

**COVERED CALIFORNIA  
GENERAL AGENT AGREEMENT**

## GENERAL AGENCY AGREEMENT

This Agreement ("Agreement") is made and entered into as of July 1, 2013, by and between the California Health Benefit Exchange (Covered California) and <General Agent Name Here> a California corporation ("GA"). Covered California and GA may be referred to in this Agreement as "the Parties" or separately as a "Party."

### RECITALS

WHEREAS, GA is a licensed insurance brokerage firm qualified and operating under the laws of the State of California with a network of affiliated agents in the State of California; and

WHEREAS, Covered California desires to secure the expertise of GA to assist in the management and sales, by licensed solicitors and brokers, of products offered by Covered California to Small Employers (as defined below); and

WHEREAS, GA desires to provide such management and sales services to the Covered California.

NOW, THEREFORE, in consideration of the foregoing recitals and mutual covenants and agreements contained herein, the Parties hereto agree as follows:

### ARTICLE 1.

#### DEFINITIONS

1.1 GA. "GA" is defined in the introductory paragraph.

1.2 Agents shall mean individuals or entities who or that are duly licensed to operate as life-only and accident and health agents in the State of California. Agents are also defined as trained, certified and authorized to represent Covered California and sell Exchange products.

1.3 GA Group. "GA Group" shall mean any New Group who (i) enters into a Group Agreement during the term of this Agreement (ii) at the time of entering into a Group Agreement, had a broker of record who is a Covered California Agent, GA had presented to Covered California the initial enrollment paperwork, and GA had performed the responsibilities as indicated in Article 2 of this Agreement.

1.4 Group shall mean those small employer groups and organizations that have been identified and solicited by General Agent, screened for compliance with Covered California's new business criteria, accepted by Covered California for a Group Health Service Contract, and which have entered into a Group Health Service Contract with Covered California. "Groups" under this Agreement shall not include large groups, individuals, families, Medicare Supplement subscribers, Medicare subscribers, or persons who are guaranteed coverage under applicable state and federal laws.

1.5 Group Agreement shall mean those group contracts issued by Covered California to small employers, as defined under the Affordable Care Act, California Health Care Service Plan Act, Cal. Health & Safety Code §§ 1357 *et seq.* (the “Knox Keene Act”) and the California Insurance Code §§ 10700 *et seq.*, which express the rights and obligations of the parties thereto and which describe the costs, procedures, benefits, conditions, limitations, exclusions, and other obligations to which Members/Insureds are subject.

1.6 New Group. “New Group” shall mean any Group (including all enrollment units) that has a Group Agreement with a contract effective date on or after January 1, 2014.

1.7 Payment. “Payment” is defined in Section 4.1.

1.8 Products. “Products” shall mean all health care service plans of Covered California together with all supplements, riders and other health benefit plans offered together with such health care service plans available to any Covered California Agent to market to Small Employers. Products shall include products offered by Covered California to the extent such products are offered with health care service plans of the Covered California.

1.9 Participant. “Participant” shall mean any employee of a Group and the employee’s dependents who are covered by Products.

1.10 Small Employer. “Small Employer: shall mean any person, firm, proprietary or nonprofit corporation, partnership, public agency or association or guaranteed association that qualifies as a “small employer” under the Affordable Care Act and California Health and Safety Code Section 1357 *et. seq.*

## ARTICLE 2.

### RESPONSIBILITIES OF GENERAL AGENT

2.1 Advertising and Marketing of Covered California and Exchange Products.

**Advertising.** General Agent is prohibited from using any advertisement or any written materials, in which appears the name or logo of Covered California or California Health Benefit Exchange, any service mark thereof, or any variation thereof, without the prior written consent of Covered California. General Agent shall comply with all of Covered California rules and guidelines regarding advertising and written materials, including but not limited to Covered California’s Brand and Advertising Guidelines; Agent Guidelines For Advertising; and Compliance Guidelines for Web Sites/Internet Use, all of which may be modified from time to time with reasonable notice to General Agent. All of Covered California’s rules and guidelines regarding advertising and written materials are incorporated into this Agreement by this reference.

(a) GA shall market and promote the Products to Covered California Agents and GA’s sales representatives by mail, fax, email, seminars, webinars and

meetings. When GA schedules seminars for Covered California Agents solely relating to Covered California and Products, GA shall give Covered California reasonable advance notice so that Covered California can decide whether to participate in the seminar. GA shall train its sales representatives and Covered California Agents on Products and Covered California services, using materials provided by the Covered California. General Agent sales staff are required to complete Exchange Training and Certification, as required of all agents under 45 C.F.R. 155.220.

(b) GA shall fairly and affirmatively market Covered California plans.

2.2 Preparation of Proposals. GA shall prepare initial proposals to prospective New Groups for Products using rates prepared by GA in accordance with Article 7. Upon request of a Covered California Agent, GA shall assist Covered California Agent in making proposals and presentations to a prospective Group, whether for initial enrollment or renewal.

2.3 Enrollment Process. GA shall provide Covered California Agents with copies of the Covered California's enrollment applications and any other forms used in connection with the Products as necessary for Covered California Agents to fulfill their duties in accord with Covered California Agent's agreement with the Covered California. GA shall receive all enrollment applications either directly from prospective Groups, or from a Covered California Agent. GA shall review all enrollment applications, shall obtain any missing information from Covered California Agents or from the prospective Group and shall forward all completed applications received by GA to Covered California for processing, or process the applications through the Covered California online enrollment system. GA shall make all reasonable efforts to submit business using the Covered California online enrollment system. No employee or dependent of the prospective Group shall be covered by a Product, until Covered California and the Group have executed a Group Agreement and Covered California has received and approved of the specific enrollment application for the individual.

2.4 Enrollment Meetings. GA shall provide, at the request of Covered California Agents, information and support reasonably necessary to enroll Groups in the Products, including, without limitation, attendance by GA at open enrollment meetings for Groups. Upon request of GA, at mutually agreeable times, Covered California shall attend open enrollment meetings for the purpose of training GA's personnel. Covered California may choose to attend open enrollment meetings at any time.

2.5 No Collection of Premiums from Groups. GA shall direct Agents to have Groups make payments directly to Covered California, except that GA shall direct Agents to have Groups provide a check to GA made out to Covered California for the initial enrollment of Participants from a New Group (the "Initial Check"). GA shall deliver the Initial Check to Covered California within the time period referenced in the Group Agreement to activate the Group on the effective date of the Group Agreement. If a Group delivers a payment of premium made out to GA, GA shall immediately endorse the check to Covered California and deliver the endorsed check to Covered California

within the time period referenced in the Group Agreement for timely payment of the premium.

2.6 Covered California Agent Liaison. If requested by Covered California from time to time, GA shall collect license verification and insurance information from Covered California Agents and forward such information to the Covered California. GA shall use best efforts to provide accurate and responsive service to Covered California Agents and Groups, including (i) responding to Covered California Agent inquiries within 24 hours regarding sales and pricing of Products and enrollments in Products and (ii) forwarding to Covered California within 24 hours of receipt all information relating to inquiries, complaints and other communications from Covered California Agents about coverage and benefits of Groups.

2.7 Reports. GA shall provide proposal and sales reports to Covered California periodically, at time periods and in format mutually agreed between the Parties.

2.8 Training Availability. GA shall make the appropriate personnel available for training by the Covered California, and such trained personnel shall be available to train other GA personnel and Covered California Agents as necessary during the term of this Agreement.

2.9 Compensation of Sales Representatives. To the extent possible, GA shall compensate its sales representatives for Covered California business development at rates no lower than the compensation paid by GA for business development for other health plans.

### **Provision of Services.**

- a. General Agent agrees to use its commercially reasonable efforts to identify potential Groups and solicit applications for Group Health Service Contracts from them. General Agent acknowledges and agrees that it shall continue to provide assistance to a Group after execution of such Group's Group Health Service Contract.
- b. General Agent agrees not to discriminate against Covered California when offering or recommending other carriers' or health plans' coverages of a similar nature because of any differences between selling General Agent commission rates or override commission rates paid by such other health plans or carriers and the rates paid by Covered California.
- c. If General Agent reasonably believes a potential Group meets Covered California's new business application guidelines (to be furnished by Covered California), General Agent shall contact the Agent and do the following:

- (1) Instruct the Agent to fully and fairly explain Covered California's Group Health Service Contracts (including any optional Covered California benefits solicited with the Group Health Service Contracts).
  - (2) If a potential Group is interested, instruct the Agent to have the Group complete the appropriate Covered California application(s) and any applicable applications and forms supplied by Covered California, and advise the potential Group that submission of application(s) does not bind Covered California unless Covered California approves the application(s) and issues a Group Health Service Contract.
  - (3) Instruct the Agent to provide the potential Group with the appropriate disclosure and rate proposal, and make it clear that only Covered California can bind coverage or negotiate changes in rates, or in terms or conditions of coverage.
  - (4) If the potential Group's application(s) is/are approved by Covered California, instruct the Agent to direct the new Group to pay all Premiums, in accordance with Covered California's billing statement procedures, to the mailing address specified by Covered California.
- d. General Agent shall provide reasonable assistance to Covered California in resolving any problems that may arise with new and existing Groups covered by this agreement, and with any problems that may arise with Agents.
  - e. General Agent shall not make any commitments on behalf of Covered California that have not been specifically approved in advance in writing by Covered California.
  - f. General Agent acknowledges and agrees that Covered California has the right to reject any application for coverage that may be submitted.

### **ARTICLE 3.**

#### **RESPONSIBILITIES OF THE COVERED CALIFORNIA**

3.1 Designing and Underwriting Products. Covered California shall design all of the Products to be offered to Groups. Covered California shall determine the enrollment criteria, application requirements, and premium charges for Products.

3.2 Materials and Forms. Covered California shall provide GA with copies of Covered California marketing brochures and materials to be used in connection with the sale of Products. Covered California shall also provide GA with any and all forms to be used in connection with enrollment and the provision of other services under this Agreement. This Section 3.2 shall not be interpreted to limit or restrict GA's ability to create any marketing materials subject to Article 6.

3.3 Enrollment. Covered California shall receive enrollment applications or electronic enrollment records from GA and shall review such applications with respect to Covered California enrollment and underwriting criteria. Covered California reserves the right to accept or reject any enrollment application, regardless of any prior determination made by GA or any Covered California Agent. Covered California reserves the right to recertify each Group to determine if it continues to qualify as a Small Employer, in accord with state and federal laws.

3.4 Covered California Agents. Covered California shall be responsible for initiating, performing due diligence, negotiating, maintaining, amending and terminating all agreements between Covered California and Covered California Agents. Covered California shall provide GA with prompt notice of any addition or deletion of persons or entities as Covered California Agents. Covered California shall pay Covered California Agents commissions and other compensation in accordance with the terms and conditions of the applicable agreements entered into between Covered California and Covered California Agents. In no event shall the General Agent or employees of GA be Covered California Agents.

3.5 Training. Covered California shall provide training to GA on Products, Covered California services, application criteria and rating processes as necessary upon commencement of this Agreement and from time to time, with respect to changes in Products, services, underwriting criteria and rating processes. Covered California shall provide GA reasonably timely response to GA's requests and questions regarding enrollment application criteria and rating processes.

## **ARTICLE 4.**

### **COMPENSATION TO GA**

4.1 Calculation of Payment. In consideration for the services provided by GA to Covered California under this Agreement, Covered California shall pay the GA part of the amount actually received by Covered California with respect to GA Groups ("Payment") calculated as provided in this Section 4.1.

4.2 GA Payment. Covered California shall make the Payment within 5 business days after the date that a commission is due and payable to Covered California Agent for the GA Group; provided however, no GA Payment shall be paid unless or until the agent of record is certified and appointed as a Covered California Agent.

(a) This Section 4.3 will remain in effect after termination of the Agreement, except as provided in Sections 13.2(b) and 13.4.

4.3 Covered California Control of Accounts. Covered California shall have full control of and discretion as to the collection, adjustment or compromise of any or all accounts with Groups. Covered California shall have full control of and discretion as to the adjudication of claims of all Participants and the enrollment and termination of

Participants. If the Covered California, for any reason, refunds any premiums or adjusts the number of Participants for which GA would otherwise be entitled to a GA Payment, GA shall not have a right to a Payment on said premiums or with respect to such Participants and GA shall pay to Covered California upon demand any amounts previously received by GA as Payments on said premiums or such Participants.

4.4 General Agent as Direct Selling Agent. Agent commissions due with respect to Groups as to which General Agent is designated as the direct selling agent (i.e., directly solicited the application of the Group) shall be paid in accordance with Covered California's Schedule of Commissions in effect at the time the Group was originally effective. If General Agent is designated as the direct selling agent, General Agent acknowledges and agrees that General Agent shall not receive GA Payments in addition to agent commissions with respect to such Group.

4.5 Broker or Agent-of-Record & Conditions of Payment. General Agent acknowledges that Groups may transfer at any time from one broker or agent to another broker or agent. Any Group may change brokers or agents and/or designate a new broker- or agent-of-record by notifying Covered California in writing. Payment to General Agent is contingent upon all of the following:

- a. Covered California retaining the Group;
- b. General Agent reasonably servicing all Groups in accordance with the terms of this Agreement;
- c. General Agent's compliance with Covered California's rules, practices, underwriting guidelines, and procedures; and
- d. General Agent maintaining its licenses in good standing, and remaining primarily in the business as an insurance broker or agent and maintaining separate offices as such.

4.6 No Sharing of Commissions. General Agent agrees that it shall not in any way share, refund, split, kickback, divide, or apportion with another party any agent commissions and/or General Agent payments pursuant to this Agreement. Activity prohibited by this Section includes, without limitation, the offering of any bonus, service, prize, fee waiver or other inducement to a present or prospective Group. Violation of this Section shall result in immediate termination of this Agreement.

4.7 Expenses. GA shall be solely responsible for all expenses incurred by GA in the performance of this Agreement.

4.8 Amounts Owed the Covered California. Covered California shall have the right to offset against any Payments any amounts GA owes to Covered California under this Agreement.



4.9 The Contractor shall submit an invoice supported by brief progress which summarizes both completed tasks and work in progress toward all contract deliverables.

(a) Invoices shall include the Agreement Number and CFDA Code 93.525 and shall be submitted in triplicate not more frequently than monthly in arrears to:

California Health Benefit Exchange  
Attn: Accounting  
560 J Street, Suite 290  
Sacramento, CA 95814

#### 4.10 State Budget Contingency Clause

(a) It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, California Health Benefit Exchange shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.

(b) If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the California Health Benefit Exchange shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an agreement amendment to Contractor to reflect the reduced amount.

#### 4.11 For Contracts With Federal Funds

(a) It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of Congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the Agreement were executed after that determination was made.

(b) This Agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the term of this Agreement for the purposes of this program. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress which may affect the provisions, terms, or funding of this Agreement in any manner.

(c) It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.

(d) The California Health Benefit Exchange has the option to invalidate the Agreement under the 30-day cancellation clause or to amend the Agreement to reflect any reduction of funds.

4.12 Prompt Payment Clause: Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.

4.13 Review. The California Health Benefit Exchange reserves the right to review service levels and billing procedures as they impact charges against this Agreement.

4.14 Final Billing. Invoices for services must be received by the State within 90 days following each state fiscal year, or 90 days following the end of the contract term, whichever comes first. The final invoice must include the statement "Final Billing."

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

## **ARTICLE 5.**

### **COMPLIANCE WITH THE COVERED CALIFORNIA'S POLICIES AND APPLICABLE LAWS**

5.1 Compliance with the Covered California's Policies and Applicable Laws. GA shall comply with the Covered California's policies and practices now in effect, or hereafter adopted, all instructions as may from time to time be given to GA by Covered California and all applicable federal and state laws and regulations including, but not limited to, as applicable, the Affordable Care Act, the California Knox-Keene Act, the California Insurance Code, and the regulations promulgated thereunder.

5.2 Valid License. General Agent represents and warrants that it is duly licensed by the California Department of Insurance as a life-only and an accident and health insurance agent. General Agent shall notify Covered California as promptly as possible upon the institution of any disciplinary proceedings against General Agent, its principal persons or its employees, relating to such licenses issued by the California Department of Insurance. Suspension, revocation or expiration of General Agent's agent licenses shall terminate this Agreement immediately and retroactive to the date such licenses were suspended, revoked or expired. In case of such termination, General Agent shall return to Covered California all General Agent Payments that Covered California paid to General Agent under the suspended, revoked, or expired license since such licenses was suspended, revoked or expired.

5.3 Audit. Contractor agrees that the awarding department ("the State") and the Bureau of State Audits, 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 three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees

to include the same right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (GC 8546.7, PCC 10115 et seq., CCR Title 2, Section 1896).

## **ARTICLE 6.**

### **MARKETING AND ADVERTISING/USE OF NAME**

#### **6.1 Marketing Materials.**

(a) GA shall only use advertising and marketing materials approved by Covered California when providing services under this Agreement unless written approval is provided by Covered California. GA shall comply with all then current Covered California policies and procedures regarding the use of all such materials. All records, literature, enrollment forms, marketing aids, and similar materials furnished to GA by Covered California are, and shall remain, the property of Covered California regardless of whether they have been completed by a Group or prospective members. GA shall return to Covered California all such materials promptly upon the Covered California's request. GA shall not broadcast, publish, display on its website, distribute or otherwise make available any advertisements, marketing materials, trademarks, tradenames, or other written, electronic or other forms of information referring to or regarding Group Agreements or Covered California (including, without limitation, screens from the Covered California's websites) without the prior approval of the Covered California.

(b) If GA prepares marketing or advertising materials, it shall obtain written approval of Covered California prior to distribution to any person as follows. GA shall submit all marketing and advertising materials in the manner described in Section 14.6, with a specific request for approval, including a list or description of planned recipients of such materials. Covered California shall respond with its approval or disapproval of any GA marketing and advertising materials within 10 business days after receipt of such materials from GA. If any such materials also require regulatory approval prior to distribution, Covered California shall inform GA at the time that Covered California responds with its approval or disapproval of the need for regulatory approval. When Covered California approves such marketing materials, Covered California shall promptly submit the approved materials for regulatory approval and inform GA within 10 business days of regulatory approval or disapproval.

**6.2 Use of Name.** Covered California and GA each reserves to itself the right to, and the control of the use of, its names, symbols, trademarks and service marks, presently existing or hereafter established, and neither Covered California nor GA shall use the other's names, symbols, trademarks, or service marks in any advertising or promotional communication of any type or otherwise without the prior written consent of the other organization. Without limiting the generality of the previous sentence, GA shall comply with the Trademark Usage Guidelines, as attached as Exhibit B, as they may be modified by Covered California from time to time, upon prior notice to GA.

## ARTICLE 7.

### **RATES AND ENROLLMENT APPLICATION CRITERIA**

7.1 Calculation of Rates and Enrollment Criteria. For Products proposed to be purchased by each prospective Group that would be a GA Group, GA shall calculate the initial rates for Products based upon the enrollment criteria and automated processes provided by Covered California to GA from time to time. GA shall not use any other criteria for preparing rates in addition or substitution to those provided by the Covered California. All underwriting criteria and automated processes provided by the Covered California, and the rates by GA shall remain the property of Covered California and subject to Section 9.1. Any proposals provided by GA shall be subject to final approval and acceptance by the Covered California.

7.2 Test Data and Review. Covered California may, at any time, provide test data to GA to determine whether GA (or their third-party quote engine provider) is preparing accurate proposals and may review the proposals provided and the underlying data. If Covered California establishes changes in rates and/or underwriting criteria, GA shall not be authorized to implement the changes until and unless GA has provided to Covered California test standard proposals incorporating the changes based upon data provided by the Covered California, and Covered California has reviewed and approved the test proposals.

7.3 Proposal Preparation by the Covered California. At any time, Covered California may, by notice to GA, choose to perform the functions described in Section 7.1 itself upon the date indicated in the notice.

7.4 Renewal Rates. Covered California shall administer and communicate all renewals for Groups.

## ARTICLE 8.

### **GENERAL RESTRICTIONS AND LIMITATIONS**

- 8.1 Representations, Modifications and Amendments. GA shall not,
- (a) Make any representations with respect to Products except as may be explicitly set forth in materials prepared and provided to GA by Covered California or approved in advance by the Covered California;
  - (b) Make any oral or written amendments, alterations, modifications or waivers of any of the terms or conditions applicable to any of the Products; or
  - (c) Bind or attempt to bind Covered California in any way except as expressly permitted in this Agreement.

8.2 Rights of the Covered California. Covered California has the right, in its sole discretion to:

- (a) Decline acceptance of any application;
- (b) Amend or rescind any Group Agreements and exercise all other rights under the terms of any Group Agreements;
- (c) Modify any of the Covered California's policies as permitted by its terms.

## **ARTICLE 9.**

### **RECORDS, MAINTENANCE, INSPECTION AND CONFIDENTIALITY**

9.1 **Books and Records.** On a current basis, General Agent agrees to keep and maintain its books of Groups and other records, records of all transactions regarding applications for Covered California Group Health Service Contracts and a current list of the names and addresses of its principals and partners, if any, and all of its employees who may act as solicitors. General Agent agrees to preserve these books of Groups and other records for a period of not less than seven (7) years, the most recent two (2) years of which must be in an easily accessible place at its offices. After two (2) years, such books and records may be warehoused, stored, microfilmed, or digitally maintained, subject to their availability to the California Department of Managed Health Care, Department of Insurance or any other agency having jurisdiction within not more than five (5) days after request therefor. Such books and records may not be removed from California without the prior written consent of the California Department of Managed Health Care and/or the California Department of Insurance and/or Covered California. General Agent acknowledges that Covered California may at any time during the term of this Agreement and for one (1) year after the termination of this Agreement, and upon reasonable notice, examine General Agent's records pertaining to the services it has provided under this Agreement. This Section shall survive termination of this Agreement for any reason.

## **ARTICLE 10.**

### **RELATIONSHIP BETWEEN COVERED CALIFORNIA AND GA**

10.1 Relationship Between Covered California and GA. Covered California and GA are independent legal entities. General Agent is and agrees to act only as an independent contractor. The parties acknowledge and agree that no employer-employee relationship is created by this Agreement and no employee rights or benefits shall inure to General Agent under this Agreement except for purposes of Civil Code Section 1798.24.

## ARTICLE 11.

### LIABILITY AND INDEMNIFICATION

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

- a. Arise out of, are due to, or are alleged to arise out of or be due to, a breach by the Contractor of any of its representations, warranties, covenants or other obligations contained in this Agreement, or
- b. Are caused by or result from or are alleged to arise out of or result from, the Contractor's acts or omissions constituting bad faith, willful misfeasance, negligence or reckless disregard of its duties under this Agreement, or
- c. 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 Contractor in the performance of this Agreement, or
- d. Arise out of, are due to, or are alleged to arise out of or be due to, any claim or allegation of infringement, misappropriation or violation of any patent, copyright, trademark, trade secret, domain name or other intellectual property right comprising or involving any of the Subject Inventions, Prior Inventions or other Inventions provided in any way by Contractor and used, reproduced or otherwise exploited by the State in connection with any of the Agreement Programs or any Turnover thereof; or
- e. Arise out of, are due to or are alleged to arise out of or be due to, any violation of HIPAA, the HIPAA Regulations, HITECH Act, other security or privacy laws, or any other laws, by Contractor or any subcontractor or agent under Contractor's control.
- f. If and to the extent that the Contractor has knowledge of a claim that it believes may develop into an action that would be subject to this Agreement, the Contractor shall promptly notify the State of the claim. Covered California

11.2 Right to Tender or Undertake Defense. If the State is named a party in any judicial, administrative, or other proceeding arising out of or in connection with a breach of this Agreement or a matter for which the Contractor is obligated to indemnify the State under this Agreement, then the State will have the option at any time to either (i) tender its defense to Contractor, in which case Contractor will provide qualified attorneys, consultants, and other appropriate professionals to represent the State's

interests at Contractor's expense, or (ii) undertake its own defense, choosing the attorneys, consultants, and other appropriate professionals to represent its interests, in which case Contractor 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 Contractor shall be afforded a reasonable opportunity to participate in the defense and attend the legal proceedings at its own expense; however, the State shall have sole control of the defense.

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

## **ARTICLE 12.**

### **RESOLUTION OF DISPUTES**

12.1 The parties shall deal in good faith and attempt to resolve disputes informally. If the dispute persists, Contractor shall submit a written dispute notice to the Exchange Project Representative within 15 calendar days after the date of the action causing the dispute. The written dispute notice shall contain the following information:

- (a) the decision or issue under dispute;
- (b) the reason(s) Contractor believes the decision or position taken by the Exchange is in error (if applicable, reference pertinent contract provisions);
- (c) identification of all documents and substance of all oral communication which support Contractor's position; and
- (d) the dollar amount in dispute, if applicable.

12.2 The Exchange Project Representative, within 15 calendar days after receipt of the dispute notice, shall issue a written decision regarding the dispute. The written decision shall include the following information:

- (a) a description of the dispute;
- (b) a reference to pertinent contract provisions, if applicable;
- (c) a statement of the factual areas of agreement or disagreement; and
- (d) a statement of the representative's decision with supporting rationale

12.3 If the Contractor is not satisfied with the decision of the Exchange Project Representative, the Contractor may, within 15 calendar days of the Exchange Project Representative's decision, submit a written appeal to the Exchange Executive Director. The Executive Director shall then issue a final decision on the dispute within 30 days after receiving Contractor's written appeal. If the Executive Director fails to render a final decision within 30 days after receipt of Contractor's written appeal, it shall be deemed a final decision adverse to the Contractor's contentions. The Executive Director's final decision shall be conclusive and binding regarding the dispute unless Contractor commences an action in a court of competent jurisdiction to contest such decision within 30 days following the date of the final decision.

12.4 Pending the final resolution of any dispute arising under, related to or involving this Contract, Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of Goods or providing of services in accordance with the Exchange's instructions. Contractor's failure to diligently proceed in accordance with the Exchange's instructions shall be considered a material breach of this Contract.

## **ARTICLE 13.**

### **TERM AND TERMINATION**

13.1 Term of Agreement. The term of this Agreement shall commence on July 1, 2013 and thereafter, this Agreement shall renew for additional terms of twelve (12) months each only upon General Agent demonstrating continued compliance with all production and administrative requirements under this Agreement, and as further set forth below.

13.2 Termination. This Agreement may be terminated upon the occurrence of any of the following:

- a. Without Cause. Any party may terminate this Agreement without cause upon thirty (30) days prior written notice to the other parties.

Upon termination without cause, General Agent will no longer be authorized to solicit applications for Group Health Service Contracts, and shall immediately cease all marketing and sales activities under this Agreement. General Agent's continuing duties under this Agreement following termination shall be limited to assisting Groups in connection with Group Health Service Contracts placed on or before the termination of this Agreement. All provisions of this Agreement, other than provisions dealing with marketing and sales activities, shall continue in force to the extent of these continuing and limited duties.

- b. Failure to Meet Obligations. Other than as set forth in subsection (c) below, in the event that a party defaults in the performance of any duties or



obligations hereunder, including the inability or refusal to provide services hereunder, and if the default or breach is not cured within thirty (30) days after any nondefaulting party gives written notice of default, the nondefaulting party may terminate this Agreement immediately by written notice to the party.

- c. Minimum Production. General Agent acknowledges and agrees that General Agent shall produce an average of [\_\_\_\_\_] Group Health Service Contracts or [ \_\_\_\_\_ ] Members/Insureds per 12-month period during the term of this Agreement, and that General Agent shall retain at least [\_\_\_\_\_%] of General Agent's existing Group Health Service Contracts or Members/Insureds per 12-month period during the term of this Agreement. If General Agent fails to meet such production and retention requirements, then Covered California shall have the right, but not the obligation, to terminate this Agreement upon sixty (60) days prior written notice to General Agent.
- d. Service Level Agreement. General Agent acknowledges and agrees that General Agent shall convert or submit completed applications via online or electronic enrollment (the CalHEERS enrollment platform) an average of [ % ] of the Group Health Service Contracts or [ % ] of Members/Insureds per 12-month period during the term of this Agreement. If General Agent fails to meet such requirements, then Covered California shall have the right, but not the obligation, to terminate this Agreement upon sixty (60) days prior written notice to General Agent. Termination of Group Health Service Contract. The terms of this Agreement, as they apply to any particular Group, shall terminate immediately upon termination of that Group Health Service Contract.
- e. Insolvency. Covered California may terminate this Agreement immediately should the other party voluntarily file a petition in or for bankruptcy, reorganization or an arrangement with creditors; make a general assignment for the benefit of creditors; be adjudged bankrupt; be unable to pay debts as they become due; have a trustee, receiver or other custodian appointed on its behalf; or should any other dissolution or liquidation proceeding be commenced against it.
- f. Change of Ownership. Covered California may terminate this Agreement on thirty (30) days prior written notice to General Agent if Covered California does not consent to a change in ownership of General Agent pursuant to Section 13.2 (a) of this Agreement.

Any notice of default or notice of termination of this Agreement shall be delivered in person or by mail, addressed to such address General Agent shall furnish to Covered California upon the Effective Date of this Agreement; and to Covered California, addressed to such address Covered California shall furnish to General Agent upon the Effective Date of this Agreement.

Upon termination of this Agreement, General Agent shall immediately remit to Covered California all funds belonging to Covered California or held for Covered California's and/or Covered California's Group(s), and shall promptly forward to Covered California all records, applications and property of Covered California. General Agent may retain copies of such as it may be legally required to do so.

13.3 Annual Review. General Agent acknowledges and agrees that Covered California may conduct an annual review to determine whether General Agent has met all production and administrative requirements during the course of the then-current contract year. Such review shall be conducted no sooner than ninety (90) business days prior to the end of the then-current contract year. Covered California shall notify General Agent no later than thirty (30) business days of Covered California's decision to renew or not renew this Agreement. In the event General Agent disagrees with Covered California's decision not to renew, then General Agent shall so notify Covered California within ten (10) business days of receiving notice of non-renewal. The parties shall negotiate in good faith to resolve any such differences but in no event shall such negotiation last longer than thirty (30) business days. At the end of such thirty days, the parties shall resolve their dispute in accordance with this Agreement.

13.4 Solicitation of Groups and Members/Insureds. General Agent shall not directly or indirectly solicit or encourage any Covered California Group or Member/Insured to transfer his or her coverage to another carrier or health plan except based upon a good faith determination that the other carrier or health plan offers superior coverage at the same or a lower price or offers equivalent coverage at lower price.

13.5 Property. General Agent acknowledges that Covered California's printed and electronic/digital materials are the sole property of Covered California. General Agent agrees to return such materials to Covered California immediately upon the earlier of Covered California's demand or the termination of this Agreement, and General Agent shall not retain any copies, in any form, of such materials.

## **ARTICLE 14.**

### **GENERAL PROVISIONS**

14.1 Captions. Captions used in this Agreement are for convenience of reference only and shall not be considered in interpreting this Agreement.

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

14.3 Amendment. This Agreement may be amended by mutual consent of the parties. No alteration or variation of the terms of this Agreement shall be valid unless

made in writing and signed by the parties. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.

14.4 Assignability. This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.

14.5 Waiver. Waiver of a breach of any provision of this Agreement shall not be deemed a waiver of any other breach of the same or different provision.

14.6 Severability. If any provision of this Agreement is deemed to be invalid or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and the parties agree to renegotiate such provision in good faith, in order to maintain the economic position enjoyed by each party as close a possible to that under the provision rendered unenforceable. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of the Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of the Agreement shall be enforceable in accordance with its terms.

14.7 Force Majeure. Neither party shall be liable, and its performance shall be excused, for any delays resulting from circumstances or causes beyond its reasonable control, including without limitation, fire or other casualty, act of God, strike or labor dispute, war, sabotage, terrorism, acts of aggression or other violence provided such party shall have used its commercially reasonable efforts to mitigate its effects and has given prompt written notice to the other party. The time for the performance shall be extended for the period of delay or inability to perform due to such occurrences up to a period of five days at which time the party unaffected by the Force Majeure event may immediately terminate this Agreement.

14.8 Notices. Any notice or other communication required or permitted hereunder shall be in writing and shall be delivered personally, sent by facsimile transmission or sent by certified, registered or express mail or Federal Express (or other similar overnight courier services) to the address below. Any such notice shall be deemed given upon receipt:

If to the Covered California, to:

Director of Sales and Marketing  
Covered California  
560 J Street # 290  
Sacramento, CA 95814

If to GA, to:

Vice President

General Agent  
Address:  
Address

Either party may change its address by notice to the other in the manner set forth above. Receipt of communications by United States first class or registered mail will be sufficiently evidenced by return receipt. In the case of illegible or otherwise unreadable facsimile transmissions, the receiving party shall promptly notify the transmitting party of any transmission problem and the transmitting party shall promptly resend any affected pages.

14.9 Applicable Law. This Agreement shall be governed by and construed according to the laws of the State of California, without respect to principles of conflicts of laws.

14.10 Entire Agreement. This Agreement, together with its Exhibits, constitutes the entire agreement of the Parties. No promises, terms, conditions or obligations other than those contained herein shall be valid or binding. Any prior agreements, statements or promises, either oral or written, made by any Party or agent of any Party that are not contained in this Agreement are of no force or effect.

14.11 Not Exclusive. This Agreement is not exclusive. Both Parties may contract at any time for similar services and obligations with other persons, firms or entities.

14.12 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.

#### 14.13 Contractor Certification Clauses.

(a) **STATEMENT OF COMPLIANCE:** Contractor has, unless exempted, complied with the nondiscrimination program requirements. (GC 12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)

(b) **DRUG-FREE WORKPLACE REQUIREMENTS:** Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

(i) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

(ii) Establish a Drug-Free Awareness Program to inform employees about:

- (1) The dangers of drug abuse in the workplace;
- (2) The person's or organization's policy of maintaining a drug-free workplace;
- (3) Any available counseling, rehabilitation and employee assistance programs; and
- (4) Penalties that may be imposed upon employees for drug abuse violations.

(iii) Every employee who works on the proposed Agreement will:

- (1) Receive a copy of the Covered California's drug-free workplace policy statement; and
- (2) Agree to abide by the terms of the Covered California's statement as a condition of employment on the Agreement.

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

(c) National Labor Relations Board Certification. Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two (2)-year period because of Contractor's failure to comply with an order of a Federal court which

orders Contractor to comply with an order of the National Labor Relations Board. (PCC 10296) (Not applicable to public entities.)

(d) Doing Business With The State Of California.

(i) CONFLICT OF INTEREST: Contractor acknowledges the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement the Contractor shall contact the State immediately for clarification.

(1) Current State Employees (PCC 10410): No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment. No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

(2) Former State Employees (PCC 10411): For the two (2)-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transaction, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency. For the twelve (12)-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the twelve (12)-month period prior to his or her leaving state service.

(ii) If Contractor violates any provisions of the above paragraphs, such action by Contractor shall render this Agreement void. (PCC 10420).

(iii) Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (PCC 10430 (e)).

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

(f) AMERICANS WITH DISABILITIES ACT: Contractor certifies that it complies with the Americans with Disabilities Act (ADA) of 1990, as amended, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

(g) **CONTRACTOR NAME CHANGE:** Contractor acknowledges that an amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

(h) **CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:** Contractor acknowledges that, when agreements are to be performed in the state by corporations, the State will verify that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

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

(j) **AIR OR WATER POLLUTION VIOLATION:** Contractor acknowledges that, under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation or provisions of federal law relating to air or water pollution.

(k) **PAYEE DATA RECORD FORM STD 204:** Contractor acknowledges that this form must be completed by all contractors that are not another state agency or other government entity.

14.14 **TIMELINESS:** Time is of the essence in this Agreement.

14.15 **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 personam jurisdiction over it and consents to service of process in any manner authorized by California law.

14.16 ANTITRUST CLAIMS: The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes sections set out below. The Government Code Chapter on Antitrust claims contains the following definitions:

(a) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.

(b) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

(c) In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

(d) If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

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

14.17 CHILD SUPPORT COMPLIANCE ACT: In accordance with the Child Support Compliance Act,

(a) The Contractor acknowledges the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and



(b) The Contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

14.18 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.

14.19 UNION ORGANIZING: By signing this Agreement, Contractor hereby acknowledges the applicability of Government Code Section 16645 through Section 16649 to this Agreement and agrees to the following:

(a) Contractor will not assist, promote or deter union organizing by employees performing work on a state service contract, including a public works contract.

(b) No state funds received under this agreement will be used to assist, promote or deter union organizing.

(c) Contractor will not, for any business conducted under this agreement, use any state property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the state property is equally available to the general public for holding meetings.

(d) If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no reimbursement from state funds has been sought for these costs, and that Contractor shall provide those records to the Attorney General upon request.

(e) Contractor will be liable to the State for the amount of any funds expended in violation of the requirements of Government.

14.20 DOMESTIC PARTNERS: Notwithstanding any other provision of law, no state agency may enter into any **contract** for the acquisition of goods or services in the amount of one hundred thousand dollars (\$100,000) or more with a contractor who, in the provision of benefits, discriminates between employees with spouses and employees with domestic partners, or discriminates between employees with spouses or domestic partners of a different sex and employees with spouses or domestic partners of the same sex, or discriminates between same-sex and different-sex domestic partners of employees or between same-sex and different-sex spouses of employees.

14.21 PRIORITY HIRING CONSIDERATIONS FOR RECIPIENTS OF AID: If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353. This requirement shall not interfere with or require a

violation of a collective bargaining agreement, a federal affirmative action obligation for hiring disabled veterans of the Vietnam era, or nondiscrimination compliance laws of California and does not require the employment of unqualified recipients of aid.

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

14.23 Certification Regarding Lobbying: Applicable to Grants, Subgrants, Cooperative Agreements, and Contracts Exceeding \$100,000 in Federal Funds.

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

(b) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into of a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.

(c) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal Grant or agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

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

(e) This certification is a prerequisite for making or entering into this transaction and is imposed by Section 1352, Title 31, U. S. Code. This certification is a material representation of fact upon which reliance was placed when this transaction

was made or entered into. Any person who fails to file the required certification shall be subject to a civil penalty of no less than \$10,000 and not more than \$100,000 for each such failure.

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

14.25 A-133 Audit: To the extent applicable, pursuant to Office of Management and Budget (OMB) Circular A-133 §\_\_\_\_.200 "Audit Requirements", non-federal entities that expend \$500,000 or more in a year in Federal awards from all sources combined shall have a single or program-specific audit conducted for that year in accordance with the provisions of OMB Circular A-133. All OMB Circular A-133 audit reports shall meet the reporting requirements established in OMB §\_\_\_\_.320 "Report Submission" and a copy shall be forwarded to the California Health Benefit Exchange.

14.26 Executive Compensation Reporting: To the extent applicable, pursuant to 2 C.F.R. Part 170, certain subrecipients of federal awards that in the previous fiscal year received 80% or more of their annual gross revenues from Federal procurement contracts and subcontracts and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. 170.320 (and subawards); and \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act (and subawards); and the public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or Section 6104 of the Internal Revenue Code of 1986, the subrecipient must report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year.

14.27 Subcontractors: (Applicable to agreements in which the Contractor subcontracts out a portion of the work) Nothing contained in this Agreement or otherwise shall create any contractual relationship between the Exchange and any subcontractors, and no subcontractor shall relieve the Contractor of its responsibilities and obligations hereunder. The Contractor agrees to be fully responsible to the Exchange for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the obligation of the Exchange to make payments to the Contractor. As a result, the Exchange shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.

14.28 Insurance Requirements: When Contractor submits a signed contract to the State, Contractor shall furnish to the State a certificate of insurance, stating that there is:

(a) 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

(b) Automobile liability, including non-owned auto liability, of not less than \$1,000,000 per occurrence for volunteers and paid employees providing services supported by this Agreement. The certificate of insurance will include provisions a, b, and c, in their entirety:

(c) That the insurer will not cancel the insured's coverage without 30 days' prior written notice to the State.

(d) That the State of California, its officers, agents, employees, and servants are included as additional insured, but only insofar as the operations under this contract are concerned.

(e) That the State will not be responsible for any premiums or assessment on the policy.

(f) Contractor agrees that the general and automobile 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.

(g) The Contractor shall require its subcontractors/vendors under this Agreement, other than units of local government which are similarly self-insured, to maintain adequate insurance coverage for general liability and automobile liability including non-owned auto liability, and further, the Contractor shall require all of its subcontractors/vendors to hold the Contractor and the Exchange harmless. The subcontractors'/vendors' Certificate of Insurance shall also have the Contractor, not the State, as the certificate holder and additional insured. The Contractor shall maintain certificates of insurance for all its subcontractors/vendors.

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

(i) 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.

14.29 Errors and Omissions. GA shall at all times maintain Errors and Omissions insurance in amounts consistent with industry standards, but no less than \$1,000,000 per occurrence and \$3,000,000 aggregate limit of all claims filed in policy year for GA and its employees and representatives. Upon the execution of this Agreement and upon request by Covered California thereafter, GA shall provide Covered California with written proof of same.

#### 14.30 Intellectual Property Rights

(a) All deliverables as defined in the Scope of Work originated or prepared by the Contractor pursuant to this agreement including papers, reports, charts, and other documentation, but not including Contractor's administrative communications and records relating to this Agreement, shall upon delivery and acceptance by the California Health Benefit Exchange become the exclusive property of the California Health Benefit Exchange and may be copyrighted by the California Health Benefit Exchange.

(b) All inventions, discoveries or improvements of the techniques or programs or materials developed pursuant to this agreement shall be the property of California Health Benefit Exchange. The California Health Benefit Exchange agrees to grant a nonexclusive royalty-free license for any such invention, discovery, or improvement to the Contractor and further agrees that the Contractor may sublicense additional persons on the same royalty-free basis.

(c) This Agreement shall not preclude the Contractor from developing materials outside this Agreement, which are competitive, irrespective of their similarity to materials which might be delivered to the California Health Benefit Exchange pursuant to this Agreement. All preexisting intellectual property, copyrights, trademarks and products shall be the sole property of the Contractor.

14.31 Confidentiality: The contractor agrees to protect the personal information of all individuals by following applicable federal and state privacy and security requirements.

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

(b) Confidential Information includes, but is not limited to, all proprietary information of the California Health Benefit Exchange including without limitation: the Deliverables; trade secrets; know-how; concepts; methods; techniques; designs; drawings; specifications; computer programs, including the State's software; support materials; information regarding the State's business operations and plans; client,

customer, or supplier lists; pricing information; marketing plans or information; or other records concerning the State's finances, contracts, services, or personnel.

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

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

14.32 Review of Deliverables: The California Health Benefit Exchange reserves the right to review the Deliverables following Contractor's delivery of each to the California Health Benefit Exchange to determine whether the Deliverables conform to the specifications and to the California Health Benefit Exchange's satisfaction, and to either: reject a Deliverable if it fails to conform to the specifications and to the California Health Benefit Exchange's satisfaction or has defects (collectively, "errors"); or to accept each Deliverable if it has no such errors ("Acceptance"). If the California Health Benefit Exchange rejects the Deliverables, Contractor shall, at the California Health Benefit Exchange's request, promptly correct all such errors and, thereafter, the California Health Benefit Exchange shall again have the opportunity to review the Deliverables. If Contractor is not able to correct all errors in the Deliverables within 30 days following their receipt by the California Health Benefit Exchange, the California Health Benefit Exchange shall have the right to terminate this Agreement, which termination shall be deemed due to Contractor's default. In the event of any such termination, Contractor shall return all payments previously made to Contractor under this Agreement.

14.33 Severability: If any provision in this Agreement is invalid or unenforceable in any jurisdiction, the other provisions herein shall remain in full force and effect in such jurisdiction and shall be liberally construed in order to effectuate the purpose and intent of this Agreement, and the invalidity or unenforceability of any provision in this Agreement in any jurisdiction shall not affect the validity or enforceability of any such provision in any other jurisdiction.

14.34 Waiver of Breach: The waiver by the California Health Benefit Exchange of any breach by Contractor of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by Contractor.

14.35 Contractor Limitations: Contractor acknowledges that, in governmental contracting, even the appearance of a conflict of interest is harmful to the interest of the State. Thus, Contractor agrees to refrain from any practices, activities or relationships that could reasonably be considered to be in conflict with Contractor's fully performing his/her obligations to the State under the terms of this Contract. Contractor shall inquire about and require disclosure by its Staff and Subcontractors of all activities that may create an appearance of conflict. In the event that Contractor is uncertain whether the appearance of a conflict of interest may reasonably exist, Contractor shall submit to the State Project Manager a full disclosure statement setting forth the relevant details of any activity which the Contractor reasonably believes may have the appearance of a conflict of interest for the State's consideration and direction. Failure to promptly submit a disclosure statement setting forth the relevant details for the State consideration and direction shall be grounds for Termination of this Contract.

(a) Consistent with the Public Contract Code Section 10365.5, no person, firm or subsidiary who has been awarded a consulting services contract may submit a bid, nor be awarded a contract, for the provision of the services, procurement of goods or supplies, or any other related action that is required, suggested, or otherwise deemed appropriate in the product of the consulting service contract. This does not apply to:

(i) Any person, firm, or subsidiary thereof who is awarded a subcontract of a consulting services contract which amounts to no more than 10 percent of the total monetary value of the consulting services contract.

(ii) Consulting services contracts subject to Chapter 10 (commencing with [Section 4525](#)) of Division 5 of Title 1 of the Government Code.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their officers thereunto duly authorized on the date and year first above written.

California Health Benefit Exchange / dba  
Covered California

General Agent

\_\_\_\_\_

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

By:

\_\_\_\_\_

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

Title:

\_\_\_\_\_

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

Print Name:



CONFIDENTIAL

EXHIBIT A

**Space Reserved for confidential terms or details identified by General Agent or Covered California.**

## EXHIBIT B

### Trademark and Brand Usage Guidelines for Broker Communications and Web Sites

Covered California's brand and trademarks, as described below ("Covered California Marks") are valuable intellectual property and important assets of the organization. They must be used properly, and these Guidelines govern their use and reproduction. Brokers offering Covered California products and services may use Covered California Marks only in accordance with these Guidelines in web site content, design, and graphics, all promotional materials, and all internal and external communications.

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 (AB1761).

AB 1761 prohibits the following conduct: (j) Holding oneself out as representing, constituting, or otherwise providing services on behalf of the California Health Benefit Exchange established pursuant to Section 100500 of the Government Code without a valid agreement with the California Health Benefit Exchange to engage in those activities.

Covered California reserves the right to revise these Guidelines, and agents and general agents will be bound to comply with the material contained in the updated Guidelines immediately upon receipt or other notification of the new Guidelines.

### Covered California Trademark Usage Guidelines

1. Covered California Marks. As used in these Guidelines, the term "Covered California Marks" refers specifically to Covered California's trademarks, service marks, and logos), including the names "Covered California," "California Health Benefit Exchange," "Exchange Health Plan," and "Covered CA," and all other names incorporating the Covered California brands, and also includes the Covered California Logo and all other product names, service names, program names, logos, slogans, trade dress, and all other designations used to identify any product or service offered by Covered California. All Covered California Marks are, and shall remain, the exclusive property of Covered California.

2. Disclaimer of Intellectual Property Ownership on Web Sites. Use of the Covered California Marks in external communications or a web site must be accompanied by the following disclaimer of ownership, which should be placed conspicuously in the materials or on the home page of each web site:  
"Covered California," "California Health Benefit Exchange", and the Covered California Logo are registered trademarks or service marks of Covered California, in the United States.

3. Web Site Identity. Each web site must also include the following disclosure statement:

This web site is owned and maintained by [Agent Name], which is solely responsible for its content. This site is not maintained by or affiliated with Covered California, and Covered California bears no responsibility for its content. The e-mail addresses and telephone numbers that appear throughout this site belong to [Agent Name], and cannot be used to contact Covered California.

This statement should appear on Brokers' home pages, as well as any "Who We Are" or "About Us" pages or other pages of similar purpose or content.

4. Logo May Not Be Used Without Written Permission. The Covered California Logo, and any other logo used to identify any product or service offered by , may not be used in any manner in materials or web sites created or maintained by brokers or by any third party without express written permission from .

5. Use Correct Trademark Symbol. When using Covered California's Marks in text form or art form, always use the correct ®, ™ or SM trademark identification symbol. The ® symbol is used for Marks registered with the U.S. Patent & Trademark Office. The ™ and SM symbols are used for unregistered trademarks and service marks.

The following Covered California Marks should be followed by the ® symbol:



Logo



and such other Covered California Marks as Covered California may designate as registered by specific notice and/or use of the ® symbol in its own materials.

Use in headlines and first use in text: A trademark symbol should be used with the mark when it appears in a headline or other prominent use, and upon the first use of the mark in any text or body copy.

6. No Alteration of Marks or Logo. When using the Covered California Marks, never vary the spelling, insert a hyphen, use a plural form or abbreviation or acronym of the Mark,

or otherwise alter the Marks. In the case of logos, never alter or modify the design, art, colors, proportions, or add or delete any words or hyphens.

7. No Combining Marks With Other Names or Marks. Only Covered California's products and services may be associated with the Marks. No third party mark, logo, product, or service may be used in conjunction with the Covered California Marks. Do not incorporate Covered California Marks into your own product names, service names, trademarks, logos, domain names or Covered California names, and do not adopt marks, logos or domain names that are confusingly similar to Covered California's Marks. For example, the Covered California Marks should not be combined with other terms to suggest an association, e.g., "Covered California Insurance Brokers" or "Covered California insurance.com."

8. Compliance With Usage Guidelines. In order to assure compliance and quality control, Covered California may request that brokers provide samples of any marketing, advertising, or other materials that will include the Covered California Marks. Covered California may, in its sole discretion, restrict any person or entity from using or displaying the Covered California Marks.

9. Improper Uses of Covered California's Marks. 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 Covered California 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.

**EXHIBIT C**  
**SCHEDULE OF GENERAL AGENT COMPENSATION**

For new Covered California Group Health Service Contracts (as defined in the Agreement), and any new optional Covered California coverages (e.g., vision, dental and life insurance coverages) sold with the Group Health Service Contracts, where the original enrollment applications were submitted by the General Agent; and which were accepted by Covered California for original effective dates of coverage within the term of the Agreement, and subject to all provisions of the General Agent's Agreement, Covered California shall pay General Agent a Payment of [\_\_\_\_\_] on paid Premiums received and retained by Covered California for the first year of coverage and for renewal years.

General Agent acknowledges and agrees that Covered California may amend the Payments set forth in this Attachment at any time upon thirty (30) days prior written notice to General Agent. Such amended General Agent Payments shall apply to any Group Health Service Contracts issued to Groups after the effective date of such amendment. Such an amendment shall be separate and apart from any other amendments or modifications made to this Agreement.

## **BUSINESS ASSOCIATE ADDENDUM**

This Addendum to the underlying Agreement (“Agreement”) is drafted in accordance with Covered California’s obligations under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and the applicable requirements of HIPAA’s implementing regulations issued by the U.S. Department of Health and Human Services, Title 45 of the Code of Federal Regulations (“C.F.R.”) Parts 160-164 (“HIPAA Regulations”), the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), as incorporated in the American Recovery and Reinvestment Act of 2009 and the regulations issued thereunder, Cal. Civil Code § 56 *et seq.*, Cal. Civil Code § 1798.82 *et seq.* and Cal. Ins. Code § 791 *et seq.*, as each may be amended from time to time, to ensure the integrity and confidentiality of individually identifiable personal and health information that a Business Associate may create for, or receive from, Covered California. Business Associate acknowledges and agrees that Business Associate is obligated by law to meet the applicable provisions of the HITECH Act and regulations issued thereunder.

### **A. Definitions.**

“**Breach**” shall mean the illegal or unauthorized acquisition, access, use, or disclosure of PHI which compromises the security, confidentiality, privacy, or integrity of such information pursuant to the HITECH Act § 13400, any regulations issued thereunder, and as described in the Cal. Civil Code § 1798.82(d).

“**Business Associate**” means an individual or entity who or which performs a function or activity on behalf of, or provides a service to Covered California that involves the creation, use or disclosure of PHI.

“**Covered Entity**” means a health plan, health care clearinghouse or a health care provider who transmits any health information in electronic form in connection with a transaction covered under the HIPAA Regulations. Covered California is a Covered Entity.

“**Designated Record Set**” means a group of records maintained by or for Covered California comprising the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for Covered California, or used in whole or in part, by or for Covered California to make decisions about individuals. For purposes of this definition, the term “record” includes any item, collection, or grouping of information that contains PHI and is maintained, collected, used, or disseminated by or for Covered California.

“**e-PHI**” means PHI maintained or transmitted in electronic form.

“**Limited Data Set**” shall mean PHI that excludes direct identifiers of the individual or of relatives, employers, or household members of the individual. (See 45 C.F.R. § 164.514(e)(2)).

“**Personal and Health Information**” (“PHI”) means either medical information or individually identifiable information in electronic or physical form. Medical information is any information in possession of, or derived from, a physician or other provider of

health care or a health care service plan regarding an individual's medical history, mental or physical condition, or treatment. Individually identifiable information is that which contains any element of personal identifying information sufficient to allow identification of the individual, such as the individual's name, address, electronic mail address, telephone number, or social security number, or other information, alone or in combination with other publicly available information, which reveals the individual's identity.

**“Privacy Official”** means the Covered California individual and such individual's designees who are responsible for the development and implementation of Covered California's policies and procedures regarding privacy and confidentiality of PHI.

**“Security Incident”** means the attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system that is created, received maintained or transmitted by or on behalf of Covered California. (See 45 C.F.R. §164.304).

**“Required by law”** has the same meaning as the term “required by law” in 45 C.F.R. §164.103.

**“Offshore”** means outside of the United States of America.

## **B. Privacy and Security of PHI.**

1. **Permitted Uses and Disclosures.** Business Associate is permitted or required to use or disclose PHI it creates for or receives, maintains or transmits from Covered California only as follows:
  - a) **Functions and Activities on Covered California's Behalf.** Business Associate is permitted to use and disclose the minimum necessary PHI it creates for or receives from Covered California in order to provide those services set forth in the Agreement, provided that no such use or disclosure would violate the HIPAA Regulations or the HITECH Act and applicable regulations issued thereunder, if Covered California made the use or disclosure.
  - b) **Business Associate's Operations.** Business Associate may use and disclose the minimum necessary PHI it creates, transmits or maintains for or receives, from Covered California as necessary in order to perform Business Associate's obligations under the Agreement, for Business Associate's proper management and administration, or to carry out Business Associate's legal responsibilities.
2. **Prohibition on Unauthorized Use or Disclosure.** Business Associate shall neither use nor disclose PHI it creates for or receives, maintains or transmits from Covered California, except as permitted or required by this Addendum, as required by law, or as otherwise permitted in writing by Covered California. Business Associate

acknowledges that Business Associate may be liable under 42 U.S.C. §§ 1320d-5 and 1320d-6 for violating any of the requirements of this Addendum relating to the use or disclosure of PHI or any privacy-related requirements of the HITECH Act and regulations issued thereunder.

3. **Compliance with Covered California's Confidentiality/Privacy Policies.** Business Associate shall comply with Covered California's Confidentiality/Privacy Policies, including the Notice of Confidentiality and Privacy Practices which is distributed to Covered California subscribers/policyholders and can be found at:  
[www.coveredca.com/privacy](http://www.coveredca.com/privacy)
4. **Compliance with Laws; Regulatory Amendments.** Business Associate shall comply with all applicable state and federal privacy and security laws pursuant to HIPAA, HIPAA Regulations, the HITECH Act and any regulations promulgated thereunder, as well as the Cal. Civil Code § 56 *et seq.*, Cal. Civil Code § 1798.82 *et seq.*, and Cal. Ins. Code § 791 *et seq.* Any regulations or amendments to applicable privacy and security laws shall be automatically included in this Addendum such that this Addendum remains in compliance with such regulations or amendments.
5. **Information Safeguards.** Business Associate shall develop, implement, maintain and use appropriate administrative, technical and physical safeguards, in compliance with applicable state and federal laws, to preserve the integrity, confidentiality, and availability, and to prevent unauthorized disclosures of PHI created or received for or from Covered California as required by 45 C.F.R. Part 164, Subpart C (Security Rule) and the HITECH Act and applicable regulations issued thereunder. Business Associate shall document and keep such safeguards current and shall develop and implement policies and procedures to meet the Security Rule documentation requirements of the HITECH Act and shall, upon Covered California's reasonable request, provide Covered California with a copy of its policies and procedures related to such safeguards.
6. **Subcontractors and Agents.** Business Associate shall require any of its subcontractors and agents to which Business Associate is permitted by this Addendum or in writing by Covered California to disclose PHI, to provide reasonable assurance evidenced by written contract, that such subcontractor or agent shall comply with the same privacy and security safeguard obligations with respect to PHI that are applicable to Business Associate under this Addendum, including, but not limited to: (i) holding such PHI in confidence and using or further disclosing it only for the purpose for which Business Associate disclosed it to the agent, subcontractor or other third party or as required by law; (ii) providing notification to Business Associate (who shall in turn promptly notify Covered California) of any instance of which the agent, subcontractor or other third party becomes aware in which the confidentiality of such PHI was Breached; and (iii) transmitting or sharing any PHI to any recipient Offshore without first obtaining written consent from Covered California as to such Offshore transmission.



7. **Minimum Necessary and Limited Data Set.** Business Associate's use, disclosure or request of PHI shall utilize a Limited Data Set if practicable. Otherwise, Business Associate shall, in its performance of the functions, activities, services, and operations specified in Section B.1 above, make reasonable efforts to use, to disclose, and to request only the minimum amount of PHI reasonably necessary to accomplish the intended purpose of the use, disclosure or request, except that Business Associate shall not be obligated to comply with the minimum necessary limitations with respect to those exceptions specified in 45 C.F.R. § 164.502(b)(2). Business Associate shall comply with the requirements governing the minimum necessary use and disclosure of PHI set forth in the HITECH Act § 13405(b) and any applicable regulations or other guidance issued thereunder.
8. **Transmission of Data Offshore.** Business Associate is not authorized or permitted to transmit or share any PHI to any recipient Offshore without first obtaining written consent from Covered California as to such Offshore transmission. In support of such a request to Covered California, Business Associate shall provide written evidence of Offshore recipient's privacy and security policies, practices and safeguards. The Business Associate shall ensure that such Offshore employees and contractors who access or utilize any PHI shall have completed privacy training in accordance with the Privacy Rule and applicable California law. Covered California may request copies of training materials and verifications of such training. The obligations of this section are in addition to Business Associate's obligations under Section B.6, above.

**C. PHI Access, Amendment, Disclosure, and Disclosure and Breach Reporting.**

1. **Access.** Business Associate shall, upon Covered California's reasonable request and within ten (10) business days of receipt of request, permit an individual (or the individual's personal representative) to inspect and obtain copies of any PHI about the individual which Business Associate created or received for or from Covered California and that is in Business Associate's custody or control. Business Associate shall provide such information in an electronic format, if requested by the individual and as directed by Covered California.
2. **Amendment.** Business Associate shall, upon receipt of notice from Covered California, promptly amend or permit Covered California access to amend, any portion of an individual's PHI which Business Associate created or received for or from Covered California and that is in Business Associate's custody or control.
3. **Disclosure Accounting.** Upon request, Business Associate shall forward to Covered California a report of disclosures as required by 45 C.F.R. § 164.528, and as applicable, the HITECH Act § 13405(c) and any regulations issued thereunder.
4. **Disclosure Accounting Retention.** Business Associate shall maintain an accounting of such disclosures for six (6) years after the date of occurrence and not prior to the Privacy Rule compliance date (April 14, 2003).
5. **Disclosure and Breach Reporting.**
  - a) **Legal or Authorized Disclosure Reporting.** Except as permitted by applicable law, Business Associate shall document each disclosure it makes of an individual's

PHI to a third party. Such report shall include the affected individual's name, the person or entity to whom the PHI was disclosed, what was disclosed, why the information was disclosed, the date of such disclosure and any other information necessary for Covered California to comply with relevant statutes and regulations. Such report shall be furnished to Covered California within ten (10) business days of its request. In addition, where Business Associate is contacted directly by an individual based on information provided to the individual by Covered California, and where so required by the HITECH Act and/or any acCovered Californiaing regulations, Business Associate shall make such report available directly to the individual.

- b) **Breach Reporting.** Business Associate shall report to Covered California any Breaches of PHI. Business Associate shall make such report to Covered California's Chief Privacy Official not more than twenty-four (24) hours after Business Associate knows, or should reasonably have known, of such Breach. Business Associate shall cooperate with Covered California in investigating such Breach, and in meeting Covered California's obligations under the HITECH Act and any other security breach notification laws. Business Associate shall report all Breaches to Covered California in writing (and in the format requested by Covered California) and such reports shall, at a minimum:
- i) Identify the nature of the Breach including the date of the Breach and the date of discovery of the Breach;
  - ii) Identify which elements of the PHI (e.g., full name, social security number, date of birth, etc.) were breached, or were part of the Breach;
  - iii) Identify who was responsible for the Breach and who received the PHI;
  - iv) Identify what corrective actions Business Associate took or will take to prevent further incidents of Breach;
  - v) Identify what Business Associate did or will do to mitigate any deleterious effect of the Breach;
  - vi) Identify Business Associate contact information and procedures to enable Covered California to obtain additional information if required; and
  - vii) Provide such other information, including a written report, as Covered California may reasonably request.

Business Associate shall reimburse Covered California for all Breach notification costs arising out of or in connection with any Breach, including but not limited to, postage and mailing fees and the provision of credit monitoring services for affected individuals.

- c) **Security Incident Reporting.** Business Associate shall report to Covered California's Chief Privacy Official and Chief Security Official within twenty four (24) hours after Business Associate knows, or should reasonably have known, of such Security Incident, any Security Incident of which Business Associate becomes aware. In addition, Business Associate shall, upon Covered California's request,

report any attempted unauthorized access, use, disclosure, modification, or destruction of e-PHI. If any such security incident resulted in a disclosure of PHI not permitted by this Addendum, Business Associate shall make a report in accordance with Section C.5(b), above.

- d) **Obligations in the Event of an Improper Pattern of Activity or Practice.** In the event that either party becomes aware of a pattern of activity or practice of the other party that constitutes a material breach or violation of this Addendum, the party discovering such pattern of activity or practice must take reasonable steps to cause the other party to cure the breach or end the violation. If a cure is not effectuated within a reasonable time period specified by the party requesting the cure, such party shall terminate the Agreement and this Addendum if feasible, or if not feasible, report the problem to the Secretary of the U.S. Department of Health and Human Services or its designee. (See 45 C.F.R. § 164.504(e)(1)(ii) and HITECH Act § 13404(b)).
6. **Inspection of Books and Records.** Business Associate shall make available for inspection its internal practices, books, and records (relating to its use and disclosure of the PHI it creates for, or receives from, Covered California) to Covered California and/or the U.S. Department of Health and Human Services to determine compliance with the HIPAA Regulations or the Business Associate's compliance with this Addendum.
7. **Designated Record Set.** Business Associate agrees that all PHI received by or created for Covered California shall be included in an individual's Designated Record Set. Business Associate shall maintain such Designated Record Set with respect to services provided to an individual under this Addendum, and shall allow such individual to access the Designated Record Set as provided in the HIPAA Regulations.
8. **Restriction Agreements and Confidential Communications.** Business Associate shall comply with any agreement that Covered California makes that either; (i) restricts use or disclosure of PHI pursuant to 45 C.F.R. § 164.522(a); or (ii) requires confidential communication about PHI pursuant to 45 C.F.R. § 164.522(b), provided that Covered California notifies Business Associate in writing of the restriction or confidential communication obligations that Business Associate must follow. Covered California will promptly notify Business Associate in writing of the termination of any such restriction agreement or confidential communication requirement, and with respect to termination of any such restriction agreement, instruct Business Associate whether any PHI will remain subject to the terms of the restriction agreement.

#### **D. Termination and Continuing Privacy and Security Obligations**

1. **Termination of Agreement.** As required by the HIPAA Regulations and this Addendum, Covered California may, in addition to other available remedies, terminate the Agreement and this Addendum if Business Associate has materially breached any provision of this Addendum and has failed to cure or take actions to cure such material breach within five (5) calendar days of such breach. Covered California shall exercise this right to terminate the Agreement by providing Business Associate written notice of

termination, which shall include the reason for the termination. Any such termination shall be effective immediately or at such other date specified in Covered California's notice of termination. Within thirty (30) calendar days of such termination of the Agreement, Business Associate shall provide to Covered California one final report of any and all Breaches made of all individuals' PHI during the term of the Agreement.

a) **Obligations upon Termination.** Upon termination, cancellation, expiration or other conclusion of the Agreement, Business Associate shall, if feasible, destroy all PHI, including all copies of and any data or compilations derived from and allowing identification of any individual who is a subject of the PHI, in whatever form or medium (including in any electronic medium under Business Associate's custody or control), that Business Associate created or received for or from Covered California. Business Associate shall complete such destruction or return as promptly as possible, but not later than thirty (30) calendar days after the effective date of the termination, cancellation, expiration or other conclusion of the Agreement. If it is not feasible to destroy such PHI, or upon Covered California's request, Business Associate shall return to Covered California such PHI including all copies of and any data or compilations derived from and allowing identification of any individual who is a subject of the PHI. Business Associate shall identify any PHI, including copies of and any data or compilations derived from and allowing identification of any individual who is a subject of the PHI created or received for or from Covered California that cannot feasibly be destroyed or returned to Covered California, and shall limit its further use or disclosure of such PHI, including all copies of and any data or compilations derived from and allowing identification of any individual who is a subject of the PHI. Within thirty (30) days of termination, cancellation, expiration or other conclusion of the Agreement, an officer of Business Associate shall certify in writing to Covered California that such return or destruction has been completed, shall deliver to Covered California the identification of any PHI, including all copies of and any data or compilations derived from and allowing identification of any individual who is a subject of the PHI, for which return or destruction is infeasible and, for that PHI, including all copies of and any data or compilations derived from and allowing identification of any individual who is a subject of the PHI, shall certify that it shall only use or disclose such PHI for those purposes that make return or destruction infeasible.

2. **Continuing Privacy and Security Obligation.** Business Associate's obligation to protect the privacy and security of the PHI, including all copies of and any data or compilations derived from and allowing identification of any individual who is a subject of the PHI, it created for or received from Covered California shall be continuous and survive termination, cancellation, expiration or other conclusion of the Agreement.

E. **Indemnification and Hold Harmless.** Business Associate shall indemnify and hold harmless Covered California, and Covered California affiliates, subsidiaries, officers, directors, employees and agents from and against any claim, cause of action, liability, damage, cost or expense, including attorneys' fees and court or proceeding costs, arising out of or in connection with any non-permitted or violating use or disclosure of PHI or other breach of this Addendum by Business Associate or any Business Associate

subcontractor, agent, representative, person or entity. This Section E shall survive the termination of the Agreement.

**F. Conflicts.** The terms and conditions of this Addendum shall prevail in the event any terms and conditions herein conflict with any provision of the Agreement.

**G. Covered Entity and Business Associate Privacy and Security Contact Information.**

**1. Privacy.**

a) Covered Entity: Covered California  
Attn: Chief Privacy Official  
560 J Street #290  
Sacramento, CA 95814  
Phone: 916-323-3000  
Email: [privacy@coveredca.com](mailto:privacy@coveredca.com)

b) Business Associate:  
Attn: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
City, State Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

**2. Security.**

a) Covered Entity: Covered California  
Attn: Chief Security Official  
560 J Street #290  
Sacramento, CA 95814  
Phone: 916-323-3000  
Email: [security@coveredca.com](mailto:security@coveredca.com)

b) Business Associate:  
Attn: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
City, State Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

Except as set forth in this Addendum, all other provisions of the Agreement shall remain unchanged and in effect.