



Contract Number

19-844

SAP Number

Human Resources

Department Contract Representative
Telephone Number

HR Division Chief
(909) 387-9676

Contractor
Contractor Representative

Blue Shield of California
Monica Matallana, Major Account
Manager

Telephone Number

(818) 228-6145

Contract Term

01/01/2020 – 12/31/2022

Original Contract Amount

N/A

Amendment Amount

N/A

Total Contract Amount

N/A

Cost Center

IT IS HEREBY AGREED AS FOLLOWS:

This Contract is entered into as of January 1, 2020 between Blue Shield of California (hereinafter referred to as Contractor) and the County of San Bernardino (hereinafter referred to as County).

WHEREAS, the County desires to designate Contractor as a provider for retiree medical plan benefits to County retirees and their eligible dependents; and

WHEREAS, the County conducted a competitive process to find a Contractor to provide these services, and

WHEREAS, the County finds Contractor qualified to provide these services; and

WHEREAS, the County desires that such services be provided by Contractor and Contractor agrees to perform these services as set forth below;

NOW, THEREFORE, the County and Contractor mutually agree to the following terms and conditions:

A. TERM OF CONTRACT

The term of this Contract, to include Attachments A-Q is for a three (3) year period beginning on January 1, 2020 through December 31, 2022 with coverage for County retirees from January 1, 2020 through December 31, 2022; plus one (1) additional two (2) year term option to extend the Contract at the County's discretion

upon satisfactory performance, unless terminated earlier as provided in this section. Monthly premium rates and performance guarantees will be negotiated on an annual basis. Notwithstanding that once effective, the Group Health Service Contract will terminate according to their own termination provisions.

- A.1.** The County may terminate this Contract with cause after written notice of material breach is sent to Contractor and the breach is not cured within fifteen (15) business days of receipt of such notice. For the purpose of the Contract, the term "material breach" shall be defined to mean the failure of Contractor to perform any of its obligations under the Contract. If the nature of the breach is such that it cannot be cured within a fifteen (15) day period, Contractor may submit a written proposal within that period which sets forth a specific means to resolve the default. If the County consents to that proposal in writing, which consent shall not be unreasonably withheld, the defaulting party shall immediately embark on its plan to cure. If the default is not cured within the time agreement, the non-defaulting party may terminate upon written notice specifying the date of termination.
- A.2.** The County may cancel this Contract at any time, without cause, by written notice delivered or mailed to Contractor, effective on receipt or on such later date as specified in the notice.
- A.3.** Upon such termination, payment will be made to Contractor for services rendered and expenses incurred prior to the effective date of termination within thirty (60) working days of the County's receipt of an invoice.
- A.4.** Upon receipt of termination notice Contractor shall promptly discontinue services unless the notice directs otherwise. Contractor shall deliver promptly to County and transfer title (if necessary) all completed work and work in progress, including drafts, documents, plans, forms, data, products, graphics, computer programs and reports in a manner usable by the County at no charge. In the event of such termination, the County may proceed with the work in any manner deemed proper by the County.
- A.5.** The Director of the Human Resources Department or their designee shall have the right to exercise the County's authority under this Contract including the right to give notice of termination on behalf of the County at his sole discretion.

B. GENERAL CONTRACT REQUIREMENTS

B.1. Recitals

The recitals and attachments set forth above are true and correct and incorporated herein by this reference.

B.2. Contract Amendments

Contractor agrees any alterations, variations, modifications, or waivers of the provisions of the Contract, shall be valid only when reduced to writing, executed and attached to the original Contract and approved by the person(s) authorized to do so on behalf of Contractor and County.

B.3. Contract Assignability

Without the prior written consent of the County, the Contract is not assignable by Contractor either in whole or in part.

B.4. Attorney's Fees and Costs

If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under Indemnification and Insurance Requirements.

B.5. Background Checks for Contractor Personnel

Contractor shall ensure that its personnel (a) are authorized to work in the jurisdiction in which they are assigned to perform services; (b) have not been convicted of a felony and are not proven substance abusers; and (c) are not otherwise disqualified from performing the services under applicable Law. If

requested by Customer and not in violation of applicable Law, Contractor shall conduct a background check on all its personnel providing services to verify compliance with the preceding requirements and shall review the results of the background check of each individual to verify that he individual meets Contractor's standards for employment. Such background check shall be in the form generally used by Contractor in its initial hiring of employees or contracting for contractors or, as applicable, during the employment-screening process but must, at a minimum, have been performed within the preceding 12-month period. Contractor personnel who do not meet criteria acceptable to County, in County's sole discretion, shall not be assigned to work on County property, and County shall have the right, at its sole option, to refuse access to any Contract personnel to any County facility

B.6. Change of Address

Contractor shall notify the County in writing, of any change in mailing address within ten (10) business days of the change.

B.7. Choice of Law

This Contract shall be governed by and construed according to the laws of the State of California.

B.8. Compliance with County Policy

In performing services hereunder and while at any County facilities, Contractor personnel (including subcontractors) shall to the extent applicable to the provision of services under the contract (a) conduct themselves in a businesslike manner; (b) comply with the policies, procedures, and rules of the County regarding health and safety, and personal, professional and ethical conduct; (c) comply with the finance, accounting, banking, Internet, security, and/or other applicable standards, policies, practices, processes, procedures, and controls of the County; and (d) abide by all laws applicable to the County facilities and the provision of services hereunder, and all amendments and modifications to each of the documents listed in subsections (b), (c), and (d) (collectively, "County Policies") to the extent the County communicates such County Policies to Contractor. County Policies, and additions or modifications thereto, may be communicated orally or in writing to Contractor or Contractor personnel or may be made available to Contractor or Contractor personnel by conspicuous posting at a County facility, electronic posting, or other means generally used by County to disseminate such information to its employees or contractors. Contractor shall be responsible for the promulgation and distribution of County Policies to Contractor personnel to the extent necessary and appropriate.

County shall have the right to require Contractor's employees, agents, representatives and subcontractors to exhibit identification credentials issued by County in order to exercise any right of access to County facilities under this Contract.

B.9. Confidentiality

In performing the services under this Contract, Contractor shall comply with all applicable state and federal laws and regulations regarding the privacy, security and confidentiality of personal or health information, including the Health Insurance Portability and Accountability Act of 1996, as amended, and regulations promulgated thereunder ("HIPAA").

B.10. Primary Point of Contact

Contractor will designate an individual to serve as the primary point of contact for the Contract. Contractor or designee must respond to County inquiries within two (2) business days. Contractor shall not change the primary contact without written acknowledgement to the County. Contractor will also designate a back-up point of contact in the event the primary contact is not available.

B.11. County Representative

The Director of Human Resources or his/her designee shall represent the County in all matters pertaining to the services to be rendered under this Contract, including termination and assignment of this Contract, and shall be the final authority in all matters pertaining to the Services/Scope of Work by Contractor. The County of San Bernardino Board of Supervisors must approve all amendments to this Contract.

B.12. Damage to County Property

Contractor shall repair, or cause to be repaired, at its own cost, all damages to County vehicles, facilities, buildings or grounds caused by the willful or negligent acts of Contractor or its employees or agents. Such repairs shall be made immediately after Contractor becomes aware of such damage, but in no event later than thirty (30) days after the occurrence.

If the Contractor fails to make timely repairs, the County may make any necessary repairs. The Contractor, as determined by the County, shall repay all costs incurred by the County for such repairs, by cash payment upon demand, or County may deduct such costs from any amounts due to the Contractor from the County.

B.13. Debarment and Suspension

Contractor certifies that neither it nor its principals or subcontracts is presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency (As identified in the United States General Services Administration's System for Award Management database).

B.14. Drug and Alcohol Free Workplace

In recognition of individual rights to work in a safe, healthful and productive work place, as a material condition of this Contract, Contractor agrees that Contractor and Contractor's employees, while performing service for the County, on County property, or while using County equipment:

- a. Shall not be in any way impaired because of being under the influence of alcohol or an illegal drug.
- b. Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal drug. =
- c. Shall not sell, offer, or provide alcohol or an illegal drug to another person, except where Contractor or Contractor's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.
- d. This shall not be applicable to a Contractor or Contractor's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.
- e. The Contractor shall inform all employees that are performing service for the County on County property, or using County equipment, of the County's objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for the County.
- f. The County may terminate for default or breach of this Contract and any other Contract the Contractor has with the County, if the Contractor or Contractor's employees are determined by the County not to be in compliance with above.

B.15. Duration of Terms

This Contract, and all of its terms and conditions, shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties, provided no such assignment is in violation of the provisions of this Contract.

B.16. Employment Discrimination

During the term of the Contract, Contractor shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. Contractor shall comply with applicable provisions of Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VI and Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including applicable laws and regulations hereafter enacted.

B.17.Environmental Requirements

NOTE: Blue Shield and the County understand and agree that the following provision is not applicable to and non-enforceable in whole or in part by either party at any time during the term of this Contract but is required as a standard provision in all County Contracts.

In accordance with County Policy 11-08, the County prefers to acquire and use products with higher levels of post-consumer recycled content. Environmentally preferable goods and materials must perform satisfactorily and be available at a reasonable price. The County requires Contractor to use recycled paper for any printed or photocopied material created as a result of this Contract. Contractor is also required to use both sides of paper sheets for reports submitted to the County whenever practicable.

To assist the County in meeting the reporting requirements of the California Integrated Waste Management Act of 1989 (AB 939), Contractor must be able to annually report the County's environmentally preferable purchases. Contractor must also be able to report on environmentally preferable goods and materials used in the provision of their service to the County, utilizing a County approved form.

B.18.Gratuity

Contractor shall not offer or otherwise distribute any bonus, gratuity, or other payment to subscribers or groups of subscribers for the purpose of inducing enrollment or to existing subscribers or groups of subscribers for the purpose of inducing continuation of enrollment.

B.19.Improper Influence

Contractor shall make all reasonable efforts to ensure that no County officer or employee, whose position in the County enables him/her to influence any award of the Contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of the Contract or shall have any relationship to the Contractor or officer or employee of the Contractor.

B.20.Improper Consideration

Contractor shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the County in an attempt to secure favorable treatment regarding this Contract.

The County, by written notice, may immediately terminate this Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the County with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once a contract has been awarded.

Contractor shall immediately report any attempt by a County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Contractor. The report shall be made to the supervisor or manager charged with supervision of the employee or the County Administrative Office. In the event of a termination under this provision, the County is entitled to pursue any available legal remedies.

B.21.Informal Dispute Resolution

In the event the County determines that service is unsatisfactory, or in the event of any other dispute, claim, question or disagreement arising from or relating to this Contract or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

B.22.Legality and Severability

The parties' actions under the Contract shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. The provisions of this Contract are specifically made

severable. If a provision of the Contract is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.

B.23.Licenses, Permits and/or Certifications

Contractor shall ensure that it has all necessary licenses, permits and/or certifications required by the laws of Federal, State, County, and municipal laws, ordinances, rules and regulations. The Contractor shall maintain these licenses, permits and/or certifications in effect for the duration of this Contract. Contractor will notify County immediately of loss or suspension of any such licenses, permits and/or certifications. Failure to maintain a required license, permit and/or certification may result in immediate termination of this Contract.

B.24.Material Misstatement/Misrepresentation

If during the course of the administration of this Contract, the County determines that Contractor has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the County, this Contract may be immediately terminated. If this Contract is terminated according to this provision, the County is entitled to pursue any available legal remedies.

B.25.Mutual Covenants

The parties to this Contract mutually covenant to perform all of their obligations hereunder, to exercise all discretion and rights granted hereunder, and to give all consents in a reasonable manner consistent with the standards of "good faith" and "fair dealing".

B.26.Nondisclosure

Contractor shall hold as confidential and use reasonable care to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, confidential information that is either: (1) provided by the County to Contractor or an agent of Contractor or otherwise made available to Contractor or Contractor's agent in connection with this Contract; or, (2) acquired, obtained, or learned by Contractor or an agent of Contractor in the performance of this Contract. For purposes of this provision, confidential information means any data, files, software, information or materials in oral, electronic, tangible or intangible form and however stored, compiled or memorialize and includes, but is not limited to, technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data.

B.27.Notice of Delays

Except as otherwise provided herein, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this contract, that party shall, within twenty-four (24) hours if reasonably possible (or, if not, as soon as reasonably possible given the circumstances, in no event shall notice be given later than 72 hours after knowledge) give notice thereof, including all relevant information with respect thereto, to the other party.

B.28.Notification Regarding Performance

In the event of a problem or potential problem that could impact the quality or quantity of work, services, or the level of performance under the Contract, the Contractor shall notify the County within one (1) working day, in writing and by telephone.

B.29.Ownership of Documents

All documents, data, products, graphics, computer programs and reports prepared by Contractor pursuant to the Contract shall be considered property of the County upon payment for services (and products, if applicable). All such items shall be delivered to County at the completion of work under the Contract, at no additional cost to the County, subject to the requirements of Section A–Term of the Contract. Unless otherwise directed by County, Contractor may retain copies of such items.

B.30.Air, Water Pollution Control, Safety and Health

Contractor shall comply with any applicable air pollution control, water pollution, safety and health ordinances and statutes, to the extent that any such requirements apply to the services performed pursuant to this Contract.

B.31. Records

Contractor shall maintain all records and books pertaining to the delivery of services under this Contract and demonstrate accountability for contract performance. All records shall be complete and current and comply with all Contract requirements. Failure to maintain acceptable records shall be considered grounds for withholding of payments for invoices submitted and/or termination of the Contract.

All records relating to the Contractor's personnel, consultants, subcontractors, Services/Scope of Work and expenses pertaining to this Contract shall be kept in a generally acceptable accounting format. Records should include primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue and expenditures. Fiscal records must comply with the appropriate Office of Management and Budget (OMB) Circulars, which state the administrative requirements, cost principles and other standards for accountancy.

B.32. Relationship of the Parties

Nothing contained in this Contract shall be construed as creating a joint venture, partnership, or employment arrangement between the Parties hereto, nor shall either Party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other Party hereto.

B.33. Release of Information

No news releases, advertisements, public announcements or photographs arising out of the Contract or Contractor's relationship with County may be made or used without prior written approval of the County.

B.34. Representation of the County

In the performance of this Contract, Contractor, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of the County of San Bernardino.

B.35. Strict Performance

Failure by a party to insist upon the strict performance of any of the provisions of this Contract by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Contract thereafter.

B.36. Subcontracting

At County's request, Contractor shall provide information regarding the subcontractor's qualifications and a listing of a subcontractor's key personnel if applicable, including, if requested by the County, resumes of proposed subcontractor personnel, as available. Contractor shall remain directly responsible to County for its subcontractors and shall indemnify County for the actions or omissions of its subcontractors under the terms and conditions specified in Section G – Indemnification and Insurance Requirements.

For any subcontractor, Contractor shall:

- a. Be responsible for subcontractor compliance with the Contractor's form Agreement set forth in Exhibit A.

Upon expiration or termination of this Contract for any reason, County will have the right to enter into direct Contracts with any of the subcontractors. Contractor agrees that its contracts with subcontractors will not prohibit or restrict such Subcontractors from entering into direct Contracts with County.

B.37. Subpoena

In the event that Contractor receives a subpoena seeking a copy of documents related to the contract between the County and Contractor, Contractor will provide timely notice to the County of the subpoena so that the County and Contractor may partner on a response or lawful effort to contest the legal validity of the subpoena. Contractor understands that the County will provide notice to them if the County receives a subpoena or other legal process seeking a copy of the contract.

B.38. Termination for Convenience

The County and the Contractor each reserve the right to terminate the Contract, for any reason, with a ninety (90) day written notice of termination. Upon such termination, payment will be made to the Contractor for services rendered and expenses reasonably incurred prior to the effective date of termination. Upon receipt of termination notice Contractor shall promptly discontinue services unless the notice directs otherwise. Contractor shall deliver promptly to County and transfer title (if necessary) all completed work, and work in progress, including drafts, documents, plans, forms, data, products, graphics, computer programs and reports.

B.39. Time of the Essence

Time is of the essence in performance of this Contract and of each of its provisions.

B.40. Venue

The venue of any action or claim brought by any party to this Contract will be the Superior Court of California, County of San Bernardino, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino, San Bernardino District.

B.41. Conflict of Interest

Contractor shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the County. Contractor shall make a reasonable effort to prevent employees, Contractor, or members of governing bodies from using their positions for purposes that are, or give the appearance of being motivated by a desire for private gain for themselves or others such as those with whom they have family business, or other ties. Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and state law. In the event the County determines a conflict of interest situation exists, any increase in costs, associated with the conflict of interest situation, may be disallowed by the County and such conflict may constitute grounds for termination of the Contract. This provision shall not be construed to prohibit employment of persons with whom Contractor's officers, employees, or agents have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant.

B.42. Former County Administrative Officials

Contractor agrees to provide, or has already provided information on former County of San Bernardino administrative officials (as defined below) who are employed by or represent Contractor. The information provided includes a list of former County administrative officials who terminated County employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of Contractor. For purposes of this provision, "County administrative official" is defined as a member of the Board of Supervisors or such officer's staff, County Executive Officer or member of such officer's staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

B.43. Disclosure of Criminal and Civil Procedures

The County reserves the right to request the information described herein from the Contractor. Failure to provide the information may result in a termination of the Contract. The County also

reserves the right to obtain the requested information by way of a background check performed by an investigative firm. The Contractor also may be requested to provide information to clarify initial responses. Negative information discovered may result in Contract termination.

Contractor is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees (as that term is defined herein), within the last ten years, has been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense arising directly or indirectly from the conduct of the firm's business, or whether the firm, or any of its partners, principals, members, associates or key employees, has within the last ten years, been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense involving financial misconduct or fraud. If the response is affirmative, the Contractor will be asked to describe any such indictments or charges (and the status thereof), convictions and the surrounding circumstances in detail.

In addition, the Contractor is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees, within the last ten years, has been the subject of legal proceedings as defined herein arising directly from the provision of services by the firm or those individuals. "Legal proceedings" means any civil actions filed in a court of competent jurisdiction, or any matters filed by an administrative or regulatory body with jurisdiction over the firm or the individuals. If the response is affirmative, the Contractor will be asked to describe any such legal proceedings (and the status and disposition thereof) and the surrounding circumstances in detail.

For purposes of this provision "key employees" includes any individuals providing direct service to the County. "Key employees" do not include clerical personnel providing service at the firm's offices or locations.

B.44. Iran Contracting Act

IRAN CONTRACTING ACT OF 2010, Public Contract Code sections 2200 et seq. In accordance with Public Contract Code section 2204(a), the Contractor certifies that at the time the Contract is signed, the Contractor signing the Contract is not identified on a list created pursuant to subdivision (b) of Public Contract Code section 2203 as a person (as defined in Public Contract Code section 2202(e)) engaging in investment activities in Iran described in subdivision (a) of Public Contract Code section 2202.5, or as a person described in subdivision (b) of Public Contract Code section 2202.5, as applicable.

Contractors are cautioned that making a false certification may subject the Contractor to civil penalties, termination of existing contract, and ineligibility to bid on a contract for a period of three (3) years in accordance with Public Contract Code section 2205.

B.45. Copyright

County shall have a royalty-free, non-exclusive and irrevocable license to publish, disclose, copy, translate, and otherwise use, copyright or patent, now and hereafter, all reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other materials or properties developed under this Contract including those covered by copyright, and reserves the right to authorize others to use or reproduce such material. All such materials developed under the terms of this Contract shall acknowledge the County of San Bernardino as the funding agency and Contractor as the creator of the publication. No such materials, or properties produced in whole or in part under this Contract shall be subject to private use, copyright or patent right by Contractor in the United States or in any other country without the express written consent of County. Copies of all educational and training materials, curricula, audio/visual aids, printer material, and periodicals, assembled pursuant to this Contract must be filed with the County prior to publication.

B.46. Artwork, Proofs and Negatives

All artwork, proofs, and/or negatives in either print or digital format for anything produced under the terms of this Contract are the property of the County. These items must be returned to the County within ten (10) days, upon written notification to the Contractor. In the event of a failure to return

the documents, the County is entitled to pursue any available legal remedies. In addition, the Contractor will be barred from all future solicitations, for a period of at least six (6) months.

C. CONTRACTOR RESPONSIBILITIES

- C.1.** Provide group health care benefits to Retirees as specified in Attachments B, C, and D - Blue Shield Group Agreements.
- C.2.** Provide final renewal rates for the retiree medical plan(s) to the County or designee no later than one-hundred twenty (120) days before the beginning of the contract plan year, subject to any changes to be implemented by the County. This is contingent on when the County confirms final benefits and rates.
- C.3.** Implement, maintain, and expand, as necessary, a network of primary care medical providers as well as specialists and hospitals sufficient to provide the benefits outlined in this contract to the County's eligible retired employees residing in California and outside of the state.
- C.4.** Accept County enrollment processes, including paper enrollment and/or electronic enrollments.
- C.5.** Accept enrollment forms via a secure electronic data interchange system.
- C.6.** Urgent enrollments will be effective on the same day if submitted prior to 1:30 p.m. Pacific Standard Time, requests received later than 1:30 p.m. will be processed by noon on the following business day.
- C.7.** Assist in the design, implementation and administration of modifications to the medical benefits.
- C.8.** Adhere to a set of agreed upon performance standards, where 2% of premium is at risk annually, as set forth in Attachment A- Performance guarantees in addition to any other targeted dollar amounts provided in the Commitment to the County set forth in Attachment P of this Contract.
- C.9.** Demonstrate measurable steps towards ensuring that high quality care is provided.
- C.10.** Provide assistance, technically and creatively, in the on-going development and preparation of various retiree communication materials.
- C.11.** Provide semi-annual and annual utilization reports broken down by plan of benefits, members, spouses and dependents, and type of service. Such reports should also include details on the type of illnesses or injuries being treated for retiree, spouse and dependent.
- C.12.** Attend and provide resources to help support all County open enrollment meetings for County retirees as scheduled by the County.
- C.13.** Maintain complete and accurate records with respect to all matters and services provided to the County.
- C.14.** Make prompt payment for claims for medical care benefits.
- C.15.** Provide claims processing for claims incurred during the contract, including claims submitted after the termination date of the contract at no additional cost to the County. Such continuance must continue for a minimum of twelve (12) months after the termination of the contract with the County.
- C.16.** Periodically provide reasonable access to a County-appointed auditor(s) to perform audits to determine accuracy of claims payments and appropriate grievance administration. Make the County whole financially for errors identified and, in the event errors are discovered that exceed industry standards, pay for the cost of such audit.
- C.17.** Provide complete and accurate electronic records of County medical, hospital, and prescription drug claims paid to any succeeding Contractor in the manner and format necessary to continue retiree medical, hospital and prescription drug coverage, at no additional cost to the County.

- C.18.** Provide a final contract for the retiree insured HMO and PPO plans to the County by October 1 of each year, subject to any changes to be implemented by the County. This is contingent on when the County confirms final benefits and rates.
- C.19.** Establish an account management and servicing relationship with the County that emphasizes proactive regular contact and timely responses to administrative issues.
- C.20.** Complete and submit on a semi-annual basis, an Executive Summary Analysis, Dashboard, and Action Plan. Satisfaction of this requirement will be subject to performance guarantees.
- C.21.** Contractor agrees the period of time to accept retroactive enrollments and corrections for the retiree plans shall not exceed ninety (90) days.
- C.22.** The County shall administer applicable Federal COBRA plans.
- C.23.** Contractor agrees the period of time to accept retroactive enrollments and corrections for the Federal COBRA plans shall not exceed one-hundred twenty (120) days.
- C.24.** Contractor shall administer applicable Cal COBRA plans.
- C.25.** Conduct discrepancy reporting, timely and accurately, to ensure that enrollment is validated and/or corrected within mutually agreed upon time frames.
- C.26.** Agree that there shall be no charge for history and take over data/reports to any subsequent Contractor for the retiree plan.

D. ELIGIBILITY

Retirees, their spouses or domestic partners and their dependent children that meet the eligibility requirements established by the County may enroll in the plans described herein.

- D.1.** Newborns are covered on the date of their birth for the first thirty-one (31) days during which the subscriber must enroll the newborn for participation in the plan within sixty (60) days.
- D.2.** Medicare eligibility shall not affect eligibility of an eligible employee, spouse, domestic partner or dependent children.

E. ENROLLMENT

- E.1.** Contractor agrees to a sixty (60) calendar day eligibility period for enrollment resulting from qualifying events as established by the County.

Enrollment of an eligible retiree, spouse, domestic partner and any dependent children is subject to cancellation provisions provided under this Contract.

- E.2.** The County shall compile and furnish to Contractor a monthly eligibility file of all primary subscribers and, if applicable all eligible spouses, domestic partners and dependent children. Contractor shall be obligated to provide benefits only to primary subscriber and the primary subscriber's eligible spouse, domestic partner and their dependent children who are enrolled and are reported on the monthly file submitted by the County and for whom the appropriate premiums are paid. Contractor agrees to accept a monthly premium remittance structure for Retiree enrollees, pursuant to Attachment B, C and D - Group Health Service Contracts for the period in which covered medical services are provided.
- E.3.** Contractor shall report discrepancies in eligibility and billing information to the County on a monthly basis. The County will review and reconcile any discrepancies within thirty (30) calendar days of notification.

F. FISCAL PROVISIONS

F.1. PAYMENT

- a. Contractor shall accept self-billed invoicing for medical insurance premiums on a monthly basis.
- b. Contractor agrees to a forty-five (45) day grace period before County payments are considered delinquent and a subsequent thirty (30) day Notice of Intent to Terminate contract once the forty-five (45) day grace period has been exhausted. (Total of 75 days)
- c. Contractor agrees that no prepayment of claims, premiums or fees will be required at any time.
- d. Contractor agrees to accept a monthly premium remittance structure for retiree enrollees.
- e. Contractor agrees to accept a monthly premium remittance structure for COBRA enrollees.

F.2. Electronic Fund Transfer Program

Contractor shall accept all payments from County via electronic funds transfer (EFT) directly deposited into the Contractor's designated checking or other bank account. Contractor shall promptly comply with directions and accurately complete forms provided by County required to process EFT payments.

- F.3.** The Employer shall remit to Blue Shield premiums as specified in Part F ("the base Dues"). If a State or any other taxing authority imposes upon Blue Shield a tax or license fee which is levied upon or measured by the base Dues or by the gross receipts of Blue Shield or any portion of either, then Blue Shield may amend the Contract to increase the base Dues by an amount sufficient to cover all such taxes or license fees rounded to the nearest cent. This amendment shall be effective as of the date stated in the notice which shall not be earlier than the date of the imposition of such tax or license fee, by mailing a postage prepaid notice of the amendment to the Employer at its address of record with Blue Shield at least 60 days before the effective date of the amendment.

G. INDEMNIFICATION AND INSURANCE REQUIREMENTS

G.1. Indemnification

Contractor will indemnify and hold the County, its officers, and employees harmless for any claims, lawsuits, settlement, judgments, costs, penalties, and expenses, including reasonable attorneys' fees, in proportion to and to the extent caused by the negligence or willful misconduct of Contractor or its employees with respect to its performance or non-performance of Contractor's obligations established in the contract signed by both parties.

G.2. Additional Insured

All policies, except for Worker's Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the County and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the County to vicarious liability but shall allow coverage for the County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

G.3. Waiver of Subrogation Rights

Contractor shall require the carriers of required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Contractor and Contractor's employees or agents from waiving the right of subrogation prior to a loss or claim. Contractor hereby waives all rights of subrogation against the County.

G.4. Policies Primary and Non-Contributory

Where available, all policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.

G.5. Severability of Interests

Contractor agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the Contractor and the County or between the County and any other insured or additional insured under the policy.

G.6. Proof of Coverage

Contractor shall furnish Certificates of Insurance to San Bernardino County Department administering the contract evidencing the insurance coverage at the time the contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, and Contractor shall maintain such insurance from the time Contractor commences performance of services hereunder until the completion of such services.

G.7. Acceptability of Insurance Carrier

Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A-VII".

G.8. Deductibles and Self-Insured Retention

Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

G.9. Failure to Procure Coverage

In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, the County has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by the Contractor or County payments to the Contractor will be reduced to pay for County purchased insurance.

G.10. Insurance Review

Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the County, inflation, or any other item reasonably related to the County's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. Contractor agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of the County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the County.

G.11. Insurance Specification

Contractor agrees to provide insurance set forth in accordance with the requirements herein. If the Contractor uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Contractor agrees to amend, supplement or endorse the existing coverage to do so.

Without in anyway affecting the indemnity herein provided and in addition thereto, the Contractor shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

- a. Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons and all risks to such persons under this contract.
- b. If Contractor has no employees, it may certify or warrant to the County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management.
- c. Commercial/General Liability Insurance – Contractor shall carry General Liability Insurance covering all operations performed by or on behalf of the Contractor providing a limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:
 - i. Damages to premises rented to you
 - ii. Products and completed operations.
 - iii. Bodily injury property damage
 - iv. Medical expense sublimit
 - v. Advertising injury and personal injury.
 - vi. Contractual liability subject to policy terms and conditions
 - vii. \$2,000,000 general aggregate limit.
- d. Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If Contractor owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

- e. Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any of the aforementioned liabilities in the event of erosion of not covered by the primary policy limits. The coverage shall also apply to automobile liability.
- f. Professional Liability – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim and two million (\$2,000,000) aggregate limits

or

- g. Errors and Omissions Liability Insurance – Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits

or

If insurance coverage is provided on a "claims made" policy, the "retroactive date" shall be shown and must be before the date of the state of the contract work. The claims made insurance shall be maintained or "tail" coverage provided for a minimum of five (5) years after contract completion.

- h. **Cyber Liability Insurance** - Cyber Liability Insurance with limits of no less than \$1,000,000 for each occurrence or event with an annual aggregate of \$2,000,000 covering privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy shall protect the involved County entities and cover breach response cost as well as regulatory fines and penalties.

H. RIGHT TO MONITOR AND AUDIT

H.1. The County, shall have the right to review and audit all records, books, papers, documents, , and other pertinent items as requested, produced by Contractor in performing the services under the Contract and shall have the right to monitor the performance of Contractor in the delivery of services provided under this Contract. Contractor shall give full cooperation, in any auditing or monitoring conducted. Contractor shall cooperate with the County in the implementation, monitoring, and evaluation of this Contract and comply with any and all reporting requirements established by the County.

H.2. All records pertaining to services delivered and all fiscal, statistical and management books and records shall be available for examination and audit by County representatives for a period of three years after final payment under this Contract or until all pending County, State and Federal audits are completed, or as required by applicable law or regulation whichever is later. Contractor agrees to cooperate fully with any State or Federal audit with respect to the agreement.

I. CORRECTION OF PERFORMANCE DEFICIENCIES

A material breach of this Contract is defined in Section A above.

I.1. In the event of a non-cured breach (as described in Section A), County may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:

- a. Afford Contractor thereafter a time period within which to cure the breach, which period shall be established at the sole discretion of County; and/or
- b. Withhold funds pending duration of the breach; and/or
- c. Offset against any monies billed by Contractor but yet unpaid by County In the event of termination of the Contract, the County may proceed with the work in any manner deemed proper by the County. The cost to the County shall be deducted from any sum due to the Contractor under this Contract and the balance, if any, shall be paid by the Contractor upon demand.

J. NOTICES

All written notices provided for in this Contract or which either party desires to give to the other shall be deemed fully given, when made in writing and either served personally, or by facsimile, or deposited in the United States mail, postage prepaid, and addressed to the other party as follows:

County of San Bernardino
Diane Rundles, Interim Director
Human Resources Department
Employee Benefits and Services Division
157 W. Fifth Street, First Floor
San Bernardino, CA 92415-0440
(909) 387-5570; Facsimile (909) 387-5566

Blue Shield of California
Attn: Customer Contract Development
601 12th Street
Oakland, CA 94607

Notice shall be deemed communicated two (2) County working days from the time of mailing if mailed as provided in this paragraph.

K. ENTIRE AGREEMENT

Attached hereto and incorporated herein are the following contracts:

Attachment A – Blue Shield Performance Guarantees

Attachment B – Group Service Contract (Non-Medicare & COB)
Attachment C – Group Service Contract (GMAPD)
Attachment D – Group Service Contract (PDP)
Attachment E – Blue Shield Signature (HMO) High Option Evidence of Coverage
Attachment F – Blue Shield Signature (HMO) Low Option Evidence of Coverage
Attachment G – Blue Shield PPO High Option Evidence of Coverage
Attachment H – Blue Shield PPO Low Option Evidence of Coverage
Attachment I – Blue Shield Medicare COB PPO [High Option] Evidence of Coverage
Attachment J – Blue Shield 65 Plus (HMO) High Option Evidence of Coverage
Attachment K – Blue Shield 65 Plus (HMO) Low Option Evidence of Coverage
Attachment L – Blue Shield Signature HMO COB (Frozen Plan) Evidence of Coverage
Attachment M – Blue Shield Hybrid PPO COB (Frozen Plan) Evidence of Coverage
Attachment N – Blue Shield of California Medicare Rx Plan Evidence of Coverage
Attachment O – Blue Shield Trio HMO Low Option Evidence of Coverage
Attachment P – Blue Shield Commitments to the County
Attachment Q – Blue Shield Certificates of Liability
Exhibit A – Supplier Agreement Template

In the event that the provisions of these attachments conflict with the provisions of this contract, the provisions of this contract shall prevail.

This Contract, including all Exhibits and other attachments, which are attached hereto and incorporated by reference, and other documents incorporated herein, represents the final, complete and exclusive agreement between the parties hereto. Any prior agreement, promises, negotiations or representations relating to the subject matter of this Contract not expressly set forth herein are of no force or effect. This Contract is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. Each party has carefully read this Contract and signs the same of its own free will.

IN WITNESS WHEREOF, the County of San Bernardino and the Contractor have each caused this Contract to be subscribed by its respective duly authorized officers, on its behalf.

COUNTY OF SAN BERNARDINO

BLUE SHIELD OF CALIFORNIA

(Print or type name of corporation, company, contractor, etc.)

By

(Authorized signature - sign in blue ink)

Name Ken Lautsch

(Print or type name of person signing contract)

Title Vice President of Premier Accounts

(Print or Type)

Dated: 12-2-2019

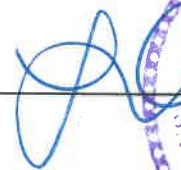
Address 100 North Pacific Coast Hwy 20th Floor

El Segundo, CA 90245


Curt Hagman, Chairman, Board of Supervisors

Dated: DEC 17 2019
SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

By

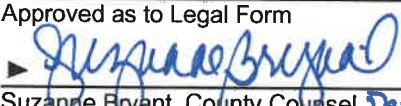

Lynna Monell
Clerk of the Board of Supervisors
of the County of San Bernardino

Deputy



FOR COUNTY USE ONLY

Approved as to Legal Form


Suzanne Bryant, County Counsel, Deputy

Date 12-13-19

Reviewed for Contract Compliance

Date 12/13/19

Reviewed/Approved by Department


Diane Rundles, Interim Director of Human Resources

Date 12/13/19

Blue Shield of California

Contract No. _____

CONSULTING AGREEMENT

THIS CONSULTING AGREEMENT (the "Agreement") is made, entered into and effective as of _____, 2020 (the "Effective Date") by and between California Physicians' Service d/b/a Blue Shield of California, a California not for profit mutual benefit corporation, located at 50 Beale Street, San Francisco, California 94105 ("BSC") and _____, a _____ corporation, located at _____ ("Consultant"). BSC may be obtaining the services described in this Agreement on behalf of its affiliates and subsidiaries, including without limitation, Blue Shield of California Life & Health Insurance Company ("BSL"). BSC is a health care service plan licensed under the Knox-Keene Act and regulated by the California Department of Managed Health Care. BSL is licensed as a life and disability insurance company pursuant to the California Insurance Code and is regulated by the California Department of Insurance. References to specific laws or regulatory agencies in this Agreement may be applicable only to BSC, or only to its affiliates or subsidiaries.

WHEREAS, BSC does not have the expertise to do the specific services it needs and desires to have Consultant provide BSC with the consulting services set forth below (the "Services"); and

WHEREAS, Consultant has the knowledge, experience, expertise and ability to provide the Services and has provided such services to other clients over a reasonable period of time.

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained herein and for other good and valuable consideration, the parties hereto agree as follows:

1. Services

The Consultant will provide to BSC the Services, which includes any related Deliverables, as is more fully set forth in the Statement of Work attached hereto as Exhibit A (the "SOW"). From time to time BSC may desire to obtain, and Consultant may desire to perform, additional Services, including related Deliverables, pursuant to a new SOW. In such event the initial SOW shall be designated Exhibit A-1 and each new additional SOW shall be consecutively numbered (e.g., Exhibit A-2, A-3, A-4, etc.). All additional SOWs shall at a minimum set forth a description of the Services to be provided and the fees to be paid in consideration of such Services, and shall only become effective upon execution by Consultant and an authorized representative of BSC. Upon mutual execution, such new SOW shall be deemed attached to this Agreement and incorporated herein by reference.

2. Compensation, Billing Terms, and Procedures

The Consultant will be paid as set forth on Exhibit A.

3. Taxpayer Identification Number

Prior to commencing the Services, Consultant shall provide BSC with a duly executed IRS Form W-9 as set forth on Exhibit B and provide Consultant's Employer Identification Number ("EIN") or Social Security Number ("SSN") to BSC.

4. Term and Termination

This Agreement shall be effective as of the Effective Date and shall terminate, unless terminated as hereinafter provided, upon completion of the Services by Consultant. BSC may, at any time, without cause, terminate this Agreement or any SOW by giving the Consultant five (5) business days' prior written notice. Consultant shall stop performing Services on the date specified in the termination notice and deliver to BSC all Deliverables completed or in progress up to the date of termination. In the event BSC terminates this Agreement or any SOW without cause BSC will only be obligated to pay Consultant for the Services actually performed, and allowed reimbursable expenses incurred, through the date of termination. In the event of a breach by either party, the other party shall give written

notice to the breaching party of its intent to terminate this Agreement. The breaching party shall then have ten (10) days after receipt of the notice to cure the breach. If the breaching party does not cure the breach within said ten (10) day period, this Agreement may be terminated by the non-breaching party. If BSC terminates the Agreement for a breach, Consultant understands and agrees BSC will pay no further compensation to the Consultant for any work performed by Consultant after Consultant's receipt of the termination notice.

Notwithstanding the foregoing, if Consultant breaches the provisions of Sections 5 or 6 hereof, then in order to protect its confidential and proprietary information, including its trade secrets, BSC shall be entitled to immediately obtain injunctive relief. Consultant will be responsible for any damages BSC suffers as a result of the breach and the Agreement may be immediately terminated by BSC.

Upon notice of termination of this Agreement or any SOW, Consultant shall cooperate with BSC to develop as promptly as reasonable a comprehensive plan for transferring the Services back to BSC or to any new consultant designated by BSC. Consultant shall assist BSC in transferring the Services in an expeditious manner in order to minimize the possibility of discontinuity or disruption to BSC. As part of the transfer of the Services, Consultant shall provide adequate information on the Services environment to allow BSC or any new consultant to duplicate such environment and the Services.

5. Ownership of Materials

Any and all information and material provided to Consultant by BSC, or anyone acting for or on behalf of BSC, will remain the sole property of BSC and any such information and material is provided to Consultant solely for the purpose set forth in this Agreement. Such information shall be considered BSC's Confidential Information as provided for in Section 6 of this Agreement.

Consultant agrees all work done as part of or in providing the Services to BSC, and the Deliverables shall be owned by and be the property of BSC and BSC shall have the exclusive ownership of all such Deliverables and work and

shall exclusively own all United States and International copyrights, patents, trade secrets, trade marks and all other Intellectual property rights in the Deliverables and work. Consultant assigns, and upon creation of each element of each piece of work or Deliverable automatically assigns to BSC, its successors and assigns, all right, title and interest in and to the work and Deliverable and ownership of all United States and International copyrights, patents, trade secrets, trade marks and all other Intellectual property rights in each element of each piece of the Deliverable or work. From time to time, upon BSC's request, either Consultant or Consultant's personnel or both shall confirm such assignments by execution and delivery of such assignments, confirmations of assignments, or other written instruments as BSC may request. BSC and its successors and assigns shall have the right to obtain and hold in its own name all copyright registrations, patents, trade secrets, trade marks and other evidence of rights that may be available for the Deliverable or work and any portion(s) thereof. All of the Deliverables and work, whether completed or not, will be promptly given to BSC upon the termination or expiration of this Agreement or upon BSC's request and Consultant shall not use or retain any copies of the Deliverables and work.

6. Confidential Information

Consultant and Consultant's agents and representatives agree to be bound by Exhibit C and Exhibit E to this Agreement, which is attached hereto and incorporated by reference herein. Consultant shall not remove any BSC Confidential Information or other BSC materials from BSC's premises without the written consent of BSC. Upon receiving such consent, the Consultant shall provide to BSC a written list specifically setting forth what BSC Confidential Information or materials Consultant is removing from the BSC premises. All such Confidential Information and materials shall be returned to BSC, upon BSC's request or as is provided for in Exhibit C and Exhibit E. Consultant agrees that information provided by BSC, whether Confidential Information or not, shall not be transmitted or stored outside the United States of America without BSC's prior written consent. Consultant further agrees that the terms and conditions of the Agreement are considered Confidential Information and are governed by the provisions set forth in this Section 6.

7. Examination of Records

BSC, and any governmental officials entitled to such access by law, may at any time during the term of this Agreement and for one (1) year after the termination of this Agreement, upon reasonable notice, examine the Consultant's records pertaining to the Services.

8. Indemnification

Consultant will be solely and entirely responsible for Consultant's actions and the actions of Consultant's agents, employees, representatives and subcontractors. Consultant agrees to fully indemnify, defend and hold harmless (collectively "Indemnify") BSC (including for purposes of this Section 8 BSC's directors, officers, employees, representatives and agents) from and against any losses, actions, liabilities, damages, claims, demands,

obligations, costs or expenses (including reasonable attorneys' fees, disbursements and costs of investigation, litigation, settlement, and judgment and any taxes, interest, penalties and fines with respect to the foregoing) (collectively, "Losses") arising from (i) acts or omissions of Consultant or any of Consultant's agents, employees, representatives or subcontractors; or (ii) claims made by the Consultant's agents, employees, representatives or subcontractors. Consultant represents and warrants (i) that all Deliverables and work developed for or made available to BSC (other than materials owned by BSC) is original to Consultant or has been provided to Consultant under licenses or approvals from the owners or licensees of such Deliverable or work; (ii) that all royalties and costs arising from patents, trademarks, service-marks, licenses and copyrights in any way involved in the Services or Deliverables or work (other than materials owned by BSC) have been paid by Consultant and whenever Consultant is required or desires to use any such design, device, material or process, Consultant shall have obtained all rights to use it as well as the right for BSC to use it; and (iii) that neither the Deliverables or work nor any of their elements, nor the use thereof, does or will violate or infringe upon any patent, copyright, trade secret, or other property right of any person. Consultant will indemnify BSC from and against any and all Losses arising from or in connection with any claim that any Deliverable or work developed by Consultant hereunder infringes, or is alleged to infringe, a patent, a copyright or a trade secret, or other property rights of any person. If any such Deliverable or work is, or in Consultant's opinion is likely to be, held to constitute an infringing product, Consultant shall at Consultant's expense and option immediately either: (i) procure the right for BSC to continue using it, (ii) replace it with a non-infringing equivalent, or (iii) modify it to make it non-infringing. During the pendency of any claim against Consultant or BSC with respect to an infringement claim, BSC may withhold compensation associated with the claim. BSC shall have the right to select the counsel who will provide the indemnification defense, subject to Consultant's approval, which shall not be unreasonably withheld. Should Consultant fail to furnish a defense or the defense is clearly inadequate or insufficient, as determined by BSC, BSC may assume its own defense and Consultant shall reimburse, on a monthly basis, BSC for this defense.

9. Independent Contractor

The Consultant is an independent contractor and nothing herein shall be construed to the contrary. Consultant shall not assume or create any obligations or responsibilities express or implied, on behalf of or in the name of BSC, or bind BSC in any manner or thing whatsoever without BSC's written consent. The Consultant will use Consultant's own tools and instruments in providing the Services. Consultant will supply all necessary labor to render Services under this Agreement and may use subcontractors in doing so. Consultant's execution of any subcontracts, including subcontracts approved by BSC, will not relieve, waive or diminish any obligation Consultant may have to BSC under this Agreement and Consultant shall be responsible and liable for all acts of its subcontractors, their employees or agents. Consultant shall be solely responsible for the direction and control of Consultant's agents, employees,

representatives and subcontractors, including decisions regarding hiring, firing, supervision, assignment and the setting of wages and working conditions. BSC shall neither have nor exercise disciplinary control or authority over Consultant or Consultant's agents, employees, representatives or subcontractors. No agent, employee, representative or subcontractor of Consultant shall be or be deemed to be the employee, agent, representative or subcontractor of BSC. None of the employer-paid benefits provided by BSC to its own employees, including but not limited to workers' compensation insurance and unemployment insurance, are available from BSC to Consultant or to Consultant's employees, agents, representatives or subcontractors. Consultant agrees to provide workers' compensation insurance for any person utilized by Consultant to perform services under this Agreement and to pay all applicable social security taxes, unemployment compensation taxes, income taxes and other employer taxes and contributions required by any federal, state or local law with respect to Consultant or to persons utilized by Consultant to perform services under this Agreement.

10. Tax Reporting and Filing

For all purposes, including but not limited to the Federal Insurance Contributions Act, the Social Security Act, the Federal Unemployment Tax Act, Federal Income tax withholding requirements, California Personal Income Tax Withholding, California Unemployment taxes, California Disability Insurance, and all other federal, state and local laws, rules and regulations, Consultant (and Consultant's respective employees, agents, representatives and subcontractors, if any) shall be treated as an independent contractor consultant and not as a BSC employee.

Consultant acknowledges and agrees that Consultant shall be responsible for filing all tax returns, tax declarations, and tax schedules, and for the payment of all taxes required, when due, with respect to any and all compensation earned by Consultant under this Agreement. BSC will not withhold any employment taxes from compensation it pays Consultant. Rather, BSC will report the amount it pays Consultant on IRS Forms 1099, to the extent required to do so under applicable Internal Revenue Code provisions and state or local law.

11. Performing Services for Others

BSC agrees that Consultant may perform services for others, so long as the performance of those services does not interfere with the performance or completion of any Services. It is expressly understood and agreed that this Agreement does not grant to Consultant any exclusive rights to do business with BSC and that BSC may contract with other suppliers for the procurement of comparable services. BSC makes no guarantee or commitment for any minimum or maximum amount of Services to be purchased under this Agreement.

12. Insurance

Consultant shall maintain the insurance coverage, and is also responsible for its Subcontractors maintaining sufficient limits of the same insurance coverage as set forth in Exhibit D to this Agreement, which is attached hereto and

Incorporated by reference herein. Before commencing performance of Work, Consultant shall furnish BSC with certificates of insurance and endorsements of all required insurance for Consultant. The documentation shall state that coverage shall not be cancelled except after thirty (30) days prior written notice has been given to BSC. The documentation must be signed by a person authorized by that insurer to bind coverage on its behalf and shall be submitted to Blue Shield of California at the following email address:

SupplierCertificate@blueshieldca.com

13. Force Majeure

Neither party shall be liable, and its performance shall be excused, for any delays resulting from circumstances or causes beyond its reasonable control, including without limitation, fire or other casualty, act of God, strike or labor dispute, war, sabotage, terrorism, acts of aggression or other violence provided such party shall have used its commercially reasonable efforts to mitigate its effects and has given prompt written notice to the other party. The time for the performance shall be extended for the period of delay or inability to perform due to such occurrences up to a period of five days at which time the party unaffected by the Force Majeure event may immediately terminate this Agreement.

14. Compliance with Laws and BSC's Policies and Procedures

Consultant will comply with all applicable laws, rules and regulations while providing the Services and will comply with the applicable policies and procedures of BSC, including, without limitation, BSC's Code of Business Conduct.

15. Representations and Warranties

A. Consultant represents and warrants (i) that it has full power and authority to provide the Services and Deliverables to BSC and to grant BSC the rights granted herein; (ii) that it has and will maintain any and all licenses and permits required to perform the Services while Consultant serves as an independent contractor to BSC; and (iii) that all Services, including creation of all Deliverables, will be performed within the United States of America.

B. Consultant represents and warrants that:

(i) It will perform the Services on a professional best efforts basis and that the findings, recommendations and Deliverables provided or set forth in the Services, as well as any other materials provided to BSC, will reflect Consultant's best professional judgment based on the information available to Consultant.

(ii) Its personnel assigned to perform Services under this Agreement and any SOW have the necessary qualifications, competence, and experience required to provide the Services and the Deliverables. If BSC, at its sole discretion, is not satisfied with the performance of any Consultant personnel, BSC shall notify Consultant and Consultant shall promptly furnish replacement personnel.

(iii) All materials, software and equipment supplied to BSC, if any, and any associated workmanship, will be free from errors, faults, and defects and in conformance with the requirements of this Agreement and any SOW for a period of twelve (12) months following completion of the Services. If any longer warranty is specified for any materials, software, equipment or workmanship under any SOW, the longer warranty period will govern. Consultant will ensure that all materials, software and equipment that carry a manufacturer's warranty are registered with the manufacturer in BSC's name.

(iv) Upon notice from BSC, Consultant will promptly remedy any non-conformance with the warranties set forth in this Section 16.B. within a thirty (30) day cure period. In the event such breach is not remedied within the applicable cure period, Consultant will, upon BSC's request and without limiting any other remedies BSC may have, refund all amounts paid by BSC related to the either the non-conforming Services or Deliverables or both and reimburse BSC for additional costs BSC incurs related to the provision of either replacement services or replacement deliverables or both. Consultant will be allowed only one cure period for the same or similar breach.

16. Change Control and Escalation.

Any changes to the Services, Deliverables or fees under an SOW must be submitted in writing by the party requesting such change to the other party (a "Change Request"). For Change Requests submitted by BSC, Consultant shall notify BSC in writing of any cost, functionality and schedule impacts within two (2) business days. If Consultant and BSC agree to approve a Change Request, the parties shall enter into a mutually executed amendment to the respective SOW, which identifies all changes to the terms set forth in such SOW. The terms set forth in the respective SOW shall remain in place until such time as an amendment reflecting the proposed change has been signed by an authorized representative of each party.

If the parties are unable to agree on any change, or if the parties otherwise have a dispute under this Agreement or any SOW, either party may escalate the matter in accordance with the levels of escalation described below. At each escalation level the parties will use good faith efforts, for a period of up to five (5) business days, to resolve the dispute.

	For BSC	For Consultant
Level 1:		
Level 2:		

17. Miscellaneous

A. Assignment. This Agreement may not be voluntarily or by operation of law assigned or transferred in whole or part, or in any other manner transferred by the Consultant without the prior written consent of BSC. Any attempt to assign or transfer this Agreement other than in conformance with this Section shall be of no effect and considered null and void. For purposes of this Section, any change of control of Consultant (including, without

limitation, (i) any other entity, person or group acquiring all or substantially all of the assets of Consultant (or any parent company of Consultant), whether directly or indirectly, in a single transaction or series of related transactions, or (ii) that Consultant (or any parent company of Consultant) will give up control through an act to consolidate with, or be merged with or into, another entity, or will sell, assign, convey, transfer, lease or otherwise dispose of all or substantially all of its assets to another person or entity) shall be deemed an assignment.

B. Amendments. No change, amendment or modification of this Agreement, including any SOWs attached hereto, shall be valid unless the same is in writing and signed by the Consultant and an authorized representative of BSC.

C. Waiver. It is understood and agreed that no failure or delay by either party in exercising any right, power or privilege hereunder in any one or more instances or to insist on strict compliance with the performance of this Agreement or to take advantage of any respective rights shall operate as a waiver thereof or the relinquishment of such rights in other instances but the same shall continue and remain in full force and effect nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

D. Severability. If any provision of this Agreement is deemed to be invalid or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and the parties agree to renegotiate such provision in good faith, in order to maintain the economic position enjoyed by each party as close as possible to that under the provision rendered unenforceable. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of the Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of the Agreement shall be enforceable in accordance with its terms.

E. Notice. Any notice shall be deemed given by U.S. mail, certified, return receipt requested, personal delivery, or by courier to the below addressees, or to such other addressees as may be provided by one party to the other. Notice by mail shall be deemed delivered five (5) days after the date it was mailed. Personal delivery shall be deemed to occur upon delivery to the receiving party or his/her/its office. Notice by courier shall be deemed delivered upon delivery by the courier.

If to BSC:

Blue Shield of California
50 Beale Street, San Francisco, CA 94105
Attn: Director of _____

with a copy to:

Blue Shield of California
50 Beale Street, San Francisco, CA 94105
Attn: Law Department

If to Consultant:

Contract No. _____

Name
Address
Attn: _____

F. Governing Laws. This Agreement and any and all matters arising under or arising from or related to the Agreement shall be construed and governed in accordance with the laws of the State of California without regard to its conflict of laws principles. It is agreed by the parties that any action arising out of, in connection with, or in any way involving this Agreement or the parties hereto, shall be brought only in California (or federal, as applicable) courts with proper venue and jurisdiction and proper venue shall lie only in a court of competent jurisdiction located in San Francisco County. Each party shall comply with all applicable federal, state and local statutes, laws, ordinances, regulations, rules, orders and codes in the performance of its obligations hereunder.

G. Use of Names/Publicity. Consultant shall not use BSC's name, logo, service marks, domain names, symbols or any other BSC name or mark without BSC's written consent, other than in providing the Services to BSC under this Agreement. Consultant may not use BSC as a reference or this Agreement as an endorsement of Consultant's work without BSC's written consent. The parties will cooperate to create any and all appropriate public, promotional announcements or press releases relating to the relationship set forth in this Agreement. Neither party shall make any public announcement regarding the existence or content of this Agreement without the other party's prior written approval and consent.

H. Successors and Assigns. This Agreement and all of the terms and conditions hereof shall be binding upon and inure to the benefit of BSC and Consultant and their respective successors, transferees, permitted assignees or legal representatives. Any terms of this Agreement containing a reference to Consultant or BSC shall apply with equal effect to any such successor, permitted assignee, transferee or legal representative of the party in question.

I. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one document.

J. Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

K. Interpretation. In the event any dispute arises in regard to the interpretation of any term or condition of this Agreement, notwithstanding any rule to the contrary, including but not limited to California Civil Code Section 1654, the parties agree that the drafting of this Agreement shall not be deemed that of one party or their agent and that any rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be applicable.

L. Remedies. The rights and remedies herein provided shall be cumulative and no one of them shall be exclusive

of any other and shall be in addition to any other remedies available at law or in equity.

M. Order of Precedence.

(use this language when a BAA is involved):

In the event of any conflict between or among the provisions contained in the Agreement, the following order of precedence will govern: (i) the Business Associate Agreement (or Addendum), attached hereto as Exhibit [] (if applicable); (ii) this Agreement, exclusive of its Exhibits (other than the Business Associate Agreement or Addendum); (iii) Exhibits to this Agreement (other than the Business Associate Agreement or Addendum).

(use this language when a BAA is NOT involved):

In the event of any conflict between or among the provisions contained in the Agreement, the following order of precedence will govern: (i) this Agreement, exclusive of its Exhibits; (ii) Exhibits to this Agreement.

N. Survival. Sections 5, 6, 7, 8, 15 and this Section 17 shall survive any termination or expiration of this Agreement.

O. Association Disclosure. Consultant hereby expressly acknowledges its understanding that this Agreement constitutes a contract between Consultant 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. Consultant further acknowledges and agrees 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 Consultant for any of BSC's obligations to Consultant 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.

P. If applicable, Executive Order 11246, 29 C.F.R. Part 471, Appendix A to Subpart A, and 41 C.F.R. Parts 60-1.4, 60-1.7, 60-4.3 are incorporated. This contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified protected veterans and against qualified individuals on the basis of disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and qualified individuals with disabilities.

Q. Internal Controls Assessment. Upon BSC's request, Consultant agrees to provide BSC with all the necessary information required to determine maturity, effectiveness and design of the safeguards implemented by Consultant to protect BSC data. The list of items BSC may request includes, but is not limited to:

- a. Detailed description of the BSC data lifecycle while in Consultant's possession;

- b. Documents and diagrams identifying Consultant's computers, applications, and networks that will maintain or process the Confidential Information and identifying any interfaces to networks that are outside Consultant's management, including Internet and wireless gateways, as well as relevant networks belonging to Consultant's business partners and service providers;
- c. A description of the physical, technical and administrative safeguards that Consultant implements to protect BSC's data throughout the lifecycle;
- d. A description of Consultant's procedures to monitor and test the proper and consistent operation of the above identified safeguards;
- e. A copy of Consultant's security policy, including related standards, procedures and guidelines and;
- f. Results of internal and third-party performed security assessments, such as vulnerability assessments or penetration tests.

Consultant shall not be required to share elements of the safeguards that would be generally considered confidential,

such as IP addresses, passwords, user IDs, encryption keys, etc. and may sanitize any documents containing such confidential information provided to BSC.

Consultant agrees to notify BSC should there be any significant change to Consultant's IT infrastructure, systems or security safeguards.

In addition, Consultant shall adhere to the IT Security Contract Terms, attached hereto as Exhibit F.

R. Audit and Record Retention Requirements.
Consultant shall adhere to the Audit and Record Retention Requirements, attached hereto as Exhibit G.

S. Entire Agreement.

This Agreement constitutes the entire understanding between the parties. All previous representations or undertakings, whether oral or in writing, are superseded by this Agreement; provided that any and all confidential or proprietary information under any prior agreement between the parties shall be deemed part of the Confidential Information under this Agreement for all purposes.

IN WITNESS WHEREOF, the parties have executed this Agreement effective on the date and year first set forth above.

CONSULTANT

**CALIFORNIA PHYSICIANS' SERVICE
d/b/a BLUE SHIELD OF CALIFORNIA**

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____