

**STANDARD AGREEMENT AMENDMENT**

STD. 213 A (Rev 6/03)

CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED 58 Pages

AGREEMENT NUMBER	AMENDMENT NUMBER <b>A1</b>
REGISTRATION NUMBER	

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

STATE AGENCY'S NAME

**California Health Benefit Exchange**

CONTRACTOR'S NAME

2. The term of this Agreement is Per Exhibit A Item H

3. The maximum amount of this Agreement after this amendment is: Undefined

4. The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein:

- I. Purpose: The purpose of this amendment is to clarify the Contractor's legal business name (if applicable) and to modify Exhibits A, B, C, E, & F as follows.
- II. Exhibit A (13 Pages), is hereby updated and replaced in its entirety.
  - a) Section A, Purpose, update and replaced "SHOP" to Covered California for Small Business (CCSB).
  - b) Added footnote expansion of small employer market to employer groups with 51-100 full-time equivalent employees.
  - c) Section B.3, Added Book of Business.
  - d) Section B.10, Added definition of "Enrolled Employee."
  - e) Section C.1, Added clarifying language for the term "good standing" under Insurance Code section 1626.

(Continued on second page)

All other terms and conditions shall remain the same.

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

<b>CONTRACTOR</b>		<b>CALIFORNIA</b> Department of General Services Use Only
CONTRACTOR'S NAME <i>(If other than an individual, state whether a corporation, partnership, etc.)</i>		
BY <i>(Authorized Signature)</i> 	DATE SIGNED <i>(Do not type)</i>	
PRINTED NAME AND TITLE OF PERSON SIGNING		
ADDRESS		
<b>STATE OF CALIFORNIA</b>		<input checked="" type="checkbox"/> Exempt per:GC Sec 100505
AGENCY NAME		
<b>California Health Benefit Exchange</b>		
BY <i>(Authorized Signature)</i> 	DATE SIGNED <i>(Do not type)</i>	
PRINTED NAME AND TITLE OF PERSON SIGNING <b>Peter V. Lee, Executive Director</b>		
ADDRESS <b>1601 Exposition Blvd., Sacramento, CA 95815</b>		

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- f) Section C.4.a, Added language specifying that Agent will only be included on Consumer applications in individual market when the consumer expressly authorizes the Agent to act as the Consumer's agent of record and authorizes the Agent to access the Consumer's personally identifiable information to complete the eligibility and enrollment process.
  - g) Section C.5.a, Added language regarding the Agent's scope of work as it pertains to CCSB.
  - h) Section C.8.b, Added requirement of annual voter registration training.
  - i) Section C.16, Transferring Agent's Book of Business.
  - j) Section H, Added revised term of this Agreement; now for five years commencing on the date that the Exchange signs the Std. 213A Standard Agreement Amendment, and shall be automatically renewed for an additional five year term unless the Exchange terminates the Agreement under Subsection E of Exhibit C.
- III. Exhibit B (2 Pages), is hereby updated and replaced in its entirety.
- a) Section A.2.a, Added language specifying that payment of commissions in CCSB is contingent upon payment of monthly premiums by Qualified Employer.
  - b) Section A.2.b.i, Added clarifying language for the term "good standing" under Insurance Code section 1626.
  - c) Section A.3, Removed Section A.3 regarding payment for Medi-Cal enrollment assistance and Federal Funding and QHP Assessment Contingency Clause.
- IV. Exhibit C (20 Pages), is hereby updated and replaced in its entirety.
- a) Section C.1, Changed "calendar days" to "business days" in the Dispute Provision section.
  - b) Section E.2, Added clarifying language to specify how Agents will continue to receive commission during suspension.
  - c) Section T, Deleted Section T – "Evaluation of Contractor."
  - d) Section U, Added Section U – "Communication with Contractor."
  - e) Section V, Added Section V – "Effective Date of Notices."
- V. Exhibit E (8 Pages), is hereby updated and replaced in its entirety.
- a) Section A.1, Updated website address where latest Brand Style Guide can be found.
  - b) Section B.1, Inserted Covered California – Certified Insurance Agent logo into Section B.
  - c) Section B.3, Inserted language stating that Covered California retains final discretion to determine if Agent's use of the Covered California marks complies with the terms and conditions of the Agent Agreement.
  - d) Section E.2 & 3, Added disclaimer requirement for Agents who use an online website to directly assist Consumers with enrolling into the Exchange.
- VI. Exhibit F (2 Page), is hereby updated and replaced in its entirety.
- a) Updated commission schedule.

**Exhibit A**  
**Agent Agreement**  
**SCOPE OF WORK**

This Agreement is made between the State of California, acting by and through the California Health Benefit Exchange, hereafter referred to as the "Exchange" and

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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

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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, new health insurance options. CCSB is designed specifically for small employers with 50 or fewer eligible employees and offers affordable health coverage through a variety of health insurance companies.<sup>1</sup>

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1. In 2016, small employers with 100 full-time equivalent employees or less may participate in CCSB. This expansion is subject to cancellation, change, or delay. See Section 1304(b) of the Patient Protection and Affordable Care Act and Section 1357.500(k) of the Health and Safety Code.

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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.

**B. Definitions:**

1. Agent(s): individuals who are licensed and in good standing as a life licensee under Insurance Code Section 1626 by the California Department of Insurance to transact in accident and health insurance.
2. Advance Payments of Premium Tax Credit (APTC): Payment of the tax credits authorized by 26 U.S.C. 36B and its implementing regulations, which are provided on an advance basis to an eligible individual enrolled in a QHP through an Exchange in accordance with Section 1412 of the Affordable Care Act.
3. **Book of Business: The collection of Consumers and/or Qualified Employers that have been delegated to the Agent and from which the Agent receives commissions pursuant to Exhibit B.**
4. 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.
5. Certified Insurance Agent: An Agent certified by the Exchange to transact in the individual and CCSB Exchanges.
6. 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

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

7. 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.
8. Consumer: A person or entity seeking information on eligibility and enrollment or seeking application assistance with a health insurance or health related product available through the Exchange. The term consumer includes, but is not limited to, an applicant, an application filer, authorized representative, employer, qualified employee, qualified employer, qualified individual, small employer, or enrollee as defined in Section 6410, Title 10, California Code of Regulations.
9. Employee: An individual as defined in Section 2791 of the Public Health Service Act (42 U.S.C. 300gg-91(d)(5)).
10. **Enrolled Employee: An employee who is enrolled in a Qualified Health Plan (QHP)**
11. 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.
12. 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.
13. Individual Market: A market as defined in Section 1304(a)(2) of the Affordable Care Act.
14. 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.
15. 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.

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16. 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.
17. Qualified Health Plans (QHPs): QHP has the same meaning as that term is defined in Patient Protection and Affordable Care Act Section 1301, 42 U.S.C. 18021. If a Standalone Dental Plan is offered through the Exchange, another health plan offered through the Exchange shall not fail to be treated as a QHP solely because the plan does not offer coverage of benefits offered through the standalone plan under 42 U.S.C. 18022(b)(1)(J).
18. 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).
19. 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 shall comply with the certification standards set forth by the Exchange in the California Code of Regulations, Title 10, section 6800 et seq. prior to assisting Consumers.
3. Due Diligence. Agent shall solicit Consumers to apply for QHPs sold through the Exchange.
4. Individual Market.
  - 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 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. Agent will only be included on an application when

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Consumer has authorized the Agent to act as the Consumer's agent of record and has authorized the Agent to access the Consumer's personally identifiable information to complete the eligibility and enrollment process. For Agents using an online application, please see Subsection D of Exhibit E for further information;

- 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. To allow for the proper processing of Agent's compensation, Agent must ensure the completion the following sections of each consumer's application to the Exchange:
    - i. Name and license number of the Certified Insurance Agent; and
    - ii. Agent's personal identification number for electronic applications or Agent's signature and date of signature for paper applications.
5. Covered California for Small Business Applications
- 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 use the CCSB Employer and Employee applications to determine eligibility and to collect information necessary for enrollment in CCSB. Agent will only be included in an application when Employer has expressly authorized the Agent to act as the Employer's agent of record and has authorized the 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.

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- c. To allow for the proper processing of Agent's compensation, Agent must ensure the completion the following sections of each consumer's application to the Exchange:
  - i. Name and license number of the Certified Insurance Agent; and
  - ii. Agent's personal identification number for electronic applications or Agent's signature and date of signature for paper applications.
6. 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 ensure that no Consumer is discriminated against, Agent shall seek assistance or guidance from the Exchange when needed.
7. 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 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 agrees 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 agrees not to enter into, alter, deliver or terminate any coverage on behalf of the Exchange or any QHP, extend the time for payment of charges, or bind the Exchange or any QHP in any way;
  - 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; and



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- ii. When Agent assists Consumers with a paper application, Agent shall not accept any payments and the Consumer shall be instructed by Agent to pay the premium statement issued by the QHP.
      - b. For CCSB, monies received by Agent from employers for or on behalf of the Exchange shall be made payable to the Exchange and received by Agent in a fiduciary capacity. Monies received by Agent for CCSB shall not be commingled by Agent with personal funds of Agent, 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. Agent shall not receive any subsequent payments.
- 12. Records. Agent shall maintain complete records (i) of all transactions pertaining to applications submitted to and accepted by the Exchange, (ii) as may be required by the California Department of Insurance, or California Department of Managed Health Care or any other governmental entity, and (iii) in connection with Agent's relationship with the Exchange. Any and all records described above 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.
- 13. 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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14. 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.
15. Agent of Record.
  - a. For the Individual Market, Agent of Record policies are defined and administered by the health plans. The Exchange does not define Agent of Record policies for participating QHPs.
  - b. For the CCSB Exchange, Agent shall advise Employers that any Agent of Record changes must be made by providing the Exchange with a written request made by the Employer's authorized representative, which identifies the name, address, and if known, tax identification number of the new Agent of Record. Upon receipt of the Employer's request, the Exchange will notify the Employer's 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 be the Employer's designated Agent of Record.
16. Transferring Agent's Book of Business
  - a. For the CCSB Exchange, the Agent may transfer his or her Book of Business to another Certified Insurance Agent, subject to the Exchange's written consent. Such consent shall not be unreasonably withheld. In order to transfer the Book of Business, the Agent must perform the following actions:
    - i. Provide written notification to the Exchange at least 30 calendar days prior to transferring the Book of Business. This notification must identify the transferee of the Book of Business as well as the planned date of the transfer. For purposes of this section, "planned date of transfer" shall mean the date upon which the Agent contemplates that the transfer of the Book of Business will be effective. Agent understands that the transfer may occur subsequent to the planned date of transfer and is dependent upon the Exchange's ability to process the transfer in a timely manner;

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- ii. Provide written notification to all Qualified Employers in the Agent's book of business at least 30 calendar days prior to the planned date of transfer. This notice must identify the transferee of the Book of Business and the planned date of the transfer; and
- iii. Submit to the Exchange a Book of Business transfer form that identifies the Qualified Employers who are being transferred. The Exchange shall provide the Agent with the Book of Business transfer form upon request or on the Covered California website at [www.coveredca.com](http://www.coveredca.com) or [hbex.coveredca.com/agents](http://hbex.coveredca.com/agents). The Agent shall also use the form to attest that he or she provided his or her Qualified Employers with the notice identified in Section C.16.a.ii. The Agent shall submit this form at least five (5) business days prior to the planned date of the transfer.

Upon receiving the Book of Business transfer form, the Exchange shall process the form in a timely manner to effectuate the transfer. Once the transfer has been completed, the Exchange shall provide the Agent with written notification advising the Agent of the completed transfer. Any assignment of commissions to the transferee shall be governed by Section A.2.c of Exhibit B.

17. 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 prior to carrying out any consumer assistance functions:
  - i. QHPs (including the metal levels described at 45 C.F.R. § 156.140(b)), and how they operate, including benefits covered, payment processes, rights and processes for appeals and grievances, and contacting individual plans;
  - ii. The range of insurance affordability programs, including Medicaid, the Children's Health Insurance Program, and other public programs;
  - iii. The tax implications of enrollment decisions;

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- iv. Eligibility requirements for premium tax credits and cost-sharing reductions, and the impacts of premium tax credits on the cost of premiums;
- v. Contact information for appropriate federal, state, and local agencies for consumers seeking additional information about specific coverage options not offered through the Exchange;
- vi. Basic concepts about health insurance and the Exchange; the benefits of having health insurance and enrolling through an Exchange; and the individual responsibility to have health insurance;
- vii. Eligibility and enrollment rules and procedures, including how to appeal an eligibility determination;
- viii. Providing culturally and linguistically appropriate services;
- ix. Ensuring physical and other accessibility for people with a full range of disabilities;
- x. Understanding differences among health plans;
- xi. Privacy and security standards applicable under 45 C.F.R. § 155.260 for handling and safeguarding consumers' personally identifiable information;
- xii. Working effectively with individuals with limited English proficiency, people with a full range of disabilities, people of any gender identity, people of any sexual orientation, and vulnerable, rural, and underserved populations;
- xiii. Customer service standards;
- xiv. Outreach and education methods and strategies;
- xv. Applicable administrative rules, processes, and systems related to Exchanges and QHPs; and
- 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.

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18. Agent shall not concurrently be certified as a Plan Based Enroller defined in Article 9, Title 10, of the California Code of Regulations.

**D. Exchange Rights**

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

**E. Agent Appointment**

1. Appointments for plans sold through the Exchange shall be made as follows:
  - a. Individual Market
    - i. The Exchange does not appoint Agents in the Individual Market. QHPs are responsible for maintaining a reasonable appointment process for appointing agents to sell QHPs in the Individual Market.
  - b. CCSB Exchange
    - i. The Exchange grants to 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 Agents, and does not prohibit 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;

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- 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 years commencing on the date that the Exchange signs the Std. 213A Standard Agreement Amendment, and shall be automatically renewed for an 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 Agent Services  
P.O. Box 7010  
Newport Beach, CA 92658  
(877) 453-9198  
[agents@covered.ca.gov](mailto:agents@covered.ca.gov)

**EXHIBIT B**  
**Agent Agreement**  
**BUDGET DETAIL AND PAYMENT PROVISIONS**

**A. Payment**

1. For sales in the Individual Exchange
  - a. QHPs are solely responsible for compensating agents for plans sold in the Individual Exchange. Compensation rates are set by QHPs and may vary depending on the terms and conditions established by agreement with Agent.
2. For sales in the CCSB
  - a. The Exchange shall pay Agent a percentage of the premium paid and retained for each QHP sold by Agent through the CCSB Exchange. Payment of commissions is contingent upon payment of premiums by the Qualified Employer. The percentage for each employer group shall be established by the "Schedule of Commissions" in place on the effective date of coverage. The "Schedule of Commissions" in Exhibit F is applicable to Contracts entered into on and after all parties sign this Agreement. Unless all parties agree to sooner effective date, the Exchange may modify or replace its commission schedule upon 45 calendar days prior notice to Agent. Such modified or replacement schedule shall apply only to all other QHPs sold by Agent effective on or after the effective date of such modification or replacement. The Exchange will provide Agent with an updated "Schedule of Commissions" whenever changes occur by posting such changes to [hbex.coveredca.com/agents](http://hbex.coveredca.com/agents). Agent understands and agrees that no commissions will be paid for Individual Conversion Plan Contracts.
  - b. Commissions shall continue to be paid if and only if the Qualified Employer remains enrolled in the CCSB, the Qualified Employer pays monthly premiums, and Agent continues to meet the following conditions:
    - i. Maintain licensure and good standing with the California Department of 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 valid license and good standing by the California Department of Insurance as a condition of eligibility.
    - ii. Agent maintains Certification with the Exchange per California Code of Regulations, Title 10, section 6800 et seq. In the event

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that Agent's certification with the Exchange is renewed within sixty days of decertification, Agent shall be compensated retroactively and commissions reinstated.

- iii. The Exchange does not terminate Agent's contract For Cause as described in Exhibit C, Section E, subsection 1.

c. Commission Assignment Rights

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

**B. Prompt Payment Clause:**

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

**C. Non-resident Tax Withholdings:**

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

**EXHIBIT C**  
**Agent Agreement**  
**GENERAL TERMS AND CONDITIONS**

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

**EXHIBIT C**  
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**GENERAL TERMS AND CONDITIONS**

**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
  - d. The dollar amount in dispute, if applicable.
2. Within 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:

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- 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 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 30 business days after receiving Contractor's written appeal. If the Executive Director fails to render a final decision within 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 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 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.

**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

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Exchange shall not be liable to pay Contractor any compensation from the date of termination, and all costs to the Exchange shall be remitted to the Exchange within 30 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. If this Agreement is terminated because of the death of an Agent, Agent's legal heirs may elect to, within one-hundred-eighty (180) days following the death of Agent, exercise the Assignment of Commission Rights set out in Section A, sub-section c of Exhibit B;
- b. Revocation, suspension or expiration of Agent license by the California Department of Insurance;
- c. Revocation, suspension or expiration of Agent's certification by the Exchange.
- d. Commission of a fraudulent, illegal, deceitful or dishonest act as determined the Exchange;
- e. Termination of the Agent 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;
- 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. Vesting:

This Agreement may be suspended for the sale of new business at any time by either party upon giving 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

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following the 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.

- a. Maintains licensure and certification; and

Continues to service Consumers for whom Agent is the Agent of Record in accordance with this Agreement, unless the Agent of Record is changed as described in Exhibit A, Section C.

**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

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

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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 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

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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 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

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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.
- 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.

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

8. Drug-Free Workplace Requirements:

Contractor shall comply with the requirements of the Drug-Free Workplace Act of 1990 and shall provide a drug-free workplace by taking the following actions:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- b. Establish a Drug-Free Awareness Program to inform employees about:
  - i. The dangers of drug abuse in the workplace;
  - ii. The person's or organization's policy of maintaining a drug-free workplace;
  - iii. Any available counseling, rehabilitation and employee assistance programs; and
  - iv. Penalties that may be imposed upon employees for drug abuse violations.
- c. Every employee who works on the proposed Agreement shall:

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- i. Receive a copy of the company's drug-free workplace policy statement; and
- ii. Agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

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

9. National Labor Relations Board Certification:

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

10. Payee Data Record Form Std 204:

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

11. Computer Software Copyrights:

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

12. Activities Abroad

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

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13. Covenant Against Contingent Fees

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

14. Child Support Compliance Act:

In accordance with the Child Support Compliance Act,

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

15. Union Organizing:

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

16. Recycling Certification:

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

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in the Public Contract Code, Section 12209. Contractor may certify that the product contains zero recycled content.

17. Resource Conservation and Recovery Act

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

18. Antitrust Claims:

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

- a. The Government Code Chapter on Antitrust claims contains the following definitions:
  - i. "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
  - ii. "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.
- b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.
- c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble

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damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

- d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

19. Domestic Partners:

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

**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

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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 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. Priority Hiring Considerations for Recipients Of Aid**

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

**M. 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).

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**N. Insurance Requirements**

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

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

**O. Intellectual Property Rights:**

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

**P. 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.

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

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

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.

**Q. 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.

**R. Resolution:**

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

**S. 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

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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.

**T. Federal Terms and Conditions**

1. OMB Circular A-133 Audit

If the Contractor is a state or local agency, or non-profit organization including a non-profit institution of higher education (as defined by the Federal Office of Management and Budget [OMB] Circular A-133) and expends \$500,000 or more in federal funds, the Contractor agrees to obtain an annual single organization wide, independent audit in accordance with the Federal Office of Management and Budget (OMB) Circular A-133. All OMB Circular A-133 audit reports shall meet the reporting requirements established in OMB § 1101.320 "Report Submission" and a copy shall be forwarded to funding program of DHCS.

2. 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."

3. 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

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awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

4. Debarment and Suspension Certification

For federally funded agreements, Contractor certifies that to the best of his/her knowledge and belief he/she and their principals or affiliates or any sub-contractor utilized under this agreement, are not debarred or suspended from federal financial assistance programs and activities nor proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. The Contractor also certifies that it or any of its sub-contractors are not listed on the Excluded Parties Listing System (<http://www.sam.gov>) (Executive Order 12549, 7 CFR Part 3017, 45 CFR Part 76, and 44 CFR Part 17).

5. Certification Regarding Lobbying

Applicable to Grants, Subgrants, Cooperative Agreements, and Contracts Exceeding \$100,000 in Federal Funds.

6. For Agreements with Contractors who are State entities not under the authority of the Governor, or cities, private firms or agencies which are receiving in excess of \$100,000 in federal funds from the California Health Benefit Exchange to perform services. By signing this Agreement the Contractor certifies that to the best of his or her knowledge and belief, that:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into of a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal Grant or agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

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- c. The Contractor shall require that the language of this certification be included in the award documents for all covered subawards exceeding \$100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.
7. 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.

**U. 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 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.

**V. 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

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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”).

**B. Definitions**

1. The following definitions shall apply to this Exhibit:
  - a. 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.

(OMB M-07-16; California Civil Code section 1798.29.)

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**PRIVACY AND SECURITY REQUIREMENTS**

- b. Disclosure: The release, transfer, provision of access to, or divulging in any other manner of PII outside the entity holding the information.
- c. Federal Tax Information: 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)
- d. Personal Information: 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)
- e. 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).
- f. Privacy Incident: the attempted or successful unauthorized access, acquisition, use, disclosure, modification, or destruction of PII or interference with system operations in an information system that processes, maintains, or stores PII.
- g. Protected Health Information: 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.
- h. 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

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

**C. Applicable Laws**

1. Contractor shall comply with any and all federal and state privacy and security laws, as well as applicable rules and regulations pertaining to the Exchange 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.
2. Exchange Privacy and Security Rules (45 C.F.R. section 155.260).
  - a. In accessing, collecting, using or disclosing PII in performing functions for the Exchange 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):
    - i. Individual access. Individuals shall be provided with a simple and timely means to access and obtain their PII in a readable form and format;
    - ii. 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;
    - iii. Openness and transparency. Contractor shall be open and transparent regarding its policies, procedures, and technologies that directly affect individuals and/or their PII;
    - iv. Individual choice. Individuals shall be provided a reasonable opportunity and capability to make informed decisions about the collection, use, and disclosure of their PII;

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- v. 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;
  - vi. 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;
  - vii. 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,
  - viii. 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.
1. California Information Practices Act. (Civil Code section 1798 et seq.)
    - a. 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 the Exchange as may be reasonably necessary for the Exchange to comply with these provisions.
  2. Health Insurance Portability and Accountability Act ("HIPAA").
    - a. Contractor expressly acknowledges and agrees that the Exchange is not a health care provider, a health care plan, or a health care clearinghouse. Accordingly, the parties mutually acknowledge and agree that, for purposes of this Agreement, the Exchange is not a Covered Entity as such term is specifically defined in HIPAA.
    - b. Contractor expressly acknowledges and agrees that where the Exchange 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 the Exchange's Business Associate, as such terms are specifically defined in HIPAA.
    - c. For certain programs related to the administration of the Medi-Cal Program, the Exchange has agreed to be the Business Associate of the

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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 the Exchange'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 the Exchange by DHCS or for the purposes of the Medi-Cal program, Contractor shall comply with the applicable terms and conditions of HIPAA.

3. IRS Code section 6103 and Publication 1075

- a. Per the Exchange 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.

4. Fingerprinting and Background Checks. (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.
- b. For any insurance agent or agent staff licensed by the California Department of Insurance (CDI) the Exchange may obtain a criminal history check in accordance with Government Code section 1043 from CDI.

**D. Consumer Rights**

1. Accounting of Disclosures

- a. Contractor shall assist the Exchange in responding to accounting requests by individuals that are made to the Exchange 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.
- 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.

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2. Copies of Records Requests

- a. Regardless of whether a request is made to the Exchange 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 the Exchange directs or agrees to, whether at the request of the Exchange or an Individual.
- b. Regardless of whether a request to amend records is made to the Exchange 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

- 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 the Exchange or to Contractor, Contractor shall

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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 the Exchange.

**E. Security Controls and Safeguards**

1. Safeguards:
  - a. At a minimum, contractor shall establish and implement operational, technical, administrative and physical safeguards that are consistent with any applicable laws to ensure
    - i. The confidentiality, integrity, and availability of personally identifiable information created, collected, used, and/or disclosed by the Exchange;
    - ii. Personally identifiable information is only used by or disclosed to those authorized to receive or view it;
    - iii. Return information, as such term is defined by section 6103(b)(2) of the Code, is kept confidential under section 6103 of the Code;
    - iv. Personally identifiable information is protected against any reasonably anticipated threats or hazards to the confidentiality, integrity, and availability of such information;
    - v. Personally identifiable information is protected against any reasonably anticipated uses or disclosures of such information that are not permitted or required by law; and

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- vi. Personally identifiable information is securely destroyed or disposed of in an appropriate and reasonable manner and in accordance with retention schedules.
  
- b. 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.
  
- c. Contractor shall update these safeguards as appropriate and as requested by the Exchange.

**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;
  - d. Training employees, contractors, and subcontractors;
  
- 2. Upon request, Contractor shall provide the Exchange with a written policies and procedures adopted by Contractor to meet its obligations under this Section.

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**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 the Exchange. 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.
3. Contractor represents and agrees that it shall only request that the Exchange 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 the Exchange 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. Privacy and Security Incidents**

1. Contractor shall immediately report to the Exchange Privacy Officer at [PrivacyOfficer@covered.ca.gov](mailto:PrivacyOfficer@covered.ca.gov) any actual or suspected Privacy Incident or Security Incident 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

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- f. Any other information necessary for the Exchange to conduct an investigation and include in notifications to the individual(s) or relevant regulatory authorities under applicable privacy and security requirements.
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 the Exchange in investigating the actual or suspected incident and in meeting the Exchange'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 the Exchange, 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 the Exchange in developing content for any public statements and shall not give any public statements without the express written permission of the Exchange.
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 the Exchange 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 the Exchange within one week of its completion. Notwithstanding the foregoing, the Exchange reserves the right to reject Contractor's assessment and direct Contractor to treat the incident as a Breach.

**I. Right to Inspect**

1. The Exchange 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 the Exchange and shall certify the same to the Exchange Privacy Officer in writing. The fact that the Exchange 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 the Exchange's rights under this Agreement and this Exhibit.

**J. Indemnification**

1. Contractor shall indemnify, hold harmless, and defend the Exchange from and against any and all costs (including mailing, labor, administrative costs, vendor charges, and any other costs the Exchange 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 the Exchange giving notice of any claims to Contractor after discovery thereof. If Contractor should publish or disclose PII 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.

**K. Termination of Agreement**

1. If Contractor breaches its obligations under this Exhibit as determined by the Exchange, the Exchange may, at its option:

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- a. Require Contractor to submit to a plan of monitoring and reporting, as the Exchange 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 the Exchange 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 the Exchange's direction Contractor shall either return all PII to the Exchange, 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 Exchange'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 the Exchange or destroyed.

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**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](http://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 shall execute and strictly abide by the terms of conditions specified within this Exhibit.

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**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:
  - 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

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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.

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:

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“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;
  - 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

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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.

**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.

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**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](mailto: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.

**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.

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**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.

**EXHIBIT F**  
**Agent Agreement**  
**SCHEDULE OF COMMISSIONS**

**A. Employer Groups with 1 to 50 Enrolled Employees**

The following is the Schedule of Commissions for new CCSB employer groups that have 1 to 50 Enrolled Employees, effective January 1, 2014 and later:

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

Should an employer group exceed 50 Enrolled Employees, the above Schedule of Commissions shall not change to the schedule identified in Subsection B of Exhibit F below. The above Schedule of Commissions shall apply so long as the Employer Group fulfills the CCSB eligibility requirements as identified in 10 CCR § 6522. The sole factor to determine the applicable Schedule of Commissions is the number of Enrolled Employees in the employer group at the time the employer group enrolls in coverage through CCSB.

**B. Employer Groups with 51 to 100 Enrolled Employees**

(Note: This provision is effective starting January 1, 2016)

For employer groups with 51 to 100 Enrolled Employees, the Schedule of Commissions shall be 5.0%. Should an employer group fall below 51 Enrolled Employees, the commission rate shall remain at 5.0% and will not change to the Schedule of Commissions identified in Subsection A of Exhibit F above. This Schedule of Commission shall apply so long as the Employer Group fulfills the CCSB eligibility requirements as identified in 10 CCR § 6522. The sole factor to determine the applicable Schedule of Commissions is the number of Enrolled Employees in the employer group at the time the employer group first receives coverage through CCSB.

Unless all parties agree to sooner effective date, the Exchange may modify or replace its commission schedule upon 45 calendar days prior notice to Agent. Such modified or replacement schedule shall apply to all other QHPs sold by Agent effective on or after the effective date of such modification or replacement. The Exchange will provide Agent with an updated "Schedule of Commissions" whenever changes occur by posting such changes to [hbex.coveredca.com/agents](http://hbex.coveredca.com/agents). No formal amendment is required for changes or modifications to the "Schedules of Commissions". **By executing this Agreement, the Contractor understands and accepts that the Exchange may modify or replace its commissions**

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**schedule upon 45 calendar days prior notice to the Agent and that any modified commissions schedule will be posted to [hbex.coveredca.com/agents](http://hbex.coveredca.com/agents).**