

California Health Benefit Exchange

Exhibit A
Agent Agreement
SCOPE OF WORK

This Non-Monetary Agreement (sometimes referred to as “Agreement”) is made between the State of California, acting by and through the California Health Benefit Exchange, hereafter referred to as the “Exchange” and

_____ an individual licensed by the California Department of Insurance to transact in health insurance and acting pursuant to the laws of the State of California, hereafter referred to as “Agent” or “Contractor” interchangeably. Agent enters this contract For the Benefit of _____.

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

A. Purpose:

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

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

The Exchange also operates Covered California for Small Business (CCSB) that offers small businesses and their employees, health insurance options. CCSB is designed specifically for small employers with 100 or fewer full-time equivalent (FTE) employees and offers affordable health coverage through a variety of health

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

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

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

This Agreement is entered into by Agent, who is affiliated with an Agency. It is a non-monetary agreement. Pursuant to a separate Agency Agreement, the Exchange remits payment to the Agency for services rendered, rather than to Agent. This Agreement is not intended to modify or supersede the Agency Agreement in any respect. Under 45 Code of Federal Regulations section 155.220, the Exchange must contract with any Agent who enrolls consumers into Qualified Health Plans in a manner that constitutes enrollment through the Exchange. As such, the Exchange and Agent must execute this Agreement in order to comply with applicable federal requirements.

B. Definitions:

1. Agency: A legal entity as defined by Insurance Code Section 1628 that is registered by the Exchange to provide one-on-one consumer assistance through one or more Agents who are affiliated with the Agency. Agencies must be licensed and in good standing as a life licensee under Insurance Code Section 1626 by the California Department of Insurance to transact in accident and health insurance.

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2. Agent(s): individuals who are licensed and in good standing as a life licensee under Insurance Code Section 1626 by the California Department of Insurance to transact in accident and health insurance. Unless specified otherwise, Agents are affiliated with or employed by an Agency.
3. Advance Payments of Premium Tax Credit (APTC): Payment of the tax credits authorized by 26 U.S.C. 36B and its implementing regulations, which are provided on an advance basis to an eligible individual enrolled in a Qualified Health Plan (QHP) through an Exchange in accordance with Section 1412 of the Affordable Care Act.
4. Book of Business (BOB): The collection of Consumers and/or Qualified Employers that have been delegated to the Agency or Agent and from which the Agency receives commissions.
5. California Health Care Eligibility, Enrollment & Retention System (CalHEERS): CalHEERS was created pursuant to Government Code Sections 100502 and 100503, as well as 42 U.S.C. 18031, to enable customers to apply for eligibility, enrollment, and reenrollment in QHPs through the Exchange as well as other Insurance Affordability Programs (IAPs) such as Medi-Cal.
6. Certified Insurance Agent: An Agent certified by the Exchange to transact in the individual and Covered California for Small Business (“CCSB”) Exchanges. For purposes of this Agreement, “Certified Insurance Agent” and “Agent” may be used interchangeably.
7. Certified QHP: Any QHP that is selected by the Exchange and has entered into a contract with the Exchange for the provision of health insurance coverage for enrollees who purchase health insurance coverage through the Individual and/or CCSB Exchanges.
8. Children’s Health Insurance Program (CHIP): The programs established under the State plan adopted in accordance with title XXI of the Social Security Act to provide health insurance for children.
9. Consumer: A person or entity seeking information on eligibility and enrollment or seeking application assistance with a health insurance or health related product available through the Exchange. The term consumer includes, but is not limited to, an applicant, an application filer, authorized representative, employer,

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qualified employee, qualified employer, qualified individual, small employer, or enrollee as defined in Section 6410, Title 10, California Code of Regulations.

10. Employee: An individual as defined in Section 2791 of the Public Health Service Act (42 U.S.C. 300gg-91(d)(5)).
11. Enrolled Employee: An employee who is enrolled in a Qualified Health Plan (QHP)
12. Employer: A person as defined in Section 2791 of the Public Health Service Act (42 U.S.C. 300gg-91(d)(6)), except that such term includes employers with one or more employees. All persons treated as a single employer under subsection (b), (c), (m), or (o) of Section 414 of IRC (26 U.S.C. § 414) are treated as one employer.
13. Individual and CCSB Exchanges: The programs administered by the Exchange pursuant to California Government Code § 100500 et seq., 42 U.S.C. 18031(b) of the federal Patient Protection Affordable Care Act and other applicable laws to furnish and to pay for health insurance plans for Qualified Individuals and Qualified Employers.
14. Individual Market: A market as defined in Section 1304(a)(2) of the Affordable Care Act.
15. Medi-Cal: Medi-Cal is administered by the California Department of Health Care Services. This program pays for a variety of medical services for children and adults with limited income and resources.
16. Qualified employee: An individual who is employed by a qualified employer and has been offered health insurance coverage by such qualified employer through the CCSB.
17. Qualified Employer: Qualified Employer has the same meaning as that term is defined in 42 U.S.C. 18032(f)(2) and 45 CFR 155.710.
18. Qualified Health Plans (QHPs): QHP has the same meaning as that term is defined in Patient Protection and Affordable Care Act Section 1301, 42 U.S.C. 18021. If a Standalone Dental Plan is offered through the Exchange, another health plan offered through the Exchange shall not fail to be treated as a QHP

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solely because the plan does not offer coverage of benefits offered through the standalone plan under 42 U.S.C. 18022(b)(1)(J).

19. Qualified Individual: Qualified Individual is an individual who meets the requirements of 42 U.S.C. 18032(f)(1) and 45 CFR 155.305(a).
20. Small employer: An employer as defined in Section 1357.500(k) of California Health and Safety Code and in Section 10753(q) of California Insurance Code.

C. Scope of Work:

1. Licensure. Agent shall maintain licensure and good standing under Insurance Code Section 1626 by the California Department of Insurance to transact in accident and health insurance. For purposes of this Agreement, “good standing” means that the Agent is authorized by the California Department of Insurance to transact in accident and health insurance. The Exchange may require proof of a valid license and good standing by the California Department of Insurance as a condition of eligibility.
2. Certification. Agent must each comply with the certification requirements as more fully set forth below. These certification requirements must be fulfilled before the Agent performs any consumer assistance functions or accesses CalHEERS:
 - a. Complete Agent Application;
 - b. Complete training as set forth in Exhibit A, Section C, Subsection 18;
 - c. Complete voter registration training as outlined in Exhibit A, Section C, Subsection 9;
 - d. Pay fees required by the California Department of Insurance pursuant to Insurance Code sections 1751.3 and 12978;
 - e. Pay administrative fee to the Exchange;
 - f. Execute Agent Agreement; and
 - g. Provide the Exchange with proof of errors and omissions liability insurance with coverage of not less than \$1,000,000 per occurrence and \$1,000,000 annually in the aggregate.
3. Due Diligence. Agent and Agency shall solicit Consumers to apply for QHPs sold through the Exchange.
4. Agent shall comply with the terms and conditions as set forth in this Agreement.

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5. For all sales in the Individual Market, Agent and Agency shall perform the following functions as delineated:
 - a. Agent shall complete all eligibility verification and enrollment applications for Consumers online through CalHEERS or via the paper application established by the Exchange. Agent shall ensure that the appropriate CalHEERS account is used to enroll consumers. Agent shall not allow individuals who have not been certified by the Exchange or any other unauthorized user to use Agent's CalHEERS login credentials without first obtaining authorization from the Exchange. Agent shall provide substantial assistance to Consumers during the application process. Agent shall use this single streamlined application to determine eligibility and to collect information necessary for enrollment in a QHP, advance payments of the premium tax credit, cost-sharing reductions; and, where applicable, enrollment in Medi-Cal or CHIP. Agency and/or its Agent will only be included on an application when the Consumer has authorized the Agency or Agent to act as the Consumer's agent of record and has authorized the Agency or Agent to access the Consumer's personally identifiable information to complete the eligibility and enrollment process. For requirements regarding usage of an online application, please see Exhibit E, Section D;
 - b. In the case that a Consumer is or may be eligible for Medi-Cal or CHIP, Agent shall facilitate the enrollment of interested Consumers without undue delay.
 - c. Agent shall ensure that each application is fully and truthfully completed by the Consumer and the completed application fully and accurately reflects and discloses the circumstances of persons included in the application.
 - d. Upon completion of the application, Agent shall ensure that Consumer receives his or her unique access code;
 - e. To allow for the proper processing of Agency's compensation, Agent must ensure the completion the following sections of each consumer's application to the Exchange:
 - a. Name and license number of the Agency; and

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- b. Agency's personal identification number for electronic applications or Agent's signature and date of signature for paper applications.
- 6. For all sales in Covered California for Small Business (hereinafter "CCSB"), Agent and Agency shall perform the following functions as delineated:
 - a. Agent shall complete all eligibility verification and enrollment applications for Employers through the paper application or the online portal established by the Exchange. Agent shall ensure that the appropriate online portal account is used to enroll Employers and Employees. Agent shall not allow individuals who have not been certified by the Exchange or any other unauthorized user to use Agent's online portal login credentials without first obtaining authorization from the Exchange. Agent shall use the CCSB Employer and Employee applications to determine eligibility and to collect information necessary for enrollment in CCSB. Agency and/or its Agent will only be included in an application when Employer has expressly authorized the Agency or Agent to act as the Employer's agent of record and has authorized the Agency or Agent to access the personally identifiable information of the Employees to complete the eligibility and enrollment process.
 - b. Agent shall ensure that each application is fully and truthfully completed by the Employer and the completed application fully and accurately reflects and discloses the circumstances of persons included in the application.
 - c. To allow for the proper processing of Agency's compensation, Agent must ensure the completion the following sections of each consumer's application to the Exchange:
 - a. Name and license number of the Agency; and
 - b. Agency's personal identification number for electronic applications or Agent's signature and date of signature for paper applications.
- 7. Nondiscrimination. In addition to requirements of Exhibit C, Section G, Subsection 2, Agent shall not discriminate against any individuals regardless of age, disability, race, ethnicity, sexual orientation, or gender identity. In order to

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ensure that no Consumer is discriminated against, Agent shall seek assistance or guidance from the Exchange when needed.

8. Representations. Agent shall represent the plans offered through the Exchange in accordance with the following:
 - a. Fairly and accurately present to Consumers all available enrollment options and prices regardless of the Agency or Agent's appointments with any health plan;
 - b. Unless specifically requested by the Consumer not to, when quoting prices, Agent shall fairly describe and display the health plans that the Consumer is eligible for;
 - c. Explain to all potential Consumers about the availability of APTCs and that APTCs are only available through the Exchange.
 - d. Agent shall not to steer Consumers towards or against any of the QHPs sold by the Exchange solely on the basis of payment schedules or other consideration made to agent;
 - e. Agent is not authorized to and shall not to enter into, alter, deliver or terminate any coverage on behalf of the Exchange or any QHP, extend the time for payment of charges, or bind the Exchange or any QHP in any way;
 - f. Advise every Consumer that in no event will the Consumer have any coverage unless and until the Exchange has approved the application and payment has been received;
 - g. Agent shall not make any commitments on behalf of the Exchange or any QHP that have not been specifically approved in advance in writing by the Exchange or a QHP;
 - h. If Agent or Agency sells any ancillary products that are not offered by the Exchange, Agent shall clearly identify those products to the Consumer and explain that such products are not offered by the Exchange. Agent shall further inform the Consumer that ancillary products are not required to be purchased as a condition for obtaining health coverage.

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9. Voter Registration Assistance

- a. Agent shall ensure that voter registration assistance is available as required by Chapter 6 of the California Elections Code (Section 2400 et seq.) and the Exchange's implementing regulations set forth at Title 10, California Code of Regulations, section 6462.
- b. Agent shall complete training on an annual basis on procedures for assisting consumers with the National Voter Registration Act of 1993, 42 U.S.C. § 1973gg and CCR section 6462 of Title 10, Chapter 12, Article 4.

10. Payment or Acceptance of Consideration as Inducements Prohibited.

- a. Agent shall not directly or indirectly charge, receive, accept, or agree to charge, receive, or accept any valuable consideration from the Consumer for the services performed under this Agreement.
- b. Agent shall not provide payment or other valuable consideration to subgrantees of the Exchange, Certified Enrollment Entities or Certified Enrollment Counselors defined under Article 8, Title 10 of the California Code of Regulations, and other community-based groups for referrals and/or enrollment services.

11. Compensation. For services rendered under this Agreement, Compensation shall be made directly to Agency. Agent is paid by Agency and shall have no claim to compensation from the Exchange. Agency shall compensate Agent according to its policies, procedures, and contractual requirements.

12. Acceptance of Payment.

- a. For the individual market:
 - a. When Agent assists Consumers with an online application through CalHEERS, monies received by Agent or Agency shall be processed in accordance with Agent's or Agency's agreement with the QHPs and, under no circumstances, shall be sent to the Exchange.
 - b. When Agent assists Consumers with a paper application, Agent shall not accept any payments and the Consumer shall be

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instructed by Agent to pay the premium statement issued by the QHP.

- b. For CCSB, monies received by Agency or Agent from employers for or on behalf of the Exchange shall be made payable to the Exchange and received by Agent or Agency in a fiduciary capacity. Monies received by Agency or Agent for CCSB shall not be commingled with personal funds of Agent or Agency, and shall be remitted to the Exchange by no later than five (5) business days from the day of receipt. Agent shall only receive payment from employers tendered with a completed initial enrollment application. Agency and Agent shall not receive any subsequent payments.
13. Records. Agency shall maintain complete records (i) of all transactions pertaining to applications submitted to and accepted by the Exchange, (ii) as may be required by the California Department of Insurance, or California Department of Managed Health Care or any other governmental entity, and (iii) in connection with Agency's relationship with the Exchange. Any and all records described above shall be accessible and available to representatives of the Exchange who may audit them from time to time while this Agreement is in effect or within ten (10) years after termination thereof.
14. Ongoing Service. Agent shall service Employers, Employees, and individuals enrolled in QHPs when Agent is the Agent of Record. Such service will include, but not be limited to, the following:
 - a. Acting as liaison between these parties and the Exchange if requested by any of these parties;
 - b. Assisting these parties to take the proper action in connection with Exchange coverage when there is a change of address, or other change of status;
 - c. Assisting a family member/dependent to obtain coverage when he or she is no longer entitled to coverage as a family member – e.g., when a dependent child reaches the limiting age, or upon a divorce or dissolution of marriage; and
 - d. Maintaining a working and current knowledge of QHPs offered through the Exchange and the ability to explain benefits and/or coverage.

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15. Agent shall provide reasonable assistance to the Exchange in resolving any problems that may arise with new and existing Employers, Employees, or individuals enrolled in QHPs.
16. Agent of Record.
 - a. For the Individual Market, Agent of Record policies are defined and administered pursuant to contractual agreements between the health plans and the Exchange.
 - b. For the CCSB, Agency shall advise Employers that any Agent of Record changes must be made by providing the Exchange with a written request made by the Employer's authorized representative, which identifies the name, address, and if known, tax identification number of the new Agent of Record. Upon receipt of the Employer's request, the Exchange will notify the Employer's existing Agent of Record. The Exchange will honor the Employer's request unless the Exchange receives a written rescission signed by the Employer's authorized representative within five (5) business days. The Exchange will honor the Employer's request effective on the first day of the month following the Exchange's receipt of the request, unless another future date is specified in the written request. The new Agent will thereafter be the Employer's designated Agent of Record.
17. Procedure for Distribution and Management of Agent's Book of Business upon Joining or Departing an Agency.
 - a. If Agent joins or departs an Agency and has a Book of Business with the Exchange, the following requirements and procedures shall govern the distribution and management of the Agent's Book of Business:
 - i. Should an Agent with an existing Book of Business join Agency, all or part of the Agent's Book of Business may be merged with the Agency's Book of Business. If all or part of the Agent's Book of Business is merged with the Agency, all commission payments associated with the merged Book of Business shall go to the Agency pursuant to the terms of Exhibit B. If the Agent does not merge his or her Book of Business or only merges part of it, the Agent shall continue to receive commission payments for the unmerged Book of Business pursuant to the Agent's respective agreement with the Exchange. Subject to any

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agreement between the Agency and Agent, the Agent may remain the Agent of Record for some or all Consumers in his or her Book of Business upon joining the Agency. Pursuant to the terms of any agreement between the Agency and Agent, the Agency may re-delegate Consumers to a different Agent affiliated with the Agency at any time. Such re-delegation must comply with the requirements set forth in Exhibit A, Section C, Subsection 16.

- ii. Should an Agent depart from an Agency, Agency shall have the capability to re-delegate any and all Consumers delegated to the Agent to another Agent affiliated with the Agency. Such re-delegation must comply with the requirements set forth in Exhibit A, Section C, Subsection 16. Depending on the Agency's policies, procedures, and contractual obligations, the departing Agent may continue to serve as the Agent of Record for any Consumer upon leaving the Agency. However, Agent must terminate the Non-Monetary Agent Agreement and execute an Agency Agreement in order to receive any payments after departing the Agency. Additionally, Agent and Agency must complete the appropriate Exchange form which specifies how the consumers will be delegated between Agency and departing Agent.

18. Training Standards

- a. To ensure that all Agents are prepared to serve both the individual Exchange and CCSB, all Agents who carry out consumer assistance functions shall complete training in the following subjects in order to receive access to CalHEERS and the CCSB Agent Portal and perform consumer assistance functions. Training shall include the subjects as set forth below. The Exchange may require Agents to receive additional training on any relevant subject after completing initial training to obtain certification. The completion of such training is a condition to remaining certified with the Exchange. Initial training shall include the following subject areas:
 - i. QHPs (including the metal levels described at 45 C.F.R. § 156.140(b)), and how they operate, including benefits covered,

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- payment processes, rights and processes for appeals and grievances, and contacting individual plans;
- ii. The range of insurance affordability programs, including Medicaid, the CHIP, and other public programs;
 - iii. The tax implications of enrollment decisions;
 - iv. Eligibility requirements for premium tax credits and cost-sharing reductions, and the impacts of premium tax credits on the cost of premiums;
 - v. Contact information for appropriate federal, state, and local agencies for consumers seeking additional information about specific coverage options not offered through the Exchange;
 - vi. Basic concepts about health insurance, the individual Exchange, and CCSB; the benefits of having health insurance and enrolling through an Exchange and CCSB; and the individual responsibility to have health insurance;
 - vii. Eligibility and enrollment rules and procedures, including how to appeal an eligibility determination;
 - viii. Providing culturally and linguistically appropriate services;
 - ix. Ensuring physical and other accessibility for people with a full range of disabilities;
 - x. Understanding differences among health plans;
 - xi. Privacy and security standards applicable under 45 C.F.R. § 155.260 for handling and safeguarding consumers' personally identifiable information;
 - xii. Working effectively with individuals with limited English proficiency, people with a full range of disabilities, people of any gender identity, people of any sexual orientation, and vulnerable, rural, and underserved populations;

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- xiii. Customer service standards;
 - xiv. Outreach and education methods and strategies;
 - xv. Applicable administrative rules, processes, and systems related to Exchanges and QHPs; and
 - xvi. Procedures for assisting consumers with voter registration in compliance with the National Voter Registration Act of 1993, 42 U.S.C. § 1973gg and CCR Section 6462 of Title 10, Chapter 12, Article 4.
19. Agent shall not concurrently be certified as a Plan Based Enroller defined in Article 9, Title 10, of the California Code of Regulations.
20. Agent must comply with the Agent Code of Conduct when performing services under this Agreement. The Agent Code of Conduct is herein incorporated by reference and shall be located at Coveredca.com/... Agent's execution of this Agreement constitutes Agent's consent to comply with the Agent Code of Conduct that is incorporated by reference. No formal amendment is required for changes or modifications to the Agent Code of Conduct. By executing this Agreement, Agent understands and accepts that the Exchange may modify or replace the Agent Code of Conduct upon ten (10) calendar day's prior notice to Agent or Agency and that any modified Agent Code of Conduct will be posted at Coveredca.com/...

D. Exchange Rights

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

E. Agent Appointment

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

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

F. Compliance with Governing Statutes:

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

G. Consumer Messaging:

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

H. Term

The term of this Agreement is for five (5) years commencing on the date that the Exchange signs this Agreement, and shall be automatically renewed for an

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additional five year term unless the Exchange terminates the Agreement under Subsection E of Exhibit C.

I. Agent Services:

For any communications or questions that arise during the term of this Agreement, Agent shall contact Agent Services at:

ATTN: Covered California – Sales
Agent Services
1601 Exposition Blvd.
Sacramento, CA 95815
(877) 453-9198
agents@covered.ca.gov

EXHIBIT C
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A. Approval:

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

B. Indemnification:

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

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

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

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promptly notify the Exchange of the claim by written notice to Agent Services identified in Section I of Exhibit A.

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

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

C. Dispute Provisions:

1. The parties shall deal in good faith and attempt to resolve disputes informally. If the dispute persists, Contractor shall submit a written dispute notice to the Agent Services within 15 business days after the date of the action causing the dispute. The written dispute notice shall contain the following information:
 - a. The decision or issue under dispute;
 - b. The reason(s) Contractor believes the decision or position taken by the Exchange is in error (if applicable, reference pertinent Contract provisions);
 - c. Identification of all documents and substance of all oral communication which support Contractor's position; and

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

D. Modification

The Exchange may modify this Agreement upon forty-five (45) calendar days prior written notification. Any such modification shall not affect Agent's rights in connection with business written with effective dates prior to the effective date of modification of this Agreement.

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E. Termination

1. Termination For Cause:

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

- a. The death of Agent;
- b. Discontinuation or termination of Agency operations;
- b. Revocation, suspension or expiration of Agent or Agency license by the California Department of Insurance;
- c. Revocation, suspension or expiration of Agent's or Agency's certification by the Exchange.
- d. Commission of a fraudulent, illegal, deceitful or dishonest act as determined the Exchange;
- e. Termination of the Agent Agreement or Agency Agreement pursuant to Exhibit D, Privacy and Security Requirements, Section K;
- f. Agent's failure to comply with any provision of this Agreement; or
- g. Threatening, harassing, or acting in an abusive manner toward the Exchange or any of its employees, agents, representatives, or Consumers;

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h. Discontinuation or termination of CCSB operations.

Although termination is effective immediately, Agent may dispute the Termination for Cause decision pursuant to Section C of this Exhibit, Dispute Provisions.

2. Termination without Cause

This Agreement may be terminated at any time by either party upon giving thirty (30) days prior written notice thereof to the other party. The effective date of termination shall be the first day of the month following the thirty (30) day notice period unless said notice specifies a later date.

2. Vesting:

This Agreement may be suspended for the sale of new business at any time by either party upon giving thirty (30) calendar days prior written notice thereof to the other party. The effective date of the suspension shall be the first day of the month following the thirty (30) day notice period unless said notice specifies a later date. In the instance that an Agent's contract is suspended, Agent shall continue to be compensated after the date of suspension pursuant to the Agent's respective agreement with the QHP or this Agreement. Agent must maintain licensure and certification during the period of suspension. Unless otherwise directed by the Exchange, Agent must also continue to service its Consumers in accordance with this Agreement.

F. Independent Contractor:

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

G. Contractor Certification Clauses:

1. Compliance:

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

2. Nondiscrimination Clauses

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

- a. Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), as amended, and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 C.F.R. Part 80), to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which Federal financial assistance is provided by the Department of Health and Human Services.
- b. Title IX of the Education Amendments of 1972 (Pub. L. 92-318), as amended, and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 C.F.R. Part 86), to the end that, in accordance with Title IX and the Regulation, no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any education program or activity for which Federal financial assistance is provided by the Department of Health and Human Services.
- c. Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended, and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 C.F.R. Part 84), to the end that, in accordance with Section 504 of that Act and the Regulation, no otherwise qualified individual with a disability in the United States shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity for which Federal financial assistance is provided by the Department of Health and Human Services.
- d. The Age Discrimination Act of 1975 (Pub. L. 94-135), as amended, and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 C.F.R. Part 91), to the end that, in accordance with the Act and the Regulation, no person in the United States shall, on the basis of age, be denied the benefits of, be excluded from participation in, or be subjected to discrimination under any program

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or activity for which Federal financial assistance is provided by the Department of Health and Human Services.

- e. Americans With Disabilities Act (ADA) of 1990, as amended, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA (42 U.S.C. 12101 et seq.).
 - f. The Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (Title 2, California Code of Regulations, Section 11000 et seq.) require that during the performance of this Agreement, Contractor and its subcontractors, as well as their agents and employees, shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (including health impairments related to or associated with a diagnosis of cancer for which a person has been rehabilitated or cured), age (over 40), marital status, and use of family and medical care leave pursuant to state or federal law. Contractor and subcontractors, as well as their agents and employees, shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement; and
 - g. The requirements of any other nondiscrimination statute(s) which may apply to this Agreement.
3. Conflict of Interest:

Contractor acknowledges that, in governmental agreements, even the appearance of a conflict of interest is harmful to the interest of the State. Thus, Contractor agrees to refrain from any practices, activities or relationships that

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could reasonably be considered to be in conflict with Contractor's fully performing his/her obligations to the State under the terms of this Contract. Contractor shall inquire about and require disclosure by its Staff and subcontractors of all activities that may create an appearance of conflict. In the event that Contractor is uncertain whether the appearance of a conflict of interest may reasonably exist, Contractor shall submit to Agent Services identified in Section I of Exhibit A a full disclosure statement setting forth the relevant details of any activity which the Contractor reasonably believes may have the appearance of a conflict of interest for the State's consideration and direction. Failure to promptly submit a disclosure statement setting forth the relevant details for the State consideration and direction shall be grounds for Termination of this Contract.

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

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

a. Current State Employees:

- i. No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- ii. No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

b. Former State Employees:

- i. For the two (2)-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transaction, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.

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- ii. For the twelve (12)-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the twelve (12)-month period prior to his or her leaving state service.

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

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

5. Labor Code/Workers' Compensation:

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

6. Contractor Name Change:

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

7. Air Or Water Pollution Violation:

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

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

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- c. Finally determined to be in violation or provisions of federal law relating to air or water pollution.

8. National Labor Relations Board Certification:

Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two (2)-year period because of Contractor's failure to comply with an order of a Federal court which orders Contractor to comply with an order of the National Labor Relations Board. (PCC 10296) (Not applicable to public entities.)

9. Computer Software Copyrights:

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

10. Activities Abroad

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

11. Covenant Against Contingent Fees

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

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12. Child Support Compliance Act:

In accordance with the Child Support Compliance Act,

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

13. Union Organizing:

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

14. Recycling Certification:

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

15. Resource Conservation and Recovery Act

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

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16. Domestic Partners:

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

H. Officials Not to Benefit

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

I. Timeliness:

Time is of the essence in this Agreement.

J. Governing Law:

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

K. Severability:

If any provision in this Agreement is invalid or unenforceable in any jurisdiction, the other provisions herein shall remain in full force and effect in such jurisdiction and

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shall be liberally construed in order to effectuate the purpose and intent of this Agreement, and the invalidity or unenforceability of any provision in this Agreement in any jurisdiction shall not affect the validity or enforceability of any such provision in any other jurisdiction.

L. Audit:

Contractor agrees that the awarding department (“the State”) and the Bureau of State Audits, Health and Human Services, or their designated representatives, shall have the right to review and to copy any records and supporting documentation directly pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of ten (10) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include the same right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (45 CFR Section 155.1210, GC 8546.7, PCC 10115 et seq., CCR Title 2, Section 1896).

M. Insurance Requirements

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

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

N. Intellectual Property Rights:

1. All activities defined in the Statement of Work originated or prepared by Contractor pursuant to this Agreement including papers, reports, charts, and other documentation, but not including Contractor’s administrative communications and records relating to this Agreement, shall upon delivery and acceptance by the Exchange become the exclusive property of the Exchange and may be copyrighted by the Exchange.

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2. All inventions, discoveries or improvements of the techniques or programs or materials developed pursuant to this Agreement shall be the property of Exchange.
3. This Agreement shall not preclude Contractor from developing materials outside this Agreement, which are competitive, irrespective of their similarity to materials which might be delivered to the Exchange pursuant to this Agreement. All preexisting intellectual property, copyrights, trademarks and products shall be the sole property of Contractor.

O. Confidentiality:

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

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

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

At the conclusion of its relationship with the Exchange, Contractor shall return any and all records or copies of records relating to the Exchange, or its business, or its Confidential Information. Contractor shall take such steps as may be reasonably necessary to prevent disclosure of Confidential Information to others and shall not disclose Confidential Information to others without the prior written consent of the Exchange. Contractor agrees that Confidential Information disclosed to it under the terms of this Agreement may be disclosed only to its employees or agents who have a need to know such Confidential Information.

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

P. Waiver of Breach

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

Q. Resolution:

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

R. Corporate Qualifications To Do Business In California:

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

Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. The Exchange will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

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S. Federal Terms and Conditions

1. Equal Employment Opportunity

By signing this Agreement, the Contractor agrees to comply with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

2. Clean Air and Water Pollution Control Act

(Applicable only to federally funded agreements in excess of \$100,000)

By signing this Agreement, the Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 *et seq.*). Violations shall be reported by the State to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

3. This certification is a prerequisite for making or entering into this transaction and is required by Section 1352, Title 31, U. S. Code. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Pursuant to 31 U.S.C. Section 1352, any person who fails to file the required certification shall be subject to a civil penalty of no less than \$10,000 and not more than \$100,000 for each such failure.

T. Communication with Contractor

1. E-Mail Communication

Unless directed otherwise by Contractor, the Exchange shall use e-mail as its primary form of communication to Contractor. However, while e-mail shall serve as the Exchange's primary form of communication, the Exchange is not prevented from using other modes of communication when necessary. The Contractor shall provide the Exchange with an e-mail address that the Contractor checks on a regular basis so as to ensure that the Contractor can receive the Exchange's e-mail communications. The Contractor shall take steps to ensure

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that the Contractor's e-mail account is secure and complies with all applicable provisions of Exhibit D of this Agreement.

2. U.S. Mail Communication

The Exchange may send communications and other documents to the Contractor via U.S. Mail. In the event that the Exchange cannot communicate to the Contractor via e-mail, the Exchange shall communicate via U.S. Mail when necessary. Contractor shall provide the Exchange with the Contractor's most recent business address or other address in which the Contractor may expect to receive regular mail. Contractor shall ensure that the Exchange has the Contractor's most recent address during the entire term of this Agreement.

U. Effective Date of Notices

All notices under the terms and conditions of this Agreement shall be in writing and delivered via e-mail or U.S. Mail. Notices delivered via e-mail during regular business hours shall be effective upon receipt. Notices delivered via e-mail after regular business hours shall be effective on the next business day. For purposes of this agreement, regular business hours shall be 8am to 5pm PST. All notices delivered via U.S. Mail shall be effective upon receipt or ten (10) business days following the date of mailing, whichever is earlier. Contractors sending notice to the Exchange via U.S. Mail shall use the address listed in Exhibit A of this Agreement.

EXHIBIT D
Agent Agreement
PRIVACY AND SECURITY REQUIREMENTS

A. Purpose of Exhibit

1. This Exhibit sets forth the privacy and security requirements that apply to all Personally Identifiable Information (PII) that Contractor obtains, maintains, transmits, uses or discloses from the California Health Benefit Exchange (Exchange aka Covered California) pursuant to this Agreement.
2. The parties agree to all terms and conditions of this Exhibit in order to ensure the integrity, security, and confidentiality of the information exchanged pursuant to this Agreement, and to allow disclosure and use of such information only as permitted by law and only to the extent necessary to perform functions and activities pursuant to this Agreement.
3. This Exhibit establishes requirements in accordance with applicable federal and state privacy and security laws including, but not limited to, the Information Practices Act (California Civil Code section 1798 et seq.), the federal Patient Protection and Affordable Care Act (P.L. 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (P.L. 111-152) (herein, the “Affordable Care Act”), and its implementing regulations at 45 C.F.R. Sections 155.260 and 155.270 (the “Exchange Privacy and Security Rules”) and, where applicable, the Health Insurance Portability and Accountability Act (42 U.S.C. section 1320d-d8) and the Health Information Technology for Economic and Clinical Health Act and their implementing regulations at 45 C.F.R. Parts 160 and 164 (collectively, “HIPAA”), as well as applicable privacy and security control protocols set forth within the Minimum Acceptable Risks For State-Based Exchanges document suite (“MARS-E”).

B. Definitions

The following definitions shall apply to this Exhibit:

1. Breach: Shall mean either: i) the loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar term referring to situations where persons other than authorized users and for an other than authorized purpose have access or potential access to PII, whether physical, or electronic; or ii) a reasonable belief that unauthorized acquisition of PII that compromises the security, confidentiality or integrity of the PII has occurred

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2. Disclosure: The release, transfer, provision of access to, or divulging in any other manner of PII outside the entity holding the information.
3. Federal Tax Information or FTI: Any return or return information as defined under the Internal Revenue Service Code, 26 U.S.C. section 6103(b)(1) and (2), received from the IRS or secondary source, such as SSA, Federal Office of Child Support Enforcement or Bureau of Fiscal Service. FTI includes any information created by the recipient that is derived from return or return information. (IRS Pub. 1075, § 1.4.1)
4. Personal Information or PI: Information that identifies or describes an individual, including, but not limited to, his or her name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history. It includes statements made by, or attributed to, the individual. (California Civil Code section 1798.3)
5. Personally Identifiable Information or PII: Information which can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, etc. alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc. (OMB M-07-16.) PII includes Federal Tax Information (FTI), Personal Information (PI) and Protected Health Information (PHI).
6. Protected Health Information or PHI: Individually Identifiable Health Information that is transmitted by electronic media, maintained in electronic media, or is transmitted or maintained in any other form or medium, as defined in 45 C.F.R. section 160.103.
7. Security Incident: The act of violating an explicit or implied security policy, which includes attempts (either failed or successful) to gain unauthorized access to a system or its data, unwanted disruption or denial of service, the unauthorized use of a system for the processing or storage of data; and changes to system hardware, firmware, or software characteristics without the owner's knowledge, instruction, or consent. Incidents include the loss of data through theft or device misplacement, loss or misplacement of hardcopy documents, and misrouting of mail, all of which may have the potential to put the data at risk of unauthorized access, use, disclosure, modification, or destruction. Adverse events such as floods,

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fires, electrical outages, and excessive heat are not considered incidents.
(Computer Matching Agreement, Agreement No. 2013-11, p.5.)

C. Applicable Laws

Contractor shall comply with any and all federal and state privacy and security laws, as well as applicable rules and regulations pertaining to Covered California including, but not limited to, those arising under the federal Patient Protection and Affordable Care Act and its implementing regulations. To the extent a conflict arises between any laws or other requirements, Contractor agrees to comply with the applicable requirements imposing the more stringent privacy and security standards.

1. Exchange Privacy and Security Rules (45 C.F.R. section 155.260).
 - a. In accessing, collecting, using or disclosing PII in performing functions for Covered California as authorized by this Agreement, Contractor shall only use or disclose PII to the minimum extent such information is necessary to perform such functions.
 - b. Contractor shall establish and implement privacy and security standards that are consistent with the principles of 45 C.F.R. section 155.260(a)(3) as set forth below in subsections (i) through (viii):
 - 1) Individual access. Individuals shall be provided with a simple and timely means to access and obtain their PII in a readable form and format;
 - 2) Correction. Individuals shall be provided with a timely means to dispute the accuracy or integrity of their PII and to have erroneous information corrected or to have a dispute documented if their requests are denied;
 - 3) Openness and transparency. Contractor shall be open and transparent regarding its policies, procedures, and technologies that directly affect individuals and/or their PII;

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- 4) Individual choice. Individuals shall be provided a reasonable opportunity and capability to make informed decisions about the collection, use, and disclosure of their PII;
 - 5) Collection, use and disclosure limitations. PII shall be created, collected, used, and/or disclosed only to the extent necessary to accomplish a specified purpose(s) and never to discriminate inappropriately;
 - 6) Data quality and integrity. Contractor will take reasonable steps to ensure that PII is complete, accurate, and up-to-date to the extent necessary for Contractor's intended purposes and has not been altered or destroyed in an unauthorized manner;
 - 7) Safeguards. PII will be protected with reasonable operational, administrative, technical, and physical safeguards to ensure its confidentiality, integrity, and availability and to prevent unauthorized or inappropriate access, use, or disclosure; and,
 - 8) Accountability. Contractor will use appropriate monitoring and other means and methods to assure accountability with these principles and to report and mitigate non-adherence and breaches.
2. California Information Practices Act. Contractor shall comply with the applicable privacy and security provisions of the Information Practices Act of 1977, California Civil Code section 1798 et seq. and shall provide assistance to Covered California as may be reasonably necessary for Covered California to comply with these provisions (Civil Code section 1798 et seq.).
 3. Health Insurance Portability and Accountability Act ("HIPAA").
 - a. Contractor expressly acknowledges and agrees that Covered California is not a health care provider, a health care plan, or a health care clearinghouse. Accordingly, the parties mutually

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acknowledge and agree that, for purposes of this Agreement, Covered California is not a Covered Entity as such term is specifically defined in HIPAA.

- b. Contractor expressly acknowledges and agrees that where Covered California performs a function required under applicable law pursuant to 45 C.F.R. section 155.200, it is not acting as a Business Associate of any other Covered Entity and Contractor is not acting as Covered California's Business Associate, as such terms are specifically defined in HIPAA.
 - c. For certain programs related to the administration of the Medi-Cal Program, Covered California has agreed to be the Business Associate of the Department of Health Care Services (DHCS). Therefore, to the extent that Contractor performs services related to the administration of the Medi-Cal program, contractor is Covered California's subcontractor, and therefore, also a Business Associate as that term is specifically defined in HIPAA. Accordingly, if in performing functions pursuant to this Agreement Contractor accesses or uses PII that was provided to Covered California by DHCS or for the purposes of the Medi-Cal program, Contractor shall comply with the applicable terms and conditions of HIPAA.
4. IRS Code section 6103 and Publication 1075. *Per Covered California's Privacy and Security Rules (45 CFR 155.260 (a)(4)(iii), return information shall be kept confidential under 26 U.S. Code section 6103. As described by IRS publication 1075, conforming to the guidelines set forth in that publication meets the safeguard requirements of 26 U.S. Code section 6103(p)(4) for FTI.*
 5. Fingerprinting and Background Checks. *(CA Government Code Section 1043).*
 - a. All individuals including, but not limited to, employees, contractors, or subcontractors who perform services under this agreement shall agree to criminal background checks in compliance with Government Code section 1043, and its implementing regulations set forth in California Code of Regulations, Title 10, Section § 6456. Fees charged by the California Department of Justice for the cost of

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processing such requests shall be paid by Contractor but may be reimbursed by Covered California upon the mutual, written agreement of the parties.

- b. For any insurance agent licensed by the California Department of Insurance (CDI) Covered California may obtain a criminal history check in accordance with Government Code section 1043 from CDI.

6. Privacy and Security Awareness Training (MARS-E).

- a. Contractor shall ensure that any and all employees, agents, representatives or subcontractors who are provided access to PII have first been provided privacy and security awareness training.
- b. Contractor shall likewise ensure that any and all such employees, agents, representatives or subcontractors certify in writing their completion of any such privacy and security awareness programs and, upon request, shall provide Covered California with copies of the same.
- c. Contractor shall retain the aforementioned certifications for a period of five (5) years and shall provide the copies upon request during this time.
- d. Notwithstanding the foregoing, Contractor shall be deemed to have complied with the above-referenced requirements through the completion of any certification program which includes privacy and security awareness training and is required for Contractor's participation in Covered California.

D. Consumer Rights

1. Accounting of Disclosures

- a. Contractor shall assist Covered California in responding to accounting requests by individuals that are made to Covered California under the Information Practices Act (Civil Code section 1798.25-29) and if Protected Health Information is involved, pursuant to HIPAA, 45 C.F.R. section 164.528.

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- b. The obligation of Contractor to provide an accounting of disclosures as set forth herein survives the expiration or termination of this Agreement with respect to accounting requests made after such expiration or termination.

2. Copies of Records Requests

Regardless of whether a request is made to Covered California or to Contractor, Contractor shall respond to the request with respect to the record Contractor and its subcontractors maintain, if any, in a manner and time frame consistent with requirements specified in the Information Practices Act (Civil Code sections 1798.30-1798.34) and if Protected Health Information is involved, with HIPAA (45 C.F.R section 164.524).

3. Requests to Amend Records

- a. Contractor shall make any amendments to Personally Identifiable Information in a record that Covered California directs or agrees to, whether at the request of Covered California or an Individual.
- b. Regardless of whether a request to amend records is made to Covered California or to Contractor, Contractor shall respond to the request with respect to the record Contractor and its subcontractors maintain in a manner and time frame consistent with requirements specified in the Information Practices Act (Civil Code section 1798.35) and if Protected Health Information is involved, with HIPAA (45 C.F.R. section 164.526).

4. Requests to Restrict Use and Disclosure of Personally Identifiable Information

- a. Contractor shall reasonably comply with any requests to restrict the use and disclosure of Personally Identifiable Information.
- b. If Protected Health Information is involved, Contractor shall respond to the request in a manner and time frame consistent with requirements specified in HIPAA (45 C.F.R. section 164.522).

5. Confidential Communications Request

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- a. Upon receipt of written notice, Contractor shall reasonably comply with any requests to utilize an alternate address, email, or telephone number when communicating with the individual.
 - b. If the request is denied, a written response shall be sent to the individual stating the reasons for denying the request.
 - c. If Protected Health Information is involved, Regardless of whether a request is made to Covered California or to Contractor, Contractor shall respond to the request in a manner and time frame consistent with requirements specified in HIPAA (45 C.F.R. section 164.522(b)(1)).
6. In responding to any requests from individuals, Contractor shall verify the identity of the person making the request to ensure that the person is the individual who is the subject of the PII or has authority to make requests concerning the PII before responding to the request.
 7. In the event any individual submits any of these requests directly from Contractor, Contractor shall within five (5) calendar days forward such request to Covered California.

E. Security Controls and Safeguards

1. Safeguards: At a minimum, contractor shall establish and implement operational, technical, administrative and physical safeguards that are consistent with any applicable laws to ensure
 - a. The confidentiality, integrity, and availability of personally identifiable information created, collected, used, and/or disclosed by Covered California;
 - b. Personally identifiable information is only used by or disclosed to those authorized to receive or view it;
 - c. Return information, as such term is defined by section 6103(b)(2) of the Code, is kept confidential under section 6103 of the Code;

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- d. Personally identifiable information is protected against any reasonably anticipated threats or hazards to the confidentiality, integrity, and availability of such information;
 - e. Personally identifiable information is protected against any reasonably anticipated uses or disclosures of such information that are not permitted or required by law; and
 - f. Personally identifiable information is securely destroyed or disposed of in an appropriate and reasonable manner and in accordance with retention schedules.
2. Encryption: Contractor shall encrypt all PII that is in motion or at rest, including but not limited to data on portable media devices, using commercially reasonable means, consistent with applicable Federal and State laws, regulations and agency guidance, including but not limited to the U.S. Department of Health and Human Services guidance specifying the technologies and methodologies that render PII unusable, unreadable, or indecipherable to unauthorized individuals for purposes of the breach notification requirements or issued by the National Institute for Standards and Technology (“NIST”) concerning the protection of identifiable data such as PII. Data centers shall be encrypted or shall otherwise comply with industry data security best practices.
3. Hardware: Contractor shall ensure that any and all hardware, including but not limited to personal computers, laptops, jump-drives, smart phones or other devices upon which PII is stored, is secured, password-protected and only accessible by Contractor or Contractor’s agents, employees or sub-contractors in accordance with the terms of this Exhibit. Contractor shall at all times remove and permanently delete any and all PII before any such hardware is transferred or sold to a third-party or is otherwise subject to any change in ownership or control.
4. Log-In Credentials: Contractor shall at all times ensure that each individual user of any Covered California computer system through which PII is accessed maintains his or her own unique user-id and password. Contractor shall strictly refrain from sharing individual log-in credentials and shall at all times assume responsibility for ensuring that the log-in credentials of any former employees, sub-contractors, agents or other representatives who are no longer subject to this Agreement are de-

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activated or otherwise changed to prevent unauthorized access by any such individuals.

5. Contractor shall update these safeguards as appropriate and as requested by Covered California.

F. Policies and Procedures:

1. Contractor shall implement and maintain written policies and procedures to ensure the privacy and security of PII stored, maintained, or accessed in compliance with this agreement and any applicable laws. Such policies shall address
 - a. Implementation of consumer rights as required by this Exhibit;
 - b. Reasonable safeguards as required by this Exhibit;
 - c. Monitoring, periodically assessing, and updating security controls and related system risks to ensure the continued effectiveness of those controls; and
 - d. Training employees, contractors, and subcontractors.
2. Upon request, Contractor shall provide Covered California with a written policies and procedures adopted by Contractor to meet its obligations under this Section.

G. Subcontractors

1. Contractor shall be bound by and be responsible for the acts and omissions of its subcontractors, agents or vendors in the exchange of data with Covered California. Contractor shall take reasonable steps to ensure compliance with the terms of this Agreement by its subcontractors, agents and vendors.
2. Contractor agrees to enter into written contracts with its agents and contractors (collectively, "subcontractors") that obligate Contractor's subcontractors to abide by the same privacy and security standards and obligations that Contractor has agreed to in this agreement.

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3. Contractor represents and agrees that it shall only request that Covered California transmit data to subcontractors with whom it has such agreements and only to the extent such information is necessary to carry out the purposes authorized by this Agreement.
4. Upon request, Contractor shall provide Covered California with a copy of any written agreement or contract entered into by Contractor and its subcontractors to meet the obligations of Contractor under this Exhibit.

H. Breaches & Security Incidents

1. Contractor shall immediately report to the Covered California Privacy Officer at PrivacyOfficer@covered.ca.gov any actual or suspected Breaches or Security Incidents involving PII created or received under this Agreement. Contractor's report shall contain the following information to the extent applicable and known at that time:
 - a. A brief description of what happened including the date of the incident and the date of the discovery of the incident;
 - b. The names or identification numbers of the individuals whose PII has been, or is reasonably believed to have been accessed, acquired, used or disclosed
 - c. A description of the types of PII that were involved in the incident, as applicable;
 - d. Information regarding any information system intrusion and any systems potentially compromised;
 - e. A brief description of Contractor's investigation and mitigation plan; and
 - f. Any other information necessary for Covered California to conduct an investigation and include in notifications to the individual(s) or relevant regulatory authorities under applicable privacy and security requirements.

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2. Upon completion of the initial report, contractor shall immediately commence an investigation in accordance with applicable law to:
 - a. Determine the scope of the incident;
 - b. Mitigate harm that may result from the incident; and
 - c. Restore the security of the system to prevent any further harm or incidents.
3. Contractor shall cooperate with Covered California in investigating the actual or suspected incident and in meeting Covered California's obligations, if any, under applicable laws.
4. Contractor shall mitigate to the extent practicable any harmful effect of any Incident that is known or reasonably discoverable to Contractor.
5. After conducting its investigation, and within fifteen (15) calendar days, unless an extension is granted by Covered California, Contractor shall file a complete report with the information listed above in subsection (1), if available. Contractor shall make all reasonable efforts to obtain all relevant information and shall provide an explanation if any information cannot be obtained. The complete report shall include a corrective action plan that describes the steps to be taken to prevent any future reoccurrence of the incident.
6. Contractor shall cooperate with Covered California in developing content for any public statements and shall not give any public statements without the express written permission of Covered California.
7. If a Breach requires notifications and reporting under applicable laws, and the cause of the Breach is attributable to Contractor, its agents or subcontractors, Contractor shall:
 - a. Be fully responsible for providing breach notifications and reporting as required under applicable laws;
 - b. Pay any costs of such Breach notifications as well as any costs or damages associated with the incident; and

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- c. Should Covered California in its sole discretion determine that credit monitoring is an appropriate remedy, arrange for and bear the reasonable, out-of-pocket cost of providing to each such affected individual one (1) year of credit monitoring services from a nationally recognized supplier of such services.
- 8. If Contractor determines that an impermissible acquisition, use, or disclosure of PII does not require breach notifications or reporting, it shall document its assessment and provide such documentation to Covered California within one week of its completion. Notwithstanding the foregoing, Covered California reserves the right to reject Contractor's assessment and direct Contractor to treat the incident as a Breach.

I. Right to Inspect

Covered California may inspect the facilities, systems, books, and records of Contractor to monitor compliance with this Exhibit at any time. Contractor shall promptly remedy any violation reported to it by Covered California and shall certify the same to the Covered California Privacy Officer in writing. The fact that Covered California inspects, fails to inspect, fails to detect violations of this Exhibit or detects but fails to notify Contractor of the violation or require remediation is not a waiver of Covered California's rights under this Agreement and this Exhibit.

J. Indemnification

Contractor shall indemnify, hold harmless, and defend Covered California from and against any and all costs (including mailing, labor, administrative costs, vendor charges, and any other costs Covered California determines to be reasonable), losses, penalties, fines, and liabilities arising from or due to Contractor's failure to comply with the requirements of this Exhibit, including a breach or other non-permitted use or disclosure of PII by Contractor or its subcontractors or agents, including without limitation. Such indemnification shall be conditioned upon Covered California giving notice of any claims to Contractor after discovery thereof. If Contractor should publish or disclose PII to others, Covered California shall be entitled to injunctive relief or any other remedies to which it is entitled under law or equity, without posting a bond.

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K. Termination of Agreement

1. If Contractor breaches its obligations under this Exhibit as determined by Covered California, Covered California may, at its option:
 - a. Require Contractor to submit to a plan of monitoring and reporting, as Covered California may deem necessary to maintain compliance with this Agreement;
 - b. Provide Contractor with an opportunity to cure the breach; or
 - c. After giving Contractor an opportunity to cure the breach, or upon breach of a material term of this Exhibit, terminate this Agreement for Cause pursuant to Exhibit C.

A failure of Covered California to exercise any of these options shall not constitute a waiver of its rights under this section.

2. Upon completion of this Agreement, or upon termination of this Agreement, at Covered California's direction Contractor shall either return all PII to Covered California, or shall destroy all PII in a manner consistent with applicable State and Federal laws, regulations, and agency guidance on the destruction of PII. If return or destruction of PII is not feasible, Contractor shall explain in writing to the Covered California's Chief Privacy Officer why return or destruction is not feasible. The obligations of Contractor under this Agreement to protect PII and to limit its use or disclosure shall continue and shall survive until all PII is either returned to Covered California or destroyed.

California Health Benefit Exchange

EXHIBIT E
Agent Agreement
MARKETING & BRANDING GUIDELINES

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

A. Trademark and Brand Usage Guidelines for Communications and Web Sites

1. Covered California's brand and trademarks, as described below ("Covered California Marks") are valuable intellectual property and important assets of the organization. The Covered California Logo, and any other logo used to identify any product or service offered by Covered California, may not be used in any manner inconsistent with this Exhibit E and the Brand Style Guide for Certified Insurance Agents available at www.CoveredCA.com or <http://hbex.coveredca.com/toolkit> and herein incorporated by reference without express written permission from Covered California.
2. The improper or unauthorized use of Covered California Marks or other intellectual property is a violation of Covered California's rights and is strictly prohibited. Unauthorized use or misrepresentation of Covered California, the California Health Benefit Exchange is also a violation of state law Section 100510 to the Government Code, Section 1360.5 of the Health and Safety Code, and Section 790.03 of the Insurance Code.
3. Section 100510 to the Government Code, Section 1360.5 of the Health and Safety Code, and Section 790.03 of the Insurance Code prohibits the holding oneself out as representing, constituting, or otherwise providing services on behalf of the California Health Benefit Exchange established pursuant to Section 100500 et. seq of the Government Code without a valid agreement with the California Health Benefit Exchange to engage in those activities. Any unauthorized use of the Covered California brand is outside of the scope of this agreement.
4. The Exchange reserves the right to revise the Brand Style Guide for Certified Insurance Agents, and Agent will be bound to comply with the material contained in the updated guide immediately upon receipt or other notification of the new guide.

B. Non-Exclusive License

1. Subject to the terms of this Exhibit and Brand Style Guide, Covered CA conveys and Contractor accepts a non-exclusive, royalty-free license in the following Covered California Marks for the purposes specified within the Scope of Work (Exhibit A) of this Agreement.

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2. Contractor shall be entitled to use the Covered California Marks in conjunction with the marketing materials and websites referenced herein subject to the terms and conditions set forth within this Exhibit and Brand Style Guide for the sole purpose of promoting the services performed by Contractor under Exhibit A.
3. Covered California retains final discretion to determine if an Agent's use of the Covered California marks complies with the terms and conditions set forth in this Exhibit and the Brand Style Guide.
4. Contractor accepts the above-referenced license "As-Is" without any representations or warranties, including but not limited to warranties of ownership or fitness for a particular purpose.
5. Contractor expressly acknowledges and agrees that nothing in this Exhibit is intended to nor shall result in the transfer of any ownership interests and that the Exchange shall at all times remain the sole and exclusive owner of the Covered California Marks.
6. In addition to the terms and conditions set forth herein, Contractor understands and agrees that the Exchange shall at all times be entitled to impose additional restrictions upon the use of the Covered California Marks for the sole purpose of protecting the goodwill and overall reputation of the Exchange and Covered California Marks, in compliance with all applicable law.
7. Contractor shall be entitled to sub-license the use of the Covered California Marks; provided, however, that Contractor shall ensure that any and all sub-contractors

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shall execute and strictly abide by the terms of conditions specified within this Exhibit.

C. Non-Affiliation & Non-Endorsement

1. Neither the above-referenced license nor Contractor's use of the Covered California Marks shall at any time be interpreted or construed as creating a partnership, co-ventureship or other agency relationship between Contractor and Covered CA. Other than the use of the Covered California Marks in accordance with the license conveyed in this Exhibit, Contractor shall strictly refrain from any representations reasonably calculated to suggest or imply the existence of any such relationship.
2. The above-referenced license shall likewise at no time be interpreted or construed as an express or implied endorsement of any product, service or activity provided by or engaged in by Contractor involving the Covered California Marks.
3. Contractor shall at all times defend, indemnify and hold the Exchange harmless from and against any and all liability or claims arising directly or indirectly from any misrepresentation by Contractor of:
 - a. An agency relationship between the Exchange and Contractor; and
 - b. An endorsement by the Exchange of any product, service or activity provided or engaged in by Contractor for which the Covered California Marks are at any time used.

D. Term & Termination

1. Unless otherwise terminated earlier, the term of the license conveyed within this Exhibit shall commence on the effective date of the original Agreement and shall renew automatically on the date the original Agreement terminates. Contractor shall immediately discontinue the use of the Covered California Marks upon the termination of the Agreement for any reason.

E. Disclaimer

1. All marketing materials, external communications, or websites which use Covered California Marks or refer to Covered California in any way must be accompanied by the following disclaimer in a conspicuous font:

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MARKETING & BRANDING GUIDELINES

- a. “Covered California,” “California Health Benefit Exchange”, and the Covered California Logo are registered trademarks or service marks of Covered California, in the United States. 2. Each web site that uses Covered California Marks must also include the following disclosure statement:
- b. This web site is owned and maintained by [Agent Name], which is solely responsible for its content. This site is not maintained by or affiliated with Covered California, and Covered California bears no responsibility for its content. The e-mail addresses and telephone numbers that appear throughout this site belong to [Agent Name], and cannot be used to contact Covered California.
- c. For purposes of this section, “conspicuous” means displayed apart from other print in not less than 12-point boldface font type in capital letters that is at least 2-point boldface font type sizes larger than the next largest print used, and in contrasting type, layout, font, or color in a manner that clearly calls attention to the language.
2. For Agents who use an online website to directly assist Consumers with enrolling into the Exchange, the following disclaimer must appear in a pop-up window before the Consumer inputs his or her Personally Identifiable Information into any application documents:

“You are about to start an application to apply for health insurance through (Agent Name), a Certified Insurance Agent for Covered California. By clicking “Okay,” you acknowledge that (Agent Name) will have access to the personally identifiable information that you must provide on the following application to complete the eligibility and enrollment process. If you do not authorize (Agent Name) to have access the personally identifiable information that you must provide on the following application, click “Cancel” and do not proceed with the application.”

The pop-up window must display this text before the Consumer inputs his or her information into any application documents. It must prevent the Consumer from inputting his or her information unless the Consumer clicks “Okay” to continue. If the Consumer clicks “Cancel,” then the Consumer may not proceed with the application. The Consumer must click “okay” in order to close the pop-up window and commence the application.

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3. For Agents who use an online website to assist Consumers with enrolling Consumers into the Exchange, the following disclaimer must appear in a pop-up window before the Consumer submits his or her application to the Agent's website and/or CalHEERS:

"By clicking "Okay", you acknowledge that (Agent Name) is your insurance agent of record and authorize (Agent Name) to act in that capacity. (Agent Name) will have access to the personally identifiable information that you provide in order to complete the eligibility and enrollment process. For further information, please contact (Agent Name) directly. Click "Cancel" if you do not authorize (Agent Name) to be your agent of record and have access to personally identifying information that you provide to complete the eligibility and enrollment process. Otherwise, please click "okay" to continue."

The pop-up window must display this text before the Consumer submits his or her application documents. It must prevent the Consumer from submitting his or her application unless the Consumer clicks "Okay" to continue. If the Consumer clicks "Cancel," then the Consumer may not submit the application.

4. Covered California retains final discretion to determine whether Agent is using the disclaimers in Subsection E of Exhibit E in a manner that complies with the terms and conditions of this Agreement and the Brand Style Guide.

F. Improper Uses of Covered California's Marks

1. Covered California's Marks may not be presented or used:
 - a. In a manner that suggests that editorial content has been authored by, or represents the views or opinions of, Covered California or its representatives, personnel or affiliates;
 - b. In a manner that is misleading, defamatory, obscene, infringing or otherwise objectionable;
 - c. In connection with any material that infringes the trademark, copyright or any other rights of any third party;
 - d. As part of a name of a product or service of a company or organization other than Covered California;

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- e. In a manner that infringes, derogates, dilutes, or impairs the rights of Covered California in such marks; or
 - f. In a manner that violates the Brand and Style Guide
2. Covered California retains final discretion to determine whether the Agent's use of Covered California's marks violates the terms of this Agreement and/or the Brand Style Guide.

G. Improper Uses of California Health Benefit Exchange or Covered California in Agent's Internet Domain Name

- 1. Agent may not use the names California Health Benefit Exchange, Exchange, Covered California, Covered CA, the use of CCSB or Covered California for Small Business as a noun, or any derivations thereof in the Agent's Internet domain name:
 - a. In a manner that creates a likelihood of confusion that the Agent's web site is sponsored by or affiliated with Covered California; and
 - b. Without the express written permission of Covered California.

H. Clearly Identifying Exchange Products

- 1. For any medium of communications used with Consumers including, but not limited to, in-person, over the phone, or online, Agent must clearly identify which products are available through the Exchange as well as which products are sold outside the Exchange.

I. Marketing Materials – Definition

- 1. The term "marketing materials" extends beyond the public's general concept of advertising materials and includes any materials developed or distributed by a Certified Insurance Agent, which are aimed at prospective or existing clients and consumers of the Individual and CCSB Exchanges. Marketing materials include, but are not limited to, anything with Covered California Marks, printed collateral material, print advertising, social and digital media material and television and radio ads.

EXHIBIT E
Agent Agreement
MARKETING & BRANDING GUIDELINES

J. Marketing Materials Subject to the Agent Marketing Guidelines

1. All marketing materials that mention, promote participation in, or reference Covered California are subject to this Exhibit E and the Brand Style Guide for Certified Insurance Agents. However, these Agent Marketing Guidelines do not apply to those marketing materials that do not promote, discuss or reference Covered California in any way.

K. General Marketing Material and Direct Mail Communications.

1. Upon request, Certified Insurance Agent shall provide Covered California with at least one (1) copy, unless otherwise specified by Covered California, of any marketing material Certified Insurance Agent intends to use, mail, or has mailed, to its clients or prospective clients, including, but not limited to, brochures, leaflets, postcards, presentations, advertisements in phone books, newsletters, health education materials, and special announcements. Covered California shall have the right to request changes to or prohibit the distribution or use of any marketing material, as determined by Covered California in its sole discretion.

L. Submission Requirements & Process for Advertising Material

1. Any question regarding the compliance of Contractor's marketing materials with this Exhibit E and the Brand Style Guide for Certified Insurance Agents must be submitted for review and approval to Covered California at agents@covered.ca.gov Agents shall allow at least 10 (ten) business days from the date of the request for Covered California to review any materials submitted.
 - a. When submitting required materials for approval, indicate the following in the subject line: Advertising Approval Request - Agent name and material type.
 - b. When submitting revised material, please indicate so in the body of the email and include the original submission date of the material.
2. Do not bundle multiple materials in the same submission email. Send a separate email for each material. The only exception is translations. Translations may be sent in one email along with the corresponding English version if available.

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M. Confidential Treatment of Certified Insurance Agent

1. To the extent that material sent from Certified Insurance Agent is not already in the public domain, Covered California shall treat such marketing materials as confidential information and exempt from public disclosure if such material is deemed to be or qualifies for treatment as confidential information under the Public Records Act, Government Code Sections 6250, et seq. and other applicable Federal and State laws, rules and regulations.

N. Distribution of Marketing Materials Developed by Covered California.

1. Certified Insurance Agent may distribute and reproduce marketing materials developed and made available by Covered California. Certified Insurance Agent shall be responsible for any printing costs for such material and for all costs related to the distribution of those materials, including, but not limited to, mailing and postage costs.

California Health Benefit Exchange

**Agent Agreement
Signature Page**

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

CONTRACTOR

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

BY *(Authorized Signature)*

DATE SIGNED *(Do not type)*


PRINTED NAME AND TITLE OF PERSON SIGNING

STATE OF CALIFORNIA

AGENCY NAME

California Health Benefit Exchange

BY *(Authorized Signature)*

DATE SIGNED *(Do not type)*

PRINTED NAME AND TITLE OF PERSON SIGNING

Peter V. Lee, Executive Director

ADDRESS

1601 Exposition Blvd, Sacramento, CA 95815
