

SCO ID:

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

STANDARD AGREEMENT

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER

GOVOPS-C2076

PURCHASING AUTHORITY NUMBER (If Applicable)

1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME

California Government Operations Agency

CONTRACTOR NAME

Blackhawk Engagement Solutions, Inc.

2. The term of this Agreement is:

START DATE

May 24, 2021

THROUGH END DATE

December 31, 2021

3. The maximum amount of this Agreement is:

\$100,000,000.00

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Agreement.

Exhibits	Title	Pages
Exhibit A	Purpose and Scope of Work	2
Exhibit A	Attachment I	3
Exhibit B	Budget and Payment Provisions	4
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+ - Exhibit D	Special Terms and Conditions	12

Items shown with an asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto.

These documents can be viewed at <https://www.dgs.ca.gov/OLS/Resources>

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

CONTRACTOR

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

Blackhawk Engagement Solutions, Inc.

CONTRACTOR BUSINESS ADDRESS

700 State Hwy 121 Bypass, Suite 200

CITY

Lewisville

STATE

TX

ZIP

75067

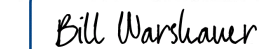
PRINTED NAME OF PERSON SIGNING

Bill Warshauer

TITLE

Vice President-Sales

CONTRACTOR AUTHORIZED SIGNATURE



DATE SIGNED

5/21/2021

SCO ID:

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

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STATE OF CALIFORNIA

CONTRACTING AGENCY NAME

Government Operations Agency

CONTRACTING AGENCY ADDRESS

915 Capitol Mall, Suite 200

CITY

Sacramento

STATE

CA

ZIP

95814

PRINTED NAME OF PERSON SIGNING

Justyn Howard

TITLE

Deputy Secretary, Fiscal Policy and Administration

CONTRACTING AGENCY AUTHORIZED SIGNATURE

DocuSigned by:



DATE SIGNED

5/21/2021

CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL

EXEMPTION (If Applicable)

Emergency Contract in response to the Governor's Proclamation of a State of Emergency related to the COVID-19 pandemic.

EXHIBIT A
PURPOSE AND SCOPE OF WORK

PURPOSE

California Government Operations Agency (GovOps) is contracting with Blackhawk Engagement Solutions, Inc. (Contractor), independently a "Party" and collectively "Parties," for fulfillment services of rewards to Californians who get their COVID-19 vaccination. This contract is necessary in order to respond to and mitigate the devastating effect of the COVID-19 pandemic on California, its economy, and residents. This Agreement is entered-into by the Parties pursuant to paragraph 2 of Governor Gavin Newsom's Proclamation of a State of Emergency dated March 4, 2020 and is also consistent with Public Contract Code sections 1102 and 10340(b)(1).

SCOPE OF WORK

1. Contractor's Roles and Responsibilities:

Contractor agrees to assist and provide to the California Government Operations Agency (GovOps), who is responsible for leading the State of California's Vaccine Task Force, the detailed services described in Attachment I of this Exhibit.

2. State's Roles and Responsibilities:

The State shall:

- A. Designate a point person to whom all communication may be addressed.
- B. Review Contractor's deliverables and provide timely feedback or approval for the Contractor to perform its obligations under this Agreement.
- C. Identify and provide relevant state information and data for use by the Contractor in the performance of its duties hereunder.

3. Time/Period of Performance:

The term of this Agreement is May 24, 2021, through December 31, 2021. The State, at its sole discretion, may exercise its option to execute an Agreement extension for up to two (2) months. Any delivery of goods or performance of services by the Contractor that is commenced prior to the start date shall be at no cost to the State.

4. Reporting & Ways of Working

During the term of this contract, the Contractor shall report to Justyn Howard, Deputy Secretary, California Government Operations Agency. Contractor shall also engage collaboratively with other entities and individuals, as designated by

Justyn Howard, who are involved with the operations and distribution of the COVID-19 vaccine throughout the State of California.

The Project representatives during the term of this Agreement shall be:

Government Operations Agency

Blackhawk Engagement Solutions, Inc.

Name: Justyn Howard

Name: Bill Warshauer

Phone: (916) 651-9011

Phone: 972-538-7207

Email: Justyn.Howard@govops.ca.gov

Email: Bill.Warshauer@bhnetwork.com

All inquiries related to this agreement shall be directed to:

Government Operations Agency

Blackhawk Engagement Solutions, Inc.

Name: Michael Miyao

Name: Bill Warshauer

Phone: (916) 651-9011

Phone: 972-538-7207

Email: Michael.Miyao@govops.ca.gov

Email: Bill.Warshauer@bhnetwork.com

EXHIBIT A **ATTACHMENT I**

This Statement of Work (the “**SOW**”) is entered into by Blackhawk Engagement Solutions, Inc., a Maryland corporation (“**BES**”), and the client identified below (“**Client**”). The Effective Date and Term of this SOW will be as provided below, unless terminated earlier as provided in the MSA. BES will provide fulfillment services (“**Services**”) of Rewards on behalf of Client as provided herein. All capitalized terms not otherwise defined herein will have the same definition as provided in the MSA. All currency references are in United States Dollars (USD) unless otherwise specifically described.

Client: California Government Operations Agency

Reward Type: Unique codes redeemable for a selection of single-merchant gift cards (“**Single Merchant Gift Cards**”) or a Mastercard® network-branded, single load virtual prepaid account with a 12 month expiration (“**Open Loop Prepaid Card**”, and collectively with the Single Merchant Gift Cards, “**Cards**”). If a physical gift card is required due to the recipient not having an email address or mobile phone, BES will offer the recipient only the Mastercard® option capped at 1% of total cards distributed

Program Type: Vaccination incentive

Description of Participants: Residents of California

Geographical Location of Participants (SOW Territory): California

Fees

Incentive Award Code Fulfillment:	Waived	Per Code Provided
Prepaid Mastercard Card Fulfillment Fee:	Waived	Per Prepaid Card Fulfilled
Discount off Face Value:	(5%)*	Per Prepaid Card Fulfilled
Single Merchant Gift Card Issuance Fee:	Waived	Per Gift Card Fulfilled**

*Prepaid Mastercard Cards may be denominated up to \$200 in increments of \$25.

Single Merchant Gift Cards shall include a discount off the face value; discounts off the face value of each Single Merchant Gift Card fulfilled shall be agreed between the parties prior to the commencement of fulfillment by BES under this SOW. **Client acknowledges and agrees that it shall not publicize any discounts provided by any merchant and, further, should Client publicize the merchant options, Client shall not do so in a manner that favors one merchant over any other. Single Merchant Gift Cards to be offered include Kroger/Ralph’s/Food For Less and Safeway/Albertson’s.

*** Prepaid Mastercard cards shall expire one year from issuance. Single Merchant Gift Cards shall not have an expiration date.

1. Incentive Award Codes and Redemption Website:

a. **Codes**: BES will provide Client with unique Incentive Award Codes (“**Codes**”) to be provided by Client to eligible Participants. Each Code will be redeemable by the Participant on a website, described in subsection b., below, for a selection of the Rewards selected by Client and agreed between the parties. Each Code will only be redeemable once and may be redeemed for only one Reward selection. Codes will expire 120 days after issuance (or such other period as agreed between the parties). Client shall be solely responsible for determination of eligible Participants and distribution of the Codes.

b. **Website:**

- i. **General**. BES will host a Client-branded, BES-hosted website located at a mutually determined URL (the “Website”), using incentive program descriptions provided by Client. The Website will permit Participants to input their Code and electronic mail address for Reward delivery, as well as select the specific Reward desired.
- ii. **Privacy Policy**: The Website will utilize the “Terms of Use” and “Privacy Policy” of Client’s website (collectively the “Privacy Policy”). BES will provide hypertext linking to the Privacy Policy from the Website. Client will notify BES prior to any material amendment of the Privacy Policy. Client will ensure that the Privacy Policy: (a) accurately describes the Consumer Data collection procedures and the actual and intended use of the Consumer Data by Client and BES; and (b) complies with all federal, state, and relevant foreign laws, statutes and regulations.
- iii. **Performance**. The Website will have sufficient capacity to process up to three-million requests over a one-month period.
- iv. **Languages**. BES will launch the Website in Spanish and English. The state will provide translations for any other languages in PDF format to be hosted on the site.
- v. **Accessibility Compliance**. The Website will be compliant with California Government Code Sections 7405 and 11135, and the Web Content Accessibility Guidelines 2.0, or a subsequent version, as published by the Web Accessibility Initiative of the World Wide Web Consortium at a minimum Level AA success criteria.

c. **Reporting**: BES will send reports to the Client that will include information agreed between the parties (such as site traffic, cards redeemed, aggregate spending by category for card use, and other data) in a format and with a frequency as agreed between the parties.

- d. *Call Center Support:* Subject to Sections 2.f.iv. and 2.g.iii. below, BES will have a call center that allows Participants to contact for issues or difficulties with the redemption of a code on the Website or collecting a Reward. BES will provide the Client with data on the number of calls, wait time, dropped calls, and the types of questions received.
- c. *Fulfillment Files:* Subject to Section 3, below, BES will fulfill Rewards directly to Participants in accordance with the selection made by such Participants on the Website (each such batch of Rewards is referred to in this SOW as a “**Fulfillment File**”).
2. **Fulfillment:** Following receipt of the associated Reward Funds, BES will fulfill Rewards. Electronic Cards shall be distributed to the Card recipients via e-mail provided by the Participant. The majority of Rewards to be fulfilled under this SOW are anticipated to be fulfilled e-mail. If physical Rewards are to be shipped directly to Participants, BES will submit the Reward to the United States Postal Service (USPS) on behalf of Client, except to the extent otherwise specifically agreed between the parties. Client acknowledges and understands that the use of the USPS, electronic mail, or overnight courier involves risks and the potential for lost, stolen or misdirected mail or email or delays in delivery of the mail or email, and Client agrees that BES shall under no circumstance bear any liability (financial or otherwise) resulting from or attributable to lost, stolen or misdirected or delayed mail or email, except to the extent attributable to the negligence or intentional misconduct of BES. Fulfillment Fees are inclusive of associated postage via regular mail, though all such fees will automatically be adjusted without any action by the parties following any increase in the relevant postal rates. Where Client elects to designate a carrier other than USPS, or where Client elects bulk shipment of Rewards, shipping fees shall be passed through to the Client.
3. **Prepaid Cards:**
- a. *Fulfillment Requirements:* Client shall only utilize Cards in connection with a bona fide loyalty, award or promotion. **Client shall not offer Cards for resale to consumers.** Client shall be solely responsible to manage and implement its promotion and determine which Participants are eligible to receive Cards and receive value on the Cards. Client shall not request that Cards be provided to persons who have not reached the age of majority in their jurisdiction. Client shall not utilize Cards for payment of “commissions”, e.g., the Card program shall not provide a primary source of compensation to the Participant. **CLIENT REPRESENTS AND WARRANTS THAT IT WILL ONLY DISTRIBUTE CARDS ISSUED UNDER THIS SOW AS AN “AWARD” CONSISTENT WITH SECTIONS 915(A)(2)(D)(III) AND 915(B)(4)(A) OF THE ELECTRONIC FUND TRANSFER ACT (15 U.S.C. 1693 ET SEQ.).**
- b. *Transaction Data:* Transactional information obtained by any third party Card Issuer utilized by BES in the fulfillment of prepaid cards will be the sole property of such third party.
- c. *Network and Issuer Rights:* Client recognizes and acknowledges that the design of any Card, any Card program, and the use of Cards as provided in this SOW, are subject to the approval of MasterCard (“**Network**”), and the issuing bank with whom the accounts associated with the Cards are held, or, for Single Merchant Gift Cards, the merchant issuer (“**Issuer**”). Client acknowledges that such approval may be withdrawn by the Network or Issuer at any time. In addition, should BES determine in its sole discretion that any such design, program, or use is likely to result in a withdrawal of approval by the Network or Issuer, or is likely to result in economic or reputational damage to the Network, the Issuer, or BES based upon the actual or intended use of Cards or circumstances in which Cards are distributed, then BES may cease or suspend issuance of Cards in association with this SOW, and/or require Client to cease or suspend distribution of Cards held in inventory.
- d. *Information Requests:* BES, the Issuer, and the Network may require Client to provide certain information to identify: (i) the intended use of Cards issued under this SOW, (ii) Client’s identity, and (iii) Client’s owners. Such information may be used to comply with applicable anti-money laundering laws, and to confirm that the Cardholder Agreement will comply with applicable laws, rules, and regulations. Based upon the information so provided (or Client’s failure to provide such information), BES, the Issuer, and the Network reserve the right to withdraw approval for Client’s program.
- e. *Third Parties:* Client shall disclose to BES any third party to be used for or involved in payment or distribution of Cards (all such parties, the “Third Parties”). Further, upon any changes to the contact or identification information for any Third Party, Client shall provide BES with such updated information fifteen business (15) days in advance of such change.
- f. *Terms Applicable to Open Loop Prepaid Cards:*
- i. *General:* Open Loop Prepaid Cards may be anonymous or personalized, as identified in this SOW. For personalized Open Loop Prepaid Cards, Client shall provide only the first name and last name, or first initial and last name, of a natural person. If Client provides any text or symbols to BES other than the first initial or name and last name of the natural person Participant, (i) Client shall assume any and all costs and liabilities incurred as a result of such action, (ii) the Card shall be treated as an anonymous card for customer service purposes. As applicable, the personalized Card demographic data must include Participant’s home address regardless of the shipment method. Client shall transmit Participant home address and updates thereto as necessary to BES regardless of the shipment method specific to personalized Cards. Should addresses other than the Participant’s home address be provided, Client accepts and acknowledges that the Card may be suspended and/or cancelled and the Card may not function at the point of sale. BES reserves the right to deny participation or cancel any issued Open Look Prepaid Card for any Participant or proposed Participant should the name of the Participant appear on the Office of Foreign Assets Control (“**OFAC**”), Office of the Superintendent of Financial Institutions (“**OSFI**”) or Financial Transactions and Reports Analysis Centre of Canada (“**FINTRAC**”) lists, or other local, state, federal, or foreign lists of individuals being pursued by law enforcement agencies, or other such legal or risk related reasons as solely determined by BES.
- ii. *Card Package:* If Client selects a plastic Card as the Reward type, each Card will be issued with a Card carrier, a Cardholder Agreement insert, an envelope, and any other inserts applicable to the Card product (such as a “tips” page)

or selected by the Client (collectively “**Materials**”). Client may utilize standard Materials, standard Materials featuring Client’s co-brand image, or custom Materials. Fees for co-branded or custom Materials shall be detailed in the “Fees” section of this SOW. For non-custom Materials, whether or not co-branded, BES reserves the right to change the Materials without notice. Any co-branding by Client shall not be changed without Client’s approval. In the event custom Materials produced for Client are not utilized (i.e., no Cards fulfilled) after the earlier of (i) an eighteen (18) month period from the time the Materials are ordered or (ii) termination of this SOW, BES may destroy any such Materials. Replacement Cards requested after destruction of custom Materials may be fulfilled with standard Card packets. Depending on the volume and type of custom Materials inventory requested, Client may be required to complete and submit a Custom Inventory Request Form prior to production or re-order of custom Materials. Conflicts between this subsection and the Custom Inventory Request Form shall be governed by the terms of the Custom Inventory Request Form. *Cardholder Agreement*: Except as otherwise specified herein, Client understands and agrees that the terms of a cardholder’s use of a Card issued under this SOW (“**Cardholder Agreement**”) will be governed by terms and conditions established by the Issuer.

- iii. *Cardholder Fees*: Any fees imposed on the cardholder, such as maintenance fees or Card replacement fees, shall be disclosed in the Cardholder Agreement. Such fees may be reduced at BES’s discretion, without the need of Client approval. Client may establish customer service guidelines whereby BES customer service representatives may waive any such fees and credit charged fees to the relevant cardholder account, in which case any amounts so waived and/or credited will be billed to Client. Should any of the following occur during the Term of this SOW so as to materially alter any features of the Cards, such as Card expiration of fees (including without limitation maintenance or interchange fees), then the parties agree that BES will no longer be required to offer Cards as a vehicle for Rewards under this SOW under the pricing set forth herein, and both parties agree to negotiate new pricing in good faith: (i) the issuance of new or modified laws, rules or regulations, including without limitation rules issued by the Federal Reserve regarding the definition of “promotional cards”; (ii) a court ruling; or (iii) a change in the applicability of federal preemption to state or local stored value card regulations.
 - iv. *Participant Service Calls and Website*: BES shall provide customer service regarding the Cards to Cardholders via telephone (toll free for calls placed within the United States) and a Cardholder website.
 - v. *Card Funds*: Unless the Card states, “Funds do not expire,” Cards must be used prior to the valid thru date displayed on the Card and are no longer redeemable after midnight (MST) the last day of the month that is embossed or printed on the Card face. The Cardholder Agreement contains directions specific to any Card balance remaining after the valid thru date.
 - vi. *Fraud*: Subject to applicable law, Client agrees to comply with all reasonable requests made by BES to investigate, prevent, and recover sums due relating to any actual or suspected loss, fraud, or other improper use of any Card ordered by Client or on Client’s behalf. BES reserves the right to suspend or cancel any Cards (or limit features offered on Cards prospectively), including but not limited to reloadable and/or ATM access, if it believes such Cards are being used for illegal or improper purposes. Client further agrees that it waives any right to dispute charge backs related to “force post” transactions associated with prepaid cards issued under this SOW, where Client, or an affiliate of Client, is the merchant associated with the “force post”. If Client requests bulk shipment of Cards, Client shall be solely obligated to ensure storage of any Cards in its possession, custody, or control in accordance with Network or Issuer storage guidelines provided by BES to Client.
 - vii. *Compliance*: With respect to Open Loop Prepaid Cards issued under this Agreement, as between BES and Client, BES is solely responsible for compliance with all applicable statutes, rules, laws and regulations governing: (i) the assessment of fees associated with such Cards; and (ii) any unclaimed property laws applicable to balances remaining on such Cards. Client further acknowledges that compliance efforts under this subsection may be made directly by BES or may be fulfilled by the Issuer.
- g. *Terms Applicable to Single Merchant Gift Cards*:
 - i. *General*. Single Merchant Gift Cards are only available within the U.S. (as of the date of execution of this SOW) and cannot be personalized. Card plastic is standard, but other Materials may be customized. Client acknowledges and agrees that availability of certain merchant Cards may change from time to time. BES will advise Client of such changes in writing.
 - ii. *Activation*. Activation may occur via any of the following methods: (i) By individual recipient: individual recipients use a predetermined code (e.g., last 4 digits of phone number) to activate each Card via IVR or online; (ii) By Client: Client activates each Card via magstripe reader connected to BES and sends active Card(s) (subject to availability) to recipient(s); or (iii) By BES: BES activates entire order prior to or after shipment to Client.
 - iii. *Customer Service*. BES shall only be responsible for customer service inquiries from Client regarding Fulfillment Requests and fulfillment thereof. Client understands and agrees that all other customer service inquiries (including without limitation inquiries from cardholders) shall be the responsibility of Client or the Card Issuer.
 - iv. *Cardholder Agreement*. Except as otherwise specified herein, Client understands and agrees that the terms of a cardholder’s use of a Single Merchant Gift Card provided under this SOW will be governed by terms and conditions established by the Card Issuer. Fees imposed on the use of the Card, if any, shall be disclosed in the Cardholder Agreement.

EXHIBIT B
BUDGET AND PAYMENT PROVISIONS

1. Invoicing and Payment

- A. The maximum amount payable by GovOps under this Agreement for the services described in Exhibit A shall not exceed \$100,000,000.00. The full amount of \$100,000,000.00 shall be made available for loading onto cards, as defined in Exhibit A.
- B. Contractor shall establish a restricted bank account for receipt of funding received under this Agreement. Contractor shall solely use the funds for the purposes provided for in this Agreement.
- C. Contractor shall submit a "Bank Information Letter", which may be submitted electronically to GovOps, that shall include the name, address, phone number, beneficiary account name, beneficiary account number, and ABA/routing number of the bank. The letter shall also certify that the bank is legally authorized to conduct business in the State of California and with the State of California. The letter shall be signed by the Contractor's contract representative.
- D. Contractor shall provide access to relevant bank account statements to designated GovOps staff upon request.
- E. For purposes of funding the preloaded value of the cards, payments shall be made by GovOps via wire transfer in the amount stated below:
 - a. Upon execution of the agreement, and after receipt of the "Bank Information Letter" required above, GovOps shall transfer \$100,000,000.00 to the account listed in the "Bank Information Letter".
- F. There is no reimbursement for travel expenses under this Agreement.
- G. There are no administrative costs allowed for Contractor under this Agreement.

2. Advancing Funds for Cards

To further the purposes of this Agreement, Contractor will be receiving funds from GovOps in advance for purposes funding the rewards that are to be issued under the terms of this Agreement. The advances shall be done pursuant to the requirements listed in Exhibit B Section 1 E. Contractor shall inform GovOps of the volume of transactions that occurred, the total amount of the funds expended, any applicable fees deducted from the funds, and the balance remaining in the account on a daily basis. As funds are depleted, GovOps will disburse additional funds to the Contractor to ensure sufficient resources are available to pay for card transactions. The parties acknowledge and agree that it is in the mutual best interest of the parties to have sufficient funds to meet the financial obligations for this Agreement without either the

Contractor carrying a any liability for the funding of the cards nor the State advancing an excess of funds beyond that necessary to meet the obligations created through this Agreement. Accordingly, the parties acknowledge that the intervals for advancing funds as provided for in Exhibit B Section 1 E, does not create unreasonable or unnecessary risk for either party.

3. Budget Contingency Clause

It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of congressional and/or legislative appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the Agreement were executed after that determination was made.

This agreement is valid and enforceable only if (1) sufficient funds are made available by the State Budget Act of the appropriate State Fiscal Year(s) covered by this Agreement for the purposes of this program; and (2) sufficient funds are made available to the State by the United States Government or by the State of California for the Fiscal Year(s) covered by this Agreement for the purposes of this program.

The parties mutually agree that if the Congress and Legislature does not appropriate sufficient funds for the program, this agreement shall be amended to reflect any reduction in funds.

GovOps has the option to terminate the agreement under the 30-day termination clause or to amend the Agreement to reflect any reduction of funds.

4. Timely Submission of Final Invoice

- A. A final undisputed invoice that is clearly marked "Final Invoice" shall be submitted for payment no more than thirty (30) calendar days following the expiration or termination date of this Agreement.
- B. If GovOps disputes the Final Invoice or any item in the Final Invoice, GovOps shall provide written notice to the Contractor describing the reason or reason GovOps disputes the Final Invoice, and the Contractor shall be required to submit a corrected Final Invoice to GovOps no later than ten (10) calendar days after the date the Contractor received GovOps written notice.
- C. If the Contractor fails to submit a corrected Final Invoice within the time required, or if the Contractor's corrected Final Invoice fails to correct the disputed item, GovOps shall have the right to elect to deny payment of the disputed item and pay only the undisputed amounts under the Final Invoice.
- D. GovOps may, at its discretion, choose not to honor any Final Invoice submitted after the deadline specified in Exhibit B, Budget Detail and Payment Provisions Section 4.A above if the Contractor fails to obtain prior written GovOps approval of an alternate Final Invoice submission deadline.

5. Reconciliation and Recovery of Unspent Funds

All funds received by Contractor as Advanced Funds for Cards under Paragraph 2 above remains the property of the State until it has been withdrawn, expended, or otherwise disbursed in the form of the rewards to the card holder. All, or any portion, of remaining advanced funds held by Contractor must be returned to the State within fifteen (15) business days of the following events:

- I. Upon expiration or termination of the Agreement and an accounting or reconciliation of unissued cards and undisbursed funds;
- II. Upon termination of the Agreement pursuant to Exhibit D Section 1 and an accounting or reconciliation of unissued cards; or
- III. Upon notice to the Contractor that no additional cards will be issued. .

Upon final determination that no further expenditures are eligible to be paid from the funds, and a reconciliation of the funds, all remaining moneys shall be returned to the State within five (5) business days of that final determination. If there is a dispute between the Parties as to the amount to be returned to the State, Contractor shall remit all undisputed funds while the Parties work to resolve the final accounting of advanced funds.

6. Transaction Records

Contractor must maintain, and provide upon request, sufficient documentation that allows GovOps to determine the funds provided to the individuals, and all charges, costs, fees or other transactions against those funds, as applicable, made by Contractor so as to determine the accuracy of all transactions made against State funds provided for purposes of this Agreement.

Contractor is fully accountable for all transactions against prefund amounts provided pursuant to this Agreement. Charges, costs, fees or other transactions, if applicable, assessed against the Agreement funds which cannot be satisfactorily documented shall be disallowed.

7. Recovery of Overpayments

- A. Contractor agrees that claims based upon the terms of this agreement or an audit finding and/or an audit finding that is appealed and upheld, will be recovered by the State by one of the following options:
 - I. Contractor's remittance to the State of the full amount of the audit exception within 30 days following the State's request for repayment;
 - II. A repayment schedule agreeable between the State and the Contractor.

- B. The State reserves the right to select which option as indicated above in paragraph A will be employed and the Contractor will be notified by the State in writing of the claim procedure to be utilized.
- C. Interest on the unpaid balance of the audit finding or debt will accrue at a rate equal to the monthly average of the rate received on investments in the Pooled Money Investment Fund commencing on the date that an audit or examination finding is mailed to the Contractor, beginning 30 days after Contractor's receipt of the State's demand for repayment.
- D. If the Contractor has filed a valid appeal regarding the report of audit findings, recovery of the overpayments will be deferred until a final administrative decision on the appeal has been reached. If the Contractor loses the final administrative appeal, Contractor shall repay, to the State, the over-claimed or disallowed expenses, plus accrued interest. Interest accrues from the Contractor's first receipt of State's notice requesting reimbursement of questioned audit costs or disallowed expenses.

EXHIBIT C
STANDARD TERMS AND CONDITIONS

1. **APPROVAL:** This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. **AMENDMENT:** No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. **ASSIGNMENT:** This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. **AUDIT:** Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours, upon reasonable prior notice and subject to reasonable safeguards to protect the confidentiality of Contractor's other clients, and to allow interviews of any employees who might reasonably have information related to such records (provided that a representative of Contractor will also be present during such interviews). Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. **INDEMNIFICATION:** Contractor agrees to indemnify, defend and hold harmless the State, its officers, agents and employees from any and all third party claims and losses accruing or resulting to any person, firm or corporation to the extent and proportion they are injured or damaged by Contractor as a result of its negligence or willful misconduct in its performance of this Agreement.
6. **DISPUTES:** Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. **TERMINATION FOR CAUSE:** The State may terminate this Agreement should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination, the State may

proceed with the work in any reasonable manner deemed proper by the State. All applicable reasonable and necessary additional costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

8. INDEPENDENT CONTRACTOR: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.
9. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully 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, age, sexual orientation, or military and veteran status. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, §11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §§11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article. Contractor shall permit access by representatives of the Department of Fair Employment and Housing and the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Agency shall require to ascertaining compliance with this clause. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. (See Cal. Code Regs., tit. 2, §11105.)
10. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 04/2017 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.
11. TIMELINESS: Time is of the essence in this Agreement.

12. COMPENSATION: The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.
13. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.
14. ANTITRUST CLAIMS: The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

A. The Government Code Chapter on Antitrust claims contains the following definitions:

- i. "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
- ii. 2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

B. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

C. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that

were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

- D. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

15. CHILD SUPPORT COMPLIANCE ACT: For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:

- A. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
- B. b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

16. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

17. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

18. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

- A. If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)
 - B. If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)
19. LOSS LEADER: If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

EXHIBIT D
SPECIAL TERMS AND CONDITIONS

1. RIGHT TO TERMINATE

GovOps, at its sole discretion, may terminate this Agreement for convenience upon thirty (30) days' advance written notice to the Contractor. Contractor may submit a written request to terminate this Agreement only if GovOps should substantially fail to perform its responsibilities as provided herein, and such termination by Contractor shall be effective thirty (30) days after such notice if GovOps fails to cure within such time.

2. DISPUTE RESOLUTUION

In the event of a dispute, the Contractor shall file a written dispute notice with the State Contract Manager within ten (10) State business days after discovery of the problem. Pending resolution of any dispute, the Parties shall continue to perform under this Agreement, and Contractor shall diligently continue all work and comply with all the State Contract Manager's orders and directions.

A. The written dispute notice shall contain the following information:

- a. The decision under dispute;
- b. The reason(S) the Contractor believes the decision in dispute to have been in error (if applicable, reference pertinent Agreement provisions);
- c. Identification of all documents and substance of all oral communications that support the Contractor's position; and
- d. The dollar amount in dispute, if applicable.

B. Upon receipt of the written dispute notice, the State Contract Manager will examine the matter and issue a written decision to the Contractor within (10) State business days. The decision shall contain the following information:

- a. A description of the dispute;
- b. A reference to pertinent Agreement provisions, if applicable;
- c. A statement of the areas of the agreement or disagreement; and
- d. A statement of the State Contract Manager's decision with supporting rationale.

- C. The decision of the State Contract Manager shall be final unless, within thirty (30) calendar days from the date of the receipt of the decision, the Contractor files with the State a notice of appeal addressed to:

California Government Operations Agency
Attn: Justyn Howard, Deputy Secretary
915 Capitol Mall, Suite 200
Sacramento CA 95814

The decision of the Secretary, or Secretary's designee, shall be final.

3. PROTECTION OF CONFIDENTIAL AND SENSITIVE INFORMATION

- A. Contractor shall impose all the requirements of this provision on all of its officers, employees and subcontractors with access to Confidential Information. Contractor, including all of its officers, employees and subcontractors with access to Confidential Information will sign the Non-Disclosure Agreement (Exhibit D-1) and return it to GovOps prior to accessing Confidential Information; provided, however, that if Contractor already has written agreements in place that require protection of Confidential Information consistent with the requirements of this provision it does not need to additionally obtain signatures on Exhibit D-1.
- B. "Confidential Information" means information, the disclosure of which is restricted or prohibited by any provision of State or federal law or which is treated as privileged or confidential under such laws. Such Confidential Information includes, but is not limited to, information that is exempt from disclosure under the California Public Records Act (Government Code sections 6250-6255, public social services client information described in California Welfare and Institutions code section 10850, and "personal information" about individuals as defined in California Civil Code Section 1798.3 of the Information Practices Act (IPA) if the disclosure of the "personal information" is not otherwise allowed by the IPA. Such Confidential Information may also include financial, statistical, personal, technical, and other data and information relating to operation of GovOps, California Department of Public Health (CDPH), or the Governor's Office (GO).
- C. Contractor shall take commercially reasonable measures to protect Confidential Information to which it or its Affiliates gain access from unauthorized access (accidental or intentional), modification, destruction, or disclosure. These measures may include but are not limited to: password protection of electronic data, required two-factor

- authentication, secure transmission of electronic data, and secure mailing and locked storage of paper and taped copies. Such measures may also include establishment of secure workstations and maintenance of a secure workstation access log. Contractors shall also apply appropriate security patches and upgrades and keep virus software up to date on all systems on which Confidential Information may be used.
- D. Contractor shall ensure that all media, including electronic media, containing Confidential Information, to which it is given access is protected at the level of the most confidential or sensitive piece of data on the media.
 - E. Contractor and employees allowed access to Confidential Information shall be limited to those persons with a demonstrable business need for such access. Contractor shall maintain a current listing of all Contractor and employees with access to Confidential Information.
 - F. Contractor shall notify GovOps within twenty-four (24) hours from Contractor's confirmation of a security breach, if a security breach involving Confidential Information occurs or if Contractor becomes legally compelled to disclose any Confidential Information (unless Contractor is legally prohibited from providing such notice).
 - G. At or before the termination date of the Contract, Contractor shall either destroy all Confidential Information in accordance with approved methods of confidential destruction; or return all Confidential and Sensitive Information to GovOps. Notwithstanding the foregoing, however, Contractor may maintain a copy of the Confidential Information (which shall remain subject to these obligations) as required to comply with legal obligations.
 - H. "Contractor Confidential Information" means any non-public information (or materials) belonging to, concerning or in the possession or control of Contractor that is furnished, disclosed or otherwise made available (directly or indirectly) to GovOps (or entities or persons acting on the GovOps' behalf) in connection with this Agreement and which is either marked or identified in writing as confidential, proprietary, secret or with another designation sufficient to give notice of its sensitive nature, or is of a type that a reasonable person would recognize it to be confidential. Contractor Confidential Information shall not include data generated under the Agreement that Contractor furnishes to GovOps in order to fulfill Contractor's obligations under this Agreement.

- I. Subject to Section K below, GovOps will not use Contractor Confidential Information or disclose it to a third party except as required by law or as reasonably required to accomplish the purposes and objectives of this Agreement.
- J. GovOps will keep Contractor Confidential Information confidential and secure, and will protect it from unauthorized use or disclosure by using at least the same degree of care as GovOps employs to avoid unauthorized use or disclosure of its own confidential information, but in no event less than reasonable care.
- K. Contractor understands that the presumption is that all information in GovOps' possession is subject to disclosure pursuant to the Public Records Act, California Government Code sections 6250, et. seq., unless a specific exemption from disclosure applies. GovOps acknowledges Contractor's position that any information provided by Contractor hereunder and marked as "confidential" or with similar notation is considered to be a trade secret or otherwise protected from disclosure under the Public Records Act, and that Contractor is providing the information to GovOps in reliance on exemptions in the Public Records Act, including without limitation exemptions for trade secrets. In recognition of these interests, GovOps will meet and confer with Contractor if information marked as confidential by Contractor is requested under the Public Records Act or through a subpoena and will withhold this information from disclosure if it agrees that an exemption to the disclosure obligation applies or if Contractor agrees to take any legal action necessary and appropriate under the circumstances to protect its confidential information from disclosure. Contractor further agrees that if GovOps must disclose Contractor Confidential Information in response to a court order, GovOps agrees to allow Contractor to seek available protection for such information, such as a protective order limiting permissible use and disclosure of such information.

4. ENTIRE AGREEMENT

This Agreement (including the Exhibits and documents incorporated into this Agreement by reference) is the complete and exclusive statement of the Agreement between the Parties relating to the subject matter of this Agreement and supersedes all prior contracts or prior representations, oral or written, between the Parties relating to the subject matter of this Agreement.

5. POTENTIAL SUBCONTRACTORS AND RESUMES

Nothing contained in this Agreement or otherwise, shall create any contractual relation between the State and any subcontractors, and no subcontract shall relieve the Contractor of their responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the State for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from any obligation of the State. As a result, the State shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.

6. CONTRACTOR STAFF EXPENSES

The Contractor represents that it has or shall secure at its own expense all personnel required to perform the services described in this Agreement. Such personnel shall not be employees of or have any contractual relationship with GovOps or the State of California.

7. STATE EMPLOYEE ENGAGEMENT

Contractor shall work closely and collaboratively with state employees as part of their performance under the terms of this agreement. At no time, shall the Contractor, Contractor's employee(s), or subcontractors, if any, be responsible for the management of State employees, including but not limited to, employee timesheet reporting, performance reviews, or other administrative actions related to state employees. However, under the direct supervision, and upon approval from, the GovOps-designated contract manager, the Contractor, Contractor's employee(s), or subcontractors may assign specific tasks to state employees working on the COVID-19 vaccine distribution plan if such work is part of the State employees' normal job responsibilities. GovOps shall exclusively be responsible for determining whether or not such requests fits within a state employee's job duties.

8. RIGHTS IN WORK PRODUCT

All intellectual property, technical communications and records originated or prepared by the Contractor pursuant to this Contract including papers, reports, charts, and other documentations (collectively, the "work product") shall be the GovOp's exclusive property. Notwithstanding the foregoing, however, "work product" shall not include any designs, text, layouts, media, proprietary technology, documentation, systems, processes, works of

authorship, software, hardware, or other proprietary materials developed or otherwise obtained by or for the Contractor or its affiliates independently of this Contract and utilized by Contractor in providing services under this Contract or any work product resulting from such services, including copyrights associated with the foregoing.

9. INSURANCE PROVISIONS

A. General Provisions Applying to All Policies:

- I. Coverage Term – Coverage needs to be in force for the complete term of the contract. If insurance expires during the term of the contract, a new certificate must be received by the State at least five (5) days prior to the expiration of this insurance. Any new insurance must still comply with the original terms of the contract.
- II. Policy Cancellation or Termination & Notice of Non-Renewal – Contractor is responsible to notify the State within five business days before the effective date of any cancellation, non-renewal, or material change that affects required insurance coverage. In the event Contractor fails to keep in effect at all times the specified insurance coverage, the State may, in addition to any other remedies it may have, terminate this Contract upon the occurrence of such event, subject to the provisions of this Contract.
- III. Deductible – Contractor is responsible for any deductible or self-insured retention contained within their insurance program.
- IV. Primary Clause – Any required insurance contained in this contract shall be primary, and not excess or contributory, to any other insurance carried by the State. This requirement shall be limited to when additional insured status is applicable.
- V. Insurance Carrier Required Rating – All insurance companies must carry a rating acceptable to the Office of Risk and Insurance Management. If the Contractor is self-insured for a portion or all of its insurance, review of financial information including a letter of credit may be required.
- VI. Endorsements – Any required endorsements requested by the State in writing in this Contract must be physically attached to all requested certificates of insurance and not substituted by referring to such coverage on the certificate of insurance.

- VII. Inadequate Insurance – Inadequate or lack of insurance does not negate the Contractor's obligations under the contract.
 - VIII. Satisfying an SIR - All insurance required by this contract must allow the State to pay and/or act as the Contractor's agent in satisfying any self-insured retention (SIR). The choice to pay and/or act as the Contractor's agent in satisfying any SIR is at the State's discretion.
 - IX. Available Coverages/Limits - All coverage and limits available to the contractor shall also be available and applicable to the State, when additional insured status is applicable, regardless of the minimum limits required in Section 2. Insurance Requirements below.
 - X. Subcontractors - In the case of Contractor's utilization of subcontractors to complete the contracted scope of work, Contractor shall either include all subcontractors as insureds under Contractor's insurance or, upon request, supply evidence to the state that subcontractors carry their own insurance that is equal to the policies, coverages and limits required of Contractor or otherwise applicable to the subcontractor's performance in support of this Contract.
 - XI. Premiums – The contractor shall be responsible for any premium, deductible or self-insured retention in connection with any Required Insurance.
 - XII. Required Insurance - By requiring the insurance herein, the State does not represent that the insurance coverage and limits will necessarily be adequate to protect the Contractor and such coverage and limits shall not be deemed as a limitation on the Contractor's liability under the indemnities granted to the Department in this Contract.
 - XIII. Insurance Certificate - Contractor shall provide an insurance certificate evidencing the required insurance coverage before work commences under this Agreement.
- B. Insurance Requirements: The requirements in this subsection B may be fulfilled via a combination of primary and umbrella/excess coverage.
- I. Commercial General Liability
- Contractor shall maintain general liability on an occurrence form with limits not less than \$5,000,000 per occurrence and \$10,000,000

aggregate for bodily injury and property damage liability. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal and advertising injury, and liability assumed under an insured Agreement. This insurance shall apply separately to each insured against which claim is made, or suit is brought subject to the Contractor's limit of liability. The policy must name The State of California, its officers, agents, and employees as additional insured, but only with respect to work performed under the contract.

II. Automobile Liability

If Contractor, owns or otherwise uses an automobile in order to perform the activities required in this Agreement, Contractor shall maintain motor vehicle liability with limits not less than \$1,000,000 combined single limit per accident. Such insurance shall cover liability arising out of a motor vehicle including hired, and non-owned motor vehicles. The policy must name The State of California, its officers, agents, and employees as additional insured, but only with respect to work performed under the contract. If contractor will not have any commercially owned vehicles used during the life of this Agreement, by signing this Agreement, the Contractor certifies that the Contractor and any employees, subcontractors or servants possess valid automobile coverage in accordance with California Vehicle Code Sections 16450 to 16457, inclusive. The State reserves the right to request proof at any time.

III. Workers' Compensation and Employer's Liability

Contractor shall maintain statutory worker's compensation and employer's liability coverage for all its employees who will be engaged in the performance of the Contract. In addition, employer's liability limits of \$1,000,000 are required. By signing this contract, Contractor acknowledges compliance with these regulations. A Waiver of Subrogation or Right to Recover endorsement in favor of the State of California must be attached to certificate.

IV. Professional Liability

Contractor shall maintain Professional Liability, Errors and Omissions insurance appropriate to the Contractor's profession and work hereunder, which shall be limited to no more than \$10,000,000 per

claim and in the aggregate, to cover and respond to the duties and obligations as is undertaken by the Contractor in this agreement.

The insurance coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by the Contractor in this agreement and shall include, but not be limited to, Cyber liability and claims involving privacy liability and network security. The policy shall also provide coverage for breach response costs as well as credit monitoring expenses with limits sufficient to respond to these obligations. The policy coverage described in this paragraph shall be limited to Contractor's legal liability to others for these types of claims.

If the policy is written on a claims-made basis:

- a. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
 - b. Insurance must be maintained, and evidence of insurance must be provided for at least three (3) years after completion of the contract of work.
 - c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of three (3) years after completion of work.
- V. Cyber Liability including coverage for alteration of, loss of, or destruction of electronic data and/or information "property" of the State of California that will be in the care, custody, or control of Contractor and claims involving privacy liability and network security. The policy shall also provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses. Contractor agrees to maintain Cyber Liability limits not less than \$5,000,000 per claim and in the aggregate.

If Policy is written on a claims-made basis:

- a. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
- b. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.

- c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, Contractor must purchase "extended reporting" coverage for a minimum of three (3) years after completion of work for the Cyber Liability policy.

C. Certificate of Insurance

The Contractor shall furnish proof of Insurance. The Certificate of Insurance will provide the above listed liability coverages and be sent to:

Government Operations Agency
Attn. Michael Miyao
915 Capitol Mall, Suite 200
Sacramento, CA 95814

10. ACCESSIBILITY REQUIREMENT

Contractor shall ensure that services and deliverables under this contract are accessible to the general public and by state employees, including persons with disabilities.

To the extent applicable, Contractor shall comply with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973 (Act), as amended (29 U.S.C. Sec. 794d), and regulations implementing that act as set forth in Part 1194 of Title 36 of the Code of Federal Regulations, which requires Federal agencies to make their electronic and information technology (EIT) accessible to people with disabilities. California Government Code section 7405 codifies Section 508, requiring accessibility of EIT. To the extent that this contract falls within the scope of Government Code Section 7405, Contractor hereby agrees to respond to and resolve any complaint brought to its attention, regarding accessibility of its products or services.

In addition, Contractor assures the state that Contractor complies with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq) to the extent applicable to the services provided by Contractor under this Contract.

11. COMPLIANCE WITH STATUTES AND REGULATIONS

Contractor warrants and certifies that in the performance of this Contract, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California and agrees to indemnify the state

against any loss, cost, damage or liability resulting from a claim or suit by a third party to the extent and proportion caused by the Contractor's violation of this provision.

12. WARRANTIES

Contractor represents and warrants that it is free to enter into and fully perform under the terms of this Agreement.

13. CONTRACTOR-SPECIFIC PROVISIONS

A. TAX REPORTING

Contractor shall not perform or be responsible for any tax-related withholding, filing, remittance, or reporting relating to any Rewards (as that term is defined in the applicable Scope of Work) under this Contract.

B. BRANDING COMPLIANCE

GovOps shall be solely responsible for compliance with any applicable laws or regulations relating to any advertising, publicity, or promotion by or on behalf of GovOps regarding the program in support of which Contractor is providing services under this Contract. Further, GovOps shall adhere to any branding guidelines provided by Contractor and shall not distribute, either internally or to the public, any materials (including but not limited to advertisements, marketing materials, promotions, direct mail (including email), press releases, internet notices or web pages, brochures and posters) that refer directly or indirectly to Contractor, any prepaid card network, Contractor's merchant partners, any prepaid card issuer (including the issuer of any gift card), or any trademarks, service marks, trade names, copyrights, or logos ("**Marks**") of any of the foregoing, or any prepaid or gift cards, without prior review and written approval from Contractor. Notwithstanding the foregoing, Contractor recognizes that situations may arise in which GovOps needs to provide information and materials that refer to Contractor on an urgent basis. In such circumstances, GovOps will use all reasonable efforts to provide advance notice and an opportunity for prior review to Contractor; provided that if such lack of prior review results in any claims or damages GovOps will not seek to hold Contractor liable for the same. Contractor's branding review is to ensure appropriate usage of Marks and should not be interpreted in any way as an approval of the elements of GovOps' program or promotion, or that the program or promotion complies with applicable law.

C. ACCURATE DEPICTION OF REWARDS

GovOps shall, at all times, accurately describe the terms and conditions of any Rewards (as defined in the applicable Scope of Work) fulfilled by Contractor on behalf of GovOps, as applicable, not strictly those for branding purposes. GovOps shall not market, advertise or promote the availability of any Rewards, or the program(s) or promotion(s) under which they are distributed in any way that (i) is misleading or potentially misleading, or (ii) fails to clearly identify program or promotion eligibility criteria or material terms and conditions of the Reward.

D. LIMITATION OF LIABILITY

Any claims involving a party's liability to the other party for damages (regardless of the form of action, whether in contract, tort, warranty or otherwise) shall in no event exceed \$1,000,000.00 under the relevant Scope of Work. NEITHER PARTY IS LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, ECONOMIC OR PUNITIVE DAMAGES INCURRED BY THE OTHER PARTY AND ARISING OUT OF OR RELATING TO THIS AGREEMENT, EVEN IF THE OTHER PARTY HAS BEEN ADVISED THAT SUCH DAMAGES ARE POSSIBLE AND WHETHER BASED IN CONTRACT, TORT OR OTHERWISE.