



COVERED
CALIFORNIA

FINAL Trading Partner Agreement

7/15/2013

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A Trading Partner Agreement (TPA) is a document required to be completed by any entity, known as a Trading Partner, that is itself or through a subcontractor transmitting or receiving Health Insurance Portability and Accountability Act of 1996 (HIPAA) compliant X12 Electronic Transactions with the California Health Benefit Exchange, also known as Covered California or the Exchange. The Trading Partner Agreement must contain original signatures and be mailed along with this completed cover letter to the following address:

Kelly Long

Covered California

560 J Street, Suite 290

Sacramento, CA 95814

The following information is requested to process your TPA:

- Trading Partner Name: _____

- Issuer Health Insurance Oversight System (HIOS) Number(s):

- Software Name: _____

For any questions regarding the completion of this cover letter and the attached TPA, please contact the Plan Management Department at 916-323-3736. QHP@covered.ca.gov

I. General

This Agreement is between the California Health Benefit Exchange (the Exchange), also known as Covered California, with offices located at 560 J Street, Suite 290, Sacramento, CA 95814, responsible for implementing the California Healthcare Eligibility, Enrollment and Retention System (CalHEERS) and the Trading Partner identified in paragraph A below (together the "Parties" and individually a "Party"):

A. Company Name:

1. Address:

2. Contact Name

3. Contact Telephone Number:

4. Contact Fax Number:

B. The following Attachments are hereby incorporated in this Agreement as though fully set forth:

1. Attachment A: Transaction Sets
2. Attachment B: Protection of Personally Identifiable Data and Information Assets
3. Attachment C: Communications and Contact Information
4. Attachment D: Service Levels

II. Purpose

- A. This Agreement outlines the requirements for the transfer of electronic health plan enrollment and payment information, Trading Partner Plan and Benefit Rate information, and Provider Directory information between the Trading Partner named in paragraph I.A. (above) and the Exchange. The transfer of this information is necessary for the Parties to perform testing functions and, if an Exchange Qualified Health Plan (QHP), QHP dental plan partner or certified standalone dental plan Contract is executed between the Parties, the transfer is necessary to perform their obligations pursuant to the QHP or dental Contract. The information shall be transferred to and from CalHEERS. The Trading Partner and/or its subcontractors and vendors are in the business of submitting said electronic transactions on behalf of itself or issuer(s).
- B. The transfer and sharing of information is for the purpose of allowing issuers and the Exchange to transfer electronic transactions as described below in Attachment A with respect to members of QHPs in Covered California and applicants for QHPs in Covered California as well as to provide the Exchange with information needed by the Exchange to comply with Federal and State reporting requirements. This Agreement provides for the transfer and exchange of information necessary for the processing of such transactions. These transactions shall comply with the applicable requirements of the American National Standards Institute (ANSI) accredited standards, the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations ("HIPAA"), 45 CFR Parts 160 and 162, and Standards for Electronic Transactions, published in the Federal Register August 17, 2000, as modified by the U.S. Secretary of Health and Human Services (HHS) and the Patient Protection and Affordability Care Act (ACA) and its implementing regulations..
- C. The Trading Partner is prohibited from transferring electronic health plan enrollment and payment information received from the Exchange for any purpose not expressly permitted pursuant to this Agreement, or, if Trading Partner has executed a QHP contract, as permitted by such contract, or as required by law.

III.Term

This Agreement shall continue in effect until terminated by either Party upon ninety (90) day's prior written notice to the other Party or upon termination under Section VII, below. The Issuer's QHP Contract, Article 9 (if applicable), and Attachment B to this Agreement, contain the survival terms with the Parties that shall continue in effect after termination of this Agreement.

IV. Definitions:

- A. **CalHEERS** – The California Healthcare Eligibility, Enrollment and Retention System, a project jointly sponsored by the Exchange and Department of Health Care Services, with the assistance of the Office of Systems Integration to maintain processes to make the eligibility determinations regarding the Exchange and other State health care programs and assist enrollees in selection of health plans.
- B. **The Exchange** – The California Health Benefit Exchange, doing business as Covered California and an independent government entity in the State of California.
- C. **Personally Identifiable Information (PII)** – Any information that identifies or describes an individual, including, but not limited to, his or her name, social security number, home address, home telephone number, education, financial matters, medical or employment history, and statements made by, or attributed to, the individual. It also includes any identifiable information collected from or about an individual for purposes of determining eligibility for enrollment in a Qualified Health Plan, determining eligibility for insurance affordability programs, determining eligibility for exemptions from the individual responsibility provisions, or any other use of such individual's identifiable information in connection with the Exchange and the Exchange's functions.
- D. **Privacy Rule** – "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
- E. **Protected Health Information (PHI)** – Protected health information, including electronic protected health information, as defined in HIPAA that relates to an applicant or enrollee. Protected Health Information also includes medical information as defined by the California Confidentiality of Medical Information Act (CMIA) at California Civil Code section 56, *et seq.*
- F. **Qualified Health Plan or QHP** – QHP has the same meaning as that term is defined in Government Code section 100501(f).
- G. **Trading Partner Exchange Function** – Any function that Trading Partner performs pursuant to this Agreement during which Trading Partner receives, creates, discloses or transmits Protected Health Information and/or Personally Identifiable Information gathered from applicants, qualified individuals or enrollees in the process of assisting individuals with the purchase of health insurance coverage through QHPs or other functions of the Exchange. Notwithstanding the foregoing, Trading Partner shall not be deemed to be performing a Trading Partner Exchange Function under the terms of this Agreement where: (1) Trading Partner is performing activities related to furnishing or arranging for health care coverage and/or services for individuals enrolled in Contractor's QHP using PHI or Personally Identifiable Information gathered from the Exchange, and (2) such use and/or disclosure is consistent with the terms of this Agreement and permitted by applicable laws, regulations and agency guidance, and (3) if necessary under applicable laws, regulations and agency guidance, consistent with the consents and other permissions agreed to by applicant as an Enrollee in Contractor's QHP. The exception to Trading Partner Exchange Functions described herein shall not apply to the extent that Trading Partner receives PHI or Personally Identifiable Information from the Exchange that Trading Partner would not ordinarily gather in the process of determining eligibility for, or enrollment in, a health insurance plan.
- H. **Transactions and Code Set Regulations** – mean those regulations governing the transmission of certain data transactions as published by the Department of Health and Human Services under HIPAA.

V. Provisions of the Agreement

- A. All transactions must be formatted in accordance with the Exchange provided Implementation Guides, CMS Implementation Guides or the HIPAA Implementation Guides/Type 3 Technical Reports (TR3) available at <http://www.wpc-edi.com/hipaa>, as applicable. The Exchange shall provide companion guides for the transactions, which specify certain situational data elements necessary for CalHEERS. HIPAA transactions to be transferred and shared between Trading Partner and CalHEERS are identified in Attachment A, Transaction Sets of this Agreement.
- B. The Trading Partner shall complete testing for each of the transactions it is required to implement and shall not transfer and share data with CalHEERS in production mode until testing is satisfactorily completed, as determined by the Exchange.
1. Successful testing means the ability to successfully pass HIPAA compliance transaction tests and to process electronic member health plan enrollment and payment information transmitted by Trading Partner to the Exchange. The Exchange shall accept certification from any third-party testing and certification entity that has been identified by the Workgroup for Electronic Data Interchange, Strategic National Implementation Process (WEDI/SNIP) in lieu of a Trading Partner being tested by the Exchange. A script is considered passed without conditions if no errors occur and all expected outcomes are met. A script is considered conditionally passed if a component is down, unusable, or difficult to use causing some operational impact but where an alternative workaround acceptable to the Exchange in its reasonable judgment is available to avoid operational impacts on the user.
 2. The functions that comprise “testing” shall include:
 - a. CalHEERS – Trading Partner interfaces operate as a bi-direction bridge covering the following areas:
 - i. Enrollment information – New enrollments, updates to existing enrollments and dis-enrollment for individual and SHOP.
 - ii. Enrollment Reconciliation – Monthly full enrollment file to be used in reconciling CalHEERS with carrier’s system.
 - iii. Individual Payments – Carrier shall send payment information for individuals daily so that it can be stored and viewed in CalHEERS information to the carrier.
 - iv. SHOP Payments – Payment remittance information for SHOP sent to the carriers daily.
 - b. Data receipt of Plan and Rate data via the SERFF templates.
 - c. Provider Directory data.
- C. The Exchange and the Trading Partner shall protect the enrollee and applicant information contained in the transfer of information by means of both physical and electronic security measures as required by Attachment B, included in this Agreement, and as required by Article 9 of the Trading Partner’s Covered California Qualified Health Plan Contract, if such a contract has been executed by the Parties. Security measures shall include, at a minimum, the following requirements:

1. Each Party shall control access to its physical locations so that only authorized personnel have access to the information transmitted in the transfer of information.
 2. Each Party shall utilize passwords in accordance with established procedures so that only authorized personnel have knowledge of those passwords. Upon departure of personnel from employment, the Trading Partner shall promptly notify the Exchange so that a new password can be established. The Exchange shall establish a similar system for departure of its own employees;
 3. Each Party shall report to the other any violation of security or the release of protected information that is not in accordance with this Agreement.
- D. The following technical rules shall be used for the transfer of electronic member or enrollee information between the Parties:
1. The recommended delimiters for the inbound X12 transaction sets shall be:
 - a. "*" Asterisk for data element separation;
 - b. "^" Caret for sub-element separation;
 - c. ":" Colon Component element separation; and
 - d. "~" Tilde for segment terminator.
 2. The delimiters for the outbound X12 transaction sets shall be:
 - a. "*" Asterisk for data element separation;
 - b. "^" Caret for sub-element separation;
 - c. ":" Colon Component element separation; and
 - d. "~" Tilde for segment terminator.
- E. The access phone number to CalHEERS for asynchronous communication can be found in Attachment C, Communications and Contact Information.
- F. The Internet Protocol (IP) address for File Transfer Protocol (FTP) transfer can be found in Attachment C.
- G. The production sign-on procedures once connected to CalHEERS shall be followed according to instructions issued by the Exchange. All such instructions shall be provided in advance to Trading Partner with time for review and comment prior to implementation.
- H. Contact information for testing and troubleshooting is contained in Attachment C.
- I. E. The transfer of electronic enrollee or member information between the Parties shall occur as follows using a "push-push" method:
1. The Trading Partner shall connect to CalHEERS and deliver files into its assigned electronic mailbox;
 2. The Exchange shall query mailboxes on a recurring, daily, periodic basis and process the transactions as appropriate;

3. In response to the Trading Partner delivered message, the Exchange shall deliver to the assigned electronic mailbox the appropriate response based on established processing schedules as outlined in Attachment D; and
 4. The Trading Partner is responsible for checking its assigned mailbox for files in accordance with the schedule.
- J. Use of Subcontractors. Trading Partner shall require any subcontractor, vendor or assignee to agree to be bound by all applicable provisions of this Agreement; provided however that nothing in this Section shall limit Trading Partner's ability to hold subcontractor liable for performance under the contract between Trading Partner and subcontractor. The obligation of Trading Partner to comply with responsibilities under this Agreement and applicable laws, rules and regulations shall remain and shall not be waived or released if Trading Partner subcontracts or otherwise delegates any obligations required to be performed by Trading Partner under this Agreement or by laws, rules or regulations or any other obligations under this Agreement. Trading Partner shall be solely responsible for (i) exercising appropriate diligence in connection with its selection of its subcontractors, and (ii) monitoring and auditing the services provided by such subcontractor to assure that the services provided by such subcontractors are provided in accordance with the terms set forth in this Agreement or imposed by applicable laws, rules and regulations regarding arrangements by and between Trading Partner and subcontractors..

VI. Amendment and Modification

- A. Except as otherwise provided herein, this Agreement may be modified or amended only by agreement of the Parties, in writing, and executed with the same formality as this Agreement. The failure of either Party to insist upon strict performance of any provision of this Agreement shall not constitute a waiver of any subsequent default of the same or similar nature.
- B. The Parties agree to enter into negotiations to modify this Agreement if either Party reasonably determines that modification is required to comply with any applicable changes in Federal and State laws, rules, and regulations. If the parties are unable to agree to an amendment, and the Party requesting the amendment reasonably determines, based on consultation with legal counsel and/or other regulators and/or other state-based or federal health benefit exchanges, that it may be at risk of being found noncompliant with federal or State laws, rules or regulation, the agreement may be terminated upon 60 days written notice by the party requesting the amendment to the party objecting to the amendment.
- C. Modifications to transaction set formats used for member or enrollee information between the Trading Partner and the Exchange shall require a mutually agreed upon update to Attachment A, and not an amendment to the Agreement.

VII. Termination

- A. Either Party may terminate this Agreement without cause by providing the other Party with ninety (90) day's written notice.
- B. The Agreement may be terminated immediately upon written notice if:
 - 1. A Party fails to adhere to the prescribed and agreed upon formats;
 - 2. It is determined that either Party is using information for purposes outside the scope of this Agreement; or
 - 3. Upon termination of the Parties' Covered California Qualified Health Plan Contract, in whole or part, by the Exchange, subject to completion of the transactions that must occur after termination pursuant to the terms of this Agreement and the survival terms in the QHP Contract and subject to survival terms in Attachment B to this Agreement.

VIII. Confidentiality for Proprietary Information

- A. During the term of this Agreement and for a period of seven (7) years thereafter, each Party shall use the same means it uses to protect its own confidential proprietary information, but in any event not less than commercially reasonable means, to prevent the disclosure and to protect the confidentiality of both Parties' confidential proprietary information when:
1. Written information received from the other Party is marked or identified as confidential; or
 2. Oral or visual information identified as confidential at the time of disclosure, which is summarized in writing and provided to the other Party in such written form promptly after such oral or visual disclosure ("Confidential Information").
- B. The foregoing shall not prevent either Party from disclosing Confidential Information that belongs to such Party, is not prohibited from disclosure by a duty of confidentiality other than as set forth in this Agreement and is:
1. Already known by the recipient;
 2. Publicly known or becomes publicly known through no unauthorized act of the recipient Party;
 3. Rightfully received from a third Party;
 4. Independently developed by the recipient Party without use of the other Party's Confidential Information;
 5. Disclosed without similar restrictions to a third Party by the Party owning Confidential Information;
 6. Approved by the other Party for disclosure; or
 7. Required to be disclosed pursuant to a requirement of a governmental agency or law so long as the disclosing Party provides the other Party with notice of such requirement prior to any such disclosure. Each Party represents and warrants that it has the right to disclose information that it has made and shall make available to the other hereunder.

IX. Miscellaneous

- A. Administration of Agreement. The Exchange may adopt policies, procedures, rules and interpretations that are consistent with applicable laws, rules and regulations and deemed advisable by the Exchange to promote orderly and efficient administration of this Agreement. The Parties shall perform in accordance with such policies and procedures; provided, however, that any changes to policies and procedures that are not disclosed to Trading Partner prior to the Agreement Effective Date shall not result in additional obligations and risks to Trading Partner existing at the Agreement Effective Date except as otherwise mutually agreed upon by the parties and as set out below in subsection B.
- B. The Exchange shall provide ninety (90) days prior written notice by letter, electronic mail or other media of any material change (as defined below) in its policies, procedures or other operating guidance applicable to Trading Partner's performance of Services. The failure by Trading Partner to object in writing to any material change within thirty (30) days following the Trading Partner's receipt of such notice shall constitute Trading Partner's acceptance of such material change. For purposes of this Paragraph, "material change" shall refer to any change that could reasonably be expected to have a material impact on the Trading Partner's compensation, Trading Partner's performance of Services under this Agreement, or the delivery of health care services to enrollees.
- C. Days: Wherever in this Agreement a set number of days is stated or allowed for a particular event to occur, the days are understood to include all calendar days, including weekends and holidays, unless otherwise specified.
- D. Force Majeure: Except as prohibited by applicable laws, rules and regulations, neither Party to this Agreement shall be in default of its obligations hereunder for delay or failure in performing that arises out of causes beyond the control and without the fault or negligence of either Party and arising from a catastrophic occurrence or natural disaster, such as Acts of God or of the public enemy, acts of the State in its sovereign capacity, acts of the State Controller's Office or other State agency having an impact on its ability to pay its obligations, acts of the State legislature, fires, floods, power failure, disabling strikes, epidemics, quarantine restrictions, and freight embargoes. However, each Party shall utilize its best good faith efforts to perform under this Agreement in the event of any such occurrence.
- E. Binding Effect and Entire Agreement. This Agreement contains the entire understanding of the Parties, and there are no representations, warranties, covenants, or undertakings other than those set forth herein. Except as otherwise set forth herein, all the provisions of this Agreement shall be binding upon the respective successors in interest to the parties.
- F. Governing Law: This Agreement shall be construed in accordance with and be governed by Federal and California State laws, rules, and regulations, regardless of the forum where it arises.

Signatures will be required on the State paperwork that accompanies this agreement.

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Attachment A - Transaction Sets

The following transaction sets are made part of this Trading Partner Agreement for health plan enrollment and payment transactions. All transactions are to be implemented in accordance with the HIPAA implementation guides. Covered California shall provide companion documents for each of the transactions that the Trading Partner will need. As additional transaction sets or operating rules are required to be implemented pursuant to HIPAA implementation guides, the Parties shall complete a new Attachment A indicating the transaction sets that are to be part of this Agreement.

Health Plan Enrollment and Payment Transaction Sets:

- 834 Membership Enrollments – 834 transaction is based on the 005010X220/Type 3 technical Report and its associated 005010X220A1 addenda
 - 834 5010 transaction
 - 999 Functional Acknowledgments
 - TA1 Interchange Acknowledgments
- 820 Payment files - Transaction, is based on the 005010X306 Type 3 technical Report and its associated 005010X306 addenda
 - 820 Transaction
 - 999 Functional Acknowledgments

Attachment B - Protection of Personally Identifiable Data and Information Assets

A. Privacy and Security Requirements for Personally Identifiable Data.

1. **HIPAA Requirements.** Trading Partner agrees to comply with applicable provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), including the Administrative Simplification Provisions of HIPAA, as codified at 42 U.S.C. § 1320d *et seq.*, the Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH"), and any current and future regulations promulgated under HITECH or HIPAA, all as amended from time to time and collectively referred to herein as the "HIPAA Requirements". Trading Partner agrees not to use or further disclose any Protected Health Information (PHI), other than as permitted or required by the HIPAA Requirements and the terms of this Agreement. For purposes of this Agreement, the Exchange represents that the Exchange is a "health oversight entity", as that term is defined in HIPAA at 45 C.F.R. § 164.501 and, as such, Trading Partner, is permitted to disclose PHI to the Exchange in its role as a health oversight entity.
2. **Exchange Requirements.** With respect to Trading Partner Exchange Functions, Trading Partner agrees to comply with the privacy and security requirements applicable to Personally Identifiable Information under the Exchange Establishment and Eligibility Rules at 45 C.F.R. Part 155 ("the Exchange Requirements"), promulgated pursuant to the Act.
3. **California Requirements.** With respect to all provisions of information under this Agreement, Trading Partner agrees to comply with all applicable California state health information privacy and security laws applicable to Personally Identifiable Information, including but not limited to the Confidentiality of Medical Information Act, the California Insurance Information and Privacy Protection Act, and the Information Practices Act, all collectively referred to as "California Requirements".
4. **Interpretation.** Notwithstanding any other provisions in this section, to the extent a conflict arises between the permissibility of a use or disclosure of Protected Health Information or Personally Identifiable Information under the HIPAA Requirements, the Exchange Requirements, or California Requirements with respect to Trading Partner Exchange Functions, the applicable requirements imposing the more stringent privacy and security standards to such uses and disclosures shall apply. In addition, any ambiguity in this Agreement regarding the privacy and security of Protected Health Information and/or Personally Identifiable Information shall be resolved to permit the Exchange and Trading Partner to comply with the most stringent of the applicable privacy and security laws or regulations.
5. **Trading Partner Exchange Function Obligations.** The following obligations apply to Trading Partner Exchange Functions (and information related thereto):
 - a. **Uses and Disclosures.** Pursuant to the terms of this Agreement, Trading Partner may receive from the Exchange Protected Health Information and/or Personally Identifiable Information in connection with Trading Partner Exchange Functions that is protected under applicable Federal and State laws and regulations. Trading

Partner shall not use or disclose such Protected Health Information or Personally Identifiable Information obtained in connection with Trading Partner Exchange Functions other than as is expressly permitted under the Exchange Requirements and only to the extent necessary in performing functions under this Agreement to assist applicants with securing health insurance coverage.

- b. Fair Information Practices. Trading Partner shall implement reasonable and appropriate fair information practices to support the operations of the Exchange that are consistent with the Exchange Requirements and address, at a minimum:
- i. Individual Access. Trading Partner shall provide access to, and permit inspection and copying of Protected Health Information and Personally Identifiable Information in either an electronic or hard copy format as specified by the individual and as required by law, within thirty (30) calendar days of such request from the individual. If the Trading Partner is unable to provide access within the time required by this subsection, Trading Partner may have no more than thirty (30) additional calendar days to provide the requested access. If the Trading Partner denies access, in whole or in part, the Trading Partner must provide a written denial within the time limits for providing access, which includes the basis for the denial and a statement of the individual's review rights, if applicable. In the event any individual requests access to Protected Health Information or Personally Identifiable Information maintained by the Exchange or another health plan directly from Trading Partner, Trading Partner shall within five (5) calendar days forward such request to the Exchange and the relevant health plan as needed.
 - ii. Amendment. Trading Partner shall provide an individual with the right to request an amendment of inaccurate Protected Health Information and Personally Identifiable Information. Trading Partner shall respond to such individual within sixty (60) calendar days of such a request either by making the correction and informing the individual of such correction or notifying the individual in writing that the request was denied, which notice shall provide an explanation for the denial and explain that the individual may submit a statement of disagreement with the denial.
 - iii. Openness and Transparency. Trading Partner shall make available to individuals applicable policies, procedures, and technologies that directly affect such individuals and/or their Protected Health Information and Personally Identifiable Information.
 - iv. Choice. Trading Partner shall provide individuals with a reasonable opportunity and capability to make informed decisions about the collection, use, and disclosure of their Protected Health Information and Personally Identifiable Information.
 - v. Limitations. Trading Partner represents and warrants that all Protected Health Information and Personally Identifiable Information shall be collected, used, and/or disclosed under this Agreement only to the extent necessary to accomplish a specified purpose under the terms of this Agreement or as permitted by the Exchange Requirements and never to discriminate inappropriately.

- vi. Data Integrity. Trading Partner shall implement policies and procedures reasonably intended to ensure that Protected Health Information and Personally Identifiable Information in its possession is complete, accurate, and current, to the extent necessary for the Trading Partner's intended purposes, and has not been altered or destroyed in an unauthorized manner.
- vii. Safeguards. Trading Partner shall have in place administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Protected Health Information and Personally Identifiable Information that it creates, receives, maintains or transmits pursuant to the Agreement and to prevent the use or disclosure of Protected Health Information and/or Personally Identifiable Information other than as provided for in this Agreement, or as required by law. In furtherance of compliance with such requirements, Trading Partner shall:
 - (a) encrypt all Protected Health Information and/or Personally Identifiable Information that is in motion or at rest, including but not limited to data on portable media devices, using commercially reasonable means, consistent with applicable Federal and State laws, regulations and agency guidance, including but not limited to the U.S. Department of Health and Human Services Guidance Specifying the Technologies and Methodologies That Render Protected Health Information Unusable, Unreadable, or Indecipherable to Unauthorized Individuals for Purposes of the Breach Notification Requirements or issued by the National Institute for Standards and Technology ("NIST") concerning the protection of identifiable data such as Protected Health Information and/or Personally Identifiable Information. Data centers shall be encrypted or shall otherwise comply with industry data security best practices.
 - (b) implement a contingency plan for responding to emergencies and/or disruptions to business that in any way affect the use, access, disclosure or other handling of Protected Health Information and/or Personally Identifiable Information;
 - (c) maintain and exercise a plan to respond to internal and external security threats and violations;
 - (d) maintain an incident response plan;
 - (e) maintain technology policies and procedures that provide reasonable safeguards for the protection of Protected Health Information and Personally Identifiable Information stored, maintained or accessed on hardware and software utilized by Trading Partner and its subcontractors and agents;
 - (f) mitigate to the extent practicable, any harmful effect that is known to Trading Partner of any Security Incident related to Protected Health Information and/or Personally Identifiable Information or of any use or disclosure of Protected Health Information and/or Personally Identifiable

Information by Trading Partner or its subcontractors or agents in violation of the requirements of this Agreement or applicable privacy and security laws and regulations and agency guidance;

- (g) destroy Protected Health Information and Personally Identifiable Information in a manner consistent with applicable Federal and State laws, regulations, and agency guidance on the destruction of Protected Health Information and Personally Identifiable Information; and
 - (h) comply with all applicable Exchange Protection of Information policies as specified in accordance with the terms and conditions set forth in this Agreement and in this Attachment B , including, but not limited to, executing non-disclosure agreements and other documents required by such policies. Trading Partner shall also require any subcontractors and agents to comply with all such Exchange Protection of Information policies.
- viii. Breach Notification. (a) Trading Partner shall report to the Exchange: (i) any use or disclosure of Protected Health Information and/or Personally Identifiable Information not permitted by this Agreement; (ii) any Security Incident involving Protected Health Information and/or Personally Identifiable Information created or received in connection with Trading Partner Exchange Functions; and/or (iii) any breach as defined in the HIPAA Requirements or California Requirements in connection with Protected Health Information and/or Personally Identifiable Information created or received in connection with Trading Partner Exchange Functions (each of which shall be referred to herein as a "Breach"). (b) Trading Partner shall, without unreasonable delay, but no later than within three (3) calendar days after Trading Partner's discovery of a Breach, report such Breach to the Exchange. In addition, Trading Partner shall, without unreasonable delay, but no later than within five (5) calendar days after Trading Partner's discovery of a successful Security Incident not involving Protected Health Information and/or Personally Identifiable Information, report such successful Security Incident not involving Protected Health Information and/or Personally Identifiable Information to the Exchange. (c) Any such report will be made on a form made available to Trading Partner, or by such other reasonable means of reporting as may be communicated to Trading Partner by the Exchange. (d) Trading Partner shall cooperate with the Exchange in investigating the Breach and/or successful Security Incident not involving Protected Health Information and/or Personally Identifiable Information and in meeting the Exchange's obligations, if any, under applicable Federal and State security breach notification laws, regulatory obligations or agency requirements. If the cause of the Breach or the successful Security Incident not involving Protected Health Information and/or Personally Identifiable Information is attributable to Trading Partner or its agents or subcontractors, Trading Partner shall be responsible for Breach notifications and reporting as required under applicable Federal and State laws, regulations and agency guidance. Such notification(s) and required reporting shall be done in cooperation with the Exchange. (e) To the extent possible, Trading Partner's initial report shall include: (i) the names of the individual(s) whose Protected

Health Information and/or Personally Identifiable Information has been, or is reasonably believed by Trading Partner to have been accessed, acquired, used or disclosed or in the event of a successful Security Incident not involving Protected Health Information and/or Personally Identifiable Information, provide such information regarding the nature of the information system intrusion and any systems potentially compromised; (ii) a brief description of what happened including the date of the incident and the date of the discovery of the incident, if known; (iii) a description of the types of Protected Health Information and/or Personally Identifiable Information that were involved in the incident, as applicable; (iv) a brief description of what Trading Partner is doing or will be doing to investigate, to mitigate harm to the individual(s) and to its information systems, and to protect against recurrences; and (v) any other information that the Exchange determines it needs to include in notifications to the individual(s) or relevant regulatory authorities under applicable privacy and security requirements. (f) After conducting its investigation, and within fifteen (15) calendar days, unless an extension is granted by the Exchange, Trading Partner shall file a complete report with the information listed above, if available. Trading Partner shall make all reasonable efforts to obtain the information listed above and shall provide an explanation if any information cannot be obtained. Trading Partner and the Exchange will cooperate in developing content for any public statements. (g) Trading Partner also shall, on at least a quarterly basis, report to the Exchange the occurrence and nature of attempted but Unsuccessful Security Incidents (as defined herein). "Unsuccessful Security Incidents" shall include, but not be limited to, pings and other broadcast attacks on Trading Partner's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of Protected Health Information and/or Personally Identifiable Information.

6. Other Obligations. The following additional obligations apply to Trading Partner:
 - a. Trading Partner's Subcontractors and Agents. Trading Partner shall enter into an agreement with any agent or subcontractor that will have access to Protected Health Information and/or Personally Identifiable Information that is received from, or created or received by, Trading Partner on behalf of the Exchange or in connection with this Agreement, or any of its contracting Plans, pursuant to which such agent or subcontractor agrees to be bound by the same or more stringent restrictions, terms and conditions as those that apply to Trading Partner pursuant to this Agreement with respect to such Protected Health Information and Personally Identifiable Information.
 - b. Records and Audit. Trading Partner agrees to make its internal practices, books and records relating to the use and disclosure of Protected Health Information and/or Personally Identifiable Information received from the Exchange, or created or received by Trading Partner on behalf of the Exchange or in connection with this Agreement available to the Secretary of the U.S. Department of Health and Human Services for purposes of determining the Trading Partner's and/or the Exchange's compliance with HIPAA Requirements. In addition, Trading Partner shall provide the Exchange with information concerning its safeguards described throughout this Section and/or other information security practices as they pertain to the protection of

Protected Health Information and Personally Identifiable Information, as the Exchange may from time to time request. Failure of Trading Partner to complete or to respond to the Exchange's request for information within the reasonable timeframe specified by the Exchange shall constitute a material breach of this Agreement. In the event of a Breach or Security Incident related to Protected Health Information and/or Personally Identifiable Information or any use or disclosure of Protected Health Information and/or Personally Identifiable Information by Trading Partner in violation of the requirements of this Agreement, the Exchange will be permitted access to Trading Partner's facilities in order to review policies, procedures and controls relating solely to compliance with the terms of this Agreement.

- c. **Electronic Transactions Rule.** In conducting any electronic transaction that is subject to the Electronic Transactions Rule on behalf of any Plan, Trading Partner agrees to comply with all applicable requirements of the Electronic Transactions Rule set forth in 45 C.F.R. § 162. Trading Partner agrees to require that any agent, including a subcontractor of Trading Partner that conducts standard transactions with Protected Health Information and/or Personally Identifiable Information of the Plan, comply with all applicable requirements of the Electronic Transactions Rule.
- d. **Minimum Necessary.** Trading Partner agrees to request and use only the minimum necessary type and amount of Protected Health Information required to perform its services and will comply with any regulations promulgated under the HIPAA Requirements and agency guidance concerning the minimum necessary standard pertaining to Protected Health Information. Trading Partner will collect, use and disclose Personally Identifiable Information only to the extent necessary to accomplish a specified purpose under this Agreement.
- e. **Indemnification.**
 - i. Trading Partner shall indemnify, hold harmless, and defend the Exchange from and against any and all costs (including mailing, labor, administrative costs, vendor charges, and any other costs the Exchange determines to be reasonable), losses, penalties, fines, and liabilities arising from or due to a Breach or other non-permitted use or disclosure of Protected Health Information and/or Personally Identifiable Information by Trading Partner or its subcontractors or agents, including without limitation, (1) damages resulting from any action under applicable (a) HIPAA Requirements, (b) the Exchange Requirements or (c) California Requirements, and (2) the costs of the Exchange actions taken to: (i) notify the affected individual(s) and other entities of and to respond to the Breach; (ii) mitigate harm to the affected individual(s); and (iii) respond to questions or requests for information about the Breach or other impermissible use or disclosure of Protected Health Information and/or Personally Identifiable Information.
 - ii. The obligation to provide indemnification under this Agreement shall be contingent upon the Exchange:
 - (a) providing Trading Partner with prompt reasonable written notice of any claim for which indemnification is sought,

- (b) allowing Trading Partner to control the defense and settlement of such claim; provided, however, that the Trading Partner consults with the Exchange regarding the defense of the claim and any possible settlements and agrees not to enter into any settlement or compromise of any claim or action in a manner that admits fault or imposes any restrictions or obligations on the Exchange without the Exchange's prior written consent, which will not be unreasonably withheld; and,
 - (c) cooperating fully with the Trading Partner in connection with such defense and settlement. Indemnification under this section is limited as described herein.
- 7. Business Associate. In instances when the Exchange acts as a Covered Entity as defined under the HIPAA Requirements, and an Exchange Qualified Health Plan (QHP) or dental plan Contract has been executed between the Exchange and Trading Partner, and Trading Partner, on behalf of the Exchange, receives, creates, transmits, and/or maintains Protected Health Information for a function or activity defined as a business associate activity under the HIPAA Requirements, then the provisions of Attachment 15 ("Business Associate Agreement") of the QHP Contract or the business associate agreement to the dental plan Contract shall apply to Trading Partner. Exchange shall notify Trading Partner when it determines that Trading Partner is obligated to comply with the obligations set forth in this subsection based on the relevant circumstances.
- 8. Notice of Privacy Practices. The Exchange shall notify Trading Partner of any limitation(s) in its notice of privacy practices in accordance with 45 C.F.R. § 164.520, other provisions within the HIPAA Requirements, or any other applicable Federal and State laws, regulations or agency guidance, to the extent that such limitation may affect Trading Partner's use or disclosure of Protected Health Information and/or Personally Identifiable Information.
- 9. Reporting Violations of Law. Trading Partner may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. § 164.502(j)(2), other provisions within the HIPAA Requirements, or any other applicable state or federal laws or regulations.
- 10. Survival. Notwithstanding anything to the contrary in the Agreement, the provisions of this Attachment B on the Protection of Personally Identifiable Data and Information Assets shall survive termination of the Agreement with respect to information that relates to Trading Partner Exchange Functions until such time as all Personally Identifiable Information and Protected Health Information is destroyed by assuring that hard copy Personally Identifiable Information and Protected Health Information will be shredded and electronic media will be cleared, purged, or destroyed consistent with National Institute of Standards and Technology Guidelines for Media Sanitization, or is returned to the Exchange, in a manner that is reasonably acceptable to the Exchange.
- 11. Contract Breach. Without limiting the rights of the parties pursuant to this Agreement, if Trading Partner breaches its obligations under this Agreement, the Exchange may, at its option: (a) exercise any of its rights of access and inspection under this Agreement; (b) require Trading Partner to submit to a plan of monitoring and reporting, as the Exchange

may determine necessary to maintain compliance with this Agreement and such plan shall be made part of this Agreement; or (c) notwithstanding any other provisions of this Agreement, after giving Trading Partner opportunity to cure the breach, terminate this Agreement. If Trading Partner materially breaches its obligations under this Section, the Exchange may terminate this Agreement, with or without opportunity to cure the breach. The Exchange's remedies under this Section and any other part of this Agreement or provision of law shall be cumulative, and the exercise of any remedy shall not preclude the exercise of any other.

B. Protection of Information Assets

1. The following terms shall be given the meaning shown:
 - a. "Information Assets" means any information, including Confidential Information, necessary to the operation of either Party that is created, stored, transmitted, processed or managed on any hardware, software, network components, or any printed form or is communicated orally. "Information Assets" does not include information that has been transferred from the Disclosing Party to the Receiving Party under applicable laws, regulations and agency guidance, and that is being maintained and used by the Receiving Party solely for purposes that are not Trading Partner Exchange Functions.
 - b. "Confidential Information" includes, but is not limited, to any information (whether oral, written, visual or fixed in any tangible medium of expression), relating to either Party's services, operations, systems, programs, inventions, techniques, suppliers, customers and prospective customers (excluding the Exchange), cost and pricing data, trade secrets, know-how, processes, plans, reports, designs and any other information of or relating to the business or either Party, including Trading Partner's programs, but does not include information that (a) is described in the Evidence of Coverage booklets; (b) was known to the Receiving Party before it was disclosed to the Receiving Party by the Disclosing Party, (c) was or becomes available to the Receiving Party from a source other than the Disclosing Party, provided such fact is evidenced in writing and the source is not bound by a confidentiality obligation regarding such information to Disclosing Party, or (d) is developed by either Party independently of the other Party's Confidential Information, provided that such fact can be adequately documented.
 - c. "Disclosing Party" means the Party who sends Information Assets that it owns to the other Party for the purposes outlined in this Agreement.
 - d. "Receiving Party" means the Party who receives Information Assets owned by the other.
2. The Receiving Party shall hold all Information Assets of the Disclosing Party in confidence and will not use any of the Disclosing Party's Information Assets for any purpose, except as set forth in this Agreement, or as otherwise required by law, regulation or compulsory process.
3. The Receiving Party must take all reasonable and necessary steps to prevent the unauthorized disclosure, modification or destruction of the Disclosing Party's Information Assets. The Receiving Party must, at a minimum, use the same degree of care to protect the Disclosing Party's Information Assets that it uses to protect its own Information Assets.

4. The Receiving Party agrees not to disclose the Disclosing Party's Information Assets to anyone, except to employees or third parties who require access to the Information Assets pursuant to this Agreement, but only where such third parties have signed agreements regarding the Information Assets containing terms that are equivalent to, or stricter than, the terms of this Section, or as otherwise required by law.
5. In the event the Receiving Party is requested to disclose the Disclosing Party's Information Assets pursuant to a request under the California Public Records Act (PRA), a summons, subpoena or in connection with any litigation, or to comply with any law, regulation, ruling or government or public agency request, the Receiving Party shall, to the extent it may do so lawfully, give the Disclosing Party timely notice of such requested disclosure and afford the Disclosing Party the opportunity to review the request before Receiving Party discloses the Information Assets. The Disclosing Party shall, in accordance with applicable law, have the right to take such action as it reasonably believes may be necessary to protect the Information Assets, and such action shall not be restricted by the dispute resolution process of this Agreement. If such request is pursuant to the PRA, the Exchange shall give Trading Partner sufficient notice to permit Trading Partner to consult with the Exchange prior to disclosure of any Confidential Information. This subdivision shall not apply to restrict disclosure of any information to the State or in connection with a dispute between the Exchange and Trading Partner or any audit or review conducted pursuant to this Agreement.
6. The Receiving Party shall notify the Disclosing Party in writing of any unauthorized disclosure, modification or destruction of the Disclosing Party's Information Assets by the Receiving Party, its officers, directors, employees, Trading Partners, agents or third parties. The Receiving Party shall make this notification promptly upon becoming aware of such disclosure, modification or destruction, but in any event, not later than four (4) calendar days after becoming aware of the unauthorized disclosure, modification or destruction. After such notification, the Receiving Party agrees to cooperate reasonably, at the Receiving Party's expense, with the Disclosing Party to remedy or limit the unauthorized disclosure, modification or destruction and/or its effects.
7. The Receiving Party understands and agrees the Disclosing Party may suffer immediate, irreparable harm in the event the Receiving Party fails to comply with any of its obligations under this Section, that monetary damages will be inadequate to compensate the Disclosing Party for such breach and that the Disclosing Party shall have the right to enforce this section by injunctive or other equitable remedies. The provisions of this Section shall survive the expiration or termination, for any reason, of this Agreement.
8. In the event of a conflict or inconsistency between the requirements of the various applicable sections of this Attachment B, Trading Partner shall comply with the provisions that provide the greatest protection against access, use or disclosure.
9. Survival. Notwithstanding anything to the contrary in the Agreement, the provisions of this Section II on Information Assets shall survive termination of the Agreement until such time as all Information Assets provided by the Exchange to Trading Partner, or created, received or maintained by Trading Partner on behalf of the Exchange, is destroyed by assuring that hard copy Information Assets will be shredded and electronic media will be cleared, purged, or destroyed consistent with National Institute of Standards and Technology Guidelines for Media Sanitization or is returned to the Exchange, in a manner that is reasonably acceptable to the Exchange.

Attachment C - Communications and Contact Information

Method of Communication:

_____ Asynchronous Communication

The phone number for asynchronous communication is <Issuer PHONE Number>.

_____ Secure FTP Communication

The IP address for Secure FTP communication is: <Issuer FTP communications>.

Covered California Contact Information for EDI Questions and Trouble Shooting:

For testing assistance – <

Fotopoulos, Peter (p.j.fotopoulos@calheers.ca.gov)

For production assistance – <

Alves, Jordan (jordan.g.alves@calheers.ca.gov)

Issuer, add separate blocks for subcontractor/vendor information. Please use both terms (subcontractor and vendor) to be sure it is clear both kinds of relationships are included.

Attachment D - Service Levels

C. Interface	SLA	Applies to
Enrollments and Updates to Issuers - Individual and Shop		
Enrollments and Updates to Issuers (EDI 834)	CalHEERS places on FTP server nightly by 11 PM	CalHEERS
Interchange Acknowledgement from Issuer (EDI TA1)	Issuer places on CalHEERS FTP server 24 hours after EDI 834 is generated	Issuer
Implementation Acknowledgement from Issuer (EDI 999)	Issuer places on CalHEERS FTP server 24 hours after EDI 834 is generated	Issuer
Enrollment Confirmations/Dis-enrollments from Issuers - Individual and Shop		
Enrollment Confirmations and Dis-enrollments from Issuer to CalHEERS (EDI 834)	Issuer places changes for that day on CalHEERS FTP server nightly by 11PM	Issuer
Interchange Acknowledgement to Issuer (EDI TA1)	CalHEERS places on CalHEERS FTP server 24 hours after EDI 834 is generated	CalHEERS
Implementation Acknowledgement to Issuer (EDI 999)	CalHEERS places on CalHEERS FTP server 24 hours after EDI 834 is generated	CalHEERS
Enrollment Reconciliation - Individual and Shop		
Enrollment Reconciliation to Issuers (EDI 834)	CalHEERS places on FTP server on the last night of the month by 11 PM	CalHEERS
Interchange Acknowledgement from Issuer (EDI TA1)	Issuer places on CalHEERS FTP server 24 hours after EDI 834 is generated	Issuer
Receipt Acknowledgement from Issuer (EDI 999)	Issuer places on CalHEERS FTP server 24 hours after EDI 834 is generated	Issuer
Discrepancy File from Issuers	5 business days after EDI 834 is generated	Issuer
Payments – Individual		
Individual Payments to CalHEERS (EDI 820)	Issuers to place on CalHEERS FTP server nightly by 11 PM	Issuer
Interchange Acknowledgement to Issuers (EDI 999)	24 hours after EDI 820 is generated	CalHEERS
Implementation Acknowledgement from Issuer (EDI 999)	CalHEERS places on CalHEERS FTP server 24 hours after EDI 820 is generated	CalHEERS
Provider Directory	15th of month following quarter end (4/15, 7/15, 10/15, 1/15)	Issuer

Signatures will be required on the State paperwork that accompanied this agreement.