

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 Deliverables 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:

SupplierCertificateo@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 15.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 addresses, or to such other addresses 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: _____

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;

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

- 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: _____