

STANDARD AGREEMENT

STD 213 (Rev 06/03)

AGREEMENT NUMBER

REGISTRATION NUMBER

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

STATE AGENCY'S NAME

California Health Benefit Exchange

CONTRACTOR'S NAME

2. The term of this

Agreement is: _____ through June 30, 2018

3. The maximum \$ Undefined
of this

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

Certified Application Entity Agreement

17 Pages

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

CONTRACTOR

**California Department of General
Services Use Only**

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

BY (Authorized Signature)

DATE SIGNED (Do not type)



PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

STATE OF CALIFORNIA

AGENCY NAME

California Health Benefit Exchange

BY (Authorized Signature)

DATE SIGNED (Do not type)



PRINTED NAME AND TITLE OF PERSON SIGNING

LaVonne Coen, Deputy Chief Operations Officer

Exempt per:
Government Code

ADDRESS

1601 Exposition Blvd, Sacramento, CA 95815

Section 100505

Not Official

**AGREEMENT BETWEEN
CALIFORNIA HEALTH BENEFIT EXCHANGE (COVERED CALIFORNIA)
AND
CERTIFIED APPLICATION ENTITY**

This Agreement is made between the State of California, acting by and through the California Health Benefit Exchange, hereafter referred to as the “Exchange” and _____ Certified Application Entity, an entity duly organized, existing and acting pursuant to the laws of the State of California, hereafter referred to as “Contractor.”

The Exchange and Contractor may be referred to individually as “Party”, and collectively as “the Parties”.

A. Purpose:

The Exchange created a new marketplace that offers subsidized health care coverage in the form of premium assistance and cost sharing reductions to individuals and families with incomes between 138% - 400% of the Federal Poverty Level limits.

The purpose of this agreement is to secure the services of a Certified Application Entity to help facilitate the enrollment and retention of Consumers into the subsidized and unsubsidized Qualified Health Plans offered by the Exchange and other insurance affordability programs.

The authority to enter this agreement arises from Government Code Section 100503, subparagraph (s), where the Exchange is directed to “Exercise all powers reasonably necessary to carry out and comply with the duties, responsibilities, and requirements of this act [California Patient Protection and Affordable Care Act] and the federal act [Patient Protection and Affordable Care Act (Public Law 111-148)], and 45 C.F.R. section 155.225.

B. Requirements:

1. Contractor and all affiliated Certified Application Counselors shall perform the roles and responsibilities as set forth in 10 CCR section 6864, and maintain compliance with all regulations set forth in California Code of Regulations, Title 10, Chapter 12, Article 11 and at 45 C.F.R. section 155.225.
2. Prior to accessing any confidential information, personal identifying information, personal health information, federal tax information, or financial information contained in the information systems and devices of the Exchange, or any other information as required by federal and state law or guidance, all

staff, including employees, contract or sub-contract personnel, vendors or volunteers, who perform services under this agreement, must comply with the criminal background check requirements set forth in Government Code section 1043, and its implementing regulations set forth in California Code of Regulations, Title 10, Section 6456.

3. Contractor certifies that it has a written plan to remain free of conflicts of interest while carrying out consumer assistance functions under this Agreement. This plan shall be made available upon request to the Exchange.
4. Contractor certifies that it will establish procedures to withdraw certification from individual certified application counselors when it finds noncompliance with the requirements of this agreement or any applicable laws or regulations.
5. Contractor must become recertified on at least an annual basis after successfully completing recertification training in order to maintain its certification.
6. A Certified Application entity may certify an individual to perform the duties of a certified application counselor only if the individual:
 - a. Completes Exchange approved training regarding QHP options, insurance affordability programs, eligibility, and benefits rules and regulations governing all insurance affordability programs operated in the state, as implemented in the state, and completes and achieves a passing score on all Exchange approved certification examinations, prior to functioning as a certified application counselor;
 - b. Discloses to the organization, or to the Exchange if directly certified by an Exchange, and potential applicants any relationships the certified application counselor or sponsoring agency has with QHPs or insurance affordability programs, or other potential conflicts of interest;
 - c. Complies with the Exchange's privacy and security standards adopted consistent with §155.260, and applicable authentication and data security standards;
 - d. Agrees to act in the best interest of the applicants assisted;
 - e. Either directly or through an appropriate referral to a Navigator or non-Navigator assistance personnel authorized under §155.205(d) and (e) or §155.210, or to the Exchange call center authorized under §155.205(a), provides information in a manner that is accessible to individuals with disabilities, as defined by the Americans with

Disabilities Act, as amended, 42 U.S.C. 12101 et seq. and section 504 of the Rehabilitation Act, as amended, 29 U.S.C. 794;

- f. Enters into an agreement with the organization regarding compliance with the standards specified in paragraphs (d), (f), and (g) of this section;
- g. Is recertified, on at least an annual basis, after successfully completing recertification training as required by the Exchange.

7. Certified Application Entities and certified application counselors must not—

- a. Impose any charge on applicants or enrollees for application or other assistance related to the Exchange;
- b. Receive any consideration directly or indirectly from any health insurance issuer or issuer of stop-loss insurance in connection with the enrollment of any individuals in a QHP or a non-QHP.
- c. Provide gifts, including gift cards or cash, unless they are of nominal value, or provide promotional items that market or promote the products or services of a third party, to any applicant or potential enrollee as an inducement for enrollment. Gifts, gift cards, or cash may exceed nominal value for the purpose of providing reimbursement for legitimate expenses incurred by a consumer in an effort to receive Exchange application assistance, such as, but not limited to, travel or postage expenses;
- d. Solicit any consumer for application or enrollment assistance by going door-to-door or through other unsolicited means of direct contact, including calling a consumer to provide application or enrollment assistance without the consumer initiating the contact, unless the individual has a pre-existing relationship with the individual certified application counselor or designated organization and other applicable State and Federal laws are otherwise complied with. Outreach and education activities may be conducted by going door-to-door or through other unsolicited means of direct contact, including calling a consumer; or
- e. Initiate any telephone call to a consumer using an automatic telephone dialing system or an artificial or prerecorded voice, except in cases where the individual certified application counselor or designated organization has a relationship with the consumer and so

long as other applicable State and Federal laws are otherwise complied with.

C. AUDIT:

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

D. INDEMNIFICATION:

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

- (i) Arise out of, are due to, or are alleged to arise out of or be due to, a breach by the other Party of any of its representations, warranties, covenants or other obligations contained in this Agreement, or
- (ii) Are caused by or result from or are alleged to arise out of or result from, the other Party’s acts or omissions constituting bad faith, willful misfeasance, negligence or reckless disregard of its duties under this Agreement, or
- (iii) Accrue or result, or are alleged to accrue or result, to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by either Party in the performance of this Agreement, or
- (iv) Arise out of, are due to, or are alleged to arise out of or be due to, any claim or allegation of infringement, misappropriation or violation of any patent, copyright, trademark, trade secret, domain name or other intellectual property right comprising or involving any of the Subject Inventions, Prior Inventions or other Inventions provided in any way by

either Party and used, reproduced or otherwise exploited by the State in connection with any of the Agreement Programs or any Turnover thereof; or

- (v) Arise out of, are due to or are alleged to arise out of or be due to, any violation of HIPAA, the HIPAA Regulations, HITECH Act, other security or privacy laws, or any other laws, by either Party or any subcontractor or agent under Contractor's control.

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

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

E. TERM:

This agreement shall commence upon the Effective Date and ends on June 30, 2018, unless otherwise terminated earlier as provided herein.

F. TERMINATION WITHOUT CAUSE:

This agreement may be terminated without cause upon 30 days' written notice to the other party.

G. TERMINATION FOR CAUSE:

The State may terminate this Agreement should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided, unless otherwise agreed to by the State in writing. Such right of termination shall be without prejudice to any other remedies available to the State. Upon receipt of any notice terminating this Agreement, the Contractor shall immediately

discontinue all activities affected, unless the notice directs otherwise, and the State may proceed with the work in any manner deemed proper by the State. In such event, the State shall pay (if applicable) the Contractor only the reasonable value of the services rendered, and all costs to the State shall be deducted from any sum due the Contractor. The State may, at its sole discretion, offer an opportunity to cure any breach prior to terminating for default.

H. INDEPENDENT CONTRACTOR:

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

I. NON-DISCRIMINATION CLAUSE:

During the performance of this Agreement, Contractor and its subcontractors, as well as their agents and employees, shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (including health impairments related to or associated with a diagnosis of cancer for which a person has been rehabilitated or cured), age (over 40), marital status, and use of family and medical care leave pursuant to state or federal law. Contractor and subcontractors, as well as their agents and employees, shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Contractor and subcontractors, as well as their agents and employees, shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (Title 2, California Code of Regulations, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

J. GOVERNING LAW:

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

K. UNENFORCEABLE PROVISION:

Should one or more provisions of this contract be held by any court to be invalid, void or unenforceable, the remaining shall nevertheless remain and continue in full force and effect.

L. Insurance Requirements

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

1. General liability insurance presently in effect for the Contractor of not less than \$1,000,000 per occurrence for bodily injury and property damage liability combined; and

Contractor agrees that the general liability insurance herein provided for shall be in effect at all times during the term of this contract. In the event said insurance coverage expires at any time or times during the term of this contract, Contractor agrees to provide at least 30 days' prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the contract, or for a period of not less than one year. New certificates of insurance are subject to the approval of the Exchange, and Contractor agrees that no work or services shall be performed prior to the giving of such approval. In the event the Contractor fails to keep in effect at all times insurance coverage as herein provided, the State may, in addition to any other remedies it may have, terminate this contract upon occurrence of such event.

The State will not provide for nor compensate Contractor for any insurance premiums or costs for any type or amount of insurance.

By signing this Agreement, the Contractor hereby warrants that it carries Workers' Compensation Insurance on all of its employees who will be

engaged in the performance of this Agreement. If staff provided by the Contractor is defined as independent contractors, this clause does not apply.

M. PRIVACY & SECURITY REQUIREMENTS

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

1. Definitions

A. The following definitions shall apply to this Exhibit:

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

Disclosure: The release, transfer, provision of access to, or divulging in any other manner of PII outside the entity holding the information.

- II. Federal Tax Information or FTI: Any return or return information as defined under the Internal Revenue Service Code, 26 U.S.C. section 6103(b)(1) and (2), received from the IRS or secondary source, such as SSA, Federal Office of Child Support Enforcement or Bureau of Fiscal Service. FTI includes any information created by the recipient that is derived from return or return information. (IRS Pub. 1075, § 1.4.1)
- III. Personal Information or PI: Information that identifies or describes an individual, including, but not limited to, his or her name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history. It includes statements made by, or attributed to, the individual. (California Civil Code section 1798.3)
- IV. Personally Identifiable Information or PII: Information which can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, etc. alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc. (OMB M-07-16.) PII includes Federal Tax Information (FTI), Personal Information (PI) and Protected Health Information (PHI).
- V. Protected Health Information or PHI: Individually Identifiable Health Information that is transmitted by electronic media, maintained in electronic media, or is transmitted or maintained in any other form or medium, as defined in 45 C.F.R. section 160.103.
- VI. Security Incident: The act of violating an explicit or implied security policy, which includes attempts (either failed or successful) to gain unauthorized access to a system or its data, unwanted disruption or denial of service, the unauthorized use of a system for the processing or storage of data; and changes to system hardware, firmware, or software characteristics without the owner's knowledge, instruction, or consent. Incidents include the loss of data through theft or device misplacement, loss or misplacement of hardcopy documents, and misrouting of mail, all of which may have the potential to put the data at risk of unauthorized access, use, disclosure, modification, or destruction. Adverse events such as floods, fires, electrical outages, and excessive heat are not considered incidents. (Computer Matching Agreement, Agreement No. 2013-11, p.5.)

2. Applicable Laws

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

A. Exchange Privacy and Security Rules (45 C.F.R. section 155.260).

- I. In accessing, collecting, using or disclosing PII in performing functions for the Exchange as authorized by this Agreement, Contractor shall only use or disclose PII to the minimum extent such information is necessary to perform such functions.
- II. The Contractor shall establish and implement privacy and security standards that are consistent with the principles of 45 C.F.R. section 155.260(a)(3) as set forth below in subsections (i) through (viii):
 - a) Individual access. Individuals shall be provided with a simple and timely means to access and obtain their PII in a readable form and format;
 - b) Correction. Individuals shall be provided with a timely means to dispute the accuracy or integrity of their PII and to have erroneous information corrected or to have a dispute documented if their requests are denied;
 - c) Openness and transparency. Contractor shall be open and transparent regarding its policies, procedures, and technologies that directly affect individuals and/or their PII;
 - d) Individual choice. Individuals shall be provided a reasonable opportunity and capability to make informed decisions about the collection, use, and disclosure of their PII;
 - e) Collection, use and disclosure limitations. PII shall be created, collected, used, and/or disclosed only to the extent necessary to accomplish a specified purpose(s) and never to discriminate inappropriately;
 - f) Data quality and integrity. Contractor will take reasonable steps to ensure that PII is complete, accurate, and up-to-date to the extent necessary for Contractor's intended

purposes and has not been altered or destroyed in an unauthorized manner;

- g) Safeguards. PII will be protected with reasonable operational, administrative, technical, and physical safeguards to ensure its confidentiality, integrity, and availability and to prevent unauthorized or inappropriate access, use, or disclosure; and,
- h) Accountability. Contractor will use appropriate monitoring and other means and methods to assure accountability with these principles and to report and mitigate non-adherence and breaches.

B. California Information Practices Act

Contractor shall comply with the applicable privacy and security provisions of the Information Practices Act of 1977, California Civil Code section 1798 et seq. and shall provide assistance to the Exchange as may be reasonably necessary for the Exchange to comply with these provisions (Civil Code section 1798 et seq.).

C. Health Insurance Portability and Accountability Act ("HIPAA")

- I. Contractor expressly acknowledges and agrees that the Exchange is not a health care provider, a health care plan, or a health care clearinghouse. Accordingly, the parties mutually acknowledge and agree that, for purposes of this Agreement, the Exchange is not a Covered Entity as such term is specifically defined in HIPAA.
- II. Contractor expressly acknowledges and agrees that where the Exchange performs a function required under applicable law pursuant to 45 C.F.R. section 155.200, it is not acting as a Business Associate of any other Covered Entity and Contractor is not acting as the Exchange's Business Associate, as such terms are specifically defined in HIPAA.
- III. For certain programs related to the administration of the Certified Application Counselor Program, the Exchange has agreed to be the Business Associate of the Department of Health Care Services (DHCS). Therefore, to the extent that Contractor performs services related to the administration of the Certified Application Counselor Program, contractor is the Exchange's subcontractor, and therefore, also a Business Associate as that term is specifically defined in HIPAA. Accordingly, if in performing functions pursuant to this Agreement Contractor accesses or uses PII that was

provided to the Exchange by DHCS or for the purposes of the Certified Application Counselor Program, Contractor shall comply with the applicable terms and conditions of HIPAA.

D. IRS Code section 6103 and Publication 1075

Per the Exchange Privacy and Security Rules (45 CFR 155.260 (a)(4)(iii), return information shall be kept confidential under 26 U.S. Code section 6103. As described by IRS publication 1075, conforming to the guidelines set forth in that publication meets the safeguard requirements of 26 U.S. Code section 6103(p)(4) for FTI.

3. Consumer Rights

A. Accounting of Disclosures

- I. Contractor shall assist the Exchange in responding to accounting requests by individuals that are made to the Exchange under the Information Practices Act (Civil Code section 1798.25-29) and if Protected Health Information is involved, pursuant to HIPAA, 45 C.F.R. section 164.528.
- II. The obligation of Contractor to provide an accounting of disclosures as set forth herein survives the expiration or termination of this Agreement with respect to accounting requests made after such expiration or termination.

B. Copies of Records Requests

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

C. Requests to Amend Records

- I. Contractor shall make any amendments to Personally Identifiable information in a record that the Exchange directs or agrees to, whether at the request of the Exchange or an Individual.
- II. Regardless of whether a request to amend records is made to the Exchange or to Contractor, Contractor shall respond to the request with respect to the record Contractor and its subcontractors

maintain in a manner and time frame consistent with requirements specified in the Information Practices Act (Civil Code section 1798.35) and if Protected Health Information is involved, with HIPAA (45 C.F.R. section 164.526).

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

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

E. Confidential Communications Request

- I. Upon receipt of written notice, Contractor shall reasonably comply with any requests to utilize an alternate address, email, or telephone number when communicating with the individual.
- II. If the request is denied, a written response shall be sent to the individual stating the reasons for denying the request.
- III. If Protected Health Information is involved, Regardless of whether a request is made to the Exchange or to Contractor, Contractor shall respond to the request in a manner and time frame consistent with requirements specified in HIPAA (45 C.F.R. section 164. 522 (b)(1)).

F. In responding to any requests from individuals, Contractor shall verify the identity of the person making the request to ensure that the person is the individual who is the subject of the PII or has authority to make requests concerning the PII before responding to the request.

G. In the event any individual submits any of these requests directly from Contractor, Contractor shall within five (5) calendar days forward such request to the Exchange.

4. Security Controls and Safeguards

A. Safeguards:

- I. At a minimum, the Contractor shall establish and implement operational, technical, administrative and physical safeguards that are consistent with any applicable laws to ensure the following:

- II. The confidentiality, integrity, and availability of personally identifiable information created, collected, used, and/or disclosed by the Exchange;
 - III. Personally identifiable information is only used by or disclosed to those authorized to receive or view it;
 - IV. Return information, as such term is defined by section 6103(b)(2) of the Code, is kept confidential under section 6103 of the Code;
 - V. Personally identifiable information is protected against any reasonably anticipated threats or hazards to the confidentiality, integrity, and availability of such information;
 - VI. Personally identifiable information is protected against any reasonably anticipated uses or disclosures of such information that are not permitted or required by law; and
 - VII. Personally identifiable information is securely destroyed or disposed of in an appropriate and reasonable manner and in accordance with retention schedules.
- B. Encryption: the Contractor shall encrypt all PII that is in motion or at rest, including but not limited to data on portable media devices, using commercially reasonable means, consistent with applicable Federal and State laws, regulations and agency guidance, including but not limited to the U.S. Department of Health and Human Services guidance specifying the technologies and methodologies that render PII unusable, unreadable, or indecipherable to unauthorized individuals for purposes of the breach notification requirements or issued by the National Institute for Standards and Technology ("NIST") concerning the protection of identifiable data such as PII. Data centers shall be encrypted or shall otherwise comply with industry data security best practices.
- C. Hardware: the Contractor shall ensure that any and all hardware, including but not limited to personal computers, laptops, jump-drives, smart phones or
- D. other devices upon which PII is stored is secured, password-protected and only accessible by Contractor or Contractor's agents, employees or sub-contractors in accordance with the terms of this Exhibit. Contractor shall at all times remove and permanently delete any and all PII before any such hardware is transferred or sold to a third-party or is otherwise subject to any change in ownership or control.

- E. The Contractor shall update these safeguards as appropriate and as requested by the Exchange.

5. Policies and Procedures:

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

6. Subcontractors

- A. Contractor shall be bound by and be responsible for the acts and omissions of its subcontractors, agents or vendors in the exchange of data with the Exchange. Contractor shall take reasonable steps to ensure compliance with the terms of this Agreement by its subcontractors, agents and vendors.
- B. Contractor agrees to enter into written contracts with its agents and subcontractors that obligate Contractor's subcontractors to abide by the same privacy and security standards and obligations that Contractor has agreed to in this agreement.
- C. Contractor represents and agrees that it shall only request that the Exchange transmit data to subcontractors with whom it has such agreements and only to the extent such information is necessary to carry out the purposes authorized by this Agreement.
- D. Upon request, Contractor shall provide the Exchange with a copy of any written agreement or contract entered into by Contractor and its subcontractors to meet the obligations of Contractor under this Exhibit.

7. Breaches & Security Incidents

- A. The Contractor shall immediately report to the Exchange Privacy Officer at Privacy Officer@covered.ca.gov any actual or suspected Breaches or Security Incidents involving PII created or received under this Agreement. Contractor's report shall contain the following information to the extent applicable and known at that time:
- I. A brief description of what happened including the date of the incident and the date of the discovery of the incident;
 - II. The names or identification numbers of the individuals whose PII has been, or is reasonably believed to have been accessed, acquired, used or disclosed;
 - III. A description of the types of PII that were involved in the incident, as applicable;
 - IV. Information regarding any information system intrusion and any systems potentially compromised;
 - V. A brief description of Contractor's investigation and mitigation plan; and
 - VI. Any other information necessary for the Exchange to conduct an investigation and include in notifications to the individual(s) or relevant regulatory authorities under applicable privacy and security requirements.
- B. Upon completion of the initial report, Contractor shall immediately commence an investigation in accordance with applicable law to:
- I. Determine the scope of the incident;
 - II. Mitigate harm that may result from the incident; and
 - III. Restore the security of the system to prevent any further harm or incidents.
- C. Contractor shall cooperate with the Exchange in investigating the actual or suspected incident and in meeting the Exchange's obligations, if any, under applicable laws.
- D. Contractor shall mitigate to the extent practicable any harmful effect of any incident that is known or reasonably discoverable to Contractor.

- E. After conducting its investigation, and within fifteen (15) calendar days, unless an extension is granted by the Exchange, Contractor shall file a complete report with the information listed above in subsection (1), if available. Contractor shall make all reasonable efforts to obtain all relevant information and shall provide an explanation if any information cannot be obtained. The complete report shall include a corrective action plan that describes the steps to be taken to prevent any future reoccurrence of the incident.
- F. Contractor shall cooperate with the Exchange in developing content for any public statements and shall not give any public statements without the express written permission of the Exchange.
- G. If a breach requires notifications and reporting under applicable laws, and the cause of the Breach is attributable to Contractor, its agents or subcontractors, the Contractor shall:
 - I. Be fully responsible for providing breach notifications and reporting as required under applicable laws;
 - II. Pay any costs of such Breach notifications as well as any costs or damages associated with the incident; and
 - III. Should the Exchange in its sole discretion determine that credit monitoring is an appropriate remedy, arrange for and bear the reasonable, out-of-pocket cost of providing to each such affected individual one (1) year of credit monitoring services from a nationally recognized supplier of such services.
- H. If a Contractor determines that an impermissible acquisition, use, or disclosure of PII does not require breach notifications or reporting, he/she shall document the assessment and provide such documentation to the Exchange within one week of its completion. Notwithstanding the foregoing, the Exchange reserves the right to reject the assessment and advise the Contractor to treat the incident as a Breach.

8. Right to Inspect

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

OPTIONAL

FOR USE ONLY IF CERTIFIED APPLICATION ENTITY USES COVERED

CALIFORNIA'S LOGO

TRADEMARK & BRANDING

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

A. Trademark Guidelines and Brand Style Guide

1. Covered California's brand and trademarks, as described below ("Covered California Marks") are valuable intellectual property and important assets of the organization. The Covered California Logo, and any other logo used to identify any product or service offered by Covered California, may not be used in any manner inconsistent with this Exhibit and the Brand Style Guide (Rev. May 2014) incorporated by reference herein without express written permission from Covered California.
2. The improper or unauthorized use of Covered California Marks or other intellectual property is a violation of Covered California's rights and is strictly prohibited. Unauthorized use or misrepresentation of Covered California, the California Health Benefit Exchange is also a violation of state law Section 100510 to the Government Code, Section 1360.5 of the Health and Safety Code, and Section 790.03 of the Insurance Code.
3. The Exchange reserves the right to revise the Brand Style Guide and CONTRACTOR will be bound to comply with the material contained in the updated guide immediately upon receipt or other notification of the new guide.

B. Non-Exclusive License

1. Subject to the terms of this Exhibit and Brand Style Guide, Covered CA conveys and CONTRACTOR accepts a non-exclusive, royalty-free license in the following Covered California Marks for the purposes specified within this agreement.

COVERED CALIFORNIA®



2. CONTRACTOR shall be entitled to use the Covered California Marks in conjunction with the marketing materials referenced herein subject to the terms

and conditions set forth within this Exhibit and Brand Style Guide for the sole purpose of promoting the services performed by CONTRACTOR under this agreement.

3. CONTRACTOR accepts the above-referenced license "As-Is" without any representations or warranties, including but not limited to warranties of ownership or fitness for a particular purpose.
4. CONTRACTOR expressly acknowledges and agrees that nothing in this Exhibit is intended to nor shall result in the transfer of any ownership interests and that the Exchange shall at all times remain the sole and exclusive owner of the Covered California Marks.
5. In addition to the terms and conditions set forth herein, CONTRACTOR understands and agrees that the Exchange shall at all times be entitled to impose additional restrictions upon the use of the Covered California Marks for the sole purpose of protecting the goodwill and overall reputation of the Exchange and Covered California Marks.
6. CONTRACTOR shall be entitled to sub-license the use of the Covered California Marks; provided, however, that CONTRACTOR shall ensure that any and all sub-contractors shall execute and strictly abide by the terms of conditions specified within this Exhibit.

C. Non-Affiliation & Non-Endorsement

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

- b. An endorsement by the Exchange of any product, service or activity provided or engaged in by CONTRACTOR for which the Covered California Marks are at any time used.

D. Disclaimer

1. Use of the Covered California Marks in external communications or a web site must be accompanied by the following disclaimer in a conspicuous font, which should be placed, on each page that displays Covered California Marks:
 - a. “Covered California,” “California Health Benefit Exchange”, and the Covered California Logo are registered trademarks or service marks of Covered California, in the United States. This web site is owned and maintained by [Contractor Name], which is solely responsible for its content. This site is not maintained by or affiliated with Covered California, and Covered California bears no responsibility for its content. The e-mail addresses and telephone numbers that appear throughout this site belong to [Contractor Name], and cannot be used to contact Covered California.
 - b. This statement must also appear on:
 - i. The Contractor’s home pages; or
 - ii. Any “Who We Are” or “About Us” pages or other pages of similar purpose or content.
2. For purposes of this section, “conspicuous” means displayed apart from other print on the external communications or web site, in not less than 12-point boldface font type in capital letters that is at least 2-point boldface font type sizes larger than the next largest print used, and in contrasting type, layout, font, or color in a manner that clearly calls attention to the language.

E. Improper Uses of Covered California’s Marks

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

- d. As part of a name of a product or service of a company or organization other than Covered California; or
- e. In a manner that infringes, derogates, dilutes, or impairs the rights of Covered California in such marks.

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

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

G. Clearly Identifying Exchange Products

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

H. Marketing Materials – Definition

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

I. Marketing Materials Subject to the Contractor Marketing Guidelines

All marketing materials that mention, promote participation in, or reference Covered California are subject to this Exhibit and the Brand Style Guide.

J. General Marketing Material and Direct Mail Communications.

Upon request, Contractor shall provide Covered California with at least one (1) copy, unless otherwise specified by Covered California, of any marketing material Contractor intends to use, mail, or has mailed, to its clients or prospective clients, including, but not limited to, brochures, leaflets, postcards, presentations, advertisements in phone books, newsletters, health education materials, and special

announcements. Covered California shall have the right to request changes to or prohibit the distribution or use of any marketing materials as determined by Covered California in its sole discretion.

K. Submission Requirements & Process for Advertising Material

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

L. Confidential Treatment of Contractor Marketing Materials

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

M. Distribution of Marketing Materials Developed by Covered California

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

Attachment 1

**Compliance with Conflict of Interest Standards California Code of Regulations,
Title 10 Investment, Section 6866**

1. Disclose any lines of insurance business not covered by the restrictions on participation and prohibitions on conduct in Section J of Exhibit A, which the entity or individual intends to sell while carrying out consumer assistance functions. If there is nothing to disclose, state that there is nothing to disclose.



(Attach additional sheets as needed)

2. Disclose any existing employment relationships, or any former employment relationships within the last five years, with any health insurance issuers or issuers of stop loss insurance, or subsidiaries of health insurance issuers or issuers of stop loss insurance, including any existing employment relationships between a spouse or domestic partner and any health insurance issuers or issuers of stop loss insurance, or subsidiaries of health insurance issuers or issuers of stop loss insurance. If you do not have anything to disclose you must state that below.

A large, empty rectangular box with a thin black border, intended for the user to provide the required disclosure information. A large, light gray watermark reading "Not Official" is oriented diagonally across the page, partially overlapping the box.

(Attach additional sheets as needed)

3. Disclose any existing or anticipated financial, business, or contractual relationships with one or more health insurance issuers or issuers of stop loss insurance, or subsidiaries of health insurance issuers or issuers of stop loss insurance. If you do not have anything to disclose you must state that below.



(Attach additional sheets as needed)