

**City and County of San Francisco  
Municipal Transportation Agency  
One South Van Ness Ave., 7th Floor  
San Francisco, California 94103**

**Agreement between the City and County of San Francisco and  
Intercare Holdings Insurance Services, Inc. for Workers'  
Compensation Third Party Claims Administration Services  
Contract No. SFMTA-2015-58**

**June 1, 2017**

**Terms and Conditions of Agreement**

**Table of Contents**

**Article 1: Definitions**..... 1

**Article 2: Term of the Agreement** ..... 3

**Article 3: Financial Matters** ..... 3

3.1 Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation ..... 3

3.2 Guaranteed Maximum Costs..... 4

3.3 Compensation ..... 4

    3.3.1 Contract Amount ..... 4

    3.3.2 Payment ..... 4

    3.3.3 Payment Limited to Satisfactory Services ..... 4

    3.3.4 Withhold Payments..... 5

    3.3.5 Invoice Format..... 5

    3.3.6 Reserved. (LBE Payment and Utilization Tracking System) ..... 5

    3.3.7 Getting Paid for Goods and/or Services from the City..... 5

3.4 Audit and Inspection of Records..... 5

3.5 Submitting False Claims ..... 6

3.6 Fiduciary Obligations..... 6

**Article 4: Services and Resources** ..... 6

4.1 Services Contractor Agrees to Perform ..... 6

4.2 Qualified Personnel..... 7

4.3 Subcontracting ..... 7

4.4 Independent Contractor; Remedial Action; Payment of Employment Taxes and Other Expenses ..... 8

    4.4.1 Independent Contractor ..... 8

    4.4.2 Remedial Action ..... 9

    4.4.3 Payment of Employment Taxes and Other Expenses..... 9

4.5 Assignment ..... 9

4.6 Warranty ..... 9

4.7 Time Is of the Essence ..... 10

**Article 5: Insurance and Indemnity** ..... 10

5.1 Insurance..... 10

5.2 Indemnification and Defense ..... 12

5.2.1 Indemnification.....	12
5.2.2 Defense .....	12
5.2.3 Insurance Does Not Limit Liability.....	13
5.2.4 Copyright Infringement .....	13
5.2.5 Penalties for Delayed or Denied Benefits Authorization or Payment .....	13
<b>Article 6: Liability of the Parties .....</b>	<b>15</b>
6.1 Liability of City.....	15
6.2 Liability for Use of Equipment.....	15
6.3 Liability for Incidental and Consequential Damages.....	16
<b>Article 7: Payment of Taxes .....</b>	<b>16</b>
<b>Article 8: Termination and Default.....</b>	<b>17</b>
8.1 Termination for Convenience .....	17
8.2 Termination for Default; Remedies .....	18
8.3 Non-Waiver of Rights.....	20
8.4 Rights and Duties upon Termination or Expiration.....	20
<b>Article 9: Rights In Deliverables .....</b>	<b>21</b>
9.1 Ownership of Records and Results .....	21
9.2 Transmission of Records.....	21
9.1 Retention of Records.....	21
9.4 Works for Hire .....	21
<b>Article 10: Additional Requirements Incorporated by Reference .....</b>	<b>21</b>
10.1 Laws Incorporated by Reference .....	21
10.2 Conflict of Interest.....	21
10.3 Prohibition on Use of Public Funds for Political Activity.....	22
10.4 Labor Code and Workers' Compensation Regulations .....	22
10.5 Maintenance, Protection and Ownership of Confidential Information.....	22
10.5.1 Proprietary or Confidential Information of City.....	22
10.5.2 Litigation by the City Attorney, and Privileged and Confidential Communications and Information .....	22
10.5.3 Confidential City Data, Records and Employee Privacy.....	22
10.5.4 Confidentiality of Medical Information.....	23
10.6 Nondiscrimination Requirements .....	23
10.6.1 Non Discrimination in Contracts .....	23
10.6.2 Nondiscrimination in the Provision of Employee Benefits .....	23
10.7 Local Business Enterprise and Non-Discrimination in Contracting Ordinance .....	24

10.8	Minimum Compensation Ordinance .....	24
10.9	Health Care Accountability Ordinance .....	24
10.10	First Source Hiring Program .....	24
10.11	Alcohol and Drug-Free Workplace.....	24
10.12	Limitations on Contributions .....	24
10.13	Reserved. (Slavery Era Disclosure) .....	25
10.14	Reserved. (Working with Minors) .....	25
10.15	Consideration of Criminal History in Hiring and Employment Decisions .....	25
10.16	Reserved. (Public Access to Nonprofit Records and Meetings).....	25
10.17	Food Service Waste Reduction Requirements.....	25
10.18	Reserved. (Sugar-Sweetened Beverage Prohibition).....	26
10.19	Tropical Hardwood and Virgin Redwood Ban .....	26
	<b>Article 11: General Provisions</b> .....	26
11.1	Notices to the Parties .....	26
11.2	Compliance with Americans with Disabilities Act.....	26
11.3	Reserved. (Payment Card Industry (PCI) Requirements).....	26
11.4	Sunshine Ordinance .....	26
11.5	Modification of this Agreement.....	27
11.6	Dispute Resolution Procedure.....	27
11.6.1	Negotiation; Alternative Dispute Resolution.....	27
11.6.2	Government Code Claim Requirement .....	27
11.7	Agreement Made in California; Venue.....	27
11.8	Construction.....	28
11.9	Entire Agreement .....	28
11.10	Workers' Compensation Laws.....	28
11.11	Compliance with Laws .....	28
11.12	Severability .....	28
11.13	Cooperative Drafting .....	28
11.14	Order of Precedence.....	28
11.15	Approval by Counterparts.....	29
	<b>Article 12: MacBride Principles And Signature</b> .....	29
12.1	MacBride Principles -Northern Ireland .....	29
	<b>Article 13: Large Vehicle Driver Safety Training Requirements</b> .....	29
	<b>Article 14: Included Appendices</b> .....	30

**Agreement between the City and County of San Francisco and  
Intercare Holdings Insurance Services, Inc. for  
Workers' Compensation Third Party Claims Administration Services  
Contract No. SFMTA-2015-58**

This Agreement, dated for convenience as June 1, 2017, is made in the City and County of San Francisco, State of California, by and between Intercare Holdings Insurance Services, Inc., 6020 West Oaks Boulevard, Suite 100, Rocklin, CA 95765 ("Contractor") and City.

**Recitals**

- A.** The City wishes to obtain Workers' Compensation Third-Party Administrator Services.
- B.** The City issued a Request for Proposals (RFP) on June 8, 2016, and selected Contractor as the highest qualified scorer pursuant to the RFP.
- C.** There is no Local Business Entity (LBE) subcontracting participation requirement for this Agreement.
- D.** Contractor represents and warrants that it is qualified to perform and will commit sufficient personnel and resources to perform fully the Services required by City as set forth in this Agreement.
- E.** Approval for this Agreement was obtained when the Civil Service Commission approved Contract number 4088-11/12 on February 6, 2012.

Now, THEREFORE, the parties agree as follows:

**TERMS AND CONDITIONS OF AGREEMENT**

**Article 1      Definitions**

The following definitions apply to this Agreement:

**"Agreement"** means this contract document, including all Included Appendices and other documents that are expressly incorporated by reference.

**"Annual Fees"** means the compensation Contractor has agreed to be paid in consideration of its performance of the Services, as set out in Appendix B to this Agreement.

**"Business Day(s)"** means business days, Monday through Friday, excluding Saturday and Sunday and holidays observed by the City and County of San Francisco.

**"CCO"** means SFMTA Contract Compliance Office.

**"City"** means the City and County of San Francisco, a municipal corporation, acting by and through its Department of Human Resources (DHR) or its Municipal Transportation Agency (SFMTA).

**“Claimant”** means the City employee who has filed a claim for workers’ compensation benefits, alternatively referenced as the “Applicant” or the “Injured Worker.”

**“Claims Management Services”** means the tasks and work that are a subset of the Services that Contractor shall provide to the manage workers’ compensation claims that the City assigns to Contractor, including any ancillary tasks or work that is necessary to perform those Services.

**“Client Service Instructions”** means the written directions to the Contractor provided by the SFMTA and DHR concerning the processing of claims. (See Section 4.1 and Appendix E.)

**“CMD”** means the Contract Monitoring Division of the City.

**“Codes”** means all applicable State and federal laws, including but not limited to the requirements of the Division of Workers’ Compensation Audit Unit, the Office of Self-Insured Plans, the California Labor Code, the California Code of Regulations, the Rules of the Workers’ Compensation Appeals Board (“WCAB”), California Department of Insurance regulations and requirements, City Ordinances and Mandatory City Requirements that govern the Services or are referenced in or incorporated by reference into this Agreement, as any may be amended during the term of this Agreement. (See Sections 11.10 and 11.11.)

**“Contract Amount”** means the compensation provided in this Agreement that the City agrees to pay Contractor for services properly rendered; the Contract Amount does not include the benefits to be paid to City employees or compensation to be paid to third party medical services providers and other Workers’ Compensation service providers, which payments are administered or authorized by Contractor.

**“Contractor”** or **“Consultant”** means Intercare Holdings Insurance Services, Inc., 6020 West Oaks Boulevard, Suite 100, Rocklin, CA 95765.

**“C&P”** means SFMTA Contracts and Procurement.

**“Day(s)”** means calendar day(s), unless Business Days are indicated as the metric, irrespective of whether the word is capitalized,

**“Department of Human Resources”** or **“DHR”** means the Department of Human Resources for the City and County of San Francisco.

**“Deliverables”** means the reports, data sets, written case management protocols, and other tangible work product produced in the course of or resulting from the Services that Contractor shall provide to City during the course of Contractor’s performance of the Agreement, including without limitation, the work product described in the “Scope of Services” attached as Appendix A.

**“Effective Date”** means the date that the City directs Contractor to commence the Services and confirms that the City’s Controller has certified the availability of funds for this Agreement, as provided in Section 2.1.

**“Mandatory City Requirements”** means those City ordinances set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws, which impose specific duties and obligations upon Contractor.

**“Party”** and **“Parties”** mean the City and Contractor either collectively or individually.

**“Program”** - See "Services."

**“Services”** (alternatively referenced as "the Program") means all actions, activities and other work that Contractor shall do to provide to the City the benefits of this Agreement, as described in the **“Scope of Services”** attached as Appendix A, and all services, labor, supervision, materials, equipment, actions and tasks ancillary to or necessary for Contractor’s performance of said Services under this Agreement.

**“SFMTA”** means the San Francisco Municipal Transportation Agency, which is a department of the City.

**“Task Order”** means a counter-signed work order issued by the City under which the Contractor shall provide additional Services described in the Task Order to the City for a negotiated fixed-fee. (See Appendix A, Article 9.)

## **Article 2      Term of the Agreement**

**2.1**      The term of this Agreement shall commence on the Effective Date and expire three years later, unless extended or earlier terminated as provided in this Agreement. The Effective Date is the date that the City confirms in writing that the City’s Controller has certified the availability of funds for this Agreement and directs Contractor to commence the Services.

**2.2**      The City may extend the term of the Agreement up to two additional one-year option periods without change to the terms and conditions of the Agreement. The City may exercise its options to extend the Agreement by providing written notice to Contractor signed by the Director of Transportation and the Director of the DHR. A modification of the Agreement is not required for the City to exercise an option to extend the term of the Agreement using the prices for said extension period(s) set forth in Appendix B to this Agreement.

## **Article 3      Financial Matters**

**3.1      Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of the City’s Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City’s obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions

are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

**THIS SECTION 3.1 CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.**

**3.2 Guaranteed Maximum Costs.** The City's payment obligation to Contractor cannot at any time exceed the amount certified by City's Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5, "Modification of this Agreement."

**3.3 Compensation.**

**3.3.1 Contract Amount.** In no event shall the Contract Amount of this Agreement exceed Twenty-Six Million, One Hundred and Seventy-Nine Thousand, One Hundred and Nineteen dollars (\$26,179,119), which amount includes the exercise of the two one-year optional extension periods.

**3.3.2 Payment.** Contractor shall provide separate monthly invoices to DHR and to SFMTA, respectively, for Services completed in the immediately preceding month, as more specifically set out in Appendix B, "Calculation of Charges." Compensation shall be made for Services identified in the invoices that the respective directors (or their designees) of DHR and SFMTA, in their sole discretion, conclude have been satisfactorily performed in accordance with this Agreement. Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. The breakdown of charges associated with this Agreement is set out in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. In no event shall City be liable for interest or late charges for any late payments.

**3.3.3 Payment Limited to Satisfactory Services.** Contractor is not entitled to any payments from City until the respective directors (or their authorized designees) for DHR and SFMTA confirm that the Services, including any furnished Deliverables, satisfy the requirements of this Agreement. Any payments to Contractor by City shall not excuse Contractor from its obligation to perform again or replace unsatisfactory Services or Deliverables, even if the unsatisfactory character of such Services or Deliverables may or may not have been apparent or detected at the time such payment was made. Deliverables and Services that do not conform to the requirements of this Agreement may be rejected by City and in such case must be performed again or replaced by Contractor without delay at no cost to the City. The payment by the City of any invoice shall not be deemed the City's acceptance of defective or incomplete Services or



Deliverables, and payment shall not effect or be deemed a waiver by the City of any claim, remedy, or requirement of this Agreement.

**3.3.4 Withhold Payments.** If Contractor fails to provide Services in accordance with Contractor's obligations under this Agreement, the City may withhold any and all payments due Contractor until such failure to perform is cured, and Contractor shall not stop work as a result of City's withholding of payments as provided herein.

**3.3.5 Invoice Format.** Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller and City, and must include a unique invoice number. Payment shall be made by City to Contractor at the address specified in Section 11.1, "Notices to the Parties," or in such alternate manner as the Parties have mutually agreed in writing.

**3.3.6 Reserved. (LBE Payment and Utilization Tracking System)**

**3.3.7 Getting Paid for Goods and/or Services from the City.**

(a) All City vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through Paymode-X, the City's third party service that provides Automated Clearing House (ACH) payments. Electronic payments are processed every business day and are safe and secure. To sign up for electronic payments, visit [www.sfgov.org/ach](http://www.sfgov.org/ach).

(b) The following information is required to sign up: (i) The enroller must be their company's authorized financial representative, (ii) the company's legal name, main telephone number and all physical and remittance addresses used by the company, (iii) the company's U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor), and (iv) the company's bank account information, including routing and account numbers.

**3.4 Audit and Inspection of Records.** Contractor agrees to maintain and make available to the City within 24 hours of City's request, during regular business hours, accurate books and accounting records relating to the Services and of Contractor's payment of benefits and claims expenditures made in the course of performing those Services. Contractor will permit City to audit, examine and make copies, excerpts and transcripts from such books and records, and to audit all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not fewer than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts for the Services

**3.5 Submitting False Claims.** The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

**3.6 Fiduciary Obligations.** In its performance of the Services, Contractor shall at all times act in the best interests of the City, subject to the constraints of applicable Codes. In authorizing or issuing payment of benefits and compensation to third party services providers, recommending and negotiating settlement of claims, and estimating claims liability and managing claims risks, Contractor, as an independent contractor, acts as and assumes the obligations of a fiduciary to the City.

## **Article 4 Services and Resources**

### **4.1 Services Contractor Agrees to Perform.**

**4.1.1 Scope of Services and Client Service Instructions.** Contractor agrees to perform the Services provided for in Appendix A, “Scope of Services,” and Appendix E, “Client Service Instructions,” including any work that is ancillary to or otherwise necessary to perform the Services. Contractor shall read the Scope of Services and the Client Service Instructions together; the Client Services Instructions describe in greater detail the Services the Contractor shall perform, claims processing and management requirements, notice requirements and communications protocols, and the Deliverables the Contractor shall provide. The Client Services Instructions may modify the Scope of Services. The Client Service Instructions and the Scope of Services shall not modify any requirement stated in the Term and Conditions or other parts of the Agreement. The SFMTA and the DHR may have separate Client Service Instructions for those departments’ respective claims.

**4.1.2 Changes to Client Service Instructions.** The SFMTA and the DHR may each in writing modify the Client Service Instructions for its claims by providing Contractor written notice of the change. Contractor shall implement the changes Client Service Instructions within 10 calendar days of receipt or Contractor shall object to said changes in writing within that time. Changes to the Client Service Instructions to which Contractor does not object shall become part of the Agreement. Changes to the Client Service Instructions shall not increase the amount of

Contractor's compensation or shift costs or risks of the Program between the City and the Contractor. Changes to compensation, term, or risk factors shall be memorialized in a formal contract amendment, as provided in Section 11.5, "Modification of this Agreement."

**4.1.3** Limitations of Client Service Instructions. Officers and employees of the City are not authorized to request and the City is not required to reimburse the Contractor for Services that Contractor may perform that are outside those described in the Scope of Services and the Client Service Instructions (and accepted changes to those Client Service Instructions to which Contractor has not objected) that modify the term, amount of compensation to be paid Contractor, or reallocate risk, unless the Agreement is modified as provided in Section 11.5, "Modification of this Agreement."

**4.1.4** Task Orders. The City may obtain additional ancillary services from Contractor related to workers' compensation and workplace safety under negotiated Task Orders, each of which shall be deemed an amendment to this Agreement. A Task Order must be signed by an authorized representative of the City department (SFMTA or DHR) that requests the services. (See also Appendix A, Article 9.)

**4.1.5** Responsibility for Claim. Contractor's liability for and obligations with respect to a claim for workers' compensation benefits commence upon Contractor's receipt of notice of a claim, including receipt of written report of injury from the injured employee, supervisor's report, or notification by telephone or email.

**4.2** **Qualified Personnel.** Contractor shall utilize only competent personnel under the supervision of and in the employment of Contractor (or Contractor's authorized subcontractors) to perform the Services. Contractor shall comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate personnel and resources to perform the Services as required by this Agreement.

**4.3** **Subcontracting.** Except as expressly authorized in this Agreement, Contractor may subcontract portions of the Services only upon prior written approval of City. Contractor shall be at all times responsible for subcontractor errors and omissions in the performance of the Services. All Subcontracts must incorporate the terms of Article 10 "Additional Requirements Incorporated by Reference" of this Agreement. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void. City's execution of this Agreement constitutes its approval of the subcontractors and the work assigned to them, as listed below.

- a. Loss Prevention and Safety Services: Safety and Loss Control: LPS Services Contact: Weston Griffith, (800) 592-0047.
- b. Check Printing and Benefits Payment Services: Change Healthcare, 615-932-3110

- c. Pharmacy Benefit Management Plan Services: Optum (formerly Helios),  
Shawn West,  
Telephone: 858-524-4608  
Email: Shawn.West@optum.com
- d. Nurse Triage Services: InterMed: Danielle Buri, 916-677-2555  
Telemedicine Services: Robert Porter, MD  
Telephone: 779-770-7770  
Email: Robert.Porter@telecareanywhere.com

#### **4.4 Independent Contractor; Remedial Action; Payment of Employment Taxes and Other Expenses**

##### **4.4.1 Independent Contractor.**

a. For all purposes of this Agreement, “Contractor” shall be deemed to include not only Contractor, but also any subcontractor, agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees shall not represent or hold themselves out to be employees of the City at any time. Contractor is not an agent of the City for any purpose. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees.

b. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents.

c. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor’s performing services and work, or any agent or employee of Contractor providing same.

d. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the results of Contractor’s work only, and not as to the means by which such a result is obtained. Except as expressly stated in this Agreement, Contractor acknowledges that the City does not retain the right to control the means or the method by which Contractor performs work under this Agreement, but the City has the right to direct Contractor as to outcomes of Contractor’s management of the City’s workers’ compensation claims. As provided in Section 3.4, above, Contractor agrees to maintain and make available to City, upon request

and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this Section.

**4.4.2 Remedial Action.** Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency or provide a plan and timeline acceptable to City in which Contractor shall remedy and cure its performance. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action. Contractor's failure to remedy unacceptable performance within a reasonable period (as the City may determine) shall constitute a material breach of this Agreement for which the City may terminate this Agreement or seek other remedies.

**4.4.3 Payment of Employment Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor that can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section.

**4.5 Assignment.** The Services to be performed by Contractor are personal in character, and neither this Agreement nor any portion of the Services, nor any other duties or obligations hereunder may be assigned or delegated by Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

**4.6 Warranty.** Contractor warrants to City that the Services will be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the

time the Services are performed so as to ensure that all Services performed are correct and appropriate for the purposes contemplated in this Agreement.

**4.7 Time Is of the Essence.** Contractor's timely performance of the Services is an essential and material term of this Agreement. Contractor's failure to perform timely all aspects of the Services shall be a material breach of this Agreement.

## **Article 5 Insurance and Indemnity**

### **5.1 Insurance.**

**5.1.1 Required Coverages.** Without in any way limiting Contractor's liability pursuant to Section 5.2 ("Indemnification") of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(a) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than One Million Dollars (\$1,000,000) each accident, injury, or illness; and

(b) Commercial General Liability Insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

(c) Commercial Automobile Liability Insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(d) Professional liability insurance, applicable to Contractor's profession, with limits not less than Ten Million Dollars (\$10,000,000) each claim with respect to negligent acts, errors or omissions in connection with the Services, including but not limited to Claims Management Services and triage services described in Appendix A.

(e) Contractor shall ensure that its subcontractor for telemedicine services shall provide not less \$1,000,000 coverage per occurrence and \$3,000,000 coverage in the aggregate of professional liability insurance, renewable annually.

(f) Contractor shall maintain throughout the term of this contract, at no expense to the City, a blanket fidelity bond or a Crime Policy (Employee Dishonesty Coverage) that includes coverage for employee dishonesty, forgery and alteration, theft of money and securities, conversion and/or theft via electronic means, endorsed to cover third party fidelity, covering all officers and employees in an amount not less than One Million Dollars (\$1,000,000) with any deductible not to exceed Fifty Thousand Dollars (\$50,000) and including City as additional obligee or loss payee as its interest may appear.

(g) Technology Errors and Omissions Liability coverage and Cyber and Privacy Insurance coverage with limits of not less than Five Million Dollars (\$5,000,000) each occurrence and each loss, and Ten Million Dollars (\$10,000,000) general aggregate. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required

for the performance of services defined in the Agreement and shall also provide coverage for the following risks:

(i) Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks and other breach of protected data; and

(ii) Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to the City's or a third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon; and

(iii) liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form.

**5.1.2** Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

(a) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(b) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

**5.1.3** All policies shall be endorsed to provide 30 days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in Section 11.1, ("Notices to the Parties.") All notices, certificates and endorsements shall include the SFMTA contract number and title on the cover page.

**5.1.4** Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

**5.1.5** Should any required insurance lapse during the term of this Agreement, the City may withhold payment of compensation until the City receives satisfactory evidence of reinstated insurance coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

**5.1.6** Before commencing to perform any Services, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings

comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

**5.1.7** If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and the Contractor as additional insureds.

## **5.2 Indemnification and Defense.**

**5.2.1 Indemnification.** Contractor shall indemnify and hold harmless City and its officers, employees, agents, boards, and commissions ("Indemnitees") from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from Intercare's acts, errors or omissions in connection with the following: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of any applicable Code including but not limited to local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; (vi) penalties and assessments imposed by the WCAB or other body of jurisdiction on workers compensation matters so long as such injury, violation, loss, or strict liability (as set forth in subsections (i) – (vi) above) arises directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City or any Indemnitees, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of an Indemnitee and is not contributed to by any act of or by any omission to perform some duty imposed by law or this Agreement on Contractor, its subcontractors or its employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

**5.2.2 Defense.** In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City upon City's request from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter. In defending a penalty assessment (described in Section 5.2.5, below) before the WCAB, Contractor may represent itself or utilize outside counsel, but such representation shall be limited to the penalty issues only and not any claim concerning disability, benefits or other related issue for which the City may be liable.



**5.2.3 Insurance Does Not Limit Liability.** No insurance policy covering the Contractor's performance under this Agreement shall operate to limit the Contractor's Liabilities under this Agreement. Nor shall the amount of insurance coverage operate to limit the extent of such Liabilities. The Contractor assumes no liability whatsoever for the sole negligence, active negligence, or willful misconduct of any Indemnitee or the contractors of any Indemnitee.

**5.2.4 Copyright Infringement.** Contractor shall indemnify and hold City harmless from all suits or claims, loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret, service mark, or any other proprietary right or trademark, and all other intellectual property claims of any person or persons arising directly or indirectly from the receipt by City, or any of its officers or agents, of Contractor's Services or in consequence of the use by the City or any indemnified parties ("Indemnitees"), or any of its boards, commissions, officers, or employees of articles, work or deliverables supplied in the performance of Services. Infringement of patent rights, copyrights, or other proprietary rights in the performance of this Agreement, if not the basis for indemnification under the law, shall nevertheless be considered a material breach of this Agreement.

**5.2.5 Penalties for Delayed or Denied Benefits Authorization or Payment**

(a) Denial/Delay of Benefits. Contractor shall be solely liable for all payments of penalty awards, required self-imposed penalties, interest, settlements of penalty claims and petitions for penalties, and regulatory fines, fees and assessments arising out of Contractors' negligent or unreasonable denial, unreasonable or negligent delay, or other late or untimely provision of workers' compensation benefits to Claimants in Contractor's performance of the Agreement. Such penalties shall include, but are not limited to, penalties and fees arising under the California Labor Code and the California Code of Regulations.

(b) Denial/Delay of Interest Payments. Contractor shall be solely liable for all payments of penalty awards, required self-imposed penalties, interest, and settlements of penalty claims and petitions for all penalties and regulatory fines and assessments arising out of Contractors' unreasonable or negligent denial of or late payment of interest on delayed workers' compensation benefits to Claimants arising out of Contractor's performance of the Agreement. Such penalties include but are not limited to penalties and fees arising under the California Labor Code and the California Code of Regulations.

(c) Confirmation of Claimant's Weekly Wages. Contractor is solely liable for all payments of penalty awards, required self-imposed penalties, interest, settlements of penalty claims and petitions for all penalties, and regulatory fines and assessments arising out of Contractors' failure to determine a Claimant's average weekly wage as of the date of injury and at the time that wage-loss benefits are requested. Such penalties and fees include but are not limited to penalties arising under the California Labor Code and the California Code of Regulations.

**(d)** Late Payment of Bills. Contractor shall be solely liable for all payments of penalty awards, required self-imposed penalties, interest, settlement payments of penalty claims and petitions for all penalties, and regulatory fines and assessments arising out of Contractors' failure to pay bills and invoices of medical service providers within the time requirements of the California Labor Code, California Code of Regulations, and WCAB Rules unless such late payment or delay is caused by either the City's Bill Review Service vendor or its Utilization Review vendor.

**(e)** Contractor shall report all payments of penalties and interest to City on a monthly basis. Contractor shall reimburse City on a monthly basis for all such penalty and interest payments made with City funds.

**(f)** Failure to Timely Deny Claim. Contractor's timely determination of claim compensability is an essential function and duty that is necessary and material under the Agreement. Contractor shall indemnify and reimburse the City for all costs of claims (including but not limited to indemnity, medical care and associated allocated expenses) that become compensable by operation of law, when such compensability was caused by Contractor's failure to meet a mandated deadline for delaying or denying a claim (including, but not limited to, application of the 90-day provision of the California Labor Code), and such claim would not otherwise have been compensable. Determination of whether a claim would otherwise have been compensable shall be determined by an independent third party selected by the mutual agreement of the parties.

**(g)** Sanctions, Attorneys' Fees and Costs. Contractor is liable for any sanctions and costs awarded to a Claimant arising out of Contractor's negligent performance of the Agreement. Such sanctions and costs shall include, but are not limited to, sanctions and costs that the WCAB may award under the California Labor Code, the California Code of Regulations, and the WCAB Rules.

**(h)** Overpayment of Indemnity. Contractor is liable for and must reimburse City for overpayments of temporary disability indemnity where Contractor negligently continues to pay temporary disability indemnity to a Claimant in the face of an uncontested medical report determining Claimant to be permanent and stationary, or where Contractor has negligently continued to pay temporary disability indemnity in the face of a written notice that the Claimant has returned to work. Contractor is liable for and must reimburse City for overpayments of permanent disability indemnity where Contractor has negligently failed to estimate reasonably a Claimant's level of permanent disability or has failed to rate properly a medical report listing factors of permanent disability.

**(i)** Failure to Issue/Late Issued Return to Work Notices. Contractor shall be liable and shall reimburse the City for the monetary difference in awards where, but for Contractor's failure to timely issue a return to work notice, the City would have been entitled to a reduction in liability for benefits under Labor Code 4658(d), or where Contractor's failure to

timely issue a return to work notice caused the City to pay benefits that it would have otherwise avoided under Labor Code 4658(d).

(j) **Failure to Issue/Late Issued Supplemental Job Displacement Vouchers.** Contractor shall be liable and shall reimburse the City for any penalties, payments, and/or any and or litigation costs incurred by the City arising from Contractor's late issuance of Supplemental Job Displacement Vouchers as required by Labor Code sections 4658.5 (b) and 4658.7(b).

(k) **Late Payment of Medical Bills.** Contractor shall pay uncontested medical bills within the time frames established by the California Labor Code and any other California Workers' Compensation laws. Contractor shall pay with its own funds any penalties or fines assessed against Contractor by the DWC Audit Unit, or resulting from Contractor's delay in paying within state-mandated time limits.

(l) **Contractor Not Liable for Errors and Omissions of Previous TPA.** Contractor shall not be liable for penalties (including but not limited to penalties set out in the California Labor Code) assessed in claim for late incorrect payment of benefits or medical services invoices arising from the errors and omissions of a previous TPA Contractor that managed the claim prior to the Effective Date of this Agreement, except where the Contractor was the previous TPA). However, Contractor shall immediately inform the City if it discovers such errors and omissions of a previous TPA, and shall confer with City as to how to remedy those errors and omissions.

(m) **Disputes Concerning Contractor's Liability.** If Contractor believes that a penalty, interest payment, sanction, fine or allocated expense is the responsibility of City under this Agreement, Contractor shall promptly provide City with a written explanation. City and Contractor shall attempt to resolve disputes concerning their respective responsibility for claims, penalties, interest payments, sanctions, fines and allocated expenses under the Agreement by informal negotiation prior to pursuing legal remedies.

## **Article 6 Liability of the Parties**

**6.1 Liability of City.** CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN THIS AGREEMENT IN APPENDIX B OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT

**6.2 Liability for Use of Equipment.** City shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or any of

its subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by City.

**6.3 Liability for Incidental and Consequential Damages.** Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions.

## **Article 7 Payment of Taxes**

**7.1** Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Services delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by the City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

**7.2** Contractor acknowledges that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

**7.2.1** Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest.

**7.2.2** Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

**7.2.3** Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

**7.2.4** Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

## **Article 8 Termination and Default**

### **8.1 Termination for Convenience**

**8.1.1** City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor not less than 90 days written notice of termination. The notice shall specify the date on which termination shall become effective.

**8.1.2** Upon receipt of the notice of termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties (including but not limited to workers' compensation Claimants, medical services providers, outside service providers, and subcontractors) as a result of the termination of this Agreement. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:

(a) Halting the performance of all Services under this Agreement on the date(s) and in the manner specified by the City.

(b) Terminating all existing orders and subcontracts, and not placing any further orders or subcontracts for materials, Services, equipment or other items.

(c) At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(d) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

(e) Completing performance of any Services that City designates to be completed prior to the date of termination specified by City.

(f) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.

**8.1.3** Within 30 days after the specified termination date, Contractor shall submit to City an invoice, which shall set forth each of the following as a separate line item:

(a) The reasonable cost to Contractor, without profit, for all Services prior to the specified termination date, for which Services City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of ten percent of Contractor's direct costs for Services. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

(b) A reasonable allowance for profit on the cost of the Services described in the immediately preceding subsection (a), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all Services under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

**8.1.4** Thirty (30) days prior to the expiration of this Agreement, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to minimize the liability of Contractor and City to Claimants and to other third parties as a result of termination or expiration of the Agreement, including those actions described in the immediately preceding section.

**8.1.5** In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the date this Agreement expires or the termination date specified by City, except for those costs specifically enumerated and described in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.3.

**8.1.6** In arriving at the amount due to Contractor under this Section, City may deduct: (i) all payments previously made by City for Services covered by Contractor's final invoice; (ii) any claim which City may have against Contractor in connection with this Agreement; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 8.1.4; and (iv) in instances in which, in the opinion of the City, the cost of any Service performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Services, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

**8.1.7** City's payment obligation under this Section shall survive termination of this Agreement.

## **8.2 Termination for Default; Remedies.**

**8.2.1** Each of the following shall constitute an immediate event of default ("Event of Default") under this Agreement:

(a) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

- |           |                          |
|-----------|--------------------------|
| 3.5       | Submitting False Claims. |
| 4.5       | Assignment               |
| Article 5 | Insurance and Indemnity  |

Article 7	Payment of Taxes
10.5	Maintenance, Protection and Ownership of Confidential Information
10.11	Alcohol and Drug-Free Workplace
10.14	Working with Minors
11.11	Compliance with Laws

**(b)** Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default continues for a period of ten days after written notice thereof from to Contractor.

**(c)** Contractor (i) is generally not paying its debts as they become due; (ii) files, or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction; (iii) makes an assignment for the benefit of its creditors; (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property; or (v) takes action for the purpose of any of the foregoing.

**(d)** A court or government authority enters an order (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (iii) ordering the dissolution, winding-up or liquidation of Contractor.

**8.2.2** On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City.

**8.2.3** All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive

any other remedy. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

**8.2.4** Any notice of default must be sent by registered mail to the address set forth in Article 11.

**8.3 Non-Waiver of Rights.** The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

**8.4 Rights and Duties upon Termination or Expiration.**

**8.4.1** This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

- 3.3.3 Payment Limited to Satisfactory Services
- 3.3.7(a) Getting Paid for Goods and/or Services from the City
- 3.4 Audit and Inspection of Records
- 3.5 Submitting False Claims
- Article 5 Insurance and Indemnity
- 6.1 Liability of City
- 6.3 Liability for Incidental and Consequential Damages
- Article 7 Payment of Taxes
- 8.1.7 Payment Obligation
- 9.1 Ownership of Records and Results
- 9.4 Works for Hire
- 10.5.1 Proprietary or Confidential Information of City
- 11.6 Dispute Resolution Procedure
- 11.7 Agreement Made in California; Venue
- 11.8 Construction
- 11.9 Entire Agreement
- 11.11 Compliance with Laws
- 11.12 Severability

**8.4.2** Subject to the survival of the Sections identified in Section 8.4.1 above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City.



## **Article 9      Rights In Deliverables**

**9.1      Ownership of Records and Results.** Any Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media, claims records and files, payment records, medical records, City employees' personnel records, or other documents prepared by Contractor or its subcontractors (collectively "Records"), shall upon their creation become the property of the City. Contractor and its subcontractors shall have no title, interest or claim to the Records.

**9.2      Transmission of Records.** If the City so directs, Contractor shall transmit said Records to the City without condition or delay. Contractor's or any subcontractor's refusal to release any Records as directed by the City for any reason, including but not limited to any dispute as to payment for Services, shall be a material breach of this Agreement for which the City may immediately pursue any legal or equitable remedy.

**9.3      Retention of Records.** Unless expressly prohibited elsewhere in this Agreement, Contractor may retain and use copies of those Records that do not contain confidential personnel or medical information for reference and as documentation of its experience and capabilities.

**9.4      Works for Hire.** If, in connection with Services, Contractor or its subcontractors creates Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works shall be the property of the City. If any Deliverables created by Contractor or its subcontractor(s) under this Agreement are ever determined not to be works for hire under U.S. law, Contractor hereby assigns all Contractor's copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon subcontractor(s). With City's prior written approval, Contractor and its subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

## **Article 10      Additional Requirements Incorporated by Reference**

**10.1      Laws Incorporated by Reference.** The full text of the laws referenced in this Agreement, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at [www.sfgov.org](http://www.sfgov.org) under "Government."

**10.2      Conflict of Interest.** By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1,

Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

**10.3 Prohibition on Use of Public Funds for Political Activity.** In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

**10.4 Labor Code and Workers' Compensation Regulations.** Contractor shall perform the Services in accordance with all applicable Codes, including but not limited to the requirements of the California Labor Code and the Workers Compensation Rules and Regulations, as those Codes may be amended. Contractor shall immediately inform the City in writing if it determines that there is any conflict between the requirements of this Agreement and any applicable Code.

### **10.5 Maintenance, Protection and Ownership of Confidential Information**

**10.5.1 Proprietary or Confidential Information of City.** Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor will have access to private or confidential information which is or may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City or its employees. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in performance of the Services. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or confidential data.

**10.5.2 Litigation by the City Attorney, and Privileged and Confidential Communications and Information.** Contractor understands and agrees that, in the performance of the work or Services under this Agreement or in contemplation thereof, Contractor shall interact with the City Attorney's Office and may have access to privileged and/or private and/or confidential information which may be subject to, among other protections, the attorney-client privilege and/or work-product privilege. Contractor shall not disclose such information without the express written authorization and consent of the City Attorney. Should Contractor make any such disclosure at any time and/or for any reason without obtaining prior written authorization and consent by the City Attorney, Contractor shall be liable for any and all resulting damages and shall defend and indemnify the City to the fullest extent of the law.

### **10.5.3 Confidential City Data, Records and Employee Privacy.**

Contractor understands and agrees that, in the performance of the Services to be provided under this Agreement or in contemplation thereof, Contractor will have access to private or confidential information concerning City employees, injuries, and accidents, including but not limited to employee medical records, personnel documents and records, injury reports and data, incident and/or accident reports and data. Contractor agrees that it shall maintain such records in the strictest confidence and privacy. Contractor shall impose these same requirements on its employees and subcontractors that it assigns to perform the Services under this Agreement. Contractor shall require each of its employees performing work under this Agreement to execute

a Confidentiality Agreement using the form set out in "Appendix C," which is incorporated by reference as though fully set forth herein.

#### **10.5.4 Confidentiality of Medical Information**

Contractor agrees that in performance of the Agreement, it will comply with and abide by California Labor Code section 3762(c), which states:

"An insurer, third-party administrator retained by a self-insured employer pursuant to Section 3702.1 to administer the employer's workers' compensation claims, and those employees and agents specified by a self-insured employer to administer the employer's workers' compensation claims, are prohibited from disclosing or causing to be disclosed to an employer, any medical information, as defined in subdivision (b) of Section 56.05 of the Civil Code, about an employee who has filed a workers' compensation claim, except as follows: 1) Medical information limited to the diagnosis of the mental or physical condition for which workers' compensation is claimed, and the treatment provided for this condition, and 2) Medical information regarding the injury for which workers' compensation is claimed that is necessary for the employer to have in order for the employer to modify the employee's work duties."

**Except as to those employees and agents identified in writing by the City as authorized to administer its workers' compensation claims, Contractor shall not provide to any other City employees, departments, agents and/or representatives access to information in violation of California Labor Code section 3762(c).**

Contractor acknowledges and understands that the Office of the City Attorney and City personnel identified by the SFMTA and DHR as authorized to receive information concerning City employees' workers' compensation claims are not subject to the limitations of Labor Code Section 3762(c). Contractor shall therefore provide to Deputy City Attorneys and their staff and/or designees full and unrestricted access to any and all information, files, documents, and reports in Contractor's possession concerning any City employee.

#### **10.6 Nondiscrimination Requirements**

**10.6.1 Non Discrimination in Contracts.** Contractor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

**10.6.2 Nondiscrimination in the Provision of Employee Benefits.** Contractor does not as of the date of this Agreement, and shall not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

**10.7 Local Business Enterprise and Non-Discrimination in Contracting Ordinance.**

Contractor shall comply with all applicable provisions of Chapter 14B (“LBE Ordinance”). Contractor is subject to the enforcement and penalty provisions in Chapter 14B. Contractor shall utilize LBE Subcontractors to perform the Services when the Contractor needs to procure goods or services from a third party where: (1) no subcontractor to provide the goods or services is listed in the Agreement or was listed in the Contractor’s Proposal submitted in response to the RFP), or (2) no vendor to provide the goods or services has been designated by the City. This requirement applies only to entities that are subcontracted to Contractor to perform those Services that the Contractor may otherwise perform itself. Contractor’s selection of treating physicians, other medical services providers, vocational rehabilitation service providers, and medical-legal evaluators are exempt from the requirements of this section 10.7.

**10.8 Minimum Compensation Ordinance.** Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. By signing and executing this Agreement, Contractor certifies that it is in compliance with Chapter 12P.

**10.9 Health Care Accountability Ordinance.** Contractor shall comply with San Francisco Administrative Code Chapter 12Q. Contractor shall choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q.

**10.10 First Source Hiring Program.** Contractor shall comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and Contractor is subject to the enforcement and penalty provisions stated in Chapter 83.

**10.11 Alcohol and Drug-Free Workplace.** City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City’s ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

**10.12 Limitations on Contributions.** By executing this Agreement, Contractor acknowledges that it is familiar with Section 1.126 of the City’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a

board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

**10.13 Reserved. (Slavery Era Disclosure)**

**10.14 Reserved. (Working with Minors)**

**10.15 Consideration of Criminal History in Hiring and Employment Decisions**

**10.15.1** Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code ("Chapter 12T"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. A partial listing of some of Contractor's obligations under Chapter 12T is set forth in this Section. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

**10.15.2** The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to Claimants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

**10.16 Reserved. (Public Access to Nonprofit Records and Meetings)**

**10.17 Food Service Waste Reduction Requirements.** Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

**10.18 Reserved. (Sugar-Sweetened Beverage Prohibition)**

**10.19 Tropical Hardwood and Virgin Redwood Ban.** Pursuant to San Francisco Environment Code Section 804(b), the City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

**Article 11 General Provisions**

**11.1 Notices to the Parties.** Unless otherwise indicated in this Agreement, all written communications sent by the Parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To City: City and County of San Francisco  
Department of Human Resources  
Workers' Compensation Division  
Attention: Peggy Sugarman, Workers' Compensation Director  
One South Van Ness Avenue, 4<sup>th</sup> Floor  
San Francisco, CA 94103  
email: [peggy.sugarman@sfgov.org](mailto:peggy.sugarman@sfgov.org)

and San Francisco Municipal Transportation Agency  
Workers' Compensation Program  
Attention: Dan Roach, Program Manager  
One South Van Ness Avenue, 6<sup>th</sup> Floor  
San Francisco, CA 94103  
email: [Dan.Roach@sfmta.com](mailto:Dan.Roach@sfmta.com)

To Contractor: Agnes Hoerberling  
Chief Operations Officer  
Intercare Holdings Insurance Services, Inc.  
6020 West Oaks Blvd., Suite 100  
Rocklin, CA 95765  
email: [ahoerberling@intercareins.com](mailto:ahoerberling@intercareins.com)

Any notice of default must be sent by registered mail. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

**11.2 Compliance with Americans with Disabilities Act.** Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

**11.3 Reserved. (Payment Card Industry (PCI) Requirements)**

**11.4 Sunshine Ordinance.** Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to

the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

**11.5 Modification of this Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, (except as noted in Section 4.1.2 (“Service Instructions”) and Section 11.1 (“Notices to Parties”), except by written instrument executed and approved as required by City law and under the policies of the SFMTA Board of Directors. Contractor shall cooperate with the City to submit a CMD Contract Modification Form to the CCO any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20 percent.

**11.6 Dispute Resolution Procedure.**

**11.6.1 Negotiation; Alternative Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of the Services. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.35, Contractor may submit to the City a written request for administrative review and documentation of the Contractor’s claim(s). Upon such request, the City shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed alternative dispute resolution process. If the parties do not agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Each Party shall bear its own legal costs and fees for any dispute claim or lawsuit between City and Contractor.

**11.6.2 Government Code Claim Requirement.** No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor’s compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

**11.7 Agreement Made in California; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco, California.

**11.8 Construction.** All paragraph captions are for reference only and shall not be considered in construing this Agreement. For avoidance of doubt, in any provision of this Agreement where the party responsible for an action or other obligation is not clearly stated, the Contractor shall be deemed to be the responsible party. The City shall be deemed the party responsible for an action or other obligation only where the Agreement expressly so provides.

**11.9 Entire Agreement .** This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5, “Modification of this Agreement.” This agreement may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

**11.10 Workers’ Compensation Laws.** Contractor shall perform the Services in accordance with all applicable Codes, as defined herein, including but not limited to the laws and regulations of the State of California, the requirements of the Division of Workers’ Audit Unit, the Office of Self-Insured Plans, and the California Labor Code, the California Code of Regulations, the Rules of the Workers’ Compensation Appeals Board (“WCAB”), and any other applicable state or federal laws or regulations, as any may be amended during the term of this Agreement.

**11.11 Compliance with Laws.** Contractor shall keep itself fully informed of the City’s Charter, codes, ordinances and duly adopted rules and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all other applicable laws, as they may be amended from time to time.

**11.12 Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

**11.13 Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of City and Contractor, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

**11.14 Order of Precedence.** Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement (and it’s Included Appendices). Should there be a conflict of contractual requirements, the following order of precedence shall apply:

- a. Terms and Conditions of the Agreement (this document)
- b. Appendix A to this Agreement



- c. Other Included Appendices
- d. Client Service Instructions
- e. Task Orders

**11.15 Approval by Counterparts** This Agreement may be executed in several counterparts, each of which shall be an original, all of which shall be read together and constitute but one and the same instrument.

## **Article 12 MacBride Principles**

**12.1 MacBride Principles -Northern Ireland.** The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

## **Article 13 Large Vehicle Driver Safety Training Requirements**

**13.1** Contractor agrees that before any of its employees and subcontractors drive large vehicles within the City and County of San Francisco, those employees and subcontractors shall successfully complete either (a) the SFMTA’s Large Vehicle Urban Driving Safety training program or (b) a training program that meets the SFMTA’s approved standards for large vehicle urban driving safety. The SFMTA’s approved standards for large vehicle urban driving safety is available for download at [www.SFMTA.com/largevehicletainingstandards](http://www.SFMTA.com/largevehicletainingstandards). This requirement does not apply to drivers providing delivery services who are not employees or subcontractors of the Contractor. For purposes of this section, “large vehicle” means any single vehicle or combination of vehicle and trailer with an unladen weight of 10,000 pounds or more, or a van designed to carry 10 or more people.

**13.2** By entering into this Agreement, Contractor agrees that in the event the Contractor fails to comply with the Large Vehicle Driver Safety Training Requirements, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of up to One Thousand Dollars (\$1,000) per employee or subcontractor who is permitted to drive a large vehicle in violation of these requirements is not a penalty, but is a reasonable estimate of the loss that City will incur based on the Contractor’s failure to comply with this requirement, established in light of the circumstances existing at the time this Contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor’s failure to comply.

*The remainder of this page has been intentionally left blank.*

## **Article 14    Included Appendices**

The documents listed below are attached to this Agreement as Appendices and are incorporated to this Agreement by reference.

Appendix A - Scope of Services

Appendix B - Calculation of Charges

Appendix C - Confidentiality Agreement

Appendix D - Contractor Staffing Chart

Appendix E – Client Service Instructions

Appendix E-1            DHR Service Instructions

Appendix E-2            SFMTA Service Instructions

*The remainder of this page has been intentionally left blank.*

**IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date of Board of Supervisors' approval stated below.**

<b>CITY</b>	<b>CONTRACTOR</b>
<p><b>Department of Human Resources</b> Recommended by:</p> <hr/>	<p><b>Intercare Holdings Insurance Services, Inc.</b></p> <hr/>
<p>Micki Callahan Human Resources Director</p>	<p>Agnes Hoerberling Chief Operations Officer Intercare Holdings Insurance Services, Inc. 6020 West Oaks Blvd., Suite 100 Rocklin, CA 95765</p>
<p><b>Office of Contracts Administration</b> Approved by:</p> <hr/>	<p><u>Acknowledgement of Large Vehicle Driver Safety Training Requirements:</u></p>
<p>Jaci Fong Director of the Office of Contract Administration, and Purchaser</p>	<p>By signing this Agreement, Contractor acknowledges that it has read and understands Article 13: Large Vehicle Driver Safety Training Requirements.</p>
<p><b>San Francisco Municipal Transportation Agency</b></p> <hr/>	<p>City vendor number: <b>59287</b></p>
<p>Edward D. Reiskin Director of Transportation</p>	
<p>Approved as to Form:</p>	
<p>Dennis J. Herrera City Attorney</p>	
<p>By: _____ Robert K. Stone Deputy City Attorney n:\ptc\as2017\1000469\01183336.docx</p>	
<p>By: _____ Cecilia Mangoba Deputy City Attorney</p>	

AUTHORIZED BY:  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

Resolution No: \_\_\_\_\_

Adopted: \_\_\_\_\_

Attest: \_\_\_\_\_

Roberta Boomer, Secretary

Board of Supervisors

Resolution No: \_\_\_\_\_

Adopted: \_\_\_\_\_

Attest: \_\_\_\_\_

Clerk of the Board

## **Appendix A Scope of Services**

### **1. SUMMARY DESCRIPTION OF SERVICES**

**1.1 Inclusive Services.** Contractor shall on behalf of the City manage all existing workers' compensation claims and any workers' compensation claims filed during the term of the Agreement (collectively "Claims") from employees of the Assigned Departments listed in Section 1.3. The Services include but are not limited to:

- a.** New claims intake and claims investigations to determine compensability;
- b.** Estimating claims value, calculating required reserves, issuing benefits and services payments, and pursuing off-sets and recoveries;
- c.** Medical costs containment and service enhancement, including appropriate referrals to medical case management, triage and telemedicine services, and pharmacy management programs;
- d.** Subrogation and claims investigations related to subrogation;
- e.** Submitting reports to the State of California and excess insurance providers;
- f.** Negotiations and settlement of claims (within limits pre-approved by the City);
- g.** Litigation support, including but not limited to attendance at Workers' Compensation Appeals Board hearings, as directed by the City Attorney;
- h.** Coordination of independent medical exams and rehabilitation services;
- i.** Claims data administration, maintenance and reporting;
- j.** Identification and investigation of potential workers' compensation fraud with appropriate referral to the City's contracted fraud investigation provider and District Attorney's office.

Contractor shall perform the Services described in this Agreement any other ancillary tasks or work (that is, tasks that are necessary for the performance of the Services and that in the industry would be expected to be assigned to a third party claims administrator or that is otherwise incidental to the performance of the Services). On an as-needed basis, the City may direct the Contractor to perform additional work by issuing Task Orders, as provided in Article 9 of this Appendix A, and Section 4.1.4.

#### **1.2 Purpose and Objectives of Agreement.**

The purpose and objectives to be achieved by Contractor's performance of the Services are:

- a.** Timely administration, processing and adjustment of claims and related liens;
- b.** Responsive, timely claims handling, assistance and communications with City staff and Applicants and/or their representatives from start to end of a claim;
- c.** Identification of potentially fraudulent claims and notification to the City of those claims;
- d.** Cooperative assistance and litigation support to the City Attorney in all litigated Claims;
- e.** Demonstrable cost containment and claim closure performance;

- f. Improvements in claim management and resolution efficiency through the application of technology and sound claims management and business practices;
- g. Ongoing recommendations for improvements in workers' compensation claims management including assessment of preventable injuries based on claim frequency and severity;
- h. Complete data analysis including monthly reporting in Excel, PowerPoint and other formats as directed by the City;

**1.3 Assigned Departments.** Contractor shall provide the Services for worker's compensation claims brought by employees of the following City departments ("Assigned Departments"). The Assigned Departments are:

<b>Dept. #, Department Name</b>
003 City Attorney
081 Community Health Network
033 Human Resources
082 Population Health and Prevention
090 Public Works
042 Recreation & Parks
068 SFMTA

With the exception of the SFMTA, the City may, in its sole discretion, add or delete departments or individual claims or types of claims from the list of Assigned Departments. Deleted Assigned Departments and claims will be transferred to DHR's in-house claims administration. The City will provide Contractor not less than 90 days' notice prior to adding or deleting Assigned Departments. No notice is required to transfer individual claims.

**1.4 Department Liaisons.** Contractor's work for all Assigned Departments, with the exception of SFMTA, shall be coordinated through the City's Liaisons, who shall have the authority to direct Contractor as to all matters concerning the Services and this Agreement. DHR's Liaison is the Director of DHR's Workers' Compensation Division, Peggy Sugarman or her designee. DHR's Liaison for purposes of contract administration shall be its Deputy Director of Finance and Information Technology. The SFMTA's Liaison is the SFMTA's Workers' Compensation Program Manager, Dan Roach.

## **2.0 CLAIMS MANAGEMENT PROCEDURES AND SERVICES**

**2.1 Claims Manual and Client Service Instructions.** Contractor shall manage all claims in accordance with the requirements and standards set out in this Scope of Work (Appendix A) and Client Service Instructions (Appendix E). Contractor may use its own Claims Manual as guidance to claims supervisors and Claims Examiners as Contractor's means and methods for performing the Services, provided that Contractor's Claims Manual does not conflict with the requirements and procedures set out in this Agreement. Contractor shall immediately notify the City in writing of any changes to the Contractor's Claims Manual. Where Contractor's Claims Manual differs from the requirements and procedures described in this Agreement, this Agreement shall control.

## 2.2 Staffing Organization and Performance

As illustrated in the Staff Chart appended to this Agreement as Appendix D, the Contractor shall:

- a. Provide a dedicated unit to manage the City's workers' compensation claims with separate Claims Examiners and supervisors dedicated solely to SFMTA and DHR claims, respectively.
- b. Provide an experienced, dedicated account manager (or program manager) to provide oversight to the management of City (DHR and SFMTA) claims.
- c. Claims personnel assigned to the Services shall have the following minimum experience:
  1. Claims Supervisors must have at least one year of experience supervising claims for public employers, a minimum of five years' experience in adjusting indemnity claims under the California Labor Code, and certification in accordance with the requirements of the California Department of Insurance.
  2. Senior Claims Examiners must have a minimum of five years of experience in adjusting indemnity claims under the California Labor Code and certification in accordance with the requirements of the California Department of Insurance.
  3. Claims Examiners (non-senior) must have a minimum of three years of experience in adjusting indemnity claims under the California Labor Code and certification in accordance with the requirements of the California Department of Insurance.
  4. Claims Assistants assigned to provide support to claim examiners must have a minimum of one year of experience as claims assistants in the California workers' compensation system.
- d. At all times provide sufficient personnel to perform the Services, irrespective of labor strikes, unrest, or planned and unplanned absences.
- e. Maintain an average caseload of open, active indemnity claims for each Senior Claims Examiner and Claims Examiner of no greater than 125 SFMTA claims and 135 DHR claims. For purposes of calculating Claims Examiner caseload limits, any open claim with a provision for future medical care or with medical treatment only shall be counted as one-half a claim. If a claims examiner's caseload exceeds either 125 for SFMTA or 135 for DHR open, active indemnity claims for 90 consecutive days, the parties shall meet and confer within 30 days to establish a plan to reduce Claims Examiner caseload size below those caseload limits. If caseloads drop due to a reduction in active claims, the City may require Contractor to reduce personnel assigned to City claims, with 60 days' notice to Contractor. The Annual Fee will be reduced on a pro rata basis based on the reduction in personnel assigned, calculated using the rates set out in Appendix B. (See also Section 3.8.)

- f. Provide direct Claims Supervisors at a ratio of one Claims Supervisor to no more than four Claims Examiners.
- g. Provide a ratio of support staff not more than four Claims Examiners to one Claims Assistant.
- h. Obtain prior written authorization from City for any and all staffing structure changes, including, but not limited to temporary assignments, new hires, promotions, staff departures, and coverage for planned staff absences. Provide a staffing plan for performance of the Services for City review and approval at least five business days prior to making staff changes.
- i. Ensure that Claims Supervisors adjust claims identified by the Program Manager for special handling, such as claims involving HIV, Hepatitis, or potential conflict of interest cases, or claims presenting other factors of complexity and/or high-liability for which a Senior Claims Examiner or Claims Examiner would not be qualified. Claims Supervisors shall not adjust more than twenty (20) open claims without written authorization from the City.
- j. The City may for any reason direct Contractor to remove (reassign from working on City or SFMTA claims) any of its claims personnel from the Services and to replace removed personnel with qualified personnel, who shall be subject to the City's approval.
- k. SFMTA Claims Assignment. Contractor shall assign caseload by SFMTA Division on the SFMTA Program instead of splitting the claims alphabetically by the name of the injured worker.

### **2.3 Performance Standards; Communications and Reporting**

The Contractor shall:

- a. Respond to phone or e-mail communications from the City within one business day, and respond to written communications from any person or entity within five business days.
- b. Manage all City workers' compensation claims from an office located within a 150-mile radius of San Francisco.
- c. Make records available within one business day for audit, as requested by the City and by state agencies charged with enforcement of the provisions of the California Labor Code.
- d. Meet with the City's Authorized Representatives upon request and at regularly scheduled times to be determined by the City to discuss cases selected by the City and/or Contractor as requiring special attention.
- e. Conduct a quarterly claim review with specified City Departments to review claims identified by the City.
- f. Submit a written quarterly report, or as indicated below, on the following metrics:



1. High exposure claims (i.e., claims in which the City's current or anticipated liability is valued at more than \$100,000 in net combined costs of PD, TD and medical treatment.).
  2. New claim volume and closures.
  3. Claim cost analytics, (i.e., analysis of trends including medical claims, indemnity claims, or expenses, and claim cost metrics such as new claims, average cost per claim, total claim costs, and other expenditures that drive claims costs).
  4. Claims delayed in quarter.
  5. Claims denied in quarter.
  6. Caseload staffing and caseload mix.
  7. Contract compliance and performance metrics in meeting Program objectives, including reduction of the City's workers' compensation costs, lost time, and number of claims filed.
  8. Statistical information, analyses and recommendations pertaining to proposed legislation or rules and regulations that may affect the City's workers' compensation Program and costs.
  9. Monthly reports that will include data on loss control/statistical analysis, payments, recoveries and cost allocation by City departments.
  10. Estimated value (of medical and disability benefits) of each active claim and required reserves.
- g. Meet with the City and physician members or representatives of the Medical Provider Network, as required by the Agreement or directed by the City to ensure effective communication.
  - h. Prepare and handle correspondence and communication with Claimants, medical providers, attorneys and City, state and federal agencies.
  - i. Prepare and submit timely reports to City, state and federal agencies as required by Code and other requirements.
  - j. Notify the State of California's Office of Self Insurance Plans of any change of Third Party Administrator, as required by California Code of Regulations, upon expiration or termination of this Agreement.
  - k. Maintain and provide timely forms and benefit notices as required by applicable Codes.
  - l. Provide temporary disability benefit information as requested by City payroll personnel or the City Attorney.
  - m. Send copies of all DWC notices and Transitional Work letters to the appropriate City Liaison and its ADA Coordinator, and to the departmental workers' compensation coordinators for DHR-Assigned Departments.

## **2.4 Performance Standards; Communications and Reporting.**

a. Contractor shall accept direction only from the City's Authorized Representatives or other persons identified in written notice as authorized by the SFMTA and DHR, respectively. Contractor shall refer any requests for information or Services beyond those described in this Agreement that it may receive from individual City departments or employees to the City's Liaisons to confirm that the request or directive is authorized. If Contractor receives direction that it believes to be contrary to the requirements of any applicable Code, the terms and conditions stated in this Agreement, or industry best practices, Contractor shall immediately communicate its objections in writing to the appropriate City Representative, or to the Director of Transportation or the Director of the Department of Human Resources. The City Representative shall confirm or overrule the directive in writing. Contractor is not obligated to perform any task or action that it reasonably believes violates any applicable Code or other legal requirement where it has communicated that opinion in writing to the appropriate City Representative.

b. The City has engaged Contractor to perform the Services specifically described in this Agreement and other services commonly performed by workers compensation claims administrators in California. Contractor is responsible for and shall exercise its independent and best judgment in managing the workers compensation claims that the City may assign to it.

c. Contractor may rely on the direction of City Representatives and shall perform the Services as the City Representatives may direct. But if a City Representative directs Contractor to perform any action or task that Contractor believes to be: 1) outside the scope of the Services described in this Agreement or not commonly performed by workers compensation claims administrators in California; 2) prohibited or otherwise contrary to the terms and conditions of this Agreement; 3) contrary to Contractor's existing management practices and policies; or 4) prohibited by applicable Codes, Contractor shall object in writing to the City Representative who gave that direction and shall describe the specific grounds on which Contractor objects. If the City Representative confirms his/her direction in writing, Contractor may perform that action or task as directed, but the City shall not hold Contractor responsible for any penalty or liability arising from Contractor's performance of that action or task.

**2.5 Records Storage and Maintenance.** Contractor shall securely store and maintain all paper and electronic documents, files, reports and other records (collectively "Records") that it creates or that the City provides to it. Records the Contractor shall maintain include but are not limited to the following: Claims Examiner file notes, diaries, documentation of events and telephone calls, plans of action, reserves, and payment records of indemnity, medical, and all other claims expenditures. All Records created by Contractor in the course of performing the Services or provided by the City are the property of the City. Contractor shall not dispose of any Records without the prior express written authorization from the City. (See Article 8, Data Management.)

**2.6 Claims Management Software.** Contractor shall manage all claims under this Agreement using the claims management software "iVOS" provided by the City.

**2.7 New Claim Entry.** Contractor shall record, date-stamp and process claims data and complete all other new claim entry tasks within twenty-four (24) hours of receipt of notification of claim, Employer's First Report of Injury (FROI), or Doctor's First Report (whichever is received first). Contractor shall contact the employee, the employer and the medical treater (aka complete three-point contact) within twenty-four (24) hours of receipt of a new claim. Contractor shall establish claims reserves, Plans of Action, and complete entry of claims data

into claims database including all state mandated reporting codes within seven (7) business days of receipt of any first Notification of Claim, Employer's Report of Injury, or Doctor's First Report of Injury (whichever is received first).

**2.8 Causation Investigation.** Contractor shall investigate the cause of each injury/illness and determine if the injury/illness arose out of employment/course of employment, ("AOE/COE"). Contractor shall accept, delay or deny claims within the time limits required by applicable Codes.

**2.9 Compensability Determination.** Contractor shall determine the compensability of injuries and illnesses claimed by City employees in a timely, appropriate manner and in accordance with State of California Workers' Compensation laws. Contractor shall review all claims and notify the appropriate City representative when indicated for compensability determinations. Contractor shall complete a compensability template for each new claim with compensability issues outlined using a format provided by the City and submit within three days of receipt of claim to the designees for each Department. All delayed claims shall be reviewed with the appropriate Department Liaison prior to issuing a notice of acceptance or denial to the Claimant.

**2.10 Claims Diary.** Contractor shall establish and maintain a diary system utilizing the City's claims process and procedures (including workflow requirements and timelines) set forth in this Agreement Scope of Work to review all cases on a regular basis. Specifically, reviews shall be conducted and documented in the claim file as follows:

- a. Delayed claims shall be reviewed for status of discovery, denial or acceptance every fourteen (14) days;
- b. Claims in which temporary disability benefits are being paid shall be reviewed every third payment;
- c. Medical only claims shall be reviewed not less than every ninety (90) days;
- d. Claims in which permanent disability advances are being paid shall be reviewed not less than every thirty (30) days;
- e. All indemnity claims in which no indemnity is currently being paid shall be reviewed not less than every 45 days;
- f. Future medical claims (claims in which future medical care has been awarded) shall be reviewed not less than every 90 days;

**2.11 Claim Management Plan.** Contractor shall establish a Plan of Action ("POA") for the investigation, adjustment and prompt resolution of all indemnity cases as soon as possible, but not to exceed seven (7) business days from receipt of the first report of injury (DWC-1, Employer's Report, or Doctor's First Report of Injury, whichever is received first). Contractor shall clearly document the POA in the file and update the POA at a minimum of every 60 days until a settlement is reached and the claim is converted to a future medical claim, after which time update the POA at a minimum of every six (6) months. The POA shall be based upon the facts and complexities of each individual case.

**2.12 Claim Cost Estimates.** Contractor shall evaluate, maintain and adjust the estimated costs of all anticipated benefits and expenses on each individual case ("reserves"). Contractor shall establish initial reserves within two (2) business days of Contractor's receipt of the claim. Evaluate and adjust reserves within thirty (30) days of receipt of supporting documentation. Reserves shall take into consideration all potential payments. Contractor shall review all reserves for adequacy on a regular 45-day diary schedule and make adjustments, as necessary, to

reflect newly discovered information and/or adverse case developments. State in the claims notes the basis for all initial reserves, reserve revisions, and payments using the appropriate reserve analysis forms. Whenever there is a reserve change (by increase or reduction) of \$50,000 or more, obtain approval from the City and send the City an email reserve alert including explanation for the change within two (2) business days of the change.

**2.13 Claims Documentation.** Contractor shall meet all file content and documentation requirements of the DWC Audit Unit. Document all communications in each file, including all three-point contacts (employee, employer, and medical provider), phone conversations, discussions, and meetings held on each claim.

**2.14 Timely Payment and Notices.** Contractor shall issue all payments, notices of delay in decision, and compensability determinations in the manner and within the time limits required by applicable laws and regulations.

**2.15 Permanent/Stationary and Return to Work Notices.** Contractor shall notify City by e-mail within 48 hours of receipt of any medical report finding a City employee to be permanent and stationary and/or releasing a City employee to return to work. The purpose of said notice is to allow the City to return the employee to work as expeditiously as possible and determine what modifications or accommodations, if any, may be required to facilitate the employee's return to work.

**2.16 Document Match and Review Process.** Contractor shall match all priority mail, including but not limited to, Declarations of Readiness to Proceed, WCAB Awards and Orders, medical reports, and legal correspondence requiring immediate action to the claim file and review for appropriate action no later than the next calendar day following receipt. For all non-priority mail, match to claim file and review for appropriate action within 5 calendar days of receipt. All documents must be scanned and must be assigned to appropriate claim and category within two (2) business days of receipt.

**2.17 Missing DWC-1.** Where a DWC-1 claim form is not submitted with the Employers' Report, Contractor shall serve a claim form within one business day to the Applicant and note in the file that the form was served.

**2.18 Claim Resolution.** Contractor shall resolve claims based on the primary treating physician's reports when that report is credible and fully addresses all issues. Where it is not possible to resolve a claim using the treating physician's reports, Contractor shall utilize the medical-legal process as set out in this Agreement and mandated by applicable Codes.

## **2.19 Claims Settlement**

For each claim, Contractor shall:

- a.** Threshold Amount. Seek to negotiate and settle claims within the threshold amount(s) as provided by the City. Threshold amounts may be increased or decreased at the City's sole discretion.
- b.** Claim Settlement Valuation. Promptly make claims settlement evaluations, based on information included in the file and in accordance with industry standards. Emphasis shall be placed on early settlement of claims, in accordance with the authority levels as extended by the City.
- c.** Settlement Negotiations. Pursue settlement negotiations with the Claimant (or applicant's attorney where the Claimant is represented (prior to formal litigation before the WCAB).

- d. **Settlement Authority.** Contractor's requests for settlement authority must be submitted to the appropriate City Liaison no less than five (5) days prior to any Mandatory Settlement Conference if permanent disability is to be addressed. All requests for settlement authority shall be in writing in a format prescribed by City and shall include complete documentation of potential liability based upon all relevant evidence.

**2.20 Return to Work.** Contractor shall work closely with City's Transitional Work Coordinators to facilitate early and prompt return to work for all Claimants released to work with temporary work restrictions.

**2.21 Claims Closeout.** Contractor shall close claims no later than 30 days from the date that the Contractor identified the claim for closure.

**2.22 Paper Reduction.** Contractor shall Comply with City's policy to maximize paperless processing, including: (a) input of all documents into City's electronic claims management software, currently iVos, electronically; (b) index and assign documents to the proper claim; and (c) store documents in accordance with City guidelines.

**2.23 Applicable Authority.** Contractor shall review and adjust to final conclusion all claims in accordance with Code requirements.

**2.24 InterConnect Program.** To facilitate claims resolution, Claims Examiners and interested claimants (who are not represented by legal counsel) will meet monthly individually at a location to be determined by the City (monthly) to discuss benefits, settlement documents and/or any other concerns that the injured worker may have. Contractor shall meet with Claimants no less often than once per month for each of the Assigned Departments. Contractor shall distribute caseload by Assigned Departments to facilitate Interconnect meetings once per month.

### **3.0 MEDICAL CLAIMS AND COSTS MANAGEMENT**

**3.1 Medical Claims.** Contractor shall manage claims assigned to it to facilitate Claimants' receipt of necessary medical treatment, as required by applicable Codes and to control medical treatment costs. As described more particularly below, Contractor shall:

- a. Coordinate medical treatment cost containment efforts consistent with DHR and SFMTA's respective Utilization Review Plans mandated by Labor Code section 4610(b), as the DHR or SFMTA may amend their respective Plans from time-to-time.
- b. Identify claims appropriate for medical treatment utilization review, pharmacy benefit management, and medical case management.
- c. Review and analyze medical charges to confirm appropriate service descriptions, coding, and use of preferred provider billing networks.
- d. Identify claims for potential fraud investigation.
- e. Identify recovery opportunities, such as subrogation and apportionment.
- f. Minimize penalties for late payment or approval of benefits and medical treatment.
- g. Implement pharmacy benefit management services.

### **3.2 Medical Provider Network**

- a.** Contractor shall use best efforts to require all Claimants to select a treating physician from the list of approved physicians included in the City's Medical Provider Network ("MPN"), unless the Claimant properly predesignated a treating physician in accordance with applicable Codes or there are access issues that would legally allow the employee to choose a provider outside the MPN consistent with applicable Codes, including but not limited to Labor Code section 4616 et. seq. and applicable case law.
- b.** MPN Web Listing. Contractor shall include the City's MPN Administrator listings of MPN providers on the Contractor's website and shall ensure that all predesignation of treating physician documents are securely maintained and accessible to claims personnel.
- c.** Contractor shall provide administrative support to the City with the DWC and employees as the City may direct to support the management and maintenance of the City's MPN. Administrative support may include but is not limited to: 1) issuing at the City's direction required notices and reports to employees, medical service providers, and State agencies; 2) posting the City's MPN website and database on Contractor's website for the City; and 3) participating in the CCSF MPN Review Committee, and reporting to the City's MPN administrator service providers who are not complying with the requirements set forth in the CCSF MPN's Memorandum of Understanding. Contractor, shall manage medical treatment for all Claimants within the scope of the MPN as required by the MPN's rules and regulations.
- d.** Manage all claims in accordance with all CCSF/SFMTA policies, including utilization review and pharmacy benefit management.

### **3.3 Nurse Triage Services**

Contractor shall provide Nurse Triage Services as described below to reduce claim reporting lag, enable more timely delivery of benefits to injured workers, including directing medical treatment recommendations as indicated by the injured employee's injury and medical status.

- a.** Contractor shall provide qualified nurses, who will be available 24 hours per day, 7 days per week, via a telephone hotline.
- b.** Contractor shall provide and maintain a telephone hotline. Contractor will provide stickers, business cards and training materials informing City employees how to contact the hotline.
- c.** When an industrial injury or illness is not so severe that the injured worker requires transport to a medical facility, the Applicant and/or their supervisor will call the Workers' Compensation Injury Reporting Hotline to report the injury. Upon receipt of the call, the Triage Nurse shall conduct intake and enter the following data to establish a new claim:
  - 1.** Evaluate severity of the injury.
  - 2.** Assess signs and symptoms of injury.
  - 3.** Provide immediate treatment information (as would an advice nurse).
  - 4.** Record injury information and injured worker's medical history.

5. Assess treatment options.
6. Confer with telemedicine physician if indicated.
7. Provide self-care information to Claimant as appropriate and follow up with Claimant as to his/her condition the following day.
8. Identify nearest MPN physicians.
9. Coordinate referral to MPN physician, if treatment is necessary.
10. Provide initial return to work coaching.
11. Complete and distribute injury report to appropriate City Liaison and set up claim in iVOS.
12. Triage nurse, when not conducting new claim intake duties, shall be available to City/SFMTA for general medical inquiries.

**d. Triage Nurse Qualifications**

Triage services shall be performed only by persons licensed by the State of California as Registered Nurse who meets the following requirements:

1. Clinical training in emergency and trauma medicine, with emphasis on triage and industrial injuries. Preference given for persons who are Certified Emergency Nurse (CEN®).
2. Certification in industrial and orthopedic medicine.
3. Completion of courses in a cardiopulmonary resuscitation (CPR) and standardized Advanced Life Support (ALS) course.
4. Minimum of one year of experience as a Triage Nurse in a workers' compensation setting.

**3.4 Telemedicine Services**

- a. Contractor shall provide telemedicine services, available 24 hours per day, seven days per week, through a subcontracted emergency medicine physician, hospital emergency room or qualified industrial medicine clinic for City employees who do not have reasonably close access to local emergency medical treatment services. The City may require the Contractor to provide telemedicine services to City employees who are not employed by an Assigned Department.
- b. Medical practitioners who provide the telemedicine services shall be licensed to practice by the State of California and supervised by a physician who holds a certificate ("Board Certified") in emergency medicine issued by the State of California.
- c. Contractor shall develop Telemedicine Protocols for the City's review, comment and approval that will set out applicable procedures and standards. The Telemedicine Protocols will describe the claims and circumstances in which the Contractor will employ telemedicine services, and the procedures by which Contractor will obtain City approval for telemedicine services on a claim by claim basis.

- d. Contractor shall compensate the telemedicine service provider(s) in accordance with applicable fee schedule/payment agreement options in and the California Official Medical Fee Schedule or by separate prior agreement as provided in Labor Code section 5307.11 and approved by the City.

### **3.5 Medical Case Management**

- a. **Approved Vendors.** The Contractor shall refer claims for Medical Case Management only to vendors designated on the City's approved vendor list. Contractor shall employ or subcontract nurse case management services for claims that meet the referral guidelines (Red Flag criteria) set out below.

- b. **Claims to be Referred to Medical Case Management**

Contractor shall refer for medical case management services the following types of Claimants and claims:

1. Catastrophic injuries, including amputations, burns, fractures, head injuries, and spinal cord injuries.
2. Any claim in which the Claimant has required hospitalization or that involve a chronic serious disease that may complicate the treatment or recovery from the injury, such as diabetes, high blood pressure, obesity and high body mass index.
3. Any Claimant that has filed three or more prior workers' compensation claims in which Claimant received temporary disability and/or permanent disability benefits.
4. Any Claimant that presents complex medical issues, such as existing or past drug abuse, pre-existing medical conditions, multiple open claims to the same body part or related body parts, or pre-existing injuries (work-related and not work related) for which Claimant is receiving medical treatment
5. Claims alleging assault that have resulted in temporary disability of six weeks or more.
6. Claims that appear to overly utilize medical services, where prescribed medical treatment appears to be inappropriate to the alleged injury, where the prescribed treatment that appears to be only palliative or where treatment has been provided for longer than six months without improvement in condition.
7. Claims in which the treating physician has failed to provide timely status reports.
8. Any claim where the Claims Examiner believes the Claimant's medical or medical/psychological/social issues will interfere with appropriate treatment or delay appropriate recovery.

- c. **Claims That Should Not Be Referred**

Contractor shall not refer the following types of claims to medical case management services:



1. Minor Injuries (lacerations, sprains, first aid claims)
2. Claims that do not involve a claim temporary or permanent disability benefits (aka "medical-only claims)
3. Claims that the Contractor or City have not accepted as work-related (aka "delayed claims")
4. Claims that the Contractor or City has denied
5. Litigated claims in which the Claimant's attorney will not authorize the City to contact the Claimant or will not otherwise cooperate.
6. Cases where the safety of the nurse may be at risk.

### 3.6 Pharmacy Benefit Management Program

- a. **Program Structure.** Contractor shall implement and manage a Pharmacy Benefit Management Program ("Pharmacy Program") through Optum/Helios or other approved **subcontractor(s)** Pharmacy Benefit Manager(s) ("PBM"). The Pharmacy Program will provide Claimants with prescribed pharmaceuticals at retail pharmacies and mail order outlets, which the Contractor will provide through access to contracts between the PBM and pharmaceutical manufacturers and distributors.
- b. **Program Goals.** The purpose and goals of the Pharmacy Program are to ensure that Claimants timely receive authorized, prescribed medications, while providing substantial cost savings to the City.
- c. **Pharmacy Program Protocols:** Contractor shall within 30 days of the Effective Date of this Agreement provide the City with draft Pharmacy Program Protocols describing the procedures and means by which the PBM will establish and maintain the Pharmacy Program. The Pharmacy Program Protocols shall provide for, but shall not be limited to, the following:
  1. Process for approving prescribed medications
  2. Process to identify potential misuse of medications, especially opiates and other pain management medications and notify treating physician
  3. Review and clinical management of prescribed medications to ensure medications authorized are appropriate for the Claimant's injuries
  4. Routing of reports to appropriate Contractor personnel (such as the Claims Examiner, supervisor, and medical case manager)
  5. Formulary procedures
  6. Step Therapy
- d. **Pharmacy Program Features:**
  1. **Pharmacy Card:** Contractor shall provide a Pharmacy Card for each Claimant for whom medications are prescribed that will allow the Claimant to procure prescribed medications through retail pharmacies and mail order outlets without co-pay or other expense to the Claimant.
  2. **First Fill.** Contractor shall provide a "first fill" guarantee, so that a Claimant may receive a limited number of doses of a prescribed medication without first obtaining Contractor's approval. (If approval is

later denied, Contractor shall not be reimbursed the cost of the provided medication.)

3. **Access Controls.** The PBM and Contractor shall utilize software provided by the PBM to track Claimants' use of medications, with particular attention to opioids and other pain management drugs that are known to cause addiction or that have a commercial (street) resale value. Contractor shall closely track quantities of pain management medications prescribed by a treating physician, and shall monitor a Claimant's change in treating physician(s) and any additional or new pain medications that a new treating physician prescribes. Contractor shall confer with qualified medical personnel to determine whether the pain management medicines prescribed to any Claimant are indicated (that is, within accepted medical practice standards for the Claimant's injuries and complaints).
4. **PBM Reports.** Contractor shall no less often than monthly submit to Contractor a written report addressing the following issues:
  - a. Detail report of all Opioids prescribed by claim.
  - b. Date of prescription.
  - c. Disposition of prescription.
  - d. Action taken.
  - e. Claimant's medical and disability status.
5. **Data Reports and Sampling.** Contractor and the PBM shall not conduct any tests or create reports based on a statistical sampling of data that could reasonably be construed as a diagnostic test, without the informed consent of the Claimant.

**3.7 Ergonomic Evaluations and Equipment.** Contractor shall refer requests for work place and work station ergonomic evaluations and associated equipment to City Liaisons. Contractor shall not refer ergonomic evaluations or work station adjustments to outside vendors except as the City Liaisons may authorize in writing.

**3.8 Claims Transfer.**

- a. With 90 days' prior notice, DHR may at any time transfer claims to its in-house Claims Examiners. If the City transfer claims to its in-house Examiners, and that transfer reduces Claims Examiner caseloads so that a reduction in the Administrative Fee is warranted, as provided in Appendix A, Section 3.8 said fee adjustment shall be calculated using the rates set out in Appendix B at Section 6.
- b. In the event, DHR wishes to transfer additional claims to Contractor from DHR in-house Claims Examiners, the parties shall establish a date to take over such claims, which shall not exceed 90 days from date of notice of said transfer from City to Contractor.

#### **4.0 CLAIMS INVESTIGATION AND DISCOVERY STANDARDS**

Contractor shall refer claims for investigative services as described below, as warranted by the facts and circumstances of each claim where issues regarding compensability, subrogation or potential fraud are identified on any given claim; or where there are outstanding and unresolved issues that must be addressed to determine the claimant's eligibility for benefits; or as the City may also direct.

**4.1 Claims Investigation.** Contractor shall perform investigation tasks and services for each claim sufficient to verify that the Claimant is a City employee, that the claim arose out and occurred during the course of employment, and that medical treatment and/or disability benefits are warranted.

**4.2 Three Point Contact/Disability Status.** For every claim, with the exception of claims where medical care required was minor, (that is, treated and discharged from care with no follow-up or self-administered "first aid") Contractor shall establish a "three-point contact" via telephone between the claims examiner, the Applicant, the employer, and medical provider (treating physician) within 24 hours of Contractor's receipt of notice of claim. Contractor shall through that initial three-point contact and follow-up determine the following:

- a.** Confirm the injured worker's disability status with the treating physician (prior to authorizing any indemnity payment).
- b.** Confirm medical treatment provided, need for continuing medical treatment prognosis for return to work, full recovery, and anticipated date of permanent and stationary status.

**4.3 Questionable Claims.** Contractor shall refer for investigation each City workers' compensation claim in which there is any doubt as to industrial origin or causation (AOE/COE), pre-existing medical conditions, prior employment, prior workers' compensation claims, or other factors that may allow for denial or apportionment of a claim. Contractor shall itself commence investigation of every questionable claim by attempting to obtain witness statements from anyone who may have knowledge of the injury, including the Claimant, witnesses to the incident or accident that gave rise to the claim, co-workers, and supervisors, within ten calendar days of notice of claim to Contractor, unless the file reflects an explanation for unavoidable delay in obtaining those statements.

**4.4 Confirmation of Employment Status.** When Form 5020, Employer's First Report of Injury, does not accompany the DWC-1 Form (employee's Claim Form), Contractor shall verify that the Claimant is a City employee by contacting the appropriate City Liaison to confirm employment status prior to authorizing benefits, as well as to identify any potential issues known to the City.

**4.5 Insurance Index Searches.** Contractor shall for every claim perform an Insurance Index search for that Claimant. Where that search reveals prior claims, lawsuits or court actions that may relate to the injured worker's claim, Contractor shall obtain copies of the court records or claim records, and medical records.

**4.6 Investigation Criteria.** Where issues (questions) regarding compensability, subrogation or potential fraud are identified on a claim or claims, Contractor shall refer the claim(s) to an investigator.

**4.7 Reports from Treating Doctors.** If disability continues for more than 21 days, obtain a medical report at a minimum of every 45 days to justify continuing indemnity payments. If

Contractor does not receive a report every 45 days and there is no other support for continuing temporary disability status, Contractor shall notify in writing the treating physician of the requirements of Section 9785 of Title 8 of the California Code of Regulations, and shall provide the physician with a copy of that section. If the treating physician does not provide a medical report supporting continuing indemnity payments within ten (10) days of that notification, Contractor shall discontinue payment of temporary disability indemnity and shall notify the injured worker for the reason of the suspension of benefits in accordance with applicable Codes.

**4.8 Outside Claims Investigation Services.** Contractor shall use only outside investigative service providers approved by the City, in accordance with the City's investigative referral criteria. The City will provide Contractor with approved vendors' referral criteria and contact information.

**4.9 Sub Rosa Surveillance.** With advance approval of the appropriate Liaison, where the existence or extent of disability is in question Contractor may refer a claim to an investigator for sub rosa surveillance/activity check.

## **5.0 MEDICAL BILL REVIEW, MEDICAL SERVICES UTILIZATION REVIEW; INVESTIGATION SERVICES**

Contractor shall refer claims to and cooperate with the service providers contracted with the City to provide medical bill review, medical services utilization review, and claims investigations services, in accordance with the Client Service Instructions and as required by applicable Codes. Contractor shall not refer claims to service providers others than those listed in the Client Service Instructions without the City's express written approval.

## **6.0 CHECK PRINTING AND BENEFIT PAYMENT**

**6.1 Check Printing.** Contractor shall subcontract check printing and benefits payments services, as described below, for all workers' compensation benefits and service vendor payments to claimants and vendors ("Payment Vendor"). When the City implements an Electronic Funds Transfer (EFT) program, as the City may direct, the Contractor shall terminate the subcontractor Payment Vendor's services by giving 30 calendar days' written notice.

### **6.2 Banking**

#### **6.2.1 Definition & Scope**

Intercare Insurance services to provide complete third party workers' compensation (TPA) services for selected city departments agrees that it will pay indemnity benefits and medical and vendor bills as set out herein.

#### **6.2.2 Bank Accounts**

- a. DHR will establish three (3) checking Accounts with the Bank of America from which Contractor shall issue payment of workers' compensation indemnity benefits and payments to workers' compensation vendors. One account shall be used by Contractor to issue payments on claims adjusted by Contractor (TPA Account); one shall be used to issue payments authorized by DHR Workers' Compensation Division (WCD) on claims adjusted by the WCD (WCD Account); and one shall be used to issue payments on claims adjusted by Contractor for SFMTA (SFMTA

- Account).
- b. DHR will transfer funds into the TPA and WCD accounts on each business day to cover checks issued by Contractor and WCD on the previous business day. SFMTA will transfer funds into the SFMTA Account on each business day to cover checks issued by Contractor on the previous day for SFMTA claims.
  - c. Contractor shall be responsible for printing checks drawn against three Accounts and mailing them to payees as required.
  - d. Daily “positive pay” will be handled by the City on each checking account.
  - e. Reconciliation of three accounts shall be handled by the WCD.
  - f. The contact person at DHR to address problems or issues concerning the Accounts is:

Benjamin Feng, Fiscal Manager  
Department of Human Resources’ Workers’ Compensation Division  
One South Van Ness Avenue, 4th Floor  
San Francisco, CA 94103  
Telephone Number: 415-701-5833

- g. The City shall bear the costs for maintain the WCD, TPA, and SFMTA checking accounts.

### **6.2.3 Purpose of Bank Account(s)**

- a. The sole purpose of the TPA and WCD Accounts shall be for Contractor to make payments of workers’ compensation benefits and/or payments to vendors providing approved services in connection with workers’ compensation claims administered by Contractor or WCD. Contractor shall not draw funds or issue checks from the Bank Accounts for any purpose other than that described in this Appendix.
- b. Contractor shall not be paid for its services from the Accounts but shall bill DHR directly for its services.

## **6.3 Account Management**

### **6.3.1 Signature Authority**

All checks issued for payment against the Accounts shall have an appropriate authorized signature of CCSF-WCD director and MTA HR director (for MTA account) whose names appear on the Bank of America Signature Authorization card(s). Checks for any amount over \$50,000 must be forwarded to the WCD via overnight service or messenger for second signature.

### **6.3.2 Audits**

- a. Contractor will provide a daily report of checks to be printed for the City’s review and approval prior to printing.
- b. DHR may perform random audits of workers’ compensation payments by comparing Contractor’s pre-audit report to the payment information and the claim payment record and bank statements. Contractor agrees and warrants that it will fully cooperate in any such audit of its payments and payment practices under this Agreement.

### **6.3.3 Stop Payments and Voids**

All stop payment and void checks, including interactions with the Bank of America and data entry into the iVOS claims system will be performed by the WCD staff.

### **6.3.4 Subrogation Checks**

Contractor shall, for all claims that it adjusts, properly identify all refund and subrogation checks to the appropriate claim file in the claims payment record. All refund and subrogation checks shall be forwarded to the DHR-WCD Fiscal Manager for deposit and must be accompanied by documentation describing the type of payment and the claim to be credited.

## **6.4 Benefits Payments**

### **6.4.1 Indemnity Benefits Payments**

DHR will provide Contractor access to and authority to approve payments against the TPA and SFMTA Accounts through the iVOS claims system for payment of indemnity benefits to City employees due workers' compensation benefits. Contractor will inform CCSF-WCD and MTA for any payment over its authority limit and will request CCSF-WCD or MTA to approve those payments.

### **6.4.2 Payments to Vendors**

- a.** DHR will provide Contractor access to and authority to approve payments against the TPA and SFMTA Accounts through the iVOS claims system for payments to vendors providing approved services in connection with workers' compensation claims administered by Contractor. (See 3.1 for payment over Contractor's authority limit.)
- b.** In connection with payment processing services provided under this Agreement, the City shall have the sole responsibility for maintenance of a vendor file containing names, addresses, and tax identification numbers of vendors who receive payment for medical, rehabilitation, or other workers' compensation services authorized by the TPA or WCD adjusters. No payment can be issued against any Account unless the City adds the vendor to the system following procedures approved by the WCD Fiscal Manager.
- c.** Upon receipt of a request from TPA or WCD staff, the City shall add a vendor to the system and send confirmation to the requester via email within one (1) business day. Additions to the vendor file shall be processed by City personnel who do not have the authority to authorize payments against the TPA, WCD, or SFMTA bank Accounts.
- d.** The City will be responsible for the maintenance of the vendor file, including preparation and mailing of all 1099 and other tax reporting documents as required by State and Federal laws.
- e.** Contractor agrees to program the check-writing software to print the medical bill review Explanation of Benefit (EOB) text, as provided by the bill review vendor and transmitted to Contractor electronically, on the check stub. Content and format of the EOB text shall be subject to approval of the Deputy Director of the WCD.

## 6.5 Anti-Fraud Measures

### 6.5.1. Fraud Warning

Contractor shall ensure that every temporary disability check issued to City claimants include a written notice and warning, pursuant to Insurance Code section 1871.8, stating the following in English and Spanish:

**WARNING: You are required to report to your employer or the insurance company any money that you earned for work during the time covered by this check, and before cashing this check. If you do not follow these rules, you may be in violation of the law and the penalty may be jail or prison, a fine, and loss of benefits.**

**ADVERTENCIA: Es necesario que usted le avise a su patrón o a su compañía de seguro todo dinero que usted ha ganado por trabajar, durante el tiempo cubierto por este cheque y antes de cambiar este cheque. Si usted no sigue estos reglamentos, usted puede estar en violación de la ley y el castigo podría ser carcel o prisión, una multa, y pérdida de beneficios.**

The above notice may be printed on the back of the check immediately below the endorsement area, on the check stub, or on a separate sheet enclosed with the check. If the statement in its entirety is not printed on the back of the check, the following additional statement must be printed on the back of the check or on the check stub:

**By endorsing and/or depositing this check, the recipient of this check affirms that she or he has read and understands the enclosed warning concerning employment while receiving temporary disability benefits.**

**Al endosar o depositar este cheque, el receptor de este cheque afirma que él o ella ha leído y entendido el aviso adjunto sobre empleo mientras recibe beneficios temporales por incapacidad.**

### 6.5.2 Check Stock

- a. Contractor will issue checks drawn on three Accounts only on DHR-approved check stock. Contractor will provide the check stock masks and will order the check stock. All check stock used by Contractor to issue checks against the City Accounts shall contain consecutive check stock numbers and shall include the following security features: artificial watermarks, laid lines, void pantograph, and chemical void.
- b. Checks used to draw on the TPA Account shall contain the following identifying language:  
  
Intercare Insurance Services  
Administrator for City and County of San Francisco  
Department of Human Resources  
Workers' Compensation Division  
6020 West Oaks Blvd. Suite 100  
Rocklin, CA 95765
- c. Checks used to draw on the WCD Account shall contain the following identifying language:

City & County of San Francisco  
Department of Human Resources  
Workers' Compensation Division  
One South Van Ness Avenue, 4th Floor  
San Francisco, CA 94103-5413

- d. Checks used to draw on the SFMTA Account shall contain the following identifying language:

Intercare Holdings Insurance Services  
Administrator for San Francisco Municipal Transit Agency  
6020 West Oaks Blvd., Suite 100  
Rocklin, CA 95765

- e. All checks shall identify the bank as follows:

Bank of America  
555 Capitol Mall  
Sacramento, CA 95814-4582

### 6.5.3 Expiration Date

Next to the explanation of benefits, Contractor shall state the following on all workers' compensation benefits check stubs: "Void if not cashed within 180 days of the date issued."

### 6.5.4 Replacement Checks

Contractor shall not issue replacement checks (for checks to applicants claiming that their check is lost, stolen, misplaced or not received) unless and until:

- a. **Contractor has received an affidavit from the claimant stating the following:**

The undersigned states under penalty of perjury that the check for which s/he seeks a replacement check has been lost, stolen, misplaced or not received. The undersigned affirms that if s/he finds the missing check, s/he will not cash it and will immediately return it to the DHR Workers' Compensation Division, One South Van Ness Avenue, 4th Floor, San Francisco, CA 94103. The undersigned affirms that s/he understands that making misleading or false statements regarding workers' compensation benefits may constitute felony insurance fraud.

- b. Contractor has emailed the WCD with the request for a stop payment, including the affidavit, with the reason for the request; and

- c. Contractor has received an email confirmation from the WCD that the request has been processed with the Bank of America and that a replacement check may be issued.



## 7.0 LITIGATION REFERRAL AND SUPPORT

**7.1 Legal Representation.** The San Francisco City Attorney is the only entity that authorized to represent the City in any legal action, including but not limited to appearances before the Workers Compensation Appeals Board and all appellate courts. Contractor shall not refer any claim to any attorney other than those designated by the City Attorney's Office to represent the City in workers' compensation matters. Contractor shall not confer with any legal counsel other than the City Attorney concerning any City workers' compensation claim without the express written permission of the City Attorney.

**7.2 Litigation Support.** Contractor shall provide support to attorneys assigned to represent the City in workers' compensation matters, which support shall include but is not limited to the following:

- a. Refer litigated cases to the City Attorney, while continuing claims management of these cases and continuing to perform all case administration functions.
- b. When requested by the City Attorney, provide to the City Attorney legible copies of all documents relating to referred claims, including but not limited to medical reports, prior claims, diagnostic studies, prior claims, settlements related medical reports, pleadings, court orders, hearing minutes, investigative reports and subrosa video, UR, and IMR documents, benefits notices, and accounting (printout) of current benefits.
- c. Refer claims to the City Attorney in which there is a potential recovery from a third party under a subrogation cases. In the event of such referrals, in addition to the Litigation Referral Form set forth in Section 7.2(h), below, Contractor shall submit with the file a standardized Subrogation Referral Form provided in iVOS.
- d. Prepare and forward all legally required notifications, including but limited to benefits notices and return to work notices.
- e. Confer with the City Attorney as early as possible following referral to the City Attorney to allow sufficient time for discovery of a claim that Contractor expects will be litigated or complex claim, or that may have a medical only or medical and indemnity value greater than \$100,000. Presence of any of the following issues indicate that a claim is complex: a claim alleging violation of California Labor Code section 132(a), AOE/COE disputes, death benefits, serious and willful misconduct; cases in which the City has informed Contractor that there is a concurrent civil action or administrative proceeding including appeals to the civil service commission, EEOC/DFEH charges, and matters before the Retirement Board that involve the Claimant. In any event, claims shall be referred to the City Attorney no later than upon Contractor's receipt of a Declaration of Readiness to Proceed.
- f. Contractor shall assist the City Attorney in the preparation of litigated cases, negotiation of workers' compensation settlements and subrogation actions. After a case has been referred to the City Attorney, Contractor

shall confer with and obtain the assigned Deputy City Attorney's approval of all further actions on the claim (including action on vocational rehabilitation issues) shall be subject to the direction of, and shall be coordinated with the City Attorney. After a claim has been referred to the City Attorney, Contractor shall not file any pleadings with the WCAB (including DORs and petitions to dismiss) without the express written approval of the assigned Deputy City Attorney.

- g.** In all cases filed before a Board outside of San Francisco, upon receipt of the application, the Contractor shall file a Notice of Representation and an Answer identifying the City Attorney as counsel of record, even if the claim has not yet been referred to the City Attorney. Contractor shall in those cases, within two business days of receipt of the application, Contractor shall evaluate the claim to determine if a change of venue may be requested and file the appropriate forms to seek a change of venue to San Francisco and refer the claim(s) to the City Attorney.
- h.** All notices of hearing shall be promptly forwarded to the City Attorney within two business days of receipt. Any notice for hearing set for a date within 14 calendar days of the date of receipt by Contractor shall be sent by email, overnight delivery or express mail to the City Attorney on the day of receipt.
- i.** Contractor shall provide with every claim referred to the City Attorney, a complete copy of the claim file, an outline of the claim status and reasons for referral written on the Litigation Referral form, compensability recommendation, claim value estimate, description timeline for discovery and other work to be done to prepare for hearing or settlement, all of which Contractor's Claims Manager shall review and approve. A claim file shall contain all documents relevant to the claim, including but not limited to:

  - 1.** medical records
  - 2.** correspondence, hearing notices, forms and pleadings
  - 3.** Claims Examiner and Claimant attorney contact information
  - 4.** payment summaries (indemnity and medical benefits)
  - 5.** investigation reports and surveillance materials
  - 6.** treating physician records and reports
  - 7.** medical-legal evaluation reports
  - 8.** disability ratings reports
  - 9.** vocational rehabilitation reports and documents
  - 10.** WCAB orders and decisions
- j.** Contractor shall provide the assigned Deputy City Attorney updated claims information not less than every 30 days. Contractor shall send the City Attorney courtesy copies of all correspondence with the Workers' Compensation Appeals Board and Claimant's counsel.

- k. No later than 30 days prior to any deposition or hearing on a claim, the Claims Examiner shall confer (in person or by telephone) with the assigned City Attorney representative (and the City's Authorized Representative if s/he requests to participate) to discuss proof of disability, claim value, settlement authority, litigation preparation and strategy. The assigned Claims Examiner shall be responsible for scheduling the conference with the Deputy City Attorney. As early as possible before but no later than two days before any deposition or hearing, Contractor shall provide the assigned Deputy City Attorney all claims documents (including but not limited to medical reports, disability evaluations and ratings, correspondence, and surveillance materials) and other relevant information not previously provided.
- l. Contractor shall provide to the City Attorney written documentation of settlement authority up to the estimated value of a claim, not less than two days before any hearing during which settlement will be negotiated. The Claims Examiner or a responsible supervisor who is familiar with the case shall be on telephone standby during any WCAB hearing.
- m. Each week, Contractor shall provide to the City Attorney, DHR and SFMTA the names and contact information of Contractor representatives who will be on-call and available to discuss claims that will be before the WCAB the following week.

**7.3 Subrogation and Third Party Claim Settlement.** Contractor shall identify and refer to the City Attorney all claims that have third party liability/subrogation potential (that is, a third party may be responsible for a claimed injury). Contractor shall work with the City Attorney's Office to coordinate the resolution of subrogation liens, and ensure all credits are properly adjusted.

## **8.0 DATA MANAGEMENT**

**8.1** Contractor shall provide data management services, including but not limited to database and report configuration and data sorting necessary for the City to perform the following tasks:

- a. Assist City staff in reporting of City workers' compensation claims data, including configuration of reporting tools, formatting of reports, identifying data categories and metrics, and sorting of data as the City may request.
- b. Create, configure and maintain an interface with the State to complete required EDI reporting.
- c. MMSEA Reporting: Provide administrative support and issue reports in as required by Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA).
- d. FROI/SROI Reporting: Perform all reporting required by California WCIS regulations and other applicable Codes, including but not limited to the following:
  - i. **First Reports:** First Reports of Injury (FROIs) must be submitted by EDI to WCIS in the Division of Workers' Compensation (DWC) no later than 510 business days after knowledge of the claim.

- ii. **Subsequent Reports:** Subsequent Reports of Injury (SROIs) shall be submitted within 105 business days whenever benefit payments to an employee are started, changed, suspended, restarted, stopped, delayed or denied or when a claim is closed, reopened or upon notification of employee representation.
- e. Assist in gathering data to create monthly and quarterly reports for benchmarking and metrics: the development and maintenance of tangible metrics designed to measure the claim data and other elements in order to control claim costs and outcomes. This includes the monthly Dashboard Reports as currently in use as well as ad hoc reports.

**8.2** Contractor shall support the website reporting software vendor, Ventiv, which will establish an interface for reporting new claims. Contractor shall provide Ventiv with datasets and shall assist in the development interfaces and workflow processes. The interface will provide the City the ability to enter required data elements for mandatory fields from which a new claim is created via iVOS.

**8.3** Integration with Existing Services: The City has existing vendors for related Workers' Compensation services, including investigation services, medical bill and utilization review services, claims administration software, and check processing services, listed in Section 3.3. The Contractor shall work cooperatively with those City vendors to integrate Contractor's Services with those vendors' business process and reporting protocols, the City's iVOS claims management software and system.

**8.4** Contractor shall maintain all claims information and data as Confidential Information to be disclosed only to persons whom the SFMTA Workers Compensation Manager (for SFMTA claims) or the DHR's Workers Compensation Division Director (for non-SFMTA claims) have authorized. The directors will provide Contractor a list of persons authorized to access workers' compensation claims information and data.

## **9.0 TASK ORDERS FOR AS-NEEDED SERVICES**

**9.1** As-Needed Services. As provided in Section 4.1.4, if the City requests, Contractor shall provide as-needed claims management support services as described below and as the City may otherwise require. The scope of work of requested services will be memorialized in a Task Order that will describe the services Contractor will perform, applicable acceptance standards, and negotiated compensation. As-needed services that the City may request from Contractor include, but are not limited to the following.

- a. Staff Training. Contractor shall provide training to City and SFMTA employees concerning workers' compensation claims management, medical treatment review, basic investigation techniques, fraud awareness, workplace safety, claims trends and other topics as the City may require to assist the City and City personnel in managing workers' compensation claims and costs.
- b. Temporary Claims Examiners. Contractor shall provide DHR with temporary claims staff when requested by the City.
- c. Safety and Loss Control Consulting. Contractor shall provide safety and loss control services by a Certified Safety and Loss Control Professional as requested by the City

by Task Order. Task orders may include research and other consulting services concerning any aspect of workplace safety, root cause analyses, OSHA regulations compliance, and biohazard handling.

**9.2 Compensation.** Compensation for as-needed services will be made either on a time and materials basis (based on the hourly rates and costs set out in Appendix B with a stated total “amount not to exceed”) or as a negotiated lump-sum, memorialized in a Task Order.

## **10. CITY’S OBLIGATIONS**

**10.1** The SFMTA will perform the tasks and provide the resources only that are specifically described in this Section 10. Unless specifically otherwise stated, Contractor shall be responsible for performing all tasks, services and providing all resources that are necessary for or incidental to the completion of the Services in accordance with the requirements of this Agreement.

**10.2** The SFMTA will provide ancillary services and program management as follows:

- a.** Conduct quarterly claims review with the Contractor and review claims management strategies and outcomes.
- b.** Provide claims settlement authority above the Contractor’s allocated authority level to be established on an individual examiner basis.
- c.** Legal representation of the City before the WCAB and appellate bodies through the City Attorney.
- d.** iVOS Claims Management Software
- e.** Medical Bill Review and Medical Services Utilization Review through a contract with Mitchell International
- f.** Investigation Services through a contract with Probe, Inc.

## **11. DISASTER RECOVERY AND BUSINESS CONTINUITY PLAN**

**11.1** If requested by the City following a disaster or other civic emergency (as determined by the City), Contractor shall assist DHR with providing ongoing services on a temporary emergency basis as directed by City. The City shall compensate Contractor for those additional services based on the costs factors, such as salaries and administrative fees, as provided in this Agreement. Disaster Recovery may include temporary emergency claims management services in case of a catastrophic event as defined by the Disaster Services Council established under the California Emergency Services Act that renders City unable to temporarily process workers’ compensation claims

**11.2** If the City requires emergency services, as part of the City’s DHR Business Continuation Plan, Contractor will function as an extension of DHR by providing Claims Management Services sufficient to meet requirements of applicable Codes for those claims that DHR usually administers until such time as DHR can perform those services itself. To provide the emergency services, Contractor will be provided system access to workers’ compensation claims that the City normally manages with its own personnel. Contractor shall provide the City the following emergency services:

- a.** Conduct initial contact with injured workers to validate injuries/claims and explain benefits.
- b.** Issue benefit payments and ensure no disruption in benefit delivery.
- c.** Process Requests for authorization of medical treatment.
- d.** Arrange medical treatment.
- e.** Respond to injured worker inquiries.
- f.** Access bill review company system and approve medical services payments.

## Appendix B Calculation of Charges

### A. Compensation for Services

1. In accordance with Section 3.3 (Compensation) of this Agreement, the City shall compensate Contractor for Services performed to the City's satisfaction as described in this Appendix B. Total Compensation for all Services provided under this Agreement, including Services provided during the two one-year extensions (that the SFMTA may exercise as options) shall not exceed \$26,179,119.

2. All Services described in this Agreement, excluding as-needed services requested under a separate Task Order, are included and fully compensated by the Annual Fixed Fee paid to Contractor. The Annual Fixed Fee shall include all costs, including but not limited to labor costs, overhead, direct costs, indirect costs, travel, lodging, meals, claims handling costs, salaries, fringe benefits, profit, contract transition charges, banking charges, retention incentives, and other costs that Contractor may incur in performing the Services.

3. Fees include three percent annual cost of living adjustment (COLA). A minimum aggregate three percent COLA raise must be provided to Contractor's and subcontractors' employees working on this contract to justify the three percent COLA increases detailed below. Contractor shall provide documentation to DHR each year certifying aggregate COLA raises given to its employees and subcontractors' employees assigned to perform the Services.

<b>Year</b>	<b>DHR</b>	<b>SFMTA</b>	<b>Total</b>
Year 1	\$1,894,798	\$2,640,110	\$4,534,908
Year 2	\$1,950,354	\$2,718,026	\$4,668,380
Year 3	\$2,008,865	\$2,799,566	\$4,808,431
Year 4 (Option)	\$2,069,130	\$2,883,553	\$4,952,683
Year 5 (Option)	\$2,131,204	\$2,970,060	\$5,101,264
*As-Needed Services	\$1,547,853	\$565,600	\$2,113,453
<b>Total</b>	<b>\$11,602,204</b>	<b>\$14,576,915</b>	<b>\$26,179,119</b>

### B. Compensation for Department of Human Resources Claims

#### 1. Claims Load Per Claims Examiner

The City shall compensate Contractor for Services performed on DHR Claims as set out in this Section B. Compensation is based on the following estimated claims (new and existing) to be assigned to Claims Examiners, with a maximum of 135 DHR active indemnity claims cases assigned to each Claims Examiner.

<b>Claim Type</b>	<b>DHR Claims Load</b>
Indemnity - New	464
Indemnity - Pending	727
Medical Only - New	539
Medical Only - Pending	99
Future Medical - Pending	466
<b>TOTAL</b>	<b>2,295</b>

## 2. Staffing

Contractor shall implement the Staffing Model described below to perform the Services for DHR Claims. Contractor's staff shall be dedicated to DHR Claims for the Full Time Employee (FTE) value listed below, except those personnel who assigned to Intercare's shared services department.

<b>Positions</b>	<b>DHR FTE</b>
Claims Manager	0.50
Claims Supervisor	2.00
Claims Examiner III	5.00
Claims Examiner I and II	3.00
Claims Assistant	2.50
Admin/General Clerk	2.00
<b>Total FTE</b>	<b>15.00</b>

## 3. Annual Fees

Contractor shall perform all Services listed in this Agreement in consideration of the City's payment of fixed Annual Fees based on the staffing model described above, plus payment for Injury Triage, Data Warehousing, and MPN Website maintenance services. Annual Fees are as follows:

<b>Year</b>	<b>Claims Administration</b>	<b>Injury* Triage (i)(i)</b>	<b>Data Warehouse</b>	<b>MPN Website</b>	<b>Total</b>
Year 1	\$1,824,848	\$67,500	\$1,250	\$1,200	\$1,894,798
Year 2	\$1,879,593	\$69,525		\$1,236	\$1,950,354
Year 3	\$1,935,981	\$71,611		\$1,273	\$2,008,865
Year 4 (Option)	\$1,994,060	\$73,759		\$1,311	\$2,069,130
Year 5 (Option)	\$2,053,882	\$75,972		\$1,351	\$2,131,204
*As-Needed Services	\$1,547,853				\$1,547,853
<b>Total</b>					\$11,602,204

## 4. Claims Transfer Fee Adjustments

If the City elects to transfer claims to in-house City Claims Examiners (as provided in Appendix A, section 3.8), the Claims Administration Fixed Fee shall be reduced by the values stated in the following table. The adjustment (reduction) to the Claims Administration Fixed Fee will go into



effect in the contract year the claims transfers are requested effective on the date of the transfer and will carry throughout the term of the contract and exercised options, unless claims are transferred by DHR to Contractor.

<b>Position</b>	<b>Adjustment</b>
Claims Supervisor	\$178,048.21
Claims Examiner	\$155,792.18
FM/MO Examiner	\$96,765.33
Claims Assistant	\$63,865.12
Clerical	\$58,059.20

### **5. As-Needed Services Compensation**

The blended hourly rates listed below shall be used to compensate Contractor for As-Needed Services provided under a Negotiated Task Order. Amounts for as-needed services shall not be billed to claim files, and shall not exceed \$114,323 annually.

<b>Position</b>	<b>Hourly Rate*</b>
Account Manager	\$107.00
Claims Supervisor	\$86.11
Claims Examiner - IND	\$74.90
Claims Examiner - FM	\$57.50
Claims Examiner - MO	\$57.50
Claims Assistant	\$31.63
Clerical	\$27.91
Injury Triage	\$80.00 per call

\*Injury triage shall be provided during Contractor's normal business operating hours. If such services are required after normal business operating hours, then the hourly rate shall be as set forth above.

### **6. Telemedicine Fees.**

Contractor shall coordinate and provide a 24-hour telemedicine services to injured Claimants during the term of the contract as described in Appendix A, Section 3.4. Services provided during business hours will be charged at \$250 per hour. Services provided outside business hours will be charged at \$350.00 per hour. Business hours are defined as 8:00 AM to 5:00 PM.

Amount Not to Exceed and Usage During Business Hours:

<b>Year</b>	<b>Business Hour Rate</b>	<b>Maximum Available Hours</b>	<b>Amount Not to Exceed</b>
Year 1	\$250	200	\$50,000
Year 2	\$258	200	\$51,500
Year 3	\$265	200	\$53,045
Year 4 (Option)	\$273	200	\$54,636
Year 5 (Option)	\$281	200	\$56,275
<b>Total</b>			<b>\$265,457</b>

Amount Not to Exceed and Usage During Off-Business Hours:

<b>Year</b>	<b>Off-Business Hour Rate</b>	<b>Maximum Available Hours</b>	<b>Amount Not to Exceed</b>
Year 1	\$350	100	\$35,000
Year 2	\$361	100	\$36,050
Year 3	\$371	100	\$37,132
Year 4 (Option)	\$382	100	\$38,245
Year 5 (Option)	\$394	100	\$39,393
<b>Total</b>			<b>\$185,820</b>

**7. Temporary Claims Examiner Fees**

When requested by DHR, Contractor shall provide DHR with temporary staffing for the DHR internal workers' compensation program on an as-needed basis. Temporary staffing shall be the employee's actual compensation plus the actual service fee from the temporary personnel agency.

<b>Year</b>	<b>Maximum Hourly Rate (including agency fees)</b>	<b>Estimate Hours</b>	<b>Amount Not to Exceed</b>
Year 1	\$90	1040	\$93,600
Year 2	\$90	1040	\$93,600
Year 3	\$90	1040	\$93,600
Year 4 (Option)	\$90	1040	\$93,600
Year 5 (Option)	\$90	1040	\$93,600
<b>Total</b>			<b>\$468,000</b>

**8. Safety and Loss Control Consulting** - Safety and Loss Control services shall be provided on an as requested basis through Contractor. Refer to Appendix A, Section I for a detailed description of services.

Amount Not to Exceed and Usage at Expert Rate:

<b>Year</b>	<b>Rate*</b>	<b>Estimate Hours</b>	<b>Amount Not to Exceed</b>
Year 1	\$150	100	\$15,000
Year 2	\$155	100	\$15,500
Year 3	\$159	100	\$15,900
Year 4 (Option)	\$164	100	\$16,400
Year 5 (Option)	\$169	100	\$16,900
<b>TOTAL</b>			<b>\$79,700</b>

**9. TPA Check Printing Services** - Contractor shall bill the City for subcontracted check printing services as pass-through rates without mark-up. Check Printing Services unit price per item are as follows:

<b>Item</b>	<b>Cost</b>
Support Staff:	No Charge
(Document design, changes, program updates)	
Postage:	At Cost
Materials:	
Number 10 Envelopes:	\$0.0200
Flat Envelopes:	\$0.0990
Business Return Envelopes	\$0.0220
Alternate Shipping-- Two (2) inch box:	\$0.3601
Alternate Shipping-- Four (4) inch box:	\$0.6213
Alternate Shipping -- Labels:	\$0.0413
2 lb. Mail Jacket (11X13.5):	\$0.3096
1 lb. Tyvek (9X12):	\$0.2984
White Paper:	\$0.0095
Check Paper:	\$0.0196
Invoice Perforated Paper:	\$0.0200
6X9 Double Window Envelope	\$0.0300
ABF Processing:	\$0.07/page
ABF Duplex Processing (if used by ACS):	½ of Processing

\* Billed consultant rates shall not exceed the rates listed above. Actual rate for services may vary depending on the level of expertise required but will not exceed expert rate indicated above.

<b>Item</b>	<b>Cost</b>
Expedited USPS (if used by ACS) including print cost:	\$0.105/page
Online image storage and view:	\$0.01/image
Online image writing to DVD (if contract is terminated herein):	\$0.0025/page
Healthpayers USA (charge on cross consolidated pages only):	\$0.075/page*
Special Delivery Services (e.g., next day):	At Cost**

\*These per page charges incurred for Healthpayers USA will be capped at 50% of the ACS's postage savings for utilizing Healthpayers USA on a monthly basis as determined by ABF.

\*\*These "at cost" charges are charged upon prior request or approval by ACS.

Fees for TPA Check Printing services shall be as follows:

<b>Year</b>	<b>Amount Not to Exceed (Printing Costs)</b>
Year 1	\$66,000
Year 2	\$67,980
Year 3	\$70,019
Year 4 (Option)	\$72,120
Year 5 (Option)	\$74,284
<b>TOTAL</b>	<b>\$350,403</b>

**10. Pharmacy Benefit Management.** Contractor will subcontract pharmacy benefit management services at no cost to the City.

**C. San Francisco Municipal Transportation Agency Claims.**

**1. Claims Load Per Examiner.** The City shall compensate Contractor for Services performed on SFMTA Claims as set out in this Section C. Compensation is based on the following estimated claims (new and existing) to be assigned to claims Examiners, with an average of 125 SFMTA indemnity claims cases assigned to each claims Examiner.

<b>Claim Type</b>	<b>SFMTA</b>
Indemnity - New	574
Indemnity - Pending	1,101
Medical Only - New	101
Medical Only - Pending	19
Future Medical - Pending	516
<b>TOTAL</b>	<b>2,311</b>

## 2. Staffing

Contractor shall implement the Staffing Model described below to perform the Services for SFMTA Claims. Contractor's staff shall be dedicated to SFMTA Claims for the Full Time Employee (FTE) value listed below, except those personnel who assigned to Intercare's shared services department.

<b>Positions</b>	<b>SFMTA</b>
Claims Manager	0.50
Claims Supervisor	3.00
Claims Examiner III	9.00
Claims Examiner I and II	2.00
Claims Assistant	3.00
Admin/General Clerk	2.00
<b>Total FTE</b>	<b>19.50</b>

## 3. Annual Fixed Fees

Annual fixed fees shall be as follows:

<b>Year</b>	<b>Claims Administration</b>	<b>Injury Triage</b>	<b>Data Warehouse Set Up Fee</b>	<b>MPN website maintenance</b>	<b>Total Amount Not to Exceed</b>
Year 1	\$2,570,160	\$67,500	\$1,250	\$1,200	\$2,640,110
Year 2	\$2,647,265	\$69,525		\$1,236	\$2,718,026
Year 3	\$2,726,682	\$71,611		\$1,273	\$2,799,566
Year 4 (Option)	\$2,808,483	\$73,759		\$1,311	\$2,883,553
Year 5 (Option)	\$2,892,737	\$75,972		\$1,351	\$2,970,060
*As-Needed Services	\$565,600				\$565,600
<b>Total</b>					<b>\$14,576,915</b>

**4. As-Needed Services**

The maximum hourly rates listed below shall be used to compensate Contractor for As-Needed Services provided under a Negotiated Task Order.

<b>Position</b>	<b>Hourly Rate*</b>
Account Manager	\$107.00
Claims Supervisor	\$86.11
Claims Examiner - IND	\$74.90
Claims Examiner - FM	\$57.50
Claims Examiner - MO	\$57.50
Claims Assistant	\$31.63
Clerical	\$27.91
Injury Triage Nurse	\$80.00

**5. Telemedicine Program** - Contractor shall coordinate and provide a 24-hour telemedicine services to injured Claimants during the term of the contract as described in Appendix A, Section 3.4. Services provided during business hours will be charged at \$250 per hour. Services provided outside business hours will be charged at \$350.00 per hour. Business hours are defined as 8:00 AM to 5:00 PM.

Amount Not to Exceed and Usage During Business Hours:

<b>Year</b>	<b>Business Hour Rate</b>	<b>Estimate Hours</b>	<b>Amount Not to Exceed</b>
Year 1	\$250	\$200	\$50,000
Year 2	\$258	\$200	\$51,500
Year 3	\$265	\$200	\$53,045
Year 4 (Option)	\$273	\$200	\$54,636
Year 5 (Option)	\$281	\$200	\$56,275
<b>Total</b>			<b>\$265,457</b>

Amount Not to Exceed and Usage During Off-Business Hours:

<b>Year</b>	<b>Off-Business Hour Rate</b>	<b>Estimate Hours</b>	<b>Amount Not to Exceed</b>
Year 1	\$350	\$100	\$35,000
Year 2	\$361	\$100	\$36,050
Year 3	\$371	\$100	\$37,132
Year 4 (Option)	\$382	\$100	\$38,245
Year 5 (Option)	\$394	\$100	\$39,393
<b>Total</b>			<b>\$185,820</b>

**6. Pharmacy Benefit Management** – Contractor will subcontract pharmacy benefit management services from the PBM and shall not charge an additional fee for oversight of the subcontract from the City or the PBM. See Appendix A section 3.6.

**Appendix C**  
**Confidentiality Agreement**

CITY AND COUNTY OF SAN FRANCISCO ("CITY")

CONTRACTOR EMPLOYEE ACKNOWLEDGMENT  
AND CONFIDENTIALITY AGREEMENT

GENERAL INFORMATION

Your employer, Intercare Holdings Insurance Services, Inc., has entered into a contract with the City and County of San Francisco ("City") to provide workers' compensation third party administration services to City. Therefore, we need your signature on this employee acknowledgment and confidentiality agreement.

EMPLOYEE ACKNOWLEDGMENT

- A. I understand that Intercare Holdings Insurance Services, Inc. is my sole employer for purposes of this employment.
- B. I understand and agree that I am not an employee of the City for any purpose and that I do not have and will not acquire any rights or benefits of any kind from the City during the period of this employment.
- C. I understand and agree that I do not have and will not acquire any rights or benefits pursuant to any agreement between my employer and City.

CONFIDENTIALITY AGREEMENT

As an employee of Intercare Holdings Insurance Services, Inc. you may be involved with work pertaining to City services, and if so, you may have access to confidential data pertaining to persons or entities represented by the Office of the City Attorney. The City Attorney's office has a confidential attorney/client relationship with its clients. All personnel who perform services pursuant to this agreement are bound by that confidential relationship, which is set forth in California Evidence Code, Article 3, and the California Code of Professional Responsibility. In addition, City has a legal obligation to protect all confidential data in its possession, especially data concerning health, criminal and welfare recipient needs. You, too, shall protect the confidentiality of all data, as well as all information protected by the attorney/client privilege. Consequently, you must sign this Confidentiality Agreement for City.

Please read the Agreement and take due time to consider it prior to signing.



## CONFIDENTIALITY AGREEMENT

1. I agree that I will not divulge to any unauthorized person, data obtained while performing work pursuant to the contract between Intercare Holdings Insurance Services, Inc. and the City and County of San Francisco (“City”).
2. I agree to adhere to the provisions of the Confidentiality of Medical Information Act, California Civil Code Section 56 et seq.
3. I have been informed by my employer of Article 9 of Chapter 4 of Division 3 (Commencing with 6150) of the California Business and Professions Code (i.e. State Bar Act provisions regarding unlawful solicitations as a runner or capper for attorneys), which states:
  4. "It is unlawful for any person, in his individual capacity or in his capacity as a public or private employee, or for any firm, corporation or partnership or association to act as a runner or capper for any such attorneys to solicit any business for such attorneys..."
5. I agree to forward all requests for the release of information received by me to my immediate supervisor.
6. I agree to report any and all violations of the above by any other person and/or by myself to my immediate supervisor, and I agree to ensure that said supervisor reports such violations to the City Attorney for City. I agree to return all confidential materials to my immediate supervisor upon termination of my employment with Intercare Holdings Insurance Services, Inc. or upon completion of the presently assigned work task, whichever occurs first.
7. I acknowledge that violation of this Agreement & Acknowledgment may subject me to civil and/or criminal action and that City will seek all possible legal redress.

Signature \_\_\_\_\_

Printed Name \_\_\_\_\_

Position/Title \_\_\_\_\_

Date \_\_\_\_\_

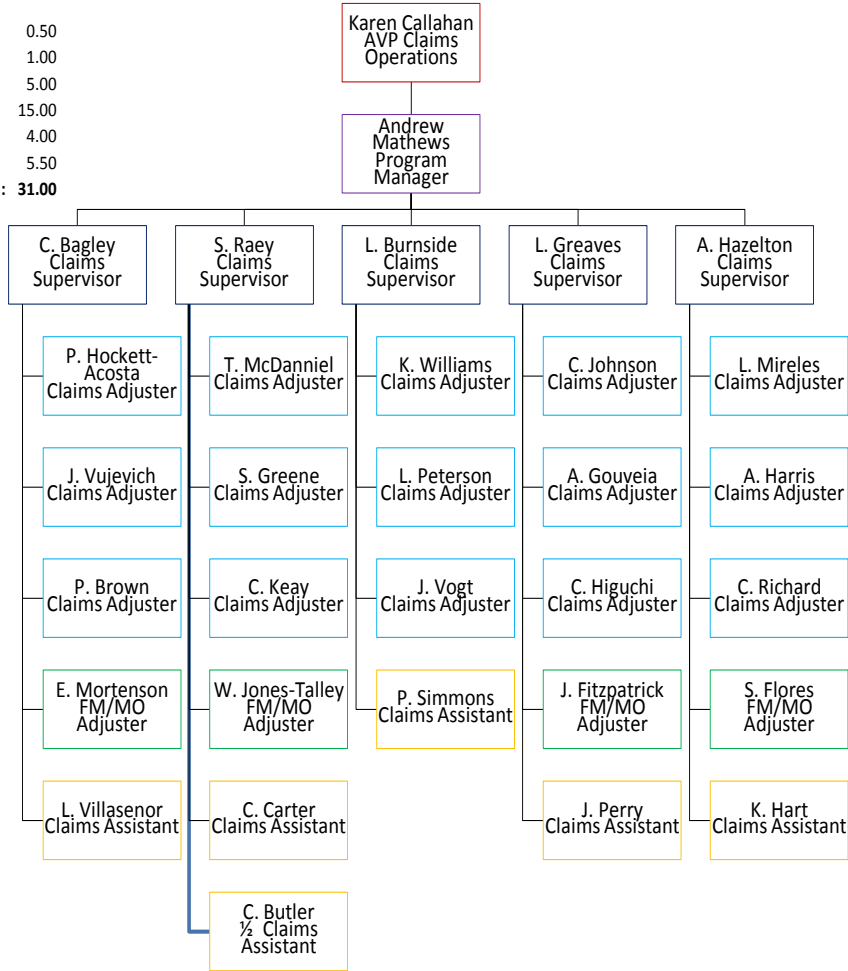
APPENDIX D

CONTRACTOR STAFFING CHART



CCSF/SFMTA Organizational Chart  
November 2016

AVP Claims Operations	0.50
Program Manager	1.00
Supervisor	5.00
Adjuster	15.00
FM/MO Adjuster	4.00
Assistant	5.50
<b>Total:</b>	<b>31.00</b>



## **Appendix E**

### **Client Service Instructions**

**Appendix E-1  
DHR Service Instructions**

**SERVICE INSTRUCTION GUIDELINES (Updated 3/20/2017)**

<b>Expiration Date:</b>	10/31/17 or contract conclusion, whichever is later	
<b>Carrier Name:</b>	N/A	
	N/A	<b>Deductible:</b> None
<b>CONTACTS</b>	<b>(a) Include Company name, contact name, address, phone #, fax # and e-mail address</b>	

Contact Name & Title	Company Name & Address	Phone	Fax	Contact Type	Email
Elizabeth Angelini, CCSF-WCD Claims Supervisor	1 South Van Ness Ave., 4 <sup>th</sup> Floor, S.F., CA 94103	(415) 701-5875		Client	Elizabeth.Angelini@sfgov.org
Ed Stone, WCD Acting Claims Manager	Same	(410) 701-5812		Client	Edward.Stone@sfgov.org
Probe SIU	Same	(916) 676-1826		Client	<a href="mailto:referral@probeinfo.com">referral@probeinfo.com</a>
Peggy Sugarman, WCD Director	Same	(415) 701-5848		Client	Peggy.Sugarman@sfgov.org

**Overall Expectations:**

- a) Ensure claims are assigned to Claims Adjusters with the requisite level of experience to manage all issues (from an effective AOE/COE analysis with identification of red flags through settlement).
- b) Ensure staff receives ongoing adequate training regarding all legal changes and developments.
- c) Effective performance management of Claims Adjusters to ensure timely resolution of claims and issues while minimizing litigation and costs.

**A. CLAIM REPORTING (First Report of Injury)**

**Reporting:**

**Reporting Method:**

**State Notification:**

R Fax

Email

Mail

Intercare to code for FROI & SROI Submission to State Agency

Client will submit FROI to State Agency.

**New Claim Reporting:**

Fax: 916-781-5700

Fax: 877-362-5050

E-mail: [newclaims@intercareins.com](mailto:newclaims@intercareins.com)

**1. All claims shall be set-up within 24 hours of receipt of the claim by Intercare**

If the DWC-1 is not received with the Employer's Report, send a claim form within one (1) business day to the injured employee and document the file that the form was sent.

**2. Coding:**

Utilize CCSF's iVOS Application for location and cause codes

**B. COMPENSABILITY**

**1. Delays:**

**X** Notify client department of claim delay by: **X** phone or **X** email.

**X** Notify CCSF-WCD Claims Supervisor of all Catastrophic/High Exposure; Potentially Confidential; Death; Psychiatric; Sensitive and/or anything involving Discrimination/Harassment immediately by: **X** phone or **X** email.

**X** Any case on delay where we are going to accept the case, regardless of reason, needs to have Intercare Program Manager approval and notification to CCSF –WCD Claims Supervisor of decision by diary.

**X** Notify client/department of claim acceptance by: **X** phone or **X** email

Please also notify the Injured Worker.

**2. Denials:**

**X** Any denied claim where we are going to reverse the decision and accept the case, regardless of reason, needs to have Intercare Program Manager approval. Notify CCSF-WCD Claims Supervisor of decision by diary.

**X** Notify client department of claim denial by: **X** phone or **X** email

Please notify client departments prior to claim denial of the decision and rationale.

**3. Legal Defenses:**

Where there exists a valid legal defense against accepting a case, send diary notification to the CCSF-WCD Claims Supervisor to discuss and agree on strategy.

**C. CLAIMS MANAGEMENT**

**1.** Meet with the City no less than monthly to discuss cases selected by the City and/or Contractor as requiring special adjusting to management attention.

**2.** Meet with the City every quarter to review:

**a.** High exposure claims

**b.** Claims delayed in quarter

**c.** Claims denied in quarter

**d.** Caseload staffing and caseload mix

**e.** Contract compliance and performance metrics in meeting Program objectives, including reduction of the City's workers' compensation costs, lost time, and number of claims filed.

- f. Statistical information, analyses and recommendations pertaining to proposed legislation or rules and regulations that may affect the City's workers' compensation Program and costs.
  - g. Monthly reports that will include data on loss control/statistical analysis, payments, recoveries and cost allocation by City departments.
  - h. Estimation of claim value and required reserves.
3. Meet with the City and physician members of the Medical Provider Network, as indicated or upon request by the City to ensure effective communication.
  4. Prepare and handle correspondence and communication with claimants, medical providers, attorneys and City, State and Federal agencies.
  5. Prepare reports to City, State and Federal agencies in accordance with required deadlines.
  6. Notify the State of California's Office of Self Insured Plans of any change of Third Party Administrator, as required by California Code of Regulations.
  7. Maintain and provide forms and benefit notices as required by statute.
  8. Provide temporary disability benefit information as required by City payroll personnel.
  9. Ensure that Department Liaison(s) approve, in advance, any and all City department requests made directly to Contractor prior to Contractor performing such requests.
  10. File storage and maintenance. The Contractor shall provide file and record storage. Claims file data to be maintained by Contractor shall include but not be limited to the following: adjuster file notes, diaries, documentation of events and telephone calls, plans of action, reserves, and payments records of indemnity, medical and allocated

**D. FINANCIAL**

**1. Claim Payments:**

Notify CCSF WCD of any payment exceeding \$25,000 via e-mail  
 Email addresses: [benjamin.feng@sfgov.org](mailto:benjamin.feng@sfgov.org)

**2. Wages Statements:**

X Obtain wage statements/verification from Departments and/or Payroll by

X phone Phone Number: Specific to each Department

X email Email Address: Specific to each Department

**3. Allocated Expenses:**

The following shall be paid as allocated loss expense except where specifically precluded by State Regulations:

- |   |  |
|---|--|
| <ul style="list-style-type: none"> <li>X Utilization Review</li> <li>X Nurse Case Management</li> <li>X Bill Review Fee</li> <li>X Investigations</li> <li>X Defense Legal Costs</li> <li>X Police reports</li> </ul> | <ul style="list-style-type: none"> <li>X Court Reporter Services and Transcripts</li> <li>X Printing Costs related to Trials &amp; Appeals</li> <li>X Trial and Hearing Attendance Fees</li> <li>X Credit Bureau Reports</li> <li>X Photographs</li> <li>X Photocopy Services</li> <li>X Witness fees, testimony, opinions, appraisals, reports surveys &amp; professionals and experts</li> </ul> |
|---|--|

## E. ERGONOMICS

### Ergonomic Referrals:

Ergonomic referrals for the City are to be sent to CCSF approved vendor for coordination of evaluation and any equipment to be ordered. (The exception to this is for DPW who does their own Ergo Assessments internally.)

## F. INVESTIGATION / INITIAL CLAIM REVIEW

### 1. Initial Mail Receipt & Review:

All mail must be scanned and named and assigned within 24 hours of receipt by Intercare.

### 2. Initial Contact:

Use CCSF Best Practices: 3-point contact within one (1) business day

- a. Attempted voice contact with employee, employer, medical provider to be documented:  
 two (2) times
- b. Document all attempts at contact in File Notes.
- c. Use the 3 point contact template in iVOS notepad for employee, employer and medical.
- d. A "contact me" letter should be sent when the examiner is unable to reach the employee.
- e. Additional instructions:

- 1. On all Indemnity claims, send the initial "Sorry" letter along with questionnaire and medical releases to all Injured Workers within 24 hours of receipt of the claims.
- 2. When a 5020, Employer's First Report of Injury, does not accompany the DWC-1, verify that the injured worker is a City employee by contacting their employer to confirm employment status prior to authorizing benefits.
- 3. Verify disability status with the treating physician and/or employer's medical facility prior to making any indemnity payments.
- 4. All proper file coding shall be completed and reviewed by the Adjuster within seven (7) working days of receipt of the claim.
- 5. If DWC-1 is not included with the 5020, send the DWC-1 within one (1) business day to the injured worker.
- 6. If the injured employee reports a criminal assault as the cause of injury or illness, any medically-approved lost time is payable as salary continuation for up to 52 weeks. To ensure that salary continuation is appropriately paid, the adjuster must document the relevant facts in iVOS and notify the DHR Workers' Compensation Director via email to request review and approval of the issuance of Assault Pay. If approved, the adjuster will notify the department workers' compensation contacts and payroll representatives of the approved dates for Assault Pay. Adjuster will complete the iVOS record accordingly and provide notice to the employee.

### 3. Investigation:

- a. **Witness statements** – investigate questionable claims by obtaining statements from anyone who may have knowledge of the injury, including the claimant, witnesses, co-workers, and Supervisors, within ten (10) calendar days of notice of claim unless the file reflects an explanation for unavoidable delay in obtaining them.
- b. **Stress/psyche claims** – interview the employee's Supervisor and/or manager and review the employee's personnel file. Obtain a psyche release.
- c. AOE/COE Investigation:

- X Approval needed from Intercare Supervisor prior to referral
- X Notify departments if sending investigator to location to take statements
- X Document need for outside investigation in iVOS along with instructions to the investigator
- X Use Client Panel (*if using client panel, attached the list to the Service Instruction*)  
*\*\* per client, vendor rotation is not required.*

**d. Activity Check and/or Surveillance:**

X Approval needed from Intercare Supervisor.

Referrals must be based on specific criteria that is connected to potential red flags, or would mitigate issues of compensability and/or extent of injury as appropriate under California law.

If the Department would like subrosa and the Adjuster does not feel it is cost effective or appropriate, the Adjuster should discuss this with the CCSF-WCD Claims Supervisor to arrive at a decision.

X Document in iVOS articulable suspicion to justify need for subrosa along with clear instructions to the Investigator.

X Use Client Panel

- a. Probe - <http://www.probeinfo.com/>
- b. JH Askins - <http://www.askinsco.com/>
- c. Passanisi - <http://passanisi.com/>

**4. Other Instructions:**

Client Departments should not be getting copies of Investigation reports or film.

Indexing / ISO

X Index all claims

X Frequency:

X At setup

X After set-up as needed

When the Insurance Index search reveals prior claims, lawsuits or court actions that may relate to the injured worker's claim, obtain copies of any court records or claim records, and medical records and conduct further investigation as appropriate. All ISO searches are to be documented in iVOS. Adjuster to document in notepad review of ISO report and document relevant findings and POA.

**5. Subpoena Service**

D. Diann Cohen  
Director of Marketing and Training, N. Cal  
Macro-Pro, Inc.  
Phone: 916-689-6891  
Direct Fax: 916-688-3668



6. SIU
- a. SIU referrals are to be coordinated through Probe.
  - b. Probe should be notified as soon as there is any suspicion of fraud. Adjuster is to call Probe and review the issues. Adjuster and Probe will strategize the next steps. The FI1 form will be completed by Probe.  
\* \* Howard will discuss with Ed the file(s) currently assigned to Bill Warner – will he continue to handle?
  - c. Submit SIU information to Ed Stone, CCSF WC/SIU Supervisor, [edward.stone@sfgov.org](mailto:edward.stone@sfgov.org)
  - d. If a claim involves SIU and has been submitted to SIU, CDI or the District Attorney's office, the Adjuster has no settlement authority and must run all settlements by CCSF-WCD Claims Supervisor before taking any settlement action.

G. SUBROGATION

1. **Subrogation:**

Review all claims for the possibility of a third party liability for the following cases:

- X All automobile accidents
- X All claims where the Adjuster becomes aware that a third party claim is being pursued including: all files in which a subpoena has been received regarding other actions; files in which a third party claim is being pursued, or where the attorney representing an employee indicates that he is pursuing a third party claim.
- X All claims resulting from alleged mechanical defects
- X All slip & fall claims off insured or client premises
- X All claims resulting from assaults
- X All claims involving injury from machinery
- X Client approval not required
- X Use CCSF/WCD panel
- X Contribution

If the DCA's office is not pursuing subrogation and we feel it should be pursued, we need to bring this to the Lead City Attorney and CCSF-WCD Claims Supervisor attention for them to handle and make the final decision.

H. LITIGATION MANAGEMENT

**Litigation Management:**

1. X Adjuster to handle litigation activity until case reaches (*check as many as applicable*)  
X Other As needed based on the facts of the case and CCSF-WCD Claims Supervisor input (See App A)

Legal counsel for CCSF workers' compensation claims and litigation is to be provided only by the City Attorney's Office. The Adjuster is primarily responsible for managing the CCSF workers' compensation claims.

- 2. X Where the file has not been referred to the City Attorney's Office and the Adjuster receives a DOR, **file the objection to the DOR if discovery is not completed**, then proceed to send the file to the DCA with a recommended plan of action.
- 3. X Adjuster to prepare and forward all legally required notifications, including a Notice of Representation listing the DCA's office when a file becomes litigated whether the case is referred to the DCA yet or not. This will trigger the WCAB to provide notices to the DCA's office.
- 4. X Adjuster to refer cases to the City Attorney while continuing claims management of these cases.

- 5.  Adjuster to provide litigation support for the City Attorney's efforts.
- 6.  Adjuster to substantiate and refer subrogation cases to the City Attorney.
- 7.  Adjuster to seek legal advice and assistance as early as possible for discussion and resolution of high exposure cases.
- 8.  Upon receipt of DOR if case has not yet been referred.

Any Attorney/Client Privilege is extended to the departments.

If any disputes between DCA's office and Intercare, we need to take those first to the CCSF-WCD Claims Supervisor for resolution as appropriate.

9. **S&W and 132A**

- a. Immediately notify CCSF-WCD Claims Supervisor and the employing department of receipt of 132a or S&W, and provide a copy of the filing.
- b. Any F&A including these benefits must be discussed with the department to determine if paying off the claim file or department paying separately, and notify the CCSF-WCD Claims Supervisor via email.

**I. MANAGED CARE**

**Bill Review:**

- 1. Bill Review Contract with:  
 Genex

**MPN (Medical Provider Network):**

Participating?  
 Yes

- 2. PPO Network:  
 CorVel  
- First Health  
- Focus  
- Concentra  
- Other/ Allied

If yes, name of MPN:  
 Other – CCSF's MPN  
  
Implementation Date: 7/1/07

**Utilization review criteria:**

Utilization review referrals in accordance with CCSF's UR Guidelines and procedures

**Utilization Review:**

Vendor Selected:  
 Genex

UR Protocols:  
 Other – (See Preauthorization "Fast Track" Procedures & Treatment Guidelines)

**Case Management:**

Utilize medical case management nurses on an exception basis, only for catastrophic claims or claims involving complex medical issues, focusing on reducing unnecessary and/or excessive treatment, improving communication, providing assistance and support to injured employees and returning employees to work as quickly as possible.

Any nurse case management referrals must be approved by a Supervisor and will be to an approved vendor.

At no time should any vendor or Nurse Case Manager authorize treatment or any services.

#### **J. MAIL DOCUMENTATION & REVIEW PROCESS**

1. Upon mail received in the office and assigned to the claim, the Adjuster shall review all priority mail (DOR, WCAB Awards, Orders and Notices, Medical Reports, legal correspondence requiring immediate action) to the claim file within one (1) business day.
2. Non-priority mail must be reviewed and attached to the claim file within five (5) days.
3. **PTP MMI Reports and QME/AME Med/Legal Reports**  
Timely review and completion of the Medical Legal Analysis Template in iVOS and discussion with the Supervisor with new POA outlining discussion and plan.

#### **K. MEDICAL**

1. **Physician Reporting**
  - a. All temporary disability must be supported by a physician's report. If the physician is not reporting every forty five (45) days, notify them in writing of the treating physician requirements of Section 9785 of the California Code of Regulations, and provide the physician with a copy of that section.
  - b. If the physician does not provide a report within ten (10) days of that notification contact the physician's office and provide appropriate warnings of the potential consequences of a lack of reporting. Consequences depend on the situation and the situation should be assessed accordingly. Where the physician is part of the MPN, the physician should be warned that he/she could be terminated from participation in the network. Where the physician is a non-MPN physician that is properly pre-designated by the employee, the physician should be warned that the claims administrator will file an Employer's Request to Change Treating Physician's with the Administrative Director's office. If no response to the warnings, take appropriate action to either file the Employer's Request or to send a request to the CCSF MPN Administrator to consider termination of the MPN provider with a brief review of the circumstances.
2. **Ratable Medical Reports**
  - a. Adjuster shall timely review a PTP MMI report to evaluate whether the report meets the criteria for substantial medical evidence and make a determination of any potential issues that require an opinion from a QME/AME.
  - b. Obtain a Qualified medical report from a QME/AME physician for every claim in which a claimant's treating physician reports permanent disability of 35% or greater except where the Adjuster, Supervisor and CCSF-WCD Claims Supervisor agree (and such agreement is memorialized in writing) that the PTP report accurately represents the level of disability.
  - c. Adjuster shall timely review a QME/AME report to determine whether the report meets the substantial medical evidence test and, if not, shall timely request a supplemental report.
    - i. Where the QME report for an unrepresented worker contains a factual error, the Adjuster shall follow the process outlined by DWC in CCR Section 37 to correct the error.
  - d. Adjuster is expected to rate all disabilities, but may use private rating for complex or exceptional cases disputed, Almarez Guzman or life pension.
3. **AME**

The use of an Agreed Medical Examiner should be reserved for cases in which there is a specific documented reason why an AME is beneficial for case resolution. Adjusters must document a rationale for this and have approval from their Supervisor and from the

**L. RESERVES:**

1. Adjuster's initial reserve review and reserve input must be completed within two (2) working days
2. Evaluate and adjust reserves within thirty (30) days of receipt of supporting documentation
3. Reserves shall be reviewed for adequacy on a regular ninety (90) (contract says 45 days) day diary schedule for adjustments to reflect new information and/or adverse case developments. Liz/Howard recommended deleting the highlighted above. Changing this is an exception to the contract – Howard will discuss with Peggy.
4. State in the claim notes the basis for all initial reserves, reserve revisions, and payments using the appropriate reserve analysis form.
5. With any reserve change of \$50,000 or more (increase or decrease), send a notification to the CCSF with an e-mail reserve alert including explanation for the change within two (2) working days of the change.
6. Reserve notification shall include a fully completed reserve worksheet and a narrative report.

**M. SETTLEMENTS:**

<b>1. Settlement Contact</b>	<b>Phone Number</b>	<b>Email Address</b>
<u>Elizabeth Angelini</u>	<u>(415) 701-5875</u>	<u><a href="mailto:Elizabeth.Angelini@sfgov.org">Elizabeth.Angelini@sfgov.org</a></u>
<u>Ed Stone</u>	<u>(415) 701-5812</u>	<u><a href="mailto:Edward.Stone@sfgov.org">Edward.Stone@sfgov.org</a></u>
<u>Peggy Sugarman</u>	<u>(415) 701-5848</u>	<u><a href="mailto:Peggy.Sugarman@sfgov.org">Peggy.Sugarman@sfgov.org</a></u>

**2. Settlement Authority:**

TPA shall have authority to settle cases up to: \$25,000.00 total value.

- a. Where there are multiple claims for a single injured worker that, if combined, would exceed \$25,000, CCSF-WCD Claim Supervisor approval is required.
- b. Authority for approvals up to \$49,999 shall be directed to the Intercare Supervisor and then to the Intercare Program Manager for settlements \$50,000 and above. Intercare Supervisor/Program Manager will complete request for settlement authority in iVOS and will diary CCSF-WCD Claims Supervisor for approval. The CCSF-WCD Claims Manager is back-up to the CCSF-WCD Claims Supervisor in emergencies. Peggy Sugarman may be contacted for emergencies and must provide approval for any settlement over \$100,000.
- c.  Settlement authority shall be secured from the CCSF-WCD Claims Supervisor via diary on all settlements in excess of:  
 \$25,000  
- \$50,000  
- Other - \_\_\_\_\_

The specific Departments do not have any settlement authority. They should be notified if a settlement C&R is being discussed and is over \$25,000.00.

- d.  Settlement requests shall include a note documenting the request for settlement authority. All issues must be outlined and a diary sent to the CCSF-WCD Claims Supervisor as soon as appropriate but at least one (1) week prior to any hearing or trial.
- e.  Settlement authority is also granted to Intercare up to \$10,000 to C&R a claim that has previously been settled by Stipulation and the settlement was previously authorized by CCSF.

- f. **X** Settlement information must be completed in the Litigation Tab in iVOS for ALL settled claims. Settlement authority template must be completed.
- g. In the event that an unrepresented injured employee does not respond to requests for resolution of the claim via stipulated settlement after thirty (30) days, send a second notice to the injured employee requesting that he/she sign the settlement papers. Include with this request that, if not received within thirty (30) days, CCSF will file a Declaration of Readiness to Proceed at the Workers' Compensation Appeals Board to request that a judge review and approve the proposed stipulations. Should there be no response, discuss with the City Attorney's office. The Deputy City Attorney will determine whether the DCA should file it or whether the Adjuster may do so.

If a claim involves SIU and has been submitted to SIU, DOI or the District Attorney's office, the Adjuster has no settlement authority and must run all settlements by CCSF-WCD Claims Supervisor before taking any settlement action.

**N. ACTION PLANS (POA's)**

Client Preference – Document Action Plan

**1. Adjuster Review:**

- a. Delayed claims shall be reviewed promptly and regularly to ensure the decision is made as expeditiously as possible.
- b. Claims in which TD benefits are being paid shall be reviewed every forty five (45) days (every 3<sup>rd</sup> payment).
- c. Claims where PD advances are being paid shall be reviewed at a minimum of every forty five (45) days.
- d. Indemnity claims where no TD is being paid shall be reviewed at a minimum of once every forty five (45) days
- e. Medical Only claims shall be reviewed every ninety (90) days or less.
- f. Future Medical claims shall be reviewed every ninety (90) days.
- g. Claim closure shall be completed within thirty (30) days from the date the claim was identified for closure.
- h. Notify the City (department contact) by e-mail within forty-eight (48) hours of receipt of any medical report finding an employee to be MMI and/or releasing the employee to permanent or modified work.

**2. Adjuster POA Review:**

- a. The initial POA is due within seven (7) working days from receipt of the claim by Intercare.
- b. Clearly document the POA in the file and update the POA at a minimum of every ninety (90) days until a settlement is reached and the claim is converted to a Future Medical Claim.
- c. Future medical claims shall have a POA at a minimum of every six (6) months one hundred eighty (180) days.
- d. The POA shall be based upon the facts and complexities of each individual case.

**3. Supervisor Review:**

Supervisor review every ninety (90) days and all Supervisor reviews must be documented in the claim notes.

**O. MO to IND Claim Conversion:**

- 1. **X** Convert MOs to Indemnity when a work injury claim has resulted in the payment of temporary disability indemnity, temporary partial disability indemnity, salary continuation or disability pay in lieu of temporary disability, permanent disability indemnity, or death benefits pursuant to CCR Section 10100.1(x).

±

- 2. **X** Medical Only claims shall be reviewed for closure in

**X** ninety (90) days

Thereafter, if the claim cannot be closed due to continuing medical, and the claim is unable to close within the next thirty (30) days, the file should be transferred to an indemnity Adjuster desk.

**P. RETURN TO WORK:**

1. Adjuster shall actively work with physicians and City Departments to facilitate employee participation in early return to work programs.
  - a.  Check with client on availability of transitional duty
  - b.  The City has an aggressive return to work plan. Each Department has their own guidelines for RTW that should be followed accordingly.
  - c. **DPW Specific Request: Job Analysis Order**  
**A JA will be completed after sixty (60) days of modified duty or off work**  
The process will begin with knowledge of modified duty:
    1. A sixty (60) day diary will be set from the first day of modified duty.
    2. If the employee is still on modified duty on the diary date, a JA will be ordered through an approved CCSF Vendor.
    3. Upon receipt of the completed JA, it will be provided to the primary treating physician to address when P&S.
    4. The JA will also need to be provided for any PQME, AME, or med-legal evaluation.
    5. Utilize your assistants to make sure the procedure is being completed.
  - d. **Jobs** Now Employees (HSA, Recreation and Parks and DPW)
    1. HSA employees who are categorized as “Jobs Now” are “lent” to departments for work assignments. Generally Recreation and Parks and DPW.
    2. When an injury occurs, the Adjuster will do the following in these two situations:
    3. Modified Duty  
Adjuster will work with Recreation and Parks or DPW contacts regarding accommodation
    4. Permanent Restrictions  
Please notify HSA Work Comp Coordinator  
HSA handles the permanent restrictions/accommodations

**Q. CLAIM REVIEWS:**

1. **Claim Reviews:**
  - a. Claim reviews required with the following frequency (select below).  
 Quarterly at no more than fifteen (15) claim reviews per department per quarter.  
 Other – specify if a Department does not want a claim review quarterly, then they can have at greater intervals. However, no more than fifteen (15) files per quarter per department shall be completed.  
 Other criteria – Chosen by the department and no more than fifteen (15) files per quarter per department or sixty (60) files per year per department.
  - b. A list of files to be reviewed shall be provided by the department to Intercare within thirty (30) days from the time the review sheets are due back to the departments or the claim review itself, whichever is the soonest date.

- c. Claim reviews shall contain a summary of the case including how the injury happened, diagnosis, treatment plan, RTW status and provide a clear plan of action to bring the case to conclusion.
- d. If questions are asked at the claims review that the answer is unknown, the Adjuster shall respond back to the Department with the answer within fourteen (14) days after the review, or an agreed upon date by all parties at the time of the review.
- e. Location of Reviews

X To be determined when claim review is scheduled

**R. Monthly Reporting Requirements**

Intercare to Report Monthly to WCD

- 1. Internal Audit Sheet with Claim Numbers for Audited Claims
- 2. Penalty Report
- 3. Closing Ratios Report
- 4. Report Listing All Settlements (claim number, name, settlement type, amount, date, percentage)
- 5. Claim Detailed Analysis Reports

**S. Bi-Monthly Reporting Requirements:**

Intercare to Report Bi-Monthly to WCD

- 1. Claims that are Anticipated to Settle within the Current Fiscal Year and are Over \$50,000
- 2. Claims with Anticipated Exposure over \$100,000 for Permanent Disability
- 3. Claims with the Following Issues (Not Including Future Medical Claims): Catastrophic/High Exposure, Potentially Confidential, Death, Psychiatric, Sensitive and/or Anything Involving Discrimination/Harassment

**T. Further Information/Department Specific Requirements:**

- 1. Please find attached Appendix A – Scope of Work (Contract) for all other reporting requirements.
- 2. Department Specific Requests for information is subject to agreement between Intercare and the client department, except that protected medical information shall not be disclosed to individuals within the client departments and must conform to the requirements of Labor Code section 3762. Should departments request reporting that Intercare finds burdensome, the dispute will be resolved by the DHR Workers' Compensation Director consistent with Appendix A – Scope of Work (Contract).

**U. Program Changes:**

- 1. Staffing Changes – IIS shall notify Client of any changes in staff assigned to the program within 5 days of knowledge that a change might be taking place due to a termination or at least 2 weeks before the effective date of the change if reason is other than a termination.
- 2. If possible, no staffing changes shall take place without prior communication with the client.

## Appendix E-2

### SFMTA Service Instructions

**Account/Client:** San Francisco Municipal Transportation Agency

**Effective Date:** 12/1/12

**Expiration Date:** 11/30/17

**Carrier Name:** Not Applicable

**FEIN Number:** 94-1160893

**Coverage Dates:** From All To

**Check one:**  Self-Insured  
 Insured

**Policy #:** N/A

**Coverage Type:** WC

**Deductible:** None

**CONTACTS**

**(b) Include Company name, contact name, address, phone #, fax # and e-mail address**

Name & Title	Company/Address	Phone	Fax	Contact Type	Email
Dan Roach, Workers' Compensation Industrial Safety & Environmental Compliance	1 S. Van Ness Ave., 6 <sup>th</sup> Floor San Francisco, CA 94102	(415) 701-4351	(415) 701-5001	Manager	Dan.roach@sfmta.com
Shawna Culp, Claims Manager	6020 West Oaks Blvd., Suite 100 Rocklin, CA 95677	(916) 780-9749	(916) 781-5670	Claims Manager/ Intercare	sculp@intercareins.com

*Please see attached for further contact information for SFMTA*

**CLAIM REPORTING (First Report of Injury) – Check Client Preference**

**Reporting Method:**

Phone       eFax  
 Email       Mail

**State Notification:**

Intercare submits FROI to State Agency  
 Client will submit FROI to State Agency.

**New Claim Reporting**

Fax: (916) 781-5700

Fax: (877) 362-5050

E-mail: [newclaims@intercareins.com](mailto:newclaims@intercareins.com)

**Hotline: 1-855-850-2249**

**All claims shall be set-up within 24 hours of receipt of the claim by the TPA**

**COMPENSABILITY**



**I. DENIALS:**

X Notify client before denying claim

X Notification Method:

- phone

X email

**II. DELAYS:**

X Notify client before delaying claim

- phone & email

Notification shall be made to Dan Roach and discussion prior to decision made to delay or deny

**FINANCIAL**

**4. Claim Payments/Cash Call:**

X Notify **SFMTA Workers' Compensation Team** of any payment exceeding **\$5,000.00** via: Email

X email Email Address: [wcteam@sfmta.com](mailto:wcteam@sfmta.com)

**5. Wages Statements:**

X Obtain wage statements/verification from **SFMTA Payroll** by Email

X email Email Address:

Mohammad Mansuri, (415) 701-4747, [mohammad.mansuri@sfmta.com](mailto:mohammad.mansuri@sfmta.com)

Lilian Yin, (415) 701-4537, [lilian.yin@sfmta.com](mailto:lilian.yin@sfmta.com)

Mimi Tran, (415) 701-4631, [mimi.tran@sfmta.com](mailto:mimi.tran@sfmta.com)

**6. Allocated Expenses:**

7. The following shall be paid as allocated loss expense except where specifically precluded by State Regulations:

X Utilization Review

X Nurse Case Management

X Bill Review Fee

X Investigations

X Defense Legal Costs

X Police reports

X Court Reporter Services and Transcripts

X Printing Costs related to Trials & Appeals

X Trial and Hearing Attendance Fees

X Credit Bureau Reports

X Photographs

X Photocopy Services

X Witness fees, Testimony, opinions, appraisals, reports surveys & Professionals and Experts

**INVESTIGATION/ INITIAL CLAIM REVIEW**

**10. Initial Mail Receipt & Review:**

a. All mail received must be scanned and named & assigned within 2 business days of receipt by the TPA

**11. Initial Contact:**

X Use IHI Best Practices: 3-4 point contact within 1 business day of claim set-up

This includes employer, Injured Worker and Doctor. Do not delay compensability determination if unable to complete three point contact timely.

**X Additional instructions:**

7. Attempt voice contact with injured worker  
X 2 times - 3 times
8. On all indemnity claims, if a voice contact with the injured employee cannot be completed within 48 hours send IW a Contact letter
9. Follow up with IW by phone within #days of sending Contact Letter (*select one below*)  
X At next diary/payment process date
10. Document all attempts in File Notes
11. All proper file coding shall be completed and reviewed by the Adjuster within 7 working days of receipt of the claim.
12. Sorry notice along with dwc-1 claim form (if one was not provided) shall be sent to the Injured Worker within 1 business day of receipt of the claim.
  - This will be completed by Shared Services, if the DWC-1 form was not provided

**Investigation:**

X Use Client Panel *Probe Investigations (See attached for further information)*

Dalene Bartholomew, [dalene@probeinfo.com](mailto:dalene@probeinfo.com) (916) 676-4976

**AOE/COE Investigation:**

- Approval needed from client prior to referral
- X Contact client if sending investigator to location to take statements
- X Document need for outside investigation

**Activity Check and/or Surveillance:**

- X Approval needed from client prior to referral
- X Document articulable suspicion to justify need for subrosa

**Subrogation:** Review all claims for the possibility of a third party liability for the following cases:

- X All automobile accidents (rear end collisions, accidents involving lane changes, intersection accidents, etc.)
- X All claims where the adjuster becomes aware that a third party claim is being pursued Including: files where a CIB indicates that a third party claim is being pursued, or where applicant's attorney indicates they will/are pursuing a third party claim.
- X All claims resulting from alleged mechanical defects
- X All slip & fall claims off insured or client premises
- X All claims resulting from assaults
- X All claims involving injury from machinery
  
- X Request client authority to pursue with litigation/atty involvement

**SIU:**

X Any suspicion of SIU activity shall be referred to Probe Investigations (See attached information)

**LITIGATION**

**12. Litigation Management:**

- Refer to defense attorney immediately upon receipt of application to adjudicate

X Adjuster to handle litigation activity until case reach (*check as many as applicable*)

- Conference
- Deposition
- MSC
- Trial

X Other As needed based on the facts of the case and client's input; in any case referral must be made prior to hearing date

**13. Approval**

X Use Client Panel (CCSF/ DCA's Office)

**14. Court Reporting**

a. Please see attached HRC Requirement for Court Reporting Services

▪ We must use the following:

- Star Reporting Service, Inc. (415) 348-0050
- Behmke Reporting & Video Services, Inc. (415) 597-5600

**15. Translation**

a. Please see attached HRS Requirement for Translation Services

▪ We must use the following:

- Thomas Chen Associates, Inc. (888) 663-7007

**MANAGED CARE**

**Bill Review:**

16. Bill Review Contract with:

- Intermed
- X Other - Mitchell

**MPN (Medical Provider Network):**

Participating?

- X Yes
- No

17. PPO Network:

X Mitchell

If yes, name of MPN:

X Other – CCSF MPN with InterMed oversight:  
[www.intermedccs.com/ccsfmpn](http://www.intermedccs.com/ccsfmpn)

Implementation Date: Applicant amendment to be filed

**Case Management:**

X Genex for Field Case Mgmt (See attached information)

No telephonic case management for SFMTA

**Referral Criteria for Field Case Management:**

Indemnity cases with the following characteristics:

- X Serious Spinal Cord Injury
- X Amputations
- X Brain Damage
- X Blindness
- X Serious Burns
- X Multiple Fractures involving more than 1 limb or non union brachial plexus nerve damage (nerve damage causing paralysis and loss of sensation in arm and hand)
- X Massive Internal Injuries affecting body organs
  - Complex fractures
  - Fibromyalgia
  - Reflex Sympathetic Dystrophy
- X Most hospitalizations
- X Areas identified and agreed upon between Adjuster and Client

**18. Utilization Review:**

Vendor Selected:

X Other – Mitchell

please see attached for referral protocols

UR Protocols:

Use Client and Mitchell UR Criteria for Adjuster and UR nurse

**19. Referral Process**

- a. Send an e-mail to the Scanbox-  
[urbox@mitchell.com](mailto:urbox@mitchell.com)
- b. Include the following Information:
  - Claimant Name
  - Claim #
  - DOI
  - WCIS & EAMS Numbers
  - Indicate reason for referral-
    - Example: request for Carpel Tunnel surgery from Dr. Smith (562) 988-1212
  - List any other items needed

**Mitchell Contact Info:**

**Teresa Bechtolt, NCM (858) 368-7580,**

**[Teresa.bechtolt@mitchell.com](mailto:Teresa.bechtolt@mitchell.com)**

**Julie Fisher, MC Account Manager (949) 335-1456**

[Julie.fisher@mitchell.com](mailto:Julie.fisher@mitchell.com)

**Barbara Williams, Manager of MC, (949) 335-1843**

[Barbara.williams@mitchell.com](mailto:Barbara.williams@mitchell.com)

**Jackie Payne, Sr. Director MC, (949) 335-1818**

[Jackie.payne@mitchell.com](mailto:Jackie.payne@mitchell.com)

#### **MAIL DOCUMENTATION & REVIEW PROCESS**

Upon mail received in the office and assigned to the claim, the Adjuster shall review all priority mail (DOR, WCAB Awards, orders and Notices, Medical reports, legal correspondence requiring immediate action) to the claim file within 1 business day.

For all non priority mail, all mail must be reviewed and attached to the claim file within 5 days.

#### **RESERVES**

20. Initial reserves shall be established within 7 working days of the receipt of the claim.
21. Evaluate and adjust reserves as appropriate within 30 days of receipt of supporting documentation. Reserves shall take into consideration all potential payments. Review all reserves for adequacy on a regular diary schedule to coincide with the POA diary schedule. For Indemnity claims this is not more than every 45 days and for FM and MO claims, no more than every 90 days.
22. Notify client of reserve changes in excess or decrease of: \$50,000.00 within 2 business days of the change.
  - a. Reserve notification shall include a fully completed reserve worksheet and a narrative report.

<b>Settlement Contact</b>	<b>Phone Number and Fax Number</b>	<b>Email Address</b>
<u>Dan Roach/ E-mail preferred</u>	<u>P:(415) 701-4351</u> <u>F: (415) 701-5001</u>	<u>Dan.roach@sfmta.com</u>

#### **SETTLEMENTS**

- New money up to \$10,000.00
- including amount previously paid and new money – Authority up to \$25,000.00
- Request settlement authority from Dan Roach via email on settlements in excess of:
  - \$25,000
  - \$50,000
  - \$100,000
  - Other - \$10,000.00 new money/ \$25,000.00 new \$ plus previously paid

X Settlement request shall include a fully completed reserve worksheet if reserve increase recommended and a narrative report outlining basis for settlement.

X Use the following vendor for structured settlement:

X IHI Panel

**PROGRAM MANAGEMENT**

**23. Action Plans (POA's):**

Client Preference – document action plan

Adjuster Review:

- a. Delayed claims shall be reviewed every fourteen (14) days (POA every 45 days)
- b. Medical Only claims shall be reviewed every 90 days or less
- c. Future Medical claims shall be reviewed every 90 days (POA every 180 days)
- d. Claim closure shall be completed within 30 days from the date the claim was identified for closure
- e. Notify the City/SFMTA (Department contact) by e-mail within 48 hours of receipt of any medical report finding an employee to be MMI and/or releasing the employee to permanent or modified work
- f. If a claim is denied, notification and discussion with SFMTA for any claim where we will be reversing the denial and accepting the clam.
- g. Notify SFMTA within 10 days if an Injured Worker has permanent restrictions which preclude him/her from returning to their usual and customary occupation

Adjuster POA Review:

- h. The initial POA is due within seven (7) working days from receipt of the claim by the TPA.
  - This is the same as the initial reserve
- i. Clearly document the POA in the file and update the POA at a minimum of every 45 days until a settlement is reached and the claim is converted to a Future Medical Claim.
- j. Future medical claims shall have a POA at a minimum of every six (6) months.
- k. The POA shall be based upon the facts and complexities of each individual case.

Supervisor Review:

- l. Supervisor review every 90 days and all Supervisor review must be documented in the claim notes for Indemnity claims
- m. Supervisor review every 180 days on Future Medical claims

• **Return to Work Program:**

X Check with client on availability of transitional duty and work with SFMTA and the physicians to get the iw's back to modified duty

X See attached RTW program documentation and agreements for claimant signature



TWP agreements and assignments excel



TWP procedure 2.pdf



TWP procedure.pdf

**RTW Notice**

- The TPA shall send the attached letter when someone is released to rtw with permanent work restrictions. It is used to determine RTW v. ADA v. Discharge. The letter shall be sent to the SFMTA team at [wcteam@sfmta.com](mailto:wcteam@sfmta.com) SFMTA will sign the document and send it to the Injured Worker.



SFMTA Options  
Letter- RTW Perm Re

---

**24. MO to IND Claim Conversion:**

**X** Convert MO's to Indemnity when one of the following occurs:

**X** Total payments reach:

- \$3,500

**X** \$5,000

**X** Other \$ The claim has been open for more than 180 days

**X** When there is exposure to temporary, permanent or vocational disability.

**X** Medical Only claims shall be reviewed for closure in

- 60 days

**X** 90 days

- 120 days.

**25. Claim Reviews:**

**f.** Claim reviews required with the following frequency (select below). Client shall notify the Account Manager shall provide a 15-30-day notice of the claim review date.

**X** Quarterly

- Every 6-months

- Annually

- Other – specify \_\_\_\_\_

**g.** Claim Review Criteria:

- All Indemnity Claims

- All Claims (MO and IND)

- IND Claims over a specific threshold – specify \_\_\_\_\_

- Large losses – specify total incurred \_\_\_\_\_

**X** Other criteria – To be determined by Dan and the cases reviewed by each Adjuster

**h.** Location of Reviews

- Claim Office

- Client's Office

- Alternate between IHI and Client Offices

**X** To be determined when claim review is scheduled

**i.** On-Site Visit :

Ask client's preference for on-site visit:

**X** Initial visit within – of program inception

**X** 30 days (Visit conducted prior to go-live date)

- 60 days

- 90 days

**X** Subsequent visits:

**X** Quarterly review of Service Instructions and evaluation

**X** Annually- Stewardship Review

- **Further Information:**

- **Please find attached Appendix A- Scope of Work**

- **Program Changes:**

- Staffing Changes – IHI shall notify Client of any changes in staff assigned to the program within 5 days of knowledge that a change might be taking place due to a termination or at least 2 weeks before the effective date of the change if reason is other than a termination.
- If possible, no staffing changes shall take place without prior communication with the client.