



**COVERED CALIFORNIA  
QUALIFIED HEALTH PLAN CONTRACT**

**between**

**Covered California, the California Health Benefit Exchange  
(the "Exchange")**

**and**

\_\_\_\_\_ (**"Contractor"**)

**DISCUSSION DRAFT**

**Comment to QHP@covered.ca.gov by April 15, 2013**

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**COVERED CALIFORNIA  
QUALIFIED HEALTH PLAN CONTRACT**  
between  
**Covered California, California Health Benefit Exchange  
(the “Exchange”)**  
and  
\_\_\_\_\_ (“Contractor”)

THIS QUALIFIED HEALTH PLAN CONTRACT (this or the “Agreement”) is entered into on the date set forth below, by and between the California Health Benefit Exchange, an independent entity established within the government of the State of California doing business as Covered California (the “Exchange”), and \_\_\_\_\_, a [California] corporation and a health insurance issuer as defined in Title 10 California Code of Regulations (“CCR”) § 6410 (“Contractor”). (Except as otherwise expressly defined, capitalized terms shall have the meaning set forth at Article 13 Definitions).

**RECITALS**

A. The Exchange is authorized under the Federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the Federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152) (collectively, “Affordable Care Act”), and the California Patient Protection and Affordable Care Act, (Chapter 655, Statutes of 2010) and Chapter 659, Statutes of 2010) (“California Affordable Care Act”) to selectively contract with Health Insurance Issuers in order to make available to enrollees of the Exchange health care coverage choices that seek to provide the optimal combination of choice, value, access, quality and service to ~~qualified individuals~~Qualified Individuals, Qualified Employees and/or ~~qualified employers~~Employers;

B. The contracting solicitation process conducted by the Exchange is based on the assessment of certain requirements, criteria and standards that: (i) the Exchange determines are reasonable and necessary for bidding Health Insurance Issuers to market, offer, and sell ~~qualified health plans~~Qualified Health Plans through the Exchange, (ii) are set forth in that certain Final Qualified Health Plan Solicitation dated November 16, 2012, as amended December 28, 2012 (“Solicitation”) and/or (iii) are required under applicable laws, rules and regulations or otherwise necessary to meet the needs of enrollees in the Exchange, including, those set forth at 45 C.F.R. Part § 155 *et seq.*;

C. In connection with the evaluation of the responses to the Solicitation received from Health Insurance Issuers, the Exchange is required under 10 CCR § 6440: (i) to evaluate the proposed QHP’s compliance with requirements imposed under the Solicitation, and (ii) to give greater consideration to potential QHPs that further the mission of the Exchange by promoting, among other items, the following: (1) affordability for the consumer and small employer – both in terms of premium and at point of care, (2) “value” competition based upon quality, service, and price, (3) competition based upon meaningful QHP choice and ability to demonstrate product differentiation within the required guidelines for standard benefit plans, (4) competition throughout the State, (5) alignment with ~~providers~~Providers and delivery systems that serve the low-income population, (6) delivery system improvement, effective prevention programs and payment reform, and (7) long-term collaboration and cooperation between the Exchange and Health Insurance Issuers;

D. Contractor is a Health Insurance Issuer authorized to provide Health Care Services to Enrollees under applicable laws, rules and regulations pursuant to: (i) a certificate of authority issued by the California Department of Insurance (“CDI”) under § 699 *et seq.* of the California Insurance Code, and/or (ii) a license issued by the Department of Managed Health Care (“DMHC”) ~~for the State~~ pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (§ 1340 *et seq.* of the California Health and Safety Code). (Except as otherwise stated, references to “Codes” set forth herein shall refer to the laws of the State of California.);

E. Based on the Exchange’s evaluation of the proposal submitted by Contractor in response to the Solicitation (“Proposal”) and its consideration of other factors required to be considered under applicable laws, rules and regulations and/or otherwise necessary to meet the needs of Enrollees, the Exchange intends to designate Contractor as a QHP Issuer (as defined at 10 CCR § 6410) pursuant to the Exchange’s determination that Contractor’s proposed QHPs meet the requirements necessary to provide health insurance coverage as a Certified QHP (as defined at 10 CCR § 6410) to qualified individuals and employers who purchase health insurance coverage through the ~~Exchange~~Exchange;

F. Contractor desires to participate in the Exchange as a QHP Issuer (as defined at 10 CCR § 6410) and ~~with respect to the operation of Contractor’s Certified QHPs; and~~

G. Contractor and the Exchange desire to enter into this Agreement to set forth the terms and conditions of Contractor’s role as a QHP Issuer and operation of the Certified QHPs through the Exchange.

**Comment [A1]:** We do not believe that this language is necessary and it is not clear what the intention is. Recital G appears to cover this.

## Article 1. Organization; Relationship of the Parties

**1.01 Purpose.** The Agreement is intended to further the mission of the Exchange to increase the number of insured Californians, improve health care quality and access to care, promote health, lower costs, and reduce health disparities. The Exchange seeks to accomplish its mission by creating an innovative, competitive marketplace that empowers consumers to choose the health plan and providers that offer the best value. The Exchange’s “triple aim” framework seeks to improve the patient care experience including quality and satisfaction, improve the health of the population, and reduce the per capita cost of health care services. This Agreement, ~~among other items,~~ sets forth the expectations of the Exchange and Contractor with respect to: (i) the delivery of services and benefits to Enrollees, (ii) the coordination and cooperation ~~between the Exchange and Contractor~~ on the promotion of better care and higher value for Enrollees and other health care consumers, and (iii) ~~an enhanced alignment~~ with Participating Providers and other organizations and groups that share in the mission to deliver better care and higher value. By agreeing to these expectations as set forth in this Agreement, Contractor and the Exchange acknowledge a commitment to be active and engaged participants to promote change and to work collaboratively to define and implement additional initiatives to continuously improve quality and value.

**Comment [A2]:** Please clarify what “other items” are referred to here. We suggest this be deleted as the integration provisions in 12.12 define the items that are incorporated into the contract and that has an order of precedence.

**Comment [A3]:** It is not clear between whom this enhanced alignment is to occur. Suggest deleting as this language does not indicate how the Contractor is involved with this goal.

**1.02 Application of Laws.** This Agreement is not intended to limit the obligations imposed on Contractor under applicable laws, rules and regulations, including, without limitation, the Affordable Care Act and the California Affordable Care Act, in existence as of the date of this Agreement or as may be enacted or modified during the term of this Agreement. The failure to reference a regulatory requirement in this Agreement does not affect the applicability of such requirement to Contractor and the Exchange. ~~Notwithstanding any other language set forth~~

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~~herein~~, Subject to the requirements of Section 12.14 in those instances where the Exchange has affirmatively elected to impose a requirement authorized by the Exchange in accordance with the California Affordable Care Act that exceeds a lesser threshold that may be applicable under the Affordable Care Act or other Federal law, the State law shall be deemed controlling unless otherwise required under applicable laws, rules and regulations.

### 1.03 Role of Contractor.

(a) Contractor and the Exchange acknowledge and agree that Contractor's Certified QHPs are important to furthering the goal of the Exchange with respect to delivering better care and higher value. Contractor agrees that each ~~of the health insurance plans operated by Contractor and~~ Contractor's QHPs identified at Attachment 1 ("Contractor's QHP List") shall be offered through the Exchange to provide access to Health Care Services to Enrollees in accordance with the terms and conditions required ~~of~~ by this Agreement and as required for designation of each health insurance plan as a Certified QHP, including, without limitation, those set forth in this Agreement, the Affordable Care Act, the California Affordable Care Act and implementing regulations set forth at 45 C.F.R. Part 156 *et seq.* (Subpart C, Qualified Health Plan Minimum Certification Standards), 10 CCR 6400 *et seq.* and other applicable laws, rules and regulations.

**1.04 Transition between ~~Medi-Cal and Exchange and Other Coverage.~~** In order to further the Exchange's mission regarding continued access to health insurance coverage to employees, Contractor shall coordinate with the Exchange to facilitate the transition of Enrollees and other consumers to and from the Medi-Cal program and other governmental health care programs and coverage provided under employers, including, coverage required by the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA") and the California Continuation Benefits Replacement Act, or Health and Safety Code § 1366.20 *et seq.* ("Cal-COBRA").

**Comment [A4]:** This goes beyond Medi-Cal. We also request that the Exchange clarify what is intended by "facilitate the transition" and outline any requirements of these other programs that may be required of the Contractor.

### 1.05 Coordination and Cooperation.

(a) Exchange. The Exchange recognizes that the successful delivery of services to Enrollees depends on a successful coordination with Contractor. The Exchange will take such action as the Exchange ~~deems is~~ reasonably deems is necessary and feasible to develop and implement programs and activities to support Contractor in its marketing and enrollment efforts, in accordance with applicable laws, rules and regulations. Such activities may include making available the following programs and resources for use by Contractor:

**Comment [A5]:** In the first draft model contract there was language that identified key items that the Exchange would provide to QHPs. As mentioned in our letter we believe it is imperative that the Exchange describe its obligations and at a minimum we suggest that the language from the first version be re-stated here and request that a more detailed list of Exchange obligations be provided.

(i) A subsidy calculator available by electronic means to facilitate a comparison of QHPs that is consistent with tools used by the Exchange will use for its own eligibility screenings, to ensure that preliminary eligibility screenings use the same tool;

(ii) Education, marketing and outreach programs that will seek to increase enrollment in the Exchange and foster consumer choice of plans offered;

**Comment [A6]:** This statement implies that plans will be marketing all QHPs, which is in direct conflict with the Board approved policy on this issue. We request that this statement be removed or updated to clarify that plans will only be required to inform enrollees that there are other QHPs available in the Exchange.

(iii) Systems for electronic exchange of information with the Exchange's full quoting and enrollment system called California Healthcare Eligibility, Enrollment and Retention System ("CalHEERS") for use in converting Contractor's existing members who are interested in and eligible for Federal subsidies. On or before the commencement of the 2015 Open Enrollment Period, the Exchange expects to offer CalHEERS from Contractor's technology environment using certain agents employed by or otherwise working exclusively for Contractor

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(i.e., a captive agent) to support enrollment of individuals who are eligible for subsidized coverage following agreed upon protocols;

(iv) A standard interface through which Contractor may electronically accept the initial binding payment (via credit card, debit card, or ACH or other means acceptable to the Contractor) to effectuate coverage in the Individual Exchange;

(v) A standard interface through which Contractor may electronically accept from the Exchange the initial binder payment (via ACH or EFT) to effectuate coverage and accept subsequent premium payment in the SHOP;

(vi) Complete documentation and reasonable testing timelines for interfaces with the Exchange's eligibility and enrollment system;

~~(vii)~~(vii) A dedicated team member responsible for working with Contractor to resolve any and all issues that arise from the implementation of the Exchange;

~~(viii)~~(viii) Eligibility and enrollment training for Contractor's staff and for licensed agents and brokers;

~~(ix)~~(ix) Joint marketing programs to support rollover to the Exchange of existing members of Contractor's health insurance plans who are eligible for the Federal subsidies;

~~(x)~~(x) Joint marketing activities of the Exchange, Contractor and other Health Insurance Issuers designed to drive awareness and enrollment in the Exchange, with marketing plans; ~~and~~

(xi) Confidential treatment of all Contractor marketing plans and materials; and

~~(xii)~~(xii) Customer service support that will include substantially extended customer service hours during Open Enrollment Periods.

(b) Contractor's Support Responsibilities. To support the collaborative marketing and enrollment effort, Contractor shall:

(i) ~~Prominently~~Within a reasonable time after the receipt of and determination of its compatibility with Contractor's system, the Contractor shall prominently display the subsidy calculator on its website ~~and on all appropriate pages related to individual health insurance coverage;~~

(ii) Have its inside sales staff certified as Exchange agents to the extent required by the Exchange's policy and have those agents use the Exchange's quoting and enrollment system for those individuals who it knows are eligible for and interested in subsidized coverage. In offering Exchange-based coverage to present members of Contractor's health insurance plan, these agents are required to disclose to these members or prospective members using the Exchange approved scripts that have been reviewed and approved by the Exchange, which will include statements that other Health Insurance Issuers also offer Qualified Health Plans;

(iii) Educate its agents that part of being an Exchange agent is to strive for annual recertification of Contractor and that a prospective Enrollee's health status is irrelevant to advice provided with respect to health plan selection other than as it informs out-of-pocket calculation estimates;

(iv) Work with the Exchange to efficiently educate its agents and brokers about the Exchange's individual and small group marketplaces;

(v) Provide education and awareness regarding eligibility for Federal tax credits, plan offerings and benefits available through the Exchange in connection with any with applicable relevant outreach to Contractor's existing members as mutually agreed;

(vi) Comply with the Exchange's financial interface requirements at its own cost that allows an Exchange-certified entity to transfer initial premiums directly into Contractor's

**Comment [A7]:** Again, this statement implies that plans will market all QHPs. We would also like to clarify that the Exchange will approve scripts written by each plan to meet the needs of its prospective enrollees and that not all plans are required to use the exact same script developed by the Exchange. This is consistent with what is done in Medicare.

**Comment [A8]:** Does this mean that annual recertification may not be a requirement? Please clarify.

**Comment [A9]:** Plans do outreach for lots of reasons that have nothing to do with tax credit and plan offerings (e.g. health campaigns).

**Comment [A10]:** Plans conduct outreach to members with every communication- from EOBs and claims to marketing communications.

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account, subject to compliance with initial premium payment requirements of the Exchange that shall be processed through a third-party payment gateway;

(vii) Cooperate with the Exchange to develop and implement an Enrollee retention plan;

(viii) Submit to the Exchange a marketing plan in a form required by the Exchange that ~~includes and~~ details the objectives of promoting new enrollment and retaining the Exchange-based enrollment part of the annual renewal process; and

(ix) Have successfully tested interfaces with the Exchange's eligibility and enrollment system, or be prepared to complete successful interface tests by dates established by the Exchange.

**Comment [A11]:** Please clarify what a third-party gateway is.

**1.06 Coordination with Other Programs and Stakeholders:** Contractor and the Exchange recognize that the performance of Services under this Agreement depends upon the joint effort of the Exchange, Contractor, Participating Providers and other authorized subcontractors of Contractor. Contractor shall coordinate and cooperate with Participating Providers and such subcontractors to the extent necessary ~~to cause and as applicable to promote compliance by~~ Participating Providers and such subcontractors to comply with the terms set forth in this Agreement. Contractor shall also coordinate and comply as applicable with requirements of other State agencies, including, the Department of Health Care Services ("DHCS") (regarding Medi-Cal) regarding the development and implementation of CalHEERS with respect to eligibility and enrollment considerations and/or as may be required under inter-governmental agency agreements and/or other laws, rules, regulations or program instructions.

#### 1.07 Administration.

Contractor will designate a liaison to serve as the primary contact person to coordinate and cooperate with the Exchange with respect to Contractor's performance of this Agreement. Liaison shall be available, and/or shall make other Contractor personnel available, to the Exchange at such times and to such extent as is reasonably required to fulfill Contractor's duties under this Agreement.

**Comment [A12]:** It's not clear if this section intends to say that to the extent that the DHCS develops and implements requirements related to Medi-Cal eligibility the Contractor must coordinate & comply with those requirements. The provision also vaguely alludes to coordinating with "other state agencies" that may have other "requirements." We suggest re-writing this section for clarity.

#### 1.08 Relationship of the Parties.

(a) Independent Contractors. The parties acknowledge and agree that, as required by 45 C.F.R. § 155.200(e), in carrying out its responsibilities, the Exchange is not operating on behalf of Contractor or Contractor's QHPs or any authorized subcontractor of Contractor. In the performance of this Agreement, each of the Exchange and Contractor shall at all times be acting and performing as an independent contractor, and nothing in the Agreement shall be construed or deemed to create a relationship of employer and employee or partner or joint venturer or principal and agent between the Exchange and Contractor. Neither Contractor nor Participating Providers, authorized subcontractors, ~~or~~ any agents, officers or employees of Contractor are agents, officers, employees, partners or associates of the Exchange.

(b) ~~Contractor's Affiliates. Contractor shall be solely responsible for, and no person, entity, or organization other than Contractor shall be held accountable or liable to a Participating Provider for, any of Contractor's obligations relating to Contractor's provision of Services under this Agreement. This paragraph shall not create any additional obligations whatsoever on the part of Contractor other than those obligations created under other provisions of this Agreement.~~

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~~(e)(b)~~ Use of Subcontractors. ~~Except where the Exchange waives such requirements in writing~~ Contractor shall require any subcontractor or assignee to agree to be bound by all ~~applicable~~ provisions of this Agreement. The obligation of Contractor to comply with responsibilities under this Agreement and applicable laws, rules and regulations shall remain and shall not be waived or released if Contractor subcontracts or otherwise delegates any Services required to be performed by Contractor under this Agreement or by laws, rules or regulations or any other obligations under this Agreement. Contractor shall be solely responsible for (i) exercising appropriate diligence in connection with its selection of its subcontractors, (ii) monitoring and auditing the services provided by such subcontractor to assure that the services provided by such subcontractors are provided in accordance with the terms set forth in this Agreement or imposed by Health Insurance Regulators or under other applicable laws, rules and regulations regarding arrangements by and between Contractor and subcontractors.

**Comment [A13]:** We recommend deleting this clause as it appears to be a provision that would protect non-parties from liability.

**1.09 Changes in Requirements.** The parties acknowledge that ~~prospective~~ changes to benefits and services may be made by the Exchange ~~for each~~ during a Contract Year to incorporate changes (1) required as a result of changes in State or Federal laws, rules or regulations; (2) imposed by regulators; or (3) as mutually agreed upon by the parties. The projected cost of any such benefit or service changes will be included in the cost of health care projections ~~made in order to support any and changes will be implemented after Contractor has had the ability to make the~~ changes in the Monthly Rates to be established in connection with the requirements set forth in ~~Article 5~~.

**Comment [A14]:** Changes referenced here should not be retroactive. In addition, any changes described in this section must be implemented with sufficient time to allow health plans the ability to re-price premiums as a result of the changes.

**Comment [A15]:** It is not clear what "each" is for here.

**1.10 Evaluation.** The performance by Contractor with respect to fulfillment of its obligations set forth herein shall be evaluated by the Exchange on an ongoing basis, including, but not limited to, during the 90 day period prior to the each anniversary of the Agreement Effective Date set forth in Section 7.01 ~~that these long as the~~ Agreement remains in effect. In the event the evaluations conducted by the Exchange disclose a significant problem or pattern of ~~problems~~ ~~a non-compliance with the terms of this Agreement as reasonably~~ determined and documented by the Exchange, the Exchange shall have the right, ~~without limitation~~, to conduct ~~reasonable~~ additional reviews of Contractor's compliance and operational performance. Such evaluations shall also be considered in connection with decisions relating to re-certification and de-certification in accordance with the terms set forth at Article 7 below.

**Comment [A16]:** It is not clear how this would work operationally and how updates will be implemented. We request more clarification on how the Exchange intends to implement this provision.

**Comment [A17]:** There should be some guidelines for these evaluations to avoid undue operational burdens. The Exchange already has broad contractual audit rights and other provisions (Art. 6 and 7). Suggest a simple reference to these sections. We would also note that this section refers to Article 15 which has not yet been made available for plans to review.

## Article 2. Exchange ~~Responsibilities~~

The Exchange is approved by the United States Department of Health Services ("DHHS") pursuant to 42 C.F.R. § 155.106 and shall perform its duties in accordance with the terms and conditions ~~required under of~~ this Agreement ~~pursuant to and~~ applicable laws, rules and regulations, including, the California Affordable Care Act and the Affordable Care Act. The duties of the Exchange shall include those relating to: non-interference with Federal law and nondiscrimination standards (45 C.F.R. § 155.120), consultation with stakeholders (45 C.F.R. § 155.130), financial support for continued operations of the Exchange (45 C.F.R. § 155.160), oversight, financial and quality activities (45 C.F.R. § 155.200), consumer assistance tools and programs ~~including but not limited to operation of a toll-free call center and internet website~~ (45 C.F.R. § 155.205 and 45 U.S.C. § 18031(d)), navigator program standards designed to raise awareness of the Exchange by, among other items, providing consumer access to education and other resources regarding eligibility, enrollment, and program specifications (45 C.F.R. § 155.205), participation of brokers to enroll qualified individuals or employers in Certified QHPs (45 C.F.R. § 155.220), notices to Enrollees (45 C.F.R. § 155.230), ~~and eligibility and~~

**Comment [A18]:** This Section does not provide enough details on the responsibilities of the Exchange as outlined throughout our comments on this contract

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~~enrollment~~ payment of premiums (45 C.F.R. § 155.240), privacy and security of personally identifiable information (45 C.F.R. § 155.260, use of standards and protocols for electronic transactions (45 C.F.R. § 155.270), eligibility and enrollment as well as exemption determinations in the Individual Exchange and Small Business Health Options Program (“SHOP”) (45 C.F.R. Part 155, Subparts D, E, F, G, H, I,) ~~and~~ certification of QHPs (45 C.F.R. Part 155, Subpart K).

**2.01 Individual Exchange.** The Exchange shall be responsible for the determination of eligibility and enrollment of eligible individuals in the Exchange in accordance with the requirements set forth at 45 C.F.R. Part 155, and other applicable laws, rules and regulations. In addition, the Exchange shall issue certifications of individual exemption consistent with ACA standards in a timely manner. The enrollment of eligible individuals in the Exchange shall be made by the Exchange pursuant to its management and ~~participation in~~ the development of CalHEERS, a project jointly sponsored by the Exchange and DHCS with the assistance of the Office of Systems Integration. The Exchange and CalHEERS shall develop, implement, and maintain processes to make the eligibility and enrollment decisions regarding the Exchange and other California health care programs ~~and submit that information to the Contractor in a timely manner in accordance with federal and state laws, rules, and regulations and the terms set forth in this Agreement.~~

**Comment [A19]:** Not a defined term in the contract.

**2.02 Small Business Health Options Program (“SHOP”).** The Exchange shall establish SHOP to assist ~~certain~~ qualified employers by facilitating enrollment of qualified employees into QHPs. All specified Employees, and their Family Members, of Employers who are qualified and eligible in accordance with the Affordable Care Act, California Affordable Care Act, and Regulations may obtain coverage through SHOP as permitted by State and Federal laws, rules and regulations, including the regulations set forth at 45 C.F.R. Subpart H, § 155.700 *et seq.* Contractor shall ~~accept, in a timely manner, determine eligibility for purchase and enrollment of Employers and Employees and process~~ SHOP enrollments from small businesses determined to be eligible for coverage in the SHOP ~~through a process maintained~~ in accordance with ~~the terms set forth in this Agreement and~~ State and Federal laws, rules and regulations and the terms set forth in this Agreement.

**Comment [A20]:** We suggest that the Exchange add a requirement explaining its roles in administering Cal-COBRA.

### Article 3. Contractor’s Responsibilities

During the term of this Agreement, Contractor shall operate ~~these certain~~ the Certified QHPs identified in Contractor’s QHP List at Attachment 1 to provide the benefits and services at the cost-sharing and actuarial cost levels described in the Benefit Plan Design - Summary of Benefits and Coverage. as summarized at Attachment 2 (“Benefit Plan Designs”), and as may be amended from time to time as required under applicable laws, rules and regulations or as otherwise authorized under this Agreement. Contractor shall comply with requirements for Certified QHPs set forth in this Agreement and under the California Affordable Care Act, and, as applicable, the Affordable Care Act and other laws, rules and regulations, including, those set forth at 45 C.F.R. Part 156, Subpart C, § 156.200 *et seq.*, 45 C.F.R., § 155.705 *et seq.*, 45 C.F.R., Part 155, Subpart K, § 155.1000 *et seq.*

**Comment [A21]:** This term should be included in the definitions.

**3.01 Certification.** Contractor shall maintain compliance with standards required for certification issued or recognized by the Exchange, or if not issued by the Exchange, recognized and adopted by the Exchange and communicated sufficiently in advance to all Health Insurance Issuers. to demonstrate that each health plan it offers in the Exchange qualifies as a Certified

**Comment [A22]:** These are responsibilities of the Exchange and not the Contractor and we suggest they be moved to Article 2 under Exchange Responsibilities.

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QHP under applicable laws, rules and regulations, including, 10 CCR § 6400 *et seq.*, and as applicable, 45 C.F.R. § 155.200(a).

**3.02 Licensure and Good Standing.** Contractor shall be licensed and in good standing to offer health insurance coverage through its Certified QHPs offered under this Agreement ~~and its other health plans offered outside the Exchange.~~ For purposes of this Agreement, “good standing” shall require: (i) Contractor to hold a certificate of authority from CDI or a health care service plan (“HCSP”) license from DMHC, as applicable, ~~and (ii) the absence of any material statutory or regulatory violations, including, penalties, during the last two years prior to the date of the Agreement and throughout the term of Agreement, with respect to the regulatory categories identified at Attachment 3 (“Good Standing”).~~ For purposes of this Agreement, ~~“material and finding by the regulator that Contractor is in good standing. The Exchange may require that the Contractor request a letter of good standing from the regulator.”~~ violations shall represent a relevant and significant departure from normal business standards required to be adhered to by a Health Insurance Issuer.

**3.03 Benefit Design.** Each Certified QHP operated by Contractor under the terms of this Agreement shall provide essential health benefits in accordance with the Benefit Plan Design requirements set forth at Attachment 2, and as required under this Agreement, and applicable laws, rules and regulations, including California Health and Safety Code Section 1367.005, California Government Code § 100503(e), and as applicable, ~~and~~ 45 C.F.R. § 156.20(b). The benefits and services provided by Contractor’s Certified QHPs shall comply ~~with~~ those certain requirements relating to, among other items: (i) participation in the Exchange through the Individual Exchange and/or SHOP, (ii) geographic reach in applicable regions (as defined in Health and Safety Code § 1357.512 and ~~California or California~~ Insurance Code Section 10753.14 for the Individual Exchange, ~~as applicable~~), (iii) the ~~provision of~~ standard benefit plan design providing essential health benefits as established pursuant to the California Affordable Care Act, and as ~~applicable~~ ~~applicable~~ Section 1302(b) of the Affordable Care Act and by the Exchange as of the date of this Agreement, (iv) health savings account (“HSA”) plans, (v) catastrophic plans as described in Section 1302(e) of the Affordable Care Act, (v) “co-pay” or “co-insurance” cost-sharing requirements, and (vi) actuarial levels of cost sharing for each plan metal tier: platinum, gold, silver, and bronze, and (v) other applicable requirements applicable to design of Contractor’s QHP offerings, such as those relating to health savings account (“HSA”) or alternate design plans.

**3.043.05 Offerings Outside of Exchange.** Contractor acknowledges and agrees that Certified QHPs and substantially similar plans offered by Contractor outside the Exchange must be offered at the same rate whether offered inside the Exchange or whether the plan is offered outside the Exchange directly from the issuer or through an agent as required under applicable laws, rules and regulations, including, those required under 45 C.F.R. § 156.255(b), 42 U.S.C. § 18021, 42 U.S.C. § 18032. In accordance with Government Code Section 100503(f), Insurance Code Section 10112.3(c), and Health and Safety Code Section 1366.6(c), ~~and other applicable state and federal law, regulation or guidance~~ in the event that Contractor sells products outside the Exchange, Contractor shall fairly and affirmatively offer, market and sell all products made available to individuals and small employers in the Exchange to individuals and small businesses purchasing coverage outside the Exchange. For purposes of this subdivision, “product” does not include contracts entered into pursuant to Part 6.2 (commencing with Section 12693) of Division 2 of the Insurance Code between the Managed Risk Medical Insurance Board and health care service plans for enrolled Healthy Families beneficiaries or to contracts entered into pursuant to

**Comment [A23]:** We recommend that this be simplified to say: Each certified QHP offered by Contractor under the terms of this Agreement shall provide Essential Health Benefits in accordance with the applicable federal and state law and its contract with the Exchange. But offer agreeable amendments to the paragraph as an alternative.

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**Comment [A24]:** The Exchange has no authority to establish requirements related to the EHBs. This language appears to confuse the standard benefit designs with the EHBs, which is in the appropriate regulator’s purview. This suggested revision helps clarify.

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**Comment [A25]:** AB 18 and CCIIO guidance may address the provision of pediatric dental and it is important to retain this flexibility in the contract.

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Chapter 7 (commencing with Section 14000) of, or Chapter 8 (commencing with Section 14200) of, Part 3 of Division 9 of the Welfare and Institutions Code between the DHCS and health care service plans for enrolled Medi-Cal beneficiaries.

**3.053.06 Network Requirements.**

(a) General. Contractor's QHPs shall comply with the network adequacy standards established by the applicable Health Insurance Regulator responsible for oversight of Contractor, including, those set forth at Health and Safety Code § 1367.03 and 28 CCR § 1300.67.2 (if Contractor is a licensed health care service plan) or Insurance Code § 10133.5 (if Contractor is regulated by CDI), and, as applicable, other laws, rules and regulations, including, those set forth at 45 C.F.R. 156.230. ~~The information provided to the Exchange shall take into consideration the ethnic and language diversity of providers available to serve Enrollees of the Exchange. Contractor shall cooperate with the Exchange to implement corrective actions necessary to address concerns identified by the Exchange with respect to network adequacy.~~

**Comment [A26]:** Who will provide this information to the Contractor?

**Comment [A27]:** Network adequacy is determined by the regulator and anything that goes beyond what is required in current state laws/regulations would be arbitrary and beyond the scope of the Exchange.

~~(b) Service Area.~~

~~(b) Withdrawal. Contractor shall not withdraw from any geographic region (as defined in Health and Safety Code § 1357.512 and California Insurance Code Section 10753.14 for the individual market) or modify any portion of its Service Area where Contractor provides Health Care Services to Enrollees without providing prior written notice to, and obtaining prior written approval from the Exchange, and to the extent required, the Health Insurance Regulator with jurisdiction over Contractor.~~

**Comment [A28]:** Plans are required to follow the process as determined by the regulator for service area withdrawals and we do not believe it is necessary to create a duplicative and costly process in addition to existing requirements.

(i)

(ii) Service Area Listing. During each year of this Agreement, in conjunction with the establishment of Monthly Rates payable to Contractor under Article 5 below for each of the Contract Years, the Service Area listing set forth in Attachment 4 ("Service Area Listing") shall be amended to reflect any changes in the Service Area of QHPs. Any such changes shall be effective as of January 1 of ~~each of~~ the applicable Contract Year. In the event ZIP codes are added to the current Service Area by the United States Postal Service, the parties agree such added ZIP codes shall be automatically included in the Service Area and shall be reflected in the next scheduled update of the Service Area Listing.

(1) Contractor shall comply with the Exchange's standards regarding the development of Service Area listing based on the ZIP Code, including, those relating to: (i) the timing of such submissions prior to the Open Enrollment Period, (ii) the reasonable assignment of enrollees residing in ZIP codes split across two rating regions, and (iii) required updates and notice of changes in ZIP Codes within Contractor's region.

**Comment [A29]:** Plans needs these standards in order to comment on this provision.

(iii) Eligibility. ~~In order to facilitate the Exchange's compliance with 45 C.F.R. § 155.710 (b) and 45 C.F.R. 155.3015 (a), Contractor shall maintain procedures to monitor information received by Contractor it receives directly or indirectly, or through its subcontractors for continuing to ensure continued compliance with eligibility requirements for-related to (i) participation by (i) Employers that participate in SHOP, including, those relating to requirements related to the Employer's principal place of business or primary worksite in the Service Area under 45 C.F.R. § 155.710(b) or (ii) participation of individuals participating in the Individual~~

**Comment [A30]:** These suggested revisions are to clarify the Exchange's obligations under federal law and the Contractor's role in assisting it with compliance.

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Exchange, including, those ~~relating to requirements related to~~ residency ~~as set forth at 45 C.F.R. 155.305 (a).~~ Contractor shall notify the Exchange if it becomes aware that an Employer or individual Enrollee enrolled in a QHP of Contractor no longer meets the requirements for eligibility ~~based on place of business, primary worksite, or residence~~. The Exchange will evaluate, or cause CalHEERS to evaluate, such information to determine Enrollee's continuing enrollment in the Contractor's Service Area under the Exchange's policies which shall be established in accordance with applicable laws, rules and regulations. Contractor and its subcontractors may rely on representations about eligibility made by Employers.

**Comment [A31]:** Beyond notification that an enrollee moved out of the service area it is not reasonable to expect that a plan will be able to monitor compliance with other eligibility requirement.

(c) Participating Provider Directory. Contractor shall make its provider directory electronically available to (i) the Exchange for publication online in accordance with guidance from the Exchange, and (ii) in hard copy when potential Enrollees make such request. Contractor shall provide information describing Participating Providers in its QHP networks in a format prescribed by the Exchange on a monthly basis to support the Exchange's centralized provider directory containing every QHP's network providers.

(d) Participating Provider Stability. Contractor shall maintain policies and procedures that are designed to preserve and enhance Contractor's network development by facilitating the recruitment and retention of Participating Providers necessary to provide access to Health Care Services. Such policies and procedures shall be consistent with applicable laws, rules and regulations and will include an ongoing assessment of turnover rates of its Participating Physicians, health care professional staff, and Participating Hospitals in order to ensure that the turnover rates do not disrupt the delivery of quality care. Physicians and non-Physicians designated as PCPs.

**Comment [A32]:** Plans are unable to regulate the turnover of staff in hospitals and medical groups.

(e) Network Disruption.

(i) Contractor shall implement policies and practices designed (i) to reduce the potential for disruptions in Contractor's provider networks, and (ii) to minimize the amount of uncertainty, disruption, and inconvenience of Enrollees in the execution of the transition of care as required under State laws, rules and regulations in connection with any such disruption. Contractor agrees to maintain adequate records, reasonably satisfactory to the Exchange, documenting its policies and its compliance with these requirements by Contractor and Participating Providers.

**Comment [A33]:** Knox-Keene already has network adequacy standards, so it makes sense for the DMHC to extend these requirements to QHPs to minimize adverse selection against the Exchange. In some cases, though, the ACA's network adequacy standards may go beyond the state's requirements (esp. with regard to ECPs). Need to determine if DMHC to apply the same standards for QHP certification (including network adequacy) to outside the Exch market. Doesn't make sense to have different standards in and out. Exchange should coordinate with DMHC.

(ii) If Contractor experiences provider network disruptions that require block transfer of Enrollees from a terminated medical group or hospital to a new medical group or hospital, Contractor shall provide the Exchange with copies of the written notices the Contractor proposes to send to affected Enrollees, as required under Health and Safety Code 1373.65, prior to mailing to Enrollees.

~~(ii)(iii)~~ (iii) If Contractor experiences provider network disruptions or other similar circumstances that make it necessary for Enrollees to change QHPs or Participating Providers, Contractor agrees to provide prior notice to the Exchange and Health Insurance Regulator, in accordance with advance notice, meeting, and other requirements as set forth in applicable laws, rules and regulations, including, Insurance Code 10199.1 and Health and Safety Code 1367.23 and 1366.1. ~~Contractor shall, and shall cause Participating Providers to, cooperate with the Exchange in planning for the orderly transfer of Enrollees as necessary and as required under~~

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~~applicable laws, rules, and regulations including those relating to continuation of care, including those set forth at Health and Safety Code Section 1373.95 and Insurance Code 10133.55.~~

~~(f) **Change in Disclosures.** Contractor shall notify the Exchange with respect to any material changes in its provider network as of and throughout the term of this Agreement with respect to prior disclosures made by Contractor in its Proposal. For purposes of this Agreement, a material change in the disclosures shall relate to an event or other information that may reasonably impact Contractor's ability to perform under this Agreement in comparison with the information previously disclosed by Contractor in the Proposal.~~

**Comment [A34]:** The continuity of care requirements under 1373.95 are applicable to transition of care from terminated provider groups or hospitals, and for new enrollees who are receiving care from a non-contracted provider. In both instances, the plan would not have a contract in place with the provider in question and would have no ability to require cooperation.

### **3.063.07 Essential Community Providers**

Contractor shall maintain a network that includes a sufficient geographic distribution of essential community providers ("ECP") that are available through Contractor to provide reasonable and timely access to Health Care Services to low-income populations in each geographic region where Contractor's QHPs provide services to Enrollees.

**Comment [A35]:** Some of these sections will not be relevant to health plans that have been granted an exemption to one or more of the ECP requirements.

(a) For purposes of this Section, "sufficient geographic distribution" of ECP providers shall be determined by the Exchange in its reasonable discretion in accordance with the conditions set forth in the Solicitation and based on a consideration of various factors, including, (i) the nature, type and distribution of Contractor's ECP contracting arrangements in each geographic region in which Contractor's QHPs provides Health Care Services to Enrollees, (ii) the balance of hospital and non-hospital ECPs in each geographic region, (iii) the inclusion in Contractor's provider contracting network of at least 15% of entities in each applicable geographic region that participate in the program for limitation on prices of drugs purchased by covered entities under Section 340B of the Public Health Service Act (42 U.S.C. § 256B) ("340B Entity"), (iv) the inclusion of at least one ECP hospital in each region, (v) the inclusion of Federally Qualified Health Centers, school-based health centers and county hospitals, and (vi) **other factors relevant** to the determination of Contractor's ability to serve the low income population.

**Comment [A36]:** This statement is too broad and we suggest that it be deleted or further defined.

(b) "Low-income populations shall be defined as families living at or below 200% of Federal poverty level. ECPs shall consist of participating entities in the following programs: (i) 340B, per the providers list as of November 9, 2012, (ii) California Disproportionate Share Hospital Program, per the Final DSH Eligibility List FY (CA DHCS 2011-12), (iii) Federally designated 638 Tribal Health Programs and Title V Urban Indian Health Programs, (iv) Community Clinic or health centers licensed as either a "community clinic" or "free clinic", by the State under Health and Safety Code section 1204(a), or is a community clinic or free clinic exempt from licensure under Health and Safety Code Section 1206, (v) Providers with approved applications for the HI-TECH Medi-Cal Electronic Health Record Incentive Program.

(c) Contractor shall notify the Exchange with respect to any material changes as of and throughout the term of this Agreement to its contracting arrangements, geographic distribution, percentage coverage, ECP classification type (e.g., 340B), and other information relating to ECPs from prior disclosures made by Contractor in its Proposal to Section II.B.3 of Solicitation and related attachments.

(d) Contractor shall comply with other laws, rules and regulations relating to arrangements with ECPs, as applicable, including, those rules set forth at 45 C.F.R. 156.235.

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**3.073.08 Applications and Notices.** Per agreement between Contractor and the Exchange, the Contractor shall provide applications, forms and notices to applicants and Enrollees. Should any of those documents be created by the Contractor they shall, to the extent agreed to by the Contractor and Exchange be in plain language and Contractor shall provide applications, forms, and notices in a manner that is accessible and timely to individuals (1) living with disabilities, including accessible web sites and the provision of auxiliary aids and services at no cost to the individual in accordance with the Americans with Disabilities Act and section 504 of the Rehabilitation Act, or (2) who are limited English proficient through the provision of language services at no cost to the individual, including (i) oral interpretation, (ii) written translations; and (iii) taglines in non-English languages indicating the availability of language services. Contractor shall provide applications, forms, and notices in a manner that is accessible and timely to individuals who are limited English proficient as required by Health and Safety code Section 1367.04 and Insurance Code Section 10133.8. Contractor shall inform individuals of the availability of the services described in this Section and otherwise comply with notice requirements imposed under applicable laws, rules and regulations, including, those set forth at 45 C.F.R. § 156.250 and Government Code § 100503(k).

**3.083.09 Rating Variations.** Contractor shall (i) charge the premium rate in each geographic rating area for each of Contractor's QHPs as agreed upon with the Exchange, and (ii) may vary premiums by geographic area as permitted by State law, including the requirements of Health Insurance Regulators regarding rate setting and variations set forth at Health and Safety Code Sections 1385 *et seq.* and 1385.07(a), Insurance Code Section 10181 *et seq.*, Insurance Code Section 10293, 10 CCR 2222.12 and as applicable, other laws, rules and regulations, including, 45 C.F.R. § 156.255(b).

**3.093.10 Rate Information.**

(a) Contractor shall comply with rate ~~filings~~ filing requirements imposed by Health Insurance Regulators, including, those set forth under Insurance Code § 10181 *et seq.* (if Contractor is an insurer regulated by CDI) or Health and Safety Code § 1385 *et seq.* (if Contractor is a licensed HCSP regulated by DMHC) and as applicable, other laws, rules and regulations, including, ~~45 C.F.R. § 156.1020.~~

(b) Individual Exchange: For the Individual Exchange, rates shall be established through an annual negotiation process between the Contractor and the Exchange and are set for the following calendar year. The parties acknowledge that (1) the Agreement does not contemplate any mid-year rate changes for the Individual Exchange in the ordinary course of business, (ii) the annual negotiation process must be supported by Contractor through the submission of information required under paragraph (e) below as of such dates as shall be determined by the Exchange ~~to provide Contractor with sufficient time for necessary analysis and actuarial certification~~

(c) SHOP: SHOP rates for ~~2015 will~~ 2014 will be established through a bid solicitation process which calls for rates to be filed with Contractor's regulators by July of 2013. If the term of the Agreement is longer than one (1) year, Contractor shall also submit rate information in such form and at such date as shall be established by the Exchange. ~~The Exchange may authorize to provide Contractor with sufficient time for necessary analysis and actuarial certification. The Exchange will allow~~ an update of rates no more frequently than on a quarterly basis, as such updates shall be determined in accordance with requirements and

**Comment [A37]:** Again, this is an Exchange responsibility to ensure that QHPs submit justifications for rate increases prior to the implementation of such an increase. Suggest moving to Article 2 under Exchange Responsibilities.

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update schedules to be determined by the Exchange ~~from time to time~~ no later than October 1, 2013.

(d) Contractor shall prominently post rate filing information on its web site in accordance with requirements set forth ~~at~~ 45 C.F.R. ~~§ 155.1020-156.210~~ and as applicable, Insurance Code § 10181.7(d) or Health and Safety Code § 1385.07(d).

**Comment [A38]:** This is the correct citation for the QHPs responsibility.

~~(e) Contractor shall provide, upon the Exchange's request, in connection with any contract negotiation or recertification process as reasonably requested by the Exchange, detailed documentation on the Exchange-specific rate development methodology. Contractor shall provide justification, documentation and support used to determine rate changes, including providing adequately supported cost projections. Cost projections include factors impacting rate changes, assumptions, transactions and other information that affects the Exchange-specific rate development process. Information pertaining to the key indicators driving the medical factors on trends in medical, pharmacy or other healthcare Provider costs may also be requested to support the assumptions made in forecasting and may be supported by information from the Plan's actuarial systems pertaining to the Exchange-specific account.~~

~~(f)(e)~~ To the extent permitted by law and contracts with participating providers, Contractor agrees that the information to be provided to the Exchange under this Agreement may include information relating to contracted rates between Contractor and a provider that is treated as confidential information by Health Insurance Regulators pursuant to Insurance Code § 10181.7(b) or Health and Safety Code § 1385.07(b).

**Comment [A39]:** We support the Exchange's efforts to promote cost transparency. However, we cannot disclose contracted rates except as permitted by our contracts with providers. The Exchange agreement does not override our existing contractual agreements. These rates are also highly commercially sensitive and any permitted disclosure would need to include strict confidentiality guarantees.

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**Comment [A40]:** This deletion is to provide Contractors with the time necessary to complete the analysis and actuarial certification.

**Comment [A41]:** The proposed language suggests that members and the public would be well-served by disclosure of all contract terms, including rates negotiated between specific plans and providers. Disclosure of cost information at that level would have anti-competitive effects and would violate existing provider agreements

**Comment [A42]:** Correct citation for QHP responsibility.

**3.103.11 Transparency in Coverage.** Contractor shall provide the Exchange and Enrollees with information reasonably necessary to provide transparency in Contractor's coverage, in accordance with the requirements set forth at 45 C.F.R. 156.220, including information relating to claims payment policies and practices, financial disclosures, enrollment, disenrollment, denials, rating practices, cost-sharing, out-of-network coverage, and Enrollee rights. Contractor shall timely respond to an Enrollee's request for cost sharing information and shall make cost sharing information available to individuals through the internet and pursuant to other means for individuals without internet access in a timely manner upon request. Contractor shall provide information required under this Section to the Exchange and Enrollees in plain language, in accordance with 45 C.F.R. § ~~155.1040-156.220~~ (c).

**3.113.12 Accreditation.** Contractor shall maintain, and/or shall take any such further action as reasonably required to comply with URAC or NCQA accreditation requirements set forth in the Exchange's Quality, Network Management and Delivery System Standards at Article 4. Contractor shall authorize the accrediting agency to provide information and data to the Exchange relating to Contractor's accreditation, including, the most recent accreditation survey and other data and information maintained by accrediting agency as required under ~~4245~~ C.F.R. ~~155.276-156.275~~

**3.123.13 Segregation of Funds.** Contractor shall comply with requirements relating to the required segregation of funds received for abortion services in accordance with the Affordable Care Act Section 1303 and 45 C.F.R. 156.280.

**3.133.14 Special Rules Governing American Indians ~~or~~ Alaskan Natives.**

**3.15** Contractor shall comply with applicable laws, rules and regulations relating to the

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provision of Health Care Services to any individual enrolled in Contractor's Certified QHP in the Individual Exchange who is determined by the Exchange to be an eligible American Indian or Alaskan Native as defined in section 4(d) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(d)), ~~Such requirements include the following:~~ The Exchange will have a transparent process to identify Alaskan Natives and American Indians, including a specific identification of those under 300% of FPL so the Contractor has the information necessary to comply with federal law. The Contractor will not be held liable for any inappropriate charges or administration if information received by the Exchange is not incorrect or not received timely. Participating Provider Arrangements,

~~Contractor shall everinclude in all of its contracts the requirement that all Health Care Services furnished through a health care provider pursuant to a referral under contract for directly furnishing an item or service to an American Indian with no cost-sharing as described in the Affordable Care Act Section § 1402(d)(2).~~

~~(b) Contractor shall not impose any cost-sharing on such individuals under three hundred (300) percent of federal poverty level in accordance with the Affordable Care Act § 1401(d)(1).~~

~~(c) Contractor shall provide monthly special enrollment periods for American Indian or Alaskan Native enrolled through the Exchange.~~

~~(d) Contractor shall comply with other applicable laws, rules and regulations relating to the provision of Health Care Services to American Indians, including, the Indian Health Care Improvement Act Sections 206 (25 U.S.C. 1621e) and 408 (25 U.S.C. 1647a).~~

~~**3.14 Participating Provider Arrangements.** Contractor shall cause all Health Care Services to be provided by duly licensed, certified and/or accredited Participating Providers consistent with the scope of their license, certification or accreditation and in accordance with applicable laws, rules, regulations, the standards of medical practice in the community and the terms set forth in agreements entered into by and between Contractor and Participating Providers ("Provider Agreement"). The Provider Agreement shall cause Participating Provider to comply not be in conflict with the terms and conditions of this Agreement, including those terms and provisions set forth at Attachment 5 ("Provider Agreement Standard Terms").~~

### **3.153.16 Enrollee's Out-of-Network and Other Costs; Network Requirements.**

Contractor shall, and shall cause Participating Providers to, comply with applicable laws, rules and regulations governing liability of Enrollees for Health Care Services provided to Enrollees, including, those relating to: (i) holding an Enrollee harmless from liability in the event Contractor fails to pay an amount owing by Contractor to a Participating Provider, ~~(ii) referrals, costs, and responsibility for payment for Health Care Services rendered Participating Providers and those provided by out-of-network providers, (iii) treatment of urgent and emergency care services, (iv) documentation requirements for arrangements with Participating Providers and other providers, as required or provided for by federal and state law.~~

(i) To the extent that Contractor's QHPs either (i) provide coverage for out-of-network services and/or (ii) impose additional fees for such services, Contractor shall disclose to the Enrollee the amount it ~~will~~would typically pay, if known, for covered proposed non-emergent out-of-network services when requested by the Enrollee.

**Comment [A43]:** These suggested revisions clarify the requirements in federal law and they do not need to be repeated in the contract.

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(ii) Contractor shall require its Participating Providers to inform every Enrollee in a manner that allows the Enrollee the opportunity to act upon that Participating Provider's proposal or recommendation regarding (i) the use of a non-network provider or facility or (ii) the referral of an Enrollee to a non-network provider or facility for proposed nonemergent Covered Services. ~~Contractor shall cause, provided the Participating Providers Provider has reason to disclose to the Enrollee who is proposing or considering using out of network nonemergent know that services #will or likely will be provided by a non-network provider or facility will be used as part of the network provider's plan of care. The Contractors obligation for this provision can be met through an update to their providers' contract manual in 2014.~~

**Comment [A44]:** Providers do not always have the ability to determine if a provider is in-network or not. For example, there may be hospital based providers who render care during a hospital admission who are non-network. The admitting physician does not have knowledge of or control over the network status of such physicians.

**3.163.17 Credentialing.** Contractor shall perform, and/or may delegate activities related to, credentialing and re-credentialing Participating Providers in accordance with ~~the terms set forth in Contractor's credentialing criteria, which standards shall meet or exceed the standards required by Health Insurance Regulators, NCQA or URAC, applicable laws, rule and regulations and/or otherwise meet standards as may reasonably be established by the Exchange's Quality, Network Management and Delivery System Standards set forth at Article 4 from time to time. Contractor shall perform ongoing monitoring, auditing and other review activities, to assure that each Participating Provider is in compliance with (i) Contractor's credentialing requirements and (ii) the representations and warranties and other terms and conditions set forth in this Agreement. A copy of the credentialing requirements will be provided to the Exchange upon request. Contractor's credentialing activities shall include the performance of the following activities throughout the term of this Agreement:~~

**Comment [A45]:** We suggest that this entire paragraph should be deleted as it exceeds the scope of the Exchange but at a minimum we request that the suggested revision be included. The additional sentence reflects the agreed upon approach with Exchange staff for meeting this provision in the near-term.

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(a) ~~Participating Provider Licenses; Insurance. Contractor shall maintain credentialing and/or other monitoring processes to assure that licensure and professional status of each Participating Provider is verified on an ongoing basis by Contractor pursuant to the performance of its credentialing, recredentialing, auditing, monitoring and/or other processes, which include confirmation relating to the following:~~

(i) ~~Each Participating Provider is and shall remain duly licensed or certified, as required by the laws of this State, and such licensure is free from restrictions that would restrict or limit the ability of Participating Provider to provide Health Care Services to Enrollees as required under this Agreement.~~

(ii) ~~Each Participating Provider maintains and shall maintain throughout the term of this Agreement professional liability insurance, either independently or through Contractor or some other entity, in a dollar amount that is sufficient for his/her/its practice and as may be required by law or accrediting entities. Contractor's Participating Providers also have general liability insurance in a dollar amount process as reviewed and approved by the appropriate for their business practice. regulator.~~

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**Comment [A46]:** It is duplicative for the Exchange to impose so many detailed requirements in the same areas that are already overseen by regulators. Therefore we suggest these revisions/deletions.

**3.17 Utilization Review and Appeals Process.** ~~Contractor shall maintain a utilization management program that complies with applicable laws, rules and regulations, including, Health and Safety Code 1370 and other requirements established by the Health Insurance Regulator responsible for oversight of Contractor. Contractor's utilization management program shall include, without limitation, mechanisms for monitoring and oversight of (1) both under and over utilization of Health Care Services, and (2) any utilization management activities delegated to Participating Providers.~~

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~~(a) Contractor shall maintain an appeals process to enable a Participating Provider to challenge, on Enrollee's behalf, a pre-service utilization review decision that the Participating Provider believes may not serve the best interests of a patient. Contractor's utilization appeals process shall be clearly communicated to and understood by Participating Providers and shall adhere to the Enrollee's appeals processes required under Section 3.26 below. Contractor shall ensure that the pre-service appeal process will be fair and prompt and not arbitrary or capricious.~~

~~(b) Contractor agrees that utilization review shall not operate to prevent or delay the delivery of emergency medical treatment.~~

~~(i) Contractor shall provide information relating to the utilization management program, including, minutes from utilization management committee meetings and reports relating access and quality of care; provided, however, that such provision of information and/or the conduct of the activities described hereunder will at all times comply with any and all laws relating to the confidentiality of medical information and will preserve all privileges as set forth in California Health and Safety Code Section 1370. Contractor shall, and shall cause Plan Participating Providers to, cooperate with and participate in the Exchange utilization management activities, including, without limitation, reporting utilization management information to the Exchange as requested by the Exchange.~~

~~(e)(b) .~~

**3.18 Customer Service.** Contractor acknowledges that superior customer service is a priority of the Exchange. ~~The Exchange and~~ Contractor shall work closely ~~together with the Exchange in an effort~~ to ensure that the needs of the Exchange Enrollees are met. Contractor shall provide and maintain all processes and systems required to ensure customer service, record protection and uninterrupted service to the Exchange and Contractor's Enrollees in the Exchange in accordance with the standards set forth at Attachment 6 ("Customer Service Standards"), applicable laws, rules and regulations, including, those consumer assistance tools and programs required to be offered through the Exchange as set forth at 45 C.F.R. § 155.205 and 45 C.F.R. § 155.210 ~~and as otherwise established by the Exchange.~~

### 3.19 Compliance Programs

~~(a) General. Contractor shall, and shall cause Participating Providers and all subcontractors to, comply with all applicable federal, state, and local laws, regulations, executive orders, ordinances and guidance, including without limitation, the Affordable Care Act and the California Affordable Care Act; the Americans with Disabilities Act, the Anti-Kickback Statute, the Public Contracts Anti-Kickback Act, the Stark Law, and the Knox-Keene Health Care Service Plan Act of 1975 and/or California Insurance Code, as applicable. Fraud, Waste and Abuse; Ethical Conduct. Contractor shall maintain and enforce policies, procedures, processes, systems and internal controls (i) to reduce fraud, waste and abuse, and (ii) to enhance compliance with other applicable laws, rules and regulations in connection with the performance of Contractor's obligations under this Agreement. Contractor shall maintain an effective compliance program that meets the requirements of applicable state and federal laws, rules and regulations. Contractor shall provide evidence of such a compliance program as reasonably reasonable requested by the Exchange. Contractor shall timely communicate to the Exchange any material concerns identified by Contractor or by a regulatory agency related to regulatory compliance as such may impact performance under this Agreement.~~

**Comment [A47]:** These again appear to be requirements of the Exchange. Imposing these requirements on the Contractor is duplicative and costly.

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~~(ii) Contractor shall provide the Exchange with a description of its fraud, waste and abuse detection and prevention programs and report total moneys recovered by Contractor in the most recent 12-month period in relation to Services provided to Enrollees. This description shall be provided upon the request of the Exchange and will be updated during each year that this Agreement is in effect and shall include an overview of fraud and abuse detection and prevention program activities conducted by Contractor, Participating Providers, other subcontractors and/or their authorized agents, including a summary of key findings and the development, implementation and enforcement of any corrective action plans for changing, upgrading, or improving these programs.~~

~~(iii) Contractor shall maintain and enforce a code of ethical conduct that shall be made available to the public through posting on a website.~~

### **3.20 Enrollment and Eligibility.**

(a) Acceptance of Enrollment. Contractor shall comply with the eligibility and enrollment determinations that shall be made for Enrollees by the Exchange in coordination with CalHEERS. The Exchange shall provide such enrollments to the Exchange in a timely manner. Contractor shall accept all Enrollees assigned by ~~the Exchange except as otherwise authorized by policies in accordance with applicable state and procedures of the Exchange or upon the approval of the Exchange federal laws.~~ Contractor shall send enrollment information to the Exchange on a daily basis and Contractor shall reconcile Enrollment information received from the Exchange with Contractor's enrollment data on a monthly basis. The Exchange shall be solely responsible for enrollment and eligibility determinations and Contractor shall rely upon the accuracy of current eligibility and enrollment information furnished by the Exchange during the term of this Agreement; provided, however, that Contractor shall (i) reconcile premium payment information with enrollment and eligibility information received from the Exchange on a monthly basis, and (ii) timely notify the Exchange of any differences between premium payments and the enrollment and eligibility information. Changes to eligibility information submitted by Employers or Enrollees shall be accepted only when the Exchange notifies or confirms such change to Contractor.

(b) Enrollment Periods. Contractor acknowledges and agrees that the Exchange is required (i) to allow qualified individuals to enroll in a QHP and/or change a QHP during annual Open Enrollment Periods, (ii) to allow certain qualified individuals to enroll in or change QHPs during Special Enrollment Periods as a result of specified triggering events per applicable state and federal law, and (iii) to allow qualified Employers and Employees to purchase coverage in SHOP (1) during an initial Open Enrollment Period in 2013, (2) at any point during the year after the initial Open Enrollment Period ("rolling enrollment period") and (3) as a result of specified triggering events, during Special Enrollment Periods. Contractor agrees to accept new Employers and Employees in SHOP and individual Enrollees in the Individual Exchange who enroll during these periods.

(c) Redetermination. Contractor shall accept changes to enrollment received from the Exchange other than during the Employer's Open Enrollment period for qualifying events ~~as required~~as required under applicable laws, rules and regulations, including those set forth at 45 C.F.R. § 155.330.

(d) Law. Contractor shall comply with all Federal and State eligibility and enrollment statutes and regulations, including, but not limited to, the Affordable Care Act § 1411 *et seq.* (42 U.S.C. 18081 *et seq.*), 45 C.F.R. Part 155 Subparts D and E, Government Code § 100503, and 10 CCR § 6400 *et seq.*

**Comment [A48]:** Responsibilities of the Exchange.

**3.21 Enrollment: Commencement of Coverage.** The provisions of this Section 3.21(a) shall apply with respect to the Individual Exchange.

(a) Individual Exchange

(i) The Exchange shall (i) notify Contractor regarding each eligible applicant who has completed an application for enrollment and designated Contractor as the Certified QHP, and (ii) transmit information required for Contractor to enroll the applicant, within five (5) business days of verification of eligibility and selection of QHP. Contractor shall ensure a coverage effective date for the Enrollee as of (1) the first day of the next subsequent month for a QHP selection notice received by the Exchange between the first day and fifteenth (15) day of the month, or (2) the first day of the second following month for QHP selections received by the Exchange from the sixteenth day through the last day of a month, or (3) such other applicable dates specified in 45 C.F.R. 155. § 410 for the Open Enrollment Period and 45 C.F.R. § 155.420 for the Special Enrollment Period and/or as otherwise established in accordance with the Exchange's Administrative Manual, consistent with applicable law and regulations. The Exchange shall require payment of one hundred percent (100%) of the entire first month premium to be received by the Exchange on or before the fourth (4<sup>th</sup>) remaining business day of the month in order to commence coverage as of the first (1<sup>st</sup>) day of the following month.

(ii) Contractor shall provide the Exchange with information necessary to confirm Contractor's receipt of premium payment from Enrollee that is required to commence coverage. The specific terms and conditions relating to commencement of coverage, including, the administration of advance payments of the premium tax credit and cost sharing reductions and cancellation or postponement of the effective date of coverage in the event of nonpayment or partial payment of an initial premium, shall be set forth in the Administrative Manual and established by the Exchange in accordance with applicable laws, rules and regulations and set forth in the Administrative Manual.

(b) Commencement of Coverage - SHOP. The provisions of this Section 3.21(b) shall apply with respect to the SHOP.

(i) Contractor shall coordinate and cooperate with Exchange to the extent necessary during the Exchange's enrollment process that shall commence following the Exchange's acceptance of the single employer and single employee application forms. Contractor shall provide Services as may be required to support the Exchange during the enrollment process conducted by the Exchange in accordance with Exchange responsibilities under 45 C.F.R. § 155.720 and other applicable laws, rules and regulations. Such processes shall include the Exchange's performance of the following activities that must occur before the effective date of coverage: (i) determination of Employer eligibility, (ii) selection of Contractor's QHPs coverage levels by Employers and Employees, and (iii) verification of Employee's eligibility. Upon verification of eligibility and selection of Contractor's QHP, the Exchange shall (1) process enrollment of Employees into Contractor's QHPs, (2) establish effective dates of Employee coverage, and (3) transmit enrollment information for Employees to Contractor and Employer and

**Comment [A49]:** Unclear what services may be required.

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Enrollees to Contractor within five (5) business days of verification of eligibility and selection of QHP. Contractor shall notify Employee of the effective date of coverage.

(ii) Coverage shall commence on the first (1<sup>st</sup>) day of a month or such other date as may be established by the Exchange under its enrollment timeline and processes in accordance with the requirements set forth at 45 C.F.R. 155.720(b)(7) and set forth in the Administrative Manual.

(iii) The specific terms and conditions relating to commencement of coverage, including, cancellation or postponement of the effective date of coverage in the event of nonpayment or partial payment of an initial premium will be set forth in the Administrative Manual and established by the Exchange in accordance with applicable laws, rules and regulations- and agreed to by the Contractor.

### **3.22 Enrollment: Termination of Coverage.**

(a) Individual. The provisions of this Section 3.22(a) shall apply with respect to the Individual Exchange.

(i) Coverage will be terminated in a Contractor's QHP in accordance with the requirements established by the Exchange based on requirements set forth at 45 C.F.R. 155.430 and other applicable State and Federal laws, rules and regulations, including, the following events:

~~(ii) Coverage may be terminated for individual Enrollees by voluntary cancellation upon (i) at least fourteen days' prior notice or such other longer period requested by Enrollee unless Enrollee and Contractor's QHP mutually agree to an earlier termination date, or (ii) the day before coverage begins for Enrollee in a specified other government health program;~~

~~(iii) Coverage may be terminated for individual Enrollees due to loss of eligibility effective as of the last day of the month following the month in which the Exchange sends the notice to Enrollee regarding the loss of eligibility; -~~

~~(iv) Coverage will be terminated for individual Enrollees upon an authorized change in enrollment to another QHP effective as of the last day before the effective date of coverage in the new QHP.~~

~~(ii)~~

~~(iii)~~ Coverage will be terminated for an individual Enrollee's non-payment of premium effective as of: (i) the last day of the first month of a three (3) month grace period provided for in the event of nonpayment of premiums by individuals receiving advance payments of the premium tax as required under 45 C.F.R. 155.430(d)(4), or (ii) the last day of coverage established by grace periods under applicable State law, including requirements relating to Health and Safety Code § 1365 and Insurance Code § 10713.

(iv) The specific terms and conditions relating to termination of coverage, including, Contractor's right to terminate in connection with the receipt of partial payments, shall

be ~~subject to further specifications set forth in the Administrative Manual handled in accordance with applicable state and federal laws.~~

~~(vi)~~(v) The Exchange will notify Contractor within five (5) business days of any individual Enrollee termination.

(b) Termination - SHOP. The provisions of this Section 3.21(b) shall apply with respect to the SHOP.

(i) Contractor acknowledges and agrees that the Exchange shall be responsible for the aggregation and administration of premiums for SHOP. The Exchange shall be responsible for: (1) the submission of bills to each Employer on a monthly basis in a form that identifies Employer and Employee contributions and the total amount due, (2) collecting the amounts due from each Employer, and (3) making payments to Contractor for Enrollees in Contractor's Certified QHPs- within five (5) business days of receipt by the Exchange. In no event shall the Exchange be liable to Contractor with respect to any interest or other charges relating to premium funds received by the Exchange that are not yet disbursed by the Exchange to Certified QHPs.

(ii) The specific terms and conditions relating to terminations, including, Contractor's right to terminate an Employer in connection with the receipt of nonpayment or partial payments from Employers, shall be subject to further specifications set forth in the Administrative Manual consistent with applicable laws and regulations.

(iii) Except as otherwise specifically set forth in the Administrative Manual or required by law, an Employee's enrollment through Employer may be terminated in connection with the termination of Employer's coverage and/or with respect to the events described in paragraph (a) above. ~~For purposes of~~With respect to an Employee, his or her eligibility shall cease at such time as he/she is no longer a qualified Employee to whom Employer has offered coverage. The Exchange will notify Contractor within five (5) business days of any Enrollee or Employer termination.

**3.23 Minimum Participation Rates - SHOP.** Contractor shall comply with minimum participation rates for Employers participating in SHOP that shall require (i) participation of a specified percentage of Employer's eligible employees in the Exchange, (ii) Employer's contribution in an amount equal to a specified percentage of the Employees premium and (iii) compliance with other conditions set forth in the ~~Exchange in the~~ Administrative Manual- Contractor acknowledges that participation consistent with applicable laws and regulations. Participation rates shall be established ~~in the discretion of~~by the Exchange in consultation with Contractors and may be modified ~~from time to time~~ by the Exchange no more frequently than annually based on consideration of various factors, including, prevailing market standards and changes in applicable laws, rules and regulations.

### 3.24 Premiums.

(a) ~~Contractor shall not pursue collection of any delinquent premiums from the Exchange, but shall seek recovery only against (i) an Employer who is responsible for payment to the Exchange of premiums for Enrollees enrolled through SHOP exchange or (ii) an~~ for an Enrollee enrolled in the Individual Exchange who is responsible for directly paying for his/her

**Comment [A50]:** The Exchange is responsible for the collection of premium payments in the SHOP. Therefore, plans should not be responsible for collecting delinquent payments. The Exchange should assume total responsibility for those payments.

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premium. ~~Contractor shall not pursue collection of any delinquent Enrollee copayments or direct premium payments from the Exchange, but shall seek recovery only against the Enrollee. Contractor's procedures to collect delinquent premiums shall be in accordance with collection guidelines of the Exchange set forth in the Administrative Manual~~

~~(b)(a)~~ Contractor shall not be entitled to collect from Enrollees and/or receive from Employers any amounts or receive funds from the Employers above the premium amounts except with respect to cost-sharing amounts or to the extent that such payment (i) is expressly authorized under the Certified QHPs, such as out-of-network services that comply with the notice requirements set forth at Section 3.15 above, or (ii) relates to a charge for non-sufficient funds transactions initiated by Enrollee ~~or Employer~~ at rates that are reasonable and customary for such transaction ~~and consistent with a fee schedule that is provided to the Exchange within the thirty (30) day period (i) following the execution of this Agreement, and (ii) prior to any subsequent proposed implementation of any changes in the fee schedule, and (iii) is~~ consistent with applicable laws, rules and regulations.

**Comment [A51]:** This section refers to the SHOP and plans would not collect from SHOP Employers or directly from Employees/Enrollees.

~~(e)(b)~~ Contractor shall review and reconcile information received from the Exchange on a monthly basis relating to the administration of premium payments, including information required under 45 C.F.R. § 155.705 and other applicable laws, rules and regulations necessary to the administration of premiums. Such reconciliation process will include the Contractor's review of information relating to: ~~(i) the required contributions from Employers and Employees,~~ and (ii) receipt of premium amounts due to (1) the Exchange from each Employer and Employee in SHOP, and (2) due to Contractor from each individual in the Individual Exchange. Contractor must provide the Exchange notice of any reconciling enrollment information with premium payment information, which shall be evaluated in accordance with requirements detailed in the Administrative Manual.

**Comment [A52]:** Contractor is not responsible for these collections.

**3.25 Collection Practices.** Contractor shall maintain fair and reasonable collection practices that comply with applicable laws, rules and regulations. Contractor shall monitor the collection activities and provide the Exchange with documentation reasonably requested by the Exchange to facilitate the Exchange's monitoring, tracking or reporting with respect to Contractor's collection efforts, including, policies and procedures and copy of any form of delinquency or termination warning or notice sent to an Enrollee or Employer.

### 3.26 Appeals and Grievances

(a) Internal. Contractor shall maintain an internal review process to resolve Enrollee's appeals of claims and benefit determinations, including, those relating to the scope of Covered Services required to be provided under the QHP and/or relating to Medical Necessity. Contractor's processes shall comply with applicable laws, rules and regulations, including, those set forth at Health and Safety Code Section 1370.2, ~~and such other reasonable standards that may be imposed by the Exchange from time to time to meet the special needs of Enrollees.~~

**Comment [A53]:** Suggest deleting since this requirement is too vague- or add language stating "provided, however, that the Exchange shall provide Contractor with reasonable advance notice of any such additional requirements."

(b) Independent Medical Review. Contractor shall comply with applicable laws, rules and regulations relating to the external independent medical review process available to Enrollees for Health Care Services that are disputed due to denial, modification, delay, or other limitation imposed by Contractor or a Participating Provider. The external medical review process shall be conducted in accordance with the requirements set forth at Insurance Code

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Section 10169 *et seq.* ~~(if Contractor is regulated by CDI)~~ or Health and Safety Code Section 1374.30 *et seq.* ~~(as applicable).~~

(c) Grievances. Contractor shall also maintain a grievance process for the review of clinical and non-clinical grievances which shall comply with requirements set forth at Health and Safety Code Section 1368.02 and 1368.03.

**3.27 Enrollee Materials** ~~Branding Documents.~~ Contractor ~~shall comply with~~ may use the Exchange ~~co-branding policy respecting the nature~~ logos as agreed to by the Contractor and ~~extent of required authorized, permitted and prohibited use of~~ the Exchange ~~logo on invoices, EOBs, ID cards, notices and other materials as set forth in guidelines established by the Exchange and set forth in the Administrative Manual.~~

(b) ~~Enrollee Materials.~~ Upon request, Contractor shall provide the Exchange with at least one (1) copy, unless otherwise specified, of any information Contractor intends to mail to all the Exchange Enrollees, including, but not limited to, Evidence of Coverage and disclosure forms, ~~enrollee newsletters, and new enrollee materials, health education materials, and special announcements.~~ Contractor will. The requirement in this section to provide copies of these documents to the Exchange for review and with these materials does not constitute the requirement for prior approval at least fourteen (14) business days prior to mailing to Enrollees and/or such other period requested by the Exchange before Contractor may distribute them. Contractor shall maintain an electronic file of plan mailings that is open to the Exchange that will include all other mailings made to a Contractor's Enrollees. Such file shall be accessible by the Exchange for a period of seven (7) following the date of such correspondence or such other longer period that may be required by laws, rules or regulations.

(c) Distribution of Enrollment Materials. Contractor agrees to distribute to prospective Enrollees the Open Enrollment publications developed and printed by the Exchange for Enrollees prior to the Open Enrollment Period ~~or special enrollment period at a time mutually agreed to by Contractor and the Exchange.~~ Contractor shall be responsible for the reasonable mailing and printing cost associated with these publications.

(d) ~~Marketing Materials.~~ Contractor shall provide the Exchange with marketing material and all related collateral used by Contractor for the Exchange and ~~non-Exchange plans~~ on an annual basis and at Exchange shall treat such other intervals marketing materials as may be requested by the Exchange from time to time.

~~(e)~~(d) confidential information. Identification Cards. Contractor shall issue identification cards to Enrollees in a form that meets the ~~standards set forth in the Administrative Manual~~ Requirements of applicable State and Federal law.

(f) ~~Mailing Addresses.~~ Contractor shall submit, upon request, ~~and according to the Exchange's specifications, the mailing addresses or mailing address labels for the Exchange Enrollees enrolled in Contractor's QHPs.~~

~~(g)~~(e) Evidence of Coverage Booklet on Contractor's Web Site. During each year of this Agreement which carries over into a subsequent Contract Year, Contractor shall make the Evidence of Coverage booklet for the next benefit year available on Contractor's web site no later than the first day of the Open Enrollment Period. provided that Contractor has received any

**Comment [A54]:** Plans are unable to agree to comply with requirements that are outlined in documents that are not available for review. We are also concerned that having the Covered California logo on ID cards and other materials may confuse the enrollee and cause them to contact the Exchange in cases where it is more appropriate to contact the plan directly, which may cause delays in care or resolution of an issue. There is also a stigma attached with the use of government programs and many enrollees may prefer to have a normal commercial insurance card that does not indicate they are someone on government assistance. We think the flexibility provided here gives both parties a way to determine the best use of branding documents.

**Comment [A55]:** We do not believe there is a role for the Exchange to approve materials that are sent to enrollees and we are also concerned that the Exchange does not have the resources to review all of these materials within 14 days given the volume of information that is sent to enrollees.

**Comment [A56]:** Please clarify the extent of the documents that are being asked for here.

**Comment [A57]:** Since address changes are processed by the Exchange this is not necessary.

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[revisions in the material that is to be included in the Evidence of Coverage from the Exchange at a time that allows for such posting on the first day of Open Enrollment.](#) The Evidence of Coverage booklet for the then-current benefit year shall remain on Contractor's web site through December 31 of the then-current benefit year.

~~(h)~~(f) Marketing Plans. Contractor shall submit annual and quarterly updates of its marketing plans as reasonably requested by the Exchange for the Exchange review. The marketing plans shall include Contractor's proposed marketing approaches and channels and shall provide samples of any planned marketing materials and related collateral as well as planned, and when completed, expenses for the marketing budget for both the Exchange and the outside individual market. The Exchange shall treat all marketing information provided under this section as confidential information. Nothing in this subdivision shall be construed to authorize the Exchange to require approval of the materials provided under this subsection.

**Comment [A58]:** We request that the Exchange clarify why it needs this information, what it intends to do with this information, and if provided how it will ensure that this information is kept confidential as these plans contain information that is competitive and proprietary.

**Comment [A59]:** This is outside the scope of the Exchange.

(g) Customer Service. Contractor ~~shall~~

~~(h)~~(h) hall also comply with the requirements relating to enrollment materials required under the customer service standards in accordance with the requirements set forth at Section 3.18.

### 3.28 Agents in the Individual Exchange.

(a) Compensation. The provisions of this Section 3.28 apply to agents who sell Contractor's QHPs through the Individual Exchange.

(i) Compensation Methodology. Contractor shall be solely responsible for compensating agents who sell Contractor's QHP through the individual market of the Exchange. ~~Upon request, Contractor shall provide the Exchange with information requested by the Exchange relating to compensation paid by Contractor to such agents.~~ Contractor shall use a standardized agent compensation program with levels and terms that shall result in the same aggregate compensation amount to agents whether products are sold within or outside of the Exchange. Contractor shall provide the Exchange with a description of its standardized agent compensation program on an annual basis. Contractor shall assure that aggregate compensation is consistent during the first year with amounts paid to agent with respect to any subsequent year of the policy.

**Comment [A60]:** This statement is not clear. Please provide more detail.

(b) Incentive Compensation Program. In order to enhance consistency in sales efforts for products offered inside and outside of the Exchange, Contractor shall add the agent's sale of Certified QHPs through the Exchange to the agent's sale of Contractor's policies outside the Exchange to determine agent's aggregate sales that are used by Contractor to determine incentive or other compensation payable by Contractor to agent. Contractor shall provide information as may reasonably be required by the Exchange from time to time to monitor Contractor's compliance with the requirements set forth in this Section.

~~(c) — Prevailing Market Rate. In the event Contractor has contracts with agents to pay commissions at higher rates than the rate generally prevailing in the market, Contractor shall take such actions as reasonably required to assure payment beginning on or before January 1, 2014 of all agents, whether they sell individual products inside or outside the Exchange, are made pursuant to the generally prevailing market rate. The prevailing market rate shall be determined~~

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~~based on an assessment of market rates by the Exchange or an independent expert designated by the Exchange.~~

~~(d)(c)~~ Agent Appointments. Contractor shall maintain a reasonable appointment process for appointing agents who contract with Contractor to sell Contractor's QHPs to individuals through the Exchange. Such appointment process shall include: (i) providing or arranging for education programs to assure that agents are trained to sell Contractor's QHP through the Exchange, (ii) providing or arranging for programs that enable agents to become certified by the Exchange; provided, however, that certification by the Exchange shall not be a required condition for an agent to sell Contractor's QHP on the individual market and (iii) confirmation of agent's compliance with State laws, rules and regulations applicable to agents, including those relating to confidentiality and conflicts of interest, and such other qualifications as determined in Contractor's reasonable discretion.

**Comment [A61]:** This would impact grandfathered plans and appears out of the scope of the Exchange. It would also be considered a breach of contract between the plan and the agent in many instances.

~~(e) — Agent Conduct. — Contractor shall implement policies, procedures, training and monitoring and other processes to assure that agents who sell Contractor's QHPs through individual markets will fairly and objectively represent all Health Insurance Issuers and all products offered on the Exchange that market through agents in order to present health plan options in a manner that is minimizes steorage by presenting plan options in an unbiased manner. — Such processes shall include, without limitation, practices that implement the following the Exchange standards:~~

~~(i) — Agents shall receive training and certification in both individual Exchange and SHOP operations in order to promote the offer of the broad array of potential products available to potential Enrollees;~~

~~(ii) — Contractor's appointment standards are intended to allow all qualified agents to maintain or receive an appointment; provided, however, that Contractor shall not be required to make an appointment to all qualified applicants. — Contractor will notify the Exchange with respect to the rejection or termination of an agent certified by the Exchange prior to such rejection or termination and Contractor shall coordinate and cooperate with the Exchange with respect to (i) mediating actions that deny or terminate an appointment of an agent certified by the Exchange, including, the establishment of probationary periods and/or other corrective actions.~~

~~(iii) — The Exchange reserves the right to monitor and audit appointment status of agents of Contractor.~~

~~(iv) — Contractor shall not take any action that may restrict agents certified by the Exchange from becoming appointed by all Health Insurance Issuers that elect to market products through an agent.~~

~~(v) — Contractor shall monitor agent behavior to ensure the absence of any discriminatory practices relating to QHPs offered through the Exchange and Contractor shall report any identified discriminatory acts within two (2) business days following its receipt of knowledge of such practices. — Contractor shall implement and enforce disciplinary standards and any necessary corrective actions and the Exchange may revoke the Exchange's certification based on its evaluation of the incidents.~~

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~~(f) Contractor shall comply with other applicable laws, rules and regulations that are designed to create an efficient market that operates in the best interests of consumers with due regard to interests of agents and Health Insurance Issuers.~~

**3.29 SHOP Agents.** The provisions of this Section 3.29 apply to agents who sell Contractor's QHPs through SHOP.

(a) Agent Commissions. Contractor's Reimbursement for SHOP Agents. In order to facilitate the Exchange's ability to administer enrollment in SHOP based on efforts that are consistent for non-Exchange products and to achieve consistency in compensation arrangement for products sold inside and outside the Exchange: (i) the Exchange shall enter into arrangements with agents to sell Contractor's QHPs through SHOP, (ii) the Exchange will be responsible for payment of agents, and ~~(iii) the Exchange will provide Enrollee specific and agent-specific information to Contractor, regarding commissions paid,~~ (iv) Contractor will reimburse the Exchange for the Exchange's payment of a standard agent commission through the Exchange's offset of agent commissions owing to the Exchange from the SHOP premiums collected by the Exchange, as such offset shall be performed in accordance with the offset procedures set forth at Section 5.03 below. The commission rate payable to a general agent by the Exchange shall be established by the Exchange based on its evaluation of market data, including, pricing information submitted in connection with its rate bids and/or pursuant to other policies that shall be established by the Exchange from time to time. The Exchange will contract with multiple general agents to represent the SHOP beginning in October, 2014 and Contractor agrees to amend any of its agreements with such agents to include a standard general agent override commission for authorized general agents to assure that payments made to agents are consistent with the rate set forth in the agreement between the Exchange and such agent. The Exchange's intent is to pay market level broker and general agent commissions.

~~(b) Incentive Compensation Program. In order to enhance consistency in sales efforts for products offered inside and outside of the Exchange, Contractor shall add the agent's sale of Certified QHPs through SHOP to the agent's sale of Contractor's policies outside the Exchange to determine agent's aggregate sales that shall be used by Contractor to determine incentive or other compensation payable by Contractor to agent. Contractor shall provide information as may reasonably be required by the Exchange from time to time to monitor Contractor's compliance with the requirements set forth in this section.~~

~~(b)~~

(c) Agent Appointments. Agents enrolling Employers in SHOP shall be appointed exclusively by the Exchange in accordance with the standards to be determined by the Exchange in accordance with applicable laws and regulations and set forth in the Administrative Manual. Contractor shall not appoint agents to sell products in the SHOP.

(d) Agent Conduct. The Exchange shall implement policies, procedures, training and monitoring and other processes to assure that agents who sell Contractor's QHPs through SHOP will fairly and objectively represent all Health Insurance Issuers and all products offered on the Exchange that market through agents in order to present health plan options in a manner that minimizes steerage by presenting plan options in an unbiased manner. Such processes shall include, without limitation, practices that implement the following standards:

**Comment [A62]:** Per policies adopted by the Exchange Board and several commitments from Exchange staff plans believe that captive agents are not required to objectively represent all QHP issuers.

**Comment [A63]:** It is not clear health plans will have the information necessary to comply with this provision since agents in the SHOP will be compensated by the Exchange.

**Comment [A64]:** We remain concerned that this provision does not allow plans to maintain the ability not to contract with agents that they believe are not good partners. It is not clear if the SHOP is the broker of record and if there will be a master agreement that governs these agents.

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(i) Agents shall receive training and certification in order to promote the offer of the broad array of potential products available to potential enrollees;

(ii) The Exchange's appointment standards are intended to allow all qualified agents who sell for SHOP to maintain or receive an appointment; provided, however that not all qualified agents shall be required to receive an appointment to sell Certified QHPs through the Exchange.

(iii) Contractor shall not take any action that may restrict agents certified by the Exchange from becoming appointed by all Health Insurance Issuers that elect to market products through an agent.

~~(e) Contractor shall comply with the Exchange's other policies that are designed to create an efficient market that operates in the best interests of consumers with due regard to interests of agents and Health Insurance Issuers.~~

**3.30 Required Notice of Contractor Changes.** Contractor shall notify the Exchange in writing upon the occurrence of any of the following events and/or as otherwise required under this Agreement or by laws, rules and regulations.

**Comment [A65]:** This statement is too vague for plans to determine how to comply.

(a) Any of Contractor's representations and warranties, as set forth in this Agreement, cease to be true at any time during the term of this Agreement;

**Comment [A66]:** We request that Covered California clarify which representations and warranties should be reported.

(b) Change in the majority ownership, control, or business structure of Contractor;

(c) Change in Contractor's business, partnership or corporate organization ~~that a reasonable person might believe could~~ may reasonably be expected to have a material impact on Contractor's performance of this Agreement or on the Exchange's rights under this Agreement;

(d) Breach by Contractor of any term set forth in this Agreement and/or Contractor otherwise ceases to meet the requirements for a Certified QHP, including, those set forth at and 45 C.F.R. § 156.200 *et seq.* (Subpart C—Qualified Health Plan Minimum Certification Standards)

(e) Significant changes in operations of Contractor that may reasonably be expected to significantly impair Contractor's the operation of Certified QHPs and/or delivery of Health Care Services to Enrollees

Except as set forth below, such notice shall be provided by Contractor promptly within ten (10) days following Contractor's knowledge of such occurrence; provided, however, (i) such notice shall be provided immediately if such occurrence may reasonably be deemed to adversely affect the quality of care or safety of Enrollees and (ii) in no event shall notice be provided by Contractor beyond the thirty (30) day period following the date of occurrence. All written notices from Contractor pursuant to this section shall contain sufficient information to permit the Exchange to evaluate the events under the same criteria that were used by the Exchange in its award of this Agreement to Contractor. Contractor agrees to provide the Exchange with such additional information as the Exchange may request. If Contractor requests confidential treatment for any information it provides, the Exchange shall treat the information as confidential, subject to the terms of this Agreement and applicable law.

**3.31 Other Financial Information.** ~~In addition to financial information to be provided to the~~

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~~Exchange under other provisions of this Agreement or by law, Contractor shall provide the following information upon the request of the Exchange and/or at such regular intervals as may be determined by the Exchange.~~

~~(a) — A business plan upon the Exchange's request addressing all of its key business operations and provide a general overview of cost control initiatives.~~

~~(b) — A copy of its most recent annual audited financial statements within one hundred twenty (120) days or such other time period required by Health Insurance Regulators for the delivery of such audited financial statements.~~

~~(c) — An annual profit and loss statement within ninety (90) calendar days of the end of each Contract Year, reporting in a manner similar to regulatory reporting as it relates to Contractor's QHP Enrollees. The annual profit and loss statement is expected to itemize administrative and medical expenditures separately with enough detail to demonstrate the classification of each expense category.~~

~~(d) — Contractor shall comply with the Exchange's reasonable requests regarding Contractor's provision to the Exchange of copies of (i) quarterly financial information or other financial reports provided by Contractor to Health Insurance Regulator and (ii) copies of financial statements of Participating Providers if such Participating Providers are risk bearing organizations as defined in Health and Safety Code Section 1375.4(g) or such financial statements are otherwise made available to Contractor. Contractor shall monitor the financial stability of its Participating Providers as required by Health Insurance Regulators and as reasonably requested by the Exchange and Contractor shall provide the Exchange with the results of such monitoring activities upon reasonable request of the Exchange, unless such disclosure is prohibited by laws, rules or regulation.~~

### ~~3.323.31~~ **Nondiscrimination**

(a) Services and Benefits. During the performance of this Agreement, Contractor shall not, and shall ~~cause~~require Participating Providers and other subcontractors, as well as their agents and employees to not, in accordance with the Affordable Care Act Section 1557 (42 U.S.C. 18116), cause an individual to be excluded on the grounds prohibited under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*), the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*), or section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity offered through the Exchange.

(b) Employment; Workplace. ~~Contractor shall not, and shall cause Participating Providers and other subcontractors, as well as their agents and employees to not, unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including Human Immunodeficiency Virus (HIV) and Acquired Immunodeficiency Syndrome (AIDS)), mental disability, medical condition (including health impairments related to or associated with a diagnosis of cancer for which a person has been rehabilitated or cured), age (40 or over), marital status, genetic information, sexual orientation, gender identity or use of family and medical care leave. Contractor shall, and shall cause Participating Providers and other subcontractors, as~~

**Comment [A67]:** Information related to solvency is submitted to the appropriate Regulator and the Exchange should rely on that process to ensure that plans are in compliance with solvency standards.

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~~well as their agents and employees to, evaluate and treat employees and applicants for employment in a manner that is free from such discrimination and harassment. Contractor shall, and shall cause Participating Providers and subcontractors, as well as their agents and employees to, comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900, et seq.) and the applicable regulations promulgated thereunder (2 CCR 7285.0, et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12900, set forth in CCR Chapter 5 of Division 4 of Title 2, including, 2, CCR Section 8103, et seq., are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor, shall, and shall cause Participating Providers and other subcontractors to, give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.~~

Contractor shall not, and shall require Participating Providers and other subcontractors, to comply with federal and state laws regarding fair employment.

**3-333.32 Conflict of Interest; Integrity.**

(a) Conflicts of Interest. Contractor shall, ~~and shall cause Participating Providers to,~~ be free from any conflicts of interest with respect to Services provided under this Agreement. Contractor represents that Contractor and its personnel, to the best of its knowledge, do not currently have, and will not have throughout the term of the Agreement, any direct or interest ~~which that~~ may present a conflict in any manner with the performance of Services required under this Agreement. Contractor also represents that it is not aware of any conflicts of interest of any Participating Provider or any basis for potential violations of Contractor or Participating Provider with respect to laws, rules and regulations that govern referrals required for the provision of certain Health Care Services. Contractor shall immediately (1) identify any conflict of interest that is identified during the term of the Agreement and (2) take any necessary action to assure that any activities are not properly influenced by a conflict of interest.

**Comment [A68]:** Unclear what the intention of this is. Please clarify.

~~(b) — Contractor shall comply with any and all other policies adopted by the Exchange regarding conflicts of interest and ethical standards established by the Exchange and/or otherwise applicable to the operation of the Exchange as identified in the Administrative Manual or other policies and procedures of the Exchange, copies of which shall be made available by the Exchange.~~

~~**3.34 — Disaster Recovery.** for review and comment by the Contractor shall maintain a disaster recovery plan that meets or exceeds industry standards and accreditation guidelines and complies with applicable laws, rules and regulations. Contractor shall provide the Exchange with a summary of its disaster recovery plan as it relates to the Exchange and its Enrollees in Contractor's QHPs, which summary shall be updated on or before February 28 during each year that this Agreement is in effect. This summary shall include:~~

~~(a) — A general description of Contractor's disaster recovery plan.~~

~~(b) — Specific details relating to how Contractor will safeguard Enrollees' enrollment records and deal with Enrollees who present to emergency rooms and other providers without their identification card during and after a disaster.~~

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~~(c) Contractor's plan and timeline for reestablishing communication with the Exchange staff after a disaster, including primary and backup contacts and contact information.~~

~~(d) Contractor's plan and timeline for resuming monthly data submission following a major disaster.~~

~~(e)(b) A message for Enrollees related to what they should do if they are in a disaster area and need Health Care Services prior to implementation.~~

**3.353.33 Other Laws.** Contractor shall comply with applicable laws, rules and regulations, including the following:

(a) Americans with Disabilities Act. Contractor shall comply with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C. 12101, *et seq.*), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA, unless specifically exempted.

(b) Drug-Free Workplace. Contractor shall comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350, *et seq.*).

(c) Child Support Compliance Act. Contractor 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.

(d) Domestic Partners. Contractor shall comply that it is in compliance with Public Contract Code Section 10295.3 with regard to benefits for domestic partners.

~~(e) Environmental. Contractor shall comply, and shall cause Participating Providers and other subcontractors to comply with environmental laws, rules and regulations applicable to its operations, including, those relating to certifies compliance with the requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with Section 42460 of the Public Resources Code, relating to hazardous and solid waste. Contractor shall maintain documentation and provide reasonable access to its records and documents that evidence compliance with such requirements. Contractor shall seek to use, to the extent economically feasible in the performance of the Agreement work, recycled products.~~

(f) Other Laws. Contractor shall comply with any and all other state and federal laws, rules and regulations applicable to this Agreement and/or the operation of the Exchange, ~~including, those identified in~~ The Exchange shall provide ninety (90) days prior notice by letter, newsletter, electronic mail or other media of any Material Change (as defined below) to the Administrative Manual or other applicable policies and procedures of. ~~Failure by Contractor to object in writing to any Material Change within thirty (30) days following the Exchange, copies date of which shall be made available by receipt of such notice shall constitute Contractor's acceptance of such Material Change. For purposes of this Section, the Exchange term "Material Change" shall mean any change that could reasonably be expected to have a material adverse impact on (i) Contractor's compensation pursuant to this Agreement, or (ii) administration of Contractor's services or obligations hereunder.~~

**Comment [A69]:** Plans are unable to confirm compliance with a document that has not been made available for review and comment.

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**3.363.34 Transition Plan.** On or before August 1, 2013, Contractor shall submit to the Exchange a transition plan for ~~facilitating the transition of notification to~~ Contractor's current enrollees in individual coverage ~~who may be of benefits in the Exchange who the Contractor has been informed are~~ eligible for subsidies in the Exchange ~~and interested in applying for such a subsidy~~. The plan shall include, without limitation, a description of Contractor's plan with respect to the following:

~~(a) Targeting specific populations, including (i) subsidy-eligible non-group incumbents, (ii) subsidy-eligible COBRA incumbents and (iii) all incumbents terminating coverage, including 25-year-old dependents~~

~~(b)(a) Processes for identification, outreach and enrollment of subsidy-eligible individuals who respond to their normal marketing efforts.~~

~~(c)(b) Estimates of the number of ~~incumbent members known enrollees~~ in each target population category above and the number of incumbent individuals in each grandfathered and non-grandfathered plan.~~

~~(d)(c) Deployment of the subsidy calculator ~~if and when~~ provided by the Exchange pursuant to section 1.05 for marketing purposes so as to estimate the level of Federal subsidies that may be available to Enrollees.~~

~~(e)(d) Plan for educating ~~incumbent enrollees~~, minimizing market confusion, and easing the seamless transition of subsidy-eligible incumbents ~~who are interested in enrolling~~ into Qualified Health Plans in the Exchange, along with customer service scripts and website presentations that inform subsidy-eligible incumbents of their options under the Affordable Care Act and in the Exchange.~~

~~(f) Plans for assuring and implementing a process required to enable Contractor to attest to its commitment to fairly and affirmatively offer, market, and sell all products made available to all eligible Enrollees and Employees both inside and outside the Exchange.~~

**3.373.35 Contractor's Representations and Warranties.** No Conflicts or Consents. Contractor represents and warrants that ~~neither it is not aware that~~ the execution of this Agreement by Contractor, nor the acts contemplated hereby, nor compliance by Contractor with any provisions hereof will:

(i) Violate any provision of the charter documents of Contractor;

(ii) Violate any laws, rules, regulations or any judgment, decree, order, regulation or rule of any court or governmental authority applicable to Contractor; or

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

**Comment [A70]:** Suggest deleting because this criteria does not mean that these people are eligible for the Exchange. They may have access to health care through Medi-Cal or an employer.

**Comment [A71]:** How will plans know who is subsidy eligible? If this is going to be a requirement on plans the Exchange must specify here how it will transmit this information to the Contractor and that the Contractor is not liable for any errors or omissions in the data received.

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(b) Due Organization. Contractor represents and warrants that it is duly organized, validly existing, and in good standing under the laws of the state of its incorporation or organization.

(c) Power and Authority. Contractor represents and warrants that: (i) it has the power and authority to enter into this Agreement and to carry out its obligations hereunder; (ii) the execution of this Agreement has been duly authorized and executed by Contractor and no other internal proceeding on the part of Contractor is necessary to authorize this Agreement; and, (iii) to the best of its knowledge, Contractor has completed, obtained, and performed all registrations, filings, approvals, authorizations, consents, or examinations required by any Health Insurance Regulators and other government or governmental authority for its acts contemplated by this Agreement.

#### Article 4. Quality, Network Management and Delivery System Standards

**4.01 Certified QHPs** The parties acknowledge and agree that furthering the goals of the Exchange require Contractor to work with the other Certified QHPs, its contracted providers and ~~its other purchasers~~ to play an active role in building and supporting models of care to meet consumer and social needs for providing better care, promoting health and lowering per capita costs through improvement. Contractor agrees to work with the Exchange to develop initiatives to promote models of care that (i) target excessive costs, (ii) minimize unpredictable quality, (iii) reduce inefficiencies of the current system, (iv) ~~develop solutions and successes that are sustainable, scalable and expand beyond local markets or specific groups of individuals, and (v)~~ promote a culture of continuous quality and value improvement, health promotion, and the reduction of health disparities to the benefit of all Enrollees and, to the extent feasible, other health care consumers. In order to further the mission of the Exchange with respect to these objectives and provide the Covered Services required by Enrollees, the Exchange and Contractor shall coordinate and cooperate with respect to quality activities conducted by the Exchange in accordance with ~~the mutually agreeable~~ terms set forth in section 4.03 and hereof and in the Exchange's Quality, Network Management and Delivery System Standards set forth at Attachment 7 ("Quality, Network Management and Delivery System Standards").

Comment [A72]: Not clear who this covers.

**4.02 Quality, Network and Delivery Standards.** The Exchange shall maintain a quality management and improvement program ~~that will apply the Quality, Network and Delivery Standards set forth at Attachment 7 to the provision of Health Care Services to each Enrollee of the Exchange. The Quality, Network and Delivery Standards will set standards for Exchange's quality activities, including, those relating to management, improvement, delivery, reporting, monitoring, auditing, education, training, research, data and other quality related activities, as such activities may be amended from time to time by the Exchange.~~

**4.03 Contractor Quality Management Program.** Contractor shall maintain a quality management program to review the quality of Health Care Services provided by ~~Contractor through~~ Participating Providers and other subcontractors. ~~Contractor's quality management program shall meet the requirements established by the Quality, Network and Delivery Standards with respect to Health Care Services provided to Enrollees.~~ Contractor's quality management program shall be subject to review by the Exchange ~~from time to time to the extent deemed reasonably necessary by the Exchange~~ annually to evaluate Contractor's compliance with requirements set forth in the Quality, Network and Delivery Standards. ~~Contractor shall comply with the requirements imposed by the Quality, Network and Delivery Standards.~~ Contractor shall

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coordinate and cooperate with the Exchange's ~~requests relating to the in developing~~ Quality, Network and Delivery Standards, including (i) participating in meetings and other programs as reasonably requested from time to time by the Exchange, and (ii) providing mutually agreed-upon data and other information required under the Quality, Network and Delivery Standards and/or (iii) as otherwise reasonably requested by the Exchange. The parties acknowledge and agree that the ~~conduct of~~ quality related activities contemplated under this Article 4 will comply ~~subject to and conducted in compliance~~ with any and all applicable laws, rules and regulations including those relating the confidentiality of medical information and will preserve all privileges set forth at Health and Safety Code 1370.

## Article 5. Compensation; Funding

**5.01 Financial Provisions for Individual Exchange.** The provisions of this Section 5.01 shall apply with respect to the Individual Exchange.

~~(a)~~ Schedule of Rates. The Exchange and Contractor have agreed upon monthly premium rates ("Monthly Rates") payable by the Exchange Enrollees to Contractor. The Monthly Rates for the Individual the Exchange for plan year 2014-XXXX are set forth at Attachment 8 ("Monthly Rates - Individual Exchange"). The parties acknowledge and agree that the premium amounts set forth under the Monthly Rates are actuarially determined to assure that premium revenues and cost sharing contributions will provide the total dollar amount necessary to support (i) the provision of Covered Services by Contractor through its Certified QHPs ~~and (ii) administrative~~ expenses required to meet the requirements outlined in this Agreement and under applicable laws, regulations, and rules, (iii) reasonable reserves, and (iv) the payment by Contractor of the Participation Fee, as further described in Section 5.03.

~~(b)~~(a) Updates. If the Term of this Agreement is longer than one year, the Monthly Rates for each subsequent year of the Agreement will be established no more frequently than annually in accordance with the procedures set forth at and Section 3.09 and Attachment 9 ("Rate Updates - Individual Exchange").

~~(e)~~(b) Collection and Remittance. Contractor understands that Contractor is responsible for collection and the Enrollee is responsible for remittance of the agreed-upon premium rates to Contractor in a timely manner. Contractor understands that individual Enrollees will remit their monthly premium payments directly to Contractor, and the Exchange will not aggregate premiums. The failure by an Enrollee to timely pay premiums may result in a termination of coverage pursuant to the terms set forth at Section 3.22 above. Contractor further understands that the premium payment collected by Contractors includes amounts allocated to the Participation Fee due to the Exchange. The Participation Fees shall be billed by the Exchange to Contractor and payable by Contractor to the Exchange in accordance with the requirements set forth at Section 5.03.

~~(d)~~(c) Financial Consequences of Non-Payment of Premium.

(i) Contractor is responsible for enforcement of premium payment rules at its own expense, as outlined in the terms set forth in the Evidence of Coverage regarding the failure by Enrollee to pay the premium in a timely manner as directed by the Enrollee policy agreement and in accordance with applicable laws, rules and regulations. Enforcement by Contractor shall include, but not be limited to, delinquency and termination actions and notices, grace period requirements and partial payment rules. Such enforcement shall be conducted in accordance with requirements set forth in the Administrative Manual and consistent with applicable laws, rules

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Comment [A73]: Not clear if this is the same as "premium rate" defined in 13.72. Request that Exchange use consistent terms throughout the contract.

Comment [A74]: Need some way to say profit (for the for profit plans) and retained earnings for the not for profits.

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and regulations. ~~Contractor shall notify the Exchange in accordance with the Exchange's policies regarding an Enrollee's failure to pay the premium in a timely manner.~~

(ii) In the event Contractor terminates an Enrollee's coverage in a QHP due to non-payment of premiums, loss of eligibility, fraud or misrepresentation, change in Enrollees selection of QHP, decertification of Contractor's QHP and/or as otherwise authorized under 3.22 above, Contractor must include the Exchange Regulator-approved appeals language in its notice of termination of coverage to the Enrollee.

(iii) Contractor acknowledges and agrees that applicable laws, rules and regulations, including the Affordable Care Act and implementing regulations specify a grace period for individuals who receive advance payments of the premium tax credit through the Exchange and that the Knox-Keene Act and Insurance Code set a grace period for other individuals with respect to delinquent payments. Contractor agrees to abide by the requirements set forth at Section 3.22 and required under applicable laws, rules and regulations with respect to these grace periods.

**5.02 Financial Provisions for SHOP.** The provisions of this Section 5.02 shall apply with respect to the SHOP.

(a) Schedule of Rates. The rates for the SHOP plan year 2014-XXXX are set forth in Attachment 10 ("Monthly Rates - SHOP"). The parties acknowledge and agree that the premium rates for SHOP are actuarially determined to assure that premium revenues and cost sharing contributions will provide the total dollar amount necessary to support (i) the provision of Covered Services by Contractor through its Certified QHPs and (ii) administrative expenses required to meet the requirements outlined in this Agreement and under applicable laws, regulations, and rules, (iii) reasonable reserves, and (iv) (the Contractor's payment of the Participation Fee to the Exchange. The Participation Fee payable with respect to Enrollees in SHOP includes a fee specified by the Exchange as necessary to support payment of agent and general agent commissions. Contractor acknowledges and agrees that any Participation Fees due to the Exchange from Contractor shall be withheld by the Exchange before passing through any premium payments received by the Exchange from Employers and Employees to Contractor in accordance with paragraph (c) of this Section 5.02.

(b) Updates. The Monthly Rates shall be established in accordance with the procedures set forth at Section 3.09 and in Attachment 11 ("Rate Updates - SHOP"). The Exchange may authorize an update of rates no more frequently than on a quarterly basis in the SHOP, as such updates shall be determined by the Exchange in accordance with requirements and update schedules to be determined by the Exchange.

(c) Rate Determinations. Rates will be determined in accordance with the Exchange policies, based on Federal and State law and outlined in the Administrative Manual. Rates for an Employer will be determined by Employee ZIP Code. Rates for an Employer and all covered Employees will be determined and frozen at initial enrollment, or upon renewal, for twelve (12) months, until the next group renewal. Rates for all Employees including new Employees or Employees with qualifying events during the Employer plan year will be determined by the prevailing rates at group enrollment.

(d) Collection and Remittance. Contractor understands that the Exchange is responsible for collection, and the Employee and/or Employer is responsible for remittance, of these monthly premium rates, except with respect to payments of the initial premium that will be through a third-party payment gateway in accordance with procedures established by the

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Comment [A75]: Need some way to say profit (for the for profit plans) and retained earnings for the not for profits.

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Exchange. The Exchange agrees to perform collection and aggregation of monthly premiums with respect to Contractor's QHPs and will remit said premiums, net of (i) Participation Fees payable to the Exchange and (ii) the fee associated with agent commissions paid by the Exchange pursuant to Section 3.29(a). The Exchange's collection of monthly premiums and remittance of net amounts to Contractor's as described in this Section shall ~~be made in accordance with a schedule and such other requirements as may be determined~~ occur within 3 business days upon receipt of premium by the Exchange ~~and set forth in the Administrative Manual.~~

(e) Grace Period. Contractor acknowledges and agrees that applicable laws, rules and regulations, including, the Knox-Keene Act and Insurance Code, set a grace period with respect to the delinquent payment of premiums for the small group market. Contractor agrees to comply with the requirements set forth at Section 3.21 and required under applicable laws, rules and regulations with respect to these grace periods.

**5.03 Participation Fee.** Contractor understands and agrees that (i) under the Affordable Care Act and the California Affordable Care Act, the Exchange may generate funds through a participation fee ("Participation Fees") on Contractor's Certified QHPs and (ii) Contractor is responsible for the timely payment of any Participation Fees to the Exchange.

(a) Contractor Allocation and Collection of Participation Fee. Contractor recognizes that the total cost of all Participation Fees for the Exchange must be collected by Contractor by spreading the cost across the premiums charged to Contractor's entire individual risk pool (both inside and outside the Exchange) for the Individual Exchange Participation Fees and across the small employer risk pool (both inside and outside the Exchange) for SHOP Participation Fees. No rate charged to an Enrollee can have a higher per member per month fee to cover this overall Participation Fee than is charged to all other enrollees of the respective risk pool.

(i) Individual Exchange. In the Individual Exchange, the aggregate Participation Fee will be based on a rate equivalent to approximately three percent (3%) of the aggregate premiums relating to all Certified QHP products and policies sold through the Individual Exchange. The aggregate Participation Fee will be allocated for payment by Contractor based upon a payment methodology established pursuant to a fixed per member per month charge on Contractor's Certified QHPs, as such amounts will be computed in accordance with the requirements set forth at Section 3.09 above and Attachment 12 ("Participation Fee Methodology - Individual Exchange").

(ii) SHOP. In the SHOP, the aggregate Participation Fee is based on approximately four percent (4%) ("Applicable Percentage - SHOP") of the aggregate premiums relating to all Certified QHP products and policies sold through SHOP. Contractor's Participation Fee will be equal to the Applicable Percentage SHOP multiplied by monthly premiums collected by Contractor as established by the Exchange. The monthly Participation Fee will also include a fee necessary to support projected agent commissions, as determined in accordance with the standards set forth at Attachment 13 ("Participation Fee Methodology - SHOP").

(b) Payment:

(i) Individual Exchange. Participation Fee invoices will be issued by the Exchange prospectively to Contractor on the 15<sup>th</sup> of the month for the coming month. Contractor's Participation Fee obligation will be determined by evaluating Contractor's then-current effective

Certified QHP enrollment in the Individual Exchange, and may be subject to adjustment to reflect enrollment adjustments that may occur. Participation Fee payments will be due on the 1<sup>st</sup> of the month the Participation Fee covers. For Participation Fees received after the 15<sup>th</sup> of the month in which the Participation Fee is due, the Exchange will charge, and Contractor shall owe a 1% per month late fee. Additional rules, including but not limited to, the manner of payment, grace period, delinquency penalty, and termination due to breach will be set forth in the Administrative Manual.

(ii) SHOP. With respect to SHOP, Contractor acknowledges that (i) the Exchange is responsible for collecting premiums from Employers and Employees, and (ii) the Exchange will remit applicable Employer and Employee premiums collected by the Exchange to Contractor, net of (1) Participation Fees computed in accordance with the Participation Methodology - SHOP), and (2) agent commissions determined in accordance with the terms set forth at Section 3.29 ~~and pursuant to a schedule to be determined by the Exchange and included in the Administrative Manual.~~ (3) the Exchange shall establish a process to resolve any disagreements on premium amounts due in a timely manner and prior to the money being transferred (4) if there are no disputes related to the premium amounts due the Exchange will transfer the money to the Contractor within 3 business days of receipt.

**Comment [A76]:** Plans are unable to agree to language that is in a document that has not been made available for review.

(c) In the event that Contractor identifies an error in the amount of Participation Fees billed or deducted by the Exchange, Contractor will submit a written dispute to the Exchange within thirty (30) days. Such dispute will detail the reasons Contractor feels the amount of Participation Fees are in error including any discrepancies in enrollment or premiums collected. The Exchange will respond to Contractor's dispute within thirty (30) days of receipt by either refunding the amount owed to Contractor or providing a detailed explanation for the denial of refund. If the Contractor still disputes Exchange findings, Contractor may pursue additional remedies in accordance with Section 12.01.

~~(e)~~(d) Subject to the provisions of Section 10.5, Contractor agrees to an annual audit or other examination by the Exchange or its designee regarding the computation and payment of Participation Fees. In the case of material non-compliance with Participation Fee payments, Contractor shall implement any necessary corrective action and follow up audits or examinations may be performed by the Exchange more frequently than annually as reasonably required to monitor Contractor's implementation of such corrective actions.

**Comment [A77]:** It would be preferable to have all audit provisions in one section but adding this ties it back to those general audit provisions.

**5.04 Funding Payments to Exchange.** ~~Contractor acknowledges and agrees that the compensation payable to the Exchange under this Agreement: (i) is independent of the availability of premium payments collected from Employers and individuals enrolled through the Exchange and (ii) is independent of the availability of Federal or State funding to Exchange. Contractor acknowledges and agrees that the Exchange is required under Government Code § 100520(a) to fund all activities, capital investments and other expenses from these payments from the Contractor. Further,~~ Contractor acknowledges that the Exchange is required under Government Code § 100520(a) to maintain a prudent reserve as determined by the Exchange.

## Article 6. Performance Measures, Penalties And Credits

**6.01 Performance Measurement Standards.** Contractor shall comply with (i) the performance measurement standards ~~for customer service, operations, reporting and quality and network management~~ set forth in Attachment 14 ("Performance Measurement Standards") and

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(ii) the requirements set forth in the compliance addendum attached hereto as Attachment 15 (“Compliance Addendum”). The Exchange shall conduct, or arrange for the conduct of, a review of Contractor’s performance under the Performance Measures and Compliance Addendum. Such review shall be performed on an annual basis or at such other intervals as determined in the Exchange’s reasonable discretion ~~from time to time, but no more frequently than annually.~~ The Exchange shall ~~share equally in~~ be responsible for the actual and reasonable costs of the review, including, the costs of any third-party designated by the Exchange to perform such review. The review shall be in addition to any ongoing monitoring ~~and auditing~~ that may be performed by the Exchange with respect to the Performance Measures or Compliance Addendum. The audit shall focus on a point in time during the annual review period, as determined by the Exchange. If the results of the audit are below those reported by the Contractor for the audit period by more than 3%, then Contractor will accept the results of the audit for the period covered by the audit.

**Comment [A78]:** This has not been made available for plans to review.

**6.02 Performance Penalties and Credits.** The Exchange, ~~in its sole and absolute discretion,~~ may impose penalties (“Penalties”) in the event that Contractor fails to comply or otherwise act in accordance with (i) the Performance Measures or (ii) the requirements set forth in the Compliance Addendum. The Exchange shall also administer and calculate credits (“credits”) that may offset or reduce the amount of any performance penalties, but in no event shall such credits exceed the total amount of the penalty levied. The imposition of Penalties and provision for credits shall: (1) be determined in accordance with the amounts and other terms set forth in either the Performance Measurement Standards or in the Compliance Addendum (2) be cumulative with other remedies available to the Exchange under the Agreement and (3) not be deemed an election of remedies. The Exchange’s failure to impose sanctions shall not be deemed a waiver with respect to any violation that constitutes a breach of the Agreement.

~~**6.03 — No Waiver.** The Exchange and Contractor agree that the failure to comply with the Performance Measurement Standards may cause damages to the Exchange and its Enrollees which may be uncertain and impractical or difficult to ascertain. The parties agree that the Exchange shall assess, and Contractor promises to pay the Exchange, in the event of such failed, delayed, and/or other performance that does not meet the Performance Measurement Standards, the amounts to be determined in accordance with the Performance Measurement Standards set forth at Attachment 14. The assessment of fees relating to the failure to meet Performance Measurement Standards or the Compliance Addendum shall not constitute a waiver or release of any other remedy the Exchange may have under this Agreement for Contractor’s breach of this Agreement, including, without limitation, Contractor’s right to terminate this Agreement, and the Exchange shall be entitled in its discretion to recover actual damages caused by Contractor’s failure to perform its obligations under this Agreement.~~

In the event that Contractor identifies an error in the amount of Penalties or credits imposed by the Exchange, Contractor will submit a written dispute to the Exchange within thirty (30) days. Such dispute will detail the reasons Contractor feels the amount of Penalties and/or credits are in error. The Exchange will respond to Contractor’s dispute within thirty (30) days of receipt by either refunding the amount owed to Contractor or providing a detailed explanation for the denial of refund. If the Contractor still disputes Exchange findings, Contractor may pursue additional remedies in accordance with Section 12.01.

**Article 7. Term; Recertification; Termination; and De-Certification .**

**Comment [A79]:** This section does not seem necessary given the language in 6.02.

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**7.01 Term.** The term of this Agreement shall commence on the later of \_\_\_\_\_, 2013 or upon execution of the Agreement by all parties ("Agreement Effective Date"), and expire on [December 31, 201\_] ("Expiration Date"), unless terminated earlier or extended in accordance with the provisions of this Agreement

**7.02 Recertification Process.** During each year of this Agreement, the Exchange will evaluate the recertification of Contractor based on an assessment process that shall be conducted by the Exchange in accordance with its procedures and on a basis consistent with applicable laws, rules and regulations, including, the requirements set forth under the California Affordable Care Act, 10 CCR 6400 *et seq.*, and the Affordable Care Act. Contractor will be considered in the Exchange's recertification evaluation process that shall be conducted by the Exchange prior to the Expiration Date unless (i) the Agreement is terminated sooner than the Expiration Date by the Exchange in accordance with the requirements set forth at Section 7.03 below or pursuant to other terms set forth in the Agreement, or (ii) Contractor makes a Non-Recertification Election pursuant to Section 7.07 below.

**7.03 ~~Termination by the Exchange.~~ Contract Termination.**

Contractor may, by ninety (90) calendar days' written notice, and without prejudice to any other legal remedies, terminate this agreement based on one or more of the following occurrences: in accordance with federal law the Contractor will provide the Exchange the opportunity to appeal the grounds for a contract termination. (a) The Exchange fails to fulfill any obligation that is material to its performance under this Agreement;

(b) Exchange breached any term, covenant, warranty, or obligation under this Agreement that is not cured or substantially cured to the reasonable satisfaction of the Contractor within forty five (45) calendar days after receipt of notice of default from the Contractor is provided.

(c) Repeated failure by the Exchange to make required payments to Contractor, including the failure to pay correct and timely payments due to failures by Employers to remit payment to the Exchange.

(d) Exchange fails to comply with a change in laws, rules or regulations occurring during the term of this Agreement and/or does not take any and all actions that may be required to amend the Agreement and otherwise establish and document compliance with any such changes, and the Contractor reasonably determines, based on consultation with legal counsel and/or other regulators and/or other State-based or Federal health benefit exchanges, that it may be at risk of being found noncompliant with Federal or State laws, rules or regulations

(e) Any other acts or omissions by Exchange that have or reasonably can be expected to cause Contractor to be unable to fulfill its obligations to enrollees.

The Exchange may, by ninety (90) calendar days' written notice to Contractor, and without prejudice to any other of the Exchange remedies, terminate this Agreement based on one or more of the following occurrences:

(a) Contractor fails to fulfill an obligation that is material to its status as a Certified QHP and/or its performance under the Agreement;

(b) Contractor no longer holds a license or certificate that is required for Contractor to perform its obligations under this Agreement and/or Contractor otherwise fails to maintain compliance with the "good standing" requirements pursuant to Section 3.02 above and which impairs Contractor's ability to provide Services under the Agreement;

(c) Contractor breaches any term, covenant, warranty, or obligation under this Agreement that is not cured or substantially cured to the reasonable satisfaction of the Exchange within ~~thirty (30)~~forty five (45) calendar days after receipt of notice of default from the Exchange; provided, however, that such cure period may not be required and the Exchange may terminate the Agreement immediately if the Exchange determines pursuant to subparagraph (e) below that Contractor's breach threatens the health and safety of Enrollees;

(d) Contractor knowingly has a director, officer, partner, or person with a beneficial ownership of more than five percent (5%) of Contractor's equity or has an employment, consulting or other subcontractor agreement for the provision of Services under this Agreement who is, or has been: (A) excluded, debarred, or suspended from participating in any federally funded health care program, (B) suspended or debarred from participation in any state contract or procurement process, or (C) convicted of a felony or misdemeanor (or entered a plea of *nolo contendere*) related to a crime or violation involving the acquisition or dispersal of funds or delivery of Health Care Services to beneficiaries of any State or Federal health care program;

(e) The Exchange reasonably determines that the welfare of Enrollees is in jeopardy if this Agreement continues, as such determination shall be made in the reasonable discretion of the Exchange based on consideration of professionally recognized standards and benchmarks, requirements imposed by accreditation agencies and applicable laws, rules and regulations; or

(f) Contractor fails to comply with a change in laws, rules or regulations occurring during the term of this Agreement and/or does not take any and all actions that may be required to amend the Agreement and otherwise establish and document compliance with any such changes, and the Exchange reasonably determines, based on consultation with legal counsel and/or other regulators and/or other State-based or Federal health benefit exchanges, that it may be at risk of being found noncompliant with Federal or State laws, rules or regulations.

#### **7.04 Notice of Termination.**

(a) If the Exchange determines, based on reliable information, that there is a substantial probability that: Contractor will be unable to continue performance under this Agreement; or, Contractor will be in material breach of this Agreement in the next thirty (30) days, then the Exchange shall have the option to demand that Contractor provide the Exchange with a reasonable assurance of performance. Upon Contractor's receipt of such a demand from the Exchange, Contractor shall provide to the Exchange a reasonable assurance of performance responsive to the Exchange's demand. If Contractor fails to provide such an assurance within ten (10) days of the Exchange's demand that demonstrates Contractor's reasonable ability to avoid such default or cure within a reasonable time period not to exceed thirty ~~-(30)~~ days, the failure shall constitute a breach by Contractor justifying termination of the Agreement by the Exchange, unless such failure to provide an assurance or to avoid such default or provide such cure is the result of events or matters outside the Contractor's control

(b) In case the Exchange elects to terminate this Agreement in whole or in part under Section 7.03, the Exchange shall give Contractor ninety (90) days written notice of termination for default, specifying the default or defaults justifying the termination. The termination shall become effective after the expiration of such notice period if the defaults specified by the Exchange in its notice remain uncured at that time; provided, however, that the Exchange may require Contractor to discontinue the provision of certain Services if the Exchange determines that the continuing provision of services may cause harm to Enrollees, Participating Providers or other stakeholders.

(c) The Exchange shall be entitled to retain any disputed amounts that remain in the possession of the Exchange until final resolution of all claims by the parties against each other arising out of any Contractor default alleged by the Exchange.

**7.05 Remedies in Case of Contractor Default.** The Exchange shall have all rights afforded by law in case of Contractor default, including, but not limited to: Decertification of Contractor's QHPs and termination of this Agreement.

- (a) Recovery of damages to the Exchange caused by Contractor delay or non-performance;
- (b) Imposing sanctions under the Performance Measures or Compliance Addendum;
- (c) Specific performance of particular covenants made by Contractor hereunder; and
- (d) Initiating an action or proceeding for damages, declaratory or injunctive relief.

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

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

**7.07 Non-Recertification Election** Contractor shall provide the Exchange with notice on or before July 1 during any Contract Year regarding Contractor's election to not seek re-certification of Contractor's QHP as of the expiration of the Agreement ("Non-Recertification Election"). Contractor shall comply with conditions set forth in this Section 7.07 with respect to continuation of coverage and transition of Enrollees to new QHPs following the Exchange's receipt of Non-Recertification Election,.

(a) Continuation and Transition of Care. Except as otherwise set forth in this Section 7.07, Contractor shall continue to provide Health Care Services to Enrollees in accordance with the terms set forth in the Agreement from and after Contractor's Non-Recertification Election up through the termination of coverage for Enrollees, as such termination of coverage shall be determined in accordance with the requirements set forth in this Section 7.07.

(b) SHOP. In the event that Contractor continues to offer small group coverage in the State following the Notice of Non-Recertification Election, Contractor shall comply with

applicable laws, rules and regulations relating to the discontinuation of a benefit package, including those set forth at Section 1357.11 of the Health and Safety Code and Section 10713 of the Insurance Code. The termination of the Agreement shall occur upon the termination of coverage which shall be determined as follows:

(i) In the event that an Employer's plan year, as determined in accordance with 45 C.F.R. § 155.725, expires between the July 1 effective date of the Non-Recertification Election and the expiration of the Contract Year on December 31, Contractor shall provide coverage to Employers and Employees until the termination of the Agreement that shall be effective upon the expiration of the Employer's first plan year that commences after the Non-Recertification Election.

(ii) In the event that an Employer's plan year terminates between January 1 and the July 1 effective date of the Notice of Non-Recertification, Contractor shall provide coverage until the termination of the Agreement effective upon the expiration of Employer's first plan year that commences prior to the July 1 effective date of the Notice of Non-Recertification.

(iii) In the event that an Employer's plan year expires more than ninety (90) days following the Notice of Non-Recertification Election, the Exchange shall notify Employers and Employees in a format approved by the Exchange that Contractor's QHP will not be available upon the next renewal anniversary date.

(iv) Contractor shall comply with other requirements of the Exchange relating to the continuation and transition of coverage following Contractor's Non-Recertification Election, including, without limitation, those relating to protocols and timing for the removal of Contractor from the listing of Certified QHPs to be selected by Employers and Employees, the commencement of coverage for new Employers and Employees, and termination and transition of coverage.

(c) Individual Exchange. The following provision shall apply to the Individual Exchange.

(i) During the thirty (30) day period following the Exchange's receipt of the Non-Recertification Election, Contractor shall (i) be removed from the enrollment and eligibility assignment process, and (ii) no longer receive assignment of new Enrollees;

(ii) Contractor will provide coverage for Enrollees assigned to Contractor as of the date of the Non-Recertification Election if coverage commences within the sixty (60) day period following the Notice of Non-Recertification. Contractor shall provide coverage for such Enrollees until the earlier of (i) the end of the Contract Year, or (ii) the Enrollee's transition to another QHP during the Special Enrollment Period;

(iii) Contractor shall provide coverage for Enrollees until the earlier of (i) the end of the Contract Year, or (ii) the Enrollee's transition to another QHP during Special Enrollment Period.

(d) Communications. Contractor shall coordinate and cooperate with respect to communications to Enrollees in the Individual Exchange, Employers and Employees in SHOP and other stakeholders regarding the transition of Enrollees to another QHP;

(e) Other Acts. Contractor shall take any further action reasonably required by the Exchange to provide Health Care Services to Enrollees and transition care following the Non-Recertification Election.;

(f) Effect of Decertification. Notwithstanding any other language set forth in this Section 7.07, the Agreement shall expire on the Expiration Date set forth in Section 7.01 in the event that the Exchange elects to decertify Contractor's QHP based on the Exchange's evaluation of Contractor's QHP during the recertification process that shall be conducted by Exchange pursuant to Section 7.02 above.

#### **7.08 Effect of Termination.**

(a) This Agreement shall terminate on the Expiration Date unless otherwise terminated earlier in accordance with the provisions set forth in this Agreement.

(b) Contractor's Certified QHPs shall be deemed decertified and shall cease to operate as a Certified QHPs as defined at 10 CCR § 6410 immediately upon termination or expiration of this Agreement in the event ~~that the continuous term uninterrupted continuation of an~~ agreement between the Exchange and Contractor is not achieved pursuant to either: (i) an extension of the term of the Agreement based upon the mutual agreement of the parties that is documented pursuant to a written amendment, or (ii) Contractor and the Exchange enter into a new agreement that is effective immediately upon the expiration of this Agreement. There shall be no automatic renewal of this Agreement or recertification of Contractor's QHPs upon expiration of the term of this Agreement. Contractor may appeal the decertification of its QHP that will result in connection with the termination of this Agreement and such appeal shall be conducted pursuant to the Exchange's process in accordance with applicable laws, rules and regulations.

(c) All duties and obligations of the Exchange and Contractor shall cease upon termination of the Agreement and the decertification of Contractor's Certified QHPs that shall occur upon the termination of this Agreement, except as set forth below or otherwise provided in the Agreement:

(i) Each party shall remain liable for any rights, obligations, or liabilities ~~arising~~ that have accrued or arise from activities carried on by it under this Agreement prior to the effective date of termination.

(ii) Any information of the other party that is in the possession of the other party will be returned promptly, or upon the request of owner of such property, destroyed using reasonable measures to protect against unauthorized access to or use of the information in connection with its destruction, following the earlier of: (i) the termination of this Agreement, (ii) receipt of a written request to return or destroy the Information Assets, or (iii) the termination of the business relationship between the Parties. If both Parties agree that return or destruction of information is not feasible or necessary, the receiving Party will continue to extend the protections outlined in this Agreement to all assets in its possession and will limit further use of that information to those purposes that make the return or destruction of the information or assets. The Exchange reserves the right to inspect the storage, processes, and destruction of any Information Assets provided under this Agreement.

(d) Contractor shall comply with the requirements set forth at Section 7.07 above in the event that Contractor makes a Non-Recertification Election.

(e) Contractor shall cooperate fully to ~~affect~~effect an orderly transfer of Health Care Services to another QHP during (i) any notice period set forth at Sections 7.04, 7.06 or 7.07, and (ii) if requested by the Exchange to facilitate the transition of care and/or otherwise required under Section 7.09 below, following the termination of this Agreement. Such cooperation shall include, without limitation, the following:

(1) Upon termination, Contractor, if offering a HMO, shall complete the processing of all claims for benefit payments under the QHP for Health Care Services other than Capitated Services, and if offering a PPO, shall complete the processing of all medical claims for benefit payments under Contractor's QHP for Health Care Services rendered on or before the termination date and received by Contractor ~~for a period of time~~for a period of time six (6) months after the termination date ~~as determined by the Exchange pursuant to QHP requirements.~~

(2) Contractor will provide ~~information, including, Explanation of Benefits messages and/or other~~ communications developed or otherwise approved by the Exchange, to communicate new QHP information to Enrollees and Employers in accordance with a timeline to be established by the Exchange.

(3) In order to assure the proper transition of Services provided prior to, and subsequent to, termination, Contractor will forward to any new QHP the electronic and direct paper claims that are received by Contractor but which relate to Services provided by new contractor. Any such information shall be subject to compliance with applicable laws, rules and regulations and shall be sent at such time periods and in the manner requested by the Exchange for a period of up to three (3) months following the termination date.

(4) Contractor shall provide customer service to support the processing of claims for Health Care Services rendered on or before the termination date for a period of two (2) months or such other longer period reasonably requested by the Exchange at a cost to be mutually agreed upon per Enrollee.

(5) If so instructed by the Exchange in the termination notice, Contractor shall promptly discontinue the provision of Services requested by the Exchange to be discontinued as of the date requested by the Exchange .

(6) Contractor will perform reasonable and necessary acts requested by the Exchange and as required under applicable laws, rules, regulation and consistent with industry standards to facilitate transfer of Health Care Services herewith to a succeeding Contractor. Contractor shall comply with requirements reasonably imposed by the Exchange relating to (i) the discontinuation of new enrollment or re-enrollment in Contractor's QHP, (ii) the transfer of Enrollee coverages to another QHP prior to the commencement date, (iii) the expiration of existing quotes and (iv) such other protocols that may be reasonably established by the Exchange.

(7) Contractor will reasonably cooperate with the Exchange and any successor QHP in good faith with respect to taking such actions that are reasonably determined to be the best interest of the QHP, Enrollees, and Employers.

(8) Contractor shall cooperate with the Exchange's conduct of an accounting of amounts paid or payable and Enrollees enrolled during the month in which termination is effective in order to assure an appropriate determination of premiums earned by and payable to Contractor for Services rendered prior to the date of termination, which shall be accomplished as follows:

- (a) Mid-Month Termination: For a termination of this Agreement that occurs during the middle of any month, the premium for that month shall be apportioned on a *pro rata* basis. Contractor shall be entitled to premiums from Enrollees for the period of time prior to the date of termination and Enrollees shall be entitled to a refund of the balance of the month.
- (b) Responsibility to Complete Contractual Obligations: Contractor is responsible for completing submission and corrections to Encounter Data for Health Care Services received by Enrollees during the period of the Agreement. Contractor is responsible for submitting any outstanding financial or other reports required for Health Care Services rendered or Claims paid during the term of the Agreement.

(9) Contractor shall (i) provide such other information to the Exchange, Enrollees and/or the succeeding QHP, and/or (ii) take any such further action as is required to effect an orderly transition of Enrollees to another QHP in accordance with requirements set forth under this Agreement and/or necessary to the continuity and transition of care in accordance with applicable laws, rules and regulations.

#### **7.09 Coverage Following Termination and Decertification.**

(a) Upon the termination of the Agreement and decertification of one or more of Contractor's Certified QHP Contractor shall cooperate fully with the Exchange in order to effect an orderly transition of Enrollees to another Certified QHP as directed by the Exchange. This cooperation shall include, without limitation, (i) attending such post- termination meetings, (ii) providing or arranging for the provision of Health Care Services as may be deemed necessary by Participating Providers to assure the appropriate continuity of care, and/or (iii) communicating with affected Enrollees in cooperation with the Exchange and/or the succeeding contractor, each as shall be reasonably requested by the Exchange.

(b) In the event of the termination or expiration of the Agreement requires the transfer of some or all Enrollees into any other health plan, the terms of coverage under Contractor's QHP shall not be carried over to the replacement QHP but rather the transferred Enrollees shall be entitled only to the extent of coverage offered through the replacement QHP as of the effective date of transfer to the new QHP.

(c) Notwithstanding the foregoing, the coverage of Enrollee under Contractor's QHP may be extended to the extent that an Enrollee qualifies for an extension of benefits including, those to effect the continuity of care required due to hospitalization or disability pursuant to Health and Safety Code section 1399.62. For purposes of this Agreement, "disability" means that the Enrollee has been certified as being totally disabled by the Enrollee's treating physician, and the

certification is approved by Contractor. Such certification must be submitted for approval within thirty (30) calendar days from the date coverage is terminated. Recertification of Enrollee's disability status must be furnished by the treating Provider not less frequently than at sixty (60) calendar day intervals during the period that the extension of benefits is in effect. The extension of benefits shall be solely in connection with the condition causing total disability. This extension, which is contingent upon payment of applicable premiums, shall be provided for the shortest of the following periods:

- (i) Until total disability ceases;
- (ii) For a maximum period of twelve (12) months after the date of termination, subject to plan maximums;
- (iii) Until the Enrollee's enrollment in a replacement plan.
- (iv) Recertification

### Article 8. Insurance and Indemnification

**8.01 Insurance.** Without limiting the Exchange's right to obtain indemnification or other form of remedies or relief from Contractor or other third-parties, Contractor shall, at its sole cost and expense, obtain, and, during the term of this Agreement, maintain, in full force and effect, the insurance coverage ~~described in this Section and/or as otherwise required by law~~, including, without limitation, coverage required to be provided and documented pursuant to Section 1351 of the Health and Safety Code ~~and relating to insurance coverage or self-insurance: (i) to respond to claims for damages arising out of the furnishing of Health Care Services, (ii) to protect against losses of facilities where required by the director, and (iii) to protect against workers' compensation claims arising out of work-related injuries that might be brought by the employees and staff of Contractor. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the State and rated A- or higher by AM Best. Contractor shall include the Exchange, its Board, contractors, officers, employees, agents and volunteers, both individually and collectively, as an additional insured party in Contractor's commercial general liability and automobile liability insurance policies required hereunder, and such insurance shall apply as primary insurance for these additional insureds. All insurance shall be adequate to provide coverage against losses and liabilities attributable to the acts or omissions of Contractor in performance of this Agreement and to otherwise protect and maintain the resources necessary to fulfill Contractor's obligations under this Agreement. The minimum acceptable limits shall be as indicated below.~~

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

~~(b) Comprehensive business automobile liability (owned, hired, or non-owned vehicles used by Contractor in connection with performance of its obligations under this Agreement) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than \$1 million per accident;~~

~~(c) Employers liability insurance covering the risks of Contractor's employees and employees' bodily injury by accident or disease with limits of not less than \$1 million per accident~~

**Comment [A80]:** It is unreasonable to require QHPs to purchase insurance covering Covered California staff, Board Members, contractors, etc. It would be either impossible or prohibitively expensive to purchase such a policy and this is not consistent with any other larger purchaser contracts that we are aware of.

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~~for bodily injury by accident and \$1 million per employee for bodily injury by disease and \$1 million disease policy limit;~~

~~(d) — Umbrella policy providing excess limits over the primary general liability, automobile liability and employer's liability policies in an amount not less than \$10 million per occurrence and in the aggregate;~~

~~(e) — Crime coverage with coverage of not less than [\$25 million] single loss limit and \$25 million in the aggregate, which shall at a minimum cover occurrences falling in the following categories: computer and funds transfer fraud; forgery; money and securities; and employee theft; and~~

~~(f) — Professional liability or errors and omissions with coverage of not less than \$1 million per claim/\$2 million general aggregate.~~

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

**8.03** ~~coverage required by law which shall remain in full force and effect during the term of the Agreement.~~ Subcontractors. Contractor shall require all subcontractors that may be authorized to provide Services on behalf of Contractor or otherwise under this Agreement to maintain insurance commensurate with the nature of such subcontractors' work. ~~To the extent available, Contractor shall cause Contractor and the Exchange to be named as an additional insured under the applicable insurance coverage and all coverage for subcontractors shall be subject to all the requirements set forth in this Agreement and applicable laws, rules and regulations. Failure of subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.~~

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**8.04** Premium Notices. Premium on all insurance policies shall be paid by Contractor or its subcontractors. Contractor shall provide 30 days' notice of cancellation to the Exchange. Contractor shall furnish to the Exchange copies of certificates of all required insurance prior to the Execution Date, and copies of renewal certificates of all required insurance within 30 Days after the renewal date. ~~The Exchange reserves the right to review the insurance requirements contained herein to ensure that there is appropriate coverage that is in accordance with this Agreement. The Exchange is to be notified by Contractor promptly if any aggregate insurance limit is exceeded. In such event, Contractor must purchase additional coverage to meet these requirements.~~

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**8.05 — Coverage.** ~~The commercial general liability and automobile liability insurance maintained by Contractor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the Exchange to the extent necessary for Contractor to meet its obligations~~

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~~under this Agreement and shall include a coverability of interests (cross-liability) provision. Contractor shall arrange for continuous insurance coverage throughout the term of this Agreement. For professional liability and errors and omissions coverage and crime coverage, Contractor shall continue such coverage beyond the expiration or termination of this Agreement and provide the Exchange with certificates of insurance on an annual basis. In the event Contractor procures a claim made policy as distinguished from an occurrence policy, Contractor shall procure and maintain prior to termination of such insurance, continuing extended reporting coverage for the maximum terms provided in the policy so as to cover any incidents arising during the term of this Agreement. Contractor shall arrange for continuous insurance coverage throughout the term of this Agreement. For professional liability and errors and omissions coverage and crime coverage, Contractor shall continue such coverage beyond the expiration or termination of this Agreement and provide the Exchange with certificates of insurance on an annual basis. In the event Contractor procures a claims made policy as distinguished from an occurrence policy, Contractor shall procure and maintain prior to termination of such insurance, continuing extended reporting coverage for the maximum terms provided in the policy so as to cover any incidents arising during the term of this Agreement.~~

**8.068.03 Exchange Indemnification.** Contractor shall indemnify, defend and hold harmless the Exchange, the State, and all of the officers, trustees, agents and employees of the foregoing ~~(each an "Indemnitee")~~, from and against any and all ~~demands, claims, actions,~~ losses, costs, liabilities, ~~or damages or deficiencies,~~ including interest, penalties and reasonable attorneys' fees, which resulting from third-party claims, to the extent they,

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

(b) Are caused by or resulting from Contractor's acts or omissions constituting bad faith, willful misfeasance, gross negligence or reckless disregard of its duties under this Agreement or applicable laws, rules and regulations; or

~~(c) Accrue or result to~~ Are brought or claimed against an Indemnitee by any of Contractor's subcontractors, material men, laborers or any other person, firm or entity furnishing or supplying services, material or supplies under a contract or subcontract with Contractor in connection with the Contractor's performance of this Agreement.

(d) 8.07 Contractor Indemnification

The Exchange shall indemnify, defend and hold harmless the Contractor, the State, and all of the officers, trustees, agents and employees of the foregoing (each an "Indemnitee"), from and against any and all losses, costs, liabilities, or damages, including interest, penalties and reasonable attorneys' fees, resulting from third-party claims, to the extent they,

(e) Arise out of or are due to a material breach by Exchange of any of its representations, warranties, covenants or other obligations contained in this Agreement; or

(f) Are caused by or resulting from the Exchange's acts or omissions constituting bad faith, willful misfeasance, negligence or reckless disregard of its duties under this Agreement or applicable laws, rules and regulations; or

(g) Are brought or claimed against an Indemnitee by any of the Exchange's subcontractors, material men, laborers or any other person, firm or entity furnishing or supplying services, material or supplies under a contract or subcontract with Contractor in connection with the Exchange's performance of this Agreement.

~~(e)(h)~~

## Article 9. Protection of Personally identifiable Data and Information Assets

### 9.01 Privacy and Security Requirements for Personally Identifiable Data.

~~(a) The Exchange and Contractor acknowledge that Contractor is a covered entity as that term is defined at 45 C.F.R. § 160.103. Contractor agrees to comply with applicable provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), including the Administrative Simplification Provisions of HIPAA, as codified at 42 U.S.C. § 1320d et seq. the Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH"), and any current and future regulations promulgated under HITECH or HIPAA, including without limitation the federal privacy, security, breach notification, and electronic transaction regulations contained at 45 C.F.R. Parts 160, 162, and 164, all as amended from time to time and collectively referred to herein as the "HIPAA Requirements." Contractor agrees not to use or further disclose any PHI, other than as permitted or required by the HIPAA Requirements and the terms of this Agreement.~~

~~(b) **Exchange Requirements.** Contractor agrees to comply with the privacy and security requirements applicable to PII under the Exchange Establishment and Eligibility Rules at 45 C.F.R. Part 155 ("the Exchange Requirements"), promulgated pursuant to the Act.~~

~~(a) **California Requirements.** Contractor agrees to comply with all applicable California state health information privacy and security laws applicable to PII, including but not limited to the CMIA., the IIPPA, and the IPA, all collectively referred to as "California Requirements."~~

~~(b) **Interpretation.** Notwithstanding any other provisions in this section, to the extent a conflict arises between the permissibility of a use or disclosure of PHI or PII under the HIPAA Requirements, the Exchange Requirements, or California Requirements, the applicable requirements imposing the more stringent privacy and security standards to such uses and disclosures shall apply. In addition, any ambiguity in this Agreement regarding the privacy and security of PHI and/or PII shall be resolved to permit the Exchange Contractor to comply with the most stringent of the applicable privacy and security laws or regulations.~~

#### ~~(c) **Contractor Obligations**~~

~~(i) Uses and Disclosures. Pursuant to the terms of this Agreement, Contractor may receive from the Exchange PHI and/or PII that is protected under applicable federal and state laws and regulations. Contractor shall not use or disclose such PHI or PII other than as is expressly permitted under the Exchange Requirements and only to the extent necessary in performing functions under this Agreement to assist applicants with securing health insurance coverage.~~

**Comment [A81]:** We are not in agreement that the Exchange is a covered entity under HIPAA as discussed in great detail in our previous comment letter.

**Comment [A82]:** IPA is not defined. If it refers to the Information Practice Act the Contractor is not subject to those requirements because they are not a state agency, but the Exchange may be subject to it and the contract may need to be revised to reflect that.

**Comment [A83]:** This is not a defined term.

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(ii) Fair Information Practices. Contractor shall implement reasonable and appropriate fair information practices to support the operations of the Exchange that are consistent with the Exchange Requirements and address, at a minimum:

**Comment [A84]:** Again, too vague as these terms are not defined.

(1) Individual Access. Contractor shall provide access to, and permit inspection and copying of PHI and PII in either an electronic or hard copy format as specified by the individual and as required by law, within ten (10) calendar days of such request from the individual. In the event any individual requests access to PHI or PII maintained by the Exchange or another health plan directly from Contractor, Contractor shall within five (5) calendar days forward such request to the Exchange and the relevant health plan as needed.

(2) Amendment. Contractor shall provide an individual with the right to request an amendment of inaccurate PHI and PII. Contractor shall respond to such individual within ten (10) calendar days of such a request either by making the correction and informing the individual of such correction or notifying the individual that the request was denied and providing an explanation for the denial.

~~(3) Openness and Transparency. Contractor shall make available to individuals applicable policies, procedures, and technologies that directly affect such individuals and/or their PHI and PII.~~

~~(4) Choice. Contractor shall provide individuals with a reasonable opportunity and capability to make informed decisions about the collection, use, and disclosure of their PHI and PII.~~

~~(5)~~(3) Limitations. Contractor represents and warrants that all PHI and PII shall be collected, used, and/or disclosed under this Agreement only that is consistent with requirements of HIPAA to the extent necessary to accomplish a specified purpose under the terms of this Agreement and never to discriminate inappropriately.

**Comment [A85]:** This requirement is too vague.

~~(6)~~(4) Data Integrity. Contractor shall implement policies and procedures reasonably intended to ensure that PHI and PII in its possession is complete, accurate, and current, to the extent necessary for the Contractor's intended purposes, and has not been altered or destroyed in an unauthorized manner.

~~(7)~~(5) Safeguards. Contractor shall have in place administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI and PII that it creates, receives, maintains or transmits pursuant to the Agreement and to prevent the use or disclosure of PHI and/or PII other than as provided for in this Agreement, or as required by law. In furtherance of compliance with such requirements, Contractor shall:

- (a) use commercially reasonable efforts to secure all electronic PHI and/or PII transmitted, i.e., and where and when appropriate to render all PHI and/or PII unusable, unreadable, or indecipherable, consistent with applicable laws and industry guidance, including but not limited to the U.S. Department of Health and Human Services Guidance Specifying the Technologies and Methodologies That Render Protected Health

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Information 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 PHI and/or PII;

- (b) ensure that encryption is used in the electronic transmission of PHI and/or PII using commercially reasonable means and consistent with applicable industry standards such as NIST guidelines;
- (c) implement a contingency plan for responding to emergencies and/or disruptions to business that in any way affect the use, access, disclosure or other handling of PHI and/or PII;
- (d) maintain and exercise a plan to respond to internal and external security threats and violations;
- (e) maintain an incident response plan;
- (f) maintain technology policies and procedures that provide reasonable safeguards for the protection of PHI and PII stored, maintained or accessed on hardware and software utilized by Contractor and its subcontractors and agents;
- (g) mitigate to the extent practicable, any harmful effect that is known to Contractor of any Security Incident related to PHI and/or PII or of any use or disclosure of PHI and/or PII by Contractor or its subcontractors or agents in violation of the requirements of this Agreement or applicable privacy and security laws and regulations and agency guidance;
- (h) destroy PHI and PII in a manner consistent with applicable laws, regulations, and agency guidance on the destruction of PHI and PII; and
- (i) comply, consistent with HIPAA requirements, with all applicable the Exchange Protection of Information policies as specified in accordance with the terms and conditions set forth herein and as detailed in Section 9.02, Protection of Information Assets, including, but not limited to, executing non-disclosure agreements and other documents required by such policies. Contractor shall also require any subcontractors and agents to comply, as applicable, with all the Exchange Protection of Information policies.

~~(iii) — Accounting of Disclosures. Within ten (10) calendar days of notice by the Exchange or any of its contracting Plans to Contractor that it has received a request for an accounting of disclosures of PHI or PII from an individual for any portion of the period beginning~~

~~six (6) years prior to the date on which the accounting was requested, Contractor shall make available to the Exchange such information as is in Contractor's possession and is required for the Exchange to make the accounting required under the HIPAA Requirements or any other applicable privacy and security laws or regulations. At a minimum, Contractor shall provide the Exchange with the following information: (a) the date of the disclosure; (b) the name of the entity or person who received the PHI and/or PII, and if known, the address of such entity or person; (c) a brief description of the PHI and/or PII disclosed; and (d) a brief statement of the purpose of such disclosure that includes an explanation of the basis for such disclosure. In the event the request for an accounting is delivered directly to Contractor, Contractor shall, within two (2) calendar days, forward such request to the Exchange. It shall be the Exchange's responsibility to prepare and deliver any such accounting requested. Contractor hereby agrees to implement an appropriate record-keeping process to enable it to comply with the requirements of this Section.~~

~~(iv) — Breach Notification. Contractor shall report to the Exchange: (i) any use or disclosure of PHI and/or PII not permitted by this Agreement; (ii) any Security Incident; and/or (iii) any breach as defined in the HIPAA Requirements or California Requirements (each of which shall be referred to herein as a "Breach"). Contractor shall, without unreasonable delay, but no later than within three (3) calendar days after Contractor's discovery of a Breach, report such Breach to the Exchange. Such report will be made on a form made available to Contractor, or by such other reasonable means of reporting as may be communicated to Contractor by the Exchange. Contractor shall cooperate with the Exchange in investigating the Breach and in meeting the Exchange's obligations under applicable security breach notification laws or regulatory obligations. If the cause of the Breach is attributable to Contractor or its agents or subcontractors, Contractor shall be responsible for Breach notifications and reporting as required under applicable federal and state laws and regulations. Such notification(s) and required reporting shall be done in cooperation with the Exchange. To the extent possible, Contractor's initial report shall include: (i) the names of the individual(s) whose PHI and/or PII has been, or is reasonably believed by Contractor to have been accessed, acquired, used or disclosed; (ii) a brief description of what happened including the date of the incident and the date of the discovery of the incident, if known; (iii) a description of the types of PHI and/or PII that were involved in the incident; (iv) a brief description of what Contractor is doing or will be doing to investigate, to mitigate harm to the individual(s), and to protect against recurrences; and (v) any other information that the Exchange determines it needs to include in notifications to the individual(s) or relevant regulatory authorities under applicable privacy and security requirements. 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, if available. Contractor and the Exchange will cooperate in developing content for any public statements.~~

~~(iii) Subcontractors and Agents. Contractor shall enter into an agreement with any agent or subcontractor that will have access to PHI and/or PII that is received from, or created or received by, Contractor on behalf of the Exchange or any of its contracting Plans pursuant to which such agent or subcontractor agrees to be bound by the same restrictions, terms and conditions that apply to Contractor pursuant to this Agreement with respect to such PHI and PII. Business Associate as defined in HIPAA regulations.~~

~~(d) Exchange Operations.~~

**Comment [A86]:** There are already processes in place at the federal and state level to address this and there is not a role for the Exchange in this process.

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(i) The Exchange shall be entitled to receive de-identified PHI consistent with the HIPAA de-identification safe harbor patient medical and pharmaceutical information from Contractor in order to effectively oversee and administer the Plans. As used in this subsection (f), the term “de-identified” shall have the meaning set forth in 45 C.F.R. § 164.514.

~~(ii) Contractor shall de-identify PHI and/or PII, as relevant, when reporting data for training, research, publication, and/or marketing purposes unless a written authorization is obtained from the affected Enrollee or their authorized representative. Contractor shall not release Enrollee PHI and/or PII for such purposes if the identity of such Enrollee(s) could reasonably be inferred from the information provided.~~

~~(g)(e)~~ **Records and Audit.** Contractor agrees to make its internal practices, books and records relating to the use and disclosure of PHI and/or PII received from the Exchange, or created or received by Contractor on behalf of the Exchange available to the Secretary of the U.S. Department of Health and Human Services for purposes of determining the Contractor’s and/or the Exchange’s compliance with HIPAA Requirements. ~~In addition, Contractor shall provide the Exchange with information concerning its safeguards described throughout this Section and/or other information security practices as they pertain to the protection of PHI and PII, as the Exchange may from time to time request. Failure of Contractor to complete or to respond to the Exchange’s request for information within the reasonable timeframe specified by the Exchange shall constitute a material breach of this Agreement.~~ In the event of a Breach or Security Incident related to PHI and/or PII or any use or disclosure of Exchange PHI and/or PII by Contractor in violation of the requirements of this Agreement, the Exchange will be permitted access to Contractor’s facilities in order to review policies, procedures and controls relating solely to compliance with the terms of this Agreement.

**Comment [A87]:** Not necessary to restate HIPAA requirements.

~~(h)~~ **Electronic Transactions Rule** In conducting any electronic transaction that is subject to the Electronic Transactions Rule on behalf of any Plan, Contractor agrees to comply with all applicable requirements of the Electronic Transactions Rule set forth in 45 C.F.R. Part 162 ~~that would apply to the Plan if the Plan were conducting the transaction itself.~~ Contractor agrees ~~to ensure or require~~ that any agent, including a subcontractor, of Contractor that conducts standard transactions with PHI and/or PII of the Plan will to comply with all of the applicable requirements with the Electronic Transactions Rule ~~that would apply to the Plan if the Plan were conducting the transaction itself.~~

~~(i)(f)~~ **Minimum Necessary.** Contractor agrees to request and use only the minimum necessary type and amount of PHI required to perform its services and will comply with any regulations promulgated under the HIPAA Requirements and agency guidance concerning the minimum necessary standard pertaining to PHI. Contractor will collect, use and disclose PII only to the extent necessary to accomplish a specified purpose under this Agreement.

~~(j)(g)~~ **Indemnification.** Contractor shall indemnify, hold harmless, and defend the Exchange from and against any and all costs (including mailing, labor, administrative costs, vendor charges, and any other costs determined to be reasonable by the Exchange in its sole discretion), losses, penalties, fines, and liabilities arising from or associated with a Breach or other non-permitted use or disclosure of PHI and/or PII by Contractor or its subcontractors or agents, including without limitation, (1) damages resulting from any action under (a) HIPAA Requirements, (b) the Exchange Requirements or (c) California Requirements, and (2) the costs of the Exchange actions taken to : (i) notify the affected individual(s) and other entities of and to

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respond to the Breach; (ii) mitigate harm to the affected individual(s); and (iii) respond to questions or requests for information about the Breach or other impermissible use or disclosure of PHI and/or PII.

~~(k) **Business Associate.** In instances when the Exchange acts as a Covered Entity as defined under the HIPAA Requirements, and Contractor, on behalf of the Exchange, receives, creates, transmits, and/or maintains PHI for a function or activity defined as a business associate activity under the HIPAA Requirements, then the provisions of Attachment 16 (“Business Associate Agreement”) to this Agreement shall apply to Contractor.~~

~~Exchange shall indemnify, hold harmless, and defend the Contractor from and against any and all costs (including mailing, labor, administrative costs, vendor charges, and any other costs determined to be reasonable by the Contractor), losses, penalties, fines, and liabilities arising from or associated with a Breach or other non-permitted use or disclosure of PHI and/or PII by Exchange or its subcontractors or agents, including without limitation, (1) damages resulting from any action under (a) HIPAA Requirements, (b) the Exchange Requirements or (c) California Requirements, and (2) the costs of the Contractor actions taken to : (i) notify the affected individual(s) and other entities of and to respond to the Breach; (ii) mitigate harm to the affected individual(s); and (iii) respond to questions or requests for information about the Breach or other impermissible use or disclosure of PHI and/or PII.~~

(l)(h) **Notice of Privacy Practices.** The Exchange shall notify Contractor of any limitation(s) in its notice of privacy practices in accordance with 45 C.F.R. § 164.520, other provisions within the HIPAA Requirements, or any other applicable laws or regulations, to the extent that such limitation may affect Contractor's use or disclosure of PHI and/or PII.

**Comment [A88]:** See previous comments on this issue.

(m)(i) **Reporting Violations of Law.** Contractor may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. § 164.502(j)(2), other provisions within the HIPAA Requirements, or any other applicable laws or regulations.

(n)(i) **Survival.** Notwithstanding anything to the contrary in the Agreement, the provisions of this Section 9.01 on the Protection of Personally Identifiable Information shall survive termination of the Agreement until such time as all PII, PHI and Information Assets provided by the Exchange to Contractor, or created, received or maintained by Contractor on behalf of the Exchange, is destroyed or returned to the Exchange, in a manner that is reasonably acceptable to the Exchange.

~~(k)~~ **Contract Breach.** Without limiting the rights of the parties pursuant to this Agreement, if Contractor materially breaches its obligations under this Section, the Exchange may, at its option: (a) exercise any of its rights of access and inspection under this Agreement; (b) require Contractor to submit to a plan of monitoring and reporting, as the Exchange may determine necessary to maintain compliance with this Agreement and such plan shall be made part of this Agreement; or (c) notwithstanding any other provisions of this Agreement, terminate this Agreement, with or without opportunity to cure the breach. The Exchange's remedies under this Section and any other part of this Agreement or provision of law shall be cumulative, and the exercise of any remedy shall not preclude the exercise of any other.

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## 9.02 Protection of Information Assets

(a) The following terms shall be given the meaning shown:

(i) **“Information Assets”** means any information, including Confidential Information, necessary to the operation of either party that is created, stored, transmitted, processed or managed on any hardware, software, network components, or any printed form or is communicated orally.

(ii) **“Confidential Information”** Includes, but is not limited, to any information (whether oral, written, visual or fixed in any tangible medium of expression), relating to either party’s services, operations, systems, programs, inventions, techniques, suppliers, customers and prospective customers (excluding the Exchange), cost and pricing data, trade secrets, know-how, processes, plans, reports, designs and any other information of or relating to the business or either party, including Contractor’s programs, but does not include information that (a) is described in the Evidence of Coverage booklets; (b) was known to the Receiving Party before it was disclosed to the Receiving Party by the Disclosing Party, (c) was or becomes available to the Receiving Party from a source other than the Disclosing Party, provided such fact is evidenced in writing and the source is not bound by a confidentiality obligation to Disclosing Party, or (d) is developed by either party independently of the other party’s Confidential Information, provided that such fact can be adequately documented.

(iii) **“Disclosing Party”** means the party who sends Information Assets that it owns to the other party for the purposes outlined in this Agreement.

(iv) **“Receiving Party”** means the party who receives Information Assets owned by the other.

(b) The Receiving Party shall hold all Information Assets of the Disclosing Party in ~~trust and~~ confidence and will not use any of the Disclosing Party’s Information Assets for any purpose, except as set forth in this Agreement, or as otherwise required by law, regulation or compulsory process.

**Comment [A89]:** Trust is a higher standard than the contract norms and the appropriate standard is set forth in subsequent subsections.

(c) The Receiving Party must take all reasonable and necessary steps to prevent the unauthorized disclosure, modification or destruction of the Disclosing Party’s Information Assets. The Receiving Party must, at a minimum, use the same degree of care to protect the Disclosing Party’s Information Assets that it uses to protect its own Information Assets.

(d) The Receiving Party agrees not to disclose the Disclosing Party’s Information Assets to anyone, except to employees or third parties who require access to the Information Assets pursuant to this Agreement, but only where such third parties have signed agreements regarding the Information Assets containing terms that are equivalent to, or stricter than, the terms of this Section, or as otherwise required by law.

(e) In the event the Receiving Party is requested to disclose the Disclosing Party’s Information Assets pursuant to a request under the California Public Records Act (PRA), a summons, subpoena or in connection with any litigation, or to comply with any law, regulation, ruling or government or public agency request, the Receiving Party shall, to the extent it may do so lawfully, give the Disclosing Party timely notice of such requested disclosure and afford the

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Disclosing Party the opportunity to review the request before Receiving Party discloses the Information Assets. The Disclosing Party shall, in accordance with applicable law, have the right to take such action as it reasonably believes may be necessary to protect the Information Assets, and such action shall not be restricted by the dispute resolution process of this Agreement. If such request is pursuant to the PRA, the Exchange shall give Contractor sufficient notice to permit Contractor to consult with the Exchange prior to disclosure of any Confidential Information. This subdivision shall not apply to restrict disclosure of any information to the State or in connection with a dispute between the Exchange and Contractor or any audit or review conducted pursuant to this Agreement.

(f) The Receiving Party shall notify the Disclosing Party in writing of any unauthorized disclosure, modification or destruction of the Disclosing Party's Information Assets by the Receiving Party, its officers, directors, employees, contractors, agents or third parties. The Receiving Party shall make this notification promptly upon becoming aware of such disclosure, modification or destruction, but in any event, not later than four (4) calendar days after becoming aware of the unauthorized disclosure, modification or destruction. After such notification, the Receiving Party agrees to cooperate reasonably, at the Receiving Party's expense, with the Disclosing Party to remedy or limit the unauthorized disclosure, modification or destruction and/or its effects.

(g) The Receiving Party understands and agrees the Disclosing Party may suffer immediate, irreparable harm in the event the Receiving Party fails to comply with any of its obligations under this Section, that monetary damages will be inadequate to compensate the Disclosing Party for such breach and that the Disclosing Party shall have the right to enforce this section by injunctive or other equitable remedies. The provisions of this Section shall survive the expiration or termination, for any reason, of this Agreement.

(h) To the extent that information subject to this Section on Protection of Information Assets is also subject to HIPAA Requirements, the Exchange Requirements or California Requirements in Section 9.01(b) and (c) and in the event of a conflict or inconsistency between the requirements of the various applicable sections and attachments of this Agreement, Contractor shall comply with the provisions that provide the greatest protection against access, use or disclosure.

(i) Survival. Notwithstanding anything to the contrary in the Agreement, the provisions of this Section 9.02 on Information Assets shall survive termination of the Agreement until such time as all ~~information assets~~ Information Assets provided by the Exchange to Contractor, or created, received or maintained by Contractor on behalf of the Exchange, is destroyed or returned to the Exchange, in a manner that is reasonably acceptable to the Exchange, or Contractor receives written permission from the Exchange to retain the Information Assets.

## Article 10. Books, Records and Data Collection

**10.01 Clinical Records.** Except as otherwise required by law, Contractor shall maintain, and require each Participating Provider and subcontractor to maintain, a medical record documentation system adequate to fully disclose and document the medical condition of each Enrollee and the extent of Health Care Services provided to Enrollees. Clinical records shall be retained for at least seven (7) years following the year of the final Claims payment. If an audit,

**Comment [A90]:** The requirements to maintain documents for 7-10 years is well beyond the industry norm. We suggest changing these to a maximum of 7 years, consistent with industry norms. We would also suggest that this section be changed to reference compliance with currently regulatory requirements and that the Exchange not duplicate what is already required by state law.

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litigation, research, evaluation, claim or other action involving the records has not been concluded before the end of the seven (7) year minimum retention period, the clinical records must be retained until all issues arising out of the action have been resolved.

**Comment [A91]:** We request that the Exchange clarify the responsibility of the Contractor to maintain medical records if this function is delegated. Suggest it be sufficient to allow delegated group to maintain documents.

**10.02 Financial Records.** Except as otherwise required to be maintained for a longer period by law or this Agreement, financial records, supporting documents, statistical records and all other records pertinent to amounts paid to or by Contractor in connection with this Agreement shall be retained by Contractor for at least seven (7) years from the date of the final claims payment. Contractor shall maintain accurate books, accounts, and records and prepare all financial statements in accordance with Generally Accepted Accounting Principles and statutory accounting principles, and in compliance with the regulations of any governmental or regulatory authority having jurisdiction over Contractor. The information and reports to be provided by Contractor under this Agreement shall include, without limitation, those certain items identified in Attachment 17 ("Required Reports")

**Comment [A92]:** Health plans in California are required to follow GAAP.

(a) Contractor shall maintain adequate data concerning each of its transactions with Participating Providers, the Exchange, and Enrollees during the period this Agreement remains in force and will keep records of claims, including medical review and high dollar special audit claims, for a period of ~~ten (10)~~ seven (7) years or for such length of time as required by federal or state law, whichever is longer. ~~At the end of the ten (10) year retention period, at the option of the Exchange, records shall either be transferred to the Exchange at its request or destroyed. All such records are the property of the Exchange and must be returned to the Exchange or its authorized representatives upon demand.~~

**Comment [A93]:** We request that the Exchange clarify what it means by "adequate data"

(a)(b) \_\_\_\_\_

**Comment [A94]:** This data contains PHI and it would be a violation of HIPAA to share it with the Exchange.

(b)(c) Contractor shall maintain historical claims data and other records and data relating to the utilization of Health Care Services by Enrollees on-line for two (2) years from date that the Agreement is terminated with respect to Health Care Services provided to Enrollees during the term of this Agreement. These records shall include, but are not limited to, the data elements necessary to produce specific reports in such form reasonably required by the Exchange and consistent with industry standards and requirements of Health Insurance Regulators regarding statistical, financial and/or data reporting requirements, including information relating to diagnosis, treatment, amounts billed (allowed and paid), dates of service, procedure numbers, deductible, out-of-pocket and other cost sharing for each claim.

**Comment [A95]:** This requirement is too vague. It is unreasonable to include data maintenance requirements for unspecified reports in unspecified formats.

**10.03 Storage.** Such books and records shall be kept in a secure location at the Contractor's office(s), and books and records related to this Agreement shall be available for inspection and copying by the Exchange, the Exchange representatives, and such consultants and specialists as designated by the Exchange, at any time during normal business hours. ~~Contractor as provided in Section 10.5 hereof and upon reasonable notice. Books and records shall be made available for inspection and copying by the Exchange only to the extent permitted by State and Federal laws and regulations~~ Contractor shall also ensure that related books and records of Participating Providers and subcontractors shall be accurately maintained. If any inquiry, audit, investigation, litigation, claim or other action involving the records is ongoing and has not been finally concluded before the end of the seven (7) year minimum retention period, the applicable financial records must be retained until all issues arising out of the action have been resolved.

**10.04 Back-Up.** Contractor shall maintain a separate back-up system for its electronic data

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processing functions and a duplicate data file which is updated regularly and stored off-site in a secured, controlled environment. Contractor's back-up system shall comply with applicable laws, rules and regulations, including, those relating to privacy and confidentiality and shall be designed to meet or exceed industry standards regarding the preservation of access to data.

#### **10.05 — Examination and Audit.**

~~(a) — During the term of this Agreement and for a period of seven years following the termination or expiration of this Agreement, Contractor shall permit, and shall cause Participating Providers and other subcontractors to permit, the Exchange, Health Insurance Regulators, the United States Department of Health and Human Services (“DHHS”), Bureau of State Audits, any other regulatory entity with jurisdiction regarding the operation of Contractor or subcontractors, and their authorized representatives, at all reasonable times during normal business hours, to inspect and copy, at the expense of the Exchange, books and records of Contractor and Participating Providers and subcontractors relating to its performance of this Agreement and the provision of Health Care Services to Enrollees. The access to books and records shall include information relating to Contractor's compensation discounts, data charges and Health Care Services fees with Participating Providers; provided, however, that such information shall be made available only to the extent that: (i) such disclosures are permitted by law and (ii) Contractor has made reasonable efforts to the satisfaction of the Exchange regarding Contractor's issuance of any necessary notices to, and/or receipt of any necessary consents from, Participating Providers required for disclosure of such information. Contractor shall cooperate fully in connection with any examination or audit. All adjustments, payments, and/or reimbursements determined to be necessary by any examination or audit shall be made promptly to the appropriate party. Contractor shall comply with Exchange's reasonable requests to provide notice and/or obtain permission from Participating Providers to disclose any such confidential Participating Provider contract information to the Exchange.~~

~~(b) — Contractor shall notify the Exchange, and make available, upon request, to the Exchange the results of final financial, market conduct, or special audits performed by the DMHC, CDI, DHCS, DHHS, and/or any other regulatory entity in a State or jurisdiction where Contractor serves Enrollees.~~

**10.06**~~10.05~~ **Notice.** Contractor shall promptly notify the Exchange in writing of any inquiry, audit, investigation, litigation, claim, examination, or other proceeding involving Contractor, or any Contractor personnel, Participating Provider or other authorized subcontractor that is threatened or commenced by any regulatory agency or other party that a reasonable person might believe could materially affect the ability for Contractor to perform in accordance with the terms set forth in this Agreement. Such notice shall be provided by Contractor to the Exchange within ten (10) days' of Contractors' receipt of notice regarding such action. Contractor shall comply with provide the Exchange's reasonable requests for Exchange with information relating to concerning the outcome of the inquiry; provided, however, that any such exchange of information shall be subject to compliance with law and shall not occur to the extent prohibited by order of the court, administrative agency, or other tribunal or regulatory authority having jurisdiction over the matter or by the laws and regulations governing the action. This section shall not be required with respect to disputes relating to claims and other matters noticed to the Exchange in the ordinary course of business pursuant to other terms and conditions set forth in this Agreement or required by law.

**Comment [A96]:** The Exchange is not a regulator nor a covered entity under HIPAA. The Exchange should rely on the appropriate regulator to oversee the examinations and audits to determine compliance, which also allows access to the federal government when appropriate and legal.

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**10.0710.06 Confidentiality.** The Exchange understands and agrees that Contractor shall only be obligated to provide access to such information to the extent that: (1) access to such information is permitted by applicable State and Federal law and regulation, including, but not limited to, State and Federal law or regulation relating to confidential or private information; and (2) it would not cause Contractor to breach the terms of any contract to which Contractor is a party. Contractor shall use efforts reasonably acceptable to obtain any necessary consents relating to Contractor's access to information.

**10.0810.07 Tax Reporting.** Contractor shall provide such information to the Exchange upon request and as set forth in the Exchange's Administrative Manual that is reasonably required to document Contractor's compliance with, and/or to fulfill the Exchange's obligations with respect to, income tax eligibility, computation and reporting requirements required under applicable laws, rules and regulations that applicable to the operation of the Exchange, including, those relating premium tax credit and other operations of the Exchange set forth at 45 C.F.R. 155 *et seq.*

**10.0910.08 Electronic Commerce.** ~~Contractor shall comply with the requirements of the Exchange and applicable laws, rules and regulations relating to Contractor's participation in electronic commerce activities required under the terms of this Agreement, including, without limitation, those relating to Contractor's (i) storage, processing, update and transmission of Information Assets within Contractor and/or to Exchange, Participating Providers, subcontractors and other third parties, (ii) processing of payments received from Enrollees and Employers, (iii) transaction of any other business, (iv) the required use of electronic signatures, or (v) conduct of any other activities required under this Agreement through electronic commerce ("Electronic Commerce Standards"). The technical specifications relating to such Electronic Commerce Standards shall be set forth in the Administrative Manual and shall include standards required for safeguarding of Information Assets, including, the nature and extent of requires audits, monitoring and oversight of Contractor relating to the storage, processing, update and transmission of Information Assets by Contractor, Participating Providers and subcontractors. Contractor shall provide the Exchange with such information as may be requested from time to time by the Exchange to evaluate Contractor's compliance with the Electronic Commerce Standards, including, without limitation, information relating to Contractor's (i) processes, systems and internal controls, including, those relating to compliance with security, privacy and other requirements set forth at Article 9, (ii) in-house capabilities and arrangements with third parties regarding the storage, processing, update and transmission of data, and (iii) monitoring, auditing and oversight of compliance with the Electronic Commerce Standards and related laws, rules and regulations by Contractor, Participating Providers and subcontractors.~~

Contractor shall use commercially reasonable efforts to comply with the requirements of the Exchange and applicable laws, rules and regulations relating to Contractor's participation in electronic commerce activities.

## Article 11. Intellectual Property

~~(a) Except where the Exchange has agreed in a signed writing to accept a license or other limited interests, the Exchange shall be and remain, without additional compensation, the sole owner of any and all rights, title and interest in all Intellectual Property, from the moment of creation, whether or not jointly conceived, that are made, conceived, derived from, or reduced to practice by Contractor or the Exchange and which result directly or indirectly from this agreement. To the extent that such Intellectual Property is not owned by the Exchange from the moment of~~

**Comment [A97]:** These requirements must be provided to the plans prior to execution of a contract.

**Comment [A98]:** Not clear what the rationale is for Exchange obtaining ownership or exclusive rights in IP developed by Contractors, or obtaining any ownership interest in Contractors' Confidential Information. See Section 11.08 below and comment thereon. Sections 11.01 through 11.04 should be rewritten to give Contractors exclusive rights to their pre-existing IP and to provide that Contractors grant non-exclusive license to IP developed by Contractors in the course of or for purposes of performing the Agreement, and to Contractor pre-existing IP to the extent necessary to practice the IP developed by Contractor in the course of performing or for purposes of the Agreement,. The scope of such licenses should be limited to enabling the Exchange to carry out its functions consistent with its responsibilities and authority as set forth in the enabling legislation and regulations. IP should defined in a more limited to exclude the Contractors Confidential Information. The Exchange should cross-license Contractors to use any IP developed or generated by the Exchange to the extent needed by Contractors to carry out their responsibilities under the Agreement.

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~~creation, Contractor hereby assigns to the Exchange and its representatives, successors and assigns forever all rights, title and interest in and to such Intellectual Property in all media now known or later existing, throughout the world in perpetuity. To the extent that any moral rights may not be assigned, Contractor hereby waives the benefit or protection of same; to the extent that such waiver is ineffective, Contractor hereby grants the Exchange a permanent, non-exclusive, royalty free, paid-up, worldwide, irrevocable, perpetual, non-terminable license to such moral rights. This assignment covers all Contractor's rights in and to all such Intellectual Property created by Contractor before and after the date of this agreement.~~

~~(i) For the purposes of this Agreement, Intellectual Property means recognized protectable rights and interests such as: patents, (whether or not issued), copyrights, trademarks, service marks, applications for any of the foregoing, inventions, Confidential Information, trade secrets, trade dress, domain names, logos, insignia, color combinations, slogans, moral rights, right of publicity, author's rights, contract and licensing rights, works, mask works, industrial design rights, rights of priority, know how, design flows, methodologies, devices, business processes, developments, innovations, good will and all other legal rights protecting intangible proprietary information as may exist now and/or here after come into existence, and all renewals and extensions, regardless of whether those rights arise under the laws of the United States, or any other state, country or jurisdiction.~~

~~(ii) For the purposes of the definition of Intellectual Property, "works" means all literary works, writings and printed matter including the medium by which they are recorded or reproduced, photographs, art work, pictorial and graphic representations and works of a similar nature, film, motion pictures, digital images, animation cells, and other audiovisual works including positives and negatives thereof, sound recordings, tapes, educational materials, interactive videos and any other materials or products created, produced, conceptualized and fixed in a tangible medium of expression. It includes preliminary and final products and any materials and information developed for the purposes of producing those final products. Works do not include articles submitted to peer review or reference journals or independent research projects.~~

~~(b) In the performance of this agreement, Contractor will exercise and utilize certain of its Intellectual Property in existence prior to the effective date of this agreement. In addition, under this agreement, Contractor may access and utilize certain of the Exchange' Intellectual Property in existence prior to the effective date of this agreement. Except as otherwise set forth herein, Contractor shall not use any of the Exchange's Intellectual Property now existing or hereafter existing for any purposes without the prior written permission of the Exchange. Except as otherwise set forth herein, neither the Contractor nor the Exchange shall give any ownership interest in or rights to its Intellectual Property to the other Party. If during the term of this agreement, Contractor accesses any third party Intellectual Property that is licensed to the Exchange, Contractor agrees to abide by all license and confidentiality restrictions applicable to the Exchange in the third party's license agreement.~~

~~(c) Contractor agrees to cooperate with the Exchange in establishing or maintaining the Exchange's exclusive rights in the Intellectual Property and in assuring the Exchange' sole rights against third parties with respect to the Intellectual Property. If the Contractor enters into any agreements or subcontracts with other parties in order to perform this agreement, Contractor shall require the terms of the agreement(s) to include all Intellectual Property provisions of this agreement. Such terms must include, but are not limited to, the subcontractor assigning and~~

~~agreeing to assign to the Exchange all rights, title and interest in Intellectual Property made, conceived, derived from, or reduced to practice by the subcontractor, Contractor or the Exchange and which result directly or indirectly from this agreement or any subcontract.~~

~~(d) Contractor further agrees to assist and cooperate with the Exchange in all reasonable respects, and execute all documents and, subject to reasonable availability, give testimony and take all further acts reasonably necessary to acquire, transfer, maintain, and enforce the Exchange' Intellectual Property rights and interests.~~

#### ~~11.02 Retained Rights / License Rights~~

~~(a) Except for Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or the Exchange and which result directly or indirectly from this agreement, Contractor shall retain title to all of its Intellectual Property to the extent such Intellectual Property is in existence prior to the effective date of this agreement. Contractor hereby grants to the Exchange, without additional compensation, a permanent, non-exclusive, royalty free, paid-up, worldwide, irrevocable, perpetual, non-terminable license to use, reproduce, manufacture, sell, offer to sell, import, export, modify, publicly and privately display/perform, distribute, and dispose Contractor's Intellectual Property with the right to sublicense through multiple layers, for any purpose whatsoever, to the extent it is incorporated in the Intellectual Property resulting from this Agreement, unless Contractor assigns all rights, title and interest in the Intellectual Property as set forth herein.~~

~~(b) Nothing in this provision shall restrict, limit, or otherwise prevent Contractor from using any ideas, concepts, know-how, methodology or techniques related to its performance under this agreement, provided that Contractor's use does not infringe the patent, copyright, trademark rights, license or other Intellectual Property rights of the Exchange or third party, or result in a breach or default of any provisions of this Exhibit or result in a breach of any provisions of law relating to confidentiality.~~

#### ~~11.03 Copyright~~

~~(a) Contractor agrees that for purposes of copyright law, all works (as defined in Section 11.01(a)(ii)) of authorship made by or on behalf of Contractor in connection with Contractor's performance of this agreement shall be deemed "works made for hire" of the Exchange. To the extent that such work is not deemed a "work made for hire" of the Exchange, Contractor hereby assigns to the Exchange and its representatives, successors and assigns forever all rights, title and interest in and to such Intellectual Property in all media now known or later existing, throughout the world in perpetuity. To the extent that any moral rights may not be assigned, Contractor hereby waives the benefit or protection of same; to the extent that such waiver is ineffective, Contractor hereby grants the Exchange a permanent, non-exclusive, royalty free, paid-up, worldwide, irrevocable, perpetual, non-terminable license to such moral rights. This assignment covers all Contractor's rights in and to all such Intellectual Property created by Contractor before and after the date of this agreement. Contractor further agrees that the work of each person utilized by Contractor in connection with the performance of this agreement will be a "work made for hire," whether that person is an employee of Contractor or that person has entered into an agreement with Contractor to perform the work, to the extent permitted by copyright law. Contractor shall enter into a written agreement with any such person that: (i) all work performed for Contractor shall be deemed a "work made for hire" under the Copyright Act~~

and (ii) that to the extent such work is not deemed a “work made for hire”, such person assigns all rights, title, and interest to the Exchange to any work made, conceived, derived from, or reduced to practice by such person alone or jointly with others and which results directly or indirectly from this agreement.

(b) All materials, including, but not limited to, visual works or text, reproduced or distributed pursuant to this agreement that include Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or the Exchange and which result directly or indirectly from this agreement, shall include the Exchange’s notice of copyright, which shall read in 3mm or larger typeface: “© [Enter Current Year e.g., 2004, etc.], State, Department of Health Services. This material may not be reproduced or disseminated without prior written permission from the Exchange.” This notice should be placed prominently on the materials and set apart from other matter on the page where it appears. Audio productions shall contain a similar audio notice of copyright.

**11.04—Patent Rights.** With respect to Intellectual Property concerning inventions made by Contractor in the performance of this agreement, which did not result from research and development specifically included in the agreement’s scope of work, Contractor hereby grants to the Exchange a license for devices or material incorporating, or made through the use of such inventions. If such inventions result from research and development work specifically included within the agreement’s scope of work, then Contractor hereby assigns to the Exchange, without additional compensation, all its right, title and interest in and to such inventions, including all patent rights and the right to sue for past infringements, and agrees to assist the Exchange in securing United States and foreign patents with respect thereto.

**11.05—Third-Party Intellectual Property.** Except as provided herein, Contractor agrees that its performance of this agreement shall not be dependent upon or include any Intellectual Property of Contractor or third party without first: (i) obtaining the Exchange’s prior written approval; and (ii) granting to or obtaining for the Exchange, without additional compensation, a license, as described in Section b of this provision, for any of Contractor’s or third party’s Intellectual Property in existence prior to the effective date of this agreement and an assignment for any Intellectual Property created in the performance of this agreement. If such a license upon these terms is unattainable, and the Exchange determines that the Intellectual Property should be included in or is required for Contractor’s performance of this agreement, Contractor shall obtain a license under terms acceptable to the Exchange.

#### ~~11.06~~11.01 Warranties

(a) (1) Contractor represents and warrants to the best of its knowledge that:

(i) ~~It is free to enter into and fully perform this agreement.~~

(ii)(i) It has secured and will secure all rights and licenses necessary for its performance of this agreement Agreement, including but not limited to consents, waivers, released from all authors of music or performances used, individuals, and talent (radio, television, and motion picture talent), owners of any interest in and to real estate site, locations, property, or props that may be used or shown.

~~(iii)~~(ii) ~~Neither~~To the best of the Contractor's knowledge, neither Contractor's performance of this ~~agreement~~Agreement, nor the exercise by either Party of the rights granted in this agreement, nor any use, reproduction, manufacture, sale, offer to sell, import, export, modification, public and private display/performance, distribution, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor ~~or the Exchange~~ and which result directly or indirectly from this Agreement will infringe upon or violate any Intellectual Property right, non-disclosure obligation, or other proprietary or contractual right or interest of any third-party or entity now existing under the laws of, or hereafter existing or issued by, any state, the United States, or any foreign country. There is currently no actual or threatened claim by any such third party based on an alleged violation of any such right by Contractor.

**Comment [A99]:** The Contractor is unable to control the Exchange and therefore cannot be liable for what it may do.

~~(iv)~~(iii) Neither Contractor's performance nor any part of its performance will violate the right of privacy of, or constitute false or misleading advertising or a libel or slander against any person or entity, misuse of social media, violate privacy rights.

~~(v)~~ ~~It has secured and will secure all rights and licenses necessary for Intellectual Property including, but not limited to, consents, waivers or releases from all authors of music or performances used, individuals, and talent (radio, television and motion picture talent), owners of any interest in and to real estate, sites, locations, property or props that may be used or shown.~~

~~(vi)~~(iv) It has not granted and shall not grant to any person or entity any right that would or might derogate, encumber, or interfere with any of the rights granted to the Exchange in this ~~agreement~~Agreement.

~~(vii)~~(v) It has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

~~(viii)~~(vi) It has no knowledge of any outstanding claims, licenses or other charges, liens, or encumbrances of any kind or nature whatsoever that could affect in any way Contractor's performance of this agreement.

(b) EXCEPT AS EXPRESSLY STATED ELSEWHERE IN THIS AGREEMENT, EXCHANGE ~~MAKES AND CONTRACTOR MAKE~~ NO WARRANTY AND EXPRESSLY DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, THAT ~~IT IS THEIR~~ INTELLECTUAL PROPERTY OR THE INTELLECTUAL PROPERTY RESULTING FROM THIS AGREEMENT IS MERCHANTABLE, FIT FOR A PARTICULAR PURPOSE, OR DOES NOT INFRINGE UPON ANY PATENT, TRADEMARK, COPYRIGHT OR THE LIKE, NOW EXISTING OR SUBSEQUENTLY ISSUED.

#### ~~11.07~~11.02 **Intellectual Property Indemnity**

~~(a)~~ ~~Contractor shall indemnify, defend and hold harmless the Exchange and its licensees and assignees, and its officers, directors, employees, agents, representatives, successors, and users of its products, ("Indemnitees") from and against all claims, actions, damages, losses, liabilities (or actions or proceedings with respect to any thereof), whether or not rightful, arising from any and all actions or claims by any third party or expenses related thereto~~

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~~(including, but not limited to, all legal expenses, court costs, and attorney's fees incurred in investigating, preparing, serving as a witness in, or defending against, any such claim, action, or proceeding, commenced or threatened) to which any of the Indemnitees may be subject, whether or not Contractor is a party to any pending or threatened litigation, which arise out of or are related to (i) the incorrectness or breach of any of the representations, warranties, covenants or agreements of Contractor pertaining to Intellectual Property; or (ii) any Intellectual Property infringement, or any other type of actual or alleged infringement claim, arising out of the Exchange's use, reproduction, manufacture, sale, offer to sell, distribution, import, export, modification, public and private performance/display, license, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or the Exchange and which result directly or indirectly from this agreement. This indemnity obligation shall apply irrespective of whether the infringement claim is based on Intellectual Property created, registered or issued before or after the effective date of this agreement. The Exchange reserves the right to participate in and/or control, at Contractor's expense, any such infringement action brought against the Exchange.~~

~~(b)(a) Should any Intellectual Property licensed by the Contractor to the Exchange under this agreement Subject to subsection (c) hereof, Contractor agrees to indemnify and hold the Exchange harmless from any loss, damage or injury; to defend at its own expense any and all suits and actions; and to pay any judgments against the Exchange to the extent they arise or are due to infringement of third-party patent rights or copyrights enforceable in the U.S. or misuse of third-party trade secret information by Contractor Intellectual Property or alleged misuse of trade secret information by Contractor Intellectual Property. Contractor's indemnification obligations under this section are subject to Contractor receiving prompt notice of the claim and being given the right to control the defense of such claim. Should any Intellectual Property licensed by the Contractor to the Exchange under this Agreement become the subject of an Intellectual Property infringement claim, Contractor will exercise its authority reasonably and in good faith to preserve the Exchange's right to use the licensed Intellectual Property in accordance with this agreement Agreement at no expense to the Exchange., except as otherwise stated in this Agreement. The Exchange shall have the right to monitor and appear through its own counsel (at Contractor's Exchange's expense) in any such claim or action. In the defense or settlement of the claim, Contractor may obtain the right for the Exchange to continue using the licensed Intellectual Property; or, replace or modify the licensed Intellectual Property so that the replaced or modified Intellectual Property becomes non-infringing provided that such replacement or modification is functionally equivalent to the original licensed Intellectual Property. If such remedies are not reasonably available, the Exchange shall be entitled to a refund of all monies paid under this agreement, without restriction or limitation of any other rights and remedies available at law or in equity., as its sole remedy.~~

~~(b) Notwithstanding anything to the contrary in this Agreement, any such indemnification obligation of Contractor shall not extend to any infringement or alleged infringement that resulted from (i) specific instructions given to Contractor by the Exchange; (ii) the Exchange's unauthorized modification of Contractor Intellectual Property; (iii) the Exchange's use of Contractor Intellectual Property in combination with any service or product not supplied, recommended or approved by Contractor, or used by the Exchange in a manner for which it was not designed; or (iv) Intellectual Property created or derived by the Exchange.~~

**Comment [A100]:** This is language from the first draft contract, which we believe is more appropriate. The proposed language in this draft is too broad.

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(c) Contractor agrees that damages alone would be inadequate to compensate the Exchange for breach of any term of this ~~Intellectual Property Exhibit~~Article by Contractor. Contractor acknowledges the Exchange would suffer irreparable harm in the event of such breach and agrees the Exchange shall be entitled to ~~obtain equitable~~see equitable relief, including without limitation an injunction, from a court of competent jurisdiction, without restriction or limitation of any other rights and remedies available at law or in equity.

~~11.08~~11.03 **Federal Funding.** In any agreement funded in whole or in part by the federal government, the Exchange may acquire and maintain the Intellectual Property rights, title, and ownership, which results directly or indirectly from the agreement; except as provided in 37 Code of Federal Regulations part 401.14; and except as stated hereinabove however, the federal government shall have a non-exclusive, nontransferable, irrevocable, paid-up license throughout the world to use, duplicate, or dispose of such Intellectual Property throughout the world in any manner for governmental purposes and to have and permit others to do so.

~~11.09~~11.04 **Survival.** The provisions set forth herein shall survive any termination or expiration of this Agreement.

**Comment [A101]:** We suggest that a general section be added that specifically states all of the obligations that survive the termination of the Agreement.

## Article 12. Miscellaneous

### 12.01 Dispute Resolution

(a) ~~Except as set forth in Section 12.01(b), if~~ any dispute arising out of or in connection with this Agreement is not resolved within thirty (30) days or such other reasonable period of time determined by Contractor and the Exchange staff normally responsible for the administration of this Agreement, the parties shall attempt to resolve the dispute through the submission of the matter for executive level involvement. The executive officer of each party or his or her designated representative shall meet and confer to attempt to resolve the dispute. If the parties agree, a neutral third party mediator may be engaged to assist in dispute resolution at either the line employee level or the executive level, or both. If after expending reasonable efforts at executive level resolution of the dispute, no resolution can be reached within thirty (30) days or such other reasonable period determined by Contractor and the Exchange, then either party may seek its rights and remedies in a court of competent jurisdiction or otherwise available under this Agreement or applicable laws, rules and regulations.

(b) Each party shall document in writing the nature of each dispute and the actions taken to resolve any disputes utilizing this dispute resolution procedure. Each party shall act in good faith to resolve such disputes; ~~provided, however, that the Exchange shall not be required to follow the dispute resolution process set forth in this section before: (1) issuing any notice of termination for default under this Agreement and (2) barring Contractor from further access to the Exchange computer systems and premises.~~ Neither party may seek its rights and remedies in court respecting any such notice of termination for default without first following the dispute resolution process stated in this section.

(c) The Exchange and Contractor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their responsibilities under this Agreement which are not affected by the dispute, ~~except for any performance which the Exchange determines should be delayed or discontinued pursuant to Section 12.01(b) above as a result of such dispute.~~

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(d) If either party determines that irreparable harm will be caused by following the timelines set forth in Section 12.01 (a) it can request an expedited resolution process. The burden will be on the party requesting the expedited resolution process to demonstrate that risk of irreparable harm is imminent. If there is a disagreement between the two parties a mediator will be hired at the expense of the party requesting the expedited resolution to determine if it is justified, and further provided that in the event the Exchange bars Contractor from access to Exchange computer systems and premises, Contractor shall not be required to carry out any obligations that depend upon such access

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

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

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

For the Exchange: Covered California, the California Health Benefit Exchange

Attention: Contracts Officer  
560 J Street, Suite 290  
Sacramento, CA 95814  
Telephone No. (916) \_\_\_\_\_ FAX No. (916) \_\_\_\_\_  
Email: \_\_\_\_\_

For Contractor:

Name:  
Address:  
City, State, Zip Code:  
Telephone No. \_\_\_\_\_ FAX No. \_\_\_\_\_  
Email: \_\_\_\_\_

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

#### 12.04 Amendments.

(a) **By the Exchange Party.** In the event that (i) it is necessary to comply with state or federal law or regulations or any accreditation requirements of a private sector accreditation agency or (ii) any law or regulation is enacted or any decision, opinion, interpretive policy or guidance of a court or governmental agency is issued (any of the foregoing, a "Change in Law") that the Exchange determines parties determine, based on its consultation each party's consultation with legal counsel, other regulators or other state-based or Federal health

benefit exchanges: (i) affects or may affect the legality of this Agreement or any provision hereof or cause this Agreement or any provision hereof to prevent or hinder compliance with laws, rules or regulations, or (ii) adversely affects or may adversely affect the operations of the Exchange or Contractor the ability of the Exchange or Contractor to perform its respective obligations hereunder or receive the benefits intended hereunder, the Exchange or Contractor may, by written notice to Contractor or the other, amend this Agreement to comply with or otherwise address the Change in Law in a manner reasonably determined by the Exchange or Contractor to carry out the original intent of the parties to the extent practical in light of such Change in Law. Such amendment shall become effective upon ~~sixty (60) calendar~~ the earlier of the mutual written agreement of the parties, upon sixty (60) business days notice, or such lesser period as required for compliance or consistency with the Change in Law or to avoid the adverse effect of the Change in Law. If Contractor or either party objects to such amendment, it must notify the Exchange or other party in writing within twenty (20) ~~calendar~~ business days of receipt of notice ~~from the Exchange.~~ If the parties are unable to agree on an amendment within thirty (30) ~~calendar~~ business days thereafter, either the Exchange or the Exchange Contractor may terminate this Agreement.

(b) **Other Amendments.** Except as provided ~~herein, in Section 12.04(a)~~, this Agreement may be amended only by mutual consent of the parties. Except as provided herein, no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

~~12.05 Time is of the Essence. Time is of the essence in this Agreement.~~

~~12.06~~ **12.05 Publicity.** Contractor shall coordinate with the Exchange with respect to communications to third-parties regarding this Agreement; provided, however, that no external publicity release or announcement or other such communication concerning this Agreement or the transactions contemplated herein shall be issued by Contractor without advance written approval by the Exchange unless such communication complies with standards that may be issued by the Exchange to Contractor based on consultation with Contractor from time to time.

**Comment [A102]:** We have concerns with some of the timeframes in this draft contract and do not believe this statement is necessary.

~~12.07~~ **12.06 Force Majeure.** Except as prohibited by applicable laws, rules and regulations, including, 22 CCR Section 1300.67.05, neither party to this Agreement shall be in default of its obligations hereunder for delay or failure in performing that arises out of causes beyond the control and without the fault or negligence of either party and arising from a catastrophic occurrence or natural disaster, such as Acts of God or of the public enemy, acts of the State in its sovereign capacity, acts of the State Controller's Office or other State agency having an impact on the Exchange's ability to pay its obligations, acts of the State legislature, fires, floods, power failure, disabling strikes, epidemics, quarantine restrictions, and freight embargoes. However, each party shall utilize its best good faith efforts to perform under this Agreement in the event of any such occurrence.

~~12.08~~ **12.07 Further Assurances.** Contractor and the Exchange agree to execute such additional documents, and perform such further acts, as may be reasonable and necessary to carry out the provisions of this Agreement.

~~12.09~~ **12.08 Binding Effect.** This Agreement, any instrument or agreement executed pursuant to this Agreement, and the rights, covenants, conditions, and obligations of Contractor

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and the Exchange contained therein, shall be binding upon the parties and their successors, assigns, and legal representatives.

**12.1012.09 Titles/Section Headings.** Titles or headings are not part of this Agreement, are for convenience of reference only, and shall have no effect on the construction or legal effect of this Agreement.

**12.1112.10 Severability.** Should one or more provisions of this Agreement be held by any court to be invalid, void, or unenforceable, such provision(s) will be deemed to be restated to affect the original intentions of the parties as nearly as possible in accordance with applicable law. The remaining provisions shall nevertheless remain and continue in full force and effect.

**12.1212.11 Entire Agreement/Incorporated Documents/Order of Precedence.** This Agreement represents the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda, or agreements are replaced in total by this Agreement. This Agreement shall consist of:

- (a) The terms of this Agreement, including obligations set forth in other documents that are referenced herein, including the Administrative Manual;
- (b) All attached documents, which are expressly incorporated herein;
- (c) Terms and conditions set forth in the Solicitation, to the extent that such terms are expressly incorporated by reference in specific sections of this Agreement and/or otherwise not inconsistent with the Agreement or Proposal; and,
- (d) The Proposal, which is expressly incorporated herein to the extent that such terms are not superseded by the terms set forth in this Agreement.

In the event there are any inconsistencies or ambiguities among the terms of this Agreement and incorporated documents, the following order of precedence shall be used:

- (i) Applicable laws, rules and regulations;
- (ii) The terms and conditions of this Agreement, including attachments;
- (iii) Administrative Manual
- (iv) Solicitation; and
- (v) Proposal

**12.1312.12 Waivers.** No delay on the part of either party in exercising any right, power, or privilege hereunder shall operate as a waiver thereof. No waiver on the part of either party of any right, power, or privilege hereunder, nor any single or partial exercise of any right, power, or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power, or privilege hereunder.

**12.1412.13 Incorporation of Amendments to Applicable Laws.** Any references to sections of Federal or State statutes or regulations shall be deemed to include a reference to any subsequent amendments thereof and any successor provisions thereto made from time to time from and after the date of this Agreement.

**12.1512.14 Choice of Law, Jurisdiction, and Venue.** This Agreement shall be

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

**12.16**~~12.15~~ **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**12.17**~~12.16~~ **Days.** Wherever in this Agreement a set number of days is stated or allowed for a particular event to occur, the days are understood to include all calendar days, including weekends and holidays, unless otherwise specified.

**12.18**~~12.17~~ **Ambiguities Not Held Against Drafter.** This Agreement having been freely and voluntarily negotiated by all parties, the rule that ambiguous contractual provisions are construed against the drafter of the provision shall be inapplicable to this Agreement.

**12.19**~~12.18~~ **Clerical Error.** No clerical error shall operate to defeat or alter any terms of this Agreement or defeat or alter any of the rights, privileges or benefits of any Enrollee or Employer.

**12.20**~~12.19~~ **Administration of Agreement.** The Exchange may adopt policies, procedures, rules and interpretations to promote orderly and efficient administration of this Agreement and Contractor shall administer this Agreement in accordance therewith to the extent consistent with applicable laws and regulation and to the extent that they do not result in additional obligations and risks to Contractor existing at the time of the Effective Date.

The Exchange shall provide ninety (90) days prior notice by letter, newsletter, electronic mail or other media of any Material Change (as defined below) to policies, procedures, rules and interpretations. Failure by Contractor to object in writing to any Material Change within thirty (30) days following the date of receipt of such notice shall constitute Contractor's acceptance of such Material Change. For purposes of this Section, the term "Material Change" shall mean any change that could reasonably be expected to have a material adverse impact on (i) Contractor's compensation pursuant to this Agreement, or (ii) administration of Contractor's services or obligations hereunder

### Article 13. Definitions

Except as otherwise expressly defined, capitalized terms used in the Agreement and/or the Attachments shall have the meaning set forth below.

**13.01 Affordable Care Act** – 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), known collectively as the Affordable Care Act.

**13.02 Administrative Manual** – A collection of detailed administrative policies and procedures. The Exchange will update the Administrative Manual as needed to ensure that Contractor has access to the most current administrative policies and procedures.

**13.03 Agreement** – This Agreement ~~attached hereto~~, including [its](#) attachments and documents incorporated by reference, entered into between the Exchange and Contractor.

**13.04 Agreement Effective Date** - The effective date of this Agreement established pursuant to Section 7.01 of this Agreement.

**13.05 Behavioral Health** – A group of interdisciplinary services concerned with the prevention, diagnosis, treatment, and rehabilitation of mental health and substance abuse disorders.

**13.06 Board** – The executive board responsible under Government Code Section 100500 for governing the Exchange.

**13.07 California Affordable Care Act** – The California Patient Protection and Affordable Care Act, AB 1602 and SB 900 (Chapter 655, Statutes of 2010 and Chapter 659, Statutes of 2010).

**13.08 CAL COBRA** - The California Continuation Benefits Replacement Act, or Health and Safety Code § 1366.20 *et seq.*

**13.09 CalHEERS** - The California Healthcare Eligibility, Enrollment and Retention System, a project jointly sponsored by the Exchange and DHCS, with the assistance of the Office of Systems Integration to maintain processes to make the enrollment decisions regarding the Exchange and other State health care programs.

**13.10 COBRA** - The Consolidated Omnibus Budget Reconciliation Act of 1985.

**13.11 Case Management** – Contractor’s medical utilization and oversight systems that attempt to optimize the most effective available benefit coverage and resources for Enrollees with complex and exceptional needs due to chronic or catastrophic illness or injury.

**13.12 CCR** - The California Code of Regulations

**13.13 CDI** – The California Department of Insurance.

**13.14 Confidentiality of Medical Information Act (CMIA)** – Means the Confidentiality of Medical Information Act (California Civil Code section 56 *et seq.*) and the regulations issued pursuant thereto or as thereafter amended, [which only applies to insurers and not HMOs](#).

**13.15 Contract Year** – The full twelve (12) month period commencing on the effective date and ending on the day immediately prior to the first anniversary thereof and each full consecutive twelve (12) month period thereafter during which the Agreement remains in effect.

**13.16 Contractor** – The Health Insurance Issuer contracting with the Exchange under the Agreement to operate a Certified QHP and perform in accordance with the terms set forth in the Agreement.

**13.17 Covered Services** – The Health Care [Services that are Medically Necessary](#) that are covered benefits under the applicable QHP and described in the EOC.

**13.18 DHCS** - The California Department of Health Care Services

**Comment [A103]:** This definition should be consistent with the KKA and not unique to a particular payor.

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- 13.19 DHHS** - The United States Department of Health and Human Services
- 13.20 DMHC** – The California Department of Managed Health Care.
- 13.21 Effective Date** – The date on which a Plan’s coverage goes into effect.
- 13.22 Eligibility Information**– The information that establishes an Enrollee’s eligibility including, but not limited to: name, age, and Social Security Number.
- 13.23 Eligibility File** – The compilation of all Eligibility Data for an Enrollee or group of Enrollees into a single electronic format used to store or transmit the data.
- 13.24 Employee** – A “qualified employee,” as defined in 45 C.F.R. 155.20.
- 13.25 Employer** – A “qualified employer,” as defined in section 1312(f)(2) of the Act.
- 13.26 Encounter** – Any Health Care Service or bundle of related Health Care Services provided to one Enrollee by one Health Care Professional within one time period. Any Health Care Services provided must be recorded in the Enrollee’s health record.
- 13.27 Encounter Data** – Encounter information Contractor can use to demonstrate the provision of Health Care Services to Enrollees.
- 13.28 Enrollee** – Enrollee means qualified individual or an Employee enrolled in a QHP offered through the Exchange.
- 13.29 Evidence of Coverage (EOC) and Disclosure Form** – The booklet(s) which describe(s) the benefits, exclusions, limitations, conditions, and the benefit levels of the applicable Plan(s).
- 13.30 The Exchange** –The California Health Benefit Exchange, doing business as Covered California and an independent entity within the Government of the State.
- 13.31 Exclusive Provider Organization (EPO)** – EPO shall have the same meaning as that term is defined in California Code of Regulations, title 10, Section 2699.6000(r).
- 13.32 Explanation of Benefits (EOB)** – A statement sent from the Contractor to a Enrollee ~~or Employer~~ listing services provided, amount billed, eligible expenses and payment made by the Plan.
- 13.33 Explanation of Payment (EOP)** – A statement sent from the Contractor to Providers detailing payments made for Health Care Services.
- 13.34 Family Member** – An individual who is within an Enrollee’s or Employee’s family, as defined in 26 U.S.C. 36B (d)(1).
- 13.35 Formulary** – A list of outpatient prescription drugs, selected by the Plan(s) and revised periodically, ~~which that~~ are covered when Medically Appropriate and prescribed by a Participating Physician and filled at a participating pharmacy.

**Comment [A104]:** Sending this information to an Employer violates HIPAA/state confidentiality laws.

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**13.36 Grace Period** – A specified time following the premium due date during which coverage remains in force and an Enrollee or Employer may pay the premium without penalty.

**13.37 Health Care Professional** – An individual with current and appropriate licensure, certification, or accreditation in a medical or behavioral health profession, including without limitation, medical doctors (including psychiatrists), dentists, osteopathic physicians, psychologists, registered nurses, nurse practitioners, licensed practical nurses, certified medical assistants, licensed physician assistants, mental health professionals, chemical dependency counselors, clinical laboratory professionals, allied health care professionals, pharmacists, social workers, physical therapists, occupational therapists, and others to provide Health Care Services.

**13.38 Health Care Services** - ~~The provision of any~~Any and all medical services, supplies and benefits provided under through Contractor's QHP by Participating Providers to Enrollees, including medical, Behavioral Health, chemical dependency, inpatient and outpatient and all other Medically Necessary Services ~~and that are~~ Covered Services

**13.39 Health Information Technology for Economic and Clinical Health Act (HITECH Act)** – The Health Information Technology for Economic and Clinical Health Act, which was enacted as part of the American Recovery and Reinvestment Act of 2009, and the regulations issued pursuant thereto or as thereafter amended.

**13.40 Health Insurance Issuer** – Health Insurance Issuer has the same meaning as that term is defined in 42 U.S.C. 300gg-91 and 45 C.F.R. 144.103.

**13.41 Health Insurance Portability and Accountability Act of 1996 (HIPAA)** – The Health Insurance Portability and Accountability Act of 1996 and the regulations issued pursuant thereto or as thereafter amended.

**13.42 Health Insurance Regulators:** CDI and DMHC, as applicable.

**13.43 Health Maintenance Organization (HMO)** – A Health Care Service Plan (as that term is defined in California Health and Safety Code § 1345) holding a current license from and in good standing with DMHC.

**13.44 Health Plan Employer Data and Information Set (HEDIS)** – The data as reported and updated annually by the National Committee for Quality Assurance (NCQA).

**13.45 High Performance / High Efficiency Network** – A network of Participating Providers selected based on criteria including the ability to provide quality and cost-efficient care.

**13.46 Individual Exchange** – The Exchange through which Qualified Individuals may purchase Qualified Health Plans.

**13.47 Individually Identifiable Health Information (IIHI)** – The “individually identifiable health information” as defined under HIPAA.

**13.48 Insurance Information and Privacy Protection Act (IIPPA)** - The California Insurance Information and Privacy Protection Act, Insurance Code section 791-791.28, *et seq.*, and the regulations issued pursuant thereto or as thereafter amended.

**13.49 Integrated Healthcare Model or IHM** – An integrated model of health care delivery in which there is organizational/operational/policy infrastructure addressing patient care across the continuum of care, population management and improvements in care delivery, information technology (IT) infrastructure to support care delivery, adherence to evidence-based medicine (EBM) behaviors from all providers of care, and financial risk sharing incentives for the Plan, hospital, and medical group that drive continuous improvement in cost, quality, and service.

**13.50 Medicaid** – The program of medical care coverage set forth in Title XIX of the Social Security Act and the regulations issued pursuant thereto or as thereafter amended.

**13.51 Medical Group** – A group of physicians or other Health Care Professionals that is clinically integrated, financially integrated, or that contract together to provide care to patients in a coordinated manner.

**13.52 Medical Management** – The process of properly allocating healthcare resources through programs such as Utilization Management and Case Management.

~~**13.53 Medical Necessity (Medically Necessary Services)** – Health Care Services as determined through the Plan’s review process to be reasonable, necessary, appropriate, and established as safe and effective for the diagnosis and/or treatment of a Enrollee’s illness, injury, or condition. The Plan’s review processes are consistent with Contractor’s medical policy and the definition of medical necessity contained in the Plan’s EOC.~~

~~**13.54**~~**13.53 Medical Policy and Technology Assessment** – The process for reviewing and making decisions related to Medical Necessity and making experimental/ investigational determinations for certain new medical technologies and/or procedures, and/or for new uses of existing technologies and/or procedures. The technologies include devices, biologics and specialty pharmaceuticals, and behavioral health services. Medical policies are intended to reflect the current scientific data and clinical thinking.

**Comment [A105]:** Should be defined consistent with regulatory definition.

~~**13.55 Medically Appropriate** – Health Care Services that are Medically Necessary and that are: (1) consistent with the symptoms of a health condition or treatment of a health condition, illness, or injury; (2) appropriate with regard to the most current standard of practice for the safe and effective assessment, treatment, or management of the applicable health condition, illness, or injury as determined by the relevant scientific community and professional bodies; (3) not solely for convenience of a Enrollee or the Health Care Professional providing the Health Care Services; and (4) more cost-effective than alternative services or supplies that could be employed for the safe and effective assessment, treatment, or management of the applicable health condition, illness, or injury under prevailing standards of scientific knowledge and clinical practice among practitioners with like credentials providing Health Care Services in the State.~~

**13.56 Medicare** – The program of medical care coverage set forth in Title XVIII of the Social Security Act and the regulations issued pursuant thereto or as thereafter as amended.

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~~**13.57**~~**13.54 Medicare Part D** – The Medicare prescription drug program authorized under the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA), effective January 1, 2006, and the regulations issued pursuant thereto or as thereafter.

~~**13.58**~~**13.55 Monthly Rates** - The rates of compensation payable in accordance with the

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terms set forth at Article 5 to Contractor for Services rendered under this Agreement.

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**Comment [A106]:** A definition of NCQA should be added here.

**13.5913.56 Nurse Advice Line** – An advice line staffed by registered nurses (RNs) who assess symptoms (using triage guidelines approved by the Plan to determine if and when the caller needs to be seen by a Provider); provide health information regarding diseases, medical procedures, medication usage and side effects; and give care advice for managing an illness or problem at home.

**13.6013.57 Open Enrollment or Open Enrollment Period** – The fixed time period as set forth in 45 C.F.R. 155.410 for individual applicants and Enrollees to initiate enrollment or to change enrollment from one health benefits plan to another.

**13.6113.58 Participating Hospital** – A hospital that, at the time of a Enrollee’s admission, has a contract in effect with Contractor to provide Covered Services to Enrollees.

**13.6213.59 Participating Physician** – A physician or a member of a Medical Group that has a contract in effect with Contractor to provide Health Care Services to Enrollees.

**13.6313.60 Participating Provider** – An individual Health Care Professional, hospital, clinic, facility, entity, or any other person or organization that provides Health Care Services and that, at the time care is rendered to a Enrollee, has (or is a member of a Medical Group that has) a contract in effect with Contractor to provide Covered Services to Enrollees and accept copayments for Covered Services.

**13.6413.61 Participation Fee** – The user fee on Qualified Health Plans authorized under Section 1311(d)(5) of the Act, 45 C.F.R. Sections 155.160(b)(1) and 156.50(b), and Government Code 100503(n) to support the Exchange operations.

**13.6513.62 Performance Measurement Standard** – A financial assurance of service delivery at levels agreed upon between the Exchange and Contractor.

**13.6613.63 Personally Identifiable Information (PII)**—~~Any 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, medical or employment history, and statements made by, or attributed to, the individual. It also includes any identifiable information collected from or about an individual for purposes of determining eligibility for enrollment in a Qualified Health Plan, determining eligibility for other insurance affordability programs, determining eligibility for exemptions from the individual responsibility provisions, or any other use of such individual's identifiable information in connection with the Exchange~~

~~- Any information about an individual, including (1) any information that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and (2) any other information that is linked or linkable to an individual, such as medical, educational, financial and employment information.~~

**13.6713.64 Pharmacy Benefit Manager (PBM)** – The vendor, if any, responsible for administering the Plan’s outpatient prescription drug program. The PBM ~~provides~~may provide a

**Comment [A107]:** Not all plans use a PBM.

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retail pharmacy network, mail order pharmacy, specialty pharmacy services, and coverage management programs.

**13.6813.65 Plan(s)** – The Qualified Health Plans the Exchange has entered into a contract with a Health Insurance Issuer to provide, hereinafter referred to as the Plan(s).

**13.6913.66 Plan Data** – All the utilization, fiscal, and eligibility information gathered by Contractor about the Plans exclusive programs, policies, procedures, practices, systems and information developed by Contractor and used in the normal conduct of business.

**13.7013.67 Enrollee** – An Enrollee eligible for and receiving benefits under the Plan.

**13.7113.68 Plan Year** – Plan Year has the same definition as that term is defined in 45 C.F.R. 155.20.

**13.7213.69 Premium** – The dollar amount payable by the Enrollee, Employer, or Employee to the Issuer to effectuate and maintain coverage.

**13.7313.70 Premium Rate** – The monthly premium due during a plan year, as agreed upon by the parties.

**13.7413.71 Primary Care Physician (PCP)**—~~A~~ – [For health care service plans licensed by the Department of Managed Health Care for HMO products a](#) California licensed doctor of medicine or osteopathy who is a general practitioner, board-certified or eligible family practitioner, internist, obstetrician/gynecologist or pediatrician who has a contract with Contractor as a primary care physician and who has the primary responsibility for providing initial and primary Health Care Services to Enrollees, initiating referrals for specialist and hospital care, and maintaining the continuity of the Enrollee’s medical care.

**13.7513.72 Proposal** - The proposal submitted by Contractor in response to the Solicitation.

**13.7613.73 Protected Health Information or PHI** – Protected health information, including electronic protected health information (EPHI) as defined in HIPAA that relates to an Enrollee. PHI also includes “medical information” as defined by the California Confidentiality of Medical Information Act (CMIA) at California Civil Code section 56, *et seq.*

**13.7713.74 Provider** – A licensed health care facility or as stipulated by local or international jurisdictions, a program, agency or health professional that delivers Health Care Services.

**13.7813.75 Provider Claim(s)** – Any bill, invoice, or statement from a specific Provider for Health Care Services or supplies provided to Enrollees.

**13.7913.76 Qualified Health Plan or QHP** – QHP has the same meaning as that term is defined in Government Code 100501(f).

**13.8013.77 Qualified Individual** – Qualified Individual has the same meaning as that term is defined in Section 1312(f)(1) of the Act.

**13.8113.78 Quality Management and Improvement** – The process for conducting outcome

reviews, data analysis, policy evaluation, and technical assistance internally and externally to improve the quality of care to Enrollees.

**13.8213.79** **Quarterly Business Review or QBR** – Quarterly in-person meetings between the Exchange and Contractor at the Exchange headquarters to report and review program performance results including all Services and components of the program, i.e., clinical, financial, contractual reporting requirements, customer service, appeals and any other program recommendations.

**13.8313.80** **Regulations** – The regulations adopted by the Board. (California Code of Regulations, Title 10, Chapter 12, section 6400, *et seq.*)

**13.8413.81** **Risk-Adjusted Premiums** – Actuarially calculated premiums utilizing risk adjustment.

**13.8513.82** **Risk-Based Capital or RBC** – The approach to determine the minimum level of capital needed for protection from insolvency, based on an organization’s size, structure, and retained risk. Factors in the RBC formula are applied to assets, premium, and expense items. The factors vary depending on the level of risk related to each item. The higher the risk related to the item, the higher the factor, and vice versa.

**13.8613.83** **Risk Adjustment** – An actuarial tool used to calibrate premiums paid to Health Benefits Plans or carriers based on geographical differences in the cost of health care and the relative differences in the health risk characteristics of Enrollees enrolled in each plan. Risk adjustment establishes premiums, in part, by assuming an equal distribution of health risk among Health Benefits Plans in order to avoid penalizing Enrollees for enrolling in a Health Benefits Plan with higher than average health risk characteristics.

**13.8713.84** **Run-Out Claims** – All claims presented and adjudicated after the end of a specified time period where the health care service was provided before the end of the specified time period .

**13.8813.85** **Service Area** – The designated geographical areas where Contractor provides Covered Services to Enrollees and comprised of the ZIP codes listed in Attachment 4.

**13.8913.86** **Services** - The provision of Services by Contractors and subcontractors required under the terms of the Agreement, including, those relating the provision of Health Care Services and the administrative functions required to carry out the Agreement.

**13.9013.87** **SHOP** – The Small Business Health Options Program described in Government Code 100502(m).

**13.9113.88** **Solicitation** – The Qualified Health Plan Solicitation released on November 16, 2012 and as amended by the Exchange.

**13.9213.89** **State** - The State of California

**13.9313.90** **Special Enrollment Period** - The period during which a qualified individual or enrollee who experiences certain qualifying events, [as defined in applicable Federal and State](#)

[Laws](#), may enroll in, or change enrollment in, a QHP through the Exchange outside of the initial and annual open enrollment periods.

**13.9413.91 Utilization Management** – Pre-service, concurrent or retrospective review which determines the Medical Necessity of hospital and skilled nursing facility admissions and selected Health Care Services provided on an outpatient basis [as specified in the EOC booklets](#).

**13.9513.92 Utilization Review Accreditation Commission (URAC)** – The independent and nonprofit organization that promotes health care quality through its accreditation and certification programs. It offers a wide range of quality benchmarking programs and Services and validates health care industry organizations on their commitment to quality and accountability.

**13.9613.93 Virtual Interactive Physician/Patient Capabilities** – Capabilities allowing Enrollees to have short encounters with a physician on a scheduled or urgent basis via telephone or video chat from the Enrollee’s home- [or other location](#).

IN WITNESS THEREOF, the parties have executed this Agreement on the date set forth below and effective as of the Agreement Effective Date set forth in Section 7.01.

**Covered California, The California Health Benefit Exchange**

**Contractor:** \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

### List of Attachments

- Attachment 1 Contractor's QHP List
- Attachment 2 Benefit Plan Designs
- Attachment 3 Good Standing
- Attachment 4 Service Area Listing
- Attachment 5 Provider Agreement - Standard Terms
- Attachment 6 Customer Service Standards
- Attachment 7 Exchange Quality, Network Management and Delivery System Standards
- Attachment 8 Monthly Rates - Individual Exchange
- Attachment 9 Rate Updates - Individual Exchange
- Attachment 10 Monthly Rates- SHOP
- Attachment 11 Rate Updates - SHOP
- Attachment 12 Participation Fee Methodology - Individual Exchange
- Attachment 13 Participation Fee Methodology - SHOP
- Attachment 14 Performance Measurement Standards
- Attachment 15 Compliance Addendum
- Attachment 16 Business Associate Agreement
- Attachment 17 Required Reports

### ATTACHMENTS

Covered California – Draft Health Plan Contract -- April 3, 2013

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