STATE OF CALIFORNIA

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| --- |
| **STANDARD AGREEMENT** |
| STD 213 (Rev 06/03) | AGREEMENT NUMBER |
|  |  |
|  | REGISTRATION NUMBER |
|  |   |
| 1. This Agreement is entered into between the State Agency and the Contractor named below: |
|  | STATE AGENCY'S NAME |
|  | California Health Benefit Exchange |
|  | CONTRACTOR'S NAME |
|  |  |
| 2. | The term of this |  | through |  |  |
|  | Agreement is: |  |
|  |
| 3. The maximum amount  | **$**  |
|  of this Agreement is: |  dollars and no cents |
|  |
| 4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement. |
|  |
|  | Exhibit A – Scope of Work | Page(s) |
|  | Exhibit B – Budget Detail and Payment Provisions | Page(s) |
|  | Exhibit C – General Terms and Conditions | Page(s) |
|  | Exhibit D – Special Terms and Conditions | Page(s) |
|  | Exhibit E – Additional Provisions | Page(s) |
|  | Exhibit F – Business Associate Agreement | Page(s) |
|  |  |  |
| Items shown with an Asterisk (\*), are hereby incorporated by reference and made part of this agreement as if attached hereto.*These documents can be viewed at www.ols.dgs.ca.gov/Standard+Language*  |
|  |
| **IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.** |
| **CONTRACTOR** | ***California Department of General Services Use Only*** |
| CONTRACTOR’S NAME *(if other than an individual, state whether a corporation, partnership, etc.)* |
|  |
| BY *(Authorized Signature)*✍ | DATE SIGNED*(Do not type)* |
| PRINTED NAME AND TITLE OF PERSON SIGNING |
|  |
| ADDRESS |  |
|  |
| **STATE OF CALIFORNIA** |
| AGENCY NAME |  |
| California Health Benefit Exchange |
| BY *(Authorized Signature)*✍ | DATE SIGNED*(Do not type)* |
| PRINTED NAME AND TITLE OF PERSON SIGNING | [x]  Exempt per: |  |
| Peter V. Lee, Executive Director | **Government Code** **Section100505** |
| ADDRESS |
| 560 J Street, Suite 290, Sacramento, CA 95814 |

**SCOPE OF WORK**

1. **Purpose:**

As a central part of the Affordable Care Act in California, the California Health Benefit Exchange (Exchange) is driving historic change for individuals and the health care system overall. Expansion of Medi-Cal, affordable insurance based on an individual’s ability to pay rather than their health status, standardized and essential benefits and a wide range of products and networks have been the starting point for this historic change. In order to sustain and accelerate these critical steps in health reform, the Exchange will need to continue its role as an “active purchaser”, which requires a sophisticated analytics capacity to support a wide range of access, health equity, quality and network management decisions and policy commitments. Under all circumstances, ensuring enrollee privacy and security, consistent with HIPAA and all applicable regulations, is an essential covenant and expectation between the Exchange and its enrollees.

Tools, filters and analysis based on “metal tier”, “rating regions”, “premium subsidy level”, “race, ethnicity and other demographics” and network analysis that incorporates concepts such as “essential community provider” are all examples of the new order of expectations for Exchanges and the enrollees they serve. What is critical to the success of the Exchange and its selected partner(s) for analytics is a true spirit of partnership that accepts the limitations of current approaches and sees the new requirements as driving new competencies and strategic success for the selected organization(s). Further, while claims and encounter information from participating health plans will be a core input to the analysis needed by the Exchange, early on the selected partner(s) will distinguish themselves by developing reproducible and scalable analysis based on data that is most available, including enrollment, pharmacy claims and provider roster information. This data can serve as a rich, but non-traditional, source of information that can be used to ensure appropriate access, capacity and demographically appropriate support for enrollees well ahead of the availability of claims information.

Further, access and use of available public data sets (such as OSHPD and California vital statistics) an ability to coordinate with the existing California All Payer Claims Database (APCD), and a demonstrated ability to highlight the relationship of networks to provider payment structures and performance will further distinguish the selected analytics partner(s). Finally, a strategic commitment to identification and analysis related to health disparities and ensuring health equity must exist and be more than aspirational. The purpose of this contract is for the Exchange to acquire services to design the analytics that will support the future of the individual market, especially those supported by subsidies available through the Affordable Care Act.

1. **General Scope or Tasks:**

Final scope of work to be inserted after contract award.

1. **Exchange Project Responsibilities:**
2. Exchange project team will perform a number of roles and carry out a number of responsibilities throughout the life of this project. Specifically, during both the implementation and operations phases, the Exchange will at least:
	1. Define the goals and objectives of the Clinical and Network Analytics project and services throughout implementation and ongoing operations;
	2. Communicate the goals and objectives of the program and project to all stakeholders;
	3. Oversee the project management approach that will govern the project;
	4. Review the draft deliverables and final deliverables developed by the Contractor(s) and provide feedback and required changes for the Contractor(s) to make until the Exchange is satisfied with the resulting deliverable and outcomes;
	5. Approve final deliverables developed and revised by the Contractor(s);
	6. Provide access to Exchange management and Subject Matter Experts (SMEs) for the approval of the deliverables required to meet the goals and objectives of the project; and,
	7. Monitor Contractor(s) performance according to contractual obligations, provide improvement requests, and approve invoices.
3. **Contractor Roles and Responsibilities:**
4. The Contractor will provide the resources to complete the following activities:
	1. Work collaboratively to prepare, submit and obtain approval for individual project management approaches and plans;
	2. Work collaboratively to execute and maintain individual project management approaches and plans;
	3. Prepare and submit the draft deliverables for Exchange review and comment in accordance with the Project Work Plan;
	4. Prepare and submit the final deliverables for Exchange review and approval in accordance with the Project Work Plan;
	5. Abide by the goals, objectives and requirements contained in this contract, including all service level agreements;
	6. Confirm the understanding of the goals, objectives and requirements contained in this contract;
	7. Prepare and conduct requirements confirmation sessions with all necessary Exchange management, SMEs and other designated vendors;
	8. Prepare and submit to the Exchange for approval the project management plans for meeting the goals and objectives;
	9. Manage all activities defined in the approved project management plans;
	10. Submit for review and approval all changes to the approved project management plans;
	11. Participate with other designated vendors and partners, Exchange management and SMEs in the creation of the Clinical and Network Analytics integrated project management plan;
	12. Review and confirm roles and responsibilities that the Contractor has which are part of any other business process which are the responsibility of other contractors or the Exchange;
	13. Collaborate with the Exchange and other designated vendors to define quality measures to monitor the required service level objectives outlined in this contract;
	14. Manage all business processes using a continual improvement approach and submit improvements to the Exchange for review and approval;
	15. Comply with all laws, policies, procedures, and standards dictated by the Exchange in meeting the goals and objectives; and,
	16. Provide an estimate of the number and type of Exchange resources required.
5. **Reporting Headquarters Location:**

The Contractor is required to perform all services under this Agreement on site at the Exchange, unless directed otherwise by the project representative listed in this Exhibit. The Exchange office is located at 1601 Exposition Blvd., Sacramento, CA 95815. **Travel and expenses for reporting to this Headquarters location shall not be reimbursed.**

1. **Project Personnel:**

Key Project Personnel provided by the Contractor are to be full-time and dedicated solely to the Exchange’s account unless the Contractor provides alternative solutions that meet with the Exchange’s approval.

The Contractor shall remove Key Project Personnel, if requested by the Exchange, as well as develop a plan for the replacement of that Key Project Personnel, all within two (2) weeks of the request for removal.

1. The Contractor shall not reassign personnel assigned to the Agreement during the term of the Agreement without prior written approval of the Exchange. If a Contractor’s employee is unable to perform duties due to illness, resignation, or other factors beyond the Contractor’s control, the Contractor shall make every reasonable effort to provide suitable substitute personnel.
2. Substitute personnel shall not automatically receive the hourly rate of the individual or position being replaced. The Exchange and the Contractor shall negotiate the hourly rate of any substitute personnel to the Agreement. The hourly rate negotiated shall be dependent, in part, upon the experience and individual skills of the proposed substitute personnel. The negotiated rate cannot exceed the hourly rate stated in the Agreement.
3. **Contract Deliverables Provisions:**
4. The Contractor understands that all recommendations and contract deliverables must comply with the Patient Protection and Affordable Care Act of 2010, as well as sections 15438, 15439, and 100501 through 100521 of the Government Code; 1346.2 and 1366.6 of the Health and Safety Code; 10112.3 and 10112.4 of the Insurance Code.
5. The Contractor shall provide all deliverables within the timeframe specified and required by the State.
6. The Contractor understands and acknowledges that all deliverables must be reviewed, approved and accepted by the State.
7. The Contractor understands that any State-requested revisions to any deliverable shall be incorporated by the Contractor within seven (7) calendar days from the date in which the State provided its feedback, unless a different timeframe is required and specified by the State.
8. In the event the State requires additional refinements and modifications for any deliverable which occurs after that deliverable has been previously accepted by the State, the Contractor shall be required to make the additional revisions until the revised deliverable is accepted and approved by the State.
9. The Contractor shall be paid for services rendered under this Agreement in accordance with Exhibit B – Budget Detail and Payment Provisions.
10. **Deliverables Expectations Document (DED)**

The Contractor must develop Deliverables Expectations Documents (DEDs), in an approved Exchange form and format; project deliverables need to adhere to the information within the DED. No work will be performed by the Contractor on any deliverable until the DED has been approved in writing by the Exchange. As each project deliverable is submitted, the Contractor must include a copy of the associated DED.

1. **Controlled Correspondence:**

In order to track and document requests for decisions and/or information, and the subsequent response to those requests, the Exchange and the Contractor shall use Controlled Correspondence.

Each Controlled Correspondence document shall be signed by the Exchange Project Manager (or designee) and the Contractor Project Manager (or designee). No Controlled Correspondence document shall be effective until the signatures of both are attached to the document.

The Controlled Correspondence process may be used to document mutually agreeable operational departures from the specifications and/or changes to the specifications. Controlled Correspondence may be used to document the cost impacts of proposed changes, but Controlled Correspondence shall not be used to change pricing.

Controlled Correspondence shall not be the basis of a claim for equitable adjustment of pricing. Any changes that involve a change in pricing must be by a Work Order as outlined in the Work Order section of this Exhibit.

Controlled Correspondence documents will be maintained by both parties in ongoing logs and shall become part of the normal status reporting process.

1. **Work Orders:**

The Contractor shall perform the services specified in this Exhibit according to the procedures in this section.

1. Work Orders are the detailed descriptions of services and deliverables to be provided pursuant to this agreement and a comprehensive plan, budget, and timeline for providing each service or deliverable. **Any work performed by the Contractor or its subcontractors or consultants that is not covered by a signed approved work order is at the Contractor's own risk.**
2. The Contractor is responsible for submitting work orders for all work performed under this agreement, including any services and deliverables performed or provided in whole or in part by subcontractors or consultants.  **Subcontractors and consultants shall not submit work orders directly to the Exchange.** Work orders for work to be completed by subcontractors or consultants shall be signed and submitted by Contractor.
3. The work order shall include at a minimum the following:
	1. Agreement number, Contractor's name, date submitted, and a unique work order name and number assigned by the Contractor.
	2. A description of the target audience(s) and the strategy and objective of the services and deliverables to be provided by the Contractor under the work order.
	3. A detailed description of the services and deliverables to be provided during completion of the work order, including identification of any service(s) or deliverable(s) to be provided by a subcontractor or consultant.
	4. The time period covered by the work order and a detailed timeline for completion of the service or deliverable.
	5. A detailed work order budget based on the Contractor’s Cost Proposal, including any mark-ups to be charged (the total mark-up for media shall not exceed the Contractor’s mark-up stated in this agreement).
	6. A description and estimate of any ongoing expenses—including, but not limited to, talent fees, photography fees, storage, and interactive digital content, maintenance and updates of an existing web site—which would be necessary to maintain the deliverable and preserve its availability for use.
	7. Contractor representative's printed or typed name and signature and date signed.
	8. Blank spaces for the Exchange Program Representative’s printed or typed name and signature and date signed.
4. The Exchange Program Representative shall review the Contractor’s proposed work order and may require the Contractor to revise portions or all of the proposed work order to the satisfaction of the Exchange Program Representative.  The Exchange Program Representative and the Contractor shall consult and negotiate in good faith to reach agreement on work orders.  If agreement on a work order is not reached, the Contractor shall proceed with work orders as directed by the Exchange Program Representative.
5. The Exchange Program Representative’s signature approval of the work order shall constitute the Contractor’s authorization to provide the work order’s service or deliverable under this agreement. Approved work orders shall become a part of this agreement without need for a formal amendment, and, as such, the terms and conditions of this agreement shall apply to the services performed under these work orders. The Exchange Program Representative may require changes to approved work orders without a formal amendment to this agreement.
6. The Exchange Program Representative may terminate a work order in whole or in part for any reason and at any time, including after it has been approved. Termination shall occur if the State no longer desires the service(s) or deliverable(s), due to program changes or lack of funding, or other unforeseen circumstances. The Exchange Program Representative shall notify the Contractor in writing whenever a work order is terminated and shall negotiate in good faith with the Contractor to determine the payment for any work completed under the work order prior to termination. The notice of termination shall include the effective date of termination of the work order.
7. **Project Representatives:**

The representatives for this project, during the term of this Agreement, shall be:

|  |  |
| --- | --- |
| **State Program Representative** | **Contractor Representative:** |
| (Enter Representative’s Name)California Health Benefit Exchange1601 Exposition Blvd.Sacramento, CA 95815(916) 228-XXXX T(916) 228-XXXX F(Email Address) | (Enter Contractor’s Name)(Enter Representative’s Name)(Enter Address)(City, State and Zip)(Telephone Number)(Fax Number)(Email Address) |

**BUDGET DETAIL AND PAYMENT PROVISIONS**

(Standard contract language)

# Invoicing and Payment

1. The maximum amount payable under this agreement shall not exceed (Enter Contract Total).
2. (This language changes depending on how the Contractor will be reimbursed for services, e.g., Flat Fee or Hourly Rate.) For services satisfactorily rendered, and upon receipt and approval of the invoice(s), the State, agrees to pay the Contractor for said services at the rates listed in Exhibit B, Attachment 1 – Cost Worksheet.

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

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

California Health Benefit Exchange

Attn: Accounting

P.O. Box 13908

Sacramento, CA 95853

 Invoices shall:

1. Be prepared on agency/company letterhead. If invoices are not on agency/company letterhead, invoices must be signed by an authorized official, employee, or agent certifying that the expenditures claimed represent actual expenses for the service performed under this Agreement.
2. Bear the Contractor’s name as shown on the Agreement.
3. Identify the billing and/or performance period covered by the invoice.
4. Itemize the costs for the billing period in the same or greater level of detail as indicated in this Agreement. Only those costs and/or cost categories expressly identified as allowable in this agreement may be reimbursed.

 Any invoices submitted without the above-referenced information may be returned to the Contractor for further re-processing.

(Standard contract language)

# Federal Funding and Qualified Health Plan (QHP) Assessment Contingency Clause

If the receipt of federal grant funds and the collection of fees assessed from QHPs are collectively not sufficient to provide the funds for this program, the Exchange shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an agreement amendment to the Contractor to reflect the reduced amount.

(Standard contract language)

1. **Prompt Payment Clause**

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

(Standard contract language)

# Review

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

(Standard contract language)

1. **Final Billing**

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

(Standard contract language)

1. **Nonresident Tax Withholdings**

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

**GENERAL TERMS AND CONDITIONS**

**A. APPROVAL:**

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

**B. AMENDMENT:**

This Agreement may be amended by mutual consent of the parties. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.

**C. ASSIGNMENT:**

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

**D. AUDIT:**

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

**E. INDEMNIFICATION:**

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

* 1. Arise out of, are due to, or are alleged to arise out of or be due to, a breach by the Contractor of any of its representations, warranties, covenants or other obligations contained in this Agreement, or
	2. Are caused by or result from or are alleged to arise out of or result from, the Contractor’s acts or omissions constituting bad faith, willful misfeasance, negligence or reckless disregard of its duties under this Agreement, or
	3. Accrue or result, or are alleged to accrue or result, to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement, or
	4. Arise out of, are due to, or are alleged to arise out of or be due to, any claim or allegation of infringement, misappropriation or violation of any patent, copyright, trademark, trade secret, domain name or other intellectual property right comprising or involving any of the Subject Inventions, Prior Inventions or other Inventions provided in any way by Contractor and used, reproduced or otherwise exploited by the State in connection with any of the Agreement Programs or any Turnover thereof; or
	5. Arise out of, are due to or are alleged to arise out of or be due to, any violation of HIPAA, the HIPAA Regulations, HITECH Act, other security or privacy laws, or any other laws, by Contractor or any subcontractor or agent under Contractor's control.

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

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

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

**F. DISPUTES:**

Disputes shall be administered in accordance with Paragraph A of Exhibit D of this Agreement. During any dispute, Contractor shall continue with the responsibilities under this Agreement, unless directed otherwise by the State in writing.

**G. TERMINATION FOR CAUSE:**

The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided, unless otherwise agreed to by the State in writing. Such right of termination shall be without prejudice to any other remedies available to the State. Upon receipt of any notice terminating this Agreement, the Contractor shall immediately discontinue all activities affected, unless the notice directs otherwise, and the State may proceed with the work in any manner deemed proper by the State. In such event, the State shall pay the Contractor only the reasonable value of the services rendered, and all costs to the State shall be deducted from any sum due the Contractor. The State may, at its sole discretion, offer an opportunity to cure any breach prior to terminating for default.

**H. INDEPENDENT CONTRACTOR:**

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

**I. RECYCLING CERTIFICATION:**

The Contractor shall certify in writing under penalty of perjury the minimum, if not exact, percentage of recycled content, both post-consumer waste and secondary waste as defined in the Public Contract Code, Sections 12200, in materials, goods, or supplies offered or products used in the performance of this Agreement, regardless of whether the product meets the required recycled product percentage as defined in the Public Contract Code, Section 12209. Contractor may certify that the product contains zero recycled content.

**J. NON-DISCRIMINATION CLAUSE:**

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

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

**K. CONTRACTOR CERTIFICATION CLAUSES:**

1. STATEMENT OF COMPLIANCE:

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

2. DRUG-FREE WORKPLACE REQUIREMENTS:

Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

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

b. Establish a Drug-Free Awareness Program to inform employees about:

1) The dangers of drug abuse in the workplace;

2) The person’s or organization’s policy of maintaining a drug-free workplace;

3) Any available counseling, rehabilitation and employee assistance programs; and

4) Penalties that may be imposed upon employees for drug abuse violations.

c. Every employee who works on the proposed Agreement will:

1) Receive a copy of the company’s drug-free workplace policy statement; and

2) Agree to abide by the terms of the company’s statement as a condition of employment on the Agreement.

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

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION:

Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two (2)-year period because of Contractor’s failure to comply with an order of a Federal court which orders Contractor to comply with an order of the National Labor Relations Board. (PCC 10296) (Not applicable to public entities.)

4. DOING BUSINESS WITH THE STATE OF CALIFORNIA:

a. CONFLICT OF INTEREST:

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

1) Current State Employees (PCC 10410):

a) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.

b) No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

2) Former State Employees (PCC 10411):

a) For the two (2)-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transaction, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.

b) For the twelve (12)-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the twelve (12)-month period prior to his or her leaving state service.

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

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

b. LABOR CODE/WORKERS’ COMPENSATION:

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

c. AMERICANS WITH DISABILITIES ACT:

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

d. CONTRACTOR NAME CHANGE:

Contractor acknowledges that an amendment is required to change the Contractor’s name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

e. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:

1) Contractor acknowledges that, when agreements are to be performed in the state by corporations, the State will verify that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.

2) “Doing business” is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.

3) Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

f. RESOLUTION:

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

g. AIR OR WATER POLLUTION VIOLATION:

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

h. PAYEE DATA RECORD FORM STD 204:

Contractor acknowledges that this form must be completed by all contractors that are not another state agency or other government entity.

**L. TIMELINESS:**

Time is of the essence in this Agreement.

**M. COMPENSATION:**

The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

**N. GOVERNING LAW:**

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

**O. ANTITRUST CLAIMS:**

The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes sections set out below.

1. The Government Code Chapter on Antitrust claims contains the following definitions:

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

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

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

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

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

**P. CHILD SUPPORT COMPLIANCE ACT:**

In accordance with the Child Support Compliance Act,

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

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

**Q. UNENFORCEABLE PROVISION:**

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

**R. UNION ORGANIZING:**

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

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

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

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

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

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

**S. DOMESTIC PARTNERS:**

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

**T. LEGAL SERVICES REQUIREMENTS:**

For all contracts that provide legal services:

1. The contractor shall agree to adhere to legal cost and billing guidelines designated by the state agency.
2. The contractor shall adhere to litigation plans designated by the state agency.
3. The contractor shall adhere to case phasing of activities designated by the state agency.
4. The contractor shall submit and adhere to legal budgets as designated by the state agency.
5. The contractor shall maintain legal malpractice insurance in an amount not less than the amount designated by the state agency.
6. The contractor shall submit to legal bill audits and law firm audits if requested by the state agency. The audits may be conducted by employees or designees of the state agency or by any legal cost control providers retained by the state agency for that purpose.

**U. MINIMUM PRO-BONO CERTIFICATION:**

For all contracts over $50,000 that provide legal services, the Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the less of 30 multiplied by the number of full time attorneys in the firm’s offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State. Failure to make a good faith effort may be cause for non-renewal of a State contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

**V. PRIORITY HIRING CONSIDERATIONS FOR RECIPIENTS OF AID:**

If this Contract includes services in excess of $200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353. This requirement shall not interfere with or require a violation of a collective bargaining agreement, a federal affirmative action obligation for hiring disabled veterans of the Vietnam era, or nondiscrimination compliance laws of California and does not require the employment of unqualified recipients of aid.

**SPECIAL TERMS AND CONDITIONS**

1. **Dispute Provisions**
2. The parties shall deal in good faith and attempt to resolve disputes informally. If the dispute persists, Contractor shall submit a written dispute notice to the Exchange Project Representative within 15 calendar days after the date of the action causing the dispute. The written dispute notice shall contain the following information:
	1. the decision or issue under dispute;
	2. the reason(s) Contractor believes the decision or position taken by the Exchange is in error (if applicable, reference pertinent contract provisions);
	3. identification of all documents and substance of all oral communication which support Contractor’s position; and
	4. the dollar amount in dispute, if applicable.
3. The Exchange Project Representative, within 15 calendar days after receipt of the dispute notice, shall issue a written decision regarding the dispute. The written decision shall include the following information:
	1. a description of the dispute;
	2. a reference to pertinent contract provisions, if applicable;
	3. a statement of the factual areas of agreement or disagreement; and
	4. a statement of the representative’s decision with supporting rationale
4. If the Contractor is not satisfied with the decision of the Exchange Project Representative, the Contractor may, within 15 calendar days of the Exchange Project Representative’s decision, submit a written appeal to the Exchange Executive Director. The Executive Director shall then issue a final decision on the dispute within 30 days after receiving Contractor’s written appeal. If the Executive Director fails to render a final decision within 30 days after receipt of Contractor’s written appeal, it shall be deemed a final decision adverse to the Contractor’s contentions. The Executive Director’s final decision shall be conclusive and binding regarding the dispute unless Contractor commences an action in a court of competent jurisdiction to contest such decision within 30 days following the date of the final decision.
5. Pending the final resolution of any dispute arising under, related to or involving this Contract, Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of Goods or providing of services in accordance with the Exchange’s instructions. Contractor’s failure to diligently proceed in accordance with the Exchange’s instructions shall be considered a material breach of this Contract.
6. **Termination for Contractor’s Material Breach**

If Contractor fails to cure any material breaches of this Agreement which are described in a written Notice from the Exchange within 30 Days of such Notice, this Agreement may be terminated immediately, in whole or in part, by Notice from the Exchange. Following a termination of the Agreement for material breach of Contractor by the Exchange, the Exchange shall pay the Contractor for completed Deliverables which have been accepted by the Exchange, but the Exchange shall not pay Contractor for Deliverables which have been completed but which have not been accepted by the Exchange. The Exchange and Contractor shall agree on the amount to be paid for partially completed Deliverables, if any. The Exchange may withhold from these amounts any sum it determines to be necessary to protect the Exchange against loss because of outstanding liens or claims of former lien holders.

1. **Termination Without Cause**

This Agreement may be terminated without cause by the State upon 30 days written notice to the contractor.

1. **Debarment and Suspension**

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

1. **Certification Regarding Lobbying**

Applicable to Grants, Subgrants, Cooperative Agreements, and Contracts Exceeding $100,000 in Federal Funds.

1. For Agreements with Contractors who are State entities not under the authority of the Governor, or cities, private firms or agencies which are receiving in excess of $100,000 in federal funds from the California Health Benefit Exchange to perform services. By signing this Agreement the Contractor certifies that to the best of his or her knowledge and belief, that:
	1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into of a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.
	2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal Grant or agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
	3. The Contractor shall require that the language of this certification be included in the award documents for all covered subawards exceeding $100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.
2. This certification is a prerequisite for making or entering into this transaction and is imposed by Section 1352, Title 31, U. S. Code. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Any person who fails to file the required certification shall be subject to a civil penalty of no less than $10,000 and not more than $100,000 for each such failure.
3. **Computer Software Copyrights**

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

1. **A-133 Audit**

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

1. **Executive Compensation Reporting**

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

1. **Subcontractors**

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

1. **Insurance Requirements**

Liability and Auto Insurance

* 1. **.** 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. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the State of California and approved by the Exchange. Contractor shall include the Exchange, its Board, contractors, officers, employees, agents and volunteers, both individually and collectively, as a named insured party in Contractor’s insurance policy obtained hereunder. Such insurance shall apply as primary insurance for these insureds. If Contractor fails to buy and maintain the insurance coverage described in this Section, the Exchange may terminate this Agreement for Contractor’s Material Breach. The minimum acceptable limits shall be as indicated below with no deductible except as indicated below:
1. Comprehensive 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;
2. Comprehensive Business Automobile Liability (owned, hired, or non-owned vehicles) 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;
3. Employers Liability insurance covering the risks of Contractor’s Staff 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;
4. Third-Party Fidelity bond of not less than $5 million per occurrence;
5. Errors and Omissions Insurance with limits not less than $30 million per occurrence to be in force and effect at all times which shall indemnify the Exchange for loss which may be incurred due to human error, computer error, machine error, or problems with non-common carrier telecommunication lines owned or leased by the Contractor, or equipment problems, whether caused by negligence, error, omission, or mistake by Contractor or any employee, officer, or agents thereof;
6. Umbrella policy providing excess limits over the primary policies in an amount not less than $25 million; and
7. Professional Liability, with coverage of not less than $30 million per occurrence.

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

The Contractor shall require its subcontractors and vendors under this Agreement to maintain insurance commensurate with the nature of such subcontractors’ and vendors’ work, and further, the Contractor shall require all of its subcontractors and vendors to hold the Contractor and the Exchange harmless. The subcontractors’ and vendors’ Certificate of Insurance shall also have the Contractor, not the State, as the certificate holder and additional insured. The Contractor shall maintain certificates of insurance for all its subcontractors and vendors.

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

By signing this Agreement, the Contractor hereby warrants that it carries Workers’ Compensation Insurance on all of its employees who will be engaged in the performance of this Agreement. If staff provided by the Contractor are defined as independent contractors, this clause does not apply.

**ADDITIONAL PROVISIONS**

1. **Intellectual Property Rights**
2. All deliverables as defined in the Scope of Work originated or prepared by the Contractor pursuant to this agreement including papers, reports, charts, and other documentation, but not including Contractor’s administrative communications and records relating to this Agreement, shall upon delivery and acceptance by the California Health Benefit Exchange become the exclusive property of the California Health Benefit Exchange and may be copyrighted by the California Health Benefit Exchange.
3. All inventions, discoveries or improvements of the techniques or programs or materials developed pursuant to this agreement shall be the property of California Health Benefit Exchange.
4. This Agreement shall not preclude the Contractor from developing materials outside this Agreement, which are competitive, irrespective of their similarity to materials which might be delivered to the California Health Benefit Exchange pursuant to this Agreement. All preexisting intellectual property, copyrights, trademarks and products shall be the sole property of the Contractor.
5. **Confidentiality**

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

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

Confidential Information includes, but is not limited to, all proprietary information of the California Health Benefit Exchange including without limitation: the Deliverables; trade secrets; know-how; concepts; methods; techniques; designs; drawings; specifications; computer programs, including the State’s software; support materials; information regarding the State’s business operations and plans; client, customer, or supplier lists; pricing information; marketing plans or information; or other records concerning the State’s finances, contracts, services, or personnel.

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

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

1. **Resumes**

Resumes of personnel the Contractor will use to provide services under this Agreement are included as **Exhibit E – Attachment 1**, and made a part herein by this reference.

1. **Evaluation of Contractor**

Contractor is hereby notified that the State will evaluate the Contractor’s performance for compliance with the terms of this Agreement within 60 days of the completion of the Agreement. The evaluation shall be prepared on a “Contract/Contractor Evaluation,” STD Form 4. If the performance of the Contractor is not satisfactory, the State shall send a copy of the evaluation to the California Department of General Services, Office of Legal Services, within five working days after the completion of the evaluation. Contractor shall be notified and sent a copy of the unsatisfactory evaluation within 15 days after its completion.

1. **Review of Deliverables**

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

1. **Severability**

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

1. **Waiver of Breach**

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

1. **Contractor Limitations**

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

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

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

(b) Consulting services contracts subject to Chapter 10 (commencing with [Section 4525) of Division 5 of Title 1 of the Government Code](http://www.westlaw.com/Find/Default.wl?rs=dfa1.0&vr=2.0&DB=1000211&DocName=CAGTS4525&FindType=L).

# Future Contract Services

The services performed under this Agreement may provide a basis for future services. If directed by the Exchange at the Exchange’s sole discretion and agreed upon by the Contractor, and subject to Board approval, the parties may amend this Agreement’s Statement of Work (Exhibit A) and Budget Detail and Payment Provisions (Exhibit B) to include additional services, including services arising out of the Agreement.

# Statement of Economic Interests

The Contractor understands that the Contractor’s key staff performing work under this Agreement are required to file a Form 700 Statement of Economic Interests with the Exchange within 30 days of execution of this Agreement. If any key staff are added to work on this Agreement, such staff must file the Form 700 within 30 days of their addition.

**BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (this “Agreement”) dated December 27, 2013, between the California Health Benefit Exchange  ("Covered Entity") and ConsumerInfo.com, Inc., Held by Experian Holdings, Inc. (“Business Associate”) is entered into in accordance with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as codified at 42 USCA §1320d-d8, and its implementing regulations at 45 C.F.R. Parts 160, 162 and 164 (the "HIPAA Regulations"); and the Health Information Technology for Economic and Clinical Health Act, enacted as part of the American Recovery and Reinvestment Act of 2009, and its attendant regulations and guidance (the "HITECH Act").

**Purpose of the Agreement**

Business Associate provides certain services on behalf of Covered Entity that require the Covered Entity to disclose certain identifiable health information to Business Associate. The parties desire to enter into this Agreement to permit Business Associate to have access to such information and to require Business Associate to comply with all applicable federal and state privacy laws, including 45 C.F.R. 155.260 and the business associate requirements of HIPAA, the HIPAA Regulations, and the HITECH Act, as each may be amended from time to time in accordance with the terms and conditions set forth in this Agreement. The Parties (Business Associate and Covered Entity) hereby agree as follows:

**Definitions**: Unless otherwise specified, in this Agreement, all capitalized terms used in this Agreement not otherwise defined have the meaning established for the purposes of Title 45 parts 160 and 164 of the United States Code of Federal Regulations, as amended from time to time, and the HITECH Act.

1. **Business Associate Obligations.**
2. **Applicable Law.** The terms and conditions set forth in this Agreement shall become effective on the later of the effective date of this Agreement, April 14, 2003, or any new mandatory compliance date established for HIPAA, the HIPAA Regulations and/or the HITECH Act. The parties acknowledge and agree that the HIPAA Regulations and HITECH Act may be amended and additional guidance and/or regulations may be issued after the date of the execution of this Agreement and may affect the parties’ obligations under this Agreement (“Future Directives”). The parties agree to abide by such Future Directives as these Future Directives may affect the obligations of the parties. If Future Directives affect the obligations of the parties, then Covered Entity shall notify Business Associate of Future Directives in writing within thirty (30) days before Future Directives are effective. The notification of Business Associate by Covered Entity of Future Directives that affect the obligations of the parties related to the Business Associate relationship shall be considered amendments to this Agreement binding on both parties.
3. **Permitted Uses and Disclosures.** Business Associate shall not, and shall ensure that its directors, officers, employees, contractors and agents do not, further use or disclose patient individually identifiable health information (“Protected Health Information” or “PHI”) received from or created for the Covered Entity in any manner that would violate the HIPAA Regulations, HITECH Act or Future Directives. Business Associate agrees to abide by the HIPAA Regulations with respect to the use or disclosure of Protected Health Information it creates, receives from, maintains, or electronically transmits for the Covered Entity as if the Business Associate were considered a health care provider under the HIPAA Regulations. Business Associate further agrees that it will not use or disclose Protected Health Information beyond the purposes set forth in the Agreement. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, the Covered Entity as specified in that certain Agreement between the parties, provided that such use or disclosure would not violate HIPAA, the HIPAA Regulations or the HITECH Act if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.
4. **Compliance with Business Associate Agreement and HITECH Act.** Effective February 17, 2010, Business Associate may use and disclose PHI that is created or received by Business Associate from or on behalf of Covered Entity if such use or disclosure, respectively, complies with each applicable requirement of 45 C.F.R. § 164.504(e) and the HITECH Act. The additional requirements of Subtitle D of the HITECH Act that relate to privacy and that apply to covered entities also will apply to Business Associate and are incorporated into this Agreement by reference.
5. **Use of PHI for Administrative Activities.** Notwithstanding Section I.2 above, Business Associate may use or disclose PHI for management and administrative activities of Business Associate or to comply with the legal responsibilities of Business Associate; provided, however, the disclosure or use must be required by law or Business Associate must obtain reasonable assurances from the third party that receives the Protected Health Information that they will (i) treat the Protected Health Information confidentially and will only use or further disclose the Protected Health Information in a manner consistent with the purposes that the Protected Health Information was provided by Business Associate; and (ii) promptly report any breach of the confidentiality of the Protected Health Information to Business Associate. Provided further that, Business Associate will notify Covered Entity immediately upon receipt of a request for any disclosure of PHI required by law.
6. **Accounting**. Business Associate agrees to document disclosures of PHI and collect information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and, if required by and upon the effective date of, Section 13405(c) of the HITECH Act and related regulatory guidance.

 a) Business Associate agrees to provide to Covered Entity or an Individual upon Covered Entity's request, information collected in accordance with this Section, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and, if required by and upon the effective date of, Section 13405(c) of the HITECH Act and related regulatory guidance.

1. **Restriction.** Effective February 17, 2010, and notwithstanding 45 C.F.R. § 164.522(a)(1)(ii), Business Associate must comply with an Individual's request under 45 C.F.R. § 164.522(a)(1)(i)(A) that Business Associate restrict the disclosure of PHI of the Individual if (1) except as otherwise required by law, the disclosure is to a health plan for purposes of carrying out payment or health care operations (and is not for purposes of carrying out treatment); and (2) the PHI pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full.
2. **Fundraising.** Any written fundraising communication occurring on or after February 17, 2010 that is a health care operation shall, in a clear and conspicuous manner and consistent with guidance to be provided by the Secretary, provide an opportunity for the recipient of the communications to elect not to receive any further such communication. An election not to receive any further such communication shall be treated as a revocation of authorization under Section 45 C.F.R. § 164.508. However, no communication pursuant to this Section may be made by Business Associate without prior written authorization by Covered Entity.
3. **Sale of PHI.** Upon the effective date of Section 13405(d) of the HITECH Act , Business Associate shall not directly or indirectly receive remuneration in exchange for PHI that is created or received by Business Associate from or on behalf of Covered Entity unless: (1) pursuant to an authorization by the Individual in accordance with 45 C.F.R. §164.508 that includes a specification for whether the PHI can be further exchanged for remuneration by the entity receiving PHI of that Individual; or (2) as provided in Section 13405(d)(2) of the HITECH Act and regulations to be issued by the Secretary, upon the effective date of such regulations. However, in no instance may Business Associate receive remuneration pursuant to this Section without Covered Entity's written authorization.
4. **Marketing.** A communication occurring on or after February 17, 2010 by Business Associate that is described in the definition of marketing in 45 C.F.R. §164.501(1)(i), (ii) or (iii) for which Covered Entity receives or has received direct or indirect payment (excluding payment for treatment) in exchange for making such communication, shall not be considered a health care operation unless: (1) such communication describes only a drug or biologic that is currently being prescribed for the recipient of the communication and any payment received in exchange for making such a communication is reasonable in amount; or (2) the communication is made by Business Associate on behalf of the Covered Entity and the communication is otherwise consistent with this Agreement. However, no communication pursuant to this Section may be made by Business Associate without prior written authorization by Covered Entity.
5. **Safeguarding the Privacy of PHI.** Business Associate agrees that it shall utilize physical, administrative and technical safeguards to ensure that PHI is not used or disclosed in any manner inconsistent with this Agreement or the purposes for which Business Associate received PHI from or created PHI for the Covered Entity. Business Associate further agrees to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of any PHI that Business Associate creates, receives, maintains or transmits electronically on behalf of Covered Entity under the Agreement. Upon request, Business Associate shall provide the Covered Entity with a written description of the physical, administrative and technical safeguards adopted by Business Associate to meet its obligations under this Section.
6. **Security Safeguards.** Business Associate acknowledges that, effective February 17, 2010, 45 C.F.R. §§ 164.308, 164.310, 164.312 and 164.316 will apply to Business Associate in the same manner that such sections apply to covered entities and are incorporated into this Agreement by reference. The additional requirements of the HITECH Act that relate to security and that apply to covered entities also will apply to Business Associate and are incorporated into this Agreement by reference. Business Associate agrees to implement the technical safeguards provided in guidance issued annually by the Secretary for carrying out the obligations under the Code of Federal Regulation sections cited in this Section and the security standards in Subpart C of Part 164 of Title 45 of the Code of Federal Regulations.
7. **Breach Notification**. Business Associate agrees to implement response programs and record-keeping systems to enable Business Associate to comply with the requirements of this Section and 13402 of the HITECH Act and the regulations implementing such provisions, currently Subpart D of Part 164 of Title 45 of the Code of Federal Regulations, when Business Associate detects or becomes aware of unauthorized access to information systems or documents that contain PHI. Business Associate agrees to mitigate any effects of the inappropriate use or disclosure of PHI by Business Associate.

a) Business Associate agrees to notify Covered Entity, by facsimile or telephone, of any breach or suspected breach of its security related to areas, locations, systems, documents or electronic systems which contain unsecured PHI, including, without limitation, any Security Incident, instance of theft, fraud, deception, malfeasance, or use, access or disclosure of PHI which is inconsistent with the terms of this Agreement (an "Incident") immediately upon having reason to suspect that an Incident may have occurred, and typically prior to beginning the process of verifying that an Incident has occurred or determining the scope of any such Incident, and regardless of the potential risk of harm posed by the Incident. Notice shall be provided to the Covered Entity’s representative designated in this Agreement. Upon discovery of a breach or suspected Incident, Business Associate shall take:

* + 1. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment; and
		2. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.

b) In the event of any such Incident, Business Associate shall further provide to Covered Entity, in writing, such details concerning the Incident as Covered Entity may request, and shall cooperate with Covered Entity, its regulators and law enforcement to assist in regaining possession of such unsecured PHI and prevent its further unauthorized use, and take any necessary remedial actions as may be required by Covered Entity to prevent other or further Incidents.

c) If Covered Entity determines that it may need to notify any Individual(s) as a result of such Incident that is attributable to Business Associate's breach of its obligations under this Agreement, Business Associate shall bear all reasonable direct and indirect costs associated with such determination including, without limitation, the costs associated with providing notification to the affected Individuals, providing fraud monitoring or other services to affected Individuals and any forensic analysis required to determine the scope of the Incident.

d) In addition, Business Associate agrees to update the notice provided to Covered Entity under Section 12(a) of this Agreement of such Incident to include, to the extent possible and as soon as possible working in cooperation with Covered Entity, the identification of each Individual whose unsecured PHI has been, or is reasonably believed by Business Associate to have been accessed, acquired, used or disclosed during the Incident and any of the following information Covered Entity is required to include in its notice to the Individual pursuant to 45 C.F.R. §164.404(c):

i. A brief description of what happened, including the date of the Incident and the date of discovery of the Incident, if known;

ii. A description of the types of unsecured PHI that were involved in the Incident (e.g. Social Security number, full name, date of birth, address, diagnosis);

iii. Any steps the Individual should take to protect themselves from potential harm resulting from the Incident;

iv. A brief description of what is being done to investigate the Incident, mitigate the harm and protect against future Incidents; and

v. Contact procedures for Individuals to ask questions or learn additional information which shall include a toll-free number, an e-mail address, Web site, or postal address (provided, Subsection v is only applicable if Covered Entity specifically requests Business Associate to establish contact procedures).

e) Such additional information must be submitted to Covered Entity immediately at the time the information becomes available to Business Associate.

f) If the cause of a breach of PHI is attributable to Business Associate or its agents, subcontractors or vendors, Business Associate is responsible for all required reporting of the breach as specified in 42 U.S.C. section 17932 and its implementing regulations, including, without limitation, notification to media outlets and to the Secretary of the Department of Health & Human Services. If a breach of unsecured PHI involves more than 500 residents of the State of California or its jurisdiction, Business Associate shall notify the Secretary of the breach immediately upon discovery of the breach. If Business Associate has reason to believe that duplicate reporting of the same breach or incident may occur because its subcontractors, agents or vendors may report the breach or incident to Covered Entity in addition to Business Associate, Business Associate shall notify Covered Entity, and Covered Entity and Business Associate may take appropriate action to prevent duplicate reporting.

1. **Subcontractors and Agents of Business Associate.** Business Associate agrees to enter into written contracts with any of its agents or independent contractors (collectively, "subcontractors") who receive PHI from Business Associate or create, maintain, or transmit electronically, PHI on behalf of the Covered Entity, as a subcontractor to Business Associate, and such contracts shall obligate Business Associate’s subcontractors to abide by the same conditions and terms as are required of Business Associate under this Agreement. Upon request, Business Associate shall provide the Covered Entity with a copy of any written agreement or contract entered into by Business Associate and its subcontractors to meet the obligations of Business Associate under this Section.

a) Business Associate shall, upon knowledge of a material breach by a subcontractor of the subcontractor's obligations under its contract with Business Associate, either notify such subcontractor of such breach and provide an opportunity for subcontractor to cure the breach; or, in the event subcontractor fails to cure such breach or cure is not possible, Business Associate shall immediately terminate the contract with subcontractor.

 b) To the extent that any of Business Associate’s subcontractors will have access to any PHI that is created, maintained or transmitted electronically, Business Associate shall require such agents and subcontractors to agree to implement reasonable and appropriate safeguards to protect such electronic PHI.

1. **Availability of Information to Covered Entity and Individuals**. Business Associate agrees to provide access and information:
2. Business Associate shall provide access as may be required, and in the time and manner designated by Covered Entity (upon reasonable notice and during Business Associate’s normal business hours) to PHI in a Designated Record Set, to Covered Entity (or, as directed by Covered Entity), to an Individual, in accordance with 45 CFR section 164.524. Designated Record Set means the group of records maintained for Covered Entity that includes medical, dental and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for Covered Entity health plans; or those records used to make decisions about individuals on behalf of Covered Entity. Business Associate shall use the forms and processes developed by Covered Entity for this purpose and shall respond to requests for access to records transmitted by Covered Entity within fifteen (15) calendar days of receipt of the request by producing the records or verifying that there are none.
3. If Business Associate maintains an Electronic Health Record with PHI, and an individual requests a copy of such information in an electronic format, Business Associate shall provide such information in an electronic format to enable Covered Entity to fulfill its obligations under the HITECH Act, including but not limited to, 42 U.S.C. section 17935(e).
4. If Business Associate receives data from Covered Entity that was provided to Covered Entity by the Social Security Administration, upon request by Covered Entity, Business Associate shall provide Covered Entity with a list of all employees, contractors and agents who have access to the Social Security data, including employees, contractors and agents of its subcontractors and agents.
5. **Access by Covered Entity and Secretary of Health & Human Services.** Business Associate agrees to allow Covered Entity and the Secretary of the Department of Health & Human Services access to its books, records and internal practices with respect to the disclosure of PHI for the purposes of determining the Business Associate’s compliance with the HIPAA Privacy Regulations. If Business Associate is the subject of an audit, compliance review, or complaint investigation by the Secretary or the Office of Civil Rights, U.S. Department of Health and Human Services, that is related to the performance of its obligations pursuant to this HIPAA Business Associate Agreement, Business Associate shall notify Covered Entity and provide Covered Entity with a copy of any PHI that Business Associate provides to the Secretary or the Office of Civil Rights concurrently with providing such PHI to the Secretary. Business Associate is responsible for any civil penalties assessed due to an audit or investigation of Business Associate, in accordance with 42 U.S.C. section 17934(c).

**II. Termination of Agreement**.

1. **Termination Upon Material Breach.** The Covered Entity may, in its sole discretion, terminate the Agreement, including this Agreement, upon determining that Business Associate violated a material term of this Agreement. If the Covered Entity makes such a determination, it shall inform Business Associate in writing that the Covered Entity is exercising its right to terminate this Agreement under this Section II.1 and such termination shall take effect immediately upon Business Associate receiving such notification of termination.
2. **Reasonable Steps to Cure Material Breach**. At the Covered Entity’s sole option, the Covered Entity may, upon written notice to Business Associate, allow Business Associate an opportunity to take prompt and reasonable steps to cure any violation of any material term of this Agreement to the complete satisfaction of the Covered Entity within ten (10) days of the date of written notice to Business Associate. Business Associate shall submit written documentation acceptable to the Covered Entity of the steps taken by Business Associate to cure any material violation. If Business Associate fails to cure a material breach within the specified time period, then the Covered Entity shall be entitled to terminate this Agreement under Section II.1 above, if feasible, or, if it is not feasible to terminate this Agreement, to report Business Associate’s material breach to the Secretary of the Department of Health and Human Services.
3. **Amendment.** Covered Entity may terminate this Agreement upon thirty (30) days written notice in the event (i) Business Associate does not promptly enter into negotiations to amend this Agreement when requested by Covered Entity pursuant to Section VI of this Agreement, or (ii) Business Associate does not enter into an amendment to this Agreement providing assurances regarding the safeguarding of PHI that Covered Entity, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA, the HIPAA Regulations and/or the HITECH Act.
4. **Return of PHI to Covered Entity Upon Termination.** Upon termination of the Agreement for any reason, Business Associate shall return all PHI to the Covered Entity. The Covered Entity may request in writing that Business Associate destroy all PHI upon termination of this Agreement rather that returning PHI to the Covered Entity. If the return or destruction of PHI is not feasible upon termination of the Agreement, then Business Associate shall explain in writing, directed to the Covered Entity’s Chief Privacy Officer, why such return or destruction is not feasible. If such return or destruction is not feasible, then Business Associate agrees that it shall extend its obligations under this Agreement to protect the PHI and limit the use or disclosure of PHI to the purposes, which make return or destruction of PHI infeasible.

**III. Conflicts**. The terms and conditions of this Agreement will override and control over any conflicting term or condition of other agreements between the parties. All non-conflicting terms and conditions of such agreements shall remain in full force and effect.

1. **No Third-Party Beneficiary Rights**. Nothing express or implied in this Agreement is intended or shall be interpreted to create or confer any rights, remedies, obligations or liabilities whatsoever in any third party.
2. **Notice**. Except as otherwise provided in Section I.12(a), any notice permitted or required by this Agreement will be considered made on the date personally delivered in writing or mailed by certified mail, postage prepaid, to the other party at the address set forth in the execution portion of this Agreement.
3. **Amendment**. The Parties agree to take such action as is necessary to implement the standards, requirements, and regulations of HIPAA, the HIPAA Regulations, the HITECH Act, and other applicable laws relating to the security or confidentiality of health information. Upon Covered Entity's request, Business Associate agrees to promptly enter into negotiations with Covered Entity concerning the terms of any amendment to the Agreement consistent with the standards, requirements and regulations of HIPAA, the HIPAA Regulations, the HITECH Act or other applicable laws.
4. **Relationship of the Parties**. The Parties hereto acknowledge that Business Associate shall be and have the status of independent contractor in the performance of its obligations under the terms of this Agreement as to Covered Entity. Nothing in this Agreement shall be deemed or construed to create a joint venture or partnership between Covered Entity and Business Associate.
5. **Indemnification**.
6. **Indemnification by Business Associate**. Business Associate shall protect, indemnify and hold harmless the Covered Entity, its officers and employees from all claims, suits, actions, attorney’s fees, costs, expenses, damages, judgments or decrees arising out of the failure by Business Associate to comply with the requirements of this Agreement, the Privacy Regulations and all Future Directives; provided however that such indemnification shall be conditioned upon the Covered Entity giving prompt notice of any claims to Business Associate after discovery thereof and cooperating fully with Business Associate concerning the defense and settlement of claims.
7. **Miscellaneous.**
8. **Exception to Limitations and Exclusions**. Business Associate's obligations under this Agreement and any breach by Business Associate of the obligations in this Agreement shall not be subject to any limitations on damages suffered by Covered Entity that may be specified in any agreement, invoice, statement of work or similar document setting forth the services Business Associate is providing to Covered Entity ("Contract"). No limitation or exclusion in any Contract shall limit Covered Entity's rights to recover from Business Associate damages, losses or sanctions suffered by Covered Entity to the extent of amounts recovered by, or sanctions awarded to, a third party which are caused by Business Associate's breach of the obligations in this Agreement, regardless of how such amounts or sanctions awarded to such third party are characterized.
9. **Assistance in Litigation or Administrative Proceedings**. Business Associate shall make itself and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under this Agreement, available to Covered Entity at no cost to Covered Entity to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officers or employees based upon claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves inactions or actions by the Business Associate, except where Business Associate or its subcontractor, employee or agent is a named adverse party.
10. **Modification**. This Agreement contains the entire understanding of the parties regarding the privacy and security obligations of Business Associate under HIPAA and will be modified only by a written document signed by each party.
11. **Waiver**. The waiver by Business Associate or Covered Entity of a breach of this Agreement will not operate as a waiver of any subsequent breach. No delay in acting with regard to any breach of this Agreement will be construed to be a waiver of the breach.
12. **Assignment**. This Agreement will not be assigned by Business Associate without prior written consent of the Covered Entity. This Agreement will be for the benefit of, and binding upon, the parties hereto and their respective successors and permitted assigns.
13. **Interpretation**. The terms and conditions in this Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the HIPAA regulations and applicable state laws. The parties agree that any ambiguity in the terms and conditions of this Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act and the HIPAA regulations.
14. **Governing Law**. The interpretation and enforcement of this Agreement will be governed by the laws of the State of California. Exclusive venue shall be in Sacramento County, California.
15. **Headings**. The section headings contained in this Agreement are for reference purposes only and will not affect the meaning of this Agreement.
16. **Counterparts**. This Agreement may be executed in counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same.