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Department of Insurance
State of Idaho

Attorneys for the Department of Insurance

BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE

STATE OF IDAHO

In the Matter of:
IDAHO HEALTH INSURANCE
EXCHANGE
Created under the Idaho Health Insurance
Exchange Act Idaho Code § 41-6101 et seq.

Docket No. 18-2872-13

**FINAL ORDER APPROVING IDAHO
HEALTH INSURANCE EXCHANGE
BYLAWS ADOPTED March 14, 2014**

The Director of the Idaho Department of Insurance ("Director") having reviewed the revised Bylaws adopted by the Board of the Idaho Health Insurance Exchange on March 14, 2014, which Bylaws are attached hereto and incorporated herein by this reference, now therefore,

IT IS HEREBY ORDERED that, pursuant to Idaho Code § 41-6105(1)(b), the Bylaws are hereby approved.

IT IS SO ORDERED.

Dated this 21ST day of March, 2014.

IDAHO DEPARTMENT OF INSURANCE

By 
WILLIAM W. DEAL
Director

NOTIFICATION OF RIGHTS

This constitutes a final order of the agency. Any party may file a motion for reconsideration of this final order within fourteen (14) days of the service date of this order. The agency will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. *See* Idaho Code § 67-5246(4).

Pursuant to Idaho Code §§ 67-5270 and 67-5272, any party aggrieved by this final order may appeal it by filing a petition for judicial review in the district court of the county in which: (1) the hearing was held; or (2) the final agency action was taken; or (3) the aggrieved party resides or operates its principal place of business in Idaho; or (4) the real property or personal property that was the subject of the agency decision is located. An appeal must be filed within twenty-eight (28) days of: (a) the service date of this final order, or (b) an order denying a petition for reconsideration, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. *See* Idaho Code § 67-5273. The filing of a petition for judicial review to the district court does not itself stay the effectiveness or enforcement of the order under appeal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have on this 21st day of March, 2014, caused a true and correct copy of the foregoing document to be served upon the following by the designated means:

Michael Stoddard
Hawley Troxell Ennis & Hawley, LLP
877 Main Street, Suite 1000
Boise, ID 83702

☒ first class mail
☐ certified mail
☐ hand delivery
☐ via facsimile

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Teresa Jones
Assistant to the Director

IDAHO HEALTH INSURANCE EXCHANGE
("Exchange")
Created under the Idaho Health Insurance Exchange Act
Idaho Code § 41-6101 *et seq.* ("Act")

BYLAWS

Adopted by the Board March 14, 2014
and

Approved by the Director of the Idaho Department of Insurance [], 2014

ARTICLE 1.
MISSION STATEMENT

1.1 Mission. The mission of Your Health Idaho is to maintain maximum control of Idaho's health insurance exchange at minimal cost to Idaho's citizens.

ARTICLE 2.
OFFICES

2.1 Office. The principal place of business of the Exchange shall be located at such office or offices as the Board may from time to time determine.

ARTICLE 3.
BOARD

3.1 Appointment; Removal. The members of the Board of the Exchange shall be appointed as provided in the Act. Any voting member of the Board who is not a legislator serves at the pleasure of the Governor of the state of Idaho ("**Governor**"). Any voting member of the Board who is a legislator serves at the pleasure of the person holding the office entitled to appoint such member in accordance with the Act.

3.2 Resignation. Any Board member may resign at any time by giving written notice to the Chairperson and the person entitled to appoint the resigning member in accordance with the Act. The resignation shall take effect at the time specified in such notice.

3.3 Compensation. Board members shall receive no compensation for their service as Board members, except that they may receive a per diem and reimbursement for travel and other reasonable and necessary expenses while engaged in the performance of official duties of the Board. Nothing in the Act or these Bylaws or any plan of operation or policy of the Exchange shall prevent a member of the Board who is otherwise a current or former state employee or member of the Idaho legislature from receiving his usual state compensation and benefits while serving on the Board.

3.4 Conflict of Interest. The Board shall establish a policy governing Board member's conflicts of interest. The Board's policy on conflicts of interest shall comply with the Act and all other state and federal laws that apply to the Exchange.

ARTICLE 4. POWERS OF THE BOARD

4.1 General Powers. The Board shall be the governing body of the Exchange and shall have all the powers necessary to implement a health insurance exchange as contemplated by the Act, including without limitation the power to borrow money to achieve the purposes of the Exchange, and to open accounts with banking institutions within or outside the state, provided that such banking institutions are insured by the Federal Deposit Insurance Corporation.

4.2 Adoption of Governance Documents. Pursuant to the Act, the Board is empowered to develop, adopt and implement a plan of operation and other governance documents.

ARTICLE 5. MEETINGS OF THE BOARD

5.1 Meetings. Pursuant to the Act, all meetings of the Board shall be held in accordance with the Idaho Open Meeting Law, Idaho Code Section 67-2340 *et seq.* ("**Open Meeting Law**"), and shall be held in an open public forum. Every reasonable effort shall be made to televise such meetings televised or stream them in video and audio format.

5.2 Regular Meetings. The Board shall designate a schedule of regular meetings of the Board for the transaction of any lawful business of the Exchange. Notice of regular meetings of the Board shall be given to the members of the Board and the public prior thereto in accordance with the Open Meeting Law and Section 5.5 below.

5.3 Special Meetings. The Chairperson may, upon the written request of at least five (5) members of the Board, call a special meeting of the Board for the purpose of transacting any business designated in the request. Notice of a special meeting of the Board shall state the purpose(s) of the meeting and shall be given to the members of the Board and the public prior thereto in accordance with the Open Meeting Law and Section 5.5 below.

5.4 Executive Sessions. The Board or any committee thereof may hold an executive session upon a two-thirds (2/3rds) vote of the Board members thereof present and voting for the purposes and in the manner provided by law.

5.5 Notice of Meetings. Notice may be given by mailing, facsimile, email or other delivery to each member of the Board at the mailing or email address or facsimile number on record with the Exchange. Email is an acceptable form of notice unless a member does not have an email address on file with the Board or specifically requests some other form of notice. Notice of all meetings shall be provided to the general public as required by the Open Meeting Law. Whenever any notice is required to be given by law or by these Bylaws, a waiver thereof in writing signed by the person or persons entitled to said notice, at or prior to the time the meeting convenes, shall be deemed equivalent thereto. Attendance at a meeting shall constitute a waiver of notice of such meeting, except where attendance is for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

5.6 Quorum and Voting. A minimum of nine (9) voting Board members shall be necessary to constitute a quorum for the transaction of business at any meeting of the Board. The affirmative

vote of a majority of the voting members of the Board present at a meeting at which a quorum is present shall be necessary to decide any questions to be voted upon by the Board, unless a greater proportion is required by law or these Bylaws. At all meetings all votes shall be made by voice. Any member of the Board may request a roll-call vote. Proxy attendance or voting is prohibited. A Board member who is present at a meeting of the Board or a committee of the Board when corporate action is taken is deemed to have assented to the action taken unless: (i) the Board member objects at the beginning of the meeting, or promptly upon arrival at the meeting, to holding or transacting business at the meeting; (ii) the dissent or abstention from the action taken is entered in the minutes of the meeting; or (iii) the Board member delivers written notice of dissent or abstention to the presiding officer of the meeting before its adjournment or to the Chairperson immediately after adjournment of the meeting. The right of dissent or abstention is not available to a Board member who votes in favor of the action taken.

5.7 Organization. At each meeting of the Board, the Chairperson (or, in the absence of the Chairperson, the Vice-Chairperson or, in the absence of both the Chairperson and Vice-Chairperson, a voting Board member chosen by a majority of the Board members then present) shall act as presiding officer.

5.8 Minutes. The Secretary, or in the Secretary's absence, a Board member chosen by the presiding officer, shall prepare or cause to be prepared minutes of all business transacted by the Board at all regular and special meetings. All minutes shall be prepared in accordance with the Idaho Code Section 67-2344 of the Open Meeting Law.

5.9 Attendance by Telecommunication Device. A Board member may participate in and be considered present at any meeting of the Board or a committee thereof through teleconference, videoconference or similar communications arrangements that permit each Board member to hear and be heard by each other Board member as if present in person. All meetings conducted by telecommunication devices shall be conducted in accordance with Idaho Code Section 67-2342(5) of the Open Meeting Law.

ARTICLE 6. COMMITTEES

6.1 Committees. The Board shall establish the following standing Board committees: (i) Governance; (ii) Finance; and (iii) Executive. In addition, the Board may, at the Board's discretion, establish one or more additional standing or ad-hoc Board committees. The Board may, at the Board's discretion, dissolve any committee other than the Governance Committee, Finance Committee, or Executive Committee.

- (a) The Board shall approve a written charter for each standing Board committee that (i) states the committee's purpose, duties, and powers and (ii) governs the committee's operation.
- (b) To the extent permitted by law and stated by Board resolution or the committee's charter, a Board committee may exercise the Board's authority.

- (c) Regular meetings of each standing committee shall be scheduled quarterly or at such other intervals as may be approved by the Board. Special meetings of a standing committee may be called by its chairperson as necessary.
 - (d) Each standing committee shall include at least four (4) voting members of the Board. A majority of the voting members of a standing committee shall constitute a quorum, and the vote of a majority of such quorum shall be required for the standing committee to take formal action.
- 6.2 Notice of Committee Meetings. Notice of meetings of any committee of the Board shall be given to the members of the committee and the public prior thereto in accordance with—and as may be required by—the Open Meeting Law and Section 5.5 above.
- 6.3 Advisory Committees. The Board may establish such advisory committees as it deems necessary to accomplish the intent and purposes of the Act and these Bylaws.
- 6.4 Qualifications for Committee Membership. The Board shall establish the qualifications for committee membership, and each committee member shall make reasonable efforts to assure continued compliance with the qualifications.
- 6.5 Appointment and Removal. All members of all Board and advisory committees shall be appointed by the Chairperson, subject to confirmation by the Board, and shall serve at the pleasure of the Board. The Chairperson shall designate a chair for each committee in accordance with the committee's charter, or in the case of advisory or ad-hoc committees without a charter, the committee's authorizing resolution. The Board may remove and replace members of any committee and may fill vacancies on any committee at any time in the discretion of the Board.
- 6.6 Posting of Committee Charters and Assignments. The Exchange shall post and maintain in a public portion of the Exchange's Web site (i) a listing of all Board and advisory committees, (ii) a copy of each committee's charter, or in the case of advisory or ad-hoc committees without charters, a copy of the Board resolution establishing the committee, and (iii) a listing of the individuals assigned to each committee.

ARTICLE 7. OFFICERS AND EMPLOYEES

- 7.1 Officers. The officers of the Exchange include the Chairperson (who shall be appointed or elected as provided in Section 7.2 below); the Vice-Chairperson, the Secretary and the Treasurer, who shall be appointed by the Board from among its voting members; and such other officers and assistant officers as may be deemed necessary or desirable and as may be appointed by the Board from time to time.
- 7.2 Chairperson. The Governor may appoint the Chairperson from among the members of the Board. If the Governor does not appoint the Chairperson, the Board shall elect the Chairperson from among the members of the Board. The Chairperson shall perform the duties imposed by the Act, these Bylaws, and any applicable resolution of the Board and shall preside at all meetings of the Board. In the absence or incapacity of the Chairperson, or in case of the Chairperson's resignation or death, the members shall elect from their number an acting Chairperson, who shall

perform the duties of the Chairperson during the time of such absence or incapacity or until such time as the Governor appoints or the Board elects a new Chairperson.

7.3 Term of Office. The Vice-Chairperson, the Secretary, the Treasurer and each other officer or assistant officer shall hold office the earlier of the expiration of the officer's term as a Board member under the Act, or the appointment of a successor, or the officer's removal pursuant to Section 7.4 below. The Vice-Chairperson, the Secretary, the Treasurer and each other officer or assistant officer serve at the pleasure of the Board. Nothing in these Bylaws shall prohibit the re-appointment of any of person to hold such offices.

7.4 Removal; Resignation. Any officer of the Exchange (other than the Chairperson if the Chairperson has been appointed by the Governor) may be removed from office, with or without cause, by the Board. Any officer may resign at any time. Such resignation shall be in writing and shall take effect at the time specified therein, and if no time be specified, at the time of receipt by the Chairperson. The acceptance of a resignation shall not be necessary in order to make it effective, unless so specified therein.

7.5 Vice-Chairperson. The Vice-Chairperson shall perform the duties of the Chairperson in the absence or incapacity of the Chairperson for any reason until such time as a new Chairperson is appointed or elected pursuant to Section 7.2 above. In the absence or incapacity of the Vice-Chairperson, or in case of the Vice-Chairperson's resignation or death, the members shall elect from their number an acting Vice-Chairperson, who shall perform the duties of the Vice-Chairperson during the time of such absence or incapacity or until such time as the Board shall elect a new Vice-Chairperson.

7.6 Secretary. The Secretary shall have such duties as from time to time may be determined by the Board. The Chairperson may appoint one or more members of the Board to serve as acting Secretary(ies) in the event of the absence or incapacity of the Secretary.

7.7 Treasurer. The Treasurer shall have such other duties and responsibilities as may be determined by the Board. The Chairperson may appoint one or more members of the Board to serve as acting Treasurer in the event of the absence or incapacity of the Treasurer.

7.8 Additional Duties. The officers of the Exchange shall perform such other duties and functions as may from time to time be assigned to them by resolution of the Board.

7.9 Executive Director. The Board shall retain an Executive Director to administer the Exchange. The Executive Director shall be responsible for the day-to-day operations of the Exchange, in accordance with the policies and guidelines delineated by the Board. The Executive Director shall report directly to the Board.

7.10 Additional Personnel. The Executive Director, as directed or subject to approval by the Board, may from time to time retain such additional personnel the Executive Director deems necessary to effectuate the purposes of the Exchange.

ARTICLE 8.
WRITTEN REPORT

8.1 Written Report. As provided in the Act, by no later than January 31 of each year, the Board shall submit a written report to of its activities and the condition of the Exchange to the Director of the Idaho Department of Insurance and the Governor, and to the director of the Idaho legislative services office for distribution to all Idaho legislators.

ARTICLE 9.
INDEMNIFICATION

9.1 No Liability. Pursuant to Idaho Code § 41-6105(2)(k), the Board shall not be liable for any obligations of the Exchange. No member of the Board shall be liable, and no cause of action of any nature may be pursued against a Board member, for any act or omission related to the performance of the Board member's powers and duties under the Act, these Bylaws, or any plan of operation or policy of the Exchange, unless such act or omission constitutes willful or wanton misconduct.

9.2 Indemnification of Board Members, Officers, Employees and Agents.

- (a) The Exchange shall indemnify and advance funds to or for the benefit of the members of the Board and the officers, employees and other agents of the Exchange to the fullest extent permitted by law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Exchange to provide broader indemnification rights than the applicable law permitted the Exchange to provide prior to such amendment).
- (b) The Exchange shall indemnify any person ("**Indemnifiable Person**") who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative or investigative (whether formal or informal) ("**Proceeding**") by reason of the fact that such Indemnifiable Person is or was a member of the Board or an officer, employee or other agent of the Exchange or a lawful spouse of a member of the Board, officer, employee or other agent of the Exchange against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such Proceeding if such Indemnifiable Person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Exchange, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any action, suit or proceeding, whether by judgment, order, settlement, conviction, or plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the Indemnifiable Person did not meet the applicable standard of conduct described in this subsection (b).
- (c) To the extent that an Indemnifiable Person has been successful on the merits or otherwise in defense of any Proceeding, or in defense of any claim, issue or matter therein, such

Indemnifiable Person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.

- (d) Except as mandated by subsection (c) of this section, any indemnification under subsection (b) of this section (unless ordered by a court) shall be made by the Exchange only as authorized in the specific case upon a determination that indemnification of the Indemnifiable Person is proper in the circumstances because such person has met the applicable standard of conduct set forth in subsection (b). Such determination shall be made (1) by majority vote of all of the members of the Board who were not parties to such Proceeding (a majority of whom shall for such purpose constitute a quorum of the Board), or (2) if such a quorum is not obtainable, or even if obtainable a quorum of disinterested members so directs, by independent legal counsel in a written opinion.
- (e) Expenses (including attorneys' fees) incurred by an Indemnifiable Person in defending a Proceeding shall be paid by the Exchange in advance of the final disposition of such Proceeding, conditioned however upon receipt by the Exchange of a written undertaking by or on behalf of the Indemnifiable Person to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Exchange as authorized in this section.
- (f) The indemnification authorized by this section shall not be deemed exclusive of any other rights to which an Indemnifiable Person may be entitled under the Act, any bylaw, agreement, vote of disinterested members of the Board or otherwise, both as to action in such Indemnifiable Person's official capacity and as to action in another capacity while holding such office, and shall continue as to any Indemnifiable Person who has ceased to be a Board member, officer, employee or other agent of the Exchange and shall inure to the benefit of the heirs or personal representative of such person.
- (g) The Exchange shall have power to purchase and maintain insurance on behalf of any Indemnifiable Person who is or was a member of the Board, officer, employee or other agent of the Exchange (or any such person's spouse) against any liability asserted against such person and incurred by such person in any such capacity or arising out of such person's status as such, whether or not the Exchange would have the power to indemnify such person against such liability under the provisions of this section.
- (h) The power of the Board to indemnify the lawful spouse of an Indemnifiable Person who is or was a member of the Board, officer, employee or other agent of the Exchange under subsection (b) shall be and is limited to Proceedings arising solely out of such spouse's capacity as the spouse of an Indemnifiable Person who is or was a member of the Board, officer, employee or other agent of the Exchange, including Proceedings that seek damages recoverable from marital community property, property held jointly by the member of the Board, officer, employee or agent of the Exchange and the lawful spouse, or property transferred from the member of the Board, officer, employee or agent of the Exchange to the lawful spouse. The power to indemnify the lawful spouse of a person who is or was a member of the Board, officer, employee or other agent of the Exchange under subsection (b) shall not include any indemnification in connection with any

Proceeding seeking damages against the spouse for any actual or alleged wrongful act of the spouse.

- (i) Without the necessity of entering into an express contract, all rights to indemnification and advances under this Article VIII shall be deemed to be contractual rights and to be effective to the same extent as if provided in a contract between the Exchange and the Indemnifiable Person at any time while this Article 9 is in effect. Any right to indemnification or advances granted by this Article 9 to an Indemnifiable Person shall be enforceable by or on behalf of the person holding such right in any court of competent jurisdiction if (i) the claim for indemnification or advances is denied, in whole or in part, by the Exchange or (ii) no disposition of such claim is made within ninety (90) days after the Indemnifiable Person requests such indemnification in writing. The claimant in such enforcement action, if successful in whole or in part, shall be entitled to be paid also the expense of prosecuting his claim. It shall be a defense to any such action that the claimant has not met the standards of conduct which make it permissible under this Article 9 for the Board to indemnify the claimant for the amount claimed; but the burden of proving such defense shall be on the Exchange. Neither the failure of the Board to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he has met the applicable standard of conduct set forth in these Bylaws, nor an actual determination by the Board that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct.
- (j) Any repeal or modification of this Article 9 shall only be prospective and shall not affect the rights hereunder in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any Proceeding against any Indemnifiable Person.
- (k) If this Article 9 of the Bylaws or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Exchange shall nevertheless indemnify each Indemnifiable Person to the full extent permitted by any applicable portion of this Bylaw that shall not have been invalidated, or by any other applicable law.

ARTICLE 10. FISCAL YEAR

- 10.1 Fiscal Year. The Exchange shall operate on the State of Idaho's fiscal year.

ARTICLE 11. AMENDMENT

11.1 Amendment or Repeal. Subject to the review and approval of the Director of the Idaho Department of Insurance pursuant to the Act, these Bylaws may be repealed or amended or new Bylaws may be adopted by the affirmative vote of a majority of the voting members of the Board at any regular or special meeting of the Board, provided that the notice of such meeting includes notice of the proposed change.

These bylaws are adopted and approved by the Board of the Exchange on March 14, 2014.

As required by the Act, these Bylaws have been reviewed and are approved by the Director of the Department of Insurance of the State of Idaho on [___], 2014.