



**COVERED CALIFORNIA
STAND-ALONE DENTAL PLAN CONTRACT FOR 2014**

between

**Covered California, the California Health Benefit Exchange
(the “Exchange”)**

and

_____ **(“Contractor”)**

FINAL VERSION ISSUED AUGUST 19, 2013

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between
**Covered California, California Health Benefit Exchange
(the “Exchange”)**
and
_____ (“Contractor”)

THIS STAND-ALONE DENTAL PLAN CONTRACT (this or the “Agreement”) is entered into on the date set forth below, by and between the California Health Benefit Exchange, an independent entity established within the government of the State of California doing business as Covered California (the “Exchange”), and _____, a [California] corporation and a dental plan issuer as defined in Title 10 California Code of Regulations (“CCR”) § 6446 (“Contractor”). (Except as otherwise expressly defined, capitalized terms shall have the meaning set forth at Article 13 Definitions).

RECITALS

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

B. The contracting solicitation process conducted by the Exchange is based on the assessment of certain requirements, criteria and standards that: (i) the Exchange determines are reasonable and necessary for bidding dental plan issuers to market, offer, and sell Stand-Alone Dental Plans (SADPs) through the Exchange, (ii) are set forth in that certain Exchange Dental Benefits Solicitation dated January 8, 2013, as amended February 1, 2013 and March 29, 2013 (“Solicitation”) and/or (iii) are required under applicable laws, rules and regulations or otherwise necessary to meet the needs of SADP enrollees in the Exchange, including, those set forth at 45 C.F.R. Part § 155 *et seq.*;

C. In connection with the evaluation of the responses to the Solicitation received from dental plan issuers, the Exchange is required under 10 CCR § 6446: (i) to evaluate the proposed SADP’s compliance with requirements imposed under the Solicitation, and (ii) to give greater consideration to potential SADPs that further the mission of the Exchange by promoting, among other items, the following: (1) affordability for the consumer and small employer – both in terms of premium and at point of care, (2) “value” competition based upon quality, service, and price, (3) competition based upon meaningful SADP choice and ability to demonstrate product differentiation within the required guidelines for standard benefit plans, (4) competition throughout the State, (5) alignment with Providers and delivery systems that serve the low-income population, (6) delivery system improvement, effective prevention programs and payment reform, and (7) long-term collaboration and cooperation between the Exchange and dental plan issuers;

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

E. Based on the Exchange’s evaluation of the proposal submitted by Contractor in response to the Solicitation (“Proposal”) and its consideration of other factors required to be considered under applicable laws, rules and regulations and/or otherwise necessary to meet the needs of Enrollees,

the Exchange intends to designate Contractor as a SADP Issuer pursuant to the Exchange's determination that Contractor's proposed SADPs meet the requirements necessary to provide dental coverage as a SADP) to qualified individuals and employers who purchase dental coverage through the Exchange;

F. Contractor desires to participate in the Exchange as a SADP Issuer; and

G. Contractor and the Exchange desire to enter into this Agreement to set forth the terms and conditions of Contractor's role as a SADP Issuer and operation of the SADPs through the Exchange.

Article 1. Organization; Relationship of the Parties

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

1.02 Application of Laws This Agreement is not intended to limit the obligations imposed on Contractor under applicable laws, rules and regulations, including at a minimum the Affordable Care Act, the California Affordable Care Act, and applicable State regulatory requirements, in existence as of the date of this Agreement or as may be enacted or modified during the term of this Agreement. The failure to reference a regulatory requirement in this Agreement does not affect the applicability of such requirement to Contractor and the Exchange. Subject to the requirements set forth in 12.14, in those instances where the Exchange has affirmatively elected to impose a requirement authorized by the Exchange in accordance with the California Affordable Care Act that exceeds a lesser threshold that may be applicable under the Affordable Care Act or other Federal law, the State law shall be deemed controlling unless otherwise required under applicable laws, rules and regulations.

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

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

1.05 Coordination and Cooperation

- (a) Exchange. The Exchange recognizes that the successful delivery of services to Enrollees depends on a successful coordination with Contractor. The Exchange will take such action as it deems is necessary and feasible to develop and implement programs and activities to support Contractor in its marketing and enrollment efforts, in accordance with applicable laws, rules and regulations. Such activities may include making available the following programs and resources for use by Contractor:
 - (i) Education, marketing and outreach programs that will seek to increase enrollment through the Exchange and inform consumers, including Contractor's current enrollees, that there is a range of SADPs available in the Exchange in addition to Contractor's SADPs;
 - (ii) Systems for electronic exchange of information with the Exchange's full quoting and enrollment system called California Healthcare Eligibility, Enrollment and Retention System ("CalHEERS") for use in converting Contractor's existing members who are eligible for Federal subsidies. On or before the commencement of the 2013 Open Enrollment Period, the Exchange expects to offer CalHEERS from Contractor's technology environment using certain agents employed by or otherwise working exclusively for Contractor to support enrollment of individuals who are eligible for subsidized coverage following agreed upon protocols;
 - (iii) A standard interface through which Contractor may electronically accept the initial binding payment (via credit card, debit card, ACH or other mutually acceptable means to effectuate coverage in the Individual Exchange);
 - (iv) A standard interface through which Contractor may electronically accept from the Exchange the initial binder payment (via ACH or EFT) to effectuate coverage and accept subsequent premium payment in the SHOP;
 - (v) Complete documentation and reasonable testing timelines for interfaces with the Exchange's eligibility and enrollment system;
 - (vi) A dedicated team member responsible for working with Contractor to resolve any and all issues that arise from the implementation of the Exchange;
 - (vii) Eligibility and enrollment training for Contractor's staff and for licensed agents and brokers;
 - (viii) Joint marketing activities of the Exchange, Contractor and other dental plan issuers designed to drive awareness and enrollment in the Exchange, with marketing plans;
 - (ix) Confidential treatment of all Contractor marketing plans and materials if submitted as confidential; and

- (x) Customer service support that will include extended customer service hours during Open Enrollment Periods. Dental Plan Issuers in SHOP are not required to provide Customer Service support on weekends.
- (b) Contractor's Support Responsibilities. To support the collaborative marketing and enrollment effort, Contractor shall:
 - (i) Educate its agents that part of being an Exchange agent is to strive for annual recertification of the Agent and that a prospective Enrollee's oral health status is irrelevant to advice provided with respect to Stand-Alone Dental Plan selection other than as it informs out-of-pocket calculation estimates;
 - (ii) Work with the Exchange to efficiently educate its agents and brokers about the Exchange's individual and small group marketplaces;
 - (iii) Provide education and awareness regarding eligibility for Federal tax credits, plan offerings and benefits available through the Exchange in connection with any applicable outreach to Contractor's existing members, as mutually agreed;
 - (iv) Comply with the Exchange's financial interface requirements at its own cost, including but not limited to transaction fees and chargebacks, that allows an Exchange certified entity to transfer initial premiums directly into Contractor's account, subject to compliance with initial premium payment requirements of the Exchange that shall be processed through a third-party payment administrator;
 - (v) Cooperate with the Exchange to develop and implement an Enrollee retention plan;
 - (vi) Submit to the Exchange a marketing plan in a form required by the Exchange that details the objectives of promoting new enrollment and retaining the Exchange-based enrollment part of the annual renewal process; and
 - (vii) Have successfully tested interfaces with the Exchange's eligibility and enrollment system, or be prepared to complete successful interface tests by dates established by the Exchange.

1.06 Coordination with Other Programs

- (a) Contractor and the Exchange recognize that the performance of Services under this Agreement depends upon the joint effort of the Exchange, Contractor, Participating Providers and other authorized subcontractors of Contractor. Contractor shall coordinate and cooperate with Participating Providers and such subcontractors to the extent necessary and as applicable to promote compliance by Participating Providers and such subcontractors with the terms set forth in this Agreement. Contractor shall also coordinate and comply with requirements of other State agencies that affect its Enrollees, including, the Department of Health Care Services ("DHCS") (regarding Medi-Cal) regarding the development and implementation of CalHEERS with respect to eligibility and enrollment considerations or as may be required under inter-governmental agency agreements or other laws, rules, regulations or program instructions.
- (b) The Contractor shall cooperate with the Exchange and DHCS to implement coverage or subsidy programs to complement existing programs that are administered by DHCS. Such programs may provide State and/or federal funding for all or a portion of enrollee premiums or subsidies to reduce or eliminate cost-sharing charges. These programs may require special authorization and coverage of certain health benefits for individuals enrolled under these special programs, which may not otherwise be covered by a SADP.

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

1.08 Relationship of the Parties

- (a) Independent Contractors. The parties acknowledge and agree that, as required by 45 C.F.R. § 155.200(e), in carrying out its responsibilities, the Exchange is not operating on behalf of Contractor or Contractor's SADPs or any authorized subcontractor of Contractor. In the performance of this Agreement, each of the Exchange and Contractor shall at all times be acting and performing as an independent contractor, and nothing in the Agreement shall be construed or deemed to create a relationship of employer and employee or partner or joint venturer or principal and agent between the Exchange and Contractor. Neither Contractor nor Participating Providers, authorized subcontractors, or any agents, officers or employees of Contractor are agents, officers, employees, partners or associates of the Exchange.
- (b) Use of Subcontractors. Contractor shall require any subcontractor or assignee to agree to be bound by all applicable provisions of this Agreement; provided however that nothing in this Section shall limit Contractor's ability to hold subcontractor liable for performance under the contract between Contractor and subcontractor. The obligation of Contractor to comply with responsibilities under this Agreement and applicable laws, rules and regulations shall remain and shall not be waived or released if Contractor subcontracts or otherwise delegates any Services required to be performed by Contractor under this Agreement or by laws, rules or regulations or any other obligations under this Agreement. Contractor shall be solely responsible for (i) exercising appropriate diligence in connection with its selection of its subcontractors, (ii) monitoring and auditing the services provided by such subcontractor to assure that the services provided by such subcontractors are provided in accordance with the terms set forth in this Agreement or imposed by Health Insurance Regulators or under other applicable laws, rules and regulations regarding arrangements by and between Contractor and subcontractors.

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

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

Article 2. Exchange Responsibilities

The Exchange is approved by the United States Department of Health Services (“DHHS”) pursuant to 45 C.F.R. § 155.105 and shall perform its duties in accordance with the terms and conditions required of this Agreement pursuant to applicable laws, rules and regulations, including, the California Affordable Care Act and the Affordable Care Act. The duties of the Exchange shall include those relating to: non-interference with Federal law and nondiscrimination standards (45 C.F.R. § 155.120), consultation with stakeholders (45 C.F.R. § 155.130), financial support for continued operations of the Exchange (45 C.F.R. § 155.160), oversight, financial and quality activities (45 C.F.R. § 155.200), consumer assistance tools and programs, including, but not limited to operation of a toll-free call center and Internet website (45 C.F.R. § 155.205 and 45 U.S.C. § 18031(d)), navigator program standards designed to raise awareness of the Exchange by, among other items, providing consumer access to education and other resources regarding eligibility, enrollment, and program specifications (45 C.F.R. § 155.210), participation of brokers to enroll qualified individuals or employers in SADPs (45 C.F.R. § 155.220), notices to Enrollees (45 C.F.R. § 155.230), payment of premiums (45 C.F.R. § 155.240), privacy and security of personally identifiable information (45 C.F.R. § 155.260), use of standards and protocols for electronic transactions (45 C.F.R. § 155.270), eligibility and enrollment, as well as exemption determinations in the Individual Exchange and Small Business Health Options Program (“SHOP”) (45 C.F.R. Part 155, Subparts D, E, H, I), and certification of SADPs (45 C.F.R. Part 155, Subpart K and 45 CFR 155.1065). The Exchange also has a duty, as part of its management of CalHEERS, to determine how information about the cost, quality and provider availability is presented to consumers to inform their selection of a Stand-Alone Dental Plan and benefit design in the Exchange. The Exchange shall solicit comment from the Contractor on the designs, but shall make design and presentation decisions at its sole discretion.

2.01 Individual Exchange The Exchange shall be responsible for the determination of eligibility and enrollment of individuals in the Exchange in accordance with the requirements set forth at 45 C.F.R. Part 155, and other applicable laws, rules and regulations. The Exchange will assume statutory obligations as required as part of initial enrollment that would otherwise be carried out by Contractor, such as assuring completion of agent attestation, if applicable. In addition, the Exchange shall issue certifications of individual exemption consistent with the Affordable Care Act standards in a timely manner. The enrollment of eligible individuals in the Exchange shall be made by the Exchange pursuant to its management and participation in CalHEERS, a project jointly sponsored by the Exchange and DHCS with the assistance of the Office of Systems Integration. The Exchange and CalHEERS shall develop, implement and maintain processes to make the eligibility and enrollment decisions regarding the Exchange and other California health care programs and submit that information to Contractor in a timely manner in accordance with Federal and State laws, rules and regulations and the terms set forth in this Agreement.

2.02 Small Business Health Options Program (“SHOP”) The Exchange shall establish SHOP to assist Employers by facilitating enrollment of Employees into SADPs. The Exchange will assume statutory obligation as required as part of initial enrollment that would otherwise be carried out by Contractor, such as assuring completion of agent attestation, if applicable. All specified Employees, and their Family Members, of Employers who are eligible in accordance with the Affordable Care Act, California Affordable Care Act, and Regulations may obtain coverage through SHOP as permitted by State and Federal laws, rules and regulations, including the regulations set forth at 45 C.F.R. Subpart H, § 155.700 *et seq.* Contractor shall process SHOP enrollments from small businesses determined by the Exchange to be eligible for coverage in the SHOP in accordance with the terms set forth in this Agreement and State and Federal laws, rules and regulations.

2.03 Exchange Confidentiality Responsibility All documents and information provided by Contractor to the Exchange or to the vendor for the Exchange shall be treated by the Exchange as confidential and exempt from public disclosure if they are deemed to be or qualify for treatment as confidential information under the Public Records Act, Government Code Sections 6250, *et seq.* and other applicable Federal and State laws, rules and regulations. Documents and information that will be treated as confidential include, but are not limited to, provider rates and the Contractor’s business or marketing plans.

Article 3. Contractor's Responsibilities

During the term of this Agreement, Contractor shall operate those SADPs identified in Contractor's SADP List at Attachment 1 to provide the benefits and services at the cost-sharing and actuarial cost levels described in the Pediatric EHB Dental Standard Benefit Plan Design in 10 CCR § 6446(b)(6), as summarized at Attachment 2 ("Benefit Plan Designs"), and as may be amended from time to time as required under applicable laws, rules and regulations or as otherwise authorized under this Agreement. Contractor shall comply with requirements that apply to SADPs set forth in this Agreement and under the California Affordable Care Act, and, as applicable, the Affordable Care Act and other laws, rules and regulations, including, those set forth at 45 C.F.R. Part 155, Subpart K, 45 C.F.R. Part 156, Subpart B and 45 C.F.R. § 156.200 *et seq.*

3.01 Certification and Consumer Protection Standards

- (a) Contractor shall maintain compliance with standards required for certification that are issued, adopted or recognized by the Exchange on a timely basis to demonstrate that each dental plan it offers in the Exchange qualifies as a SADP under applicable laws, rules and regulations, including, 10 CCR § 6400 *et seq.*, 45 C.F.R. § 155.1065 and as applicable 45 C.F.R. § 156.200 *et seq.*
- (b) Contractor and the Exchange recognize that several of the market reforms in the Affordable Care Act do not apply to SADPs. For Contractor's SADPs sold inside the Exchange, the Contractor agrees to comply with the following provisions:
 - (i) Prohibition of preexisting conditions or other discrimination based on health status pursuant to 42 U.S.C. § 300gg-3, California Health and Safety Code § 1357.51, and California Insurance Code § 10198.7;
 - (ii) Fair health insurance premiums pursuant to 42 U.S.C. § 300gg, California Health and Safety Code § 1357.512(a), and California Insurance Code § 10753.14;
 - (iii) Guaranteed availability of coverage pursuant to 42 U.S.C. § 300gg-1, California Health and Safety Code § 1399.849(g), and California Insurance Code § 10965.3(g);
 - (iv) Guaranteed renewability of coverage pursuant to 42 U.S.C. § 300gg-2, California Health and Safety Code § 1389.7(a), and California Insurance Code § 10119.2(a);
 - (v) Nondiscrimination in health care pursuant to 42 U.S.C. § 300gg-4, 42 U.S.C. § 300gg-5, California Health and Safety Code § 1357.503(f), and California Insurance Code § 10753.05(h);
 - (vi) Elimination of waiting periods pursuant to 42 U.S.C. § 300gg-7, California Health and Safety Code § 1357.51(c), and California Insurance Code § 10198.7(c);
 - (vii) Elimination of annual and dollar limits pursuant to 42 U.S.C. § 300gg-11, 10 CCR 6426, California Health and Safety Code § 1367.001, and California Insurance Code § 10112.1;
 - (viii) Network adequacy requirements pursuant to Article 3.05 of this Agreement.
 - (ix) Timely access to care

3.02 Licensed and Good Standing Contractor shall be licensed and in good standing to offer health insurance coverage through its SADPs offered under this Agreement. For purposes of this Agreement, each dental plan issuer must be in “good standing”, which is determined by the Exchange pursuant to 45 C.F.R § 156.200(b)(4) and shall require: (i) Contractor to hold a certificate of authority from CDI or a specialized health care service plan (“SHCSP”) license from DMHC, as applicable, and (ii) the absence of any material statutory or regulatory violations, including penalties, during the year prior to the date of the Agreement and throughout the term of Agreement, with respect to the regulatory categories identified at Attachment 3 (“Good Standing”). For purposes of this Agreement, “material” violations shall represent a relevant and significant departure from normal business standards required to be adhered to by a dental plan issuer.

3.03 Benefit Design Each SADP operated by Contractor under the terms of this Agreement shall provide the pediatric dental essential health benefit in accordance with the Benefit Plan Design requirements set forth at Attachment 2, and as required under this Agreement, and as applicable, any other laws, rules and regulations, including California Health and Safety Code § 1367.005, California Insurance Code § 10112.27., California Government Code § 100503(e), 45 C.F.R. § 155.1065, 45 C.F.R § 156.150, and as applicable, 45 C.F.R. § 156.200(b).

3.04 Offerings Outside of Exchange Contractor acknowledges and agrees that SADPs bundled with Qualified Health Plans and substantially similar plans offered by Contractor outside the Exchange must be offered at the same rate whether offered inside the Exchange or whether the plan is offered outside the Exchange directly from the issuer or through an agent as required under applicable laws, rules and regulations, including those required under 45 C.F.R. § 156.255(b), 42 U.S.C. § 18021, 42 U.S.C. § 18032. Nothing in this section shall be construed to authorize Contractor to sell any plan contract outside the Exchange that does not include coverage for all ten essential health benefits. For purposes of this subdivision, “product” does not include contracts entered into pursuant to Part 6.2 (commencing with Section 12693) of Division 2 of the Insurance Code between the Managed Risk Medical Insurance Board and health care service plans for enrolled Healthy Families beneficiaries or to contracts entered into pursuant to Chapter 7 (commencing with Section 14000) of, or Chapter 8 (commencing with Section 14200) of, Part 3 of Division 9 of the Welfare and Institutions Code between the DHCS and health care service plans for enrolled Medi-Cal beneficiaries.

3.05 Network Requirements

- (a) General. Contractor’s SADPs shall comply with the network adequacy standards established by the applicable Health Insurance Regulator responsible for oversight of Contractor, including, those requirements applicable to specialized health care service plans as set forth at Health and Safety Code § 1367.03 and 28 CCR § 1300.67.2.2 (if Contractor is a licensed health care service plan) or Insurance Code § 10133.5 and 10 CCR § 2240-2240.5 (if Contractor is regulated by CDI), and, as applicable, other laws, rules and regulations, including, those set forth at 45 C.F.R. 156.230. The information provided to the Exchange shall reasonably take into consideration the ethnic and language diversity of providers available to serve Enrollees of the Exchange. Contractor shall cooperate with the Exchange to implement network changes as necessary to address reasonable concerns identified by the Exchange.

- (b) Service Area.
- (i) Withdrawal. Contractor shall not withdraw from any geographic region (as defined in Health and Safety Code § 1357.512 and California Insurance Code Section 10753.14 for the individual market) or modify any portion of its Service Area where Contractor provides Specialized Health Care Services to Enrollees without providing prior written notice to, and obtaining prior written approval from the Exchange, which shall not be unreasonably denied, and to the extent required, the Health Insurance Regulator with jurisdiction over Contractor.
 - (ii) Service Area Listing. During each year of this Agreement, in conjunction with the establishment of Monthly Rates payable to Contractor under Article 5 below for each of the Contract Years, the Service Area listing set forth in Attachment 4 (“Service Area Listing”) shall be amended to reflect any changes in the Service Area of SADPs. Any such changes shall be effective as of January 1 of each of the applicable Contract Year. In the event ZIP codes are added to the current Service Area by the United States Postal Service, the parties agree such added ZIP codes shall be automatically included in the Service Area and shall be reflected in the next scheduled update of the Service Area Listing.
 - (1) Contractor shall comply with the Exchange’s standards, developed in consultation with dental plan issuers regarding the development of Service Area listing based on the ZIP Code, including, those relating to:
 - (i) the timing of such submissions prior to the Open Enrollment Period,
 - (ii) the assignment of enrollees residing in ZIP codes split across two rating regions, and
 - (iii) required updates and notice of changes in ZIP Codes within Contractor’s region.
 - (iii) Eligibility. In order to facilitate the Exchange’s compliance with 45 C.F.R. § 155.710(b) and 45 C.F.R. § 155.305(a), Contractor shall monitor information it receives directly, or indirectly or through its subcontractors to ensure continued compliance with eligibility requirements related to: (i) participation by Employers in SHOP, including, those requirements related to the Employer’s principal place of business or primary worksite in the Service Area or (ii) participation of Qualified Individuals in the Individual Exchange, including, requirements related to residency. Contractor shall notify the Exchange if it becomes aware that an Employer or individual Enrollee enrolled in a SADP of Contractor no longer meets the requirements for eligibility, based on place of business, primary worksite or residence. The Exchange will evaluate, or cause CalHEERS to evaluate, such information to determine Enrollee’s continuing enrollment in the Contractor’s Service Area under the Exchange’s policies which shall be established in accordance with applicable laws, rules and regulations. Contractor and its subcontractors will have no duty to investigate representations made by Employers regarding eligibility; provided, however, that Contractor shall notify the Exchange in the event that it becomes aware that such representation may not be accurate.
- (c) Participating Provider Directory. Contractor shall make its provider directory electronically available to (i) the Exchange for publication online in accordance with guidance from the Exchange, and (ii) in hard copy when potential Enrollees make such request. Contractor shall provide information describing Participating Providers in its SADP networks in a format prescribed by the Exchange on a quarterly basis to support the Exchange’s centralized provider directory containing every SADP’s network providers.
- (d) Participating Provider Stability. Contractor shall maintain policies and procedures that are designed to preserve and enhance Contractor’s network development by facilitating

the recruitment and retention of Participating Providers necessary to provide access to Specialized Health Care Services. Such policies and procedures shall be consistent with applicable laws, rules and regulations and will include an ongoing assessment of turnover rates of its Participating Providers to ensure that the turnover rates do not disrupt the delivery of quality care.

- (e) Network Disruption.
 - (i) Contractor shall implement reasonable policies and practices designed (i) to reduce the potential for disruptions in Contractor's provider networks, and (ii) to minimize the amount of uncertainty, disruption, and inconvenience of Enrollees in the execution of the transition of care as required under State laws, rules and regulations in connection with any such disruption. Contractor agrees to maintain adequate records, reasonably satisfactory to the Exchange, documenting its policies and its compliance with these requirements by Contractor and Participating Providers.
- (f) Change in Disclosures. Contractor shall notify the Exchange with respect to any material changes in its provider network as of and throughout the term of this Agreement with respect to prior disclosures made by Contractor in its Proposal. For purposes of this Agreement, a material change in the disclosures shall relate to an event or other information that may reasonably impact Contractor's ability to perform under this Agreement in comparison with the information previously disclosed by Contractor in the Proposal.

3.06 Contracting with Dental Providers Who Serve the Low Income and Uninsured Populations

Contractor shall maintain a network that includes participation of dental providers with a history of serving uninsured and low income populations that are available through Contractor to provide reasonable and timely access to Specialized Health Care Services to low-income populations in each geographic region where Contractor's SADPs provide services to Enrollees.

- (a) For purposes of this Section, "participation of dental providers with a history of serving uninsured and low income populations" shall be determined by the Exchange in its reasonable discretion in accordance with the conditions set forth in the Solicitation and based on a consideration of various factors, including, (i) the nature, type and distribution of Contractor's contracting arrangements with Federally Qualified Health Centers who provide dental services in each geographic region in which Contractor's SADPs provides Specialized Health Care Services to Enrollees, (ii) the inclusion of a sufficient number of providers that participate or have participated with the Medi-Cal and/or Healthy Families program, and (iii) other factors as mutually agreed upon by the Exchange and the Contractor regarding Contractor's ability to serve the low income population.
- (b) "Low-income populations" shall be defined as families living at or below 200% of Federal poverty level.
- (c) Contractor shall notify the Exchange with respect to any material changes as of and throughout the term of this Agreement to its contracting arrangements with Federally Qualified Health Centers that provide dental services and other information relating to contracting with providers who serve the low-income and uninsured populations.

3.07 Applications and Notices Contractor shall provide applications, forms and notices to applicants and Enrollees in plain language and in a manner that is accessible and timely to individuals (1) living with disabilities, including accessible web sites and the provision of auxiliary aids and services at no cost to the individual in accordance with the Americans with Disabilities Act and section 504 of the Rehabilitation Act, or (2) with limited English language proficiency. Contractor shall provide applications, forms, and notices in a manner that is accessible and timely to individuals who are limited English proficient as required by Health and Safety Code Section 1367.04 and Insurance Code Section 10133.8.

Contractor shall inform individuals of the availability of the services described in this Section and otherwise comply with notice requirements imposed under applicable laws, rules and regulations, including, those set forth at 45 C.F.R. § 156.250 and Government Code § 100503(k).

3.08 Rating Variations Contractor shall (i) charge the premium rate in each geographic rating area for each of Contractor's SADPs as agreed upon with the Exchange, and (ii) may vary premiums by geographic area as permitted by applicable laws, rules and regulations including, 45 C.F.R. § 156.255(b).

3.09 Rate Information

- (a) Individual Exchange: 2014 rates shall be established through an annual negotiation process between the Contractor and the Exchange and are set for the applicable calendar year. The parties acknowledge that (1) the Agreement does not contemplate any mid-year rate changes for the Individual Exchange in the ordinary course of business, and (2) the annual negotiation process must be supported by Contractor through the submission of information in such form and at such date as shall be established by the Exchange to provide Contractor with sufficient time for necessary analysis and actuarial certification.
- (b) SHOP: 2014 SHOP rates will be established through an annual negotiation process between the Contractor and the Exchange and are set for the applicable calendar year... If the term of the Agreement is longer than one (1) year, Contractor shall also submit rate information in such form and at such date as shall be established by the Exchange to provide Contractor with sufficient time for necessary analysis and actuarial certification. The Exchange will permit an update of rates to be offered on the Exchange no more frequently than on an annual basis. Contractor shall provide, upon the Exchange's request, in connection with any contract negotiation or recertification process as reasonably requested by the Exchange, detailed documentation on the Exchange-specific rate development methodology.
- (c) To the extent permitted by law and by Contractor's contracts with Participating Providers, Contractor agrees that the information to be provided to the Exchange under this Agreement may include information relating to contracted rates between Contractor and Participating Providers that is treated as confidential information by Health Insurance Regulators pursuant to Insurance Code § 10181.7(b) or Health and Safety Code § 1385.07(b), or both. To the extent that any Participating Provider's rates are prohibited from disclosure to the Exchange by contract, the Contractor shall identify that Participating Providers and shall, upon renewal of its contract, make commercially reasonable efforts to obtain agreement by that Participating Provider to amend, such provisions to allow disclosure, but in no event later than July 1, 2014. In entering into a new contract with a Participating Provider, Contractor agrees to make commercially reasonable efforts to exclude any contract provisions that would prohibit disclosure of such information to the Exchange.

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

3.11 Special Rules Governing American Indians and Alaskan Natives Contractor shall comply with applicable laws, rules and regulations relating to the provision of Specialized Health Care Services to any individual enrolled in Contractor's SADP in the Individual Exchange who is determined by the Exchange to be an eligible American Indian or Alaskan Native as defined in section 4(d) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(d)). Such requirements include the following:

- (a) Contractor shall provide monthly special enrollment periods for American Indians or Alaskan Natives enrolled through the Exchange.
- (b) Contractor shall comply with other applicable laws, rules and regulations relating to the provision of Health Care Services to American Indians, including, the Indian Health Care Improvement Act Sections 206 (25 U.S.C. 1621e) and 408 (25 U.S.C. 1647a)).

3.12 Participating Provider Arrangements Contractor shall include in all of its contracts with Participating Providers the requirement for all Specialized Health Care Services to be provided by duly licensed, certified or accredited Participating Providers consistent with the scope of their license, certification or accreditation and in accordance with applicable laws, rules, regulations, the standards of dental practice in the community and the terms set forth in agreements entered into by and between Contractor and Participating Providers ("Provider Agreement").

3.13 Enrollee's Out-of-Network and Other Costs; Network Requirements Contractor shall, and shall require Participating Providers to, comply with applicable laws, rules and regulations governing liability of Enrollees for Specialized Health Care Services provided to Enrollees, including, those relating to holding an Enrollee harmless from liability in the event Contractor fails to pay an amount owing by Contractor to a Participating Provider as required by Federal and State laws, rules and regulations.

- (a) To the extent that Contractor's SADPs either (i) provide coverage for out-of-network services and/or (ii) impose additional fees for such services, Contractor shall disclose to the Enrollee the amount or percentage it will pay for covered proposed non-emergent out-of-network services when requested by the Enrollee.
- (b) Contractor shall require its Participating Providers to inform every Enrollee in a manner that allows the Enrollee the opportunity to act upon that Participating Provider's proposal or recommendation regarding (i) the use of a non-network provider or facility or (ii) the referral of an Enrollee to a non-network provider or facility for proposed non-emergent Covered Services. Contractor shall require Participating Providers to disclose to the Enrollee who is proposing or considering using out of network non-emergent services if a non-network provider or facility will be used as part of the network provider's plan of care. The Contractor's obligation for this provision can be met through an update to their providers' contract manual that is effective as of January 1, 2014. Participating Providers may rely on Contractor's provider directory in fulfilling their obligation under this provision.

3.14 Credentialing Contractor shall perform, or may delegate activities related to credentialing and re-credentialing Participating Providers in accordance with process as reviewed and approved by the appropriate Health Insurance Regulator.

3.15 Utilization Review and Appeals Process Contractor shall maintain a utilization management program that complies with applicable laws, rules and regulations, including, Health and Safety Code § 1367.01 and other requirements established by the Health Insurance Regulator responsible for oversight of Contractor.

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

For 2014, Contractor shall meet all State requirements for language assistance services that are applicable to its commercial lines of business. The Exchange and Contractor will evaluate the adequacy of language services provided for verbal and written communications during 2014 and consider the adoption of additional standards in 2015.

3.17 Compliance Programs

- (a) General. Contractor shall, and shall require Participating Providers and all subcontractors to comply with all applicable federal, state, and local laws, regulations, executive orders, ordinances and guidance, including without limitation, the Affordable Care Act and the California Affordable Care Act; the Americans with Disabilities Act, the Anti-Kickback Statute, the Public Contracts Anti-Kickback Act, the Stark Law, and the Knox-Keene Health Care Service Plan Act of 1975 and/or California Insurance Code, as applicable.
- (b) Fraud, Waste and Abuse; Ethical Conduct. Contractor shall maintain and enforce policies, procedures, processes, systems and internal controls (i) to reduce fraud, waste and abuse, and (ii) to enhance compliance with other applicable laws, rules and regulations in connection with the performance of Contractor's obligations under this Agreement. Contractor shall maintain an effective compliance program that meets the requirements of applicable laws, rules and regulations. Contractor shall provide evidence of such compliance program as reasonably requested by the Exchange. Contractor shall timely communicate to the Exchange any material concerns identified by Contractor or by a regulatory agency related to regulatory compliance as such may impact performance under this Agreement.
 - (i) Contractor shall provide the Exchange with a description of its fraud, waste and abuse detection and prevention programs and report total moneys recovered by Contractor from providers in the most recent 12-month period who provided services to Enrollees. This description shall be provided upon the request of the Exchange and will be updated during each year that this Agreement is in effect and shall include an overview of fraud and abuse detection and prevention program activities conducted by Contractor, Participating Providers, other subcontractors and/or their authorized agents, including a summary of key findings and the development, implementation and enforcement of any corrective action plans for changing, upgrading, or improving these programs.
 - (ii) Contractor shall maintain and enforce a code of ethical conduct that shall be made available to the public through posting on a website.

3.18 Enrollment and Eligibility

- (a) Acceptance of Enrollment. Contractor shall comply with the eligibility and enrollment determinations that shall be made for Enrollees by the Exchange in coordination with CalHEERS. The Exchange shall provide information regarding enrollment in Contractor's SADPs to Contractor in a timely fashion. Contractor shall accept all Enrollees assigned by the Exchange except as otherwise authorized by policies and procedures of the Exchange or upon the approval of the Exchange. Contractor shall send enrollment

information to the Exchange on a daily basis and Contractor shall reconcile Enrollment information received from the Exchange with Contractor's enrollment data on a monthly basis. The Exchange shall be solely responsible for enrollment and eligibility determinations and Contractor shall rely upon the accuracy of current eligibility and enrollment information furnished by the Exchange during the term of this Agreement; provided, however, that Contractor shall (i) reconcile premium payment information with enrollment and eligibility information received from the Exchange or its QHP partner on a monthly basis, and (ii) timely notify the Exchange of any differences between premium payments and the enrollment and eligibility information. Changes to eligibility information submitted by Employers or Enrollees shall be accepted only when the Exchange notifies or confirms such change to Contractor.

- (b) Enrollment Periods. Contractor acknowledges and agrees that the Exchange is required (i) to allow qualified individuals to enroll in a SADP or change a SADP during annual Open Enrollment Periods, (ii) to allow certain qualified individuals to enroll in or change SADPs during Special Enrollment Periods as a result of specified triggering events per applicable Federal and State laws, rules and regulations and (iii) to allow Employers and Employees to purchase coverage in SHOP (1) during an initial Open Enrollment Period in 2013, (2) at any point during the year after the initial Open Enrollment Period ("rolling enrollment period") and (3) as a result of specified triggering events, during Special Enrollment Periods. Contractor agrees to accept new Employers and Employees in SHOP and individual Enrollees in the Individual Exchange who enroll during these periods.
- (c) Redetermination. Contractor shall accept changes to enrollment received from the Exchange other than during the Employer's Open Enrollment period for qualifying events as required under applicable laws, rules and regulations, including those set forth at 45 C.F.R. § 155.330.
- (d) Law. Contractor shall comply with all Federal and State eligibility and enrollment statutes and regulations, including, but not limited to, the Affordable Care Act § 1411 et seq. (42 U.S.C. 18081 et seq.), Government Code § 100503, and 10 CCR § 6400 et seq.

3.19 Enrollment: Commencement of Coverage

- (a) Individual Exchange: The provisions of this Section 3.19(a) shall apply with respect to the Individual Exchange.
 - (i) The Exchange shall (i) notify Contractor regarding each eligible applicant who has completed an application for enrollment and designated Contractor as the SADP, and (ii) transmit information required for Contractor to enroll the applicant within five (5) business days of verification of eligibility and selection of Contractor's SADP or its QHP partner as applicable. Contractor shall ensure a coverage effective date for the Enrollee as of (1) the first day of the next subsequent month for a SADP selection notice received by the Exchange between the first day and fifteenth (15) day of the month, or (2) the first day of the second following month for SADP selections received by the Exchange from the sixteenth day through the last day of a month, or (3) such other applicable dates specified in 45 C.F.R. 155. § 410 for the Open Enrollment Period and 45 C.F.R. § 155.420 for the Special Enrollment Period and/or as otherwise established by Contractor in accordance with applicable laws, rules and regulations. The Exchange shall require payment of one hundred percent (100%) of the entire first month premium to be received by the Exchange on or before the fourth (4th) remaining business day of the month in order to commence coverage as of the first (1st) day of the following month.

- (ii) Contractor shall provide the Exchange with information necessary to confirm Contractor's receipt of premium payment from Enrollee that is required to commence coverage. The specific terms and conditions relating to commencement of coverage, including, the administration of advance payments of the premium tax credit and cancellation or postponement of the effective date of coverage in the event of nonpayment or partial payment of an initial premium, shall be established by the Exchange in accordance with applicable laws, rules and regulations.
 - (iii) Receipt of the first month's full premium payment to be processed through a third-party administrator will be deposited into an account owned by the third-party administrator and settled by the third-party administrator to the Contractor's own bank account.
- (b) SHOP. The provisions of this Section 3.19(b) shall apply with respect to the SHOP.
- (i) Contractor shall coordinate and cooperate with Exchange to the extent necessary during the Exchange's enrollment process that shall commence following the Exchange's acceptance of the single employer and single employee application forms. Contractor shall provide Services as may be required to support the Exchange during the enrollment process conducted by the Exchange in accordance with the Exchange's responsibilities under 45 C.F.R. § 155.720 and other applicable laws, rules and regulations. Such Services shall include support of the Exchange's performance of the following activities that must occur before the effective date of coverage: (i) determination of Employer eligibility, (ii) selection of Contractor's SADPs coverage levels by Employers and Employees, and (iii) verification of Employee's eligibility. Upon verification of eligibility and selection of Contractor's SADP, the Exchange shall (1) process enrollment of Employees into Contractor's SADPs, (2) establish effective dates of Employee coverage, and (3) transmit enrollment information for Employees to Contractor and Contractor shall notify Employee of the effective date of coverage.
 - (ii) Coverage shall commence on the first (1st) day of a month or such other date as may be established by the Exchange under its enrollment timeline and processes in accordance with the requirements set forth at 45 C.F.R. § 155.720(b)(7).
 - (iii) The specific terms and conditions relating to commencement of coverage, including, cancellation or postponement of the effective date of coverage in the event of nonpayment or partial payment of an initial premium will be determined in accordance with applicable laws, rules and regulations.

3.20 Enrollment: Termination of Coverage

- (a) Individual. The provisions of this Section 3.20(a) shall apply with respect to the Individual Exchange.
 - (i) Coverage will be terminated in a Contractor's SADP in accordance with the requirements established by the Exchange based on requirements set forth at 45 C.F.R. 155.430 and other applicable State and Federal laws, rules and regulations.
 - (ii) Coverage will be terminated for an individual Enrollee's non-payment of premium effective as of the last day of the first month of a three (3) month grace period provided in the event of nonpayment of premiums by individuals receiving advance payment of the premium tax credit that applies to the SADP as required

under 45 C.F.R. 155.430(d)(4). Contractor shall report information to the Exchange regarding delinquent full or partial payments of premium owing by Qualified Individuals in such format and intervals as is reasonably requested by the Exchange based on consultation with the Contractor.

- (iii) The specific terms and conditions relating to termination of coverage, including, Contractor's right to terminate in connection with the receipt of partial payments, shall be determined by the Exchange in accordance with applicable State and Federal laws, rules and regulations.
 - (iv) The Exchange will notify Contractor within five (5) business days of any individual Enrollee termination.
- (b) SHOP. The provisions of this Section 3.20(b) shall apply with respect to the SHOP.
- (i) Contractor acknowledges and agrees that the Exchange shall be responsible for the aggregation and administration of premiums for SHOP. The Exchange shall be responsible for: (1) the submission of bills to each Employer on a monthly basis in a form that identifies Employer and Employee contributions and the total amount due, (2) collecting the amounts due from each Employer, and (3) making payments to Contractor for Enrollees in Contractor's SADPs on a monthly basis or such other intervals as mutually agreed upon by the Exchange and Contractor. In no event shall the Exchange be liable to Contractor with respect to any interest or other charges relating to premium funds received by the Exchange that are not yet disbursed by the Exchange to SADPs.
 - (ii) The specific terms and conditions relating to terminations, including, Contractor's right to terminate an Employer in connection with the receipt of nonpayment or partial payments from Employers, shall be established by the Exchange in accordance with applicable laws, rules and regulations.
 - (iii) Except as otherwise required under applicable laws, rules or regulations, an Employee's enrollment through Employer may be terminated in connection with the termination of Employer's coverage and/or with respect to the events described in paragraph (a) above. With respect to an Employee, his or her eligibility shall cease at such time as he/she is no longer a qualified Employee to whom Employer has offered coverage. The Exchange will notify Contractor within five (5) business days of any Employer or Employee termination.

3.21 Minimum Participation Rates - SHOP Contractor shall comply with minimum participation rates for Employers participating in SHOP that shall require (i) participation of a specified percentage of Employer's eligible employees in the Exchange, (ii) Employer's contribution in an amount equal to a specified percentage of the Employees premium and (iii) compliance with applicable laws, rules and regulations. Participation rates shall be established by the Exchange in consultation with dental plan issuers and may be modified by the Exchange no more frequently than annually based on consideration of various factors, including, prevailing market standards and changes in applicable laws, rules and regulations.

3.22 Premiums

- (a) Individual Market
 - (i) Premium charged to individuals includes the assessment of the participation fee, (see Section 5.03 Participation Fee). Contractor shall not pursue collection of any delinquent premiums from the Exchange for an Enrollee enrolled in the Individual Exchange who is responsible for directly paying for his/her premium to Contractor.

- (ii) Contractor shall not be entitled to collect from Enrollees and/or receive funds above the premium amounts except with respect to cost-sharing amounts or to the extent that such payment (i) is expressly authorized under the SADPs, such as out-of-network services that comply with the notice requirements set forth at Section 3.13 above, or (ii) relates to a charge for non-sufficient funds or transaction fees initiated by Enrollee at rates that are reasonable and customary for such transactions; the Contractor shall not pursue collections of any said fees from the Exchange.
 - (iii) Contractor or its QHP partner as applicable shall review and reconcile information received from the Exchange on a monthly basis relating to the administration of premium payments, including information required under 45 C.F.R. § 155.240 and other applicable laws, rules and regulations necessary to the administration of premiums. Such reconciliation process will include the Contractor's review of information relating to the receipt of premium amounts due to Contractor from each individual in the Individual Exchange including providing notices required under State and Federal laws. Contractor shall provide the Exchange notice of any reconciling enrollment information with premium payment information, which shall be evaluated by the Exchange in consultation with Contractor.
- (b) SHOP
- (i) SHOP will be responsible for collection of premiums, including delinquent payments. Premium charged in SHOP includes the assessment of the participation fee, agent and general agent commissions (see Section 5.03 Participation Fee).
 - (ii) Contractor shall not be entitled to collect from Enrollees and/or receive from Employers any amounts or receive funds from the Employers above the premium amounts except with respect to cost-sharing amounts or to the extent that such payment (i) is expressly authorized under the SADPs, such as out-of-network services that comply with the notice requirements set forth at Section 3.13 above, or (ii) relates to a charge for non-sufficient funds or transaction fees initiated by Enrollee at rates that are reasonable and customary for such transactions; the Contractor shall not pursue collections of any said fees from the Exchange.
 - (iii) Contractor shall review and reconcile information received from the Exchange on a monthly basis relating to the administration of premium payments, including information required under 45 C.F.R. § 155.705 and other applicable laws, rules and regulations necessary to the administration of premiums. Such reconciliation process will include the Contractor's review of information relating to the receipt of premium amounts due to the Exchange from each Employer and Employee in SHOP. Contractor shall provide the Exchange notice of any reconciling enrollment information with premium payment information, which shall be evaluated by the Exchange in consultation with Contractor.

3.23 Notice to Provider Regarding Enrollee's Grace Period Status

- (a) In the event of nonpayment of premium by an individual Exchange enrollee who is receiving a federal health insurance subsidy that applies to the Stand-Alone Dental Plan, Contractor shall provide written or telephonic notice to its network providers within 15 calendar days of the start of the second month of the grace period of an individual Exchange enrollee who is receiving a federal health insurance subsidy required pursuant to 45 C.F.R. § 156.270(d). This notice shall inform the network provider of the possibility of pended claims when enrollee is in the second and third month of the enrollee's grace period if premium remains unpaid at the exhaustion of the grace period. This notice

obligation only attaches to network providers who have submitted claims to the SADP within the previous two months and any provider who is an assigned dental care provider for that enrollee.

- (b) Notwithstanding (a) above, this notice obligation does not relieve the SADP issuer from compliance with existing state laws governing claims payment.

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

3.25 Appeals and Grievances

- (a) Internal. Contractor shall maintain an internal review process to resolve Enrollee's written or oral expression of dissatisfaction regarding the Contractor and/or Provider, including appeals of claims and benefit determinations, and complaints relating to the scope of Covered Services required to be provided under the SADP. Contractor's processes shall comply with applicable laws, rules and regulations, including, those set forth at Health and Safety Code Section 1368.
- (b) Grievances. Contractor shall maintain a grievance process for the review of clinical and non-clinical grievances which incorporates and reflects the requirements set forth at Health and Safety Code Section 1368.

3.26 Enrollee Materials; Branding Documents Contractor shall comply with the Exchange co-branding requirements relating to the format and use of the Exchange logo and information on premium invoices, ID cards and Enrollee termination notices. The Contractor shall include Exchange logo and other information in notices and other materials based upon the mutual agreement of the Exchange and Contractor regarding both which materials should include the Exchange logo and timing of its inclusion in Contractor-generated notices and other materials.

- (a) Enrollee Materials. Upon request, Contractor shall provide the Exchange with at least one (1) copy, unless otherwise specified, of any information Contractor intends to mail to all the Exchange Enrollees, including, but not limited to, Evidence of Coverage and disclosure forms, enrollee newsletters, new enrollee materials, health education materials, and special announcements. The materials provided to the Exchange under this Section will not require prior-approval by the Exchange before the Contractor distributes such materials; provided, however, that Contractor shall duly evaluate any changes proposed by the Exchange with respect to such materials. Contractor shall maintain an electronic file that is open to the Exchange. Such file shall be accessible by the Exchange as required by applicable laws, rules and regulations and as otherwise mutually agreed upon by the parties.
- (b) Distribution of Enrollment Materials. Contractor agrees to distribute to prospective Enrollees the Open Enrollment publications developed and printed by the Exchange for Enrollees prior to the Open Enrollment Period at a time mutually agreed to by the Contractor and the Exchange. Contractor shall be responsible for the mailing cost associated with these publications.
- (c) Marketing Materials. In order to promote the effective marketing and enrollment of individuals inside and outside the Exchange, Contractor shall provide the Exchange with marketing material and all related collateral used by Contractor for the Exchange on an annual basis and at such other intervals as may be reasonably requested by the Exchange. The Exchange shall treat such marketing materials as confidential information.

- (d) Identification Cards. Contractor shall issue identification cards to Enrollees in a form that shall be agreed to by the Exchange which may include electronic cards or a no-card eligibility verification system.
- (e) Mailing Addresses; Other Information. The Exchange and Contractor shall coordinate with respect to the continuous update of changes in an Enrollee's address or other relevant information.
- (f) Evidence of Coverage Booklet on Contractor's Web Site. During each year of this Agreement which carries over into a subsequent Contract Year, Contractor shall make the Evidence of Coverage booklet for the next benefit year available on Contractor's web site no later than the first day of the Open Enrollment Period provided that Contractor has received any revisions in the material that is to be included in the Evidence of Coverage from the Exchange and the applicable Regulator in sufficient time to allow for posting on the first day of Open Enrollment. The Evidence of Coverage booklet for the then-current benefit year shall remain on Contractor's web site through December 31 of the then-current benefit year. The same requirements apply to Dental Plan Issuers' Certificate of Coverage when applicable.
- (g) Marketing Plans. Contractor and the Exchange recognize that Enrollees and other health care consumers benefit from efforts relating to outreach activities designed to increase health awareness and encourage enrollment. The parties shall share marketing plans on an annual basis and with respect to periodic updates of material changes. The marketing plans of each of the Exchange and Contractor shall include proposed marketing approaches and channels and shall provide samples of any planned marketing materials and related collateral as well as planned, and when completed, expenses for the marketing budget. The Contractor shall include this information for both the Exchange and the outside individual market. The Exchange shall treat all marketing information provided under this Section as confidential information and the obligation of the Exchange to maintain confidentiality of this information shall survive termination or expiration of this Agreement.
- (h) Customer Service. Contractor shall also comply with the requirements relating to enrollment materials required under the customer service standards in accordance with the requirements set forth at Section 3.16.

3.27 Agents in the Individual Exchange

- (a) Compensation. The provisions of this Section 3.27 apply to agents who sell Contractor's SADPs through the Individual Exchange.
 - (i) Compensation Methodology. Contractor shall be solely responsible for compensating agents who sell Contractor's SADP through the individual market of the Exchange. Contractor shall use a standardized agent compensation program with levels and terms that shall result in the same aggregate compensation amount to agents whether products are sold within or outside of the Exchange. Contractor shall provide the Exchange with a description of its standard agent compensation program on an annual basis.
- (b) Incentive Compensation Program. In order to enhance consistency in sales efforts for products offered inside and outside of the Exchange, Contractor shall add the agent's sale of Contractor's SADPs through the Exchange to the agent's sale of Contractor's policies outside the Exchange to determine agent's aggregate sales that are used by Contractor to determine incentive or other compensation payable by Contractor to agent. Contractor shall provide information as may reasonably be required by the Exchange from time to time to monitor Contractor's compliance with the requirements set forth in this Section.

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

3.28 SHOP Agents

- (a) The provisions of this Section 3.28 apply to agents who sell Contractor's SADPs through SHOP.
 - (i) Agent Commissions. Contractor's Reimbursement for SHOP Agents. In order to facilitate the Exchange's ability to administer enrollment in SHOP based on efforts that are consistent for non-Exchange products and to achieve consistency in compensation arrangement for products sold inside and outside the Exchange: (i) the Exchange shall enter into arrangements with agents to sell Contractor's SADPs through SHOP, (ii) the Exchange will be responsible for payment of agents, (iii) the Exchange will provide Enrollee specific and agent-specific information to Contractor regarding commissions paid, and (iv) Contractor will reimburse the Exchange for the Exchange's payment of a standard agent commission through the Exchange's offset of agent commissions owing to the Exchange from the SHOP premiums collected by the Exchange, as such offset shall be performed in accordance with the offset procedures set forth at Section 5.03 below. The commission rate payable to a general agent by the Exchange shall be established by the Exchange based on its evaluation of market data, including, pricing information submitted in connection with its rate bids and/or pursuant to other policies that shall be established by the Exchange from time to time. The Exchange will contract with multiple general agents to represent the SHOP beginning in October, 2013 and Contractor agrees to amend any of its agreements with such agents to include a standard general agent override commission for authorized general agents to assure that payments made to agents are consistent with the rate set forth in the agreement between the Exchange and such agent. The Exchange's intent is to pay market level broker and general agent commissions.
 - (ii) Incentive Compensation Program. In order to enhance consistency in sales efforts for products offered inside and outside of the Exchange, Contractor shall consider information provided by the Exchange regarding sales commissions in order to credit the agent's sale of SADPs through SHOP to the agent's sale of Contractor's policies outside the Exchange for purposes of determining agent's aggregate sales that shall be used by Contractor to determine incentive or other compensation payable by Contractor to agent. Contractor shall provide information as may reasonably be required by the Exchange from time to time to monitor Contractor's compliance with the requirements set forth in this section.

- (iii) Agent Appointments. Agents enrolling Employers in SHOP shall be appointed exclusively by the Exchange in accordance with the standards to be determined by the Exchange in accordance with applicable laws, rules and regulations.
- (iv) Agent Conduct. The Exchange shall implement policies, procedures, training and monitoring and other processes to assure that agents who sell Contractor's SADPs through SHOP will fairly and objectively represent all dental plan issuers and all products offered on the Exchange that market through agents in order to present dental plan options in a manner that minimizes steerage by presenting plan options in an unbiased manner. Such processes shall include, without limitation, practices that implement the following standards:
- (v) Agents shall receive training and certification in order to promote the offer of the broad array of potential products available to potential enrollees.
- (vi) The Exchange's appointment standards are intended to allow all qualified agents who sell for SHOP to maintain or receive an appointment; provided, however that not all qualified agents shall be required to receive an appointment to sell SADPs through the Exchange.
- (vii) Contractor shall not take any action that may restrict agents certified by the Exchange from becoming appointed by all dental plan issuers that elect to market products through an agent.

3.29 Required Notice of Contractor Changes

- (a) Contractor shall notify the Exchange in writing upon the occurrence of any of the following events:
 - (i) Contractor is in breach of any of its obligations under this Agreement;
 - (ii) Change in the majority ownership, control, or business structure of Contractor, or a material change in its agreement with its QHP partner;
 - (iii) Change in Contractor's business, partnership or corporate organization that may reasonably be expected to have a material impact on Contractor's performance of this Agreement or on the Exchange's rights under this Agreement;
 - (iv) Breach by Contractor of any term set forth in this Agreement and/or Contractor otherwise ceases to meet the requirements for a SADP, including, those set forth at and 45 C.F.R. § 156.200 et seq. (Subpart C—Qualified Health Plan Minimum Certification Standards);
 - (v) Significant changes in operations of Contractor that may reasonably be expected to significantly impair the Contractor's operation of SADPs and/or delivery of Specialized Health Care Services to Enrollees.
- (b) Except as set forth below, such notice shall be provided by Contractor promptly within ten (10) days following Contractor's knowledge of such occurrence; provided, however, (i) such notice shall be provided immediately if such occurrence may reasonably be deemed to adversely affect the quality of care or safety of Enrollees and (ii) in no event shall notice be provided by Contractor beyond the thirty (30) day period following the date of occurrence. All written notices from Contractor pursuant to this section shall contain sufficient information to permit the Exchange to evaluate the events under the same criteria that were used by the Exchange in its award of this Agreement to Contractor. Contractor agrees to provide the Exchange with such additional information as the Exchange may request. If Contractor requests confidential treatment for any information

it provides, the Exchange shall treat the information as confidential, subject to the terms of this Agreement and applicable law.

3.30 Other Financial Information In addition to financial information to be provided to the Exchange under other provisions of this Agreement or pursuant to applicable laws, rules and regulations, at the request of the Exchange, Contractor shall provide the Exchange with financial information that is (i) provided by Contractor to Health Insurance Regulators or other regulatory bodies, or (ii) reasonable and customary information that is prepared by Contractor, including, supporting information relating to Contractor's SADP Enrollees. Possible requests may include (but not be limited to), annual audited financial statements, and annual profit and loss statements.

3.31 Nondiscrimination

- (a) **Services and Benefits.** During the performance of this Agreement, Contractor shall not, and shall require Participating Providers and other subcontractors, as well as their agents and employees to not, in accordance with the Affordable Care Act Section 1557 (42 U.S.C. 18116), cause an individual to be excluded on the grounds prohibited under Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*), the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*), or section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), or subject to any other applicable State and Federal laws, from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity offered through the Exchange.
- (b) **Employment; Workplace.** Contractor shall not, and shall require Participating Providers and other subcontractors, as well as their agents and employees to not, unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including Human Immunodeficiency Virus (HIV) and Acquired Immunodeficiency Syndrome (AIDS)), mental disability, medical condition (including health impairments related to or associated with a diagnosis of cancer for which a person has been rehabilitated or cured), age (40 or over), marital status, genetic information, sexual orientation, gender identity or use of family and medical care leave. Contractor shall, and shall require Participating Providers and other subcontractors, as well as their agents and employees to, evaluate and treat employees and applicants for employment in a manner that is free from such discrimination and harassment. Contractor shall, and shall require Participating Providers and subcontractors, as well as their agents and employees to, comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900, *et seq.*) and the applicable regulations promulgated thereunder (2 CCR 7285.0, *et seq.*). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in CCR Chapter 5 of Division 4 of Title 2, including, 2, CCR Section 8103, *et seq.*, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor, shall, and shall require Participating Providers and other subcontractors to give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

3.32 Conflict of Interest; Integrity

- (a) **Conflicts of Interest.** Contractor shall, and shall require Participating Providers to, be free from any conflicts of interest with respect to Services provided under this Agreement. Contractor represents that Contractor and its personnel do not currently have, and will not have throughout the term of the Agreement, any direct or interest which may present a conflict in any manner with the performance of Services required under this Agreement. Contractor also represents that it is not aware of any conflicts of interest of any

Participating Provider with respect to laws, rules and regulations that govern referrals required for the provision of certain Health Care Services, including, Federal and State anti-kickback and anti-self referral laws, rules and regulations. Contractor shall immediately (1) identify any conflict of interest that is identified during the term of the Agreement and (2) take any necessary action to assure that any activities are not properly influenced by a conflict of interest.

- (b) Contractor shall comply with any and all other policies adopted by the Exchange regarding conflicts of interest and ethical standards, copies of which shall be made available by the Exchange for review and comment by the Contractor prior to implementation.

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

- (a) Americans with Disabilities Act. Contractor shall comply with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C. 12101, et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA, unless specifically exempted.
- (b) Drug-Free Workplace. Contractor shall comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350, et seq.).
- (c) Child Support Compliance Act. Contractor shall fully comply with all applicable State and Federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code.
- (d) Domestic Partners. Contractor shall fully comply with Public Contract Code Section 10295.3 with regard to benefits for domestic partners.
- (e) Environmental. Contractor shall comply with environmental laws, rules and regulations applicable to its operations, including, those relating to certifies compliance with the requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with Section 42460 of the Public Resources Code, relating to hazardous and solid waste.
- (f) Other Laws. Contractor shall comply with any and all other State and Federal laws, rules and regulations applicable to this Agreement and/or the operation of the Exchange and Contractor's provision of Services under this Agreement.

3.34 Contractor's Representations and Warranties

- (a) Contractor represents and warrants that neither the execution of this Agreement by Contractor, nor the acts contemplated hereby, nor compliance by Contractor with any provisions hereof will:
 - (i) Violate any provision of the charter documents of Contractor;
 - (ii) Violate any laws, rules, regulations or any judgment, decree, order, regulation or rule of any court or governmental authority applicable to Contractor; or
 - (iii) Violate, or be in conflict with, or constitute a default under, or permit the termination of, or require the consent of any person under, any agreement to which Contractor may be bound, the occurrence of which in the aggregate would

have a material adverse effect on the properties, business, prospects, earnings, assets, liabilities, or condition (financial or otherwise) of Contractor.

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

Article 4. Quality, Network Management and Delivery System Standards

4.01 Certified SADPs The parties acknowledge and agree that furthering the goals of the Exchange require Contractor to work with the other SADPs and its contracted providers to play an active role in building and supporting models of care to meet consumer and social needs for providing better care, promoting health and lowering per capita costs through improvement. Contractor agrees to work with the Exchange to develop or participate in initiatives to promote models of care that (i) target excessive costs, (ii) minimize unpredictable quality, (iii) reduce inefficiencies of the current system, and (iv) promote a culture of continuous quality and value improvement, health promotion, and the reduction of health disparities to the benefit of all Enrollees and, to the extent feasible, other oral health care consumers. In order to further the mission of the Exchange with respect to these objectives and provide the Covered Services required by Enrollees, the Exchange and Contractor shall coordinate and cooperate with respect to quality activities conducted by the Exchange in accordance with the mutually agreeable terms set forth in Section 3.02 hereof and in the Exchange's Quality, Network Management and Delivery System Standards set forth at Attachment 7 ("Quality, Network Management and Delivery System Standards").

4.02 Contractor Quality Management Program Contractor shall maintain a quality management program to review the quality of Specialized Health Care Services provided by Participating Providers and other subcontractors. Contractor's quality management program shall be subject to review by the Exchange annually to evaluate Contractor's compliance with requirements set forth in the Quality, Network Management and Delivery System Standards. Contractor shall coordinate and cooperate with the Exchange in developing the Quality, Network Management and Delivery System Standards, including (i) participating in meetings and other programs as reasonably requested from time to time by the Exchange, and (ii) providing mutually agreed upon data and other information required under the Quality, Network Management and Delivery System Standards and/or (iii) as otherwise reasonably requested by the Exchange. The parties acknowledge and agree that quality related activities contemplated under this Article 4 will be subject to and conducted in compliance with any and all applicable laws, rules and regulations including those relating to the confidentiality of medical information and will preserve all privileges set forth at Health and Safety Code 1370. Quality Improvement Strategy - Promoting Better Care, Better Health, and Lower Cost

Consistent with The Exchange's mission to promote better care, better health and lower cost as part of a Quality Improvement Strategy, Contractor agrees to:

- (a) Implement a quality assurance program in accordance with Title 28, CCR, Section 1300.70, for evaluating the appropriateness and quality of the covered services provide to members
- (b) Maintain a system of accountability for quality improvement in accordance with all applicable statutes and regulations, monitoring, evaluating and taking effective action to

address any needed improvements, as identified by The Exchange, in the quality of care delivered to members.

- (c) Work with Exchange to craft a quality improvement program that is dental-specific and tailored to the Exchange population.

Article 5. Compensation; Funding

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

- (a) **Schedule of Rates.** The Exchange and Contractor have agreed upon monthly premium rates (“Monthly Rates”) payable to Contractor as compensation for Services provided under this Agreement. The Monthly Rates for the Individual Exchange for plan year 2014 are set forth at Attachment 8 (“Monthly Rates - Individual Exchange”). The parties acknowledge and agree that the premium amounts set forth under the Monthly Rates are actuarially determined to assure that premium revenues and cost sharing contributions will provide the total dollar amount necessary to support (i) the provision of Covered Services by Contractor through its SADPs, (ii) administrative expenses and reasonable reserves required by Contractor to meet the requirements outlined in this Agreement and in accordance with applicable laws, rules and regulations, and (iii) the payment by Contractor of the Participation Fee, as further described in Section 5.03.
- (b) **Updates.** If the Term of this Agreement is longer than one year, the Monthly Rates for each subsequent year of the Agreement will be established no more frequently than annually in accordance with the procedures set forth at and Section 3.09 and Attachment 9 (“Rate Updates - Individual Exchange”).
- (c) **Collection and Remittance.**
 - (i) **Stand-Alone Dental Plans:** Contractor understands that Contractor is responsible for collection and the Enrollee is responsible for remittance of the agreed-upon premium rates to Contractor in a timely manner. Contractor understands that individual Enrollees will remit their monthly premium payments directly to Contractor, and the Exchange will not aggregate premiums. The failure by an Enrollee to timely pay premiums may result in a termination of coverage pursuant to the terms set forth at Section 3.20. Contractor further understands that the premium payment collected by Contractor includes amounts allocated to the Participation Fee due to the Exchange. The Participation Fees shall be billed by the Exchange to Contractor and payable by Contractor to the Exchange in accordance with the requirements set forth at Section 5.03.
 - (ii) **SADP as a bundled dental plan:** Contractor understands that Contractor’s QHP partner is responsible for collection and the Enrollee is responsible for remittance of the agreed-upon premium rates to Contractor’s QHP partner in a timely manner. Contractor understands that individual Enrollees will remit their monthly premium payments directly to Contractor’s QHP partner, and the Exchange will not aggregate premiums. The failure by an Enrollee to timely pay premiums may result in a termination of coverage pursuant to the terms set forth at Section 3.20 above. Contractor further understands that the premium payment collected by Contractor’s QHP partner includes amounts allocated to the Participation Fee due to the Exchange. The Participation Fees shall be billed by the Exchange to Contractor and payable by Contractor to the Exchange in accordance with the requirements set forth at Section 5.03.

- (d) Financial Consequences of Non-Payment of Premium.
- (i) Contractor is responsible for enforcement of premium payment rules at its own expense, as outlined in the terms set forth in the Evidence of Coverage regarding the failure by Enrollee to pay the premium in a timely manner as directed by the Enrollee policy agreement and in accordance with applicable laws, rules and regulations. Enforcement by Contractor shall include, but not be limited to, chargebacks, delinquency and termination actions and notices, grace period requirements and partial payment rules. Such enforcement shall be conducted in accordance with requirements set forth in Section 3.24 and consistent with applicable laws, rules and regulations.
 - (ii) In the event Contractor terminates an Enrollee's coverage in a SADP due to non-payment of premiums, loss of eligibility, fraud or misrepresentation, change in Enrollees selection of SADP, decertification of Contractor's SADP and/or as otherwise authorized under Section 3.20, Contractor must include the Health Insurance Regulator-approved appeals language in its notice of termination of coverage to the Enrollee.
 - (iii) Contractor acknowledges and agrees that applicable laws, rules and regulations, including the Affordable Care Act and implementing regulations specify a grace period for individuals who receive advance payments of the premium tax credit that applies to the SADP through the Exchange with respect to delinquent payments. Contractor agrees to abide by the requirements set forth at Section 3.20 and required under applicable laws, rules and regulations with respect to these grace periods.

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

- (a) Schedule of Rates. The rates for the SHOP plan year 2014 are set forth in Attachment 10 ("Monthly Rates - SHOP"). The parties acknowledge and agree that the premium rates for SHOP are actuarially determined to assure that premium revenues and cost sharing contributions will provide the total dollar amount necessary to support (i) the provision of Covered Services by Contractor through its SADPs, (ii) administrative expenses and reasonable reserves by Contractor to meet the requirements outlined in this Agreement and in accordance with applicable laws, rules and regulations, and (iii) the Contractor's payment of the Participation Fee to the Exchange. The Participation Fee payable with respect to Enrollees in SHOP includes a fee specified by the Exchange as necessary to support payment of agent and general agent commissions. Contractor acknowledges and agrees that any Participation Fees due to the Exchange from Contractor shall be withheld by the Exchange before passing through any premium payments received by the Exchange from Employers and Employees to Contractor in accordance with paragraph (c) of this Section 5.02.
- (b) Updates. The Monthly Rates shall be established in accordance with the procedures set forth at Section 3.09 and in Attachment 11 ("Rate Updates - SHOP"). The Exchange may authorize an update of rates no more frequently than on a quarterly basis in the SHOP, as such updates shall be determined by the Exchange in accordance with requirements and update schedules to be determined by the Exchange.
- (c) Rate Determinations. Rates will be determined for the Exchange in accordance with applicable laws, rules and regulations. Rates for an Employer will be determined by Employee ZIP Code. Rates for an Employer and all covered Employees will be determined and frozen at initial enrollment, or upon renewal, for twelve (12) months, until the next group renewal. Rates for all Employees including new Employees or Employees

with qualifying events during the Employer plan year will be determined by the prevailing rates at group enrollment.

- (d) Collection and Remittance. The Exchange agrees to perform collection and aggregation of monthly premiums with respect to Contractor's SADPs and will remit said premiums, net of (i) Participation Fees payable to the Exchange and (ii) the fee associated with agent commissions paid by the Exchange pursuant to Section 3.28(a). The Exchange's collection of premiums and remittance of net amounts to Contractor's as described in this Section shall be made on a monthly basis.
- (e) Grace Period. Contractor acknowledges and agrees that applicable laws, rules and regulations, including, the Knox-Keene Act and Insurance Code, set a grace period with respect to the delinquent payment of premiums for the small group market.

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

- (a) Contractor Allocation and Collection of Participation Fee. Contractor recognizes that the total cost of all Participation Fees for the Exchange must be collected by Contractor by spreading the cost across the premiums charged to Contractor's entire individual risk pool (both inside and outside the Exchange) for the Individual Exchange Participation Fees and across the small employer risk pool (both inside and outside the Exchange) for SHOP Participation Fees. No rate charged to an Enrollee can have a higher per member per month fee to cover this overall Participation Fee than is charged to all other enrollees of the respective risk pool.
 - (i) Individual Exchange. The Participation Fee payable to the Exchange during each month of this Agreement shall be equal to a per member per month ("PMPM") rate of \$.83 multiplied by the number of Enrollees in Contractor's SADPs for such month. The Participation Fee is based on the Exchange's estimates of the revenue required to support the transition of the Exchange to being self-sufficient beginning in 2015. The Participation Fee will be assessed by the Exchange and payable monthly by Contractor based on enrollment in Contractor's SADPs sold through the Individual Exchange in 2014.
 - (ii) SHOP. The Participation Fee payable to the Exchange during each month of this Agreement shall be equal to a per member per month ("PMPM") rate of \$.83 multiplied by the number of Enrollees in Contractor's SADPs for such month plus additional fees as necessary to pay agent commissions. This Participation fee is based on the Exchange's estimates of the revenue required to support the transition of the Exchange to being self-sufficient beginning in 2015. The Participation Fee will be assessed by the Exchange and payable monthly by Contractor based on enrollment in Contractor's SADPs sold through the SHOP Exchange in 2014.
- (b) Payment:
 - (i) Individual Exchange. Participation Fee invoices will be issued by the Exchange prospectively to Contractor on the 15th of the month for the coming month. Contractor's Participation Fee obligation will be determined by evaluating Contractor's then-current effective SADP enrollment in the Individual Exchange, and may be subject to adjustment to reflect enrollment adjustments that may occur. Participation Fee payments will be due on the 1st of the month the Participation Fee covers. For Participation Fees received after the 15th of the month in which the Participation Fee is due, the Exchange will charge, and

Contractor shall owe a 1% per month late fee on the unpaid balance as of that date. Additional rules, including but not limited to, the manner of payment, grace period, delinquency penalty, and termination due to breach will be established by the Exchange in accordance with applicable laws, rules and regulations and based on consultation with Contractor.

- (ii) SHOP. With respect to SHOP, Contractor acknowledges that (i) the Exchange is responsible for collecting premiums from Employers and Employees, and (ii) the Exchange will remit applicable Employer and Employee premiums collected by the Exchange to Contractor, net of (1) Participation Fees computed in accordance with the Participation Methodology - SHOP, and (2) agent commissions determined in accordance with the terms set forth at Section 3.28. The Exchange shall transfer funds to Contractor on a monthly basis or such other intervals as mutually agreed upon by the Exchange and Contractor and shall establish a process to resolve any disagreements on premium amounts due in a timely manner and prior to transfer of funds to Contractor as required under this Section.
- (iii) In the event that Contractor disputes the amount of Participation Fees billed or deducted by the Exchange, Contractor shall submit a written notice of such dispute to the Exchange within thirty (30) days following receipt of such bill or deduction by the Exchange. Contractor's notice will document the nature of the discrepancies, including, reconciliation of any differences identified by Contractor in enrollment or premiums collected. The Exchange will respond to Contractor within forty-five (45) days of receipt of the notice by either (i) paying the amount claimed by Contractor or (ii) providing a detailed explanation for the denial of the refund. If the Contractor still disputes the findings of the Exchange, Contractor may pursue additional remedies in accordance with Section 12.01.
- (c) Subject to the provisions of Section 10.05, Contractor agrees to a periodic audit or other examination by the Exchange or its designee regarding the computation and payment of Participation Fees. In the case of material non-compliance with Participation Fee payments, Contractor shall implement any necessary corrective action and follow up audits or examinations may be performed by the Exchange more frequently than annually to monitor Contractor's implementation of such corrective actions.

5.04 Funding Payments to Exchange Contractor acknowledges that the Exchange is required under Government Code § 100520(c) to maintain a prudent reserve as determined by the Exchange.

Article 6. Performance Measures, Penalties and Credits

6.01 Performance Measurement Standards

- (a) Contractor shall comply with the performance measurement standards set forth in Attachment 14 ("Performance Measurement Standards"). The Exchange shall conduct, or arrange for the conduct of a review of Contractor's performance under the Performance Measures. The Exchange shall be responsible for the actual and reasonable costs of the review, including, the costs of any third-party designated by the Exchange to perform such review. The review shall be in addition to any ongoing monitoring that may be performed by the Exchange with respect to the Performance Measures.
- (b) The Exchange will review results of the Contractor's Performance Measurement Standards. The parties will meet and confer on the results of the Contractor's Performance Measurement Standards. The Exchange, in its sole discretion, may use some or all of the Performance Measurement Standards set forth in Attachment 14 as part of its Recertification and Decertification process in subsequent years.

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

7.01 Term The term of this Agreement shall commence on the date on which Contractor's SADPs are certified and the Agreement is executed by all parties ("Agreement Effective Date"), and expire on [December 31, 2014] ("Expiration Date"), unless terminated earlier or extended in accordance with the provisions of this Agreement.

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

7.03 Termination

- (a) The Exchange may, by ninety (90) calendar days' written notice to Contractor, and without prejudice to any other of the Exchange remedies, terminate this Agreement for cause based on one or more of the following occurrences:
 - (i) Contractor fails to fulfill an obligation that is material to its status as a SADP and/or its performance under the Agreement;
 - (ii) Contractor no longer holds a license or certificate that is required for Contractor to perform its obligations under this Agreement and/or Contractor otherwise fails to maintain compliance with the "good standing" requirements pursuant to Section 3.02 above and which impairs Contractor's ability to provide Services under the Agreement;
 - (iii) Contractor breaches any material term, covenant, warranty, or obligation under this Agreement that is not cured or substantially cured to the reasonable satisfaction of the Exchange within forty-five (45) calendar days after receipt of notice of default from the Exchange; provided, however, that such cure period may not be required and the Exchange may terminate the Agreement immediately if the Exchange determines pursuant to subparagraph (e) below that Contractor's breach threatens the health and safety of Enrollees;
 - (iv) Contractor knowingly has a director, officer, partner, or person with a beneficial ownership of more than five percent (5%) of Contractor's equity or has an employment, consulting or other subcontractor agreement for the provision of Services under this Agreement who is, or has been: (A) excluded, debarred, or suspended from participating in any federally funded health care program, (B) suspended or debarred from participation in any state contract or procurement process, or (C) convicted of a felony or misdemeanor (or entered a plea of *nolo contendere*) related to a crime or violation involving the acquisition or dispersal of funds or delivery of Health Care Services to beneficiaries of any State or Federal health care program;
 - (v) The Exchange reasonably determines that the welfare of Enrollees is in jeopardy if this Agreement continues, as such determination shall be made in the reasonable discretion of the Exchange based on consideration of professionally recognized standards and benchmarks, requirements imposed by accreditation agencies and applicable laws, rules and regulations; or

- (vi) Contractor fails to comply with a change in laws, rules or regulations occurring during the term of this Agreement and/or does not take any and all actions that may be required to amend the Agreement and otherwise establish and document compliance with any such changes, and the Exchange reasonably determines, based on consultation with legal counsel and/or other regulators and/or other State-based or Federal health benefit exchanges, that it may be at risk of being found noncompliant with Federal or State laws, rules or regulations.
- (b) Contractor may, by ninety (90) calendar days' written notice to the Exchange, and without prejudice to any other of the remedies, terminate this Agreement for cause based on one or more of the following occurrences:
 - (i) The Exchange breaches any material term, covenant, warranty, or obligation under this Agreement that is not cured or substantially cured to the reasonable satisfaction of the Contractor within forty-five (45) calendar days after receipt of notice of default from the Exchange; or
 - (ii) The Exchange fails to comply with a change in laws, rules or regulations occurring during the term of this Agreement or does not take any and all actions that may be required to amend the Agreement and otherwise establish and document compliance with any such changes, and Contractor reasonably determines, based on consultation with legal counsel and/or other regulators and/or other State-based or Federal health benefit exchanges, that it may be at risk of being found noncompliant with Federal or State laws, rules or regulations.

7.04 Notice of Termination

- (a) If the Exchange determines, based on reliable information, that there is a substantial probability that: Contractor will be unable to continue performance under this Agreement; or, Contractor will be in material breach of this Agreement in the next thirty (30) days, then the Exchange shall have the option to demand that Contractor provide the Exchange with a reasonable assurance of performance. Upon Contractor's receipt of such a demand from the Exchange, Contractor shall provide to the Exchange a reasonable assurance of performance responsive to the Exchange's demand. If Contractor fails to provide such an assurance within ten (10) days of the Exchange's demand that demonstrates Contractor's reasonable ability to avoid such default or cure within a reasonable time period not to exceed thirty (30) days, the failure shall constitute a breach by Contractor justifying termination of the Agreement by the Exchange.
- (b) In case a party elects to terminate this Agreement in whole or in part under Section 7.03, the notifying party shall give the other party ninety (90) days written notice of termination for default, specifying the default or defaults justifying the termination. The termination shall become effective after the expiration of such notice period if the defaults specified by the notifying party in its notice remain uncured at that time; provided, however, that the Exchange may require Contractor to discontinue the provision of certain Services if the Exchange determines that the continuing provision of services may cause harm to Enrollees, Participating Providers or other stakeholders.
- (c) The Exchange shall be entitled to retain any disputed amounts that remain in the possession of the Exchange until final resolution of all claims by the parties against each other arising out of any Contractor default alleged by the Exchange.

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

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

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

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

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

- (a) Continuation and Transition of Care. Except as otherwise set forth in this Section 7.07, Contractor shall continue to provide Specialized Health Care Services to Enrollees in accordance with the terms set forth in the Agreement from and after Contractor's Non-Recertification Election up through the termination of coverage for Enrollees, as such termination of coverage shall be determined in accordance with the requirements set forth in this Section 7.07.
- (b) SHOP. In the event that Contractor continues to offer small group coverage in the State following the Notice of Non-Recertification Election, Contractor shall comply with applicable laws, rules and regulations relating to the discontinuation of a benefit package, including those set forth at Section 10713 of the Insurance Code. The termination of the Agreement shall occur upon the termination of coverage which shall be determined as follows:
 - (i) In the event that an Employer's plan year, as determined in accordance with 45 C.F.R. § 155.725, expires between the July 1 effective date of the Non-Recertification Election and the expiration of the Contract Year on December 31, Contractor shall provide coverage to Employers and Employees until the termination of the Agreement that shall be effective upon the expiration of the Employer's first plan year that commences after the Non-Recertification Election.
 - (ii) In the event that an Employer's plan year terminates between January 1 and the July 1 effective date of the Notice of Non-Recertification, Contractor shall provide coverage until the termination of the Agreement effective upon the expiration of Employer's first plan year that commences prior to the July 1 effective date of the Notice of Non-Recertification.

- (iii) In the event that an Employer's plan year expires more than ninety (90) days following the Notice of Non-Recertification Election, the Exchange shall notify Employers and Employees in a format approved by the Exchange that Contractor's SADP will not be available upon the next renewal anniversary date.
 - (iv) Contractor shall comply with other requirements of the Exchange relating to the continuation and transition of coverage following Contractor's Non-Recertification Election, including, without limitation, those relating to protocols and timing for the removal of Contractor from the listing of SADPs to be selected by Employers and Employees, the commencement of coverage for new Employers and Employees, and termination and transition of coverage.
- (c) Individual Exchange. The following provision shall apply to the Individual Exchange.
- (i) During the thirty (30) day period following the Exchange's receipt of the Non-Recertification Election, Contractor shall (i) be removed from the enrollment and eligibility assignment process, and (ii) no longer receive assignment of new Enrollees;
 - (ii) Contractor will provide coverage for Enrollees assigned to Contractor as of the date of the Non-Recertification Election if coverage commences within the sixty (60) day period following the Notice of Non-Recertification. Contractor shall provide coverage for such Enrollees until the earlier of (i) the end of the Contract Year, or (ii) the Enrollee's transition to another SADP during the Special Enrollment Period;
- (d) Communications. Contractor shall coordinate and cooperate with respect to communications to Enrollees in the Individual Exchange, Employers and Employees in SHOP and other stakeholders regarding the transition of Enrollees to another SADP;
- (e) Other Acts. Contractor shall take any further action reasonably required by the Exchange to provide Specialized Health Care Services to Enrollees and transition care following the Non-Recertification Election;
- (f) Effect of Decertification. Notwithstanding any other language set forth in this Section 7.07, the Agreement shall expire on the Expiration Date set forth in Section 7.01 in the event that the Exchange elects to decertify Contractor's SADP based on the Exchange's evaluation of Contractor's SADP during the recertification process that shall be conducted by Exchange pursuant to Section 7.02 above.

7.08 Effect of Termination

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

- (c) All duties and obligations of the Exchange and Contractor shall cease upon termination of the Agreement and the decertification of Contractor's SADPs that shall occur upon the termination of this Agreement, except as set forth below or otherwise provided in the Agreement:
- (i) Each party shall remain liable for any rights, obligations, or liabilities that have accrued or arise from activities carried on by it under this Agreement prior to the effective date of termination.
 - (ii) Any information of the other party that is in the possession of the other party will be returned promptly, or upon the request of owner of such property, destroyed using reasonable measures to protect against unauthorized access to or use of the information in connection with its destruction, following the earlier of: (i) the termination of this Agreement, (ii) receipt of a written request to return or destroy the Information Assets, or (iii) the termination of the business relationship between the Parties. If both Parties agree that return or destruction of information is not feasible or necessary, the receiving Party will continue to extend the protections outlined in this Agreement to all assets in its possession and will limit further use of that information to those purposes that make the return or destruction of the information or assets. The Exchange reserves the right to inspect the storage, processes, and destruction of any Information Assets provided under this Agreement.
- (d) Contractor shall comply with the requirements set forth at Section 7.07 above in the event that Contractor makes a Non-Recertification Election.
- (e) Contractor shall cooperate fully to effect an orderly transfer of Specialized Health Care Services to another SADP during (i) any notice period set forth at Sections 7.04, 7.06 or 7.07, and (ii) if requested by the Exchange to facilitate the transition of care and/or otherwise required under Section 7.09 below, following the termination of this Agreement. Such cooperation shall include, without limitation, the following:
- (i) Upon termination, Contractor, if offering a DHMO, shall complete the processing of all claims for benefit payments under the SADP for Specialized Health Care Services other than Capitated Services, and if offering a DPPO, shall complete the processing of all dental claims for benefit payments under Contractor's SADP for Specialized Health Care Services rendered on or before the termination date
 - (ii) Contractor will provide communications developed or otherwise approved by the Exchange, to communicate new SADP information to Enrollees and Employers in accordance with a timeline to be established by the Exchange.
 - (iii) In order to assure the proper transition of Services provided prior to, and subsequent to, termination, Contractor will forward to any new SADP the electronic and direct paper claims that are received by Contractor but which relate to Services provided by new contractor. Any such information shall be subject to compliance with applicable laws, rules and regulations and shall be sent at such time periods and in the manner requested by the Exchange for a period of up to three (3) months following the termination date.
 - (iv) Contractor shall provide customer service to support the processing of claims for Specialized Health Care Services rendered on or before the termination date for a period of two (2) months or such other longer period reasonably requested by the Exchange at a cost to be mutually agreed upon per Enrollee.

- (v) If so instructed by the Exchange in the termination notice, Contractor shall promptly discontinue the provision of Services requested by the Exchange to be discontinued as of the date requested by the Exchange.
- (vi) Contractor will perform reasonable and necessary acts requested by the Exchange and as required under applicable laws, rules and regulations, and consistent with industry standards to facilitate transfer of Specialized Health Care Services herewith to a succeeding Contractor. Contractor shall comply with requirements reasonably imposed by the Exchange relating to (i) the discontinuation of new enrollment or re-enrollment in Contractor's SADP, (ii) the transfer of Enrollee coverages to another SADP prior to the commencement date, (iii) the expiration of existing quotes and (iv) such other protocols that may reasonably be established by the Exchange.
- (vii) Contractor will reasonably cooperate with the Exchange and any successor SADP in good faith with respect to taking such actions that are reasonably determined to be the best interest of the SADP, Enrollees, and Employers.
- (viii) Contractor shall cooperate with the Exchange's conduct of an accounting of amounts paid or payable and Enrollees enrolled during the month in which termination is effective in order to assure an appropriate determination of premiums earned by and payable to Contractor for Services rendered prior to the date of termination, which shall be accomplished as follows:
 - (1) Mid-Month Termination: For a termination of this Agreement that occurs during the middle of any month, the premium for that month shall be apportioned on a pro rata basis. Contractor shall be entitled to premiums from Enrollees for the period of time prior to the date of termination and Enrollees shall be entitled to a refund of the balance of the month.
 - (2) Responsibility to Complete Contractual Obligations: Contractor is responsible for completing submission and corrections to Encounter Data for Specialized Health Care Services received by Enrollees during the period of the Agreement. Contractor is responsible for submitting any outstanding financial or other reports required for Specialized Health Care Services rendered or Claims paid during the term of the Agreement.
- (ix) Contractor shall (i) provide such other information to the Exchange, Enrollees and/or the succeeding SADP, and/or (ii) take any such further action as is required to effect an orderly transition of Enrollees to another SADP in accordance with requirements set forth under this Agreement and/or necessary to the continuity and transition of care in accordance with applicable laws, rules and regulations.

7.09 Coverage Following Termination and Decertification

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

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

Article 8. Insurance and Indemnification

8.01 Insurance Without limiting the Exchange's right to obtain indemnification or other form of remedies or relief from Contractor or other third-parties, Contractor shall, at its sole cost and expense, obtain, and, during the term of this Agreement, maintain, in full force and effect, the insurance coverage described in this Section and/or as otherwise required by law, including, without limitation, coverage required to be provided and documented pursuant to Section 1351 of the Health and Safety Code and relating to insurance coverage or self-insurance: (i) to respond to claims for damages arising out of the furnishing of Specialized Health Care Services, (ii) to protect against losses of facilities where required by the director, and (iii) to protect against workers' compensation claims arising out of work-related injuries that might be brought by the employees and staff of Contractor. All insurance shall be adequate to provide coverage against losses and liabilities attributable to the acts or omissions of Contractor in performance of this Agreement and to otherwise protect and maintain the resources necessary to fulfill Contractor's obligations under this Agreement. The minimum acceptable limits shall be as indicated below:

- (a) Commercial general liability or equivalent self-insurance covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;
- (b) Comprehensive business automobile liability (owned, hired, or non-owned vehicles used by Contractor in connection with performance of its obligations under this Agreement) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than \$1 million per accident;
- (c) Employers liability insurance covering the risks of Contractor's employees and employees' bodily injury by accident or disease with limits of not less than \$1 million per accident for bodily injury by accident and \$1 million per employee for bodily injury by disease and \$1 million disease policy limit;
- (d) Umbrella policy providing excess limits over the primary general liability, automobile liability and employer's liability policies in an amount not less than \$10 million per occurrence and in the aggregate;
- (e) Crime coverage at such levels consistent with industry standards and reasonably determined by Contractor to cover occurrences falling in the following categories: computer and funds transfer fraud; forgery; money and securities; and employee theft; and
- (f) Professional liability or errors and omissions with coverage of not less than \$1 million per claim/\$2 million general aggregate.

8.02 Workers' Compensation Contractor shall, in full compliance with State law, provide or purchase, at its sole cost and expense, and, statutory California's workers' compensation coverage which shall remain in full force and effect during the term of this Agreement.

8.03 Subcontractors Contractor shall require all subcontractors that may be authorized to provide Services on behalf of Contractor or otherwise under this Agreement to maintain insurance commensurate with the nature of such subcontractors' work and all coverage for subcontractors shall be subject to all the requirements set forth in this Agreement and applicable laws, rules and regulations. Failure of

subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

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

8.05 Coverage For professional liability and errors and omissions coverage and crime coverage, Contractor shall continue such coverage beyond the expiration or termination of this Agreement. In the event Contractor procures a claim made policy as distinguished from an occurrence policy, Contractor shall procure and maintain prior to termination of such insurance, continuing extended reporting coverage for the maximum terms provided in the policy so as to cover any incidents arising during the term of this Agreement. Contractor shall arrange for continuous insurance coverage throughout the term of this Agreement.

8.06 Indemnification

- (a) Contractor shall indemnify, defend and hold harmless the Exchange, the State, and all of the officers, trustees, agents and employees of the foregoing, from and against any and all demands, claims, actions, losses, costs, liabilities, damages or deficiencies, including interest, penalties and attorneys' fees, which
 - (i) Arise out of or are due to a breach by Contractor of any of its representations, warranties, covenants or other obligations contained in this Agreement; or
 - (ii) Are caused by or resulting from Contractor's acts or omissions constituting bad faith, willful misfeasance, negligence or reckless disregard of its duties under this Agreement or applicable laws, rules and regulations; or
 - (iii) Accrue or result to any of Contractor's subcontractors, material men, laborers or any other person, firm or entity furnishing or supplying services, material or supplies in connection with the performance of this Agreement.
- (b) The obligation to provide indemnification under this Agreement shall be contingent upon the Exchange:
 - (i) Providing Contractor with prompt reasonable written notice of any claim for which indemnification is sought,
 - (ii) allowing Contractor to control the defense and settlement of such claim; provided, however, that the Contractor 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,
 - (iii) cooperating fully with the Contractor in connection with such defense and settlement. Indemnification under this section is limited as described herein.

Article 9. Protection of Personally identifiable Data and Information Assets

9.01 Privacy and Security Requirements for Personally Identifiable Data

- (a) **HIPAA Requirements.** Contractor agrees to comply with applicable provisions of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), including the Administrative Simplification Provisions of HIPAA, as codified at 42 U.S.C. § 1320d et seq., the Health Information Technology for Economic and Clinical Health Act of 2009 (“HITECH”), and any current and future regulations promulgated under HITECH or HIPAA, all as amended from time to time and collectively referred to herein as the “HIPAA Requirements”. Contractor agrees not to use or further disclose any Protected Health Information, 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, Contractor is permitted to disclose protected health information to Exchange in its role as a health oversight entity.
- (b) **Exchange Requirements.** With respect to Contractor Exchange Functions, Contractor 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.
- (c) **California Requirements.** With respect to all provisions of information under this Agreement, Contractor 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 the Medical Information Act, the California Insurance Information and Privacy Protection Act, and the Information Practices Act, all collectively referred to as “California Requirements.”
- (d) **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 Contractor 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 Contractor to comply with the most stringent of the applicable privacy and security laws or regulations.
- (e) **Contractor Exchange Function Obligations.** The following obligations apply to Contractor Exchange Functions (and information related thereto):
 - (i) **Uses and Disclosures.** Pursuant to the terms of this Agreement, Contractor may receive from the Exchange Protected Health Information and/or Personally Identifiable Information in connection with Contractor Exchange Functions that is protected under applicable Federal and State laws and regulations. Contractor shall not use or disclose such Protected Health Information or Personally Identifiable Information obtained in connection with Contractor 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.
 - (ii) **Fair Information Practices.** Contractor shall implement reasonable and appropriate fair information practices to support the operations of the Exchange that are consistent with the Exchange Requirements and address, at a minimum:

- (1) Individual Access. Contractor 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 Contractor is unable to provide access within the time required by this subsection, Contractor may have no more than thirty (30) additional calendar days to provide the requested access. If the Contractor denies access, in whole or in part, the Contractor 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 Contractor, Contractor shall within five (5) calendar days forward such request to the Exchange and the relevant dental plan as needed.
- (2) Amendment. Contractor shall provide an individual with the right to request an amendment of inaccurate Protected Health Information and Personally Identifiable Information. Contractor 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.
- (3) Openness and Transparency. Contractor 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 except to the extent that such disclosures increase Contractor's privacy and security risk.
- (4) Choice. Contractor 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.
- (5) Limitations. Contractor 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.
- (6) Data Integrity. Contractor 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 Contractor's intended purposes, and has not been altered or destroyed in an unauthorized manner.
- (7) Safeguards. Contractor 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, Contractor 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 Contractor and its subcontractors and agents.
- f. Mitigate to the extent practicable, any harmful effect that is known to Contractor 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 Contractor or its subcontractors or agents in violation of the requirements of this Agreement or applicable privacy and security laws and regulations and agency guidance.
- g. Destroy Protected Health Information and Personally Identifiable Information in a manner consistent with applicable State and Federal laws, regulations, and agency guidance on the destruction of Protected Health Information and Personally Identifiable Information.
- h. Comply with all applicable Exchange Protection of Information policies as specified in accordance with the terms and conditions set forth herein and as detailed in Section 9.02, Protection of Information Assets, including, but not limited to, executing non-disclosure agreements and other documents required by such policies. Contractor shall also require any subcontractors and

agents to comply with all such Exchange Protection of Information policies.

- (iii) Breach Notification. Contractor 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 Contractor 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 Contractor Exchange Functions (each of which shall be referred to herein as a “Breach”). Contractor shall, without unreasonable delay, but no later than within three (3) calendar days after Contractor’s discovery of a Breach, report such Breach to the Exchange. In addition, Contractor shall, without unreasonable delay, but no later than within five (5) calendar days after Contractor’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. Any such report will be made on a form made available to Contractor, or by such other reasonable means of reporting as may be communicated to Contractor by the Exchange. Contractor shall cooperate with the Exchange in investigating the Breach and/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 State and Federal 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 Contractor or its agents or subcontractors, Contractor 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. To the extent possible, Contractor’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 Contractor 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 Contractor 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. After conducting its investigation, and within fifteen (15) calendar days, unless an extension is granted by the Exchange, Contractor shall file a complete report with the information listed above, if available. Contractor shall make all reasonable efforts to obtain the information listed above and shall provide an explanation if any information cannot be obtained. Contractor and the Exchange will cooperate in developing content for any public statements. Contractor 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 Contractor’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.

- (f) Other Obligations. The following additional obligations apply to Contractor:
- (i) Subcontractors and Agents. Contractor 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, Contractor 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 Contractor pursuant to this Agreement with respect to such Protected Health Information and Personally Identifiable Information.
 - (ii) Exchange Operations. The Exchange shall be entitled to receive de-identified patient dental information from Contractor in order to effectively oversee and administer the Plans. As used in this Subsection (f), the term “de-identified” shall have the meaning set forth in 45 C.F.R. § 164.514.
 - (iii) Records and Audit. Contractor 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 Contractor 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 Contractor’s and/or the Exchange’s compliance with HIPAA Requirements. In addition, Contractor shall provide the Exchange with information concerning its safeguards described throughout this Section and/or other information security practices as they pertain to the protection of Protected Health Information and Personally Identifiable Information, as the Exchange may from time to time request. Failure of Contractor to complete or to respond to the Exchange’s request for information within the reasonable timeframe specified by the Exchange shall constitute a material breach of this Agreement. In the event of a Breach or Security Incident related to Protected Health Information and/or Personally Identifiable Information or any use or disclosure of Protected Health Information and/or Personally Identifiable Information by Contractor in violation of the requirements of this Agreement, the Exchange will be permitted access to Contractor’s facilities in order to review policies, procedures and controls relating solely to compliance with the terms of this Agreement.
 - (iv) Electronic Transactions Rule. In conducting any electronic transaction that is subject to the Electronic Transactions Rule on behalf of any Plan, Contractor agrees to comply with all applicable requirements of the Electronic Transactions Rule set forth in 45 C.F.R. Part 162. Contractor agrees to require that any agent, including a subcontractor, of Contractor 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.
 - (v) Minimum Necessary. Contractor 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. Contractor will collect, use

and disclose Personally Identifiable Information only to the extent necessary to accomplish a specified purpose under this Agreement.

- (g) Indemnification. Contractor shall indemnify, hold harmless, and defend the Exchange from and against any and all costs (including mailing, labor, administrative costs, vendor charges, and any other costs 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 Contractor 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.
- (h) Business Associate. In instances when the Exchange acts as a Covered Entity as defined under the HIPAA Requirements, and Contractor, on behalf of the Exchange, receives, creates, transmits, and/or maintains 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”) to this Agreement shall apply to Contractor. Exchange shall notify Contractor in the manner set forth in Section 12.03 when it determines that Contractor is obligated to comply with the obligations set forth in this subsection and Attachment 15 based on the relevant circumstances.
- (i) Notice of Privacy Practices. The Exchange shall notify Contractor of any limitation(s) in its notice of privacy practices in accordance with 45 C.F.R. § 164.520, other provisions within the HIPAA Requirements, or any other applicable State and Federal laws, regulations or agency guidance, to the extent that such limitation may affect Contractor’s use or disclosure of Protected Health Information and/or Personally Identifiable Information.
- (j) Reporting Violations of Law. Contractor 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.
- (k) Survival. Notwithstanding anything to the contrary in the Agreement, the provisions of this Section 9.01 on the Protection of Personally Identifiable Information shall survive termination of the Agreement with respect to information that relates to Contractor 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.
- (l) Contract Breach. Without limiting the rights of the parties pursuant to this Agreement, if Contractor breaches its obligations under this Section, the Exchange may, at its option: (a) exercise any of its rights of access and inspection under this Agreement; (b) require Contractor to submit to a plan of monitoring and reporting, as the Exchange may determine necessary to maintain compliance with this Agreement and such plan shall be made part of this Agreement; or (c) notwithstanding any other provisions of this Agreement, after giving Contractor opportunity to cure the breach, terminate this Agreement. If Contractor 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.

9.02 Protection of Information Assets

- (a) The following terms shall be given the meaning shown:
- (i) "Information Assets" means any information, including Confidential Information, necessary to the operation of either party that is created, stored, transmitted, processed or managed on any hardware, software, network components, or any printed form or is communicated orally. "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 Contractor Exchange Functions.
 - (ii) "Confidential Information" includes, but is not limited, to any information (whether oral, written, visual or fixed in any tangible medium of expression), relating to either party's services, operations, systems, programs, inventions, techniques, suppliers, customers and prospective customers (excluding the Exchange), cost and pricing data, trade secrets, know-how, processes, plans, reports, designs and any other information of or relating to the business or either party, including Contractor's programs, but does not include information that (a) is described in the Evidence of Coverage booklets; (b) was known to the Receiving Party before it was disclosed to the Receiving Party by the Disclosing Party, (c) was or becomes available to the Receiving Party from a source other than the Disclosing Party, provided such fact is evidenced in writing and the source is not bound by a confidentiality obligation 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.
 - (iii) "Disclosing Party" means the party who sends Information Assets that it owns to the other party for the purposes outlined in this Agreement.
 - (iv) "Receiving Party" means the party who receives Information Assets owned by the other.
- (b) The Receiving Party shall hold all Information Assets of the Disclosing Party in 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.
- (c) The Receiving Party must take all reasonable and necessary steps to prevent the unauthorized disclosure, modification or destruction of the Disclosing Party's Information Assets. The Receiving Party must, at a minimum, use the same degree of care to protect the Disclosing Party's Information Assets that it uses to protect its own Information Assets.
- (d) The Receiving Party agrees not to disclose the Disclosing Party's Information Assets to anyone, except to employees or third parties who require access to the Information Assets pursuant to this Agreement, but only where such third parties have signed agreements regarding the Information Assets containing terms that are equivalent to, or stricter than, the terms of this Section, or as otherwise required by law.

- (e) In the event the Receiving Party is requested to disclose the Disclosing Party's Information Assets pursuant to a request under the California Public Records Act (PRA), a summons, subpoena or in connection with any litigation, or to comply with any law, regulation, ruling or government or public agency request, the Receiving Party shall, to the extent it may do so lawfully, give the Disclosing Party five (5) business days' 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 Contractor five (5) business days' notice to permit Contractor to consult with the Exchange prior to disclosure of any Confidential Information. This subdivision shall not apply to restrict disclosure of any information to the State or in connection with a dispute between the Exchange and Contractor or any audit or review conducted pursuant to this Agreement.
- (f) The Receiving Party shall notify the Disclosing Party in writing of any unauthorized disclosure, modification or destruction of the Disclosing Party's Information Assets by the Receiving Party, its officers, directors, employees, contractors, agents or third parties. The Receiving Party shall make this notification promptly upon becoming aware of such disclosure, modification or destruction, but in any event, not later than four (4) calendar days after becoming aware of the unauthorized disclosure, modification or destruction. After such notification, the Receiving Party agrees to cooperate reasonably, at the Receiving Party's expense, with the Disclosing Party to remedy or limit the unauthorized disclosure, modification or destruction and/or its effects.
- (g) The Receiving Party understands and agrees the Disclosing Party may suffer immediate, irreparable harm in the event the Receiving Party fails to comply with any of its obligations under this Section, that monetary damages will be inadequate to compensate the Disclosing Party for such breach and that the Disclosing Party shall have the right to enforce this section by injunctive or other equitable remedies. The provisions of this Section shall survive the expiration or termination, for any reason, of this Agreement.
- (h) To the extent that information subject to this Section on Protection of Information Assets is also subject to HIPAA Requirements, the Exchange Requirements or California Requirements in Section 9.01(b) and (c), such information shall be governed by the provisions of Section 9.01. In the event of a conflict or inconsistency between the requirements of the various applicable sections and attachments of this Agreement, including Section 9.01 and this Section 9.02, Contractor shall comply with the provisions that provide the greatest protection against access, use or disclosure.
- (i) Survival. Notwithstanding anything to the contrary in the Agreement, the provisions of this Section 9.02 on Information Assets shall survive termination of the Agreement until such time as all Information Assets provided by the Exchange to Contractor, or created, received or maintained by Contractor 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.

Article 10. Books, Records and Data Collection

10.01 Clinical Records Except with respect to any longer periods that may be required under applicable laws, rules and regulations, Contractor shall maintain, and require each Participating Provider and subcontractor to maintain, a dental record documentation system adequate to fully disclose and document the medical and dental condition of each Enrollee and the extent of dental services provided to Enrollees. Clinical records shall be retained for at least seven (7) years following the year of the final Claims payment. Except as otherwise required by State and Federal laws, rules and regulations, if an audit, litigation, research, evaluation, claim or other action involving the records has not been concluded before the end of the seven (7) year minimum retention period, the clinical records must be retained until all issues arising out of the action have been resolved. If responsibility for maintenance of dental records is delegated by Contractor to a Participating Provider or subcontractor, Contractor shall require such Participating Provider or other subcontractor to comply with the document retention requirements set forth in this Agreement and as otherwise required by applicable laws, rules and regulations.

10.02 Financial Records Except as otherwise required to be maintained for a longer period by law or this Agreement, financial records, supporting documents, statistical records and all other records pertinent to amounts paid to or by Contractor in connection with this Agreement shall be retained by Contractor for at least seven (7) years from the date of the final claims payment. Contractor shall maintain accurate books, accounts, and records and prepare all financial statements in accordance with Generally Accepted Accounting Principles, applicable laws, rules and regulations and requirements imposed by any governmental or regulatory authority having jurisdiction over Contractor. The information and reports to be provided by Contractor under this Agreement shall include, without limitation, those certain items identified in Attachment 7 Appendix 1 ("Required Reports").

- (a) Contractor shall maintain adequate data customarily maintained and reasonably necessary to properly document each of its transactions with Participating Providers, the Exchange, and Enrollees during the period this Agreement remains in force and will keep records of claims, including dental review and high dollar special audit claims, for a period of ten (10) years or for such length of time as required by federal or state law, whichever is longer. Subject to compliance with applicable laws, rules and regulations, including, those relating to confidentiality and privacy, at the end of the ten (10) year retention period, at the option of the Exchange, records shall either be transferred to the Exchange at its request or destroyed. All such records are the property of the Exchange and must be returned to the Exchange or its authorized representatives upon demand.
- (b) Contractor shall maintain historical claims data and other records and data relating to the utilization of Specialized Health Care Services by Enrollees on-line for two (2) years from date that the Agreement is terminated with respect to Specialized Health Care Services provided to Enrollees during the term of this Agreement. These records shall include, but are not limited to, the data elements necessary to produce specific reports mutually agreed upon by the Exchange and Contractor and in such form reasonably required by the Exchange that is consistent with industry standards and requirements of Health Insurance Regulators regarding statistical, financial and/or data reporting requirements, including information relating to diagnosis, treatment, amounts billed (allowed and paid), dates of service, procedure numbers, deductible, out-of-pocket and other cost sharing for each claim.

10.03 Storage Such books and records shall be kept in a secure location at the Contractor's office(s), and books and records related to this Agreement shall be available for inspection and copying by the Exchange, the Exchange representatives, and such consultants and specialists as designated by the Exchange, at any time during normal business hours as provided in Section 10.05 hereof and upon reasonable notice. Contractor shall also ensure that related books and records of Participating Providers and subcontractors shall be accurately maintained. If any inquiry, audit, investigation, litigation, claim or other action involving the records is ongoing and has not been finally concluded before the end of the seven (7) year minimum retention period, the applicable financial records must be retained until all issues arising out of the action have been resolved.

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

10.05 Examination and Audit Results

- (a) Contractor shall immediately submit to the Exchange the results of final financial, market conduct, or special audits/reviews performed by the Department of Managed Health Care, California Department of Social Services, Department of Health Care Services, US Department of Health and Human Services, and/or any other regulatory entity within the State of California that has jurisdiction where Contractor serves enrollees.
- (b) Contractor agrees to subject itself to the Exchange for audits/reviews, either by the Exchange or its designee, or the Department of General Services, the Bureau of State Audits or their designee, as they deems necessary to determine the correctness of premium rate setting, the Exchange's payments to agents based on the Contractor's report, questions pertaining to enrollee premium payments and Advance Premium Tax Credit payments and participation fee payments Contractor made to the Exchange. Contractor also agrees to all audits subject to applicable State and Federal law regarding the confidentiality of and release of confidential Protected Health Information of Enrollees.
- (c) Contractor agrees that the Exchange, the Department of General Services, the Bureau of State Audits, or their designated representative, shall, subject to applicable State and Federal law regarding the confidentiality and release of confidential Protected Health Information of Enrollees, have the right to review and to copy any records and supporting documentation 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 a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement.
- (d) Contractor agrees to take corrective actions of audit/review findings within 90 days. In the instance Contractor cannot complete the corrective action of a finding within 90 days, it will submit a status report to the Exchange stating why it cannot correct the finding within the specified time frame and proposes another date for correction. In all instance, Contractor and the Exchange will do their best to resolve an audit/review finding within 160 days. Should Contractor disagree with the Exchange's management decision on an audit/review finding, it may appeal such management decision to the Exchange Executive Director whose decision is final and binding on the parties, in term of administrative due process.

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

respect to disputes relating to claims and other matters noticed to the Exchange in the ordinary course of business pursuant to other terms and conditions set forth in this Agreement or required by law.

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

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

10.09 Electronic Commerce Contractor shall use commercially reasonable efforts, which shall include, without limitation, Contractor's development, implementation and maintenance of processes and systems consistent with industry standards, to comply with the requirements of the Exchange and applicable laws, rules and regulations relating to Contractor's participation in electronic commerce activities required under the terms of this Agreement. Contractor shall comply with service levels and system interface specifications documented by the Exchange in appropriate CalHEERS documentation and sign an appropriate Trading Partner Agreement that describes the transaction set of files needed by the CalHEERS solution.

Article 11. Intellectual Property

11.01 Warranties

- (a) Contractor represents, warrants and covenants to the best of its knowledge that:
 - (i) It has secured and will secure all rights and licenses necessary for its performance of this Agreement, including but not limited to consents, waivers, releases from all authors of or owners of any copyright interests in music or performances used, individuals, and talent (radio, television, and motion picture talent), owners of any interest in and to real estate site, locations, property, or props that may be used or shown.
 - (ii) To the best of the Contractor's knowledge, neither Contractor's performance of this Agreement, nor the exercise by either Party of the rights granted in this Agreement, nor any use, reproduction, manufacture, sale, offer to sell, import, export, modification, public and private display/performance, distribution, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor and which result directly or indirectly from this Agreement will infringe upon or violate any Intellectual Property right, non-disclosure obligation, or other proprietary or contractual right or interest of any third-party or entity now existing under the laws of, or hereafter existing or issued by, any state, the United States, or any foreign country. There is currently no actual or threatened claim by any such third party based on an alleged violation of any such right by Contractor.
 - (iii) Neither Contractor's performance nor any part of its performance will violate the right of privacy of, or constitute false or misleading advertising or a libel or slander against any person or entity, misuse of social media, or violate privacy rights.

- (iv) It has not granted and shall not grant to any person or entity any right that would or might derogate, encumber, or interfere with any of the rights granted to the Exchange in this Agreement.
 - (v) It has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
 - (vi) It has no knowledge of any outstanding claims, licenses or other charges, liens, or encumbrances of any kind or nature whatsoever that could affect in any way Contractor's performance of this agreement.
- (b) EXCEPT AS EXPRESSLY STATED ELSEWHERE IN THIS AGREEMENT, EXCHANGE AND CONTRACTOR MAKE NO WARRANTY AND EXPRESSLY DISCLAIM ANY WARRANTY, EXPRESS OR IMPLIED, THAT THEIR INTELLECTUAL PROPERTY OR THE INTELLECTUAL PROPERTY RESULTING FROM THIS AGREEMENT IS MERCHANTABLE, FIT FOR A PARTICULAR PURPOSE, OR DOES NOT INFRINGE UPON ANY PATENT, TRADEMARK, COPYRIGHT OR THE LIKE, NOW EXISTING OR SUBSEQUENTLY ISSUED.

11.02 Intellectual Property Indemnity

- (a) Subject to subsection (c) hereof, Contractor agrees to indemnify and hold the Exchange harmless from any expense, loss, damage or injury; to defend at its own expense any and all claims, suits and actions; and to pay any judgments or settlements against the Exchange to the extent they arise or are due to infringement of third-party intellectual property rights enforceable in the U.S.; misuse of third-party confidential or trade secret information; failure to obtain necessary third-party consents, waivers or releases; violation of the right of privacy or publicity; false or misleading advertising; libel or slander; or misuse of social media, by Contractor or any Contractor Intellectual Property. Contractor's indemnification obligations under this section are subject to Contractor receiving prompt notice of the claim after the Exchange becomes aware of such claim, and being given the right to control the defense of such claim. Should any Intellectual Property licensed by the Contractor to the Exchange under this Agreement become the subject of an Intellectual Property infringement claim or other claim for which Contractor is obligated to indemnify the Exchange, Contractor will promptly take steps reasonably and in good faith to preserve the Exchange's right to use the licensed Intellectual Property in accordance with this Agreement at no expense or disruption to the Exchange, except as otherwise stated in this Agreement. The Exchange shall have the right to monitor and appear through its own counsel (at Exchange's expense) in any such claim or action. In the defense or settlement of the claim, Contractor may obtain the right for the Exchange to continue using the licensed Intellectual Property; or, replace or modify the licensed Intellectual Property so that the replaced or modified Intellectual Property becomes non-infringing provided that such replacement or modification is functionally equivalent to the original licensed Intellectual Property, as its sole remedy.
- (b) Notwithstanding anything to the contrary in this Agreement, any such indemnification obligation of Contractor shall not extend to any infringement or alleged infringement to the extent that such infringement or alleged infringement resulted from (i) specific instructions to use certain Intellectual Property given to Contractor by the Exchange; (ii) the Exchange's unauthorized modification of Contractor Intellectual Property; (iii) the Exchange's use of Contractor Intellectual Property in combination with any service or product not supplied, recommended or approved by Contractor, or used by the Exchange in a manner for which it was not authorized; or (iv) Intellectual Property created or derived by the Exchange.

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

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

11.04 Ownership and Cross-Licenses

- (a) Intellectual Property Ownership. As between Contractor and the Exchange, each Party shall remain at all times the sole and exclusive owner of all right, title and interest in and to the Intellectual Property that it owned or used prior to entry into this Agreement, or that it developed in the course of performance of this Agreement. Any Intellectual Property created by either Party in the performance of this Agreement shall not be considered a “work made for hire” of the other Party, as “work made for hire” is defined in the United States Copyright Act, 17 U.S.C. § 101. Any rights not licensed to the other Party hereunder are expressly reserved exclusively by the originating Party.
- (b) License of Intellectual Property. Each Party (a “Licensor”) grants the other Party (a “Licensee”) the non-exclusive, royalty-free, paid-up, worldwide, irrevocable, right, during the term of this Agreement, to use the Licensor’s Intellectual Property solely for the purposes of this Agreement and to carry out the Party’s functions consistent with its responsibilities and authority as set forth in the enable legislation and regulations. Such licenses shall not give the Licensee any ownership interest in or rights to the Intellectual Property of the Licensor. Each Licensee agrees to abide by all third-party license and confidentiality restrictions or obligations applicable to the Licensor’s Intellectual Property of which the Licensor has notified the Licensee in writing.
- (c) Definition of Intellectual Property. For purposes of this Agreement, “Intellectual Property” means recognized protectable rights and interests such as: patents (whether or not issued), copyrights, trademarks, service marks, applications for any of the foregoing, inventions, Confidential Information, trade secrets, trade dress, domain names, logos, insignia, color combinations, slogans, moral rights, right of publicity, author’s rights, contract and licensing rights, works, mask works, industrial design rights, rights of priority, know how, design flows, methodologies, devices business processes, developments, innovations, good will and all other legal rights protecting intangible proprietary information as may exist now and/or hereafter come into existence, and all registrations, renewals and extensions, regardless of whether those rights arise under the laws of the United States, or any other state, country or jurisdiction. For the avoidance of doubt, Protected Health Information and Personally Identifiable Information are not included in the definition of Intellectual Property, and are addressed under Article 9.
- (d) Definition of Works. For purposes of the definition of Intellectual Property, “works” means all literary works, writings and printed matter including the medium by which they are recorded or reproduced, photographs, art work, pictorial and graphic representations and works of a similar nature, film, motion pictures, digital images, animation cells, and other audiovisual works including positives and negatives thereof, sound recordings, tapes, educational materials, interactive videos and any other materials or products created, produced, conceptualized and fixed in a tangible medium of expression. It includes

preliminary and final products and any materials and information developed for the purposes of producing those final products. Works do not include articles submitted to peer review or reference journals or independent research projects.

11.05 Survival The provisions set forth herein shall survive any termination or expiration of this Agreement.

Article 12. Miscellaneous

12.01 Dispute Resolution

- (a) If any dispute arising out of or in connection with this Agreement is not resolved within thirty (30) days or such other reasonable period of time determined by Contractor and the Exchange staff normally responsible for the administration of this Agreement, the parties shall attempt to resolve the dispute through the submission of the matter for executive level involvement. The executive officer of each party or his or her designated representative shall meet and confer to attempt to resolve the dispute. If the parties agree, a neutral third party mediator may be engaged to assist in dispute resolution at either the line employee level or the executive level, or both. If after expending reasonable efforts at executive level resolution of the dispute, no resolution can be reached within thirty (30) days or such other reasonable period determined by Contractor and the Exchange, then either party may seek its rights and remedies in a court of competent jurisdiction or otherwise available under this Agreement or applicable laws, rules and regulations.
- (b) Each party shall document in writing the nature of each dispute and the actions taken to resolve any disputes utilizing this dispute resolution procedure. Each party shall act in good faith to resolve such disputes. Neither party may seek its rights and remedies in court respecting any such notice of termination for default without first following the dispute resolution process stated in this section.
- (c) The Exchange and Contractor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their responsibilities under this Agreement which are not affected by the dispute.
- (d) Either party may request an expedited resolution process if such party determines that irreparable harm will be caused by following the timelines set forth in Section 12.01(a) above. If the other party does not consent to such expedited process, the requesting party will hire, at its sole cost and expense, an independent mediator to determine whether such an expedited process is necessary to avoid or reduce irreparable harm. In the event that the mediator determines that irreparable harm may result from delays required under the thirty (30) day period required under Section 12.01(a), the parties will engage in an expedite process that will require the parties to resolve the dispute within five (5) business days or such other period as mutually agreed upon by the parties.

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

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

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

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

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

For Contractor:

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

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

12.04 Amendments

- (a) By the Exchange. In the event that any law or regulation is enacted or any decision, opinion, interpretive policy or guidance of a court or governmental agency is issued (any of the foregoing, a "Change in Law") that the Exchange determines, based on its consultation with legal counsel, other regulators or other state-based or Federal health benefit exchanges: (i) affects or may affect the legality of this Agreement or any provision hereof or cause this Agreement or any provision hereof to prevent or hinder compliance with laws, rules or regulations, or (ii) adversely affects or may adversely affect the operations of the Exchange or the ability of the Exchange or Contractor to perform its respective obligations hereunder or receive the benefits intended hereunder, the Exchange may, by written notice to Contractor, amend this Agreement to comply with or otherwise address the Change in Law in a manner reasonably determined by the Exchange to carry out the original intent of the parties to the extent practical in light of such Change in Law. Such amendment shall become effective upon sixty (60) calendar days' notice, or such lesser period as required for compliance or consistency with the Change in Law or to avoid the adverse effect of the Change in Law. If Contractor objects to such amendment, it must notify the Exchange in writing within twenty (20) calendar days of receipt of notice from the Exchange. If the parties are unable to agree on an amendment within thirty (30) calendar days thereafter, the Exchange may terminate this Agreement.

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

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

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

12.07 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 the Exchange's ability to pay its obligations, acts of the State legislature, fires, floods, power failure, disabling strikes, epidemics, quarantine restrictions, and freight embargoes. However, each party shall utilize its best good faith efforts to perform under this Agreement in the event of any such occurrence.

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

12.09 Binding Effect This Agreement, any instrument or agreement executed pursuant to this Agreement, and the rights, covenants, conditions, and obligations of Contractor and the Exchange contained therein, shall be binding upon the parties and their successors, assigns, and legal representatives.

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

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

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

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

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

- (i) Applicable laws, rules and regulations;
- (ii) The terms and conditions of this Agreement, including attachments;

- (iii) Solicitation; and
- (iv) Proposal

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

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

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

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

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

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

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

12.20 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 Contractor prior to the Agreement Effective Date shall not result in additional obligations and risks to Contractor existing at the Agreement Effective Date except as otherwise mutually agreed upon by the parties.

The Exchange shall provide ninety (90) days prior written notice by letter, newsletter, electronic mail or other media of any material change (as defined below) in Exchange's policies, procedures or other operating guidance applicable to Contractor's performance of Services. The failure by Contractor to object in writing to any material change within thirty (30) days following the Contractor's receipt of such notice shall constitute Contractor's acceptance of such material change. For purposes of this Section, "material change" shall refer to any change that could reasonably be expected to have a material impact on the Contractor's compensation, Contractor's performance of Services under this Agreement, or the delivery of Specialized Health Care Services to Enrollees.

Article 13. Definitions

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

13.01 Affordable Care Act – The federal Patient Protection and Affordable Care Act, (P.L. 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (P.L. 111 -152), known collectively as the Affordable Care Act.

13.02 Agreement – This Agreement attached hereto, including attachments and documents incorporated by reference, entered into between the Exchange and Contractor.

13.03 Agreement Effective Date – The effective date of this Agreement established pursuant to Section 7.01 of this Agreement.

13.04 Bundled Dental Plan– A SADP plan which partners with a QHP to offer the pediatric dental essential health benefit. In this arrangement, there are two separate evidences of coverage or policy forms and two separate out-of-pocket maximums, though the enrollee receives only one invoice from the QHP.

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

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

13.07 CalHEERS – The California Healthcare Eligibility, Enrollment and Retention System, a project jointly sponsored by the Exchange and DHCS, with the assistance of the Office of Systems Integration to maintain processes to make the eligibility determinations regarding the Exchange and other State health care programs and assist enrollees in selection of health plan.

13.08 COBRA – The Consolidated Omnibus Budget Reconciliation Act of 1985.

13.09 Case Management – Contractor's medical utilization and oversight systems that attempt to optimize available benefit coverage and resources for Enrollees with complex and exceptional needs due to chronic or catastrophic illness or injury.

13.10 CCR – California Code of Regulations

13.11 CDI – California Department of Insurance

13.12 Confidentiality of Medical Information Act (CMIA)– The Confidentiality of Medical Information Act (California Civil Code section 56 *et seq.*) and the regulations issued pursuant thereto or as thereafter amended, to the extent applicable to operation of Contractor.

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

13.14 Contractor – The dental plan issuer contracting with the Exchange under the Agreement to operate a SADP and perform in accordance with the terms set forth in the Agreement.

13.15 Contractor Exchange Function – Any function that Contractor performs pursuant to this Agreement during which Contractor receives, creates, discloses or transmits Protected Health Information and/ or Personally Identifiable Information gathered from the Exchange, applicants, qualified individuals or enrollee in the process of assisting individuals with the purchase of health insurance coverage in SADPs or other functions under the California exchange program. Contractor is not performing a

Contractor Exchange Function where Contractor establishes an independent relationship with the applicant through the offering and/or furnishing of health insurance, and Contractor may utilize Protected Health Information and Personally Identifiable Information gathered from the Exchange that relates to applicants consistent with the terms, conditions, consents, and other permissions agreed to by the applicants in establishing the independent relationship with Contractor and as permitted by applicable laws, regulations and agency guidance.

13.16 Covered Services – The Specialized Health Care Services that are covered benefits under the applicable SADP and described in the Evidence of Coverage (EOC).

13.17 DHCS – California Department of Health Care Services

13.18 DHHS – United States Department of Health and Human Services

13.19 DMHC – California Department of Managed Health Care

13.20 Dental Health Maintenance Organization (DHMO) – A type of dental plan product that delivers dental services by requiring assignment to a primary dental care provider who is paid a capitated fee for providing all required dental services to the enrollee unless specialty care is needed. DMHOs require referral to specialty dental providers. These products do not include coverage of services provided by dental care providers outside the dental plan.

13.21 Dental Plan Issuer – Has the same meaning as that term is defined in 10 CCR 6446(b)(3).

13.22 Dental Preferred Provider Organization (DPPO) – A type of dental plan product that delivers dental services to members through a network of contracted dental care providers and includes limited coverage of out-of-network services.

13.23 Effective Date – The date on which a Plan's coverage goes into effect.

13.24 Eligibility Information – The information that establishes an Enrollee's eligibility including, but not limited to: name, age, and Social Security Number.

13.25 Eligibility File – The compilation of all Eligibility Data for an Enrollee or group of Enrollees into a single electronic format used to store or transmit the data.

13.26 Employee – A "qualified employee," as defined in 45 C.F.R. 155.20.

13.27 Employer – A "qualified employer," as defined in section 1312(f)(2) of the Act.

13.28 Encounter – Any dental service or bundle of related dental services provided to one Enrollee by one Health Care Professional within one time period. Any dental services provided must be recorded in the Enrollee's health record.

13.29 Encounter Data – Encounter information Contractor can use to demonstrate the provision of dental services to Enrollees.

13.30 Enrollee – Enrollee means each and every individual or an Employee and each of their Family Members enrolled in a SADP offered through the Exchange for the purpose of receiving health benefits. An Enrollee may be referred to as a member of a SADP who is entitled to receive covered services.

13.31 Evidence of Coverage (EOC) and Disclosure Form – The booklet(s) which describe(s) the benefits, exclusions, limitations, conditions, and the benefit levels of the applicable Plan(s).

13.32 The Exchange – The California Health Benefit Exchange, doing business as Covered California and an independent entity within the State of California.

13.33 Exclusive Provider Organization (EPO) – EPO shall have the same meaning as that term is defined in 10 CCR § 2699.6000(r).

13.34 Explanation of Benefits (EOB) – A statement sent from the Contractor to an Enrollee listing services provided, amount billed, eligible expenses and payment made by the Plan.

13.35 Explanation of Payment (EOP) – A statement sent from the Contractor to Providers detailing payments made for Health Care Services.

13.36 Family Member – An individual who is within an Enrollee's or Employee's family, as defined in 26 U.S.C. 36B (d)(1).

13.37 Grace Period – A specified time following the premium due date during which coverage remains in force and an Enrollee or Employer or other authorized person or entity may pay the premium without penalty.

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

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

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

13.41 Health Insurance Regulators – CDI and DMHC, as applicable.

13.42 Individual Exchange – The Exchange through which Qualified Individuals may purchase SADPs.

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

13.44 Information Practices Act (IPA) – The California Information Practices Act, Civil Code section 1798, *et seq.* and the regulations issued pursuant thereto or as thereafter amended.

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

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

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

13.48 Monthly Rates – The rates of compensation payable in accordance with the terms set forth at Article 5 to Contractor for Services rendered under this Agreement.

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

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

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

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

13.53 Personally Identifiable Information – Any information that identifies or describes an individual, including, but not limited to, his or her name, social security number, physical description, home address, home telephone number, education, financial matters, medical or employment history, and statements made by, or attributed to, the individual. It also includes any identifiable information collected from or about an individual for purposes of determining eligibility for enrollment in a Qualified Health Plan, determining eligibility for other insurance affordability programs, determining eligibility for exemptions from the individual responsibility provisions, or any other use of such individual's identifiable information in connection with the Exchange

13.54 Plan(s) – The SADPs the Exchange has entered into a contract with a dental plan issuer to provide hereinafter referred to as the Plan(s).

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

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

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

13.58 Premium Rate or Monthly Rate – The monthly premium due during a plan year, as agreed upon by the parties.

13.59 Primary Care Provider (PCP) – The following types of health care providers or organizations are considered Primary Care Providers and provide medical care, either through team members or as individual health care providers, which includes coordination of care as needed and as used in this Agreement: a California licensed doctor of medicine or osteopathy who is a general or family practitioner, internist, obstetrician-gynecologist, pediatrician, Health Center or a Patient-Centered Medical Home (PCMH) and who has a contract with Contractor and has assumed the primary responsibility for providing initial and primary medical care to enrollees and coordinating care for an enrollee, including facilitating access to specialists and hospital care and maintaining the continuity of Enrollee's medical care.

13.60 Proposal – The proposal submitted by Contractor in response to the Solicitation.

13.61 Protected Health Information or Personal Health Information – Protected health information, including electronic protected health information (EPersonal Health Information) as defined in HIPAA that relates to an 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.*

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

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

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

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

13.66 Quality Management and Improvement – The process for conducting outcome reviews, data analysis, policy evaluation, and technical assistance internally and externally to improve the quality of care to Enrollees.

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

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

13.69 Security Incident – The attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system.

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

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

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

13.73 Solicitation – The Exchange Dental Benefits Solicitation dated January 8, 2013 , as amended February 1, 2013 and March 29, 2013.

13.74 State – The State of California

13.75 Special Enrollment Period – The period during which a qualified individual or enrollee who experiences certain qualifying events, as defined in applicable Federal and State laws, rules and regulations, may enroll in, or change enrollment in, a SADP through the Exchange outside of the initial and annual open enrollment periods.

13.76 Stand-Alone Dental Plan or SADP A plan providing limited scope dental benefits as defined in 26 U.S.C. 9832(c)(2)(A), including the pediatric dental benefits meeting the requirements of 42 U.S.C. 18022(b)(1)(J) offered by a dental plan issuer and has been certified by the Exchange. A certified Stand-Alone Dental Plan may be offered by a QHP as a bundled dental plan.

13.77 Specialized Health Care Service Plan or SHCSP – Any person who undertakes to arrange for the provision of health care services to subscribers or enrollees, or to pay for or to reimburse any part of the cost for those services, in return for a prepaid or periodic charge paid by or on behalf of the subscribers or enrollees as defined in Health and Safety Code Section 1345 (f)

13.78 Utilization Management – Pre-service, concurrent or retrospective review which determines the Medical Necessity of hospital and skilled nursing facility admissions and selected Health Care Services provided on an outpatient basis.

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

Covered California, The California Health Benefit Exchange

Contractor: _____

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

List of Attachments

- Attachment 1 Contractor's SADP List by Region
- Attachment 2 Benefit Plan Designs
- Attachment 3 Good Standing
- Attachment 4 Service Area Listing
- Attachment 5 Provider Agreement - Standard Terms
- Attachment 6 Customer Service Standards
- Attachment 7 Exchange Quality, Network Management and Delivery System Standards
- Attachment 8 Monthly Rates - Individual Exchange
- Attachment 9 Rate Updates - Individual Exchange
- Attachment 10 Monthly Rates- SHOP
- Attachment 11 Rate Updates - SHOP
- Attachment 12 [reserved for future use]
- Attachment 13 [reserved for future use]
- Attachment 14 Performance Measurement Standards
- Attachment 15 Business Associate Agreement