

STANDARD AGREEMENT

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER

GovOps C20-24

PURCHASING AUTHORITY NUMBER (If Applicable)

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

CONTRACTING AGENCY NAME

Government Operations Agency

CONTRACTOR NAME

Blue Shield of California

2. The term of this Agreement is:

START DATE

2/1/2021

THROUGH END DATE

12/31/2021

3. The maximum amount of this Agreement is:

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	Statement of Work	20
Exhibit B	Payment Provisions	4
Exhibit C	Terms and Conditions	7
+ - Exhibit D	Additional Provisions	6
+ - Exhibit E	Privacy and Security Requirements	10
+ - Exhibit F	FEMA Provisions	6

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.)

Blue Shield of California

CONTRACTOR BUSINESS ADDRESS

601 12th Street

CITY

Oakland

STATE

CA

ZIP

94607

PRINTED NAME OF PERSON SIGNING

Paul Markovich

TITLE

President & CEO

CONTRACTOR AUTHORIZED SIGNATURE



DATE SIGNED

2/12/2021

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

STANDARD AGREEMENT

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AGREEMENT NUMBER

GovOps C20-24

PURCHASING AUTHORITY NUMBER (If Applicable)

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

Justyn Howard

Digitally signed by Justyn Howard
Date: 2021.02.12 15:03:54 -08'00'

DATE SIGNED

CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL

EXEMPTION (If Applicable)

Emergency Contract in response to the Governor's
March 4th, 2020, Proclamation of a State of
Emergency related to the COVID-19 pandemic.

EXHIBIT A

Statement of Work

1. Service Overview

Blue Shield of California (“Blue Shield”) agrees to provide to the California Government Operations Agency (“the Agency”) the services described herein.

Due to current public health emergencies concerning the rapid spread of the pandemic known as the Novel Coronavirus or COVID-19 (“COVID-19”), the Agency has determined that the State of California must take immediate action to contain and respond to the spread of COVID-19. The Parties entered into this Agreement pursuant to the authority in the Governor’s Proclamation of a State of Emergency dated March 4, 2020, paragraph 2, and also consistent with Public Contract Code sections 1102 and 10340(b)(1). This Agreement is also consistent with applicable provisions of federal law and applicable federal directives, including the FDA emergency use authorization for administration of the COVID-19 vaccinations and the Public Readiness and Emergency Preparedness Act (PREP Act) declaration of the Secretary of Health and Human Services regarding Coverage for Medical Countermeasures Against COVID-19 (published in the Federal Register on December 9, 2020).

Blue Shield will operate as the Agency’s Third-Party Administrator (“TPA”) and build a statewide vaccine network to ensure the rapid delivery of current supply of the COVID-19 vaccine to Californians, consistent with the Agency’s COVID-19 Vaccine Allocation Guidelines. This cost-reimbursement only contract with Blue Shield is intended to set forth the standards and guidelines to be followed by the Agency and Blue Shield in establishing a statewide network of vaccine providers who meet program requirements, such as data integration, equity, and volume capacity. Blue Shield will assist the Agency in allocating vaccines directly to providers to maximize distribution efficiency, having timely transparency into where the vaccines are and to whom they have been administered, and ensuring they are distributed to communities disproportionately impacted by COVID-19.

These Services and Deliverables, as defined below, are being provided as covered countermeasures to the COVID-19 epidemic pursuant to the U.S. Department of Health and Human Services’ February 4, 2020 Declaration pursuant to the Public Readiness and Emergency Preparedness Act, as extended from time to time, and are to be used as authorized by any public agency to which they ultimately may be provided. The parties may meet at mutually agreed times to discuss the progress of the Services and to exchange feedback. In order to be able to complete the Services within the agreed timeframes and budget and to fulfill its responsibilities on a timely basis, Blue Shield will rely on the Agency, including the Agency making available relevant data, information, personnel and software applications and systems; performing any tasks or responsibilities assigned to the Agency within the scheduled timeframes; and notifying Blue Shield of any issues or concerns the Agency may have relating to the Services. During the course of the Services, priorities may shift, unexpected events may occur or additional information may become available which may necessitate changes to the Services. In this event, the parties will jointly discuss the anticipated impact on the Services and agree on any appropriate adjustments, including to the scope of work, timeframes, and budget. Blue Shield’s services under this Agreement do not include providing advice, opinions or recommendations on policy or political matters nor

providing lobbying on any such matters. The Agency shall designate an authorized representative who shall have the authority to make all decisions and approvals required on the part of the Agency.

2. Service Location

The services shall be performed statewide.

3. Project Representatives

A. The Project Representatives during the term of this Agreement will be:

California Government Operations Agency Justyn Howard Deputy Secretary, Fiscal Policy and Administration Telephone: (916) 651-9011 Fax: (916) 651-9071 E-mail: Justyn.Howard@govops.ca.gov	Blue Shield of California Larry Hilty VP Enterprise Transformation Telephone: (510) 607-2830 E-mail: Larry.Hilty@blueshieldca.com
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B. Direct all inquiries to:

California Government Operations Agency Attention: Justyn Howard Telephone: (916) 651-9011 Fax: (916) 651-9071 E-mail: Justyn.Howard@govops.ca.gov	Blue Shield of California Attention: Larry Hilty VP Enterprise Transformation Telephone: (510) 607-2830 E-mail: Larry.Hilty@blueshieldca.com
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C. Either party may make changes to the information above by giving written notice to the other party. Said changes shall not require an amendment to this Agreement.

4. Amendment of Agreement

Any amendment to the Agreement will be valid only if in writing and signed by both parties.

5. Progress Reports or Meetings

A. Blue Shield shall submit progress reports or attend meetings with Agency personnel at intervals reasonably determined by the Agency to determine if Blue Shield is performing under this Agreement to the Agency's expectation, whether the project is on schedule, provide communication of interim findings, and afford occasions for airing difficulties or special problems encountered so that remedies can be developed quickly.

- B. At the conclusion of this Agreement and if applicable, Blue Shield shall hold a final meeting at which Blue Shield shall present any findings, conclusions, and recommendations. If required by this Agreement, Blue Shield shall submit a comprehensive final report.

6. Defined Terms

The following defined terms shall apply for purposes of the Agreement:

- 6.1. "Agreement" shall mean the contract entered into between the Agency and Blue Shield effective as of February 1, 2021, including all exhibits referenced therein.
- 6.2. "Allocation Algorithm" means a formula to be developed, periodically updated, and managed by Blue Shield as a recommendation to the Agency for the allocation of vaccine to Vaccine Providers.
- 6.3. "Credentialing" means the evaluation and determination by Blue Shield of whether a Vaccine Provider meets the Participation Criteria.
- 6.4. "Designated Provider" means Kaiser Foundation Hospitals, pursuant to the applicable contractual agreement between it and the Agency, as amended as provided herein; Kaiser Foundation Hospitals shall, under the referenced contractual arrangements, be considered a Vaccine Provider.
- 6.5. "Enrollment" or "Enrolled" mean, respectively, the process of or status of being contracted as a Vaccine Provider in the State Vaccine Network.
- 6.6. "Equity Gap" means an instance in which the population to which a Vaccine Provider is administering the COVID-19 vaccine does not meet or exceed the Equity Goal.
- 6.7. "Equity Goal" means target goals applicable to Vaccine Providers and the State Vaccine Network for the administration of vaccine to members of communities that have been disproportionately impacted by COVID-19 or are particularly difficult to reach for medical treatment, to be further delineated.
- 6.8. "Health Care Service Plan" shall have the same meaning as defined under the Knox-Keene Health Care Service Plan Act of 1975, California Health and Safety Code sections 1340 *et seq.*
- 6.9. "Health Insurer" shall have the same meaning as defined under the Insurance Code.
- 6.10. "Hot Spot" means a geographical area that is experiencing a higher COVID-19 case rate than the state as a whole, or whose medical system is stressed because of increased hospital bed and ICU bed usage.
- 6.11. "Immunization Information Systems," "IIS," or "State Immunization Registry" means the three databases used by Vaccine Providers to input vaccination information known as CAIR2, SDIR and RIDE.

- 6.12. “Low Performing Geography” means a geographical area whose providers are not meeting equity targets, volume targets, or both.
- 6.13. “Low Performing Provider” means a Vaccine Provider that is not meeting Equity Goals, Volume Requirements, or both.
- 6.14. “Mass Vaccination Site” means a location where members of the public may receive vaccinations in mass.
- 6.15. “Model Contracts” means standard form contracts developed by Blue Shield, in accordance with criteria provided by the Agency, upon which all contracts with Vaccine Providers Enrolled in the State Vaccine Network will be based.
- 6.16. “Mobile Clinic” means a mobile vaccine administration clinic.
- 6.17. “MyTurn” means the online electronic systems available at MyTurn.ca.gov, including MyTurn, MyTurnClinic, and MyTurnVax, established and maintained by the Agency to facilitate registering patients onto the vaccine waitlist, scheduling of COVID-19 vaccination appointments, and collection of vaccination orders and administration data from Vaccine Providers.
- 6.18. “Network Incentive Payments” means funds paid directly by the Agency to Vaccine Providers to provide Vaccine Providers enhanced compensation for meeting or exceeding standards established by the Agency in relation to Volume Requirements, Equity Goals, successful/timely administration of vaccine doses, and other factors as determined by the Agency, but does not include any federally disallowed amount.
- 6.19. “Network Management Strategy” means the network management strategy developed by Blue Shield and approved by the Agency as described below in Section 1.3.1 as part of Blue Shield’s obligations for maintenance of the State Vaccine Network.
- 6.20. “Network Performance Criteria” means standards and goals for design and performance of the State Vaccine Network, including in regard to access, equity, inventory management, service, and data analytics and reporting, as set forth in Schedule A to this SOW.
- 6.21. “Participation Criteria” means those Participation Criteria identified below in Section 1.3.1.
- 6.22. “Startup Costs” means funds paid directly by the Agency to Vaccine Providers (or other appropriate entities identified by the Agency) to support the establishment of vaccination sites, including Mass Vaccination Sites, Mobile Clinics, and Vaccine Hubs, as identified and directed by the Agency.
- 6.23. “State Vaccine Network” means all the Vaccine Providers contracted by Blue Shield pursuant to this Agreement to provide vaccine administration and related services to residents of the State of California, as well as the Designated Providers.

- 6.24. “Subcontractor” and “subcontractor” means a third party engaged by Blue Shield to satisfy any of Blue Shield’s obligations under this Agreement. For clarity, Vaccine Providers are not Subcontractors, agents or representatives of Blue Shield for purposes of this Agreement.
- 6.25. “Vaccine Allocation Reports” means the reports described in Section 1.3.2 below that will facilitate the Agency’s evaluation and determination of vaccine allocation.
- 6.26. “Vaccine Hub” means an existing physical location, including, but not limited to, a pharmacy or clinic, that has capacity to perform a high volume of vaccine administration.
- 6.27. “Vaccine Provider” means a provider that Blue Shield determines meets the Participation Criteria, and has been accepted by and Enrolled by Blue Shield following the execution of a contract by the provider and Blue Shield effective on or after the effective date of this Agreement, as well as the Designated Providers. For clarity, Vaccine Providers are not Subcontractors, agents or representatives of Blue Shield for purposes of this Agreement.
- 6.28. “Vaccine Provider Data” means data that Vaccine Providers agree to submit to the Agency and Blue Shield under the Model Contracts..
- 6.29. “Vaccine Provider Oversight and Monitoring Process” means the oversight and monitoring process for Vaccine Providers described in Section 1.3.1 below as part of Blue Shield’s maintenance obligations for the State Vaccine Network.
- 6.30. “Vaccine Provider Reporting Requirements” means those data reporting requirements for Vaccine Providers included in the Model Contracts.
- 6.31. “Volume Requirement” means the vaccination volume target goal for each Vaccine Provider.

7. Services to be Performed

- 7.1. Blue Shield cannot and will not give medical, regulatory, public health or legal advice. The Agency will review and approve or concur in Blue Shield’s work, or provide timely input as to requested changes or adjustments, including its methodologies and approaches and the Deliverables, in carrying out the Services. Notwithstanding such uncertainty, questions and risk, Blue Shield is agreeing at the Agency’s request, to provide the Services set forth in this Agreement due to the urgency of the situation and the devastating effects the pandemic has had on Californians, and Blue Shield’s desire to ensure that all Californians have access to high quality health care, consistent with Blue Shield’s mission statement. Given the foregoing context, where due to unanticipated circumstances, Blue Shield may not be able to perform certain of the Services, Blue Shield shall promptly notify the Agency of such circumstances. The parties will discuss such situation to identify potential alternative approaches, if any, to meeting the requirement. If the parties are unable to agree on any alternate approaches, Blue Shield shall be relieved of its obligation to perform such tasks.

- 7.2. Blue Shield's provision of the Services is subject to the Agency (or the Agency's agents, subdivisions, representatives or third parties contracted by the Agency) fulfilling its responsibilities set forth in this Agreement and the following assumptions, which if not met, may prevent or impede Blue Shield from performing the services in a timely and effective manner. To the extent that Blue Shield is unable to perform any Services due to a failure of the Agency (or the Agency's agents, representatives or third parties contracted by the Agency) to perform the Agency's responsibilities as required in this Agreement or any of the following assumptions, any non-performance or delay by Blue Shield shall be excused.
- a. Blue Shield will not be responsible for the provision of vaccines, vaccine administration supplies, or structures, equipment, or supplies for the establishment or operation of vaccine administration sites.
 - b. Kaiser Foundation Hospitals may participate in the State Vaccine Network. To the extent Kaiser Foundation Hospitals have a direct contract with the Agency, Blue Shield will cooperate and coordinate with Kaiser Foundation Hospitals as directed by the Agency.
 - c. Blue Shield and the Agency will cooperate and coordinate to address any changes to the federal vaccine distribution program that impact the Services.
 - d. Timely Agency approvals.
 - e. Timely Agency Deliverables.
- 7.3. In the event the federal government or any other entity besides the Agency takes over allocation and/or administration of the COVID-19 vaccine within California, the parties will immediately meet to determine which elements of the Agreement, if any, should continue.
- 7.4. Notwithstanding the Agency's Standard Contractor Certification Clauses, this Agreement is a contract for services, and no material deliverables hereunder constitute delivery of goods as contemplated within the meaning of Public Contract Code section 6108. Accordingly, neither Public Contract Code section 6108 nor the Department of Industrial Relations' requirements in accordance with section 6108, shall apply to this Agreement.

8. Blue Shield Responsibilities

Services. Blue Shield shall provide the following services to the Agency (the "Services"):

- 8.1. Develop and manage the State Vaccine Network, consisting of the following activities:
 - 8.1.1. Develop Model Contracts for the State Vaccine Network.
 - 8.1.1.1. Blue Shield will develop Model Contracts which shall be submitted to and approved by the Agency prior to use with

Vaccine Providers. The parties intend that the Model Contracts will address the following in addition to other provisions deemed necessary and appropriate by Blue Shield and approved by the Agency:

- a. Compliance with the Participation Criteria.
- b. Startup Costs and Network Incentive Payments that may be established and paid by the Agency.
- c. Express provisions acknowledging that, as allowed by state or federal law or by contract, Vaccine Providers may seek payment for vaccine administration fee reimbursement from a government health care benefits program such as Medicare, MediCal, and CalMediConnect, or a Health Care Service Plan, or a Health Insurer or other payor that covers COVID-19 vaccine administration fees for the vaccine recipient under the terms of the coverage provided to the vaccine recipient by such payor. The parties understand and agree that Blue Shield shall have no responsibility for paying, reviewing, approving, submitting any vaccine administration claim for payment, or otherwise intervening on any Vaccine Provider's behalf in connection with a Vaccine Provider's request for payment of vaccine administration fees by a payor, except to the extent that Blue Shield is the payor for a specific individual patient to whom a Vaccinating Provider administers the vaccine. Any disputes regarding payment of vaccine administration fees by a payor shall be resolved solely between the Vaccine Provider and the payor, and the Model Contract shall provide that the Vaccine Provider may not balance bill a patient for any unpaid amounts.
- d. A provision that in the event of a dispute regarding Network Incentive Payments or Start-Up Costs, Vaccine Providers shall be authorized to submit claims under the Model Contracts, including in accordance with Government Code sections 900 et seq., as applicable, directly to the Agency. The Agency acknowledges and agrees that, absent fraud or willful misfeasance by Blue Shield, Blue Shield will have no responsibility for any Network Incentive Payments or Start-Up Cost payments of any kind to Vaccine Providers. Vaccine Providers will have no claim against Blue Shield with respect to any such payments. Without limiting the foregoing, Blue Shield shall have no responsibility

for reviewing, approving, or submitting any claim for disputed Network Incentive Payments or Start-Up Cost payments from any Vaccine Provider to the Agency. Blue Shield acknowledges that, unless authorized by the Agency, it will not make assurances to any provider that the Agency will pay any Network Incentive Payments or Start-Up Cost payments; notwithstanding the foregoing, Blue Shield may inform Vaccine Providers of the program criteria that have been communicated to Blue Shield by the Agency.

- e. Third Party Beneficiary. The Agency shall be an express third-party beneficiary of the Model Contracts, and shall have the right to assume any such contract with any Vaccine Provider should this Agreement be terminated for any reason whatsoever.
- f. Liability. The Model Contract shall provide that Blue Shield shall have no liability to the Vaccine Providers for claims arising out of the Agency's acts or omissions related to performance of the Model Contract or failure by the Agency to perform any of its obligations under this Agreement.

8.1.1.2. The Agency must approve the Model Contracts before the Model Contracts may be executed with Vaccine Providers. The Agency agrees to approve or provide proposed changes to the Model Contracts within three (3) business days after Blue Shield submits the Model Contracts to the Agency. The Agency's approval is limited to ensuring that Agency-provided criteria are included in the Model Contract. Blue Shield and Vaccine Provider shall not amend or alter the Model Contract template form without approval by the Agency. This provision does not apply to filling out the Model Contract with specific Vaccine Provider information. Blue Shield is authorized to execute contracts with Vaccine Providers in the form of the approved Model Contracts, including non-material deviations, without further Agency approval. Vaccine Providers are not Subcontractors, including for purposes of Exhibit D, section 4. Blue Shield's performance of its obligations hereunder is conditioned on and subject to the Agency's timely approval of the Model Contracts.

8.1.2. Implement Vaccine Provider Credentialing and Enrollment based on the following Participation Criteria in addition to other provisions deemed necessary and appropriate by Blue Shield or the Agency and approved by the Agency:

- a. Properly licensed to administer COVID-19 vaccinations or permitted to administer COVID-19 vaccinations under an applicable waiver.
- b. Enrolled with the Centers for Medicare & Medicaid Services (CMS) for purposes of administering COVID-19 vaccinations.
- c. Agreement to ongoing compliance with the terms of enrollment with CMS.
- d. Agreement to abide by the CDC immunization program agreement.
- e. Agreement to establish and maintain registration in, and use the State Immunization Registry and MyTurn (or other appropriate Agency electronic health record interface approved by Blue Shield and the Agency) as the technology platform(s) for registering patients onto the vaccine waitlist, scheduling of COVID-19 vaccination appointments, and collection of vaccination orders and administration data from Vaccine Providers.
- f. Agreement and ability to accept all government-sponsored health coverage that provides coverage for administration of COVID-19 vaccines.
- g. Agreement to provide vaccine administration services to any resident of California who is eligible for vaccination and for whom vaccination is medically appropriate, regardless of ability to pay, health plan or insurance status, or type of coverage (if any), and regardless of whether there is any previously existing patient or member relationship with the Vaccine Provider.
- h. Ability and commitment to meet Volume Requirements, which may vary by provider type and location.
- i. Ability and commitment to closing Equity Gaps and meeting Equity Goals.
- j. Agreement to comply with the Vaccine Provider Reporting Requirements.
- k. Acknowledgement and maintenance of credentialed status with one or more Health Care Service Plans or Health Insurers or other appropriate provider credentialing for purposes of administration of the COVID-19 vaccine and compliance with the Participation Criteria. Vaccine Providers that are enrolled through CalVax and identified by the Agency as high-value providers (due to volume and/or equity metrics) shall be deemed to satisfy this requirement.

- I. Ability to support vaccination appointments for patients who do not have internet access. This requirement may be satisfied via a hybrid offline and online approach. For example, a call center may be able to assist patients who do not have internet access by scheduling appointments for those patients via MyTurn.
 - m. Agreement to the Vaccine Provider Oversight and Monitoring Process.
 - n. Agreement to provide Form 204 if not previously executed with the Agency.
- 8.1.3. Blue Shield will promptly notify the Agency regarding Blue Shield's selection of Vaccine Providers to be offered Model Contracts for participation in the State Vaccine Network. For the initial phase of Vaccine Provider Credentialing, Blue Shield currently intends to focus participation efforts on a limited number of providers that Blue Shield, in consultation with the Agency, believes are able to meet or exceed capacity, equity, and geographic reach concerns. The parties understand and agree that given the state of emergency and dynamic nature of the spread of COVID-19 and shifting needs of the population, Blue Shield will make adjustments to which providers participate in the State Vaccine Network as the need arises in Blue Shield's discretion. The parties will each cooperate in good faith to promptly perform all required activities in connection with securing executed Model Contracts and participation of Vaccine Providers.
 - 8.1.3.1. In addition, Blue Shield will perform Vaccine Provider Credentialing for any Vaccine Providers reasonably identified by the Agency for specific functions in the Vaccine Provider Network (e.g., Mass Vaccination Sites, Mobile Clinics, Vaccine Hubs, state employees, etc.). Blue Shield retains the right, in its discretion, to determine whether to enter into a contract with any Vaccine Provider.
- 8.1.4. Blue Shield will work with Vaccine Providers to develop capacity within the State Vaccine Network for the identification of at-risk patients and vaccination of such patients in their homes.
- 8.1.5. Maintenance of State Vaccine Network:
 - 8.1.5.1. Based on the Network Performance Criteria, Blue Shield will develop a Network Management Strategy for approval by the Agency. Upon Agency approval, Blue Shield will implement the Network Management Strategy. Network Performance Criteria are attached as Schedule A. Blue Shield will have no responsibility for vaccine providers, vaccine provider networks, or vaccine administration sites arranged by the federal government.

- 8.1.5.2. The Network Management Strategy will address the following Blue Shield obligations:
- a. Blue Shield will develop and implement a Vaccine Provider Oversight and Monitoring Process, including:
 - i. Monitoring and oversight of Vaccine Provider reporting and data entry in MyTurn (or other appropriate Agency electronic health record interface approved by Blue Shield and the Agency).
 - ii. A process for monitoring Vaccine Provider compliance with the Participation Criteria; Equity Goals, or Volume Requirements; and other performance and compliance issues identified by Blue Shield or the Agency.
 - iii. Blue Shield shall have authority to suspend or terminate a Vaccine Provider's State Vaccine Network participation contract in accordance with the terms and conditions set forth in the contract between Blue Shield and the Vaccine Provider. Blue Shield shall make recommendations to the Agency to reduce, increase, modify, suspend or terminate vaccine allocations for a Vaccine Provider in accordance with the terms and conditions set forth in the contract between Blue Shield and the Vaccine Provider, subject to the Agency's authority to modify vaccine allocations.
- 8.1.5.3. Blue Shield may update the Network Management Strategy from time to time.
- 8.1.5.4. Blue Shield will develop and implement State Vaccine Network provider-facing communication plans and materials, which will:
- a. Focus on changes in supply, tiers, or other changes that require action on the part of providers.
 - b. Provide mechanism for interested providers to contact Blue Shield to express interest in enrolling in the State Vaccine Network (e.g., via a call center or email).
- 8.1.5.5. Blue Shield will assist the Agency in the administration of Start-Up Costs as set forth in Section 1.4; provided, however, that Blue Shield will have no responsibility for

any payments of any kind related to Start-Up Costs or Network Incentive Payments to Vaccine Providers, and Vaccine Providers will have no claim against Blue Shield with respect to any such payments. Without limiting the foregoing, Blue Shield shall have no responsibility for reviewing, approving, or submitting any claim for disputed Start-Up Costs from any Vaccine Provider to the Agency.

- 8.1.5.6. Blue Shield will participate in any stakeholder calls or meetings as reasonably requested or hosted by the Agency with no less than 24 hours' notice.

8.2. Develop Vaccine Allocation Reports:

- 8.2.1. Blue Shield will recommend for adoption by the Agency, a vaccine Allocation Algorithm, with a focus on equity, to be used in operationalizing the distribution of vaccines across the state; the Allocation Algorithm will be updated as needed based on changing conditions, such as vaccine availability, COVID-19 incidence, and feedback from relevant stakeholders. The Allocation Algorithm will include both geographic and Vaccine Provider allocations.
- 8.2.2. Blue Shield will recommend for adoption by the Agency, an algorithm to guide the prioritization of appointments at State Vaccine Network vaccine sites, taking into account factors such as demographic characteristics, and geographic needs. The factors may be adjusted as the circumstances of the pandemic change and federal and state vaccine prioritization criteria evolve.
- 8.2.3. Blue Shield will create a Vaccine Allocation Report template for approval by the Agency.
 - 8.2.3.1. Vaccine Allocation Reports will compile Vaccine Provider Data in a manner that will facilitate the Agency's evaluation and determination of vaccine allocation.
 - 8.2.3.2. Data reporting will focus on speed, effectiveness, and equity of vaccine delivery.
 - 8.2.3.3. Data reporting will address:
 - a. Equity Goals
 - b. Equity Gaps
 - c. Hot Spots
 - d. Low Performing Geographies
 - e. Low Performing Providers

f. Volume Requirements

- 8.2.4. Blue Shield shall provide Vaccine Allocation Reports to the Agency on a daily basis once the Agency has provided approval for the Vaccine Allocation Report template and the Agency's completion of any system adjustments and third-party requirements necessary to update the reporting system to produce the approved template.
- 8.2.5. The Agency shall establish parameters for Blue Shield to follow for purposes of vaccine allocation, including revising allocations among geographies and Vaccine Providers, so that Blue Shield will have direction from the Agency to implement such allocations.
- 8.2.6. Information Technology Advisory Services – Establishing an improved workflow, technology and data submission process across the Agency to reach as many residents as possible and accurately track results: Blue Shield will provide experience and information technology advisory services to include guidance on technical architecture, solution design, data flow, and report design. The Blue Shield personnel roles involved in performing this service will include: technical architects, solution architects, user experience designers, product managers, and data architects. Blue Shield will partner with the appropriate technology team from the Agency who will be responsible for making the recommended changes to MyTurn.
- 8.2.7. Data analytics and action plan:
 - 8.2.7.1. Blue Shield will provide timely reporting and analytics for a statewide vaccine dashboard, including timely data aggregation, reporting, and integration of Vaccine Provider Data. This may include integration of additional data elements, such as data from MyTurn, the State Immunization Registry, or other sources, as identified by the Agency.
 - 8.2.7.2. Blue Shield will report on ongoing network performance to assist the Agency in directing adjustments to allocations and making recommendations regarding network strategy adjustments.
 - 8.2.7.3. Blue Shield will provide and implement, at the Agency's direction, adjustments to the Allocation Algorithm for response strategies, such as Hot Spots and Lower Performing Geographies and Providers or other priorities.
 - 8.2.7.4. The Agency must provide Blue Shield with timely access to the necessary data and capabilities to meet Blue Shield's obligations set forth above.

9. Blue Shield Deliverables

Blue Shield Deliverables. In connection with the Services, Blue Shield shall provide the following deliverables no later than the Due Date set forth in the table below (the “Deliverables”):

#	Blue Shield Deliverables	Due Date
1	Model Contracts (submitted to the Agency for approval) (Section 8.1.1) – Template provider agreements under which Vaccine Providers will provide vaccination services for the State Vaccine Network.	02/09/2021
2	Credentialing Procedures (Section 8.1.2) –Develop provider Credentialing procedures based on the Participation Criteria.	02/10/2021
3	Provider-Facing Communication Plan and Materials (Section 8.1.5.4) – Develop plan and materials for provider communications related to the State Vaccine Network.	02/12/2021
4	Information Technology Advisory Services (Section 8.6.2) – Strategic Recommendations for Future State Patient and Provider User Experience Workflow	TBD
5	Network Management Strategy (Section 8.1.5.1)	02/10/2021
6	Vaccine Allocation Reports (Section 8.2)	03/01/2021
7	Network Incentive Payment Criteria and Reporting Requirements (Section 10.2.9)	TBD
8	Data Analytics Action Plan (Section 8.2.7)	02/15/2021
9	Enhancements to Timely Reporting and Analytics Dashboard (Section 8.2.7.1)	Frequency to be determined by Blue Shield
10	Ongoing Data Reports on Network Performance (Section 8.2.7.2)	TBD
11	Response Strategies (Hot Spots, Low Performing Providers/Geographies) (Section 8.2.7.3)	02/15/2021 through 03/30/2021

10. Agency Responsibilities

The Agency will be responsible for:

10.1. General Contract Management

- a. Any changes to the Deliverables and Services shall receive prior written authorization from the Agency before they can become effective.
- b. Work with Blue Shield to provide clarification of the Services, process, and associated expectations.
- c. Access to appropriate level of staff, stakeholders, users, and Agency management for successful completion of Administrative Services.
- d. Conduct timely decisions and reviews of work products.
- e. Pay invoices timely based on the Agency’s acceptance of approved work.

- f. It shall be the Agency's sole determination as to whether a deliverable has been satisfactorily completed.
 - g. Establish effective daily/weekly communication with the Blue Shield to ensure successful execution of all contract requirements via videoconference, telephone conference, email, and other venues, as needed.
 - h. The Agency will require Optum Serve to participate in the State Vaccine Network and reasonably cooperate with Blue Shield until such time as Blue Shield executes a Model Agreement with Optum Serve.
- 10.2. The Agency's Oversight and Responsibilities. In addition to the obligations set forth in Section 8 above, the Agency shall be responsible for the following activities and functions:
- 10.2.1. CDC Liaison and information source for Blue Shield.
 - 10.2.2. Stakeholder engagement, including:
 - a. Continuing to manage county public health relationships and compile and provide necessary county input to Blue Shield.
 - b. Responsibility for defining the role of Kaiser Permanente in the administering of vaccinations in the state.
 - c. Hosting ongoing daily or weekly (as appropriate) stakeholder calls to answer questions and address issues related to the State Vaccine Network.
 - 10.2.3. Overseeing, scheduling, and enforcing the migration from the county-based delivery system to the Blue Shield contracted State Vaccine Network delivery system within the established schedule.
 - 10.2.4. Establishing the Vaccination Allocation Criteria and ultimate determination/approval of all vaccine allocations and making vaccine allocation determinations based on strategic reporting from Blue Shield (with input from the California Department of Public Health).
 - 10.2.5. Counties will continue to receive direct allocation of vaccine from the Agency under this Agreement.
 - 10.2.6. Startup Cost and Network Incentive Payment criteria approval, budget, and the approval and direct payment of any such payments to Vaccine Providers.
 - 10.2.7. Host, manage, and maintain MyTurn and other Agency data systems.
 - 10.2.7.1. As between the Agency and Blue Shield, the Agency will be responsible for the MyTurn applications and any other systems necessary for Blue Shield to provide the reporting

and other Services for which Blue Shield is responsible under this Statement of Work, including but not limited to the operation, hosting, and maintenance of such systems, and any modifications or additions to such systems that are needed in order to permit MyTurn and such other systems to provide the functionality necessary to be used to make appointments, collect and display data, and perform other functions and Services that Blue Shield is obligated to provide under this Statement of Work.

Additionally, the Agency will facilitate and support Vaccine Provider electronic interface with the State Immunization Registry and MyTurn (or other appropriate electronic health record interfaces approved by Blue Shield).

10.2.7.2. Technical changes: Blue Shield's Information Technology Advisory Services as defined in section 1.3.5 may recommend changes to the on-line software systems. The Agency shall consider whether to implement Blue Shield's recommended changes in good faith and shall not unreasonably refuse to implement any Blue Shield-recommended changes. Changes to these systems are the responsibility of the Agency. Blue Shield shall be provided the ability to suggest and recommend priorities of these software system changes, such as enhancements to existing experience workflows, functionality and/or the creation of new experience workflows and functionality as needed. If the Agency's refusal to accept any Blue Shield recommended change materially impacts Blue Shield's ability to perform any of the Services, Blue Shield's performance of the impacted Services shall be excused.

10.2.8. Public and Vaccine Provider call centers: The Agency will continue to provide the public and provider call centers in partnership with any third-party vendors and the California Department of Public Health, which will operate the call centers. Blue Shield is responsible for establishing an improved workflow with standardized procedures and controls ensuring process integration with MyTurn in order to register and set appointments for as many residents as possible. Blue Shield will also recommend service level agreements and staffing workforce plans to support the agreed upon rollout schedule. Any changes to systems (including third-party technology) and associated costs are the responsibility of the Agency.

10.2.9. Network Incentive Payments:

10.2.9.1. Blue Shield will develop, and recommend for adoption by the Agency, Network Incentive Payment methodologies and criteria. Network Incentive Payment criteria may include incentives related to:

a. Volume-based payments.

- b. Equity payments with verification on back end (close Equity Gaps and ensure Equity Goals are met).
- c. Percent of vaccines administered.
- d. Such other metrics as determined by the Agency.

10.2.9.2. Blue Shield will provide ongoing reporting to the Agency tracking Vaccine Provider Network Incentive Payment performance metrics for all eligible Vaccine Providers. Blue Shield will identify Vaccine Providers that have met Agency metrics for Network Incentive Payments, and identify the amount of the payment merited under the Agency criteria.

10.2.9.3. Blue Shield will review Network Incentive Payment requests and forward the same to the Agency with a recommendation regarding payment. Following receipt of a recommendation regarding payment from Blue Shield, the Agency will review and approve Network Incentive Payments (or identify a basis for dispute), fund, and distribute the Agency-approved Network Incentive Payments directly to the recipients. Blue Shield shall have no obligation whatsoever to fund or distribute any Network Incentive Payments. The Agency represents that it will make available the funds necessary to make the Network Incentive Payments.

10.2.9.4. The Agency will report to Blue Shield, for tracking purposes, all Network Incentive Payments authorized and distributed to Vaccine Providers.

10.2.10. Start-Up Costs:

10.2.10.1. The Agency will be responsible for defining criteria for the allocation of Start-Up Costs for Vaccine Hubs, Mobile Clinics, and Mass Vaccination Sites.

10.2.10.2. Blue Shield will review Start-Up Cost payment requests and forward the same to the Agency with a recommendation regarding payment. The Agency will review and approve Start-Up Cost payments (or identify a basis for dispute), fund, and distribute the Start-Up Cost payments directly to the Start-Up Cost recipients. Blue Shield shall have no obligation whatsoever to fund or distribute any Start-Up Cost payments. The Agency represents that it will make available the funds necessary to make the Start-Up Cost payments.

10.2.10.3. The Agency will report to Blue Shield, for tracking purposes, all Start-Up Cost payments authorized and distributed to Vaccine Providers.

10.2.11. The Agency shall secure a waiver or other action from the Department of Health Care Services and the federal government to allow Vaccine Providers to obtain reimbursement for vaccine administration fees regardless of whether the Vaccine Provider participates with the applicable plan or program.

10.2.12. The Agency shall secure amendments to existing agreements for vaccine services with Kaiser Foundation Hospitals obligating these providers to comply with the requests of Blue Shield arising from this Agreement for participation in the Vaccine Network.

11. Agency Deliverables

Agency Deliverables. The Agency shall provide the following deliverables no later than the Due Date set forth in the table below (the “Agency Deliverables”):

#	Agency Deliverables	Due Date
1	Startup Cost Criteria and Budget (Section 10.2.6)	*
2	Network Incentive Payment Criteria and Budget (Section 10.2.6)	*
3	Network Performance Criteria (Schedule A)	N/A
4	MyTurn (Section 10.2.7)	*
5	MyTurn Resident Flow (Section 10.2.7)	*
6	MyTurn Provider Flow (Section 10.2.7)	*
7	Interface between MyTurn and IIS (Section 10.2.7.1)	*
8	Public and Vaccine Provider Call Centers (Section 10.2.8)	*
9	Vaccine Allocation Determinations/Approvals (ongoing) (Section 10.2.4)	*
10	Vaccine Provider communication website and other systems to communicate with Vaccine Providers (Section 10.2.7.1)	*
11	Access to necessary data and capabilities for Blue Shield’s data analytics and action plan (Section 8.2.7.4)	*

*The parties will mutually determine appropriate due dates within 10 days of execution of this Agreement.

12. Privacy and Security Requirements

Blue Shield must adhere to the terms and conditions in the Information Privacy and Security Requirements which are incorporated as Exhibit E to this Agreement.

Schedule A

Network Performance Criteria for State Vaccine Network

Category	Performance Criteria Definition	Goal
Access ¹	Travel distance in time for a sufficiently healthy person to drive or be transported in a vehicle from their home to a place they can receive a vaccine.	95% of people: Living in urban areas travel < 30 minutes Living in rural areas travel < 60 minutes
	The ability to deliver vaccines to people who are homebound or suffering from illnesses/disabilities that make it unsafe or prohibitively difficult for them to visit a Vaccine Provider for a vaccination. Blue Shield will rely on the Agency's assistance in accurately identifying people eligible for this service and the established targets are contingent on reasonable assistance from the Agency.	Able to do this in all 58 counties in the priority order designated by the Agency.
Capacity	Number of vaccination doses that can be administered per week statewide and (proportionate to the population) by county. The established targets are for network capacity, and are contingent upon receipt of Agency approval of the Model Contracts in sufficient time to secure executed Vaccine Provider agreements. Actual vaccine administration rates are contingent on the Agency receiving and making available sufficient vaccine supply to warrant the specified level of capacity.	By March 1 st : 3.0 million By April 30: 4.0 million
Equity	Starting March 1 st for the month of March and on the 1 st day of each subsequent month of the Agreement, the Agency will establish a monthly goal for the percentage of vaccinations completed for the following populations: <ul style="list-style-type: none"> ■ Agency-identified under-resourced or disproportionately impacted populations ■ People living in Healthy Places Index tracts that rank in the lowest quartile The goal must be consistent with the agreed upon Allocation Algorithm for vaccine	As an illustrative example, for the month of March: 60% of doses administered to Agency-identified disproportionately impacted populations 50% of doses for people living in

¹ For purposes of the Access goals, the Network Performance Criteria will be measured based on vaccinations performed through the State Vaccine Network in combination with vaccinations performed through any federally administered and county administered vaccination programs. If data from federal or other programs cannot be obtained, the goals will be adjusted appropriately.

Category	Performance Criteria Definition	Goal
	<p>allocation and is contingent upon the continued availability of necessary data.</p> <p>It is anticipated that the State Vaccine Network will be established in three geographical waves and will be state-wide by the final wave; these goals will only apply to the geographic areas the State Vaccine Network is operating. If there is incomplete data on ethnicity provided, the Agency and Blue Shield will mutually agree to appropriate assumptions on the population that chose not to identify their ethnicity.</p>	lowest quartile HPI tracts
Administration Efficacy	Percentage of total vaccine doses (both first and second doses) administered within one week of being received safely by Vaccine Providers.	95%
Customer/ Patient Experience	If appropriate, establish a 5-star rating system and invite patients to rate their experience getting vaccinated on MyTurn (5 stars being the best, 1 star being the worst).	Average rating of 4 stars or higher

EXHIBIT B
Payment Provisions

1. Invoicing and Payment

- A. For services satisfactorily rendered, and upon receipt and approval of the invoices, the Agency agrees to compensate Blue Shield for actual expenditures incurred in accordance with the Cost Breakdown specified in Attachment 1 of this Exhibit.
- B. Invoices and relevant supplement documentation, as described in Section C below should be sent via secure email stating the agreement number to: covid19vaccine@govops.ca.gov.
- C. Blue Shield shall submit detailed and itemized invoices or accounting of payment, as applicable, to the Agency on a monthly basis. All invoices for payment or accounting of payment shall be submitted in arrears for work already performed. No invoice may be submitted, and no payments will be made, for services not yet rendered, in whole or in part. Each Invoice submitted shall:
 - 1) Be prepared on Blue Shield letterhead. Invoices must be signed by an authorized official, employee or agent certifying that the expenditures claimed represent activities performed
 - 2) Identify the billing and/or performance period covered by the invoice.
 - 3) Itemize costs for the billing period in the same or greater level of detail as indicated in this Agreement. Subject to the terms of this Agreement, reimbursement may only be sought for those costs and/or cost categories expressly identified as allowable in this Agreement and approved by the Agency.
- D. The Agency will pay Blue Shield only for services which have not been disputed by the Agency.
- E. If payments under this Agreement result in payments to Blue Shield to which Blue Shield is not entitled, the Agency, after giving written notification to Blue Shield, may withhold from payments due to Blue Shield such amounts over such period of time as are necessary to recover the amount of the overpayment.
- F. Amounts Payable

Blue Shield shall not bill the Agency for its staff time spent on performing the Services. The Agency shall pay Blue Shield for all allowable third-party costs and expenses actually incurred by Blue Shield in its performance of this Agreement. The amount payable shall not exceed fifteen million dollars (\$15,000,000) for the contract term.

The Agency shall be a third-party beneficiary to Blue Shield's Vaccine Provider contracts and shall be responsible for directly paying Vaccine Providers for Startup Costs and Incentive Payments thereunder.

2. Budget Contingency Clause

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the Agency shall have no liability to pay any funds whatsoever to Blue Shield or to furnish any other considerations under this Agreement and Blue Shield shall not be obligated to perform any provisions of this Agreement.

EXHIBIT B
Payment Provisions

- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the Agency shall have the option to either cancel this Agreement with no liability occurring to the Agency, or offer an agreement amendment to Blue Shield to reflect the reduced amount.

3. Prompt Payment Clause

Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.

4. Timely Submission of Final Invoice

A final undisputed invoice shall be submitted for payment no more than thirty (30) calendar days following the expiration or termination date of this Agreement, unless a later or alternate deadline is agreed to in writing by the program contract manager. Said invoice should be clearly marked "Final Invoice", indicating that all payment obligations of the Agency under this Agreement have ceased and that no further payments are due or outstanding. The Agency may, at its discretion, choose not to honor any delinquent final invoice if Blue Shield fails to obtain prior written Agency approval of an alternate final invoice submission deadline.

5. Expense Allowability / Fiscal Documentation

- A. Invoices, received from Blue Shield and accepted for payment by the Agency, shall not be deemed evidence of allowable agreement costs.
- B. Blue Shield shall maintain for review and audit and supply to the Agency upon request, adequate documentation of all expenses claimed pursuant to this Agreement to permit a determination of whether each expense is allowable and, therefore, reimbursable. The parties agree that the following expenses incurred by Blue Shield are allowable expenses subject to reimbursement by the Agency to Blue Shield: amounts paid by Blue Shield to its Subcontractors (as defined in Exhibit A); amounts paid to agencies providing marketing and communication services, amounts paid to contingent staffing agencies and all incremental cost directly attributable to Blue Shield's Service obligations set forth in Exhibit A. As of the date of this Agreement, however, the parties acknowledge and agree that they have not determined the full scope of allowable and unallowable Blue Shield expenses. For this reason, the parties agree to work in good faith to agree to additional Blue Shield's allowable expenses on or before the date that is forty-five (45) days after the date of this Agreement. Such agreed upon list of additional allowable expenses will be documented in an Amendment to this Agreement. Blue Shield shall have the right during the term to propose to the Agency that other costs not listed above that Blue Shield encounters in performing its obligations under the Agreement also be allowable expenses under this Agreement, subject to the Parties' mutual agreement in an amendment.
- C. Blue Shield represents that it intends to subcontract with numerous contractors, some being new to Blue Shield and some with which it has existing relationships in support of this Agreement, to facilitate immediate performance of the services. For any such Subcontractors, Blue Shield represents that the rates it will pay them are reasonable, market rates and agrees that the rates charged to the Agency will not exceed the rates that Blue Shield currently pays for such services. The Agency agrees that it will accept such rates as reasonable market rates unless and until the Agency provides evidence that the rates are inconsistent with market rates for such services.

EXHIBIT B
Payment Provisions

- D. If the allowability of an expense cannot be determined by the Agency because invoice detail, fiscal records, or backup documentation is nonexistent or inadequate according to generally accepted accounting principles or practices, all questionable costs may be disallowed and payment may be withheld by the Agency. Upon receipt of adequate documentation supporting a disallowed or questionable expense, reimbursement may resume for the amount substantiated and deemed allowable.
- E. In addition to the above, any unexpected or unforeseen reasonable expenses incurred by Blue Shield arising out of a force majeure event (as defined in Exhibit D) shall be considered allowable expenses that are reimbursable to Blue Shield.

6. Repayment for Failure to Meet Performance Measures

In the event Blue Shield fails to perform the Services and Deliverables as set forth in Exhibit A in accordance with any of the Network Performance Criteria in Exhibit A, as determined by the Agency, the Agency reserves the right to request a repayment of any fees remitted to Blue Shield in compensation for its own services in the amount of 7%. For clarity, this Section shall not apply to any amounts reimbursed by the Agency to Blue Shield under the Agreement.

EXHIBIT B
Payment Provisions

ATTACHMENT 1
TO
EXHIBIT B (PAYMENT PROVISIONS)

Vendor/Service Obligation	Estimate Costs
Provider: Model Contracts, Credentialing, Enrollment, Communications and Service	\$5,000,000
Delivery: Network Maintenance, At-Risk Identification and Vaccine Allocation	\$5,000,000
Marketing and Contingent Staffing, costs of contract preparation and execution, insurance premium costs	\$5,000,000

The costs will be consistent with and in furtherance of the activities described in Exhibit A

EXHIBIT C

GENERAL 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. Blue Shield 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 either party, in whole or in part, without the consent of the other party, in the form of a formal written amendment.
4. **AUDIT**: Blue Shield agrees that the awarding department, the Department of General Services, the Bureau of State Audits, the Department of Finance's Office of State Audits and Evaluations, or their designated representative shall have the right to access, review and copy any records and supporting documentation pertaining to the performance of and compliance with this Agreement. Government auditors will perform any such auditing at the government's expense. Blue Shield agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless (1) a longer period of records retention is stipulated, or (2) Blue Shield destroys otherwise auditable records in accordance with Section XVI of Exhibit E hereto. Blue Shield agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. If auditors discover an overpayment, the amount of the alleged overpayment will become subject to this Agreement's Disputes clause. Further, Blue Shield agrees to include a similar right of the Agency 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).

Upon the Agency's request, Blue Shield will conduct on-site audits of Vaccine Providers in accordance with requirements as determined by the Agency. If the Agency directs Blue Shield to audit any Vaccine Provider, then the Agency shall either a) retain an auditor at the Agency's expense to perform the audit under Blue Shield's oversight or b) direct Blue Shield to retain and oversee a third-party auditor of its choosing and the Agency shall reimburse Blue Shield for the cost of the audit.

5. **INDEMNIFICATION**: Blue Shield agrees to indemnify, defend and save harmless the Agency, its officers, agents and employees (collectively, "Agency Indemnitees") from any and all claims made by third parties, and any losses, costs, liabilities, damages or

deficiencies, including interest, penalties, and reasonable attorneys' fees (collectively, "Losses") arising from such third party claims (which Losses the Agency must establish) and which:

- A. Arise out of or are due to a breach by Blue Shield of any of its representations, warranties, covenants or other obligations contained in this Agreement; or
- B. Are caused by or resulting from Blue Shield's wrongful acts or omissions constituting, but not limited to, bad faith, willful misfeasance, negligence or reckless disregard of its duties under this Agreement; or
- C. Accrue or result to or by any of Blue Shield's subcontractors, materialmen, laborers or any other person, firm or corporation furnishing or supplying services, material or supplies in connection with the performance of this Agreement.

Notwithstanding the foregoing, Blue Shield shall have no obligation to indemnify, defend, or save harmless any Agency Indemnitees for any claims of Losses based on:

- A. Alleged delayed receipt of, difficulty or cost in obtaining, or inability to obtain, a vaccine; or
- B. The selection or non-selection of any provider as a Vaccine Provider under the Agreement; or
- C. Claims made by any Vaccine Provider or vaccine recipient; or
- D. The negligent acts or omissions or willful misconduct of any Agency Indemnitee.

6. LIMITATION OF LIABILITY: In consideration of the services being performed by Blue Shield at no charge and notwithstanding anything else set forth in this Agreement to the contrary, (1) in no event shall Blue Shield's liability under this Agreement exceed the total amount paid by the Agency directly to Blue Shield under this Agreement. This limitation of liability includes liquidated damages recoverable under other provisions of this Agreement, and (2) in no event will Blue Shield be liable to the Agency for indirect, consequential, exemplary, punitive or special damages of any kind or nature whatsoever, even if Blue Shield has been advised of the possibility of such damages in advance.

7. DISPUTES: In the event of disagreement, the Agency and Blue Shield will negotiate in good faith to resolve those differences. This includes, but is not limited to, disputes about the allowability of an expense or the amount of an expense to which Blue Shield seeks reimbursement. If the differences cannot be resolved through good faith negotiations, the Parties may avail themselves to all remedies available under California law. The Agency and Blue Shield shall continue with their responsibilities under this

Agreement during any dispute. The parties agree that for those claims subject to a twelve (12) month presentation of claim deadline under Government Code 911.2, accrual shall be calculated as within twelve (12) months from when Blue Shield first learns of a claim for which it intends to present a claim against the Agency.

8. INDEPENDENT CONTRACTOR: Blue Shield, and the agents and employees of Blue Shield, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the Agency.
9. RECYCLING CERTIFICATION: Blue Shield shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the Agency regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).
10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Blue Shield 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. Blue Shield shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. Blue Shield 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. Blue Shield 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 ascertain compliance with this clause. Blue Shield 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.)

Blue Shield shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. 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.
12. TIMELINESS: Time is of the essence in this Agreement. However, the parties acknowledge and agree that the situation around COVID-19 is highly dynamic, evolving rapidly, subject to significant uncertainty, a lack of reliable information, and other events completely beyond the parties' control. Further, in order to be able to complete the Services within the agreed timeframes and budget and to fulfill its responsibilities on a timely basis, Blue Shield will rely on the Agency's timely cooperation, including the Agency making available relevant data, information, personnel and software applications and systems; performing any tasks or responsibilities assigned to the Agency within the scheduled timeframes; and notifying Blue Shield of any issues or concerns the Agency may have relating to the Services. During the course of the Services, priorities may shift, unexpected events may occur or additional information may become available which may necessitate changes to the Services and timelines. Any such changes to the Services and timelines shall be mutually agreed upon by the Parties and set forth in an amendment.
13. COMPENSATION: The consideration to be paid Blue Shield, as provided herein, shall be in compensation for all of Blue Shield's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.
14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.
15. ANTITRUST CLAIMS: Blue Shield by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, Blue Shield 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:
 - 1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the Agency 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.
 - 2) "Public purchasing body" means the Agency 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.
- e. For the avoidance of doubt, the parties agree that the provisions set forth in this Section 15 are not applicable to Blue Shield as the Services provided under this Agreement are pursuant to the authority in the Governor's Proclamation of a State of Emergency dated March 4, 2020, paragraph 2, in response to the current public health emergencies concerning the rapid spread of the pandemic known as the Novel Coronavirus or COVID-19 ("COVID-19").

16. CHILD SUPPORT COMPLIANCE ACT: For any Agreement in excess of \$100,000, Blue Shield acknowledges in accordance with Public Contract Code 7110, that:
 - a. Blue Shield 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. Blue Shield, 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.
17. 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.
18. PRIORITY HIRING CONSIDERATIONS: If this Agreement includes services in excess of \$200,000, Blue Shield 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.
19. USE OF NAME/PUBLICITY: The Agency shall not use Blue Shield's name, logo, service marks, domain names, symbols or any other Blue Shield name or mark without Blue Shield's prior written consent. The Agency may not use Blue Shield as a reference or this Agreement as an endorsement of the Agency without Blue Shield's prior written consent.
20. ASSOCIATION DISCLOSURE: The Agency hereby expressly acknowledges its understanding that this Agreement constitutes a contract between the Agency and Blue Shield, that Blue Shield 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 Blue Shield to use the Blue Shield Service Mark in the State of California, and that Blue Shield is not contracting as the agent of the Association. The Agency further acknowledges and agrees that it has not entered into this Agreement based upon representations by any person other than Blue Shield and that no person, entity, or organization other than Blue Shield and its Subcontractors as

defined in Exhibit A shall be held accountable or liable to the Agency for any of Blue Shield's obligations to the Agency under this Agreement. This paragraph shall not create any additional obligations whatsoever on the part of Blue Shield other than those obligations under other provisions of this Agreement.

EXHIBIT D
Additional Provisions

1. Termination

- A. Unless otherwise stated in this section, this Agreement may be cancelled by the Agency without cause upon at least thirty (30) calendar days advance written notice to Blue Shield.
- B. This Agreement may be terminated by either party for material breach of the Agreement upon thirty (30) days prior written notice of such breach provided that such breach is not rectified to the non-breaching party's reasonable satisfaction within the thirty (30) day period.
- C. Upon receipt of a notice of cancellation or termination, Blue Shield shall take immediate reasonable steps to stop performance and to cancel or reduce subsequent agreement costs.
- D. In the event of early cancellation or termination, Blue Shield shall be entitled to compensation for services performed in accordance with this Agreement and expenses incurred up to the effective date of cancellation or termination and any expenses incurred after the date of cancellation or termination to wind down performance or pay for non-cancelable obligations incurred in support of this Agreement.
- E. If because of force majeure (as defined in Section 7 below) or the actions of any governmental agency, it becomes impossible for the parties to perform their obligations under this Agreement, other than the Agency's payment obligations that are otherwise unaffected hereunder, such failure to perform shall not be deemed a breach of this Agreement.

2. Confidential Information

- A. Blue Shield and its employees, agents, or subcontractors shall protect from unauthorized disclosure names and other identifying information concerning persons either receiving services pursuant to this Agreement or persons whose names or identifying information become available or are disclosed to Blue Shield, its employees, agents, or subcontractors as a result of services performed under this Agreement, except for statistical information not identifying any such person.
- B. Blue Shield and its employees, agents, or subcontractors shall not use such identifying information for any purpose other than carrying out Blue Shield's obligations under this Agreement.
- C. Blue Shield shall not disclose, except as otherwise specifically permitted by this Agreement or authorized by the Agency, any such identifying information to anyone other than the Agency without prior written authorization from the Agency, except if disclosure is required by State or Federal law.
- D. As deemed applicable by the Agency, this provision may be supplemented by additional terms and conditions covering personal health information (PHI) or personal, sensitive, and/or confidential information (PSCI). Said terms and conditions will be outlined in one or more exhibits that will either be attached to this Agreement or incorporated into this Agreement by reference.
- E. "Blue Shield Confidential Information" means any non-public information (or materials) belonging to, concerning or in the possession or control of Blue Shield that is furnished, disclosed or otherwise made available (directly or indirectly) to the Agency (or entities or persons acting on the Agency's behalf) in connection with this Agreement and which is either marked or identified in writing as confidential, proprietary, secret or with another designation.

EXHIBIT D Additional Provisions

sufficient to give notice of its sensitive nature, or is of a type that a reasonable person would recognize it to be confidential. Blue Shield Confidential Information shall not include data generated under the Agreement that Blue Shield furnishes to the Agency in order to fulfill Blue Shield's obligations under this Agreement, including, but not limited to information provided via the Agency's system(s), for example via MyTurn, or Vaccine Provider registration data.

- F. Subject to Section H below, the Agency will not use Blue Shield 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.
- G. The Agency will keep Blue Shield Confidential Information confidential and secure, and will protect it from unauthorized use or disclosure by using at least the same degree of care as the Agency employs to avoid unauthorized use or disclosure of its own confidential information, but in no event less than reasonable care.
- H. Blue Shield understands that the presumption is that all information in the Agency's 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. The Agency acknowledges Blue Shield's position that any information provided by Blue Shield 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 Blue Shield is providing the information to the Agency in reliance on exemptions in the Public Records Act, including without limitation exemptions for trade secrets. In recognition of these interests, the Agency will meet and confer with Blue Shield if information marked as confidential by Blue Shield 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 Blue Shield agrees to take any legal action necessary and appropriate under the circumstances to protect its confidential information from disclosure. Blue Shield further agrees that if the Agency must disclose Blue Shield Confidential Information in response to a court order, the Agency agrees to allow Blue Shield to seek available protection for such information, such as a protective order limiting permissible use and disclosure of such information.

3. Insurance Requirements

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 Agency at least ten (10) 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** – Blue Shield is responsible to notify the Agency within five business days before the effective date of any cancellation, non-renewal, or material change that affects required insurance coverage. In the event Blue Shield fails to keep in effect at all times the specified insurance coverage, the Agency 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** – Blue Shield is responsible for any deductible or self-insured retention contained within their insurance program.

EXHIBIT D
Additional Provisions

- 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 Agency.
- v. **Insurance Carrier Required Rating** – All insurance companies must carry a rating acceptable to the Office of Risk and Insurance Management. If Blue Shield 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 Agency 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 Blue Shield's obligations under the contract.
- viii. **Subcontractors** - In the case of Blue Shield's utilization of subcontractors to complete the contracted scope of work, Blue Shield is responsible and hereby verifies that all subcontractors will carry insurance coverages and limits sufficient to cover and respond to the duties and obligations as is undertaken by Blue Shield in this agreement.
- ix. **Premiums** – Blue Shield shall be responsible for any premium in connection with any Required Insurance.
- x. **Required Insurance** - By requiring the insurance herein, the Agency does not represent that the insurance coverage and limits will necessarily be adequate to protect Blue Shield and such coverage and limits shall not be deemed as a limitation on Blue Shield's liability under the indemnities granted to the Department in this Contract.
- xi. **Insurance Certificate** - Blue Shield shall provide an insurance certificate evidencing the required insurance coverage before work commences under this Agreement.

B. Insurance Requirements

- i. **Commercial General Liability** — Blue Shield 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 Blue Shield'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** — Blue Shield 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 owned, 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 Blue Shield will not have any commercially owned vehicles used during the life of this Agreement, by signing this Agreement, Blue Shield certifies that Blue Shield and any employees, subcontractors or servants possess valid automobile coverage in accordance with California Vehicle Code Sections 16450 to 16457, inclusive. The Agency reserves the right to request proof at any time.

EXHIBIT D
Additional Provisions

- iii. **Workers' Compensation and Employer's Liability** — Blue Shield 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, Blue Shield 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. **Crime Insurance** — Blue Shield shall maintain Crime coverage including but not limited to Employee Dishonesty, Inside/Outside Money & Securities, Forgery and Alteration, with limits not less than \$5,000,000 per occurrence. The policy shall include, or be endorsed to include, coverage for property of others (the Agency). The policy shall also include State of California, Government Operations Agency as loss payee.
- v. **Professional Liability** — Blue Shield shall maintain Professional Liability (Managed Care Errors and Omissions) insurance appropriate to Blue Shield's profession and work hereunder, with limits not less than \$5,000,000 per claim and in the aggregate.
- vi. **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 Blue Shield 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. Blue Shield 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:

- 1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
- 2. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
- 3. 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, Blue Shield must purchase "extended reporting" coverage for a minimum of three (3) years after completion of work for the Cyber Liability policy and one (1) year after completion of work for the Professional Liability (Managed Care Errors and Omissions).

4. Subcontract Requirements

- A. The Agency reserves the right to promptly approve or disapprove the selection of Subcontractors, which shall be no later than three (3) business days after receiving an approval request from Blue Shield, and with advance written notice, require the substitution of Subcontractors and require Blue Shield to terminate particular subcontracts entered into in support of this Agreement when circumstances warrant.
- 1) Upon receipt of a written notice from the Agency requiring the substitution and/or termination of a subcontract, Blue Shield shall take steps to ensure the completion of any work in progress and select a replacement, if applicable, within thirty (30) calendar days, unless a longer period is agreed to by the Agency or required by the agreement with the Subcontractor.

EXHIBIT D

Additional Provisions

- B. Blue Shield shall maintain a copy of each subcontract entered into in support of this Agreement and shall, upon request by the Agency, make copies available for approval, inspection, or audit.
- C. The Agency assumes no responsibility for the payment of Subcontractors used in the performance of this Agreement. Blue Shield accepts responsibility to pay the Subcontractors it uses in the performance of this Agreement.
- D. Blue Shield is responsible for all performance requirements under this Agreement even though performance may be carried out through a subcontract.
- E. Blue Shield shall ensure that all subcontracts for services include provision(s) requiring compliance with applicable terms and conditions specified in this Agreement and shall be the subcontractor's sole point of contact for all matters related to the performance and payment during the term of this Agreement.
- F. For clarity, Vaccine Providers are not Subcontractors, agents or representatives of Blue Shield for purposes of this Agreement.
- G. Blue Shield agrees to include the following clause, relevant to record retention, in all subcontracts for services:

"(*Subcontractor Name*) agrees to maintain and preserve, until three years after termination of (*Agreement Number*) and final payment from the Agency to Blue Shield, to permit the Agency or any duly authorized representative, to have access to, examine or audit any pertinent books, documents, papers and records related to this subcontract and to allow interviews of any employees who might reasonably have information related to such records."

5. Documents, Publications and Written Reports

Any document, publication or written report (excluding progress reports, financial reports and normal contract communications) prepared as a requirement of this Agreement shall contain, in a separate section preceding the main body of the document, the number and dollar amounts of all contracts and subcontracts relating to the preparation of such document or report, if the total cost for work by nonemployees of the Agency exceeds \$5,000.

6. Prohibited Use of Agency Funds for Software

Blue Shield certifies that it has appropriate systems and controls in place to ensure that Agency funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

7. Force Majeure

- A. The failure of either party to this Agreement to perform its obligations, if caused by "force majeure" as hereinafter defined, shall not constitute a default nor subject the party so failing to any liability to the other; provided, however, the party affected by such force majeure shall promptly notify the other of (1) the existence hereof, (2) its expected duration, (3) the estimated effect such force majeure will have on its ability to perform its obligations, and (4) when such force majeure circumstance has ceased to affect its ability to perform its obligations.

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Additional Provisions

- B. As used herein, the term "force majeure" shall mean and include any circumstances beyond the reasonable control of the affected party, including without limitation, the following: any act of God or the public enemy, accident, explosion, fire, storm, earthquake, flood, drought, strikes, lockouts, labor troubles, riots, sabotage, embargo, war (whether or not declared and whether or not the United States is a participant), the imposition of any law, regulation or order by or the imposition of restrictions by any federal, state or municipal government, or any agency or subdivision thereof, governmental priority, seizure, requisition or allocation, failure or delay of transportation, shortage of or inability to obtain supplies, equipment, fuel or labor. The Parties acknowledge that the state of the COVID-19 pandemic as of the effective date of the Agreement does not constitute force majeure for purposes of excusing performance under this Agreement but acknowledge that a material change in the state of the pandemic after the effective date of the Agreement that has a material adverse effect on Blue Shield's ability to perform may constitute a force majeure event. In such event, the parties shall discuss such change and negotiate equitable adjustments to the Agreement.
- C. In the event that performance of the affected party is suspended under the terms hereof for a period of more than thirty (30) days, either party shall thereafter have the option to terminate this Agreement upon fifteen (15) days' prior written notice to the other party, provided that the force majeure conditions then continue to exist.
- D. Blue Shield and the Agency each covenant that it will use all commercially reasonable efforts to eliminate any circumstances of force majeure which affects its ability to carry out its responsibilities under this Agreement.

8. Miscellaneous

- A. No delay or omission on the part of Blue Shield or the Agency in the exercise of any right or remedy hereunder shall operate as a waiver thereof.
- B. Blue Shield, and the agents and employees of Blue Shield, in the provision of services and materials under this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State of California.
- C. Upon execution this Agreement is a public document, and parties may disclose this Agreement as required by applicable law, regulation, or stock exchanges rules.

EXHIBIT E

Information Privacy and Security Requirements

This Information Privacy and Security Requirements Exhibit (hereinafter referred to as “this Exhibit”) sets forth the information privacy and security requirements Blue Shield is obligated to follow with respect to all Personal Information and Confidential Information (as defined herein) Disclosed to Blue Shield, or collected, created, maintained, stored, transmitted or Used by Blue Shield for or on behalf of the California Government Operations Agency (“Agency”) which is acting on behalf of the California Department of Public Health (“CDPH”), pursuant to Blue Shield’s Agreement with the Agency. (Such Personal and Confidential Information is referred to herein collectively as “CDPH PCI”.) The Agency and Blue Shield desire to protect the privacy and provide for the security of CDPH PCI pursuant to this Exhibit and in compliance with state and federal laws applicable to the CDPH PCI.

- I. Order of Precedence: With respect to information privacy and security requirements for all CDPH PCI, the terms and conditions of this Exhibit shall take precedence over any conflicting terms or conditions set forth in any other part of the Agreement between Blue Shield and the Agency, including Exhibit A (Statement of Work), all other exhibits and any other attachments, and shall prevail over any such conflicting terms or conditions.
- II. Effect on lower tier transactions: The terms of this Exhibit shall apply and be incorporated into all contracts, subcontracts, and subawards, and the information privacy and security requirements Blue Shield is obligated to follow with respect to CDPH PCI disclosed to Blue Shield, or collected, created, maintained, stored, transmitted or used by Blue Shield for or on behalf of the Agency, pursuant to Blue Shield’s Agreement with the Agency.
- III. Definitions: For purposes of the Agreement between Blue Shield and the Agency, including this Exhibit, the following definitions shall apply:
 - A. Breach:

“Breach” means:
 1. the unauthorized acquisition, access, Use, or Disclosure of CDPH PCI in a manner which compromises the security, confidentiality, integrity or availability of the information; or
 2. the same as the definition of "breach of the security of the system" set forth in California Civil Code section 1798.29(f);
 - B. Confidential Information: “Confidential Information” means information that:
 1. does not meet the definition of “public records” set forth in California Government Code section 6252(e), or is exempt from Disclosure under any of the provisions of Section 6250, et seq. of the California Government Code or any other applicable state or federal laws; or
 2. is contained in documents, files, folders, books or records that are clearly labeled, marked or designated with the word “confidential” by the Agency.
 - C. Disclose, Disclosed or Disclosure: “Disclose” “Disclosed” or “Disclosure” means the release, transfer, provision of, access to, or divulging in any manner of information outside the entity holding the information.
 - D. PCI: “PCI” means “Personal Information” and “Confidential Information” (as these terms are defined herein).

- E. Personal Information: “Personal Information” means information, in any medium (paper, electronic, oral) that:
1. directly or indirectly collectively identifies or uniquely describes an individual; or
 2. could be used in combination with other information to indirectly identify or uniquely describe an individual, or link an individual to the other information; or
 3. meets the definition of “personal information” set forth in California Civil Code section 1798.3, subdivision (a); or
 4. is one of the data elements set forth in California Civil Code section 1798.29, subdivision (g)(1) or (g)(2); or
 5. meets the definition of “medical information” set forth in either California Civil Code section 1798.29, subdivision (h)(2) or California Civil Code section 56.05, subdivision (j); or
 6. meets the definition of “health insurance information” set forth in California Civil Code section 1798.29, subdivision (h)(3); or
 7. is protected from Disclosure under applicable state or federal law.
- F. Security Incident: “Security Incident” means:
1. an attempted Breach; or
 2. the attempted or successful unauthorized Use or Disclosure, modification or destruction of CDPH PCI, in violation of any state or federal law or in a manner not permitted under the Agreement between Blue Shield and the Agency, including this Exhibit; or
 3. the attempted or successful modification or destruction of, or interference with, Blue Shield’s system operations in an information technology system, that negatively impacts the confidentiality, integrity or availability of CDPH PCI; or
 4. any event that is reasonably believed to have compromised the confidentiality, integrity, or availability of an information asset, system, process, data storage, or transmission. Furthermore, a Security Incident may also include an event that constitutes a violation or imminent threat of violation of information security policies or procedures, including acceptable Use policies.
- G. Use: “Use” means the sharing, employment, application, utilization, examination, access to, or analysis of information within the entity that maintains such information.
- H. Workforce Members: “Workforce Members” means employees, volunteers, trainees, and other persons whose conduct, in the performance of work for Blue Shield is under the direct control of Blue Shield, whether or not they are paid by Blue Shield.
- IV. Disclosure Restrictions: Blue Shield and its Workforce Members, agents, and subcontractors shall protect from unauthorized Disclosure any CDPH PCI. Blue Shield shall not Disclose, except as otherwise specifically permitted by the Agreement between Blue Shield and the Agency (including this Exhibit), any CDPH PCI to anyone other than Agency personnel or programs without prior written

authorization from the Agency Contract Manager, except if Disclosure is required by state or federal law.

- V. Use Restrictions: Blue Shield and its Workforce Members, agents, and subcontractors shall not Use any CDPH PCI for any purpose other than performing Blue Shield's obligations under its Agreement with the Agency.
- VI. Data Ownership: CDPH owns and retains all ownership rights to CDPH PCI. Upon request by CDPH, Blue Shield will provide CDPH access to all CDPH PCI in its possession or under its control. CDPH grants Blue Shield the right and authority to Use CDPH PCI in order to provide Services under the Agreement, except as otherwise prohibited by the provisions of this Exhibit.
- VII. Safeguards: Blue Shield shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the privacy, confidentiality, security, integrity, and availability of CDPH PCI, including electronic or computerized CDPH PCI. Blue Shield shall develop and maintain a written information privacy and security program that includes administrative, physical and technical safeguards appropriate to the size and complexity of Blue Shield's operations and the nature and scope of its activities in performing its Agreement with the Agency, including this Exhibit, and which incorporates the requirements of Section VIII, Security, below. Blue Shield shall provide the Agency with Blue Shield's current and updated policies within five (5) business days of a request by the Agency for the policies.
- VIII. Security: Blue Shield shall take any and all steps reasonably necessary to ensure the continuous security of all computerized data systems containing CDPH PCI. These steps shall include, at a minimum, complying with all of the data system security precautions listed in Blue Shield Data Security Standards set forth in Attachment 1 to this Exhibit.
- IX. Security Officer: Blue Shield shall designate a Security Officer to oversee its compliance with this Exhibit and to communicate with the Agency on matters concerning this Exhibit.
- X. Training: Blue Shield shall provide annual training at its own expense, to all of its Workforce Members who assist in the performance of Blue Shield's obligations under Blue Shield's Agreement with the Agency, including this Exhibit, or otherwise Use or Disclose CDPH PCI.
 - A. Within thirty (30) calendar days of the execution of this Exhibit, and annually thereafter within thirty (30) calendar days of the Agency's written request, Blue Shield shall provide to the CDPH Privacy Officer hard copy or electronic form records that demonstrate the date on which the training was completed .
 - B. Blue Shield shall retain each Workforce Member's certifications for the Agency inspection for a period of three (3) years following contract termination or completion.
 - C. Blue Shield shall provide the Agency with its Workforce Member's certifications within five (5) business days of a request by the Agency for the employee's certifications.
- XI. Employee Discipline: Blue Shield shall impose discipline that it deems appropriate (in its sole discretion) on such Workforce Members under Blue Shield's direct control who intentionally or negligently violate any provisions of this Exhibit.

XII. Breach and Security Incident Responsibilities:

- A. Notification to CDPH of Breach or Security Incident: Blue Shield shall notify CDPH **within twenty-four (24) hours by telephone call plus email or fax** upon the discovery of a Breach (as defined in this Exhibit), **and within twenty-four (24) hours by email or fax** of the discovery of any Security Incident (as defined in this Exhibit), that has occurred in a manner not permitted under this Agreement between Blue Shield and the Agency, including this Exhibit, unless a law enforcement agency determines that the notification will impede a criminal investigation, in which case the notification required by this section shall be made to CDPH immediately after the law enforcement agency determines that such notification will not compromise the investigation. Notification shall be provided to the Agency Contract Manager, the CDPH Privacy Officer and the CDPH Chief Information Security Officer, using the contact information listed in Section XII(F), below. If the Breach or Security Incident is discovered after business hours or on a weekend or holiday and involves CDPH PCI in electronic or computerized form, notification to CDPH shall be provided by calling the CDPH Information Security Office at the telephone numbers listed in Section XII(F), below. For purposes of this Section, Breaches and Security Incidents shall be treated as discovered by Blue Shield as of the first day on which such Breach or Security Incident is known to Blue Shield, or, by exercising reasonable industry standard due diligence would have been known to Blue Shield. Blue Shield shall be deemed to have knowledge of a Breach if such Breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the breach, who is an employee or agent of Blue Shield.

Blue Shield shall take:

1. prompt corrective action to mitigate any risks or damages involved with the Breach or Security Incident and to protect the operating environment; and
2. any action pertaining to a Breach required by applicable federal and state laws, including, specifically, California Civil Code section 1798.29.

Blue Shield and CDPH acknowledge and agree that this section constitutes notice to CDPH by Blue Shield of the ongoing existence and occurrence or attempts of Unsuccessful Security Incidents for which no additional notice and/or reporting requirements under this Exhibit shall be required. "Unsuccessful Security Incidents" means, without limitation, pings or other broadcast attacks on Blue Shield's firewall, port scans, unsuccessful log-on attempts, denial of service of attacks, and any combination of the above, so long as no such Security Incident results in the unauthorized Use or Disclosure of CDPH PCI in violation of this Agreement (including this Exhibit) and applicable law.

- B. Investigation of Breach and Security Incidents: Blue Shield shall immediately investigate such Breach or Security Incident. As soon as the information is known, and subject to the legitimate needs of law enforcement, Blue Shield shall inform the Agency Contract Manager, the CDPH Privacy Officer, and the CDPH Chief Information Security Officer of:
1. what data elements were involved and the extent of the data unauthorized Use or Disclosure involved in the Breach or Security Incident, including, specifically, the number of individuals whose CDPH PCI was breached; and
 2. a description of the unauthorized persons known or reasonably believed to have improperly Used or Disclosed the CDPH PCI, and/or to the persons whom it is known or reasonably believed to have had the CDPH PCI improperly Disclosed to them; and

3. a description of where the CDPH PCI is believed to have been improperly Used or Disclosed; and
 4. a description of the probable and proximate causes of the Breach or Security Incident; and
 5. whether Civil Code section 1798.29 or any other federal or state laws requiring individual notifications of Breaches or Security Incidents have been triggered.
- C. Written Report: Blue Shield shall provide a written report of the investigation to the Agency Contract Manager, the CDPH Privacy Officer, and the CDPH Chief Information Security Officer as soon as practicable after the discovery of the Breach or Security Incident. The report shall include, but not be limited to, the information specified above, as well as a complete, detailed corrective action plan, including information on measures that were taken to halt and/or contain the Breach or Security Incident, and measures to be taken to prevent the recurrence or further improper Use or Disclosure of CDPH PCI regarding such Breach or Security Incident.
- D. Notification to Individuals: If notification to individuals whose CDPH PCI was Breached is required under state or federal law, and regardless of whether Blue Shield is considered only a custodian and/or non-owner of the CDPH PCI, Blue Shield shall, at its sole expense, and at the sole election of CDPH, either:
1. make notification to the individuals affected by the Breach or Security Incident (including substitute notification), pursuant to the content and timeliness provisions of such applicable state or federal Breach notice laws. Blue Shield shall inform the CDPH Privacy Officer of the time, manner and content of any such notifications, prior to the transmission of such notifications to the individuals; or
 2. cooperate with and assist the Agency in its notification (including substitute notification) to the individuals affected by the Breach.
- E. Submission of Sample Notification to Attorney General: If notification to more than 500 individuals is required pursuant to California Civil Code section 1798.29, and regardless of whether Blue Shield is considered only a custodian and/or non-owner of the CDPH PCI, Blue Shield shall, at its sole expense, and at the sole election of the Agency, either:
1. electronically submit a single sample copy of the security breach notification, excluding any Personal Information, to the Attorney General pursuant to the format, content and timeliness provisions of Section 1798.29, subdivision (e). Blue Shield shall inform the CDPH Privacy Officer of the time, manner and content of any such submissions, prior to the transmission of such submissions to the Attorney General; or
 2. cooperate with and assist CDPH in its submission of a sample copy of the notification to the Attorney General.
- F. CDPH Contact Information: To direct communications to the above referenced CDPH staff, Blue Shield shall initiate contact as indicated herein. CDPH reserves the right to make changes to the contact information below by written notice to Blue Shield's Privacy Office. Said changes shall not require an amendment to this Exhibit or the Agreement to which it is incorporated.

Agency Contract Manager	CDPH Privacy Officer	CDPH Chief Information Security Officer	Blue Shield's Privacy Officer
See the Scope of Work Exhibit for Program Contract Manager	Privacy Officer Privacy Office Office of Legal Services California Dept. of Public Health 1415 L Street, 5 th Floor Sacramento, CA 95814 Email: privacy@cdph.ca.gov Telephone: (877) 421-9634	Chief Information Security Officer Information Security Office California Dept. of Public Health P.O. Box 997377 MS6302 Sacramento, CA 95899-7413 Email: CDPH.InfoSecurityOffice@cdph.ca.gov Telephone: (855) 500-0016	Blue Shield of California Chief Privacy Officer PO Box 272540 Chico, CA 95927 Email: privacy@blueshieldca.com Telephone: (888) 266-8080

- XIII. Documentation of Disclosures for Requests for Accounting: Blue Shield shall document and make available to the Agency or (at the direction of the Agency) to an individual such Disclosures of CDPH PCI, and information related to such Disclosures, necessary to respond to a proper request by the subject individual for an accounting of disclosures of personal information as required by Civil Code section 1798.25, or any applicable state or federal law.
- XIV. Requests for CDPH PCI by Third Parties: Blue Shield and its Workforce Members, agents, or subcontractors shall promptly transmit to the CDPH Privacy Officer all requests for Disclosure of any CDPH PCI requested by third parties to the Agreement between Blue Shield and the Agency (except from an individual for an accounting of disclosures of the individual's Personal Information pursuant to applicable state or federal law), unless prohibited from doing so by applicable state or federal law. Blue Shield shall not Disclose, sell, or distribute, including publicizing, CDPH PCI to any third party or to the public without express written permission from CDPH.
- XV. Audits, Inspection and Enforcement: The Agency may inspect the facilities, systems, books and records of Blue Shield to monitor compliance with this Exhibit. Blue Shield shall promptly remedy any violation of any provision of this Exhibit and shall certify the same to the Agency Contract Manager in writing.
- XVI. Return or Destruction of CDPH PCI on Expiration or Termination: Upon expiration or termination of the Agreement between Blue Shield and the Agency for any reason, or upon written request by the Agency or CDPH, Blue Shield shall securely return or destroy the CDPH PCI within thirty (30) calendar days. If return or destruction is not feasible, Blue Shield shall provide a written explanation to the Agency Contract Manager, the CDPH Privacy Officer and the CDPH Chief Information Security Officer, using the contact information listed in Section XII(F), above.
- A. Retention Required by Law: If required by state or federal law, Blue Shield may retain, after expiration or termination, CDPH PCI for the time specified as necessary to comply with the law.
- B. Obligations Continue Until Return or Destruction: Blue Shield's obligations under this Exhibit shall continue until Blue Shield destroys the CDPH PCI or returns the CDPH PCI to CDPH; provided however, that on expiration or termination of the Agreement between Blue Shield and

the Agency, Blue Shield shall not further Use or Disclose the CDPH PCI except as required by state or federal law.

- C. Notification of Election to Destroy CDPH PCI: If Blue Shield elects to destroy the CDPH PCI, Blue Shield shall certify in writing, to the Agency Contract Manager, the CDPH Privacy Officer and the CDPH Chief Information Security Officer, using the contact information listed in Section XII(F), above, that the CDPH PCI has been securely destroyed. The notice shall include the date and type of destruction method used.

- XVII. Amendment: The parties acknowledge that federal and state laws regarding information security and privacy rapidly evolves and that amendment of this Exhibit may be required to provide for procedures to ensure compliance with such laws. The parties specifically agree to take such action as is necessary to implement new standards and requirements imposed by regulations and other applicable laws relating to the security or privacy of CDPH PCI. The parties agree to promptly enter into negotiations concerning an amendment to this Exhibit consistent with new standards and requirements imposed by applicable laws and regulations and Blue Shield may request in writing reimbursement for its costs associated with the new regulations or applicable laws from the Agency that Blue Shield would not have incurred but for this Agreement (including this Exhibit) with the Agency.
- XVIII. Assistance in Litigation or Administrative Proceedings: Blue Shield shall make itself and any Workforce Members, agents or subcontractors assisting Blue Shield in the performance of its obligations under the Agreement between Blue Shield and the Agency, available to the Agency to testify as witnesses, in the event of litigation or administrative proceedings being commenced against the Agency, its director, officers or employees based upon claimed violation of laws relating to security and privacy caused by the inactions or actions of Blue Shield in violation of this Exhibit, except where Blue Shield or its Workforce Member, agent or subcontractor is a named adverse party.
- XIX. No Third-Party Beneficiaries: Nothing express or implied in the terms and conditions of this Exhibit is intended to confer, nor shall anything herein confer, upon any person other than the Agency or Blue Shield and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.
- XX. Interpretation: The terms and conditions in this Exhibit shall be interpreted as broadly as necessary to implement and comply with regulations and applicable state laws. The parties agree that any ambiguity in the terms and conditions of this Exhibit shall be resolved in favor of a meaning that complies and is consistent with federal and state laws and regulations.
- XXI. Survival: If Blue Shield does not return or destroy the CDPH PCI upon the completion or termination of the Agreement, the respective rights and obligations of Blue Shield under Sections VII, VIII and XII of this Exhibit shall survive the completion or termination of the Agreement between Blue Shield and the Agency.

Attachment 1
Blue Shield Data Security Standards

1. General Security Controls

- A. **Confidentiality Statement.** All Workforce Members that will be working with CDPH PCI must sign a confidentiality statement. The statement must include at a minimum, General Use, Security and Privacy safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the Workforce Member prior to access to CDPH PCI. The statement must be renewed annually. Blue Shield shall retain each Workforce Member's written confidentiality statement for the Agency inspection for a period of three (3) years following contract termination.
- B. **Background check.** Before a Blue Shield's Workforce Members may access CDPH PCI, Blue Shield must conduct a thorough background check of that worker and evaluate the results to assure that there is no reasonable indication that the worker may present a risk for theft of confidential data. Blue Shield shall retain each Workforce Member's background check documentation for a period of three (3) years following contract termination.
- C. **Workstation/Laptop encryption.** All workstations and laptops that process and/or store CDPH PCI must be encrypted using a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher. The encryption solution must be full disk unless approved by the CDPH Information Security Office.
- D. **Server Security.** Servers containing unencrypted CDPH PCI must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.
- E. **Minimum Necessary.** Only the minimum necessary amount of CDPH PCI required to perform necessary business functions may be copied, downloaded, or exported.
- F. **Removable media devices.** All electronic files that contain CDPH PCI data must be encrypted when stored on any removable media or portable device (i.e. USB thumb drives, floppies, CD/DVD, smart devices tapes etc.). CDPH PCI must be encrypted using a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher
- G. **Antivirus software.** All workstations, laptops and other systems that process and/or store CDPH PCI must install and actively use a comprehensive anti-virus software solution with automatic updates scheduled at least daily.
- H. **Patch Management.** All workstations, laptops and other systems that process and/or store CDPH PCI must have operating system and application security patches applied, with system reboot if necessary. There must be a documented patch management process which determines installation timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable patches must be installed within 30 days of vendor release.
- I. **User IDs and Password Controls.** All Workforce Members must be issued a unique user name for accessing CDPH PCI. Username must be promptly disabled, deleted, or the password changed upon the transfer or termination of a Workforce Member with knowledge of the password. Passwords are not to be shared. Must be at least eight characters. Must be a non-dictionary word. Must not be stored in readable format on the computer. Must be

changed every 90 days. Must be changed if revealed or compromised. Must be composed of characters from at least three of the following four groups from the standard keyboard:

- Upper case letters (A-Z)
- Lower case letters (a-z)
- Arabic numerals (0-9)
- Non-alphanumeric characters (punctuation symbols)

- J. **Data Sanitization.** All CDPH PCI must be sanitized using NIST Special Publication 800-88 standard methods for data sanitization when the CDPH PCI is no longer needed.

2. System Security Controls

- A. **System Timeout.** The system must provide an automatic timeout, requiring reauthentication of the user session after no more than 20 minutes or per CIS Benchmarks of inactivity.
- B. **Warning Banners.** All systems containing CDPH PCI must display a warning banner each time a user attempts access, stating that data is confidential, systems are logged, and system use is for business purposes only. User must be directed to log off the system if they do not agree with these requirements.
- C. **System Logging.** The system must maintain an automated audit trail which can identify the user or system process which initiates a request for CDPH PCI, or which alters CDPH PCI. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. This logging must be included for all user privilege levels including, but not limited to, systems administrators. If CDPH PCI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least 3 years after occurrence.
- D. **Access Controls.** The system must use role based access controls for all user authentications, enforcing the principle of least privilege.
- E. **Transmission encryption.** All data transmissions of CDPH PCI outside Blue Shield's secure internal network must be encrypted using a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher. Encryption can be end to end at the network level, or the data files containing CDPH PCI can be encrypted. This requirement pertains to any type of CDPH PCI in motion such as website access, file transfer, and E-Mail.
- F. **Intrusion Detection.** All systems involved in accessing, holding, transporting, and protecting CDPH PCI that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

3. Audit Controls

- A. **System Security Review.** All systems processing and/or storing CDPH PCI must be part of a system risk assessment/security review program which provides assurance that administrative, physical, and technical controls are functioning effectively and providing adequate levels of protection. Reviews shall include vulnerability scanning tools.
- B. **Log Reviews.** All systems processing and/or storing CDPH PCI must have a routine procedure in place to review system logs for unauthorized access.

- C. **Change Control.** All systems processing and/or storing CDPH PCI must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.

4. Business Continuity / Disaster Recovery Controls

- A. **Disaster Recovery.** Blue Shield must establish a documented plan to enable continuation of critical business processes and protection of the security of electronic CDPH PCI in the event of an emergency. Emergency means any circumstance or situation that causes normal computer operations to become unavailable for use in performing the work required under this agreement for more than 24 hours.
- B. **Data Backup Plan.** Blue Shield must have established documented procedures to securely backup CDPH PCI to maintain retrievable exact copies of CDPH PCI. The backups shall be encrypted. The plan must include a regular schedule for making backups, storing backups offsite, an inventory of backup media, and the amount of time to restore CDPH PCI should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of the CDPH data.

5. Paper Document Controls

- A. **Supervision of Data.** CDPH PCI in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by an Workforce Member authorized to access the information. CDPH PCI in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.
- B. **Escorting Visitors.** Visitors to areas where CDPH PCI is contained shall be escorted and CDPH PCI shall be kept out of sight while visitors are in the area.
- C. **Confidential Destruction.** CDPH PCI must be disposed of through confidential means, using NIST Special Publication 800-88 standard methods for data sanitization when the CDPH PCI is no longer needed.
- D. **Removal of Data.** CDPH PCI must not be removed from the premises of Blue Shield except with express written permission of the Agency or CDPH.
- E. **Faxing.** Faxes containing the CDPH PCI shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending.
- F. **Mailing.** The CDPH PCI shall only be mailed using secure methods. Large volume mailings of CDPH PCI shall be by a secure, bonded courier with signature required on receipt. Disks and other transportable media sent through the mail must be encrypted with an Agency approved solution.

EXHIBIT F
FEMA Provisions**1. EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of this contract, Blue Shield agrees as follows:

- A. Blue Shield will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Blue Shield will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Blue Shield agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- B. Blue Shield will, in all solicitations or advertisements for employees placed by or on behalf of Blue Shield, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- C. Blue Shield will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Blue Shield's legal duty to furnish information.
- D. Blue Shield will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Blue Shield's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. Blue Shield will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- F. Blue Shield will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- G. In the event of Blue Shield's noncompliance with the nondiscrimination clauses of this contract or

with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and Blue Shield may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- H. Blue Shield will include the portion of the sentence immediately preceding paragraph A and the provisions of paragraphs A through H in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Blue Shield will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event Blue Shield becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, Blue Shield may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon

2. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Compliance with the Contract Work Hours and Safety Standards Act.

- A. **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- B. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph 2.A. of this section Blue Shield and any subcontractor responsible

therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 2.A. of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 2.A. of this section.

- C. ***Withholding for unpaid wages and liquidated damages.*** The State of California shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Blue Shield or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally- assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2.B. of this section.
- D. ***Subcontracts.*** Blue Shield or subcontractor shall insert in any subcontracts the clauses set forth in paragraph 2.A. through 2.D. and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 2.A. through 2.D.

3. CLEAN AIR ACT

- A. Blue Shield agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq.
- B. Blue Shield agrees to report each violation to the California Air Resources Board and understands and agrees that the California Air Resources Board will, in turn, report each violation as required to assure notification to the State, Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.
- C. Blue Shield agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

4. THE FEDERAL WATER POLLUTION CONTROL ACT

- A. Blue Shield agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. Sections 1251 et seq.
- B. Blue Shield agrees to report each violation to the State Water Resources Control Board and understands and agrees that the State Water Resources Control Board will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.
- C. Blue Shield agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

5. DEBARMENT AND SUSPENSION CLAUSE

- A. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such Blue Shield is required to verify that none of Blue Shield, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- B. Blue Shield must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- C. This certification is a material representation of fact relied upon by the State of California. If it is later determined that Blue Shield did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of California, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- D. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

6. BYRD ANTI-LOBBYING CLAUSE

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended). Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

APPENDIX A, 44 C.F.R. PART 18- CERTIFICATION REGARDING LOBBYING

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Blue Shield certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, Blue Shield understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

DocuSigned by:

Larry Hilty

Signature of Contractor's Authorized Official

Larry Hilty, Vice President Enterprise Transformation

Name and Title of Contractor's Authorized Official

2/16/2021

Date

7. PROCUREMENT OF RECOVERED MATERIALS

- A. In the performance of this contract Blue Shield shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired-
 - i Competitively within a timeframe providing for compliance with the contract performance schedule;
 - ii Meeting contract performance requirements; or
 - iii At a reasonable price.
- B. Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/>. The list of EPA-designate items is available at <https://www.epa.gov/smm/comprehensive-procurement-guideline- cpg-program>.
- C. Blue Shield also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

8. ACCESS TO RECORDS

The following access to records requirements apply to this contract:

- A. Blue Shield agrees to provide the State of California, the FEMA Administrator, the Controller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of Blue Shield which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- B. Blue Shield agrees to permit any of the foregoing parties to reproduce by any means whatsoever of to copy excerpts and transcriptions as reasonably needed.
- C. Blue Shield agrees to provide the FEMA Administrator or his authorized representative access to construction or other work sites pertaining to the work being completed under the contract.
- D. In compliance with the Disaster Recovery Act of 2018, the State of California and Blue Shield acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

9. DHS SEAL, LOGO, AND FLAGS

Blue Shield shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

10. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract only. Blue Shield will comply with all federal law, regulations, executive orders, FEMA policies, procedures, and directives.

11. NO OBLIGATION BY FEDERAL GOVERNMENT

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

12. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

Blue Shield acknowledges the 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to Blue Shield's action pertaining to this contract.