the event of breach of this Section by Contractor, the Exchange shall have the right to either annul or terminate this Agreement without liability to the Exchange, or, in the Exchange's discretion, deduct from payments due to Contractor, or otherwise recover from Contractor, the full amount of such commission, percentage, brokerage, or contingent fee.

18.14 Debarment and Suspension

18.14.1 Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion of Lower Tier Covered Transactions. As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110, by signing and submitting this Agreement, Contractor certifies that it and its principals: (a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency; (b) have not within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; (c) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in Section 22.14.1(b); and (d) have not within a three-year period preceding the Effective Date had one or more public transactions (federal, state, or local) terminated for cause or default. Contractor certifies that it will not contract with a subcontractor that is debarred or suspended. Contractor further agrees that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion Lower Tier Covered Transactions," without modification in all lower tier transactions and in all solicitations for lower tier covered transactions.

18.14.2 For federally funded agreements in the amount of \$100,000 or more, Contractor agrees to certify that it and its principals are not debarred or suspended from federal financial assistance programs and activities. Contractor agrees to sign and return to the Exchange the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary

Exclusion of Lower Tier Transactions.” (Executive Order 12549, 7 CFR Part 3017, 45 CFR Part 76, and 44 CFR Part 17).

18.15 Domestic Partners. Contractor certifies that it is in compliance with Public Contract Code Section 10295.3 with regard to benefits for domestic partners. For contracts executed or amended after July 1, 2004, Contractor may elect to offer domestic partner benefits to Contractor’s employees in accordance with Public Contract Code Section 10295.3. However, Contractor cannot require an employee to cover the costs of providing any benefits, which have otherwise been provided to all employees regardless of marital or domestic status.

18.16 Drug Free Workplace Certification.

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

18.16.1.1 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, as required by California Government Code 8355(a).

18.16.1.2 Establish a Drug Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:

- (i) The dangers of drug abuse in the workplace;
- (ii) Contractor’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.

18.16.1.3 Provide, as required by California Government Code Section 8355(c), that every employee who works on the Agreement:

- (i) Will receive a copy of the Contractor’s drug free policy statement; and
- (ii) Will agree to abide by the terms of the Contractor’s statement as a term of condition of employment on the Agreement.

18.16.1.4 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 agreements by the Exchange if the Exchange determines that any of the following has occurred:

- (i) Contractor has made false certification; or
- (ii) Violates the certification by failing to carry out the requirements as noted above.

18.16.2 In addition, Contractor agrees as follows to comply with the Drug Free Workplace Act of 1988:

18.16.2.1 The unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the work place;

18.16.2.2 Violators may be terminated by the Exchange or requested to seek counseling from an approved rehabilitation service;

18.16.2.3 Contractor and Subcontractor employees must notify Contractor or Subcontractor, respectively, of any conviction of a criminal drug statute no later than five days after such conviction;

18.16.2.4 Contractor shall certify to the Exchange that it shall provide drug-free workplaces for its employees.

18.17 Entire Agreement; Acknowledgement of Understanding. The Exchange and Contractor acknowledge that they have read the Agreement, the attached Exhibits which are incorporated herein by this reference, and other documents incorporated into the Agreement by reference, understand them and agree to be bound by their terms and conditions. Further, the Exchange and Contractor agree that the Agreement (including the Exhibits and documents incorporated into the Agreement by reference) is the complete and exclusive statement of the Agreement between the parties relating to the subject matter of the Agreement and supersede all letters of intent or prior contracts or prior representations, oral or written, between the parties relating to the subject matter of the Agreement.

18.18 Environmental Protection Standards.

18.18.1 General. Contractor shall comply with Section 306 of the Clean Air Act, Section 308 of the Clean Water Act, Executive Order 11738, and Environmental Protection Agency Regulations (40 C.F.R. Part 15).

18.18.2 The Clean Air Act, Section 306. Contractor represents and warrants that it shall not perform its obligations under this Agreement at any facility at which a violation, which could give rise to a conviction of any offense under section 113(c) of the Clean Air Act for the procurement of goods, materials, and services, occurred, if such facility is owned, leased, or supervised by such Contractor. Contractor warrants that the prohibition in the preceding sentence shall continue until Contractor certifies that the condition giving rise to such a conviction has been corrected. For convictions arising under section 113(c)(2), the condition giving rise to the conviction also shall be considered to include any substantive violation of the

Clean Air Act associated with the violation of 113(c)(2). The Exchange may extend this prohibition to other facilities owned or operated by the Contractor.

18.18.3 The Clean Water Act. Contractor represents and warrants that it shall not perform its obligations under this Agreement at any facility at which a violation, which could give rise to a conviction of any offense under section 309(c) of the Clean Water Act for the procurement of goods, materials, and services, occurred, if such facility is owned, leased, or supervised by such Contractor. Contractor warrants that the prohibition in the preceding sentence shall continue until Contractor certifies that the condition giving rise to such a conviction has been corrected.

18.19 Fair Labor Standards. Contractor shall comply with all applicable provisions of the Federal Fair Labor Standards Act, and shall indemnify, defend, and hold harmless the Exchange, its officers, employees and agents from any and all liability, including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorneys' fees arising under any wage and hour law, including, but not limited to the Federal Fair Labor Standards Act for work performed by Contractor's employees for which the Exchange may be found jointly or solely liable.

18.20 Force Majeure. Neither Contractor nor the Exchange shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism, or other disasters, whether or not similar to the foregoing, and acts or omissions or failure to cooperate of the other party or third parties (except Subcontractors).

18.21 Governing Law. This Agreement shall be governed in all respects by the law and statutes of the State of California, without reference to conflict of law principles. The exclusive jurisdiction and venue of any action hereunder shall be in the State or Federal courts in the County of Sacramento. Contractor accepts the personal jurisdiction of such courts.

18.22 Headings. The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

18.23 Independent Status of Contractor. Contractor will perform all work and Services herein as an independent contractor and not as an officer, agent, servant or employee of Exchange. Likewise, Exchange will perform all work and services herein as an independent contractor and not as an officer, agent, servant or employee of Contractor. None of the provisions of this Agreement is intended to create, nor shall be deemed or construed to create, any relationship between the parties other than that of independent parties contracting with each other for the purpose of effecting the provisions of this Agreement. The parties are not, and will not be construed to be in a relationship of joint venture, partnership or employer-employee. Neither party has the authority to make any statements, representations or commitments of any kind on behalf of the other party, or to use the name of the other party in any publication or advertisements, except with the written consent of the other party or as

explicitly provided herein. Contractor will be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any.

18.24 Licensing Standards. Any licenses, certificates, or permits required by the Federal, State, County, or municipal governments for Contractor to provide the Services described in the Agreement must be procured by Contractor and be valid at the time Contractor enters into this Agreement. Further, during the term of this Agreement, Contractor must maintain such licenses, certificates, and permits in full force and effect. Licenses, certificates, and permits may include, but are not limited to driver's licenses, professional licenses or certificates, and business licenses. Such licenses, certificates, and permits will be procured and remain in full force by Contractor at no expense to the Exchange.

18.25 Litigation.

18.25.1 Notice of Litigation. Contractor shall promptly notify the Exchange in the event that Contractor learns of any actual litigation in which it is a party in a case which involves Services provided under this Agreement. Contractor shall promptly, after being served with a summons, complaint, or other pleading which has been filed in any federal or State court or administrative agency, deliver copies of such document(s) to the Exchange Project Director. The term "litigation" includes but is not limited to an assignment for the benefit of creditors and filings in bankruptcy, reorganization or foreclosure.

18.25.2 Costs. In the event that the Exchange is, without any fault on its part, made a party to any litigation commenced by or against Contractor in connection with this Agreement, Contractor shall pay all costs and expenses incurred by or imposed on the Exchange, including attorneys' fees, to the extent arising from the acts or omissions of Contractor, its officers, employees, agents, or Subcontractors.

18.25.3 Lobbying Restrictions.

18.25.3.1 Federal Restrictions. Contractor shall comply with all certification and disclosure requirements prescribed by Section 319, Public Law 101 - 121 (31 U.S.C. § 1352) and any implementing regulations, and shall be responsible for ensuring that all Subcontractors or sub-grantees of funds provided under this Agreement also fully comply with all such certifications and disclosure requirements.

18.25.3.2 State Restrictions. Contractor shall be responsible for its lobbyists' compliance with Federal and State lobbyist laws and regulations in connection with their lobbyist activities related to this Agreement. Failure of any such lobbyist to fully comply with such statutes, regulations, and ordinances constitutes a material breach of this Agreement by Contractor.

18.25.3.3 Certification Regarding Lobbying. For Agreements with contractors who are state entities not under the authority of the Governor, or cities, private firms or agencies which are receiving in excess of \$100,000 in federal funds from the State to perform services, the Contractor agrees to sign and submit to the State the 'Certification Regarding Lobbying' form. (Section 1352, Title 31 of the U.S. Code).

18.25.3.4 Contractor acknowledges that the Anti-Lobbying Act prohibits the recipients of federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the federal government in connection with a specific contract, grant, or loan. As required by Section 1352, Title 31 of the U.S. Code and implemented at 34 CFR Part 82, Contractor certifies that:

(i) No federal appropriated funds have been paid or will be paid, by or on behalf of Contractor to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement;

(ii) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal grant or cooperative agreement, Contractor shall complete and submit Standard Form – LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions; and

(iii) Contractor shall require that the language of this certification in Section 18.25.3.4 be included in the award documents for all sub-awards (including but not limited to sub-grants, contracts under grants and cooperative agreements, and Subcontractor subcontracts) and that all Subcontractors shall certify and disclose accordingly.

18.26 Modifications and Amendments.

18.26.1 No modification, amendment, alteration, addition or waiver of any Section, term, or condition of this Agreement shall be effective or binding unless it is in writing and signed by an authorized representative of Contractor and the Exchange.

18.26.2 Only the Exchange Executive Director or authorized delegate by writing (with the delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Agreement on behalf of the Exchange. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding until made in writing and signed by the Exchange Executive Director or authorized delegate in writing as aforesaid and Contractor, unless otherwise provided herein.

18.26.3 Contractor shall give Notice to the Exchange of the names of individuals who have authority to bind Contractor to modifications to the Agreement and of the limits of such authority at the time Contractor submits its Response and at such other times as required.

18.27 Nondiscrimination.

18.27.1 During the performance of this Agreement, Contractor, its agents, officers, employees and Subcontractors shall not unlawfully discriminate, harass or allow

harassment, against any employee, applicant for employment, or person receiving services under this Agreement because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV or AIDS), medical conditions (cancer), mental handicap, marital status, age (over 40), political affiliation, sexual orientation (for Contractor's employees and Subcontractors located in California), or denial of family care leave. In addition, in accordance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented by the Department of Labor Regulations (41 CFR Part 60), Contractor shall not discriminate in employment decisions on the basis of race, color, religion, sex, or national origin and shall take affirmative action to ensure that equal opportunity is provided in all aspects of their employment.

18.27.2 Contractor, its agents, officers, employees and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and its agents, officers, employees and subcontractors shall comply with all federal and applicable State nondiscrimination laws, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. § 12101, *et seq.*; the Americans with Disabilities Act (ADA); and the provisions of the Fair Employment and Housing Act (Government Code Section 12900, *et seq.*) and the applicable regulations promulgated thereunder in the California Code of Regulations (Title 2, Section 7285.0, *et seq.*). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, and California Welfare and Institutions Code, Section 10000 are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor, its agents, officers, employees and subcontractors shall also abide by the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto and all administrative rules and regulations issued pursuant to said Act. Contractor further agrees to abide by the Exchange's nondiscrimination policy. 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 agreements.

18.27.3 Contractor shall include the nondiscrimination and compliance provisions of this Section in agreement with all Subcontractors to perform work under this Agreement.

18.28 Non-waiver. Except as otherwise specifically provided herein, any failure or delay by either party to exercise or partially exercise any right, power or privilege under the Agreement shall not be deemed a waiver of any such right, power, or privilege under the Agreement. Any waivers granted by a party for breaches hereof shall not indicate a course of dealing of excusing prior, subsequent or other breaches. One party's pursuit or non-pursuit of a remedy under this Agreement for the other party's breach of its obligations will neither constitute a waiver of any such remedies or any other remedy that a party may have at law or equity for any other occurrence of the same or similar breach, nor estop a party from pursuing such remedy.

18.29 Notices. Except Any notice or demand or other communication required or permitted to be given under this Agreement or applicable law shall be effective if and only if it is in writing, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class certified mail, postage

prepaid, return receipt requested, to the parties at the Notice addresses below the signatures to this Agreement. Notices shall be effective upon receipt or four business days after mailing, whichever is earlier. The Notice address as provided herein may be changed by Notice given as provided above.

18.30 Pro-Children Act of 1994. Contractor shall comply with Public Law 103-227, Part C – Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994.

18.31 Publicity. The award of this Agreement to Contractor is not in any way an endorsement of Contractor or Contractor's Services by the Exchange and shall not be so construed by Contractor in any advertising or publicity materials. Contractor agrees to submit to the Exchange Project Director in advance all advertising, sales promotion, and other publicity matters relating to this Agreement wherein the Exchange's name is mentioned or language used from which the connection of the Exchange's name therewith may, in the Exchange's judgment, be inferred or implied. Contractor further agrees not to publish or use such advertising, sales promotion, or publicity matter without the prior written consent of the Exchange. Contractor shall not in any way contract on behalf of or in the name of the Exchange. Nor shall Contractor release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning this project without obtaining the prior written approval of the Exchange.

18.32 Recycling. Contractor shall use recycled and recyclable products, whenever practicable, in fulfilling the terms of this Agreement. Recycled printed products shall include a symbol identifying the recycled material.

18.33 Remedies. No remedy conferred by any of the specific provisions of the Agreement is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by either party shall not constitute a waiver of the right to pursue other available remedies.

18.34 Severability. If any term or condition of this Agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Agreement are declared severable.

18.35 Sovereign Immunity. The parties expressly agree that no provision of this Agreement is in any way intended to constitute a waiver by the Exchange of any immunities from suit or from liability that the Exchange may have by operation of law.

18.36 State Energy Conservation Plan. Contractor agrees to recognize and comply with the mandatory standards and policies relating to energy efficiency in the State Energy Conservation Plan Title 23 and 24, California Code of Regulations, as required by the U.S. Energy, Policy and Conservation Act (P.L. 94 165).

18.37 Subcontractors.

18.37.1 Contractor may, with prior written permission from the Exchange Project Director, which shall not be unreasonably withheld, enter into subcontracts with third parties for its performance of any part of Contractor's duties and obligations. Subject to the other provisions of this Section, the Exchange expressly consents to Contractor's use of the Subcontractors designated in its Response for the provision of the Services specified in the Response. Any such approval may be rescinded in the Exchange's sole discretion.

18.37.2 Contractor is responsible and liable for the proper performance of and the quality of any work performed by any and all Subcontractors and their compliance with the Agreement and the subcontract terms and conditions. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor to the Exchange for any breach in the performance of Contractor's duties. In addition, Contractor's use of any Subcontractor shall not cause the loss of any warranty from Contractor. All subcontracts will be made in writing and copies provided to the Exchange upon request, although Contractor shall have the right to redact confidential and proprietary pricing information in the copies provided to the Exchange. The Exchange has the right to refuse reimbursement for obligations incurred under any subcontract that do not comply with the terms and conditions of this Agreement. Contractor shall give Notice to the Exchange when a Subcontractor threatens to stop working, gives notice to Contractor it will stop working, or stops working on the Project.

18.37.3 For any Subcontractor, Contractor shall include in the Subcontractor's subcontract substantially similar terms as are provided in Sections 4.6 (Reference and Background Checks), 4.7 (Records Retention and Access Requirements), 5.5 (Ownership), 12 (Insurance), and 13 (Confidential Information).

18.37.4 Upon expiration or termination of this Agreement for any reason, the Exchange will have the right to enter into direct agreements with any of the Subcontractors. Contractor agrees that its arrangements with Subcontractors will not prohibit or restrict such Subcontractors from entering into direct agreements with the Exchange.

18.38 Subpoena. In the event that a subpoena or other legal process commenced by a third party in any way concerning the Deliverables or Services provided pursuant to this Agreement is served upon Contractor or the Exchange, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and the Exchange further agree to cooperate with each other in any lawful effort by the such other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by one party to another as provided in Section 16.

18.39 Survival. All Services performed and Deliverables provided pursuant to the authority of this Agreement are subject to all of the terms, conditions, price discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Agreement or any extension thereof. Further, the terms, conditions and warranties contained in this Agreement that by their sense and context are intended to survive the completion of the performance,

cancellation or termination of this Agreement shall so survive. In addition, the terms of Section 4.4.4, Section 4.7 (Records Retention and Access Requirements), Section 4.8 (Accounting Requirements), Section 5.5 (Ownership), Section 9.3 (Legal and Regulatory Compliance), and Sections 12-13 and 15-18 shall survive the termination of this Agreement.

The parties hereto, having read this Agreement in its entirety, including all attachments hereto, do agree thereto in each and every particular. In witness thereof, the parties have set their hands hereunto as of the Execution Date.

THE CALIFORNIA HEALTH BENEFIT EXCHANGE

CONTRACTOR

By: _____
Printed Name: _____
Title: _____
Date: _____
Notice Address: _____

Email: _____

By: _____
Printed Name: _____
Title: _____
Date: _____
Notice Address: _____

Email: _____

EXHIBIT A

FINANCIAL MATTERS, DELIVERABLES, AND SERVICES

To be added in an addendum.

EXHIBIT B

OPTION B SOFTWARE AND SOFTWARE SPECIFIC TERMS

I. General

A. This Exhibit B shall:

1. List Option B Software and certain other Deliverables that Contractor shall make accessible or provide to the Exchange; and
2. Include terms and conditions that will apply to such Option B Software and such other Deliverables as are listed below.

B. In addition, other terms and conditions in the Agreement that apply to Software and Deliverables shall apply to the Option B Software and Deliverables listed in Exhibit B, respectively.

II. Option B Software [List]

III. Other Deliverables [List]

IV. Option B Software Specific Terms

A. Additional Definitions

1.1 “Interfaces”: Custom Software that is developed for transmitting Data between the Option B Software and other systems, including the System.

1.2 “Processing”: The performance by the Option B Software residing on the Equipment of logical operations and calculations on the Data.

1.3 “Unauthorized Code”: Any: (i) virus, Trojan horse, worm or other software routines or equipment components designed to permit unauthorized access to disable, erase, or otherwise harm Software, Equipment, or Data or to perform any other such actions; and (ii) back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than a licensee of the Software.

B. License.

1. Option B Software License. Contractor hereby grants to the Exchange a nonexclusive license to use and access the Option B Software for the Exchange’s internal purposes. The license to the Option B Software is granted as of the date of availability for the Exchange and shall continue until the earlier of when the Exchange ceases accessing the Option B Software or the Agreement is terminated in whole.

2. Title. Contractor and its suppliers hold all right, title and interest in the Option B Software.

3. Documentation. Contractor shall provide Documentation to the Exchange for the Option B Software in electronic format compatible with Microsoft Corporation's then-generally available Office products and written format in accordance with the terms of this Agreement. Upgrades and revisions to this Documentation shall be provided while Contractor is providing Services therefor. There shall be no additional charge for the Documentation or updates thereto, in whatever form provided. Contractor's Documentation shall be comprehensive, well structured, and indexed for easy reference. If Contractor maintains its technical, maintenance and installation Documentation on a web site, Contractor may fulfill the obligations set forth in this Section by providing the Exchange access to its web-based Documentation information. Contractor grants the Exchange a nonexclusive, perpetual right to use, make derivative works based upon, modify, and reproduce the Documentation furnished pursuant to this Section at no additional charge.

4. Restrictions. Except as permitted in this Agreement or otherwise permitted by law, the Exchange agrees not to: otherwise copy, display, transfer, adapt, modify, reverse engineer, decompile, disassemble, or distribute to any third party or lease the Option B Software.

5. No Unauthorized Code.

5.1 Contractor warrants that it shall not introduce Unauthorized Code into the Software and that it has tested for such Unauthorized Code using industry standard tests and has not found any such Unauthorized Code. Contractor warrants to the Exchange that the Software under this Agreement shall contain no Unauthorized Code. Contractor further warrants that Contractor shall not introduce, via modem or otherwise, any code or mechanism that electronically notifies Contractor of any fact or event, or any key, node, lock, time-out, or other function, implemented by any type of means or under any circumstances, that may restrict the Exchange's use of or access to the Software, Data, or Services, in whole or in part, based on any type of limiting criteria, including without limitation frequency or duration of use for any copy of the Software and Services provided to the Exchange under this Agreement.

5.2 In the event of a breach of these warranties, Contractor shall immediately remove or repair such Software, Data or Services to cure such breach at no cost to the Exchange.

EXHIBIT C

SERVICE LEVEL AGREEMENTS AND LIQUIDATED DAMAGES

To be added in an addendum

EXHIBIT D

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (the "Agreement") is made as of this ___ day of _____, 201___ (the "Execution Date"), among _____ ("ESCROW AGENT"), _____ ("LICENSOR" or "DEPOSITOR"), and the California Health Benefits Exchange ("LICENSEE" or "BENEFICIARY") (hereafter, each a "Party" or collectively "Parties").

RECITALS

LICENSOR and LICENSEE have entered into an Agreement dated the Execution Date (the "Main Agreement") to use or license certain Option A Software and/or Option B Software (as defined in the Main Agreement) (collectively, the "Software") upon specified terms and conditions; and

To assure the continued availability and usefulness of such Software, LICENSOR has agreed to establish and maintain in escrow with ESCROW AGENT the Software source code, object code, and certain documentation therefor.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants contained herein and other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. Deposit in Escrow.

1.1 Within 30 days of the Execution Date as defined in the Main Agreement, LICENSOR shall deliver to ESCROW AGENT a sealed package containing the same current version of the source code for the Software licensed to or made accessible to LICENSEE by LICENSOR, programmer notes, its database schema and architecture, and its related documentation and other materials in Schedule 1, which is attached hereto and incorporated herein by this reference (collectively, the "Source Materials" or "Deposit Materials"). LICENSOR shall identify each item in said package and certify the completeness and accuracy of the Source Materials in a letter forwarding the same to ESCROW AGENT, with a copy of each letter to LICENSEE.

1.2 Escrow Agent will conduct a visual deposit inspection upon receipt of any Source Materials and associated Schedule 1 and provide notice by electronic mail, telephone, or regular mail to the Depositor and Beneficiary of all Source Materials that is accepted and deposited into the escrow account under this Agreement. If Escrow Agent determines that the Source Materials does not match the description provided by Depositor represented in Schedule 1 attached hereto, Escrow Agent will provide Depositor with notice by electronic mail, telephone, or regular mail of such discrepancies. Escrow Agent will work directly with the Depositor to resolve any such discrepancies prior to accepting Source Materials. OTHER THAN ESCROW AGENT'S INSPECTION OF THE SOURCE MATERIALS, AS DESCRIBED ABOVE, ESCROW AGENT SHALL HAVE NO OBLIGATION REGARDING THE ACCURACY, COMPLETENESS, FUNCTIONALITY, PERFORMANCE OR NONPERFORMANCE OF THE SOURCE MATERIALS.

1.3 LICENSOR shall deliver revisions of the Source Materials, including if available the Source Code for the Software, to ESCROW AGENT as and when corresponding revisions of the Software are made available to LICENSEE in accordance with the Main Agreement. At such time as any modifications or revisions to the Source Materials are deposited with ESCROW AGENT, LICENSOR shall give written notice of such deposits to LICENSEE.

1.4 ESCROW AGENT shall acknowledge receipt of all revisions of or additions to the Source Materials by sending written acknowledgment (as provided in Section 1.3 above) thereof to both LICENSOR and LICENSEE within five calendar days of receipt.

1.5 Upon receipt of a new revision, ESCROW AGENT agrees to return to LICENSOR all such Source Materials from previous revisions as specified by LICENSOR in writing to ESCROW AGENT.

2. Release From Escrow.

2.1 ESCROW AGENT shall, within seven days following receipt of an affidavit, which is from an officer of LICENSEE to ESCROW AGENT sent via certified mail with return receipt requested, and which states that one of the following events has occurred, proceed in accordance with the procedure described in Sections 2.3 through 2.7 below if:

2.1.1 LICENSOR has made an assignment for the benefit of creditors; or

2.1.2 LICENSOR institutes or becomes subject to a liquidation or bankruptcy proceeding of any kind; or

2.1.3 A receiver or similar officer has been appointed to take charge of all or part of LICENSOR's assets;

2.1.4 LICENSOR terminates its operations and/or maintenance and support services for LICENSEE for the Software or breaches its operations, support and/or maintenance obligations for the Software for LICENSEE, whether due to its ceasing to conduct business generally or otherwise; or

2.1.5 Another event described in Section 17.7 of the Main Agreement occurs.

2.2 LICENSEE shall send a copy of the affidavit to LICENSOR via certified mail with return receipt requested, simultaneously with its affidavit to ESCROW AGENT. Upon its receipt of the affidavit as provided above in Section 2.1, ESCROW AGENT shall immediately give written notice to LICENSOR, attaching a copy of the affidavit to the notice, via commercial express mail.

2.3 Upon receipt of such notices in accordance with Sections 2.1 and 2.2, LICENSOR shall have 30 calendar days to review LICENSEE's affidavit requesting release from escrow as provided for in Section 2.1 above.

2.4 If LICENSOR does not give notice to ESCROW AGENT within the 30 calendar days provided in Section 2.3 that LICENSEE's request for release from escrow is contested by LICENSOR, ESCROW AGENT shall automatically release the Source Materials to LICENSEE. The Source Materials shall be used by LICENSEE subject to the Main Agreement and solely for support and maintenance for the Software within the provisions of the Main Agreement. Delivery of the Source Materials to LICENSEE in accordance with provisions hereof shall automatically terminate this Escrow Agreement.

2.5 If LICENSOR does give ESCROW AGENT notice within the 30 days provided in Section 2.3 that LICENSEE's request for release from escrow is contested by LICENSOR, ESCROW AGENT shall retain the Source Materials in escrow while LICENSOR and LICENSEE either:

2.5.1 Settle the dispute among themselves and jointly give notice to ESCROW AGENT in writing of the result; or

2.5.2 Submit the dispute to litigation for resolution in accordance with the terms of this Agreement.

2.6 In the event of litigation, ESCROW AGENT shall dispose of the Source Materials as directed by the court of competent jurisdiction's finding given in writing to all parties.

2.7 Each party shall bear its own costs incurred in any litigation as set forth in Section 2.5 above

3. Ownership of Source Material.

3.1 The tangible medium comprising the escrowed Source Materials, but not the source code or technical specifications and other information embodied in such tangible media, shall be in the possession of ESCROW AGENT as soon as such material is received by ESCROW AGENT and at all times until the Source Materials are returned to LICENSOR or to LICENSEE as outlined in Section 2 above.

3.2 ESCROW AGENT, LICENSOR, and LICENSEE recognize and acknowledge that ownership of the source code itself shall remain the sole and exclusive proprietary property of LICENSOR at all times and that nothing in this Agreement shall be interpreted to deprive LICENSOR of any right, title or interest in or to the Source Materials.

3.3 It is expressly understood and agreed that LICENSEE's right to obtain the source code and other documentation from escrow is subject to the terms described in Section 8 of the Main Agreement and that LICENSEE shall have no right or claim to LICENSOR's proprietary rights in the Software.

4. Storage and Security.

4.1 ESCROW AGENT will act as custodian of the Source Materials until the escrow is terminated. ESCROW AGENT shall establish, under its control, a secure receptacle for the purpose of storing the Source Materials.

4.2 The Source Materials deposited with ESCROW AGENT by LICENSOR pursuant to this Escrow Agreement shall remain the exclusive property of the LICENSOR, except as otherwise provided in Section 2.

4.3 Except as provided in this Agreement, ESCROW AGENT agrees that:

4.3.1 It shall not divulge, disclose or otherwise make available to any parties other than LICENSOR or LICENSEE, or make any use whatsoever, of the Source Materials;

4.3.2 It shall not permit any person access to the Source Materials, except as may be necessary for ESCROW AGENT's authorized representatives to perform its functions under this Agreement;

4.3.3 Access to the Source Materials by LICENSOR shall be granted by ESCROW AGENT only to those persons duly authorized in writing by a competent officer of LICENSOR or as provided herein; and

4.3.4 Access to the Source Materials shall not be granted without compliance with all security and identification procedures instituted by ESCROW AGENT.

4.4 ESCROW AGENT shall, upon LICENSEE's request and in accordance with Section 1.2, verify or determine that the Source Materials deposited with ESCROW AGENT by LICENSOR do, in fact, consist of those items which LICENSOR is obligated to deliver under any agreement.

4.5 ESCROW AGENT shall accept, store and deliver the Source Materials deposited with it by LICENSOR, in accordance with the terms and conditions of this Agreement.

4.6 If any of the Source Materials held in escrow by ESCROW AGENT shall be attached, garnished or levied upon pursuant to an order of court, or the delivery thereof shall be stayed or enjoined by an order of court, or any other order, judgment or decree shall be made or entered by any court affecting the Source Materials or any part thereof of any act of ESCROW AGENT, ESCROW AGENT is hereby expressly authorized in its sole discretion to obey and comply with all orders, judgments or decrees so entered or issued by any court, without the necessity of inquiring whether such court had jurisdiction, and in case ESCROW AGENT obeys or complies with any such order, judgment or decree, ESCROW AGENT shall not be liable to LICENSEE, LICENSOR or any third party by reason of such compliance, notwithstanding that such order, judgment or decree may subsequently be reversed, modified or vacated.

5. Termination.

5.1 The initial term of this Agreement is for a period of one year. Thereafter, this Agreement shall automatically renew from year to year unless (a) LICENSOR and LICENSEE jointly instruct ESCROW AGENT in writing that the Agreement is terminated; or (b) ESCROW AGENT instructs LICENSOR and LICENSEE in writing after its renewal date that the Agreement is terminated for nonpayment in accordance with Section 5.2. ESCROW AGENT reserves the right to terminate this Agreement, for any reason, other than for nonpayment, by providing LICENSOR and LICENSEE 90 calendar days written notice of its intent to terminate this Agreement. Upon ESCROW AGENT's receipt of LICENSEE's (or LICENSOR's, if LICENSOR is paying ESCROW AGENT's fees) request for a refund, ESCROW AGENT shall refund the pro rata portion of the annual renewal fee attributable to the period from the date of such termination by resignation to the next successive anniversary date. If the Source Materials are subject to another escrow agreement with ESCROW AGENT, ESCROW AGENT reserves the right, after the initial one year term, to adjust the anniversary date of this Agreement to match the then prevailing anniversary date of such other escrow arrangements. This Agreement may also be terminated in accordance with the terms of Section 2.

5.2 In the event of the nonpayment of fees owed to ESCROW AGENT, ESCROW AGENT shall provide written notice of delinquency to all Parties to this Agreement. Any Party to this Agreement shall have the right to make the payment to ESCROW AGENT to cure the default. If the past due payment is not received in full by ESCROW AGENT within one (1) month of the date of such notice, then ESCROW AGENT shall have the right to terminate this Agreement at any time thereafter by sending written notice of termination to all Parties. ESCROW AGENT shall have no obligation to take any action under this Agreement so long as any payment due to ESCROW AGENT remains unpaid.

5.3 LICENSEE and LICENSOR may terminate this Agreement by mutual written agreement, giving 60 days notice to ESCROW AGENT.

5.4. Good Faith Reliance. ESCROW AGENT shall act in good faith reliance upon any instruction, instrument, or signature believed in good faith to be genuine and may assume that any person purported to give any writing, notice, respect, advice, or instruction in connection with or relating to this Agreement has been duly authorized to do so.

6. Indemnification, Limitation of Liability, Consequential Damages Waiver, Good Faith Reliance.

6.1 Indemnification.

6.1.1 LICENSOR and ESCROW AGENT shall defend, indemnify and hold harmless the other, its corporate affiliates and its officers, directors, employees, and agents and its successors and assigns from and against any and all claims, losses, liabilities, damages, and expenses (including, without limitation, reasonable attorneys' fees), arising under this Agreement from the negligent or intentional acts or omissions of the indemnifying party or its subcontractors, or the officers, directors, employees, agents, successors and assigns of any of them.

6.1.2 If there is a claim brought against ESCROW AGENT that the Source Materials infringes intellectual property rights or any other rights of a third party and such claim includes a threat of liability for ESCROW AGENT (as reasonably determined by ESCROW AGENT) in the event of release of the Source Materials by ESCROW AGENT to Beneficiary (an "IP Infringement Claim"), then ESCROW AGENT shall notify Beneficiary of same, and Beneficiary shall release ESCROW AGENT from its obligation to provide to Beneficiary the Source Materials as set forth in this Agreement pending resolution of such IP Infringement Claim, except that ESCROW AGENT shall comply with the order of a court of competent jurisdiction to release the Source Materials.

6.2 Limitation of Liability. NOTWITHSTANDING ANYTHING ELSE HEREIN, ALL LIABILITY, IF ANY, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, OF ANY PARTY TO THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT EQUAL TO ONE YEAR OF FEES PAID OR OWED TO ESCROW AGENT UNDER THIS AGREEMENT. IF CLAIM OR LOSS IS MADE IN RELATION TO A SPECIFIC DEPOSIT OR DEPOSITS, SUCH LIABILITY SHALL BE LIMITED TO THE FEES RELATED SPECIFICALLY TO SUCH DEPOSITS. THIS LIMIT SHALL NOT APPLY TO ANY PARTY FOR: (I) ANY CLAIMS OF INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY RIGHT; (II) LIABILITY FOR DEATH OR BODILY INJURY; (III) DAMAGE TO TANGIBLE PROPERTY (EXCLUDING THE SOURCE MATERIALS); (IV) THEFT; OR (V) PROVEN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

6.3 Consequential Damages Waiver. IN NO EVENT SHALL ANY PARTY TO THIS AGREEMENT BE LIABLE TO ANOTHER PARTY FOR ANY INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR LOST DATA OR INFORMATION, ANY COSTS OR EXPENSES FOR THE PROCUREMENT OF SUBSTITUTE SERVICES, OR ANY OTHER INDIRECT DAMAGES, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE EVEN IF THE POSSIBILITY THEREOF MAY BE KNOWN IN ADVANCE TO ONE OR MORE PARTIES.

7. Fees.

7.1 ESCROW AGENT is entitled to be paid its standard fees and expenses applicable to the services provided. LICENSOR shall pay the ESCROW AGENT's fees and expenses. ESCROW AGENT shall notify LICENSOR at least 60 calendar days prior to any increase in fees.

7.2 ESCROW AGENT shall not be required to perform any service, including release of any Source Materials under Article 2, unless the payment for such service and any outstanding balances owed to ESCROW AGENT are paid in full. Initial fees are due upon receipt of a signed contract or receipt of the Source Materials whichever is earliest. Payments on all renewal and services invoices are due net 30

calendar days from date of invoice. If invoiced fees are not paid, ESCROW AGENT may terminate this Agreement in accordance with Section 5.2. Any service fees not collected by ESCROW AGENT when due shall bear interest until paid at a rate of 1% per month (12% per annum) or the maximum rate permitted by law, whichever is less. Delinquent accounts may be referred to a collection agency at the sole discretion of ESCROW AGENT.

8. Entire Agreement. As between LICENSOR and LICENSEE this Agreement incorporates by reference specific sections of or definitions from the Main Agreement. With respect to ESCROW AGENT, this Agreement constitutes the entire Agreement among the parties, including the subject matter hereof and shall supersede all previous communications, representations, understandings and agreements, either oral or written between the parties. This Escrow Agreement is intended to be and shall be treated as an agreement separate and distinct from the Main Agreement.

9. Notice. All notices regarding Section 2 shall be sent by commercial express mail. All other correspondence, including invoices, payments, and other documents and communications, shall be sent by certified, registered or regular mail to the Parties at the addresses specified on another Exhibit (if any) which shall include the individual(s) authorized to receive notices. It shall be the responsibility of the Parties to notify each other as provided in this Section in the event of a change of physical or e-mail addresses. Any Party shall have the right to rely on the last known address of the other Parties. Any correctly addressed notice or last known address of the other Parties that is relied on herein that is refused, unclaimed, or undeliverable because of an act or omission of the Party to be notified as provided herein shall be deemed effective as of the first date that said notice was refused, unclaimed, the postal authorities by mail, through messenger or commercial express delivery services.

10. Governing Law. This Agreement shall be governed by and construed according to the laws of the State of California. LICENSOR and ESCROW AGENT consent to personal jurisdiction in that State. The exclusive venue of any action hereunder shall be in State or Federal courts of Sacramento County, California.

11. Severability. In the event any of the provisions of this Agreement shall be held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

12. Headings. The headings in this Agreement do not form a part of it, but are for convenience only and shall not limit or affect the meaning of the provisions.

13. Main Agreement Terms. Capitalized terms not defined in this Agreement shall have the meanings provided in the Main Agreement. However, to the extent this Agreement is in conflict with the Main Agreement, the terms of this Agreement shall prevail.

IN WITNESS WHEREOF, the parties hereto have executed this Escrow Agreement as of the Execution Date.

LICENSEE - The California Health Benefits Exchange

LICENSOR –

Name: _____
Title: _____
Date: _____
Notice Address: _____

Name: _____
Title: _____
Date: _____
Notice Address: _____

Attn: _____
Facsimile No.: _____

Attn: _____
Facsimile No.: _____

ESCROW AGENT -

By: _____
Printed Name: _____
Title: _____
Date: _____

SCHEDULE 1

SOURCE MATERIALS

Depositor/LICENSOR represents to Beneficiary/LICENSEE that Source Materials delivered to ESCROW AGENT shall consist of the following:

The Deposit Materials include Source Code for the Software and all relevant commentary, explanations, and other documentation of the Software, including but not limited to:

- Functional specifications (which describe the function of a Software module from a user point of view in detail) and Software designs for the software, including but not limited to background and detailed instructions for a programmer, the database schema, entity relationship diagrams (where applicable), data objects, and user interface objects. In the case of data interfaces, which have limited user interfaces, it also includes a description of how the overall interface will work on a technical level, the content and format of protocols streams, and shaking considerations. This documentation will also include information describing how to compile and link the source modules to obtain working software, as well as data structures outside of the module which are required to configure or drive the module.
- Source code and documentation for database definition and database procedures (SQL definitions), graphical user interface modules, data interface modules and other Software modules, including but not limited to build procedures.
- Deliverable installation media of current product release, product upgrade media for upgrades issued within three years of each escrow deposit.
- Quality assurance tools, including but not limited to test suites.
- The Exchange manuals and training manuals.
- Software installation and support policies and procedures.
- The platform on which the Software operates, including but not limited to hardware, operating system, utilities, and network connectivity.
- The compiler components for the Software.

EXHIBIT E

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (this "Agreement") dated _____, 20__, 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 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 I.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 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 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 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 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, 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 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).

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 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, 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 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.

IN WITNESS WHEREOF, Covered Entity and Business Associate execute this Agreement to be effective on the last date written below, or, if no date is inserted, the Execution Date of the other Agreement referenced above.

COVERED ENTITY: The California Health
Benefit Exchange

By: _____

Printed Name: _____

Title: _____

Date: _____

Notice Address:

Telephone: _____

Fax: _____

E-mail: _____

BUSINESS ASSOCIATE

By: _____

Printed Name: _____

Title: _____

Date: _____

Notice Address:

Telephone: _____

Fax: _____

E-mail: _____

EXHIBIT F
REVISIONS TO THE RESPONSE

