

**AGREEMENT
(HSA Program)**

BY AND AMONG _____ (“EMPLOYER”), CALIFORNIA PHYSICIANS’ SERVICE DBA BLUE SHIELD OF CALIFORNIA, A CALIFORNIA NOT FOR PROFIT MUTUAL BENEFIT CORPORATION, ON BEHALF OF ITSELF AND ITS AFFILIATES (“BSC”), AND HEALTHEQUITY, INC., A DELAWARE CORPORATION (“CUSTODIAN”) IS MADE AS OF THE ___ DAY OF _____, 20__ (“EFFECTIVE DATE”).

RECITALS:

This Agreement is entered into in consideration of the following circumstances:

- A. Employer wishes to offer its employees the ability to participate in a High Deductible Health Plan ("HDHP") through BSC. The HDHP may be offered either through an insurance policy or through an Administrative Services Only (“ASO”) Agreement between the Employer and BSC.
- B. Employer also wishes to make available to each of its eligible employees who elects a HDHP the opportunity to establish and maintain a health savings account administered by an entity of each eligible employee’s choosing.
- C. As a matter of law, an individual can only establish and contribute to a health savings account if that individual is covered by a HDHP.
- D. Custodian is an IRS approved non-bank trustee that makes available a program (the “HSA Program”) for the establishment and maintenance of health savings accounts (“HSA Custodial Accounts”), and has an arrangement with BSC for the coordinated delivery of information and transfer of money from Employers to Custodian involving a HDHP that is paired with a health savings account. Any health savings account that is established using Custodian’s HSA Program by an employee of Employer whose health plan is administered by BSC under an insurance policy or through an ASO is referred to herein as an “HSA.”
- E. Under the HSA Program, Custodian provides the HSA pursuant to a separate Agreement between the applicable employee (“Account Beneficiary”) and Custodian (“HSA Custodial Agreement”), and causes money contributed to the HSA to be deposited with a depository bank that is an FDIC-insured financial institution that is in good standing with the FDIC and its primary regulator (“Depository Bank”) and, to the extent the participating employee so directs, in an investment account maintained with a broker-dealer firm, currently, Charles Schwab.
- F. Custodian and BSC have entered into an agreement pursuant to which BSC customers are offered the opportunity to use the HSA Program on a basis that affords certain conveniences through information, data and funds transfers between Custodian and BSC.

AGREEMENT:

Now, therefore, in consideration of the foregoing premises, the parties hereto agree as follows:

I. Covenants of Employer

- 1.1 **Participation Voluntary.** At all times relevant to this Agreement participation in HSAs by employees shall be completely voluntary; and Employer shall not: (i) limit the ability of Account Beneficiaries to direct the transfer of monies in their HSAs to another HSA (except to the extent of restrictions imposed by the Internal Revenue Code of 1986, as amended (the "Code")); (ii) impose any conditions on the utilization of HSA Custodial Accounts' monies beyond those permitted by the Code; (iii) represent or advise that the HSAs are an employee welfare benefit plan established or maintained by Employer; or (iv) receive any payment or compensation in connection with an HSA.
- 1.2 **Notice of ERISA Coverage.** Employer shall advise Custodian as soon as practicable if it becomes aware of any fact or has other reason that leads it to believe that the HSA Custodial Accounts may be subject to the Employee Retirement Income Security Act of 1974 ("ERISA").
- 1.3 **Funding Instructions.** Whenever Employer remits funds to Custodian to fund HSA Custodial Accounts of Account Beneficiaries (which funds may include amounts withheld from employees' payroll or funded by Employer from its own funds), Employer shall concurrently advise Custodian of the respective amounts and Account Beneficiaries for whose benefit the contributions are being funded. Employer shall not be entitled to recoup any contributions made by it to HSA Custodial Accounts, except for correction or errors and related adjustments which shall be processed in a reasonably timely manner by Custodian, consistent with the requirements of Treasury regulations and guidance of the Internal Revenue Service.
- 1.4 **Provision of Information for HSA Set-Up.** Employer shall complete forms and questionnaires as required by Custodian for setting up new HSA Custodial Accounts and enrolling Account Beneficiaries.
- 1.5 **Provision of Information for Funds Transfers.** The Employer or its designee shall provide to Custodian or its affiliate any and all information reasonably necessary to effect money transfer transactions originating from Employer to the Depository Bank for HSA services with respect to the HSA Custodial Accounts.
- 1.6 **CIP Procedures.** In order to permit the Custodian and other entities to fulfill their obligations to establish and maintain a Customer Identification Program ("CIP") pursuant to the USA Patriot Act, the Bank Secrecy Act, the Money Laundering Control Act and all other applicable anti-money laundering laws, now or hereafter existing, and all regulations promulgated pursuant thereto, as well as all rules, rulings, interpretations, advisories, orders, decrees, guidelines, interpretations and applications thereof, Employer shall follow those CIP procedures specified by Custodian from time to time, so long as such procedures are reasonably necessary to provide Custodian with only such information which it is required by applicable law to collect and maintain.

II. Covenants of Custodian

- 2.1 **Clarification of Contribution Instructions.** Subject to Section 4.3, to the extent that the instructions provided to Custodian with respect to contributions are not clear to Custodian, Custodian shall undertake reasonable steps to obtain additional information to clarify each such ambiguity. In the event that Custodian does not promptly receive information sufficient to clarify the ambiguity, Custodian shall have the right, in its reasonable discretion to take such acts as it deems appropriate with respect to such contributions. Nothing in this Agreement shall alter, modify, or otherwise affect the obligations of Custodian to the Account Beneficiaries under the HSA Custodial Accounts, including without limitation, the manner in which Custodian is obligated to act upon receipt of any instruction provided to it by any Account Beneficiary.
- 2.2 **Performance of Agreements.** Custodian shall perform its obligations (a) in a competent, professional, and timely manner and with the degree of skill and judgment possessed by one experienced in providing custodian services for the establishment and maintenance of HSAs, and (b) as required by each of its agreements with BSC, Employer, the Account Beneficiary, and the Depository Bank. In that connection, Custodian shall provide the necessary resources, including staffing, technology systems and expertise, to perform such agreements.

III. Covenants of BSC.

- 3.1 **Secure Data Files.** Following such time as one or more employees of Employer shall elect to establish a HSA Custodial Account with Custodian, BSC shall send Custodian, using secure file transfer protocol, data files containing information required for the set up and administration of the applicable HSA Custodial Account. The data files shall include the following information for each such employee (and such employee's eligible dependents) (who will thereby become an Account Beneficiary):
- Eligibility files containing details necessary to enroll Account Beneficiaries including Account Beneficiary names, identification numbers, demographics and group information.
 - Claims information, containing details about the medical history of each Account Beneficiary, including dates of service, provider information, procedure information, billed amounts, allowed amounts and the patient responsibility amounts.

IV. Limitation of Liability of Custodian

- 4.1 **Accounts Not Subject to ERISA.** Employer acknowledges and agrees that the HSA Custodial Accounts established by Account Beneficiaries with Custodian do not, individually or collectively, constitute employee benefit plans, and accordingly that the assets held in the HSA Custodial Accounts will not be plan assets subject to the provisions of ERISA.

- 4.2 **Contracting with Providers.** Employer acknowledges that BSC may, from time to time, change the third party provider with whom it contracts to provide an HSA program. If BSC, after providing advance notice to Employer, ceases to contract with Custodian, in addition to any rights available under the applicable HSA Custodial Agreement or applicable law, each Account Beneficiary will have the right to terminate its HSA with Custodian, and to appoint another provider of similar services. If any Account Beneficiary does not do so, however, Employer acknowledges that, subject to the HSA Custodial Agreement, Custodian may thereafter cease to provide services hereunder to the extent that such services involve the use of data provided by BSC on an integrated basis. Custodian shall not have any liability to Employer as a result of the appointment of a third party provider or the resulting termination or reduction of Custodian's services, or consequences thereof subject to the terms of this Agreement.
- 4.3 **Application of Funds.** Custodian shall have no responsibility with respect to contributions paid by Employer, Account Beneficiaries or other contributor or transferor to the HSA Custodial Accounts, other than to receive the contributions paid or transferred to Custodian, allocate them in accordance with clear instructions received from Employer, Account Beneficiaries, or other contributor or transferor, invest them in accordance with instructions from Account Beneficiaries (to the extent permitted in the applicable HSA Custodial Agreement), and distribute them as directed by the applicable Account Beneficiaries. Custodian shall have no obligation to take affirmative actions to collect monies paid as contributions, such as, by way of example, to pursue a collection of a check from Employer or an Account Beneficiary or other contributor or transferor that does not clear.
- 4.4 **Reliance on Instructions.** Employer will provide to Custodian in writing the names and/or titles of individuals, together with the scope of each such individual's authority, who are authorized to act for Employer in connection with this Agreement. Custodian will accept instructions and directions given on behalf of Employer only from an individual so designated by Employer as having the requisite authority to give such instruction or direction. Custodian will promptly notify Employer if Custodian believes any action or inaction requested by or on Employer's behalf is (a) unclear, (b) incomplete, or (c) inconsistent with industry practice (collectively, the "Inadequate Directions"). Employer will not require that Custodian take or withhold any action upon which Custodian asserts to have received Inadequate Directions from Employer except upon a subsequent written direction from Employer's properly authorized representative.
- 4.5 **Provision of Information in a Timely Manner.** Employer shall provide Custodian with such documents, instructions, and information at such times and in such form and manner as may be reasonably requested by Custodian in order for Custodian to facilitate provision of the HSA Custodial Accounts. Employer acknowledges that any delay on the part of the Employer in providing such documents, instructions and/or information to Custodian may result in a delay or preclude provision of HSA services.

V. **Indemnification and Limitation of Liability**

- 5.1 **Indemnities.** The parties agree that each shall fully indemnify, defend and hold the other party harmless against all losses and damage attributable to its own

negligent actions and omissions or any breach of any provision of this Agreement by it.

- 5.2. **Limitation on Liability of BSC.** BSC is not responsible for claims, damages or liabilities arising from (i) BSC's failure to perform any services or other obligation related to the HSA Program, other than those which BSC expressly agreed to perform pursuant to this Agreement or its agreement with Custodian, (ii) BSC's acts or omissions in compliance with duly authorized instructions or directions received from Custodian or its affiliate, Employer or Account Beneficiaries or their authorized agents, representatives or employees or any third parties acting on behalf of them, or (iii) errors or failure to provide the services required by the Depository Bank under its agreement with Custodian to the extent such errors or failure is caused by (1) incomplete, inaccurate or untimely information provided by Custodian or its affiliate, Employer, Account Beneficiaries or a third party, (2) failure of Custodian to perform its obligations or provide resources as required by its agreement with BSC or the Depository Bank, or (3) a Force Majeure Event (as defined in Section 5.6).
- 5.3. **Limitation on Liability of Employer.** Employer is not responsible for claims, damages or liabilities arising from (i) Employer's failure to perform any services or other obligation related to the HSA Program, other than those which Employer expressly agreed to perform pursuant to this Agreement or its agreement with Custodian, (ii) Employer's acts or omissions in compliance with duly authorized instructions or directions received from Custodian or its affiliate, or Account Beneficiaries or their authorized agents, representatives or employees or any third parties acting on behalf of them, or (iii) errors or failure to provide the services required by the Depository Bank under its agreement with Custodian to the extent such errors or failure is caused by (1) incomplete, inaccurate or untimely information provided by Custodian or its affiliate, BSC, Account Beneficiaries or a third party, (2) failure of Custodian to perform its obligations or provide resources as required by its agreement with Account Beneficiaries, BSC or the Depository Bank, or (3) a Force Majeure Event (as defined in Section 5.6).
- 5.4. **Limitation on Liability of Custodian.** Custodian is not responsible for claims, damages or liabilities arising from (i) Custodian's acts or omissions in compliance with duly authorized instructions or directions received from Employer or Account Beneficiaries or their authorized agents, representatives or employees or any third parties acting on behalf of them, or (ii) errors or failure to provide the services to the extent such errors or failure is caused by (1) incomplete, inaccurate or untimely information provided by BSC or its affiliates, Employer, Account Beneficiaries or a third party, (2) failure of Employer or BSC to perform their obligations or provide resources as required by their agreement with Custodian, or (3) a Force Majeure Event (as defined in Section 5.6).
- 5.5. **General Limitation on Liability.** Except for (a) damages incurred arising out of or due to gross negligence or willful misconduct, or (b) a breach of a party's confidentiality obligations, or in connection with a party's indemnification obligations, the aggregate liability of a party to any other party from any and all actions relating to the subject matter of this Agreement shall be limited to general money damages in an amount not to exceed the fees paid or received by such party under this Agreement or paid by BSC to Custodian for any services provided by

Custodian to Employer or any Account Beneficiary; provided that such limitation shall not apply to, and this Agreement does not affect or alter the liability of Custodian (i) to any Account Beneficiary under any HSA Custodial Agreement or (ii) to BSC under the Services Agreement, as between the parties thereto. Subject to the caveats in this Section 5.5, *IN NO EVENT SHALL ANY PARTY BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR SIMILAR DAMAGES EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.*

- 5.6 **Force Majeure Event.** A party to this Agreement shall not be deemed in breach of this Agreement to the extent that performance of its obligations under this Agreement or attempts to cure any breach are delayed or prevented by reason of an event beyond the reasonable control of such party, including acts of God, acts of the public enemy, wars, insurrections, riots, lightning, fires, floods, civil disturbances, explosions, accidental breakage or accidents to machinery, failure of equipment or communication lines, telephone or other interconnection problems, or unauthorized access (unless such unauthorized access results from a party's breach of this Agreement) (subject to the exceptions provided below in this section, a "Force Majeure Event"); provided, however, (X) that such event is not due to the negligence or action of the party seeking to be excused, (Y) that such party gives the other parties written notice thereof promptly and, in any event, within 5 Business Days of discovery thereof if reasonably possible, and (Z) that a pre-existing breach shall not be waived or negated but the cure period may be extended in accordance with Section 5.6(b) below. The term "Business Day" means a day other than a Saturday, Sunday or federal or California legal holiday. The following provisions shall also apply:

(a) A Force Majeure Event shall not be deemed to have occurred merely because a party is unable to perform, or delays in performance, under this Agreement due to an affiliate or third party subcontractor or supplier engaged by a party (i) failing to perform any of such party's obligations under this Agreement; (ii) failing to provide systems, software, hardware or services that enable such party to provide the services; or (iii) becoming insolvent or unable to pay its debts as they come due or entering into or filing (or having filed or commenced against it) a petition, arrangement application, action or other proceeding seeking relief or protection from creditors under the bankruptcy laws or similar laws of the United States, any state of the United States or any other country in which the entity operates; however the foregoing shall not apply and a party shall not be liable for any Force Majeure Event impacting an affiliate, third party subcontractor or supplier to the extent that if such Force Majeure Event had impacted a party, such party would have been relieved of performance under this Section 5.6 (i.e., a flood that prevents a subcontractor's performance, would also relieve a party of its performance obligations).

(b) If a party fails to perform or delays in performing due to a Force Majeure Event, such party on behalf of itself and its subcontractors shall use all possible diligence to the extent within its control to avoid, mitigate and remove the Force Majeure Event as quickly as possible. In the event of such a Force Majeure Event, the time for performance or cure will be extended for a period equal to the duration of the Force Majeure Event, but in no event more than 30 days unless the parties mutually agree to a longer period; provided, however, that in such event the

non-failing parties' sole remedy shall be to terminate this Agreement with no party having any liability to the other with regard to the Force Majeure Event.

VI. Relationship of Parties

- 6.1 **Subcontractors.** Each party shall be responsible for the performance of services under this Agreement by its subcontractors, agents and representatives to the same extent as though such services were performed by the party itself pursuant to this Agreement; provided that Employer is not responsible for the performance of services by BSC or Custodian, or their respective agents and representatives.
- 6.2 **Employer Does Not Have Ownership Interest.** The Employer shall not be the account holder or have any ownership interest in the HSA Custodial Accounts.
- 6.3 **Limits on Use of Trademarks.** The Employer shall have no right to use: (i) any of the trademarks, service marks, logos or other indicia of origin, of Custodian or BSC unless the party owning such names or marks expressly consents in writing to such use; and (ii) any software, materials, information, processes, and products, including BSC's and the Custodian's websites and the contents thereof, used by Custodian or its affiliates or the Depository Bank in connection with providing HSA services, any modifications made thereto, and such work records as are the proprietary information of such entities. Except as may be explicitly set forth in this Agreement or the Terms and Conditions, nothing herein will be construed as an implied license by a party to use the other party's name, trademarks, domain names, or other intellectual property. No party will use the name, trademarks, domain names, or any other name or mark of the other party in any advertising or promotional materials or otherwise, without the prior written consent of the other parties. Except as may be explicitly set forth in this Agreement or the Terms and Conditions, neither BSC nor Custodian has a license to use the trademarks or derivative marks of Employer or its affiliates (collectively, the "Employer Brands") and nothing in the Agreement will be deemed to grant a license to BSC or Custodian to use the Employer Brands. Any references to the Employer Brands made by BSC or Custodian in their respective materials are subject to prior review and approval by Employer.
- 6.4 **Term.** The initial term of this Agreement shall commence as of the Effective Date and shall terminate upon the termination of the Terms and Conditions between Custodian and Employer, or if earlier upon Employer's cessation to offer a HDHP as one option for health coverage within its group health plan or plans for its employees, it being understood that the HSA is available for use only by those employees of Employer who have medical coverage under the HDHP.
- 6.5 **General.** This Agreement may not be assigned without the written consent of the other parties which shall not be unreasonably withheld. This Agreement shall be governed by the laws of the State of California.
- 6.6 **Fees.** Employer acknowledges that the premiums, fees and charges payable by it to BSC for health coverage or ASO administration may include a surcharge for the HSA Program, and a portion of the amounts so collected may be used by BSC to pay the Custodian's fees and costs for the HSA Program.

- 6.7 **Association Disclosure.** Custodian and Employer hereby expressly acknowledge their understanding that this Agreement constitutes a contract between Customer, Employer and BSC, that BSC is an independent corporation operating under a license from the Blue Cross and Blue Shield Association, an association of independent Blue Cross and Blue Shield Plans (the “Association”) permitting BSC to use the Blue Shield Service Mark in the State of California, and that BSC is not contracting as the agent of the Association. Custodian and Employer further acknowledge and agree that it has not entered into this Agreement based upon representations by any person other than BSC and that no person, entity, or organization other than BSC shall be held accountable or liable to Custodian and Employer for any of BSC’s obligations under this Agreement. This paragraph shall not create any additional obligations whatsoever on the part of BSC other than those obligations under other provisions of this Agreement.
- 6.8 **ERISA.** The Parties acknowledge that in performing their respective obligations under this Agreement, they shall not knowingly take actions or cause another Party to take action that would violate the safe harbor limitations as outlined in the Department of Labor’s Field Assistance Bulletin (FAB) 2004-01, and subsequent applicable guidance (collectively, “FAB 2004-01”) for Employee’s HSAs to remain outside of ERISA.

[Signature page follows]

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto have caused this Agreement to be executed by their duly authorized representatives effective on the date and year first set forth above.

**CALIFORNIA PHYSICIANS' SERVICE
DBA BLUE SHIELD OF CALIFORNIA**

**EMPLOYER, CLIENT OF BLUE SHIELD
OF CALIFORNIA**

By:  _____

Name: Janet Widmann

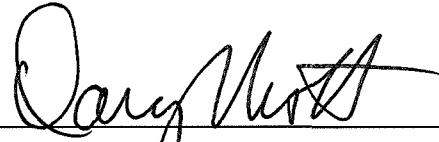
Title: Senior Vice President

By: _____

Name: _____

Title: _____

HEALTH EQUITY, INC.

By:  _____

Name: Darcy Mott

Title: Chief Financial Officer

EXHIBIT A

TERMS AND CONDITIONS ATTACHMENT TO THREE PARTY AGREEMENT

These General Terms and Conditions (“Terms”), as may be supplemented or amended from time to time, shall govern the Services (defined below) to be provided by HealthEquity pursuant to that certain Agreement (HSA Program) (“Agreement”) by and among Employer, BSC and HealthEquity to which these Terms are attached. As used herein, the term “party” or “parties” shall only refer to HealthEquity and/or Employer. Capitalized terms not otherwise defined herein, shall have the same meanings ascribed to them in the Agreement.

1. Definitions

- 1.1 The term “Services” refers to those account administration services as specified in (a) the Statement of Work, attached hereto as Attachment 1, and (b) each of the agreements between HealthEquity and an eligible employee of Employer in the event such employee maintains an HSA with HealthEquity.
- 1.2 The term “Members” shall mean qualified employees or other qualified individuals using the Employer’s health plan or other account sponsored or offered by the Employer and for which fees are being paid by or for them to receive the Services. Members that cease to use the Employer’s sponsored health plan or account may continue to have HealthEquity act as a custodian or administrator unless otherwise provided in any agreement between HealthEquity and the applicable Member, but such individuals will not be considered Members for purposes of the Terms.

2. Term

- 2.1 The initial term of the Terms shall commence as of the Effective Date and shall terminate at midnight twenty-four (24) months after the Effective Date (unless earlier terminated pursuant to Section 2.2 or Section 7 below). These Terms shall be automatically renewed on the same terms and conditions for successive one (1) year terms thereafter, unless either party provides written notice to the other party of its intention not to renew at least ninety (90) days prior to the expiration of the term then in effect.
- 2.2 Notwithstanding the foregoing, in the event of the termination of either (a) the services agreement between HealthEquity and BSC, or (b) the insurance policy or ASO, between Employer and BSC, Employer shall have the right to terminate the Terms upon sixty (60) days written notice to HealthEquity and HealthEquity will cooperate with the transition to a successor administrator that is duly appointed.

3. The Parties’ Responsibilities

- 3.1 HealthEquity shall provide the Services as provided in Attachment 1 attached to these Terms.

4. Ownership and Title

- 4.1 By entering into the Terms, neither party in any way agrees or implies that it is waiving any property rights it has in software, processes or other intellectual property belonging to it, its subsidiaries or affiliates, including but not limited to rights accruing by virtue of applicable federal, state, or common law protections for copyright, patent, trade secret, trademark and/or service mark rights. In the event either party discovers a violation of such proprietary rights, that party, for itself and on behalf of its subsidiaries and affiliates, expressly reserves the right to seek or pursue in an appropriate state or federal court all available remedies for the infringement of such rights.
- 4.2 HealthEquity retains ownership in all intellectual property of HealthEquity used in the provision of the Services and any custom development by HealthEquity for use by Employer or its employees shall be the intellectual property of HealthEquity.
- 4.3 Employer hereby grants permission to HealthEquity to use Employer's trademarks, including name and logos but solely in connection with the performance of the Services. HealthEquity may also use such marks for marketing and promotional materials with the consent of Employer. Employer will provide or make available to HealthEquity approved formats and any guidelines for use of Employer's trademarks, including the name or logos, and the trademarks shall be used only consistent with the supplied formats and guidelines.

5. Confidentiality and Non Disclosure.

- 5.1 Subject to Section 5.3, the parties hereto acknowledge that in the general course of doing business under the Terms, each party may disclose information to the other party that is deemed confidential and is not subject to disclosure to third parties. Unless previously indicated in writing by the party whose confidential information is being disclosed, all information disclosed by either party pursuant to the Terms is to be considered strictly confidential and the parties hereto will use reasonable commercial efforts to maintain such information as strictly confidential and to require their respective officers, directors, employees and agents to maintain the confidentiality of such information. The obligations of this subsection shall not apply, however, to any information which (a) is already in the public domain at the time of disclosure or later becomes available to the public through no breach of the Terms by the recipient; (b) was, as between the recipient and the disclosing party, lawfully in the recipient's possession prior to receipt from the disclosing party without obligation of confidentiality; (c) is received by the recipient independently from a third party free to lawfully disclose such information to the recipient; or (d) is subsequently independently developed by the recipient as evidenced by its business records.
- 5.2 Notwithstanding the foregoing and subject to Section 5.3 below, each party shall have the right to disclose and disseminate confidential information to third parties as required by law, court order, regulation, or judicial or administrative process, but only to the extent of such required disclosures and after reasonable

notice to the other party, and provided that prior to any such disclosure or dissemination, the party disclosing or disseminating the confidential information shall notify the other party and the other party shall have a reasonable opportunity, at its own cost, to contest such disclosure or dissemination by appropriate proceedings prior to such disclosure or dissemination. HealthEquity shall also have the right to disclose confidential information to its service providers as allowed by law and to the extent necessary to provide the Services provided that such persons maintain the confidentiality of the information, are subject to the nondisclosure provisions of Section 5.1 hereto, execute a Business Associate Addendum in the form reasonably acceptable to Employer, and HealthEquity is responsible for ensuring that such service providers comply with all relevant terms of the Terms and a breach by any such service provider of HealthEquity shall constitute a breach by HealthEquity.

- 5.3 The parties' performance under the Terms will be consistent with, and in compliance with, all laws that regulate the use and disclosure of protected health information and personal information, including but not limited to the Health Insurance Portability and Accountability Act of 1996, as amended, and regulations promulgated thereunder ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009, as amended, and regulations promulgated thereunder (the "HITECH Act"), and any applicable state laws, related to the confidentiality of personal information. Each party agrees to indemnify the other party and hold the other party harmless for damages resulting from the indemnifying party's failure to comply with regulations governing such protected health information.

6. Dispute Resolution Procedure

- 6.1 If either HealthEquity or Employer determines in good faith that a breach or dispute is sufficiently serious, the parties agree to attempt to resolve the breach or dispute in good faith and take remedial action to resolve it. If a dispute involving a material breach of any provision of the Terms is not successfully resolved by good faith remedial action or affirmative steps to cure the problem within thirty (30) days after the receipt of the written notice of the breach, the non-breaching party may elect to terminate the Agreement pursuant to Section 7 and/or pursue any other remedy at law or in equity.
- 6.1 Parties may also elect to follow an informal dispute resolution process by pursuing discussions between management and other normal business channels. Either party shall have the right to seek immediate injunctive relief in the event of a violation of the confidentiality obligations or a breach of such party's intellectual property rights by the other party.

7. Termination

- 7.1 In addition to the termination rights provided elsewhere in the Terms, the Terms may be terminated: (1) by either party if the other party has materially breached the Terms and such breach is (a) capable of being cured, and (b) has not been cured within thirty (30) days after written notice of such breach, or (2) by

Employer, at any time with ninety (90) days advance written notice to HealthEquity.

- 7.2 Should the Terms be terminated, then the rights and obligations of the parties hereunder shall also terminate, except that the provisions of Sections 5, 6, 7 and 8 shall survive any such termination. Upon termination of the Terms, each party shall return to the other party, upon request of the other party, all originals and copies of confidential information as described in Section 5, including all reports or documents which reflect or are based on any confidential information which is in the non-disclosing party's possession or control. Notwithstanding the foregoing, return of confidential information shall not be required if retention of copies is otherwise required by law or if return is not feasible and in either event appropriate safeguards to maintain confidentiality shall be maintained.

8. Governing Law and Personally Identifiable Health Information

- 8.1 The terms of the Terms shall be governed by and construed in accordance with the laws of the State of California, without giving effect to principles regarding conflict of laws; provided, however, that the custodial arrangements established by any HSAs under the Agreement and the HSAs themselves shall be governed and construed in accordance with the laws of the State of Utah, without giving effect to principles regarding conflict of laws.
- 8.2 HealthEquity's use of and exposure to personally identifiable health information provided to it by Employer, if any, shall be governed by a Business Associate Agreement in such form as reasonably requested by Employer and approved by HealthEquity.

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**ATTACHMENT 1
STATEMENT OF WORK**

HealthEquity Integrated Model with Blue Shield of California: This platform populates BSC adjudicated claims and Members can view their claims and pay providers all on one web-based platform.

- Groups with HSAs will be seamlessly set up with HealthEquity during BSC group installation
- BSC will provide eligibility information to HealthEquity
- HealthEquity will set up bank accounts automatically based on the eligibility file
- Client will be able to transfer amounts to a Member’s HSA through a payroll deduction, and a Member may also transfer amounts to their HSA from their established bank account
- Claims data is provided by BSC to HealthEquity
- Client’s employees will be provided with various pre-enrollment services to help guide them through the process, such as a pre-enrollment website, 24/7 access to Consumer Directed Health Plan (“CDH”) account specialists, and a plan cost comparison tool (optional). Members can engage with HealthEquity’s Consumer Representatives, each who are trained to assist in building knowledge to share with Members based on the direction of their Employer.

All CDH accounts are on one platform with integrated enrollment and claims information, and flexible contribution models. HealthEquity will also provide Client with an Employer Portal with access in real time to eligibility information, contributions, fee payments, and more; provided that such access by Client would not (1) jeopardize Client’s neutrality in accordance with the Department of Labor’s guidance providing that the HSA is not and will not become an ERISA program and (2) be in violation of any privacy laws.

Employer Portal	Member Portal
<ul style="list-style-type: none"> • View which employees have opened bank accounts • Online contributions • Self-serve reports 	<ul style="list-style-type: none"> • Cost Plan Estimator (optional) • Multiple bank options for members; pay provider or pay self • Direct pay to provider • Claims review section

Focus on Educating Customers

HealthEquity’s integrated offering includes extensive support and intuitive tools to educate customers. HealthEquity will provide Client’s employees with various pre-enrollment services to help guide them through the process, such as access to pre-enrollment materials, a phone line for Members with 24/7 access to CDH account specialists, and a plan cost comparison tool (optional). Eligible Client employees who become Members can engage with HealthEquity’s

Consumer Representatives, each who are trained to assist in building knowledge to share with such Members.

Integrated Enrollment with Single Sign-On

Once enrolled, Members will receive a welcome kit and a debit card which a Member may use to purchase qualified medical and pharmacy related services with money in such Member's HSA.

Claims Reimbursement and Medical Expense Process

With HealthEquity's new Account Based platform, it's just five simple steps from visit to reimbursement:

1. Member visit to healthcare provider
2. Claims sent to HealthEquity by BSC
3. Members who have provided a valid email address will receive automatic notification from HealthEquity of Member's payment responsibility for services received
4. Claim and account information provided securely to Member on the same screen
5. At Member's direction, healthcare provider is paid directly from amounts in Member's HSA, or Member may be reimbursed from Member's HSA for amounts paid by Member to a healthcare provider directly.

Investment Options

Members can invest their HSA dollars directly from the HealthEquity website after reaching the \$2,000 minimum balance. HealthEquity will not charge any monthly administration fees if a Member elects to invest amounts in Member's HSA in one of the 12 mutual funds offered to HealthEquity's HSA members. Tax statements are also available on the website. HealthEquity shall require a Member who opts for this feature to review and accept the terms of any conditions and risks relating to said investments.