



Dear Valued Broker:

Thank you for your interest in Blue Shield of California. This is an exciting time to work with us. You can be confident that our range of medical and specialty benefit plans paired with our personalized service will provide you with the support you need to be successful in today's market.

We're dedicated to your success. That's why we've built a sales and service team that supports you at every turn. From our sales and support teams to our online sales tools and resources, we are committed to making sure that your business grows with Blue Shield. Plus, your clients can benefit from our network of quality providers and our extensive range of well-designed, affordable plans.

Become part of our winning team today! Complete and return the attached forms along with the required documentation. If you have questions, please call our dedicated Producer Services team at **(800) 559-5905**.

Yours in good health,

A handwritten signature in black ink, appearing to read "Don M. Antonucci".

Don Antonucci
Senior Vice President
Employer Markets

A handwritten signature in black ink, appearing to read "Steve Shearer".

Steve Shearer
Vice President
Individual Business Markets

A handwritten signature in black ink, appearing to read "Krista Bowers".

Krista Bowers
Vice President
Senior Markets

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Pending regulatory approval.

blueshieldca.com

601 12th Street | Oakland, CA 94607

Blue Shield of California is an independent member of the Blue Shield Association A17540-B (1/21)

2021 Producer Agreement

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Blue Shield of California and Blue Shield of California Life & Health Insurance Company Producer Agreement

This Producer Agreement ("Agreement") is made by and between the following parties:

1. _____ ("Producer," "you," "your")
(Insert producer's name)

and

2. California Physicians' Service, d/b/a Blue Shield of California ("Blue Shield," "us," "we," "our") for and on behalf of itself and its affiliates and subsidiaries including, but not limited to, Blue Shield of California Life & Health Insurance Company ("Blue Shield Life"), but does not include Blue Shield of California Promise Health Plan ("Promise") (collectively "Blue Shield").

For good and valuable consideration, the sufficiency of which both parties hereby acknowledge, the parties agree as follows:

ARTICLE I: OBLIGATIONS OF PRODUCER

You agree to perform and fulfill the following services and meet the following requirements:

- 1.1 Blue Shield Health Service Contracts:** Subject to the terms and conditions of this Agreement, you are authorized, on a non-exclusive basis, to solicit and submit applications for healthcare service plan contracts, health insurance policies, and vision, dental and life insurance policies (collectively, "Contracts") for our Blue Shield products.
- 1.2 Application of Agreement:** This Agreement shall apply to you and your principals, partners and investors, employees, staff or any other person who solicits or otherwise assists you in soliciting Blue Shield Contracts. You agree to be solely responsible for your associates (including, but not limited to, those persons who are employed by or have a contract with you to solicit applications on your behalf) under this Agreement and for their compensation, training, supplies and correspondence. You agree to ensure your associates' adherence to all applicable terms of this Agreement including, but not limited to, the requirements regarding E&O liability insurance (as set forth below), licensure, soliciting and advertising. You hereby represent and warrant that all your associates are licensed with all applicable state, federal, or other governmental agencies as required by law and will, upon request, provide us with appropriate documentation to verify your compliance with this Section 1.2.
- 1.3 Producer Expertise:** You agree to maintain sufficient knowledge of the following to perform competently your obligations under this Agreement:
- a. Blue Shield Contracts, products and services;
 - b. Blue Shield's applicable rules, practices, policies and procedures including, but not limited to, Blue Shield Code of Business Conduct, underwriting guidelines, and the completion and submission of Contract applications. You agree to comply with such rules, practices, policies and procedures. Blue Shield agrees to inform you of such rules, practices, policies and procedures, including but not limited to, policies and procedures related to enrollment, disenrollment, sales, and marketing, which may be amended from time to time in our sole discretion; and
 - c. All laws, rules and regulations set forth in Section 1.8 below.
- 1.4 Submission of Applications:** You agree to use your best efforts to ensure that each application including, but not limited to, applicable eligibility verifications and attestations, is fully and truthfully completed by the applicant, and the application fully and accurately discloses the circumstances, including relationship to applicant, of persons for whom coverage is sought.

This Section 1.4 applies to all Contracts for which you are the Producer of Record as of the date the application is submitted to Blue Shield.

- 1.5 Licenses:** You represent and warrant that you hold a current license from the California Department of Insurance as an insurance agent to transact all applicable lines of insurance and will provide proof of such license(s) to Blue Shield upon request. You agree to notify us promptly if the California Department of Insurance, or any other governmental entity, institutes any disciplinary proceedings against you or your license(s). You acknowledge and agree that Blue Shield Life shall appoint you as an agent of Blue Shield Life, in accordance with the requirements of the California Insurance Code.
- 1.6 Training, Certifications and Appointments:**
- a. For Individual and Family Plans and Covered California for Small Business (CCSB) plans inside the California exchange: You acknowledge that commissions cannot be paid to agents that are not certified by Covered California. You represent and warrant that you maintain active certification.
 - b. For Medicare Advantage and Prescription Drug plans: You agree that you and your associates shall complete required training regarding Medicare and Blue Shield Medicare products and pass an approved test by at least the minimum level required by Centers for Medicare and Medicaid Services (CMS) on an annual basis.
 - c. You further acknowledge and agree that you and your associates shall not be qualified to market or sell Blue Shield Medicare products until successful completion of such annual training and testing.
 - d. You acknowledge and agree that Blue Shield cannot pay commissions to brokers that have not received training and certification required by Centers for Medicare and Medicaid Services (CMS).
- 1.7 Independent Contractor Relationship:** You acknowledge and agree that, in soliciting applications for and servicing Contracts, you are an independent contractor. No employer-employee relationship, employee rights or employee benefits are created by or included in this Agreement.
- 1.8 Law:** You agree to comply with all applicable provisions of the California Insurance Code, the Knox-Keene Health Care Service Plan Act of 1975 (California Health and Safety Code section 1340, et seq.), the federal Patient Protection and Affordable Care Act (ACA) of 2010, all applicable regulations and rules adopted thereunder, the federal Health Insurance Portability and Accountability Act of 1996 and the Health Information Technology for Economic and Clinical Health (HITECH) Act, as amended, and their implementing regulations (collectively referred to as "HIPAA"), all applicable Medicare laws, regulations and guidance, including: (i) All relevant provisions of the Social Security Act, including but not limited to, Part C and Part D of Title XVIII; (ii) all rules and regulations promulgated pursuant to the relevant provisions of the Social Security Act, including but not limited to those set forth in 42 C.F.R. Parts 422 and 423; (iii) the CMS Internet Security Policy; and (iv) any and all relevant administrative guidelines (including the Medicare Marketing Guidelines), bulletins, manuals, instructions, requirements, policies, standards, or directives from time to time adopted or issued by CMS or HHS ("Medicare Laws and Regulations"), all applicable state and federal laws and regulations pertaining to solicitation, marketing and telemarketing including the Telemarketing and Consumer Fraud and Abuse Prevention Act (codified at 15 USC § 6102 et seq.) and the Telemarketing Sales Rule (set forth at 16 CFR § 310.1 et seq.) (collectively, the "Telemarketing Rules"), the Telephone Consumer Protection Act of 1991(TCPA) (set forth at 47 U.S.C. §227), the Controlling the Assault of Non-Solicited Pornography And Marketing (CAN-SPAM) Act of 2003, and all other applicable state, federal and local laws and regulations each as may be amended from time to time, in carrying out this Agreement. You agree to file the reports required by law and pay any taxes or fees that may be charged on commissions and bonuses paid to you by Blue Shield. This Section 1.8 shall survive termination of this Agreement for any reason.
- 1.9 Equal Sales Opportunity:** You agree:
- a. Not to discriminate against Blue Shield when soliciting or offering other plans or coverage of a similar nature. You will use your best efforts to solicit and submit applications for Blue Shield Contracts from qualified clients whenever possible; and
 - b. Not to encourage or direct an individual to refrain from filing an application for individual coverage with Blue Shield, or to seek individual coverage from another plan, insurer or Covered California, because of health status, claims experience, industry, occupation or geographic location, provided the location is within Blue Shield's approved service area for that individual; and
 - c. Not to encourage or direct a small employer to refrain from filing an application for coverage with Blue Shield, or to seek coverage from another plan or insurer because of health status,

claims experience, industry, occupation or geographic location, provided the location is within Blue Shield's approved service area for that small employer or its employees; and

- d. Not to employ marketing practices or benefit designs that will have the effect of discouraging enrollment of individuals with significant health needs or discriminate based on race, color, national origin, disability, age, sex, gender, sexual orientation, expected length of life, degree of medical dependency, quality of life, or other health conditions.

1.10 Services: You agree to perform the following services, as appropriate, when a client meets Blue Shield's underwriting guidelines:

- a. Contact the client and fully and fairly explain all applicable Blue Shield Contracts;
- b. If the client is interested, you will have the client complete a Blue Shield Contract application, including applicable verifications and attestations, and will explain to the client that submitting an application does not bind Blue Shield, and that only we may approve the application and issue a Contract to the applicant;
- c. Provide the client with the appropriate disclosures and rate proposal(s), clearly explaining that only Blue Shield can negotiate changes in rates, terms or conditions of coverage;
- d. For Individual Plans inside the California exchange: Assist eligible applicants for individual coverage to apply for state financial assistance subsidies, advance premium tax credits and cost-sharing reductions (applies only to brokers certified through Covered California);
- e. Assist Blue Shield in negotiations when we request your assistance;
- f. Make no commitments on Blue Shield's behalf that have not been fully approved in writing by us;
- g. Direct Blue Shield-approved clients to send all dues/premiums in accordance with our billing statement procedure and to the mailing address we specify; and
- h. Assist us in resolving any problems that arise with the client.

1.11 Dues and Premium Checks:

- a. For Individual and Family Market (inside and outside the California exchange) and for Small Business Transactions outside the California exchange: You agree that you and your associates are prohibited from receiving funds on our behalf, with the exception that you may receive funds in the form of checks payable to us if you forward the check to us no later than the close of business of the next business day. Commingling of funds is absolutely prohibited. If you receive funds on our behalf, you agree to (1) deposit such funds, within one business day of your receipt of the funds, in a trust account in a state or federal bank authorized to do business in California and insured by an appropriate federal insuring agency; (2) at all times segregate such funds from your and your associates' assets; and (3) transmit such funds to us within five (5) business days of your receipt of the funds. Should you or your associates maintain an account with a financial institution for funds of yours, your clients or ours, that account must be in your or our name and under your or our control.
- b. For CCSB Transactions: You agree that you and your associates are prohibited from receiving funds on Covered California's behalf.

1.12 Books and Records:

- a. You agree to keep and maintain your books of account and other records on a current basis including, but not limited to, records of all transactions regarding applications for Contracts. You agree to keep a current list of the names and addresses of your principals, partners and investors, as well as all your employees, staff or other persons who themselves solicit or otherwise assist you in soliciting Blue Shield Contracts. You agree to preserve these books of account and other records, including all applications, for the longer of seven (7) years or the term of the Contract holder's coverage, keeping on file the most recent two (2) years' books of account and records in an easily accessible place at your offices. After two (2) years, these books of account and other records may be warehoused, stored or microfilmed as long as they are available to the California Department of Managed Health Care, the California Department of Insurance and/or Blue Shield within five (5) days after they are requested.

- b. You acknowledge that unless you are a non-resident of California, these books of account and other records may not be removed from California without the consent of the California Department of Managed Health Care and/or the California Department of Insurance and/or Blue Shield. Non-residents of California agree to produce these books of account and other records immediately upon request.
- c. You agree to make your internal practices, books and records relating to your use and disclosure of the Protected Health Information you create, receive, maintain or transmit on behalf of Blue Shield, available to us and/or to the U.S. Department of Health and Human Services to determine Blue Shield's compliance with the HIPAA or your compliance with this Agreement for, at minimum, the periods and in the manner outlined in Section 1.12(a) above.

This Section 1.12 shall survive termination of this Agreement for any reason.

1.13 Advertising and Marketing Materials:

You agree that you shall comply with all Blue Shield rules and guidelines regarding advertising and written materials ("Advertising Guidelines"), as they may be amended from time to time in our sole discretion. Such rules and guidelines are incorporated into this Agreement by this reference.

- a. You agree to accept all sales and marketing-related communications from Blue Shield, whether delivered by mail, facsimile or electronic mail.
- b. You may add only your business name, personal name, business address, license number (if required), telephone number, fax number, business website address and business email address to any advertising copy provided to you by Blue Shield. No other additions or changes to copy or layout are permissible without prior written approval from the Blue Shield Marketing Department. If you fail to comply with this paragraph, we may immediately terminate this Agreement.
- c. You agree that you may only use advertising materials supplied by us, or approved in writing by us, prior to your use. You may submit proposed advertising materials for approval through your Blue Shield sales representative.
- d. You agree to abide by Blue Shield Advertising Guidelines for telephone and Web/Internet advertising as issued by us electronically or otherwise, and as may be revised from time to time in our sole discretion. Your failure to abide by the Advertising Guidelines shall be considered a breach of this Agreement. Your failure to cure any such breach within fifteen (15) business days shall give Blue Shield the right to take appropriate action with respect to such breach.
- e. You agree to abide by Covered California's requirements applicable to Web/Internet advertising.
- f. You agree to abide by the Centers for Medicare and Medicaid Services (CMS) Medicare Communications and Marketing Guidelines.
- g. You may not permit Blue Shield advertising to be used for any other purpose, or by any person other than you.
- h. Except as permitted by this Agreement, you may not state or imply that you are owned, controlled by, or otherwise affiliated with Blue Shield. You acknowledge and agree that any advertisement materials referencing Blue Shield, as well as any other tangible forms of Blue Shield's advertising and marketing materials, remain the sole property of Blue Shield, and may only be used as authorized by us. You agree to return such forms and materials immediately to Blue Shield upon our request.
- i. You agree that you shall not use Blue Shield's name, logo, service marks, domain names, symbols or any other name or mark of Blue Shield without our written consent, other than in providing the services under this Agreement. You may not use Blue Shield as a reference or this Agreement as an endorsement of your work without our written consent. The parties will cooperate to create any and all appropriate public, promotional announcements or press releases relating to the relationship set forth in this Agreement. Neither party shall make any public announcement regarding the existence or content of this Agreement without the other party's prior written approval and consent.

1.14 E&O Liability Insurance: While this Agreement is in effect, you agree to maintain errors and omissions ("E&O") liability insurance, with a liability insurance carrier admitted in California, of at least \$1,000,000 per claim and \$1,000,000 aggregate coverage. This insurance must specifically cover your

activities under this Agreement. You agree to submit proof of your E&O liability insurance coverage to Blue Shield upon execution of this Agreement, upon any change in your E&O carrier, upon any change to your current insurance policy and upon our request thereafter.

You agree to make all reasonable efforts, consistent with the advice of your counsel and the requirements of your E&O liability insurance carrier, to coordinate the defense of all claims in which you are named as a defendant or could possibly be named. This Section 1.14 shall survive termination of this Agreement for any reason.

1.15 Indemnification:

- a. You agree to indemnify and hold us harmless from any and all liability, losses, costs, damages or expenses, including reasonable attorney's fees, arising out of or relating to: (i) any breach or failure by you or your associates to comply with the terms and conditions of this Agreement and all applicable laws; (ii) any dispute between you and your associates, or between you or your associates and a client, member, subscriber or contract holder with Blue Shield, arising out of or relating to you and/or your associates' acts, errors or omissions; or (iii) any act or incident of fraud, malpractice, negligence, misrepresentation, defamation or intentional misconduct caused or alleged to have been caused by you or your associates.
- b. We agree to indemnify and hold you harmless from any and all liability, losses, costs, damages or expenses, including reasonable attorney's fees, arising out of or relating to our breach or failure to comply with the terms and conditions of this Agreement or the Knox-Keene Health Care Service Plan Act of 1975, as amended, and the rules and regulations related to it. We do not assume any responsibility to defend you against your acts, errors or omissions.

ARTICLE II: COMMISSIONS AND RIGHTS RESERVED TO BLUE SHIELD

2.1 Commissions:

- a. For all markets, inside and outside the California exchange, except CCSB: Blue Shield will pay commissions, if commissions are required to be paid, for Contracts in accordance with the Commission Schedule in place at the time of the original effective date of the Contracts. Commission schedules are subject to change at Blue Shield's option for any reason, including based on applicable state, federal and local laws, regulations, rules and guidance.
For IFP and Small Business, commission payments are net of ACA taxes and fees.
- b. Individual and Family market (inside and outside the California exchange) and for Small Business transactions outside the California exchange: We shall pay to you first-year commissions ("Initial Commissions") and thereafter, renewal-year commissions ("Renewal Commissions") for Contracts received and allocated by Blue Shield and subject to the applicable "Schedule of Commissions" in place at time of original effective date of Contracts. We shall pay commission when plan is effective and paid. The "Schedule of Commissions" available on Producer Connection at blueshieldca.com/producer is applicable to Contracts entered into on and after the effective date of this Agreement. Blue Shield will provide you with an updated "Schedule of Commissions" 45 days prior to the effective date of the change by posting such changes to Producer Connection. Changes we make to the "Schedule of Commissions" will only apply to Contracts with effective dates of coverage falling on or after the date the "Schedule of Commissions" was amended.
- c. CCSB transactions: You acknowledge that CCSB will be responsible for collection of premiums and payment of commissions as well as broker of record changes.
- d. Individual and Family Plans: Covered California is responsible for all producer of record information for consumers that have enrolled through the California exchange. That information is maintained by Blue Shield; however, Blue Shield is not responsible for the accuracy of the information.

2.2 Payment of Commissions:

- a. Blue Shield will pay to you compensation due under this Agreement within thirty (30) days following the end of each calendar month. You acknowledge and agree that we have the right to offset any commissions to which you are entitled to by the amount of any funds under your control,

which belong to us, or by the amount of any other debt(s) you owe us. You grant us a lien on all commissions due under this Agreement to secure all funds under your control, which belong to us, or to secure any other debt(s) you owe us.

- b. Commissions will be paid pursuant to the terms and conditions of this Agreement, and our policies and procedures relating to such commissions. We will be under no obligation to reimburse you for other costs, fees, including application fees, or expenses unless expressly approved by us in advance, in writing.
- c. We may, in our sole discretion, designate an agent to process and issue your commission payments on our behalf. Such designation may be revoked or changed by us from time to time. We will give you at least thirty (30) days' prior written notice of any such change.
- d. Producer must notify Blue Shield pursuant to Section 4.9 of any disputes regarding compensation under this Agreement within ninety (90) days of the bill period in dispute. Blue Shield shall have no obligation to review disputes regarding commissions or other compensation or to pay any additional amounts if Producer notifies Blue Shield of such matters more than ninety (90) days after the date of the bill period in dispute.

2.3 Change in Producer of Record:

- a. For Individual and Family Plans inside the California exchange: You and Blue Shield shall follow the rules specified by the California exchange for making changes to the "Producer of Record" designation.
- b. For all other business, including Individual and Family Plans outside of the California exchange: You shall advise any Contract holders that any change in the "Producer of Record" designation must be made in writing using either the Blue Shield "Producer of Record Change" form or by providing Blue Shield with a written request on the Contract holder's letterhead signed by the Contract holder's authorized representative, which identifies the name, address and, if known, tax identification number of the new Producer of Record. Upon receiving the written request, we will notify the Contract holder's current producer. For all Contract holders, Blue Shield will honor the Contract holder's written request on the first day of the month following Blue Shield's receipt of the request, or the first day of the bill period if this is not the first of the month, unless a future date is specified in the request. The new producer will be the Contract holder's designated Producer of Record.
- c. For all business: Commission payments to the new producer shall begin on the first day of the month following Blue Shield's receipt of the request, or the first day of the bill period if this is not the first of the month, unless a future date is specified in the request or unless the member or group has prepaid premium and commissions have been paid to the previous producer. In the latter instance, the commissions will be paid to the new producer on the next billing period.
- d. For Medicare Advantage and Medicare Prescription Drug plan business: Notwithstanding any contrary provisions of the Agreement, Blue Shield may not change the Producer of Record or pay commissions to any individual other than the Producer of Record except to the extent allowable under Medicare Laws and Regulations.

2.4 Renewal Commissions for Individual Family Plans and Medicare Supplement Plans:

- a. IFP Contracts: Notwithstanding Section 2.1 above and for IFP Contracts only if Blue Shield receives a request to change the Producer of Record, Blue Shield will pay the new Producer of Record (the "Servicing Producer") as outlined in 2.1 above. The new Servicing Producer will be the IFP Contract holder's designated Producer of Record with all the other rights and obligations thereunder.
- b. Medicare Supplement Contracts: Notwithstanding Section 2.1 above and for Medicare Supplement Contracts only, if Blue Shield receives a request to change the Producer of Record during the first year of a Contract, Blue Shield will continue to pay the Initial Commission to the Producer who solicited and submitted the application to Blue Shield (the "Writing Producer") for the duration of the first year of the Contract. Thereafter (and for written requests to change the Producer of Record received after the Contract's first year), Blue Shield will pay the Writing Producer 70% of the Renewal Commission that the Producer would have been entitled to had the Writing Producer remained the Producer of Record. Blue Shield will pay the new Producer of Record (the "Servicing Producer")

the remaining 30% of the Renewal Commission. The new Servicing Producer will be the Medicare Supplement plan's Contract holder's designated Producer of Record with all the other rights and obligations thereunder.

2.5 Commission Assignment Rights:

- a. You may assign your right to commissions under this Agreement to another Blue Shield Producer (Assignee) subject to our prior written consent, which consent will not be unreasonably withheld. You shall provide at least thirty (30) days' prior written notice of the assignment. We will pay the Assignee the commissions we would have paid to you absent the assignment of the Contracts.
- b. The Assignee will be the Contract holder's Producer of Record with all the other rights and obligations thereunder.

2.6 Commissions Upon Retirement; Upon Death:

- a. Commissions upon retirement: This Agreement terminates upon your retirement. Upon retirement, you shall give us written notice of your retirement date and the effective date of such termination shall be the date of retirement set forth in your notice of retirement to Blue Shield. Blue Shield shall pay you 100% of Renewal Commission if you continue to fulfill your obligations under Sections 1.5 (Licenses) and 1.14 (E&O Liability Insurance) and continue to serve as the Producer of Record pursuant to Section 2.3, even though you are retired. If you fail to maintain your license, Blue Shield will assume the service of your book of business and will pay 70% renewal commission. This Section 2.6(a) does not apply to Contracts written for employer groups.
- b. Commissions upon death: If you die and your "book" of Contracts passes to a beneficiary, your beneficiary must notify us in writing, including documentation verifying that they are your beneficiary. If your beneficiary is a licensed and appointed Blue Shield producer, we will pay that producer as if you had assigned your "book" of Contracts to him or her. If not, we will pay your beneficiary 70% of the Renewal Commission. You acknowledge and agree, and upon designation of your beneficiary, shall ensure that your beneficiary acknowledges and agrees, that: (1) your beneficiary may not subsequently sell, assign or otherwise transfer any rights to commissions upon your death; and (2) any right to such commissions, and our obligation to pay such commissions upon your death, will immediately and automatically terminate upon the death of your beneficiary. This Section 2.6(b) does not apply to Contracts written for employer groups.

2.7 Loss of Commissions: You acknowledge and agree that our payment of any commissions to you will terminate immediately if any of the following events occur:

- a. You fail to immediately remit to Blue Shield any funds received on our behalf;
- b. You shall at any time (after termination of this Agreement) be indebted to Blue Shield for more than sixty (60) calendar days;
- c. You purport to act, or represent that you are entitled to act, in any way on behalf of Blue Shield;
- d. Your license, Covered California certification or appointment with CCSB expires, lapses or is terminated, or the California Department of Insurance takes any disciplinary action against your license;
- e. You commit an act of fraud, dishonesty or moral turpitude, or breach any fiduciary duty; or
- f. You do anything that would have been a breach of this Agreement during the term of this Agreement.

In addition, you acknowledge and agree that in the event of any of the foregoing, we may immediately terminate this Agreement.

2.8 Blue Shield's Authority and Rights Regarding Contracts: You agree that Blue Shield retains all rights and obligations contained within the Blue Shield Contracts issued to your clients, and that you will take no action that interferes with or limits those rights and obligations. You acknowledge and agree that only Blue Shield and, as applicable, Covered California and CCSB, has the authority to:

- Approve Blue Shield plan applications and issue health service contracts;
- Change the dues, conditions or terms of any application, Blue Shield health service contract or any document issued by us;

- Waive or change the terms or conditions regarding application, eligibility, enrollment, coverage, benefits or access to the online portal available to contracted brokers ("Broker Portal"); and
- Accept applicants. We reserve the right to reject any application submitted.

This Section 2.8 shall survive termination of this Agreement for any reason.

ARTICLE III: TERM; TERMINATION; EFFECT OF TERMINATION

3.1 Term: This Agreement replaces all other written or oral agreements and shall be effective on the last date a party executes this Agreement and shall continue thereafter until terminated in accordance with this Agreement. Commission rates to which you are entitled for Blue Shield health service contracts issued under prior executed Agent's Agreements and "Schedules of Commissions" will not change.

3.2 Termination Without Cause:

- Either party may terminate this Agreement without cause at any time by giving thirty (30) days' prior written notice to the other party.
- Upon termination, you will no longer be authorized to solicit applications for Blue Shield Contracts and you will no longer be able to access the Broker Portal.
- Upon termination of this Agreement, we will revoke access to information on the Broker Portal.
- Upon termination of this Agreement, we, at our sole discretion, may respond to reasonable and lawful inquiries (i) on behalf of a member; or (ii) for other legitimate business purposes.
- The effective date of the termination shall be the first day of the month following the 30-day notice period, unless said notice specifies a later date.
- If this Agreement is terminated without cause pursuant to this Section 4.2, we shall continue paying commissions to you following such termination subject to the terms and conditions contained in Section 2 above.

3.3 Termination for Cause:

- We may terminate this Agreement immediately upon written notice to you at any time for your breach of this Agreement (including any amendments or addendum thereto), commission of any act of fraud or dishonesty, or breach of any fiduciary duty arising from or relating to this Agreement. The right to terminate this Agreement for cause shall be cumulative with all other remedies available to Blue Shield by law or in equity.
- We may terminate this Agreement immediately upon written notice to you for your failure to comply with any applicable rules and regulations of the BlueCross BlueShield Association, U.S. Department of Labor, the California Department of Managed Health Care, the California Department of Insurance or other entity, or governmental body which regulates Blue Shield.
- Either party may terminate this Agreement immediately should the other party voluntarily file a petition in or for bankruptcy, reorganization or an arrangement with creditors; make a general assignment for the benefit of creditors; be adjudged bankrupt; be unable to pay debts as they become due; have a trustee, receiver or other custodian appointed on its behalf; or should any other dissolution or liquidation proceeding be commenced against it.
- In addition to any other termination rights either party may have under this Agreement, if Blue Shield determines that you have committed a material breach of this Agreement pertaining to the use or disclosure of PHI, Blue Shield shall either:
 1. Provide an opportunity for you to cure the breach or end the violation and terminate this Agreement if you do not cure the breach or end the violation within the time specified by Blue Shield; or
 2. Immediately terminate this Agreement if Blue Shield determines cure is not possible.

A failure to terminate for cause shall not be a waiver of the right to do so with respect to a future breach. If this Agreement is terminated with cause pursuant to this Section 4.3, we shall discontinue paying commissions to you following such termination.

e. Upon termination of this Agreement:

1. we will revoke access to information on the Broker Portal; and
2. we, at our sole discretion, may respond to reasonable and lawful inquires (i) on behalf of a member; or (ii) for other legitimate business purposes.

3.4 Obligations Regarding PHI:

Except as provided in the paragraph below, upon termination of this Agreement for any reason, you shall return or destroy all PHI received from Blue Shield or created or received by you on behalf of Blue Shield. This provision shall also apply to PHI that is in the possession of your associates, employees, directors, officers, agents and subcontractors. You shall retain no copies of the PHI.

In the event that you determine that returning or destroying the PHI is infeasible, you shall provide to Blue Shield notification of the conditions that make return or destruction infeasible. Such notification shall be sent to:

Blue Shield of California
P.O. Box 2630
Lodi, CA 95241-2630
Attention: Producer Appointments

A copy should also be sent to the Blue Shield of California Privacy Office:

Email: privacy@blueshieldca.com
Fax: (800) 201-9020
Telephone: (888) 266-8080
Mailing Address: P.O. Box 272540, Chico, CA 95927-9914

Upon Blue Shield's determination that return or destruction of PHI is infeasible, you shall extend the protections of this Agreement to such PHI and limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as you maintain such PHI.

3.5 Continuing Obligations: Upon termination, you agree to immediately remit to Blue Shield all funds belonging to us or held for Blue Shield's account, and to forward to us all records, applications and property that belong to Blue Shield.

ARTICLE IV: GENERAL PROVISIONS

4.1 a. Confidentiality: You agree that you will keep confidential and not disclose any confidential or proprietary information of ours, regardless of how the information was obtained, to any third party, except as required by law, and shall not use such information other than as is permitted by this Agreement. Such confidential or proprietary information includes, but is not limited to, member names and other identifying information, medical records and business information. You agree that such confidential information shall promptly be returned to us upon request. This Section 4.1 shall survive termination of this Agreement for any reason.

b. Credit Card Information: You and your Agents agree that you shall not retain any identifiable Blue Shield Customer financial information, expressly including any credit card information on any of your systems of record or upon any other record, provided that a record of the payment shall be input onto Blue Shield's systems of record.

4.2 Association Disclosure: You hereby expressly acknowledge your understanding that this Agreement constitutes a contract between you and Blue Shield, that Blue Shield is an independent corporation operating under a license from the BlueCross BlueShield Association, an association of independent Blue Cross and Blue Shield Plans ("the Association") permitting Blue Shield to use the Blue Shield trademark in the State of California, and that Blue Shield is not contracting as the agent of the Association. You further acknowledge and agree that you have 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 shall be held accountable or liable to you for any of Blue Shield's obligations created under this Agreement. This Section shall not create any additional obligations whatsoever on the part of Blue Shield other than those obligations created under other provisions of this Agreement.

- 4.3 Fiduciary Obligations of Producer:** You agree that in performing under this Agreement, you are acting in a fiduciary capacity to Blue Shield.
- 4.4 Certified Enrollment Counselors, Navigators and Plan-Based Enrollers:** Individual and Family Market Transaction: You agree that you shall not apply to act as a Certified Enrollment Counselor, Navigator, or Plan-Based Enroller.
- 4.5 Governing Law:** This Agreement will be governed by California law, without regard to its conflict of laws, provisions or, as applicable, federal law.
- 4.6 Prevailing Party:** The prevailing party in any dispute arising out of this Agreement may recover reasonable attorneys' fees and court costs in addition to any other relief to which they are entitled.
- 4.7 No Assignment of Agreement:** You may not make any assignment of this Agreement or of its rights or benefits hereunder, whether by merger, asset sale, operation of law or otherwise, without the prior written consent of Blue Shield. Any attempted assignment of this Agreement shall be void unless prior written approval is obtained from Blue Shield. You acknowledge that, in the event all or substantially all of Blue Shield's assets and liabilities are acquired by another entity, the acquiring entity would have the right (but not the obligation) to assume this Agreement. In the event of such an acquisition, Blue Shield's obligation to pay commissions under this Agreement shall terminate as of the effective date of the acquisition.
- 4.8 Change in Information:** You agree to notify Blue Shield of any changes to your name, address, telephone number, fax number, email or other similar information. Such notice shall be delivered in person, by facsimile, by email or other electronic means, or by U.S. mail, to the address we provided with this Agreement.
- 4.9 Notice Procedure:** Notice shall be deemed delivered in person, by email, by posting on Producer Connection, by courier or by U.S. mail, addressed to the below addresses for Blue Shield, or to the physical address you list on the signature page you submit to Blue Shield (or any updates you request thereafter). Notice by mail shall be deemed delivered five (5) days after the date it was mailed. Personal delivery or delivery by courier shall be deemed to occur upon delivery to physical address of Blue Shield below or to the physical address you list on the signature page you submit to Blue Shield. Notices delivered by email shall be deemed to have been received on the date of successful transmission thereof if received during business hours or otherwise on the next business day following its receipt with proof of receipt held by the sending party. Notices delivered by posting on Producer Connection shall be deemed to have been delivered on posting date of the communication.

If sent to Blue Shield:

Blue Shield of California
P.O. Box 2630
Lodi, CA 95241-2630
Attn: New Appointment Desk
Email: ProducerServiceAppointments@blueshieldca.com

- 4.10 Amendment:** This Agreement, including any addenda or exhibits thereto, may be amended by Blue Shield upon thirty (30) days' prior written notice to you and delivered as set forth in Section 4.9. Such notice shall contain notification of sections changed and instructions on where to view the full document (such as online on Producer Connection). This Section 4.10 shall not apply to amendment of or modification to commissions as set forth in Section 2.1 of this Agreement.

Except when mutually agreed between Blue Shield and the Producer, or when required by applicable law, amendments to this Agreement, including addenda and exhibits, concerning the following will be made upon forty-five (45) days' prior written or electronic notice:

- (1) Commissions, bonuses and incentives paid to the Producer;
- (2) Right of survivorship;
- (3) Indemnification of the Producer by Blue Shield; or
- (4) Errors and omissions coverage requirements for the Producer.

- 4.11 Entire Agreement:** As of January 1, 2021, this Agreement replaces and supersedes any and all other Producer's or Agent's agreements, including representations or understandings between or among any of the parties or their predecessors regarding the subject matter contained herein. In the event of any conflict between such previous agreements and this Agreement, this Agreement shall govern. This Agreement constitutes the entire understanding of the parties hereto with respect to the subject matter hereof, and supersedes any and all prior agreements, representations or understandings, whether written or oral, express or implied with respect to that relationship. No agreements related to the subject matter of this Agreement that are not set forth herein (or in a written modification of this Agreement) shall be of any force or effect.
- 4.12 Waiver:** It is understood and agreed that no failure or delay by either party in exercising any right, power or privilege hereunder in any one or more instances or to insist on strict compliance with the performance of this Agreement or to take advantage of any respective rights shall operate as a waiver thereof or the relinquishment of such rights in other instances, but the same shall continue and remain in full force and effect, nor shall any single or partial exercise thereof preclude any other or further exercise thereof, or the exercise of any right, power or privilege hereunder.
- 4.13 Severability:** If any provision of this Agreement is deemed to be invalid or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of the Agreement and the parties agree to renegotiate such provision in good faith, in order to maintain the economic position enjoyed by each party as close as possible to that under the provision rendered unenforceable. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of this Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of this Agreement shall be enforceable in accordance with its terms.
- 4.14 Force Majeure:** Neither party shall be liable, and its performance shall be excused, for any delays resulting from circumstances or causes beyond its reasonable control, including, without limitation, fire or other casualty, act of God, strike or labor dispute, war, sabotage, terrorism, acts of aggression or other violence provided such party shall have used its commercially reasonable efforts to mitigate its effects and has given prompt written notice to the other party. The time for the performance shall be extended for the period of delay or inability to perform due to such occurrences up to a period of five days at which time the party unaffected by the Force Majeure event may immediately terminate this Agreement.
- 4.15 Counterparts:** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together constitute one agreement.
- 4.16 Titles and Subtitles:** The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.
- 4.17 Interpretation:** In the event any dispute arises in regard to the interpretation of any term or condition of this Agreement, the parties agree that the drafting of this Agreement shall not be deemed that of one party or their agent or the other party or its agent, and that any rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be applicable.
- 4.18 Business Associate Obligations:** In accordance with Blue Shield's obligations as a Covered Entity under HIPAA; Cal. Civil Code § 56 et seq.; Cal. Civil Code § 1798.80 et seq.; Cal. Ins. Code § 791 et seq., and other applicable federal and state laws related to privacy and security of protected data, as each may be amended from time to time, you and your associates, employees, directors, officers, agents, and subcontractors as a Business Associate (as defined in HIPAA) of Blue Shield, shall be subject to and comply with the terms set forth in the Business Associate Agreement attached as Exhibit A to this Agreement. For the avoidance of doubt, Producer is also subject to the requirements set forth in Sections 1.12(c), 4.1(a) and 4.1(b).

This Article IV shall survive termination of this Agreement.

Blue Shield looks forward to a rewarding association with you.

Please complete and sign this page, keep a copy for yourself and mail the original to us. Please also include your current errors and omissions liability insurance coverage, and your applicable California Agent's license or licenses (if you have not already sent us copies).

Producer

*** Items marked with an asterisk (*) are required fields.**

Print name and title*

Company name*

Social Security or Federal tax reporting number*

Phone number*

NPN number*

Email*

Physical address*

City

State

ZIP

County

Billing address (if different from mailing address)

City

State

ZIP

County

Mailing address

City

State

ZIP

County

Agent's license number

By signing below, you have read and agree to this Producer Agreement.

Your signature*

Date*

EXHIBIT A

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (this "**Agreement**") is an addendum to the Parties' Producer Agreements (as defined below) and is entered into by and between **California Physicians' Service, d/b/a Blue Shield of California**, for and on behalf of itself and its operating subsidiaries and affiliates, including Blue Shield of California Life & Health Insurance Company"), but does not include Blue Shield of California Promise Health Plan ("Promise") (collectively "**Company**" or "**Blue Shield**"), and [INSERT PRODUCER NAME] ("**Producer**"), on behalf of itself and its operating subsidiaries and affiliates and agents, and is effective as of [INSERT DATE] (the "**BAA Effective Date**"). Each Party's rights and obligations under this Agreement shall extend to its operating subsidiaries and affiliates.

WHEREAS, Company is a HIPAA Covered Entity which has entered or will enter into certain agreements with Producer ("**Producer Agreements**") pursuant to which Producer provides certain services to Company (and its operating subsidiaries and affiliates) which may require Producer to create, receive, maintain, or transmit Protected Health Information (as such term is defined below) on behalf of Company as Company's Business Associate; and

WHEREAS, the Parties are entering into this Agreement to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 as amended by the Health Information Technology for Economic and Clinical Health (HITECH) Act and with applicable California State regulatory requirements, including, inter alia, Cal. Civil Code §56 et seq., Cal. Civil Code §1798.82 et seq. and Cal. Ins. Code §791 et seq.;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, in affirmation of the existing Producer Agreements, and intending to be legally bound, the Parties hereto agree as follows:

I. Definitions:

For purposes of this Agreement, capitalized terms used or defined herein shall supersede any definition ascribed to such terms in any applicable Producer Agreements. Capitalized terms used in this Agreement shall have the meaning ascribed to them by HIPAA. If the meaning of any defined term used herein is changed by amendment to HIPAA, then the meaning of such defined term shall automatically change to correspond to the amended definition.

"**Breach**" shall have the meaning ascribed to that term by HIPAA, i.e., the acquisition, access, use or disclosure of PHI in a manner not permitted by HIPAA which compromises the security or privacy of such PHI subject to the exclusions set forth at 45 C.F.R. §164.402.

"**Data Aggregation**" shall mean, with respect to the PHI created or received by Producer in your capacity as the Business Associate of Blue Shield, the combining of such PHI by Producer with the PHI received by Producer in your capacity as a Business Associate of another Covered Entity, to permit data analyses that relate to the Health Care Operations (defined below) of the respective Covered Entities. The meaning of "Data Aggregation" in this Agreement is consistent with the meaning given to that term in HIPAA.

"**Designated Record Set**" shall have the meaning ascribed to that term by HIPAA Privacy Rule at 45 C.F.R. §164.501.

"**Electronic Media**" shall have the meaning ascribed to that term at 45 C.F.R. §160.103 and shall include (i) electronic storage media including memory devices in computers (hard drives) and any removable/ transportable digital memory medium, such as magnetic tape or disk, optical disk or digital memory card; or (ii) transmission media used to exchange information already in electronic storage media. Transmission media include, for example, the Internet (wide-open), extranet (using Internet technology to link a business with information accessible only to collaborating parties), leased lines, dial-up lines, private networks and the physical movement of removable/transportable electronic storage media. Certain transmissions, including paper, via facsimile, and of voice, via telephone, are not considered to be transmissions via Electronic Media, because the information being exchanged did not exist in electronic form before transmission.

“**Electronic PHI**” shall mean PHI that is transmitted by or maintained in Electronic Media as that term is defined at 45 C.F.R. §160.103.

“**Offshore**” shall mean outside of the United States of America and its territories.

“**Protected Health Information**” or “**PHI**” has the meaning ascribed to such term under HIPAA at 45 C.F.R. §160.103, as amended, and includes individually identifiable health information, including genetic information, maintained or transmitted in any form or medium that one Party hereto creates or receives from or on behalf of another Party hereto in the course of fulfilling such Party’s obligations under this Agreement. PHI shall not include (i) education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. §1232g, (ii) records described in 20 U.S.C. §1232g(a)(4)(B) (iv), and (iii) employment records held by any Party hereto in its role as employer. For purposes of this Agreement, PHI shall include Personal Information as defined in the California Civil Code when and as applicable.

“**Record**” shall mean any item, collection or grouping of information that includes PHI and is maintained, collected, used or disseminated by or for Blue Shield.

“**Secretary**” shall mean the Secretary of the Department of Health and Human Services.

“**Security Incident**” shall have the meaning set forth in 45 C.F.R. §164.304.

“**Treatment**,” “**Payment**” and “**Health Care Operations**” shall have the meaning given to those terms at 45 C.F.R. §164.501, as may be amended from time to time.

“**Unsecured PHI**” shall mean PHI that is not rendered unusable, unreadable or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary.

II. Producer Business Associate Obligations:

A. Use and Disclosure of PHI

1. Subject to the terms of this Agreement, Producer (hereafter referred to as “you” or “your”) may Use and Disclose PHI only if such Use or Disclosure is: permitted or required by HIPAA, including the applicable provisions of 45 C.F.R. §164.504(e); is permitted by and required to satisfy your obligations under this Agreement and the applicable Producer Agreements; and/or is otherwise required by law.
2. You shall not Use or Disclose, and shall ensure that your associates, employees, directors, officers, agents and subcontractors do not Use or Disclose, PHI in any manner that would constitute a violation of the HIPAA if done by Blue Shield, except that Producer may Use and Disclose PHI as permitted under HIPAA (i) for your proper management and administration, (ii) to carry out your legal responsibilities, or (iii) to provide Data Aggregation services relating to the Health Care Operations of Blue Shield if such services are required under the Producer Agreements.
3. You shall neither Use nor Disclose PHI for the purpose of creating De-Identified Information that will be used for any purpose other than as directed by Blue Shield to carry out your obligations as set forth in this Agreement or the applicable Producer Agreements, or as otherwise required by law.
4. To the extent that, pursuant to this Agreement or any applicable Producer Agreements, you are required to carry out any obligation of Blue Shield which is addressed by Subpart E of HIPAA – Privacy of Individually Identifiable Health Information, then in the performance of such obligations you shall comply with the requirements of Subpart E that apply to Blue Shield as a HIPAA Covered Entity.

B. Limited Dataset or Minimum Necessary Standard

In Using, requesting and/or Disclosing PHI, you shall comply with any and all applicable laws, including implementing guidance and regulations, in determining what constitutes “minimum necessary.” You shall limit the Use, Disclosure or request of Individuals’ PHI, to the extent practicable, to the Limited Dataset (as defined in 45 C.F.R. §164.514(e)(2)) or to the minimum necessary amount of PHI to accomplish the intended purpose of such Use, Disclosure or request

and to perform its obligations under this Agreement and/or the Producer Agreements. You shall determine what constitutes the minimum necessary to accomplish the intended purpose of such Disclosure. Your obligations under this provision shall be subject to modification to comply with guidance issued by the Secretary.

C. Sale of PHI Prohibited

The sale of PHI, as defined by 45 C.F.R. 164.502(a)(5)(ii)(B), is prohibited and you are prohibited from seeking an individual's authorization to sell such individual's PHI.

D. Safeguards Against Misuse of Information

1. You shall comply with all applicable requirements of HIPAA relating to Business Associates and shall implement appropriate safeguards to prevent the Use or Disclosure of PHI in any manner other than pursuant to the terms and conditions of this Agreement. You shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the PHI that you create, receive, maintain or transmit on behalf of Blue Shield.
2. You and your associates, employees, directors, officers, agents and subcontractors with access to PHI shall comply in full with the applicable provisions of HIPAA including the Security Standards for the Protection of Electronic PHI and Privacy of Individually Identifiable Health Information.

E. Reporting of Violations and Security Incidents

1. Within 24 hours of your discovery of access to, Use or Disclosure of PHI which is not permitted by this Agreement, including any Breach or suspected Breach of Unsecured PHI, you shall notify Blue Shield of your discovery by contacting the Blue Shield of California Privacy Office via telephone at (800) 296-9086, or email to privacy@blueshieldca.com, or fax to (800) 201-9020. Blue Shield will advise you of any subsequent changes to the Privacy Office's contact information.
2. In the event of a Breach or suspected Breach, including any actual, successful Security Incident of which you become aware which has compromised the protections set forth in HIPAA, you shall forward to Blue Shield as soon as practicable, but in any event within 24 hours after your discovery of such Breach, suspected Breach or successful Security Incident, a written notice including, to the extent known to you at the time, the identification of each individual whose Unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, Used or Disclosed during the Breach, suspected Breach or Security Incident.
3. You shall cooperate with Blue Shield and shall provide such assistance as Blue Shield may reasonably request so that Blue Shield may comply with any obligations it may have to investigate, remediate, mitigate, report and/or otherwise notify third parties of such Breach. You shall be liable for all costs associated with the investigation, remediation, mitigation and reporting of Breaches of Unsecured PHI and/or access to, Use or Disclosure of PHI which is not permitted by this Agreement or required by applicable law which is caused by you, your associates, employees, directors, officers, agents and/or subcontractors.
4. In addition to reporting any actual, successful Security Incident of which you become aware as required in subsection e(2) above, you shall report any attempted, unsuccessful Security Incident of which you become aware within a reasonable time period. If HIPAA is amended to remove the requirement to report unsuccessful attempts of unauthorized access, the requirement to report such unsuccessful attempts shall no longer apply as of the effective date of that amendment.

F. Agreements with Third Parties

As required by 45 C.F.R. §164.504(e)(5), you shall enter into a Business Associate Agreement with any agent or subcontractor of yours that creates, receives, maintains or transmits PHI on your behalf. In accordance with 45 C.F.R. §164.502(e)(1)(ii), you shall ensure that, with respect to such PHI, your agents or subcontractors agree to the same or more stringent restrictions and conditions as apply to you pursuant to this Agreement – including required reporting of unauthorized access to, Use or Disclosure of PHI, Breaches and suspected Breaches, and successful Security Incidents

of Unsecured PHI, and as otherwise required by applicable law. Furthermore, you shall ensure that any agent or subcontractor to whom you provide PHI agrees to implement reasonable and appropriate security measures to protect the PHI. You warrant and represent that in the event of a Disclosure of PHI to any third party, the PHI Disclosed shall be no more than the minimum necessary for the intended purpose. You shall ensure that any agent or subcontractor to whom you provide PHI complies in full with HIPAA.

G. Access to PHI

In the event you maintain PHI in a Designated Record Set, you shall, within five business days of receipt of a request from Blue Shield, provide to Blue Shield PHI in your possession that is required for Blue Shield to respond to an individual's request for access to PHI made pursuant to 45 C.F.R. §164.524 or other applicable law. You shall comply with, and shall assist Blue Shield in complying with, requirements for providing access to certain information in electronic format if you or Blue Shield uses or maintains an electronic health record with respect to an individual's PHI, under 45 C.F.R. §164.524. In the event any individual requests access to PHI directly from you, whether or not you are in possession of PHI, you may not approve or deny access to the PHI requested. Rather, you shall, within two business days, forward such request to Blue Shield.

H. Availability of PHI for Amendment

In the event that you maintain PHI in a Designated Record Set, you shall, within five business days of receipt of a request from Blue Shield, provide to Blue Shield PHI in your possession that is required for Blue Shield to respond to an individual's request to amend PHI made pursuant to 45 C.F.R. §164.526 or other applicable law. If the request is approved, you shall incorporate any such amendments to the PHI as required by 45 C.F.R. §164.526 or other applicable law. In the event that the request for the amendment of PHI is made directly to you, whether or not you are in possession of PHI, you may not approve or deny the requested amendment. Rather, you shall, within two business days, forward such request to Blue Shield.

I. Accounting of Disclosures

You agree to document disclosures of PHI and information related to such disclosures as would be required for Blue Shield to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528 or other applicable law. You shall comply with, and shall assist Blue Shield in complying with, requirements for providing an accounting of certain PHI disclosures if you or Blue Shield uses or maintains an electronic health record with respect to PHI, under 45 C.F.R. §164.528. You shall, within 10 business days of receipt of a request from Blue Shield, provide to Blue Shield such information as is in your possession and is required for Blue Shield to respond to a request for an accounting made in accordance with 45 C.F.R. §164.528 or other applicable law. In the event the request for an accounting is delivered directly to you, you shall, within two business days, forward such request to Blue Shield. It shall be Blue Shield's responsibility to prepare and deliver any such accounting requested.

J. Individuals' Right to Restrict Use and Disclosure of PHI

You shall comply, and shall assist Blue Shield in complying, with responding to individuals' requests to restrict the uses and disclosures of their PHI under 45 C.F.R. §164.522. In the event that the request for restriction on the use or disclosure of PHI is made directly to you, whether or not you are in possession of PHI, you may not approve or deny the requested restriction. Rather, you shall, within two business days, forward such request to Blue Shield.

K. Transmission of PHI Offshore

You shall not transmit or make PHI accessible to any Offshore recipient without Blue Shield's prior written consent. Requests for permission to send PHI Offshore must be submitted to the Privacy Office by email at privacy@blueshieldca.com or fax to (800) 201-9020. The request must include details sufficient to identify the Offshore recipient, the specific PHI to be transmitted and the purpose for which such PHI will be used or accessed by the Offshore recipient. Blue Shield reserves the right to request, and upon such request you shall provide, additional documentation and evidence of the Offshore recipient's compliance with the terms of this Agreement and privacy and data protection laws including, inter alia, HIPAA and California state laws. You shall ensure that Offshore recipients

who will be granted access to PHI have first completed HIPAA-compliant privacy training. The obligations of this section are in addition to your obligations under Section 3.2(f), above.

L. Availability of Books and Records

You hereby agree to make your internal practices, books and records, including policies and procedures, relating to the Use and Disclosure of PHI received from, or created or received by you on behalf of Blue Shield, available to Blue Shield and/or to the Secretary for purposes of determining Blue Shield's and your compliance with HIPAA.

M. Policies, Procedures and Training

You shall develop and implement privacy and security policies and procedures as necessary and appropriate to meet its obligations under this Agreement and applicable state and federal laws, including HIPAA. You shall train your associates, employees directors, officers, and ensure that your agents and subcontractors train their respective associates, employees, directors, officers, agents and subcontractors on such policies and procedures.

III. TERM AND TERMINATION

A. Term

This Agreement shall be effective as of the BAA Effective Date, and shall terminate when all of the PHI that Producer maintains in any form which was received from, or created or received by Producer on behalf of, Company is destroyed or returned to Company and Producer no longer retains copies of such PHI. If it is infeasible to return or destroy such PHI, the protections of this Agreement shall extend to such PHI for so long as Producer maintains it, and further Use and Disclosures shall be limited to those purposes that make the return or destruction of the PHI infeasible.

B. Termination for Cause

If Company determines that Producer has committed a material breach of this Agreement, or any applicable Producer Agreements pertaining to the Use or Disclosure of PHI, Company shall either:

1. Provide an opportunity for Producer to cure the breach or end the violation and terminate this Agreement and any applicable Producer Agreements if Producer does not cure the breach or end the violation within the time specified by Company; or
2. Immediately terminate this Agreement and any applicable Producer Agreements if Company determines cure is not possible.

Producer acknowledges and agrees that any breach of this Agreement shall also constitute a breach of the applicable Producer Agreements.

C. Effect of Termination

1. Except as provided in the paragraph below, upon termination of this Agreement for any reason, Producer shall return or destroy all PHI received from Company, or created or received by Producer on behalf of Company. This provision shall also apply to PHI that is in the possession of subcontractors or agents of Producer. Producer shall retain no copies of the PHI.

In the event that Producer determines that returning or destroying the PHI is infeasible, Producer shall provide to Company notification of the conditions that make return or destruction infeasible. Such notification shall be sent to:

Blue Shield of California
P.O. Box 2630
Lodi, CA 95241-2630
Attn: New Appointment Desk
Email: ProducerServiceAppointments@blueshieldca.com

A copy shall also be sent to the Blue Shield of California Privacy Office:

Email: privacy@blueshieldca.com
Fax: 800-201-9020
Telephone: 888-266-8080
Mailing Address: P.O. Box 272540, Chico, CA 95927-9914

Upon Company's determination that return or destruction of PHI is infeasible, Producer shall extend the protections of this Agreement to such PHI and limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Producer maintains such PHI.

IV. Miscellaneous:

- A. Limitation of Liability:** No exculpation or limitation on your liability set forth elsewhere in the Producer Agreements shall apply to any of your liability as a result of your breach of this Agreement.
- B. Indemnification for Privacy Violations:** In addition to all other rights and remedies available to Blue Shield under this Agreement and/or any Producer Agreements, Producer shall defend, indemnify and hold Blue Shield harmless from and against any and all claims, damages, costs, fines and penalties directly or indirectly arising from, or alleged to have arisen from, your breach of this Agreement or your violation of applicable state or federal privacy and data security laws and regulations, including HIPAA, and/or related to any such violation directly or indirectly attributable to Producer including your associates, employees, directors, officers, agents and/or subcontractors.
- C. Amendment:** The terms of this Agreement shall be construed in light of any interpretation or guidance on HIPAA issued by the United States Department of Health & Human Services from time to time. If any relevant provision of the HIPAA is materially amended in a manner that changes the obligations of Business Associates or Covered Entities that are embodied in this Agreement, or in the event that applicable law or regulation, or an arbitration or judicial interpretation of same, or any regulatory or enforcement action should explicitly or otherwise require that this Agreement be changed, altered or modified, then Blue Shield shall notify Producer and provide such required amendment, and Blue Shield and Producer shall continue to perform their respective obligations under this Agreement as modified.
- D. Prior Agreements:** This Agreement constitutes the entire agreement between the Parties hereto with respect to the Business Associate obligations addressed herein and supersedes and replaces any prior agreements between the Parties relating to such obligations, including provisions that may be included in any Producer Agreements or in any prior amendments to the Producer Agreements or to this Agreement.
- E. Survival:** Your obligations under Section II(E) (Reporting of Violations and Security Incidents), Section IV (Effect of Agreement), Section III(A) (Limitation of Liability), Section III(B) (Indemnification for Privacy Violations), Section III(C) (Amendment), and this Section III(E) (Survival) shall survive the termination or expiration of this Agreement.

V. Effect of Agreement:

To the extent that the terms of this Agreement conflicts with other terms of the Producer Agreements or any other agreement between Producer and Blue Shield relating to PHI, the terms of this Agreement shall take precedence.

[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the BAA Effective Date by their respective duly authorized representatives.

Blue Shield of California:

Producer:

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____