

AGREEMENT NUMBER

12-E9053

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

Contra Costa County

2. The term of this Agreement is: February 1, 2013 through January 31, 2015

3. The maximum amount of this Agreement is: \$ [To be left blank until contract award] 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 – County Based Service Center Request for Offer	4 Pages
Exhibit B – Budget Detail and Payment Provisions	3 Pages
Exhibit B, Attachment 1 – Cost Worksheet	XX Page(s)
Exhibit C – General Terms and Conditions	10 Pages
Exhibit D – Special Terms and Conditions	1 Page
Exhibit E – Additional Provisions	3 Pages
Exhibit F – Performance Standards	6 Pages
Exhibit G – Business Associate Agreement	10 Pages

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

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

Contra Costa County

BY (Authorized Signature)



DATE SIGNED(Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

Federal D. Glover, Chair
Board of Supervisors

ADDRESS

Attention of Kathy Gallagher, 40 Douglas Drive, Martinez, CA 94553

STATE OF CALIFORNIA

AGENCY NAME

California Health Benefit Exchange

BY (Authorized Signature)

PRINTED NAME AND TITLE OF PERSON SIGNING

David Maxwell-Jolly, Chief Deputy Executive Director, Strategy

ADDRESS

560 J Street, Suite 290, Sacramento, CA 95814

California Department of General Services Use Only

Exempt per:
Government Code Section 100505

Exhibit A
(Public Entity Agreement)

SCOPE OF WORK

The Scope of Work consists of the following items, and by reference incorporates the work identified in Section 3, General Statement and Purpose of Work, of the HBEX12 County Service Center Request for Offer (RFO):

A. Statement of Work:

Contra Costa County (County) shall provide staff and facilities to perform work as follows:

1. Staffing

a. The County shall provide, located at the County site, a minimum of:

1. One hundred and sixty two (162) full-time equivalents (FTEs) customer service (call center) staff (90 Full Time and 90 Part Time)
2. sufficient front-line supervisor staff to meet a one-to-fifteen ratio of supervisor to call center staff (Eligibility Worker 1 and 2), e.g., twelve (12) supervisors for one hundred and eighty (180) staff. For cost purposes, the maximum the Exchange will pay for is one (1) supervisor for every fifteen (15) staff. For performance purposes, the minimum is one (1) supervisor for every eighteen (18) staff. As the Exchange Service Center operations are refined, the County shall conform to staffing ratios consistent with Exchange-operated facilities.
3. sufficient Operations management staff to provide a one-to-six (1:6) ratio of manager to supervisors. For cost purposes, the maximum the state would pay for is one (1) manager for every six (6) supervisory staff. For performance purposes, the minimum is one (1) manager for every seven (7) supervisory staff. As the Exchange Service Center operations are refined, the County shall conform to staffing ratios consistent with Exchange-operated facilities. A minimum of one (1) dedicated Operations manager is required.
4. one (1) dedicated Exchange Call Center Manager, one (1) dedicated Exchange Call Center Quality Control Manager, one (1) dedicated Exchange Call Center Training Coordinator (1) dedicated Exchange Call Center Quality Assurance Monitor. The Exchange Call Center Manager, Exchange Call Center Quality

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Control Manager, and the Exchange Call Center Training Coordinator are accountable for the site's overall performance.

5. a single, named individual designated as the site director, with dotted line accountability to the Exchange service center management. This role may be leveraged with other County organizations, however, allocation to County Service Center shall be sufficient to meet Exchange needs

The Exchange shall not restrict County hiring conditions, processes, or any other matters relative to the employment and compensation of County Exchange staff including the granting of cost of living adjustments as part of the County's collective bargaining processes.

2. Quality of Work

- a. Customer Service agents (representatives) must successfully pass the Exchange provided training curriculum, which shall include a certification of successful completion, before they are permitted to take inquiries (calls, web chats) on behalf of the Exchange Service Center.
- b. The County shall commit to a formal performance management program that measures key performance metrics on a 30/60/90 day rolling plan. Performance will be tracked by the Exchange and measured on the individual customer service agent, supervisor, manager, and site on a weekly and monthly basis. This will include but not be limited to: Average Handle Time, Schedule Adherence, Quality Adherence, and Customer Satisfaction.

3. Tasks and Responsibilities – the County shall:

- a. Conduct Customer Service agent training using, at a minimum, the Exchange provided training curriculum. The County shall provide a certificate of successful completion as evidence of completed training.
- b. Maintain call center hours of operation identical to the Exchange Service Center hours of operation.
 1. Open Enrollment periods: Monday – Saturday 8am – 8 pm.
 2. Non-Open Enrollment periods: Monday – Friday 8am – 6pm and Saturday 8am-5pm

Exhibit A
(Public Entity Agreement)

3. The County is responsible for any local work rules changes required to conform to the Exchange Service Center hours of operation.
 - c. Utilize the Service Center desktop utilized by the Exchange Service Center(s.) This is currently envisioned to be the California Healthcare Eligibility, Enrollment, and Retention System (CalHEERS), but could include other systems and technologies as determined by the Exchange. The Exchange shall provide, manage, maintain and upgrade, as may be determined necessary by the Exchange, call center technologies required to deliver multi-channel and customer service tools on the desktop (e.g., CalHEERS, Customer Relationship Management (CRM) system, Automated Call Distribution (ACD), et al) needed to take and handle customer calls for the Exchange consistent with Exchange enterprise wide standards.
 - d. Utilize CalHEERS to determine eligibility.
 - e. Adhere to the Exchange protocols and scripts (knowledgebase) for contact handling.
 - f. Provide staff on the dedicated queues with next available agent to support the Exchange Service Center. When staff are logged into the dedicated Exchange queue, they shall work on Exchange Service Center work only.
 - g. Enable the Customer Service agent to handle a call through the potential life cycle, that is, from inquiry to eligibility through to plan enrollment.
 - h. Commit one or more liaison resources to work with the centralized Exchange Command Center. The centralized Exchange Command Center provides all workforce management forecasting, schedules and monitoring across all Exchange and County service center sites.
 - i. Adhere to the Exchange Command Service Center workforce management forecast and scheduling requirements.
 - j. Work collaboratively with the Exchange Service Center staff in the development of training materials and curriculum, quality assurance programs and knowledgebase tools. This may require travel for the dedicated staff during the launch program. Travel costs will be reimbursed by the Exchange according to County Travel Reimbursement guidelines and policies.

Exhibit A
(Public Entity Agreement)

- k. Allow access to on-site operations by Exchange Service Center staff or approved consultants during normal business hours of operation for scheduled and unscheduled visits.
- l. Provide all facilities, including furniture, cubes, office supplies, etc., to perform the required work, including any facilities and resources for training. Provide wiring from the point of presence to the workstation. Facilities shall meet HIPAA security and privacy requirements. Voice and Data technology shall be provided by the Exchange, however the facility must be capable of supporting such technology.
 - 1. The facilities shall include space for up to two (2) desktop/technology support staff provided by the Exchange.
- m. Designate a single person (e.g., site director) to whom all project communications may be addressed and who has the authority to act on all aspects of the contract for services. This person will be responsible for the overall project and will be the contact for all invoice and County staffing issues.
- n. Meet the Exchange Service Center ramp-up and timelines for the July 1, 2013 pilot program and October 1, 2013 formal go live. The following key milestone dates are planned but may change:
 - 1. County Board of Supervisors approval of contract by **February 26, 2013**
 - 2. Availability of resources both technical and Subject Matter Expert (SMEs) to participate in the coordination of deployment and content development by contract effective date
 - 3. Dedicated County leadership staff hired and on board full time no later than thirty days of contract effective date.
 - 4. Service Center hiring and recruitment completed by May 2013
 - 5. Leadership staff completed with training by April 2013 and frontline completed with training by June 2013
 - 6. Successful integration of Exchange technology and completion of User Acceptance Testing by May 2013
 - 7. Staff fully engaged in pilot by July 2013
 - 8. Staff engaged with Go Live October 2013
 - 9. Leadership available to participate in “post pilot” and “post go live” process improvements to refine operational processes.
- o. The parties acknowledge that the County operates a subsidized employment program which provides employment, training, and supervision targeted to CalWORKs recipients. The goal of the subsidized employment program is to provide supervised work and

**Exhibit A
(Public Entity Agreement)**

enrichment activities leading to unsubsidized employment for CalWORKs clients.

It is agreed that CalWORKs clients may be placed at the Exchange Call Center in paid subsidized employment slots to provide Center support. CalWORKS clients placed at the Center will be covered under signed worksite agreements and will be subsidized by CalWORKs funds during the worksite placement period. CalWORKS clients placed at the Exchange call center shall not displace any current represented County employees nor violate any provisions listed in Exhibit C, Section U.

The Exchange shall not incur any direct costs related to the employment of individuals employed through the CalWORKS program.

B. Project Representatives:

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

Exchange Program Representative	County Representative:
David Maxwell-Jolly California Health Benefit Exchange 560 J Street, Suite 290 Sacramento, CA 95814 (916) 323-3625 - T (916) 323-3564 - F David.Maxwell-Jolly@hbex.ca.gov	Contra Costa County Wendy Therrian 40 Douglas Drive Martinez, CA 94553 (925) 313-1593 - T (925) 313-1575 - F Wtherria@ehsd.cccounty.us

EXHIBIT B
(Public Entity Agreement)

BUDGET DETAIL AND PAYMENT PROVISIONS

A. General Payment Provisions

- a. Payment for Customer Service Agents shall be an hourly rate. The hourly rate shall include the proportionate, distributed cost of a supervisor and other indirect and overhead costs such as benefits and administrative overhead, and non-productive time such as vacation and holidays.
- b. Payment for Customer Service Agents shall be based on the actual time logged into the dedicated Exchange ACD queue at the negotiated rate indicated in Exhibit B, Section B.1. Logged time on the Exchange ACD queue covers talk time, after call work, any idle time between calls required to achieve the service levels, and time logged to auxiliary codes such as call center and other mandatory training, team meetings, quality reviews, etc. Logged time shall not include non-working time such as sickness, vacation, lunch breaks, leaves of absence, and so forth.

Subject to Exhibit E, Section F (Force Majeure), the County is entitled to payment for customer service agents at the comparable state rate for time not logged into the Exchange ACD queue if the County's agents are prepared to log in but are unable to do so because the Exchange's technology system is inoperable, through no fault of County.

- c. Payment for Supervisors is included in the hourly rate for Customer Service Agents.
- d. Payment for the Exchange Call Center Manager, the Exchange Call Center Quality Control Manager, the Exchange Call Center Training Coordinator, and the Exchange Call Center Quality Assurance Monitor shall be a fixed per-position monthly rate comparable to the state rate. Only positions actually filled shall be reimbursed.
- e. Payment for training of customer service agents shall be based on actual hours spent in training and at the agreed upon hourly rate.
- f. No overtime costs shall be reimbursed.
- g. The Exchange shall reimburse the County for reasonable, approved start-up costs based on the County's actual cost. County shall provide line-item detail and business justification for all start-up costs.

Examples of start-up costs include:

- i. Hiring and recruiting efforts
- ii. Facility tenant improvements, including wiring from the point of presence to the workstation
- iii. Facility furnishings (offices, cubes, furniture)

EXHIBIT B
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- iv. Office equipment (other than service center technology that the Exchange is supplying), such as copiers, printers, shredders, etc.
- v. Facility required for training (if not otherwise provided by the Exchange)
- h. The Exchange shall provide, manage, maintain and upgrade, as may be determined necessary by the Exchange call center technologies required to deliver multi-channel and customer service tools on the desktop (e.g., CalHEERS, Customer Relationship Management (CRM) system, Automated Call Distribution (ACD), et al) needed to take and handle customer calls for the Exchange consistent with Exchange enterprise wide standards. The Exchange shall bear the costs to provide and manage the technologies, but shall not reimburse the County for any direct or indirect costs related to the technologies identified in this paragraph.

B. Invoicing and Payment

The maximum amount payable under this agreement shall not exceed \$25,398,647. Attachment 1 to Exhibit B – Summary Cost Worksheet summarizes all costs to be reimbursed by the Exchange.

- 1. Shown below are the amounts that cannot be exceeded for each state fiscal year.

2012/2013: \$1,891,987
2013/2014: \$14,904,734
2014/2015: \$8,601,926

- 2. For services satisfactorily rendered, and upon receipt and approval of the invoice(s), the Exchange, agrees to pay the County for said services
 - a. Staffing Services
 - i. For Customer Service agents, at a provisional hourly rate of \$46.88 per hour for hours logged onto the dedicated Exchange ACD as displayed in Attachment 3 to Exhibit B.
 - ii. For Site Director, at a provisional monthly rate of \$13,989 per month.
 - iii. For Quality Assurance Manager, at a provisional monthly rate of \$12,292 per month.
 - iv. For Training position, at a provisional monthly rate of \$11,123 per month.
 - v. For Quality position, at a provisional monthly rate of \$8,832 per month.
 - b. The County shall submit an invoice by calendar month supported by Exchange Command Center reports, which summarize satisfaction of service level agreements for the month. The invoice shall also be supported by Exchange Command Center reports summarizing the customer service agent hours logged onto the dedicated Exchange ACD and shall name the Exchange Call Center Manager, Exchange Call Center Quality Control Manager, Exchange Call Center Training Coordinator, and Exchange Call Center Quality Assurance Monitor position being invoiced. Provisional rates may be adjusted during the term of this agreement and must be documented in writing by both parties. Training
 - i. For Customer Service agents, at a provisional hourly rate of \$46.88 per hour for actual hours in Exchange training classes and other mandatory training as displayed in Attachment 3 to Exhibit B.

**EXHIBIT B
(Public Entity Agreement)**

The County shall submit an invoice by calendar month supported by documentation summarizing the agent name, class(es) taken, and the actual hours in attendance.

c. Monthly Facility Costs

- i. For monthly facility costs.

The County shall submit an invoice by calendar month for the monthly facility lease charges. Other incidental facility costs shall be supported by an invoice documenting the charge.

d. Travel

- i. For approved Start-up/Launch travel, for actual costs at the current County rate.

The County shall submit an invoice for prior calendar month costs, supported by evidence of Exchange approved travel (e.g., dates, locations, purpose, etc.) and copies of receipts for actual costs where required.

e. Start-Up

- i. For reasonable and approved start-up items, other than travel, for actual costs

The County shall submit an invoice monthly supported by brief progress which summarizes both completed tasks and work in progress toward start-up, and by evidence of actual costs.

3. Invoices shall be submitted in a format consistent with Attachment 4 to Exhibit B and 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: Accounts Payable
560 J Street, Suite 290
Sacramento, CA 95814

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

4. The state shall send payments to:

Department of Human Services
Kathy Gallagher
40 Douglas Drive
Martinez, CA 94553

C. State Budget Contingency Clause

1. The HBEX is a public state entity that does not have legislative authority to receive state general funds to support operations without a specific appropriation. The legislation that created the Exchange requires it to ensure that its establishment and operations costs do not exceed the non-General Fund revenue sources available. If revenue for the Exchange requires operational adjustments to remain self-sustaining, the California Health Benefit Exchange shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an agreement amendment to County to reflect the reduced amount. It is mutually agreed that if the revenue for the Exchange for the current year and/or any subsequent years covered under this Agreement does not provide sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, California Health Benefit Exchange shall have no liability to pay any funds

EXHIBIT B
(Public Entity Agreement)

whatsoever to County or to furnish any other considerations under this Agreement and County shall not be obligated to perform any provisions of this Agreement, under the 90-day cancellation clause in Exhibit D, Section B.

2. The California Health Benefit Exchange has the option to invalidate the Agreement under the 90-day cancellation clause in Exhibit D, Section B or to amend the Agreement to reflect any reduction of funds.

D. For Contracts With Federal Funds

1. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of Congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the Agreement were executed after that determination was made.
2. This Agreement is valid and enforceable only if sufficient funds are made available to the Exchange by the United States Government for the term of this Agreement for the purposes of this program. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress which may affect the provisions, terms, or funding of this Agreement in any manner.
3. It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.
4. The California Health Benefit Exchange has the option to invalidate the Agreement under the 90-day cancellation clause in Exhibit D, Section B or to amend the Agreement to reflect any reduction of funds.

E. 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.

F. Review

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

G. Final Billing

Invoices for services must be received by the Exchange 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."

H. 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

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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.

I. Budget Flexibility

Line items, as listed in Attachment 2 to Exhibit B, may be adjusted by the County by up to \$225,000 per fiscal year without prior approval by the Exchange and must be identified in all subsequent financial reports submitted to the Exchange. The cumulative total of all line item adjustments per fiscal year allowed without prior Exchange approval cannot exceed \$1,000,000. Line item adjustments over \$225,000 or cumulative adjustments in excess of \$1,000,000 per fiscal year will require Exchange approval. There must be a business justification for any shifts made and reported to the Exchange. Line item shifts may be requested by either the Exchange or the County in writing and must not increase or decrease the total contract amount allocated. Line item shifts in excess of the amount delegated to the County must be approved in writing by the Director of the Exchange, or his or her designee in the month prior to the month in which it would apply. If the contract is formally amended, any line item shifts agreed to by the parties must be included in the amendment.

J. Mutual Financial Reconciliation

The parties mutually understand that this Call Center is operated by the County under contract with the Exchange and that the County does not have authority to expend any County General Funds to support the operation of this Call Center.

The County's authorization to enter into this contract with the Exchange requires that the establishment and operations costs are equal to the amount of the reimbursement provided by the Exchange. The parties specifically agree that there will be at least a quarterly process as described in Exhibit D Section G (2) where all costs and reimbursements from the Exchange to the County will be reviewed and any costs under the contract or approved under Section I in this Exhibit (Budget Flexibility) that have not been previously reimbursed by the Exchange, and are not contested, will be reimbursed within 90 days of the completion of the process. Furthermore, if any costs reimbursed by the Exchange that exceeded the County's costs will be credited back to the Exchange on the next subsequent invoice.

At the termination of this contract for any cause, the parties shall reconcile costs and reimbursements and settle any outstanding undisputed amounts within 90 days.

Failure by the Exchange or County to provide such payment is a breach of this contract.

**Attachment 1 to Exhibit B
Summary Cost Worksheet**

Hourly Rates

Staff Category	Provisional Hourly Rate *	Provisional Hourly Rate *	Provisional Hourly Rate *
	FY 12/13	FY 13/14	FY 14/15
Customer Service Agents	\$46.88	\$ 46.88	\$ 46.88

* Staff Category Provisional Hourly Rate includes Salary, benefits, administrative costs, overhead costs, and associated supervisory positions.

Monthly Management Costs

Staff Category	Provisional Monthly Rate	Provisional Monthly Rate	Provisional Monthly Rate
	FY 12/13	FY 13/14	FY 14/15
Management Positions	\$46,236	\$ 46,236	\$ 46,236

Start-up Costs

Proposed Start-Up Task/Item	Units	Unit Rate	Extended Cost	Extended Cost	Total Estimated Cost
			FY 12/13	FY 13/14	
Tenant Improvements			\$526,750		\$ 526,750
Furniture			\$139,690		\$139,690
Equipment			\$30,385		\$30,385
Launch & Operations Staffing			\$320,850	\$57,253	\$378,104
Background Checks			13,398		13,398
Travel			6,790		6,790
GRAND TOTAL		\$	\$1,037,863	\$57,253	\$1,095,116

Estimated Monthly Facility Costs

Add lines as needed.

Monthly Facility Line Item	Annual Extended Cost	Annual Extended Cost	Annual Extended Cost
	FY 12/13	FY 13/14	FY 14/15
Lease Rate	\$174,588	\$715,811	\$430,083
GRAND TOTAL	\$174,588	\$715,811	\$430,083

Attachment 2 to Exhibit B - Example Line Item Reconciliation

		Fully Loaded Cost per hour
Eligibility Work I	Estimated Hourly Rate	\$ xx.xx
Eligibility Worker II	Estimated Hourly Rate	\$ xx.xx
Blended Estimated Hourly Rate		\$ xx.xx

Benefits Percentage	xx.xx%	included in hourly rate
Administrative Overhead Percentage	xx.xx%	included in hourly rate

Front Line Staff Labor Costs	# of Hours	Hourly Rate	Total Monthly Costs
Full Time EW1 & EW2 Blended Rate	Actual Hours	\$ xx.xx	\$ xx.xx
Part Time EW1 & EW2 Blended Rate	Actual Hours	\$ xx.xx	\$ xx.xx
Total Monthly Staff and Supervisors Labor Costs			\$ x,xxx,xxx

Monthly Dedicated Management	
Site Director-Division Manager	\$ xx,xxx
Quality Assurance Manager	\$ xx,xxx
Training Position	\$ xx,xxx
Quality Control Position	\$ xx,xxx
Total Monthly Dedicated Management	\$ xx,xxx

Total Monthly Labor Costs	\$ x,xxx,xxx
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Monthly Lease Cost	\$ xx,xxx
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Total Fully Loaded Monthly Costs	\$ x,xxx,xxx
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Estimated Annual Costs	\$ xx,xxx,xxx
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Example: Annual Administrative Costs

Office Supplies	\$ xx,xxx
Office Equipment	\$ xx,xxx
Ergo Evaluations	\$ xx,xxx
Ergo Evaluation Equipment	\$ xx,xxx
Neopost meter & scale (med duty-60 mo. Lease)	\$ xx,xxx
Requested Bldg Maintenance	\$ xx,xxx
Bldg Maintenance including utilities	\$ xx,xxx
Central Service Drivers	\$ xx,xxx
Benefits Admin Fee G32	\$ xx,xxx
Countywide Cost Allocation A-87	\$ xx,xxx
Liability charges from Risk Management	\$ xx,xxx
E-mail/DoIT	\$ xx,xxx
Other Post Employment Benefit Charges	\$ xx,xxx
Prorated share of General Admin Support	\$ xx,xxx
Total Operating Overhead	\$ x,xxx,xxx

Clerical Support	\$ xx,xxx
Clerical Supervisor with Bldg differential	\$ xx,xxx
Secretary for Division Manager	\$ xx,xxx
Lead Division Manager (Includes a 5% differential)	\$ xx,xxx
Dedicated HR PSA III + a clerk	\$ xx,xxx
Ongoing Direct Billed Overhead and Staff	\$ x,xxx,xxx

Total Annual Administrative Costs	\$ x,xxx,xxx
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Attachment 3 to Exhibit B - Example Calculation for Provisional Hourly Rate

	Agents	Oper Hrs Annual Hours	Billable \$ per F Hours x rate	Combined Rate
Number of billable hours for each full time agent				
Balance of Hours that need to be staff by PI staff				
TOTAL				

Full Time Average Billable Hours
 Average Hourly Rate
 Benefits
 Overhead / Admin Cost
 Fully Loaded Costs per hour

Covers vacation, sick time and paid holidays & supervisor
 Estimated benefits for all full time employees.

Part Time Average Billable Hours
 Average Hourly Rate
 Benefits
 Overhead / Admin Cost
 Fully Loaded Costs per hour

Covers vacation, sick time and paid holidays
 Estimated Benefits for all part tme employees
 * Assumes part time with payroll taxes and worker's compensation as only benefits

Example Calculation for Benefit Rate

County Classification Roles	Ratio's	Annual Base Salar # of FTE's	Total Salaries	Total Benefits	Sal & Benefits Combined FT & PT
** EW II					
EW I					
EW Supervisor					
					% of Benefits/Sal

** Includes 25% w/100 per mo. Bi-lingual differential

Example Calculation for Overhead Rate

Total Operating Overhead	
Ongoing Direct Billed OH and Staff	
Total Operating Overhead and Direct Billed Overhead Staff	
Combined Salaries for Full Time and Part T Salaries	xx.xx %

Attachment 4 to Exhibit B - Sample Monthly Invoice

To: California Health Benefits Exchange
 Attn: Accounts Payable
 560 J Street, Suite 290
 Sacramento, Ca 95814

From: Contra Costa County
 Employment and Human Services
 40 Douglas Drive
 Martinez, CA 94553

Agreement #: XX-XXXXXX
DFDA Code: 93.525
Invoice #: XX
Invoice Period: XX/XX/XXXX to XX/XX/XXXX

Provisional Hourly Rate	Provisional Hourly Rate	
	\$ xx.xx	
Benefits Percentage	xx.xx %	Included in Provisional Hourly Rate
Administrative Overhead Percentage	xx.xx %	Included in Provisional Hourly Rate
	- A -	- B - (A X B)

Front Line Staff Labor Costs	# of Hours	Provisional Hourly Rate	Total Monthly Costs
Total Monthly Eligibility I and II Staff Hours	Actual ACD Hours	\$ xx.xx	\$ xx,xxx
Monthly Dedicated Management			
Site Director-Division Manager		\$xx,xxx	
Quality Assurance Manager		xx,xxx	
Training Position		xx,xxx	
Quality Control Position		xx,xxx	
Total Monthly Dedicated Management			\$ xx,xxx
Total Monthly Labor Costs (Front Line Staff Labor + Dedicated Mgmt)			\$ xx,xxx
Monthly Lease Cost			\$ xx,xxx
Start Up Costs			
Tenant Improvements		\$xx,xxx	
Furniture		xx,xxx	
Equipment		xx,xxx	
Launch & Operations Staffing		xx,xxx	
Total Start Up Costs			\$ xxx,xxx
Invoice Total:			\$ x,xxx,xxx

Signed:

 Name of Authorized County Representative Date
 Title

EXHIBIT C (Public Entity Agreement)

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 County, either in whole or in part, without the consent of the Exchange in the form of a formal written amendment.

D. AUDIT:

County agrees that the awarding department (“the Exchange”) and the Bureau of State Audits, or their designated representatives, shall have the right to review and to copy any records and supporting documentation directly pertaining to the performance of this Agreement. County agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. County 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, County agrees to include the same right of the Exchange to audit records and interview staff in any subcontract related to performance of this Agreement. (GC 8546.7, PCC 10115 et seq., CCR Title 2, Section 1896).

E. INDEMNIFICATION:

If a legal action or proceeding is instituted against the State, related to County’s performance under this Agreement, County will indemnify the State from and against the County’s share of liability for any damage, injury or death of or to any person or the property of any person, including attorneys fees, that a court determines is directly attributable to the willful misconduct or the negligent acts, errors or omissions of the County its officers or employees in carrying out its responsibilities under this Agreement. County’s obligations under this section are subject to the limitation that, under no circumstance shall County have any liability to State or to any other person or entity not a party to this Agreement, for consequential or special damages, or for any claims, causes of action or damages based on loss of use, revenue, profits or business opportunities (collectively referred to herein as “Consequential Damages”).

EXHIBIT C (Public Entity Agreement)

F. DISPUTES:

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

G. INDEPENDENT CONTRACTOR:

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

H. RECYCLING CERTIFICATION:

The County shall certify in writing under penalty of perjury, 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. County may certify that the product contains zero recycled content.

I. NON-DISCRIMINATION CLAUSE:

During the performance of this Agreement, County 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. County 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 County 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. County 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.

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

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J. CERTIFICATION CLAUSES:

1. DRUG-FREE WORKPLACE REQUIREMENTS:

County 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 this contract will:
 - 1) Receive a copy of the County's drug-free workplace policy statement; and
 - 2) Agree to abide by the terms of the County'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 County may be ineligible for award of any future Exchange agreements if the Exchange determines that any of the following has occurred: (1) the County has made false certification, or violated the certification by failing to carry out the requirements as noted above. (GC 8350 et seq.)

2. DOING BUSINESS WITH THE STATE OF CALIFORNIA:

a. CONFLICT OF INTEREST:

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

EXHIBIT C (Public Entity Agreement)

- 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 County violates any provisions of the above paragraphs, such action by County 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:

County 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 County 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:

County 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.)

EXHIBIT C (Public Entity Agreement)

d. **NAME CHANGE:**

County acknowledges that an amendment is required to change the County's name as listed on this Agreement. Upon receipt of legal documentation of the name change the Exchange 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) County acknowledges that, when agreements are to be performed in the state by corporations, the Exchange 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 Exchange 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:**

County acknowledges that, under the State laws, the County 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:**

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

EXHIBIT C (Public Entity Agreement)

K. TIMELINESS:

Time is of the essence in this Agreement.

L. COMPENSATION:

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

M. 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.

N. ANTITRUST CLAIMS:

The County by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the County 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.

EXHIBIT C (Public Entity Agreement)

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.

O. CHILD SUPPORT COMPLIANCE ACT:

In accordance with the Child Support Compliance Act,

1. The County 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 County, 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.

P. 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.

Q. UNION ORGANIZING:

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

1. County 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.

EXHIBIT C (Public Entity Agreement)

3. County 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 County incurs costs, or makes expenditures to assist, promote or deter union organizing, County will maintain records sufficient to show that no reimbursement from state funds has been sought for these costs, and that County shall provide those records to the Attorney General upon request.
5. County will be liable to the Exchange for the amount of any funds expended in violation of the requirements of Government Section 16645 through Section 16649.

R. 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.

S. 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.

T. MINIMUM PRO-BONO CERTIFICATION:

For all contracts over \$50,000 that provide legal services, the County 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

EXHIBIT C (Public Entity Agreement)

actual day basis for any contract period of less than a full year or 10% of its contract with the Exchange. 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.

U. PRIORITY HIRING CONSIDERATIONS FOR RECIPIENTS OF AID:

If this Contract includes services in excess of \$200,000, the County 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.

V. 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.

EXHIBIT D
(Public Entity Agreement)

SPECIAL TERMS AND CONDITIONS

A. Dispute Resolution Provisions

1. This section is applicable where the County disputes an interpretation of this agreement made by the Exchange. The parties shall deal in good faith and attempt to resolve disputes informally. If the dispute persists, County may submit a Written Notice of Dispute to the Exchange Project Representative within 15 calendar days after the date of the action causing the dispute. The Written Notice of Dispute shall contain the following information:
 - a. the decision or issue under dispute;
 - b. the reason(s) County believes the decision or position taken by the Exchange is in error (if applicable, reference pertinent contract provisions);
 - c. identification of all documents and substance of all oral communication which support County's position; and
 - d. the dollar amount in dispute, if applicable.
2. Upon receipt of the Written Notice of Dispute, the Exchange Project Representative, within 15 calendar days after receipt of the Notice, shall issue a Project Representative's Written Decision regarding the dispute. The Project Representative's Written Decision must include the following information:
 - a. a description of the dispute;
 - b. a reference to pertinent contract provisions, if applicable;
 - c. a statement of the factual areas of agreement or disagreement; and
 - d. a statement of the representative's decision with supporting rationale
3. No later than fifteen (15) working days following receipt of the Project Representative's Written Decision, the County may send a Written Appeal of Project Representative's Decision to the Exchange Executive Director. No later than thirty (30) calendar days after receipt of the County's Written Appeal of Project Representative's Decision, the Executive Director shall then issue a Final Decision of Dispute, specifying the reasons for denial. If the Executive Director does not issue a Final Decision of Dispute within said thirty (30) day period, the appeal will be deemed denied by the Executive Director. The Executive Director's Final Decision of Dispute shall be conclusive and binding regarding the dispute unless County commences an action in a court of competent jurisdiction to contest such decision within 30 days following the date of the final decision.
4. Pending the final resolution of any dispute arising under, related to or involving this Agreement, the County shall diligently proceed with the performance of this Agreement, including the delivery of goods or providing of services in accordance with the Exchange's instructions. County's failure to diligently proceed in accordance with the Exchange's instructions shall be deemed a material breach of this Contract.

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B. Termination Without Cause

This Agreement may be terminated without cause by either party upon ninety (90) days written notice to the other party. If either party terminates this Agreement without cause, the County shall wind down and cease its services under this Agreement as quickly and efficiently as possible, without performing unnecessary services or activities, and by minimizing negative effects on the Exchange from such winding down of services. If this Agreement is so terminated by either party, the Exchange shall be liable for payment in accordance with the terms of this Agreement for services rendered in accordance with the requirements of this Agreement before the effective date of termination. Additionally, the Exchange agrees to compensate County for reasonable and necessary costs that were incurred by County in performance of this Agreement as a result of the Exchange's termination without cause, for undepreciated or unamortized equipment and software licenses, early termination of leases, and other reasonable and necessary expenses related to performance of this Agreement, subject to the Exchange's availability of State and Federal funds and receipt of supporting documentation from County. Under no circumstances shall the Exchange reimburse such reasonable and necessary expenses related to performance of this Agreement in the event the Exchange terminates this Agreement without cause in an amount that exceeds \$3,700,000.

C. Termination For Cause

The Exchange may terminate this Agreement and be relieved of any payments should the County fail to perform the requirements of this Agreement at the time and in the manner herein provided, unless otherwise agreed to by the Exchange in writing. Such right of termination shall be without prejudice to any other remedies available to the State. Before terminating for cause, the Exchange must provide County with a Written Notice of Breach identifying the breaches of this Agreement. If, after 30 calendar days of the Written Notice of Breach, County fails to cure any material breaches of this Agreement which are described in the Written Notice of Breach, this Agreement may be terminated in whole or in part, with a Notice of Termination, effective after 30 calendar days from the Notice of Termination. Upon receipt of a Notice of Termination for this Agreement, the County shall immediately discontinue all activities affected, unless the Notice of Termination directs otherwise, and the Exchange may proceed with the work in any manner deemed proper by the Exchange. In such event, the Exchange shall pay the County only the reasonable value of the services rendered, and all costs to the Exchange shall be deducted from any sum due the County.

D. REMEDIES

County and Exchange waive their respective rights to trial by jury of any claim or cause of action arising out of this Agreement. County and Exchange shall have no liability for damages to one another or to any other person or entity resulting from any violation of this Agreement.

E. 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

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§ ____.320 "Report Submission" and a copy shall be forwarded to the California Health Benefit Exchange.

F. Allowable Costs

Determination of allowable costs will be made in accordance with the applicable Federal cost principles, including OMB Circular A-87. Disallowed costs are those charges determined to not be allowed in accordance with the applicable Federal cost principles or other conditions contained in this Agreement.

G. Periodic Business Review

1. Weekly and Monthly Operational Meetings.

Throughout the Term, the Exchange and County shall convene for weekly and monthly meetings to review County's performance under this Agreement. Exchange Representative(s) and County Representatives and such additional appropriate personnel of each Party shall attend the weekly and monthly operational meetings, which shall take place at mutually agreeable locations, or if mutually agreed, by telephone conference call or video conference. The attendees shall address, at a minimum:

- a. Performance Standards and other operational issues as identified in the most recent Reports ("Weekly Performance Reports" and "Monthly Performance Reports");
- b. Issues for escalation to the QBRs (as defined in Section b immediately below);
- c. Delinquent actions of either Party;
- d. Program status;
- e. Forecasts; and
- f. Upcoming audits or compliance reviews.

2. Quarterly Financial Report

Within 60 days after the end of each quarter (e.g., May 31 for the quarter ending March 31), County shall prepare Quarterly Financial Reports reconciling budgeted expenses and actual costs as well as reconciling actual costs and amount billed both by month and for the quarter. These amounts will be reconciled in accordance with Exhibit B, Section J. The Quarterly Financial Reports shall provide financial data consistent with the format contained in Exhibit B - Attachment 2 - Line Item Reconciliation.

3. Quarterly Business Reviews (QBR)

Throughout the Term, the Exchange and County shall also convene quarterly leadership oversight meetings ("Quarterly Business Reviews" or "QBRs"). All such meetings shall take place at mutually agreeable locations, or if mutually agreed, by telephone conference call or video conference. These meetings shall be attended by Exchange Representative(s) and County Representatives (or their designees), as well as senior leadership from the Exchange and County with appropriate levels of expertise regarding the Services. The attendees of the QBRs shall:

- a. Review
 - i. periodic reports and trends from the Exchange Representative(s) and County Representative(s)
 - ii. monthly performance reports

EXHIBIT D
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- b. Advise with respect to strategic and tactical decisions regarding the establishment, budgeting and implementation of the Exchange's priorities and plans for the Services;
 - c. Review County's overall performance under this Agreement;
 - d. Review long-term planning with respect to matters related to this Agreement;
 - e. Consider whether any updates are required to the list of Developed Marks, Developed Materials or Procedures Manual; and
 - f. consider such other issues or matters related to the Services or this Agreement as either Party may from time to time desire.
4. Business Planning
- The Parties acknowledge and agree that the Exchange is responsible for the overall strategic direction, goals and objectives of the Programs on an ongoing basis. The County shall have involvement and input. The Exchange shall communicate strategy, and any changes thereto to County on an annual basis in the form of an annual strategic plan for its business in the coming year (the "Exchange Strategic Plan"), to be provided on or before September 1 of each calendar year. County shall review the Exchange Strategic Plan and develop a comprehensive Business Plan that includes planning and budgetary projections for the coming calendar year (or for the subsequent Term, if shorter). The Business Plan shall be submitted to the Exchange on or before November 1 of each calendar year (provided County has received the Exchange Strategic Plan and Forecast requirements within the timeframes specified herein) after consultation with the Exchange, shall be consistent with the Exchange Strategic Plan, and shall be subject to the final approval of the Exchange no later than December 15 of each calendar year. The County's Business Plan shall include the County's proposed:
- a. Recommendations and plans for modifications, updates and enhancements to the Services as necessary for the Services to keep pace with technological advances and advances in the methods of delivering similar services, consistent with the Exchange Strategic Plan;
 - b. Recommendations and plans for improving the Services, supporting the Programs and meeting the social welfare needs of the Exchange's constituency, including proposed investments to improve efficiencies and remain competitive;
 - c. service and quality objectives, including the addition or deletion of any Services included in the [Statement of Work] in which the Services are described in detail;
 - d. financial projections and budget information forecasts;
 - e. response to regulatory and governmental developments and other external environmental matters that are relevant to the Programs;
 - f. staffing goals; and
 - g. any other County developments material to its delivery of the Services.
5. Meeting Agenda.
- For each meeting described in this Section, the County Representative(s) and Exchange Representative(s) shall agree to distribute an agenda sufficiently in advance of the meeting to allow meeting participants a reasonable opportunity to prepare for the meeting. The County Representative(s) and Exchange Representative(s) shall also prepare, circulate and maintain meeting minutes for the meetings described in this Section.

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(Public Entity Agreement)

H. Retention and Access Requirements for Records (45 CFR 92.42)

County agrees to comply with the standards set forth in 45 CFR 92.42.

I. Service Center Lease

The lease agreement for the County Service Center site shall not exceed the amount presented to the Exchange by the County in the County's proposal. Furthermore, prior to entering into a lease agreement for the Service Center site, the County must first submit a written proposal to the Exchange for approval of the lease amount by the Executive Director of the Exchange or his designee.

EXHIBIT E
(Public Entity Agreement)

ADDITIONAL PROVISIONS

A. Intellectual Property Rights

1. All deliverables as defined in the Scope of Work originated or prepared by the County pursuant to this agreement including papers, reports, charts, and other documentation, but not including County'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.
2. All inventions, discoveries or improvements of the techniques or programs or materials developed pursuant to this agreement shall be the property of California Health Benefit Exchange. The California Health Benefit Exchange agrees to grant a nonexclusive royalty-free license for any such invention, discovery, or improvement to the County and further agrees that the County may sublicense additional persons on the same royalty-free basis.
3. This Agreement shall not preclude the County 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 County.

B. Confidentiality

The County agrees to protect the personal information of all individuals by following applicable federal and Exchange 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 County shall be protected during or after its relationship with the California Health Benefit Exchange by County from unauthorized use and disclosure. County agrees that County 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 Exchange's software; support materials; information regarding the Exchange's business operations and plans; client, customer, or supplier lists; pricing information; marketing plans or information; or other records concerning the Exchange's finances, contracts, services, or personnel.

At the conclusion of its relationship with the California Health Benefit Exchange, County shall return any and all records or copies of records relating to the California health Benefit Exchange, or its business, or its Confidential Information. County shall take such steps as

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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. County 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 County. County will report to the California Health Benefit Exchange any and all unauthorized disclosures of Confidential Information. County 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 County 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.

C. 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.

D. Waiver of Breach

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

E. County Limitations

County acknowledges that, in governmental contracting, even the appearance of a conflict of interest is harmful to the interest of the Exchange. Thus, County agrees to refrain from any practices, activities or relationships that could reasonably be considered to be in conflict with County's fully performing County's obligations to the Exchange under the terms of this Contract. County 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 County is uncertain whether the appearance of a conflict of interest may reasonably exist, County shall submit to the Exchange Project Manager a full disclosure statement setting forth the relevant details of any activity which the County reasonably believes may have the appearance of a conflict of interest for the Exchange's consideration and direction. Failure to promptly submit a disclosure statement setting forth the relevant details for the Exchange 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

EXHIBIT E
(Public Entity Agreement)

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.

Additionally, County agrees that its employees will present Qualified Health Plan offerings to Service Center Customers in a neutral and unbiased manner.

F. Force Majeure

Neither County nor the Exchange shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism, or other disasters, whether or not similar to the foregoing, and acts or omissions or failure to cooperate of the other party or third parties (except Subcontractors).

**Exhibit F
(Public Entity Agreement)**

PERFORMANCE STANDARDS

- i. **Performance Standards and Remedy for Non-Performance**
 - a. Performance Standards are defined by Service Level Agreements (SLAs) in this contract. The initial Performance Standards are established by Table F-1 – “Initial Service Level Agreement.”
 - b. At the end of the Baseline Period described in Section c below, Service Level Agreements (SLAs) will be continuously monitored, measured, and recalibrated, as determined necessary by the Exchange. At its sole discretion, the Exchange may add or delete Performance Standards that will be measured and monitored across all Exchange Service Center operations.
 - c. During the first six (6) months after October 1, 2013 that the County first starts to take operational calls (the "Baseline Period"), the parties will work together to evaluate and refine Service Level expectations and key Performance Indicators as defined in Table F-1. During the Baseline Period, the County will use reasonable business efforts to appropriately staff and utilize workforce management with the goal of meeting or exceeding the initial Service Levels as defined in Table F-1. At the end of the Baseline Period, based upon actual performance and historical data the Exchange will finalize the SLA's to become binding after the Baseline Period.
 - d. Failure to Meet Performance Standards
 - ii. Performance Standards will be discussed during the Weekly and Monthly Operational Meetings set forth in Exhibit D, Section G.
 - iii. Root Cause Analysis / Corrective Action. In the event of the County's failure to meet any Service Level in any calendar month (whether or not the failure is excused), the County will promptly develop a Corrective Action Plan as defined below
 - a. A Corrective Action Plan should at least include the following information:
 - i. Investigation: a report of the investigation of the root cause of the problem;
 - ii. Root Cause Identification: identification of the root cause of the problem
 - iii. Remedy: where applicable, a plan that identifies a remedy for the cause of the failure to meet a Service Level
 - iv. Implementation Plan: a detailed report of the measures taken by the County to prevent recurrences if the performance failure is otherwise likely to recur, and

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- v. Recommendations: recommendations to the Exchange for improvements in procedures.
- iv. Independent of whether or not the County has submitted a Root Cause Analysis, at its sole discretion, the Exchange may determine that the County has failed to remedy a Performance Standard and the Exchange may send a Corrective Action Notice to the County regarding the failure to meet a Performance Standard.
 - a. In response to a Corrective Action Notice, the County must create and implement a Corrective Action Plan as defined above to cure such failure within 30 days after receiving a Corrective Action Notice from the Exchange.
 - b. At the Exchange's sole discretion, the 30-day correction period may be extended an additional 30 days if the actions required to correct the failure are unusually complex, provided that the County has demonstrated significant progress in implementing the Corrective Action Plan to correct the failure by the end of the initial 30-day correction period.
 - c. In the event the County does not correct the deficiency in accordance with this subsection, the Exchange in its discretion may terminate this Agreement for cause subject to Exhibit D, Section C, with the exception that no additional cure period will be required before termination. This remedy shall not apply to the extent that the County's failure to meet the Performance Standards is attributable to an event described in Exhibit E, Section F (Force Majeure.)

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 (Public Entity Agreement)**

Table F-1 – Initial Service Level Agreement

General.

The Service Level Schedule table sets forth the Performance Indicators and their associated Service Levels. In performing the Services, the County will use Commercially Reasonable Efforts to meet (or exceed) the Service Levels.

SERVICE LEVEL SCHEDULE

Service Category	Performance Indicator	Measurement Definition	Measurement Tool	Measurement Frequency	Service Level
Contact Handling	Phone Call Average Handle Time	Average Handle Time measures the average amount of time it takes agents to complete a call, including wrap time. Average Handle Time shall be the amount of time, expressed in minutes, determined by dividing (i) the cumulative length of all inbound calls (as applicable) handled by agents, as measured from the time a call is answered by the agent until the time the call and associated after-call work is completed (including hold time during the call), by (ii) the total number of inbound calls (as applicable) answered by agents.	ACD	Monthly	2013 Phone AHT SLA: General Inquiry – 420 seconds; Application Enrollment – 1800 seconds; Application Quick Sort - 360 seconds; Ongoing Support – 480 seconds;
Schedule Adherence	Schedule Adherence Percentage	Measures the percentage of time an agent is actively logged into the ACD Queue compared to the forecasted scheduled time the agent is supposed to be logged into the ACD Queue.	ACD	Monthly	97% schedule adherence
Quality	Quality Monitoring	Quality Monitoring measures the quality of agent interactions with consumers, including the accuracy of information provided to consumers, adherence to established procedures, the accuracy of data entry	NICE (or equivalent tool)	Monthly	Quality Monitoring Average Score of at least 91%

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Service Category	Performance Indicator	Measurement Definition	Measurement Tool	Measurement Frequency	Service Level
		into the systems based on an average of data attributes and customer relations skills. The Exchange shall monitor a minimum of ten (10) Agent interactions per month. For each monitored call, the Exchange shall complete a monitoring form that rates the Agent's performance. The Exchange shall rate each Agent's performance in a fair, accurate and consistent manner. At the Exchange request, from time to time, the parties shall conduct calibration sessions in which a sampling of calls will be jointly monitored and rated by the parties to ensure consistency in the rating of Agent performance. The average score received by each Agent during the measurement period shall be calculated and the sum of such average scores shall be divided by the total number of Agent's whose calls were monitored and scored to produce an overall Quality Monitoring Average Score.			
Quality	Satisfaction Tracking	Independent Survey measures the level of consumer satisfaction in their interactions with the Service Center at an agent level. Measures include areas within the agent's control such as courtesy, understanding, knowledge, and problem resolution. Surveys shall be administered to a random sample of consumers who have had a recent contact with the Service Center. Both State and County Service Center agents will be measured by the same Independent Survey. Survey measures may change over time, based on the needs of the Exchange and consumer population.	Independent Survey Evaluations	Monthly/Quarterly/ YTD	Customer Satisfaction Index (CSI) score \geq 87

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BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (this "Agreement") dated _____, 2013, between the California Health Benefit Exchange ("Covered Entity") and Contra Costa County ("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 comply with 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.

I. Business Associate Obligations.

- 1. 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.
- 2. 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

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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.

- 3. 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.
- 4. Use of PHI for Administrative Activities.** Notwithstanding Section 1.2 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.
- 5. 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.

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- 6. 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.
- 7. 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.
- 8. 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.
- 9. 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.
- 10. 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,

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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.

11. 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.

12. 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:

- i. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment; and
- ii. 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

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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

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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.

13. 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.

14. Availability of Information to Covered Entity and Individuals. Business Associate agrees to provide access and information:

a) 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

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within fifteen (15) calendar days of receipt of the request by producing the records or verifying that there are none.

- b) 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).
- c) 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.

15. 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

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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 than 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.

IV. 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.

V. 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.

VI. 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.

VII. Relationship of the Parties. The Parties hereto acknowledge that Business Associate

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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.

VIII. Indemnification.

1. **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.

IX. Miscellaneous.

1. **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.
2. **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.
3. **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.
4. **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

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acting with regard to any breach of this Agreement will be construed to be a waiver of the breach.

5. **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.
6. **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.
7. **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.
8. **Headings.** The section headings contained in this Agreement are for reference purposes only and will not affect the meaning of this Agreement.
9. **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.

IN WITNESS WHEREOF, Covered Entity and Business Associate execute this Agreement to be effective on the last date written below, or, if no date is inserted, the Execution Date of the other Agreement referenced above.

COVERED ENTITY: The California Health
Benefit Exchange

BUSINESS ASSOCIATE: Contra Costa County

By: _____

Printed Name: David Maxwell-Jolly
Title: Chief Deputy Executive Director,
Strategy

Date: _____

Notice Address: 560 J Street, Suite 290,
Sacramento, CA 95814

Telephone: (916) 323-3625

Fax: (916) 323-3564

E-mail: David.Maxwell-Jolly@hbex.ca.gov

By: _____

Printed Name: Federal D. Glover
Title: Chair, Contra Costa County Board of
Supervisors

Date: _____

Notice Address: 40 Douglas Drive, Martinez, CA
94533

Telephone: (925) 313-1579

Fax: (925) 313-1575

E-mail: Kathy.gallagher@ehsd.cccounty.us