

**Agreement between the City and County of San Francisco and
Intercare Holdings Insurance Services, Inc.
for Workers' Compensation
Third Party Administrator Claims Services**

Contract No. 1000026741

Table of Contents

Article 1: Definitions..... 1

Article 2: Term of the Agreement 4

Article 3: Financial Matters..... 4

3.1 Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation 4

3.2 Guaranteed Maximum Costs..... 5

3.3 Compensation 5

 3.3.1 Contract Amount 5

 3.3.2 Payment 5

 3.3.3 Payment Limited to Satisfactory Services and Delivery of Deliverables..... 5

 3.3.4 Withhold Payments..... 6

 3.3.5 Invoice Format..... 6

 3.3.6 Payment Terms 6

 3.3.7 Reserved. (LBE Payment and Utilization Tracking System) 6

 3.3.8 Payment of Compensation..... 6

3.4 Audit and Inspection of Records..... 6

3.5 Submitting False Claims 7

3.6 Fiduciary Obligations..... 7

Article 4: Services and Resources..... 7

4.1 Services Contractor Agrees to Perform 7

 4.1.1 Scope of Services and Client Service Instructions 7

 4.1.2 Changes to Client Service Instructions..... 8

 4.1.3 Task Orders..... 8

 4.1.4 Limitations of Client Service Instructions and Task Orders 8

 4.1.5 Responsibility for Claims 8

4.2 Qualified Personnel..... 8

4.3 Subcontracting 8

4.4 Independent Contractor; Payment of Employment Taxes and 9

 4.4.1 Independent Contractor 9

 4.4.2 Remedial Action 10

 4.4.3 Payment of Employment Taxes and Other Expenses..... 10

4.5 Assignment 11

4.6 Warranty 11

4.7 Time Is of the Essence	11
Article 5: Insurance and Indemnity	11
5.1 Insurance.....	11
5.2 Indemnification and Defense	14
5.2.1 Indemnification.....	14
5.2.2 Defense	15
5.2.3 Insurance Does Not Limit Liability.....	15
5.2.4 Copyright Infringement	15
5.2.5 Legal Penalties for Delayed or Denied Benefits Authorization or Payment.....	15
Article 6: Liability of the Parties	18
6.1 Liability of City.....	18
6.2 Liability for Use of Equipment	18
6.3 Liability for Incidental and Consequential Damages.....	18
Article 7: Payment of Taxes	18
7.1 Contractor to Pay All Taxes.....	18
7.2 Possessory Interest Taxes	19
7.3 Withholding	19
Article 8: Termination and Default	19
8.1 Termination for Convenience	19
8.2 Termination for Default; Remedies	21
8.3 Non-Waiver of Rights.....	23
8.4 Rights and Duties upon Termination or Expiration.....	23
Article 9: Rights In Deliverables	24
9.1 Ownership of Records and Results	24
9.2 Transmission of Records.....	24
9.3 Retention of Records.....	24
9.4 Works for Hire	24
Article 10: Additional Requirements Incorporated by Reference	24
10.1 Laws Incorporated by Reference	24
10.2 Conflict of Interest	25
10.3 Prohibition on Use of Public Funds for Political Activity.....	25
10.4 Consideration of Salary History.....	25
10.5 Labor Code and Workers' Compensation Regulations	25
10.6 Nondiscrimination Requirements	25

10.6.1 Non Discrimination in Contracts	25
10.6.2 Nondiscrimination in the Provision of Employee Benefits	26
10.7 Local Business Enterprise and Non-Discrimination in Contracting Ordinance	26
10.8 Minimum Compensation Ordinance.....	26
10.9 Health Care Accountability Ordinance.....	26
10.10 First Source Hiring Program.....	27
10.11 Alcohol and Drug-Free Workplace.....	27
10.12 Limitations on Contributions	27
10.13 Consideration of Criminal History in Hiring and Employment Decisions.....	27
Article 11: General Provisions	28
11.1 Notices to the Parties	28
11.2 Compliance with Americans with Disabilities Act.....	29
11.3 Incorporation of Recitals.....	29
11.4 Sunshine Ordinance	29
11.5 Modification of this Agreement.....	29
11.6 Dispute Resolution Procedure.....	29
11.6.1 Negotiation; Alternative Dispute Resolution.....	29
11.6.2 Government Code Claim Requirement	29
11.7 Agreement Made in California; Venue.....	30
11.8 Construction.....	30
11.9 Entire Agreement	30
11.10 Workers' Compensation Laws.....	30
11.11 Compliance with Laws	30
11.12 Severability	30
11.13 Cooperative Drafting	30
11.14 Order of Precedence.....	31
11.15 Approval by Counterparts.....	31
Article 12: Department Specific Terms	31
12.1 Reserved.....	31
Article 13: Confidential Information and Data Security	31
13.1.1 Proprietary or Confidential Information of City.....	31
13.1.3 Confidentiality of Medical Information.....	33
13.3 Management of City Data and Confidential Information	34
Article 14 Litigation and Communications with the City Attorney	36

Article 15: MacBride Principles – Northern Ireland..... 37
Article 16: COVID Contractor Vaccination Policy 37
Article 17: Included Appendices..... 38

**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. 1000026741

This Agreement is made as of first day of November, 2022, in the City and County of San Francisco (City), State of California, by and between Intercare Holdings Insurance Services, Inc., a Delaware corporation (Contractor), and City.

Recitals

A. The City wishes to obtain Workers' Compensation Third-Party Administrator Services.

B. This Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through a Request for Proposals (RFP) issued on May 4, 2022, pursuant to which City selected Contractor as the highest-qualified scorer.

C. There is no Local Business Enterprise (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. The City's Civil Service Commission approved Contract number 42796-21/22 on September 19, 2022.

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement. Where any word or phrase defined below, or a pronoun in place of the word or phrase, is used in any part of this Agreement, it shall have the meaning set forth below:

1.1 **"Agreement"** or **"Contract"** means this contract document, including all appendices, any future amendments, Client Service Instructions, Task Orders, and all applicable City Ordinances and Mandatory City Requirements specifically incorporated into this Agreement by reference as provided herein.

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

1.3 “**Business Day(s)**” means Monday through Friday, excluding Saturday and Sunday and holidays observed by the City.

1.4 “**City**” or “**the City**” means the City and County of San Francisco, a municipal corporation, acting by and through its Department of Human Resources (DHR).

1.5 “**City Data**” or “**Data**” means that data as described in Article 13 of this Agreement, which includes, without limitation, all data collected, used, maintained, processed, stored, or generated by or on behalf of the City in connection with the performance of the Services, performance of this Agreement, and information concerning City employees’ workers compensation claims, medical condition, evaluation and diagnoses, and disability information; all data and information entered, stored, processed in the Ventiv’s Claims Enterprise system (Ventiv System), and any software system used for medical bill review and medical services utilization review, or other system used to manage claims and benefits, and any reports generated by those systems. (City Data includes Confidential Information that the City is not required by law to disclose to the Workers’ Compensation Appeals Board (WCAB), parties to a litigated matter, or to State and federal government agencies.)

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

1.7 “**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.

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

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

1.10 “**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 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.)

1.11 “**Confidential Information**” means information including, but not limited to, personally-identifiable information (PII), protected health information (PHI), information concerning City employees’ injuries, and accidents, including but not limited to City employees’ medical records, personnel documents and records, injury reports and data, claims investigation reports, incident and/or accident reports and data, and records concerning the medical treatment,

evaluation, condition and disability status of any City employee, or personal financial information that is subject to local, state or federal laws restricting the use and disclosure of such information, including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and San Francisco Administrative Code Chapter 12M (Chapter 12M), and any data, data files, reports, and other documents in electronic or hard copy that contain Confidential Information.

1.12 “Contract Administrator” means the contract administrator assigned to the Contract by DHR.

1.13 “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.

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

1.15 “Day(s)” means calendar day(s), unless Business Days are indicated as the metric, irrespective of whether the words are capitalized.

1.16 “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.

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

1.18 “Director” means the Human Resources Director and his/her designee.

1.19 “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 3.1.

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

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

1.22 “**Program**” - See “Services.”

1.23 “**Project Account Manager**” means the Contractor’s project manager assigned to the Contract.

1.24 “**Purchase Order**” (also referenced as “Notice to Proceed”) means the written order issued by the City to Contractor, authorizing the Effective Date as provided in Section 2.1.

1.25 “**San Francisco Municipal Transportation Agency**” (or “**SFMTA**” or “**Agency**”) means the agency of City with jurisdiction over surface transportation in San Francisco, as provided under Article VIIIA of the San Francisco Charter.

1.26 “**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 this document and 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.

1.27 “**Task Order**” means a counter-signed work order issued by the City under which 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 from the Effective Date, unless earlier terminated as otherwise provided herein.

2.2 The City shall have two options to extend the term of this Agreement by two three-year periods for a total term not to exceed nine years (three-year initial term plus extensions of three years each) applying the prices for said extension period(s) set forth in Appendix B (Calculation of Charges) to this Agreement. The City’s exercise of said options to extend the term of the Agreement shall not be contingent upon changes to the terms and conditions of the 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 in the form of a Purchase Order, 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-Nine Million, Three Hundred Fifty-Seven Thousand, Three Hundred and Sixty-One Dollars (**\$29,357,361.00**).

3.3.2 Payment. Contractor shall provide an invoice to DHR on a monthly basis for Services completed in the immediately preceding month, as more specifically set out in Appendix B. Compensation shall be made for Services identified in the invoice that the Human Resources Director, or his or her designee, in his or her sole discretion, concludes have been satisfactorily performed in accordance with this Agreement. The breakdown of charges for the Services Contractor shall perform under this Agreement is set out in Appendix B, 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. City will not honor minimum service order charges for any Services covered by this Agreement.

3.3.3 Payment Limited to Satisfactory Services and Delivery of Deliverables. Contractor is not entitled to any payments from City until the authorized representative of DHR confirms that the Services that Contractor performed and invoiced, including any furnished Deliverables, satisfy the requirements of this Agreement. Any payment to Contractor by City shall not excuse Contractor from its obligation to perform again or replace unsatisfactory Deliverables and/or 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 additional 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 Deliverables and/or 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 City's Controller and the City and must include a unique invoice number and a specific invoice date. City will make payment as specified in Section 3.3.8, or in such alternate manner as the Parties have mutually agreed upon in writing. All invoices must show the PeopleSoft Purchase Order ID Number, PeopleSoft Supplier Name and ID, Item numbers (if applicable), complete description of Deliverables delivered or Services performed, sales/use tax (if applicable), contract payment terms, and contract price. Invoices that do not include all required information or contain inaccurate information will not be processed for payment.

3.3.6 Payment Terms.

(a) Unless the City notifies Contractor that a dispute exists, Payment shall be made within 30 Days, measured from the date of the City's receipt of the invoice. Payment is deemed to be made on the date on which City has issued a check to Contractor or, if Contractor has agreed to electronic payment, the date on which City has posted the electronic payment to Contractor.

(b) No additional charge or interest shall accrue against City in the event City does not make payment within any time specified by Contractor.

3.3.7 Reserved. (LBE Payment and Utilization Tracking System)

3.3.8 Payment of Compensation.

(a) The City utilizes the Paymode-X[®] service offered by Bank of America Merrill Lynch to pay City contractors. Contractor must sign up to receive electronic payments to be paid under this Agreement. To sign up for electronic payments, visit http://portal.paymode.com/city_countyofsanfrancisco.

(b) At the option of the City, Contractor may be required to submit invoices directly in the City's financial and procurement system (PeopleSoft) via eSettlement. Refer to <https://sfcitypartner.sfgov.org/pages/training.aspx> for more information on eSettlement. For access to PeopleSoft eSettlement, submit a request through sfemployeeportalsupport@sfgov.org.

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 less 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,” Task Orders, and any work that is ancillary to or otherwise necessary to perform the Services. The Scope of Services and the Client Service Instructions shall be read together as a unified statement and description of the Services; the Client Services Instructions describe in greater detail the Services Contractor shall perform, claims processing and management requirements, notice requirements and communications protocols, and the Deliverables Contractor shall provide. The Scope of Services described in Appendix A, the

Client Service Instructions, and any Task Orders shall not modify any requirement stated in the Term and Conditions or other parts of the Agreement (see Section 4.1.4, below).

4.1.2 Changes to Client Service Instructions . The DHR may in writing modify the Client Service Instructions for its claims by providing Contractor written notice of the change and amended Client Service Instructions. Contractor shall implement the changes to the 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 amend the terms and conditions of the Agreement in any manner that would modify the allocation of the costs or risks of the Program between the City and Contractor.

4.1.3 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 DHR that requests the services. (See also Appendix A, Article 9.)

4.1.4 Limitations of Client Service Instructions and Task Orders. Officers and employees of the City are not authorized to request and the City is not required to reimburse Contractor for Services that Contractor performs that are outside those described in the Scope of Services, Client Service Instructions (and accepted changes to those Client Service Instructions to which Contractor has not objected), and issued Task Orders. Changes to compensation (that are not stated in Appendix B), contract term, indemnity, liability or other risk factors shall be memorialized in a formal contract amendment, as provided in Section 11.5 (Modification of this Agreement).

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 use only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor's authorized subcontractors) to perform the Services. Contractor will 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.

4.3.1 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.

4.3.2 City's execution of this Agreement constitutes its approval of the subcontractors listed below.

- (a) **Nurse Triage Services:** InterMed Cost Containment Services
InterMed Contact: Christina Dellosa cdellosa@intermedccs.com ,
1-626- 318- 9222
- (b) **Nurse Triage After Hours/Overflow Coverage:** The Kingtree Group
Kingtree Group Contact: Christina Dellosa
cdellosa@intermedccs.com , 1-626- 318- 9222
- (c) **Medical Provider Network Services:** InterMed Cost Containment Services
InterMed Contact: Christina Dellosa cdellosa@intermedccs.com ,
1-626- 318- 9222
- (d) **Loss Prevention and Safety Services:** Loss Prevention Specialists (LPS)
LPS Services Contact: Pam White, pam@lps-safety.com, 1-951-
229-4862
- (e) **Pharmacy Benefit Management Plan Services:** Optum
Optum: Jill Bisaccia, Director, Account Management, 1-714-393-
0097, jill.bisaccia@optum.com

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

4.4.1 Independent Contractor

(a) For the purposes of this Section 4.4, "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 which can be applied as a credit against such liability). A determination of employment status pursuant to this Section 4.4 shall be solely limited to 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. Neither this Agreement, nor any portion of the Services, nor any other duties or obligations hereunder, may be directly or indirectly assigned, novated, hypothecated, transferred, or delegated (collectively referred to as an "Assignment") by Contractor, or, where Contractor is a joint venture, a joint venture partner unless first approved by City by written instrument executed and approved in the same manner as this Agreement in accordance with the Administrative Code. The City's approval of any such Assignment is subject to Contractor demonstrating to City's reasonable satisfaction that the proposed transferee is: (a) reputable and capable, financially and otherwise, of performing each of Contractor's obligations under this Agreement and any other documents to be assigned, (b) not forbidden by applicable law from transacting business or entering into contracts with City; and (c) subject to the jurisdiction of the courts of the State of California. A change of ownership or control of Contractor or a sale or transfer of substantially all of the assets of Contractor shall be deemed an Assignment for purposes of this Agreement. Contractor shall immediately notify City about any Assignment. 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 and Defense) 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 \$1,000,000 each accident, injury, or illness.

(b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations.

(c) Commercial Automobile Liability Insurance with limits not less than \$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 \$10,000,000 for 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) Crime (Employee Dishonesty Coverage) or Blank Fidelity Bond 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 \$2,000,000 with any deductible not to exceed \$50,000 and including City as additional obligee or loss payee as its interest may appear.

(f) Technology Errors and Omissions Liability coverage, with limits of \$10,000,000 for each claim and each loss. 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.

(g) Cyber and Privacy Insurance with limits of not less than \$10,000,000 per claim. Contractor shall in good faith seek to acquire additional Cyber and Privacy Insurance, on commercially reasonable terms, with limits of not less than \$20,000,000 per claim, which may be achieved in part by an umbrella policy. Such insurance shall include coverage for 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 Additional Insured Endorsements.

(a) The Commercial General Liability policy must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(b) The Commercial Automobile Liability Insurance policy must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

5.1.3 Waiver of Subrogation Endorsements.

(a) Contractor's and all subcontractors' Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all Services and ancillary work performed by Contractor, its employees, agents and subcontractors.

5.1.4 Primary Insurance Endorsements.

(a) The Commercial General Liability policy shall provide 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 the insurance applies separately to each insured against whom claim is made or suit is brought.

(b) The Commercial Automobile Liability Insurance policy shall provide 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 the insurance applies separately to each insured against whom claim is made or suit is brought.

5.1.5 Other Insurance Requirements.

(a) Thirty days' advance written notice shall be provided to the City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment, for which no less than 10 Days' notice shall be provided to City. 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 contract number and title on the cover page.

(b) 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 Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

(c) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

(d) Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated 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.

(e) Before commencing to perform any Services, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements from 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.

(f) 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 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 Contractor's acts, errors or omissions in connection with the following: (i) injury to or death of a person, including employees of City or Contractor (including claims of Contractor's employees working on City property); (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 entity that has jurisdiction over workers compensation matters and the administration of workers' compensation benefits, 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 the Services and the obligations 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 employees. 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 Contractor's performance under this Agreement shall operate to limit Contractor's Liabilities under this Agreement. Nor shall the amount of insurance coverage operate to limit the extent of such Liabilities. 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 Legal Penalties for Delayed or Denied Benefits Authorization or Payment

(a) Denial/Delay of Benefits. Contractor shall be solely and strictly liable for all payments of statutory and regulatory penalties and fees arising under the California Labor Code and the California Code of Regulations for Contractor's failure to administer the Services in accordance with applicable law and this Agreement, including but not limited to 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 directly or indirectly arising from Contractor's performance of the Agreement.

(b) Denial/Delay of Interest Payments. Contractor shall be solely and strictly 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 and strictly 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 and strictly 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) Reporting. 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 a necessary and material obligation of Contractor. 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 investigation period (as provided in California Labor Code section 5402 and CCR, title 8 §§ 10109, 10113, and other provisions of State law that require a claims administrator to investigate a workers' compensation claim or request for benefits), and such claim or request would not otherwise have been compensable.

(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 Services and ancillary work under this Agreement. Such sanctions, fees, and costs shall include, but are not limited to, sanctions, fees, 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 failure to issue and 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 limits stated in the California Labor Code and any other California Workers' Compensation laws. Contractor shall pay with its own funds any penalties, accrued interest, or fines assessed or otherwise required by law against Contractor or the City by the DWC Audit Unit, or resulting from Contractor's delay in paying within State-mandated time limits.

(l) Contractor Is 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 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 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 listed in this Section 5.2.5 is the sole responsibility of City, 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, fees and allocated

expenses (collectively, “Sanctions”) under the Agreement by informal negotiation prior to pursuing legal remedies. If the parties are unable to resolve a dispute concerning Contractor’s liability for said Sanctions or determination of whether a claim would otherwise have been compensable, the parties shall mediate that dispute through an independent third party who has significant expertise in workers compensation claims management and workers’ compensation law who is selected by the agreement of the parties before either party may seek judicial remedy.

(n) The Contractor’s assumption of responsibility for costs of claims described in this Section 5.2.5 as a remedy for Contractor’s failure to properly perform the Services does not effect or constitute an impermissible penalty against Contractor, but is a fair and reasonable apportionment of risk between the parties and remedy intended to compensate the City the costs it may reasonably incur arising from Contractor’s failure to perform the Services as required by applicable laws or this Agreement.

Article 6 Liability of the Parties

6.1 Liability of City. CITY’S PAYMENT OBLIGATIONS TO CONTRACTOR UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR 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 Contractor to Pay All Taxes. 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 Possessory Interest Taxes. 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 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.

7.3 Withholding. Contractor agrees that it is obligated to pay all amounts due to the City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Contractor further acknowledges and agrees that City may withhold any payments due to Contractor under this Agreement if Contractor is delinquent in the payment of any amount required to be paid to the City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Contractor, without interest, upon Contractor coming back into compliance with its obligations.

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 the 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, the 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 the 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 the City designates to be completed prior to the date of termination specified by the 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 the City has or may acquire an interest.

8.1.3 Within 30 Days after the specified termination date, Contractor shall submit to the 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 the City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% 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 the 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.

(c) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.

(d) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to the City, and any other appropriate credits to the City against the cost of the Services or other work.

8.1.4 Thirty 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 of this Agreement expires or the termination date specified by the City, except for those costs specifically listed 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, the City may deduct: (i) all payments previously made by the City for Services covered by Contractor's final invoice; (ii) any claim which the 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 the 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 |
| 10.11 | Alcohol and Drug-Free Workplace |

11.11 Compliance with Laws
Article 13 Confidential Information and Data Security

(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 is not cured within 10 days after written notice thereof from the City to Contractor. If Contractor defaults a second time in the same manner as a prior default cured by Contractor, the City may in its sole discretion immediately terminate the Agreement for default or grant an additional period not to exceed five days for Contractor to cure the default.

(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. This Section 8.2.2 shall survive termination of this Agreement.

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 to the address set forth in Article 11, and in the manner prescribed 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 and Delivery of Deliverables
- 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
- 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
- Article 13 Confidential Information and Data Security

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. If authorized by the City, Contractor may retain and use copies of Records that do not contain Confidential Information or data concerning individual City employees 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, data sets and data 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 http://www.amlegal.com/codes/client/san-francisco_ca.

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 Consideration of Salary History. Contractor shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (a) asking such applicants about their current or past salary or (b) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Contractor is required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.

10.5 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.

10.6 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. San Francisco Administrative Code 12B.2. Contractor does not as of the date of this Agreement, and will 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 Contractor needs to procure Deliverables or services from a third party where: (1) no subcontractor to provide the Deliverables or services is listed in the Agreement or was listed in Contractor's Proposal submitted in response to the RFP, or (2) no vendor to provide the Deliverables or services has been designated by the City. This requirement applies only to entities that are subcontracted to Contractor to perform those Services that Contractor may otherwise perform itself. Treating physicians, physical therapists, chiropractors and other medical services providers, vocational rehabilitation service providers, and medical-legal evaluators are not subcontractors to Contractors under this Agreement and are exempt from the requirements of this Section 10.7.

10.8 Minimum Compensation Ordinance. If Administrative Code Chapter 12P applies to this contract, Contractor shall pay its covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. Information about and the text of the Chapter 12P is available on the web at <http://sfgov.org/olse/mco>. Contractor is required to comply with all of the applicable provisions of 12P, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Contractor certifies that it complies with Chapter 12P.

10.9 Health Care Accountability Ordinance. If Administrative Code Chapter 12Q applies to this contract, Contractor shall comply with the requirements of Chapter 12Q. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of Chapter 12Q, as well as the Health Commission's minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q. Any Subcontract entered into by Contractor shall require any Subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

10.10 First Source Hiring Program. Contractor must 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 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 its obligations under Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of 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, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (a) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (c) a candidate for that City elective office, or (b) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. 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 10% in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

10.13 Consideration of Criminal History in Hiring and Employment Decisions

10.13.1 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>. 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.

10.13.2 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.

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, 4th Floor
San Francisco, CA 94103
email: Peggy.Sugarman@sfgov.org

City and County of San Francisco
Department of Human Resources
Workers' Compensation Division
Attention: Stanley Ellicott, Manager of Finance & Information Systems
One South Van Ness Avenue, 4th Floor
San Francisco, CA 94103
email: Stanley.Ellicott@sfgov.org

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

Any notice of default must be sent by overnight delivery service or courier, with a signature obtained at delivery. 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 Incorporation of Recitals. The Recitals are incorporated into and made part of this Agreement.

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 (Changes to Client Service Instructions) and Section 11.1 (Notices to Parties), and except by written instrument executed and approved as required by City policies and City law. Contractor shall cooperate with the City to submit a CMD Contract Modification Form to the Director of CMD for 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%.

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 21.36, Contractor may submit to the City a written request for administrative review and documentation of 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 Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the Parties do not mutually 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, 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).

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 (Scope of Services)
- (c) Other Included Appendices
- (d) Client Service Instructions
- (e) Task Orders

11.15 Approval by Counterparts. This Agreement may be executed by verified electronic signature, or 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 Department Specific Terms

12.1 Reserved .

Article 13 Confidential Information and City Data Security

13.1 Protection of Confidential Information and City Data. Contractor understands and agrees, that in its performance of the Services or in contemplation thereof, Contractor will have access to Confidential Information, City Data, or otherwise confidential or proprietary information that is legally protected or otherwise private that the City owns or to which the City has legal access. Said Confidential Information and City Data includes electronic data and files and hard copy documents 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 and report concerning workers compensation claims and industrial injuries. Contractor understands and agrees that, the disclosure of said Confidential Information and City Data to third parties or the public may be damaging to City or its employees. Contractor agrees to hold City Data and Confidential Information received from, or collected on behalf, of the City, in strictest confidence. Contractor shall not use or disclose City Data unless specifically authorized in writing by the City or as provided in this Agreement. Any work using, or sharing or storage of, City Data outside the United States is subject to prior written authorization by the City.

Contractor shall develop safeguards to manage the Confidential Information to ensure this information is used solely for the performance of the Services and to prevent all unauthorized uses. Contractor and any subcontractors or agents shall use Confidential Information only in accordance with all applicable local, state and federal laws restricting the access, use and disclosure of Confidential Information and only as necessary in the performance of this Agreement. Contractor's failure to comply with any requirements of City, State or federal laws restricting access, use and disclosure of Confidential Information shall be deemed a material breach of this Agreement. Contractor's obligations set forth herein shall survive the termination or expiration of this Agreement.

13.2 Obligation of Confidentiality. Contractor agrees to hold all City Data and Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such City Data or Confidential Information to third-parties other than its employees, agents, or authorized subcontractors who have a need to know in connection with the Services or this Agreement or to use such City Data or Confidential Information for any purposes whatsoever other than the performance of the Services and compliance with this Agreement and applicable laws. Contractor agrees to advise and require its respective employees, agents, and subcontractors of their obligations to keep all City Data and Confidential Information confidential.

13.3 Use of City Data and Confidential Information. Contractor and any subcontractors or agents shall use Confidential Information only in accordance with all applicable local, state and federal laws restricting the access, use and disclosure of Confidential Information and only as necessary in the performance of the Services in accordance with this Agreement. Contractor agrees to include all of the terms and conditions regarding Confidential Information contained in this Agreement in all subcontractor or agency contracts providing the Services.

13.4 Ventiv System. The Contractor shall manage all Confidential Information concerning claims in the Ventiv System, including claimant data, claims notes, documents, reports, communications, multimedia materials, audio and video recordings, and other documents that contain City Data or Confidential Information. Email communications containing City Data or Confidential Information, including personal health information, and personally identifying information, shall be encrypted at all times.

13.5 Access to Confidential Information and City Data. Access to City Data and Confidential Information must be strictly controlled and limited to Contractor's staff assigned to the Program on a need-to-know basis only. Contractor is provided a limited non-exclusive license to use Confidential Information and City Data solely for performing the Services and not for Contractor's own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data or Confidential Information, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data by Contractor, subcontractors, or other third parties is prohibited. For purpose

of this requirement, the phrase “unauthorized use” means the data mining or processing of data, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized. Contractor shall require each of its employees that perform the Services or manage the Program to execute a Confidentiality Agreement using the form set out in Appendix C, which is incorporated by reference as though fully set forth herein.

13.6 Ownership of Confidential Information and City Data. The Parties agree that as between them, all rights, including all intellectual property rights, in and to the City Data and any derivative works of the City Data is the exclusive property of the City.

13.7 Statutes and Regulations.

13.7.1 In performing the Services, Contractor shall conform its business practices to and shall comply with all federal and State statutory and regulatory requirements concerning the use, transmission and storage of Confidential Information and other data and information that Contractor generates or to which it has access concerning the medical condition, status, evaluation and treatment of City employees and other Confidential Information. Said statutory requirements include but are not limited to California Civil Code sections 56.20-56.245, 1798.29 and 1798.82, as applicable, and California Labor Code section 3762(c), as further provided below. Contractor agrees that in performance of the Agreement, it will comply with and abide by California Labor Code section 3762(c), which directs:

3762(c) 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 Section 56.05 of the Civil Code , about an employee who has file 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.*
- (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.*

13.7.2 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) or any other applicable law.

13.7.3 Contractor acknowledges and understands that the Office of the City Attorney and City personnel identified by 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. (See Section 14.1.)

13.8 Data Privacy and Information Security Program. Without limiting Contractor's obligation of confidentiality as described herein, Contractor shall establish and maintain a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (i) ensure the security and confidentiality of Confidential Information and City Data; (ii) protect against any anticipated threats or hazards to the security or integrity of the Confidential Information and City Data; (iii) protect against unauthorized disclosure, access to, or use of the City Data; (iv) ensure the proper disposal of Confidential Information and City Data; and, (v) ensure that all of Contractor's employees, agents, and subcontractors, if any, comply with all of the foregoing.

13.9 Data Transmission. Contractor shall ensure that all electronic transmission or exchange of system and application data with City and/or any other parties expressly designated by City shall take place via encrypted secure means (e.g. HTTPS or SFTP or most current industry standard established by NIST). Contractor shall also ensure that all City Data exchanged shall be used expressly and solely for the purposes of performing the Services. City Data shall not be distributed, repurposed or shared across other applications, environments, or business units of Contractor. Contractor shall ensure that no City Data of any kind shall be copied, modified, destroyed, deleted, transmitted, exchanged or otherwise passed to other vendors or interested parties except on a case-by-case basis as specifically agreed to in writing by City. Contractor is prohibited from accessing City Data from outside the continental United States.

13.10 Management of City Data and Confidential Information.

To prevent unauthorized access of City Data and Confidential Information:

13.10.1 Contractor shall at all times provide and maintain up-to-date security with respect to (a) the Services, (b) Contractor's Website, (c) Contractor's physical facilities, (d) Contractor's infrastructure, and (e) Contractor's networks.

13.10.2 Contractor shall provide security for its networks and all Internet connections consistent with industry best practices, and will promptly install all patches, fixes, upgrades, updates and new versions of any security software it employs.

13.10.3 Contractor will maintain appropriate safeguards to restrict access to the Ventiv System and City's Data to those employees, agents or service providers of Contractor who need the information to carry out the purposes for which it was disclosed to Contractor.

13.10.4 Contractor's Internet Protocol (IP) Addresses must be verified and added to the City's list of accepted inbound, connecting IP addresses to access the Ventiv System. Contractor shall establish a computer network infrastructure to route all inbound connections to the Ventiv System through approved IP addresses. Individual employee or subcontractor IP Addresses will not be approved, for locations that are not Contractor offices, (for example, the home office location of an employee). Contractor shall limit the quantity of incoming IP addresses to the extent possible. Contractor shall notify the City in writing of necessary changes including the decommissioning of prior approved IP addresses.

13.10.5 All employees or subcontractors of Contractor shall complete and submit an electronic user access and update request form, which the employee's direct supervisor and claims manager shall review and approve in accordance with Contractor's internal management procedures. The City shall review and approve user request forms prior to generating user accounts and credentials. Contractor's employees or subcontractors may be required to complete training on the Ventiv System prior to receipt of user access privileges. Contractor shall notify the City of employee changes that require permission changes through the user access and update request form. Contractor shall participate in ongoing surveillance of user accounts by periodically reviewing user account lists and reports to ensure permissions are accurate.

13.10.6 Contractor shall establish policies and implement anti-malware defenses, including installing and maintaining anti-virus and malware software on all computers used in the performance of the Services.

13.10.7 Contractor shall develop an ongoing cyber security education program to annually train employees and subcontractors on best practices and strategies to enhance cyber security preparedness.

13.10.8 Contractor shall establish an incident response program to alert the City of data breaches and security events and regularly test adopted incident management plans.

13.11 Cooperation to Prevent Disclosure of Confidential Information. Contractor shall use its best efforts to assist the City in identifying and preventing any unauthorized use or disclosure of any City Data and Confidential Information. Without limiting the foregoing, Contractor shall advise the City immediately in the event Contractor learns or has reason to believe that any person who has had access to City Data or Confidential Information has violated or intends to violate the terms of this Agreement, and Contractor will cooperate with the City in seeking injunctive or other equitable relief against any such person.

13.12 Remedies for Breach of Obligation of Confidentiality. Contractor acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the City, which damage may be inadequately compensable in the form of monetary damages. Accordingly, City may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available, to

include, at the sole election of City, the immediate termination of this Agreement, without liability to City.

13.13 City's Right to Terminate for Deficiencies. City reserves the right, at its sole election, to immediately terminate this Agreement, in whole or part, without limitation and without liability, if City reasonably determines that Contractor fails or has failed to meet its obligations under this Article 13. Contractor's failure to comply with any requirements of City, State or federal laws restricting access, use and disclosure of Confidential Information shall be deemed a material breach of this Agreement, for which City may terminate the Agreement. In addition to termination or any other remedies set forth in this Agreement or available in equity or law, the City may bring a false claim action against Contractor pursuant to the City's Administrative Code, or debar Contractor.

Article 14 Litigation and Communications with City Attorney.

14.1 Litigation by the City Attorney Contractor understands and agrees that, in the performance of the Services or in contemplation thereof, Contractor shall communicate and otherwise interact with the City Attorney's Office and may have access to privileged communications and/or private and/or Confidential Information which may be subject to, among other protections, the attorney-client privilege and/or attorney work-product privilege. Contractor shall not disclose such information without the express written authorization and consent of the City Attorney's Office. 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's Office, Contractor shall be liable for any and all resulting damages and shall defend and indemnify the City to the fullest extent of the law from any claims arising from Contractor's unauthorized disclosure of privileged and confidential communication and materials, and Confidential Information.

14.2 Litigation Holds and Subpoenas

14.2.1 Litigation Holds. Contractor shall retain and preserve City Data in accordance with the City's instruction and requests, including without limitation any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

14.2.2 Subpoenas and Notification. Contractor shall immediately notify the City Attorney upon receipt of any subpoenas, service of process, litigation holds, discovery requests and other legal requests ("Legal Requests") (other than routine requests for Confidential Information from parties to a matter currently before the WCAB) for City Data, and in no event later than 24 hours after it receives the request. Contractor shall not respond to Legal Requests (other than routine requests for Confidential Information from parties to a matter currently before the WCAB) related to City without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement. Contractor shall

retain and preserve City Data in accordance with the City's instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

Article 15 MacBride Principles - Northern Ireland

15.1 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 16 COVID Contractor Vaccination Policy

16.1 Contractor acknowledges that it has read the requirements of the 38th Supplement to Mayoral Proclamation Declaring the Existence of a Local Emergency (Emergency Declaration), dated February 25, 2020, and the Contractor Vaccination Policy for City Contractors issued by the City Administrator (Contractor Vaccination Policy), as those documents may be amended from time to time. A copy of the Contractor Vaccination Policy can be found at: <https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors> .

16.2 A Contract subject to the Emergency Declaration is an agreement between the City and any other entity or individual and any subcontract under such agreement, where Covered Employees of the Contractor or Subcontractor work in-person with City employees in connection with the work or services performed under the agreement at a City owned, leased, or controlled facility. Such agreements include, but are not limited to, professional services contracts, general services contracts, public works contracts, and grants. This Contract includes such agreements currently in place or entered into during the term of the Emergency Declaration. This Contract does not include an agreement with a state or federal governmental entity or agreements that do not involve the City paying or receiving funds.

16.3 In accordance with the Emergency Declaration, Contractor agrees that:

16.3.1 Contractor has read the Contractor Vaccination Policy pertaining to the obligations of City;

16.3.2 Where applicable, Contractor shall ensure it complies with the requirements of the Contractor Vaccination Policy pertaining to Covered Employees, as they are defined under the Emergency Declaration and the Contractor Vaccination Policy, and ensure such Covered Employees are fully vaccinated for COVID-19 or obtain an exemption based on medical or religious grounds; and

16.3.3 If Contractor grants Covered Employees an exemption based on medical or religious grounds, Contractor will promptly notify City by completing and submitting the

Covered Employees Granted Exemptions Form (“Exemptions Form”), which can be found at <https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors> (navigate to “Exemptions” to download the form).

Article 17 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

Signatures on following page.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day first mentioned above.

CITY	CONTRACTOR
<p>Recommended by:</p> <hr/> <p>Carol Isen Human Resources Director Department of Human Resources</p> <p>Approved as to Form:</p> <p>David Chiu City Attorney</p> <p>By: _____ Matthew K. Yan Deputy City Attorney</p> <p>Approved: Sailaja Kurella Director of the Office of Contract Administration, and Purchaser</p> <p>By: _____</p>	<p>Intercare Holdings Insurance Services, Inc.</p> <hr/> <p>Agnes Hoerberling Chief Executive Officer</p> <p>City Supplier Number: 0000018253</p>

n:\ptc\as2022\1000469\01596348.docx

Appendix A Scope of Services

1. DESCRIPTION OF SERVICES

1.1. Included 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 of this Appendix A. The Services include but are not limited to:

- a.** Preparing and processing new claims intake, including claim setup and assignment per the Client Service Instructions, by any source including the Nurse Triage Hotline and the CityTestSF (which reports COVID-19 positive test results for City Employees to DHR).
- b.** Conducting initial and subsequent claims investigations to determine compensability.
- c.** Estimating claims value, calculating required reserves, issuing benefit and service payments, and pursuing off-sets and recoveries.
- d.** Managing medical treatment and disability duration using the Official Disability Guidelines or similar model embedded in the Ventiv's Claims Enterprise system (Ventiv System) (or other predictive modeling tools approved by DHR (as applicable) to determine optimal duration of estimated disability based on diagnoses and other co-morbid factors of the claim; and following up with treating physicians as appropriate.
- e.** Using medical cost containment tools, including referrals to medical case management, utilization review, peer review, special bill review, triage and telemedicine services, and pharmacy benefit network programs.
- f.** Initiation of subrogation and claims investigations related to subrogation.
- g.** Preparing and submitting required reports and data to the State of California, regulatory bodies, and other entities as directed by the City.
- h.** Negotiating and settling claims (within limits approved by the City).
- i.** Providing litigation support, including but not limited to attendance at Workers' Compensation Appeals Board hearings, as directed by the City Attorney's Office.
- j.** Coordinating medical treatment, diagnostics, medical exams, and rehabilitation services.
- k.** Claims data administration, maintenance and reporting to City departments and officers and to State and federal agencies.
- l.** Identification and investigation of potential workers' compensation fraud with appropriate referral to the City's contracted fraud investigation provider and District Attorney's Office.
- m.** Identifying, reporting, and processing of paperwork related to Supplemental Job Displacement Benefit.

- n. Appropriate and timely reporting to Medicare per U.S. Centers for Medicare & Medicaid Services (CMS) requirements.
- o. Administration of and support for the City's Medical Provider Network (CCSF MPN), including maintaining the MPN website, providing support for maintaining the network consistent with regulatory requirements including preparing and filing reapprovals and modifications when necessary, working with the City's Medical Provider Network committee to review applications and recommend the addition or termination of providers from the network, geocoding and other services required by the state, maintaining the Roster of Treating Physicians and Participating providers, maintaining the physician look-up tool that allows employees to select the appropriate physician, and medical access assistant support when needed (generally after normal business hours as requested by the City).
- p. Administration and support for the City's Physician pre-designation process and program as required by the California Labor Code and California Code of Regulations. This includes, but not limited to, maintaining a bank of filed employee physician pre-designation forms, managing inquiries by claims staff, and providing copies of pre-designation forms upon request.
- q. Proactively collaborating with the City and its management teams to develop new risk management strategies and interventions to improve outcomes, reduce costs, and enhance services to injured employees.
- r. If applicable, support and manage claims according to any existing Alternate Dispute Resolution (ADR) process between the City and applicable Labor Organization or Union pursuant to California Labor Code Section 3201.7.
- s. Using available resources to support DHR in identifying and investigating all forms of workers compensation fraud, including claimant fraud, medical provider billing inconsistencies, referring these for investigation to City-approved investigators, and submitting potential fraud referrals (FD-1s) to the California Department of Insurance.
- t. Providing DHR employees and supervisors with access to and use of the DHR's knowledge-based platform, currently Slite, for information on updated policies, procedures and resources available to support claims handling.

Contractor shall perform the Services described in this Agreement and 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 Contractor to perform additional work by issuing Task Orders, as provided in Article 9 of this Appendix A, and Section 4.1.3 of this Agreement.

1.2. Program Purpose and Objectives

The purpose and objectives to be achieved by Contractor in performance of the Services are to support DHR in the management, handling, and resolution of workers' compensation claims as required under the California Labor Code by:

- a. Timely new claim setup, 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. Issuance of all required benefit and service payments in compliance with City financial policies and procedures.
- d. Identification of potentially fraudulent claims or fraudulent medical trends that materially affect claims, and notification to the City of those claims.
- e. Cooperative assistance and litigation support to the City Attorney’s Office in all litigated Claims.
- f. Demonstrable medical and legal cost containment and claim resolution performance;
- g. Improvements in claims management and resolution efficiency through the application of technology and sound claims management and business practices.
- h. Ongoing recommendations for improvements in workers’ compensation claims management including assessment of preventable injuries based on claim frequency and severity.
- i. Complete data analysis including monthly reporting in Excel, PowerPoint and other formats as directed by the City.
- j. Supporting the City in implementation and claims administration pursuant to any applicable ADR program and/or agreement entered in or previously agreed upon between the City and the applicable Labor Organization or Union pursuant to California Labor Code 3201.7.

1.3. Assigned Departments

Contractor shall provide the Services for worker’s compensation claims brought by employees of the following Assigned Departments.

Department Name
City Attorney’s Office
Department of Public Health
Human Resources Department
Department of Public Works
Department of Streets and Sanitation (formerly a component of the Department of Public Works)

DHR 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 performance of the Services shall be coordinated through the DHR Liaisons, who shall have the authority to direct Contractor as to all matters concerning the Services and the resulting Agreements. DHR's Liaison is the Director of DHR's Workers' Compensation Division or their designee. DHR's Liaison for purposes of contract administration shall be DHR's Workers' Compensation Deputy Director of Finance and Information Technology.

1.5. Program Oversight Requirements

Contractor shall provide a Plan setting out the resources it will assign and management structure it will use to the perform the Services. The Plan shall include or address the following:

- a. Description of Services and Deliverables, Program organizational structure describing Contractor personnel's roles and responsibilities, and a timeline illustrating Deliverable due dates and Program tasks by start and finish dates.
- b. "Kick-off" meeting with the DHR/SFMTA staff. Prior to the meeting, Contractor shall provide a draft agenda and draft Program plan for DHR/SFMTA review and input. Contractor shall develop the final agenda and other materials as required to ensure the following meeting objectives of the Kick-off meeting are met:
 - 1) Confirmation of the Program goals, tasks, deliverables, timeline, and roles and responsibilities of Program participants (summarized in the Program plan) meet the requirements of this Agreement.
 - 2) Protocol for Program communications.
 - 3) Identification of City resources that Contractor may need , including data and assistance in obtaining information.

1.6. Responsibility for Claims

Contractor shall assume responsibility for managing existing claims (that is, claims initiated prior to the execution of this Agreement) from Assigned Departments and claims initiated during the term of this Agreement.

2. 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 Services (Appendix A) and the DHR Client Service Instructions, as amended or updated during the term of the Agreement (Appendix E to this Agreement). Contractor may use its own Claims Manual as guidance to Claims Supervisors and Claims Examiners of 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 or industry best practices that may conflict with any provision of this Agreement. Where Contractor's Claims Manual differs from the requirements and procedures described in this Agreement, the Agreement shall control.

2.2. Staffing Organization and Performance

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

- a. Provide a dedicated unit to manage the City's workers' compensation claims with separate Claims Examiners and supervisors dedicated solely to DHR claims, respectively.
- b. Provide an experienced, dedicated account manager (Program Account Manager) to provide oversight to the management of DHR claims. The Program Account Manager must have at least five years of experience managing third party workers' compensation programs, including a minimum of two years' experience with public agencies.
- c. Ensure adequate new claim intake resources are available for timely intake and set up of new losses to ensure compliance with mandatory timeframes and potential exposures. This includes accounting for changes and updates in claim and claims exposure volume due to illness exposure or outbreak, and ensuring the City's obligations as an employer are met.
- d. Key claims personnel assigned to the Services shall have the following minimum experience levels:
 - 1) **Claims Manager** must have at least three years of experience managing claims for public employers under the California Labor Code, certification in accordance with the training requirements of the Department of Insurance, and a valid Self-Insurance Plan (SIP) Administrator Certificate from the Office of Self-Insurance Plans, California Department of Industrial Relations.
 - 2) **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, certification in accordance with the training requirements of the California Department of Insurance, and a valid Self-Insurance Plan (SIP) Administrator Certificate from the Office of Self-Insurance Plans, California Department of Industrial Relations.
- e. The following experience levels are recommended for other claims personnel:
 - 1) **Claims Examiners** possessing at least three years of experience in adjusting indemnity claims under the California Labor Code and certification in accordance with the training requirements of the California Department of Insurance.
 - 2) **Claims Assistants** assigned to provide support to claim examiners possessing at least one year of experience as claims assistants in the California workers' compensation system.
 - 3) **Training Plan**. Should Contractor not have staff or candidates that meet the above recommended experience levels, Contractor shall submit a detailed plan for overseeing the candidate's work and training plan to get the candidate to the sufficient level of expertise. This training and monitoring plan shall be submitted to Director of DHR's Workers' Compensation Division (or his/her designee).

- f. At all times provide sufficient personnel to perform the Services, irrespective of labor strikes, unrest, or planned and unplanned absences.
- g. Maintain an average caseload of open, active indemnity claims for each Claims Examiner of no greater than 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 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 the Calculation of Charges (Appendix B of this Agreement). (See also Section 3.8.)
- h. Provide direct Claims Supervisors at a ratio of one Claims Supervisor to no more than five Claims Examiners.
- i. Provide a ratio of support staff not more than five Claims Examiners to one Claims Assistant.
- j. 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.
- k. Ensure that a Claims Examiner is designated to adjust claims identified by the Program Account Manager for special handling, such as confidential claims involving HIV, Hepatitis, or potential conflict of interest cases, or claims presenting other factors of complexity and/or high-liability, as requested by the City.
- l. The City may for any reason direct Contractor to remove (reassign from working on claims) any of its claims or support personnel from the Services and to replace removed personnel with qualified personnel, who shall be subject to the City's approval.

2.3. Performance Standards: Communications and Reporting

Contractor shall:

- a. Respond to phone or email 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. Contractor may be required to be on-site for scheduled meetings or trainings.
- 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 claim review with specified City Departments to review claims identified by the City, when requested.
- 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 above specified thresholds by reserve type, or in aggregate).
 - 2) Death claims.
 - 3) New claim volume and closures, including closure ratios by Claims Examiner.
 - 4) 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).
 - 5) Claims delayed in quarter.
 - 6) Claims denied in quarter.
 - 7) Caseload staffing and caseload assignments.
 - 8) Contract compliance and performance metrics in meeting Program objectives, including reduction of the City's workers' compensation costs, lost days, and number of claims filed.
 - 9) Statistical information, analyses and recommendations pertaining to proposed legislation or rules and regulations that may affect the City's workers' compensation Program and costs.
 - 10) Monthly reports that will include data on loss control/statistical analysis, payments, recoveries and cost allocation by City departments.
 - 11) 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 as directed by the City to ensure effective communication. This includes participation in the City's Medical Provider Network Committee.
- 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 all applicable codes, including but not limited to, the California Labor Code and California Code of Regulations.
- j.** Notify the State of California's Office of Self Insurance Plans of the change of Third Party Administrator, as required by California Code of Regulations, upon initiation, expiration or termination of the Agreement.
- k.** Maintain and provide timely forms and benefit notices as required by applicable Codes.

- l. Provide disability benefit information as requested by the City to departmental payroll personnel, the City Attorney, or other parties as requested by the City.
- m. Promptly report requests for approval of Assault Pay (a form of salary continuation), pursuant to City Charter, to the Director of DHR's Workers' Compensation Division.
- n. Send copies of all DWC notices and Transitional Work letters to the appropriate City Liaison and its Americans with Disabilities Act (ADA) Coordinator, and City payroll department; and to the departmental workers' compensation coordinators for DHR-Assigned Departments. This shall also include Option Letters and permanent modified/alternate work letters as directed by each Program.
- o. 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. Contractor shall accept direction only from the City's authorized representatives or other persons identified in a written notice as authorized by DHR. If Contractor receives direction that it believes to be contrary to the requirements of any applicable Code, the terms and conditions stated in the resulting Agreement, or industry best practices, Contractor shall immediately communicate its objections in writing to the Director of the Department of Human Resources who shall confirm or overrule the directive in writing.
- p. The City will engage Contractor to perform the Services specifically described in the Agreement and other services commonly performed by workers compensation claims administrators in California. Contractor will be responsible for and shall exercise its independent and best judgment in managing the workers compensation claims that the City may assign to it.
- q. 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.

2.4. Records Storage and Maintenance

The Contractor shall maintain all claims records in the City's electronic claims system, the Ventiv System (formerly known as iVOS). The Contractor shall securely store and maintain all paper and electronic documents, files, reports and other records (collectively "Records") for existing claims that it creates or that the City provides to it. Contractor shall maintain accurate notes and records in the Ventiv System including but 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

consistent with State regulatory requirements (including but not limited to Title 8 of the CCR, Article 2, sections 10101 - 10103.2) for the maintenance of claim file contents. All Records created by the 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 of this Appendix, Data Management.)

2.5. Claims Management Software

Contractor shall manage all claims and analysis of claims trends under the Agreement using the Ventiv System provided by the City. Contractor shall use all due diligence to safeguard access to the information in the Ventiv System by following all cybersecurity protocols required by the City to safeguard employee personal and medical information. The system is maintained by DHR.

2.6. New Claim Entry

Contractor shall record, date-stamp and process claims data and complete all other new claim entry tasks within twenty-four 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 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 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).

2.7. 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.

2.8. 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. All delayed claims shall be reviewed with the appropriate Department Liaison prior to issuing a notice of acceptance or denial to the Claimant.

2.9. Claims Diary

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

- a. Upon all initial new claim assignments to claims personnel, supervisors shall provide

adequate direction to staff depending on claim facts.

- b. All new claims shall be initially reviewed for compensability (accept, delay or denial) within 14 days of the City's knowledge of injury/illness.
- c. Delayed claims shall be reviewed for status of discovery, denial or acceptance every 14 days.
- d. Claims in which temporary disability benefits are being paid shall be regularly reviewed using the embedded Official Disability Guidelines in Claims Enterprise. Claims that extend beyond recommended disability duration shall be reviewed no less every 28 days (every other payment).
- e. Medical only claims shall be reviewed not less than every 90 days.
- f. Claims in which permanent disability advances are being paid shall be reviewed not less than every 30 days.
- g. All indemnity claims in which no indemnity is currently being paid shall be reviewed not less than every 90 days.
- h. Future medical claims (claims in which future medical care has been awarded) shall be reviewed not less than every 180 days unless there is a material change in strategy or case outcome which requires more frequent handling.

2.10. 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 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 90 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 months. The POA shall be based upon the facts and complexities of each individual case.

2.11. Claim Cost Estimates

Contractor shall evaluate, maintain and adjust the estimated costs of all anticipated benefits and expenses on each individual case to determine adequate reserves. Contractor shall establish initial reserves within two business days of Contractor's receipt of the claim. Evaluate and adjust reserves within 30 days of receipt of supporting documentation. Reserves shall take into consideration all potential payments and exposure. Contractor shall review all reserves for adequacy 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 by sending the City a claims diary system reserve alert including explanation for the change within two business days of the change.

2.12. Claims Documentation

Contractor shall meet all file content and documentation requirements of the DWC Audit Unit. Contractor shall 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.

2.13. 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. Contractor shall assume financial responsibility for all penalties, interest and/or any fines that arise from delays, negligence or other factors under Contractor's control or responsibility. Contractor will report monthly on all claims in which delays requiring payment of penalties or interest and reimburse the City on a monthly basis.

2.14. Permanent/Stationary and Return to Work Notices

Contractor shall notify City by email 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.

2.15. 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 business days of receipt.

2.16. 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.

2.17. 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.

2.18. 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 that exceed allotted threshold amount(s) as provided by the City must be submitted to the appropriate City Liaison no less than five days prior to any Mandatory Settlement Conference. 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.

2.19. 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, and make concerted efforts to contact primary treating physicians to provide activity restrictions so that temporary transitional work may be located where possible.

2.20. Claims Closeout

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

2.21. Paper Reduction

Contractor shall Comply with City's policy to maximize paperless processing, including: (a) input of all documents into City's Ventiv System; (b) index and assign documents to the proper claim; and (c) store documents in accordance with City guidelines.

2.22. Applicable Authority

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

2.23. Claims Resolution

To facilitate claims resolution, Claims Examiners and interested claimants (who are not represented by legal counsel) will meet, as directed by the City, in person at a location to be determined by the City or meet using a secure virtual platform to discuss benefits, settlement documents and/or any other concerns that the injured worker may have.

3. MEDICAL CLAIMS AND COSTS MANAGEMENT

3.1. Medical Treatment

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's respective Utilization Review Plans mandated by California Labor Code Section 4610, as DHR may amend their respective Plans from time-to-time.
- b. Identify claims appropriate for medical treatment utilization review, and medical case management.
- c. Identify claims for potential fraud investigation.
- d. Identify recovery opportunities, such as subrogation and apportionment.
- e. Minimize penalties for late payment or approval of benefits and medical treatment.
- f. Implement pharmacy benefit management services.

3.2. Medical Provider Network (MPN)

- 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 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 California Labor Code Section 4616 et. seq. and applicable case law.
- b. Contractor shall include the City's MPN Administrator listings of MPN providers on 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) hosting the City's MPN website and database on the Contractor's website for the City; and 3) participating in the City's MPN Review Committee, 3) providing geocoding and regular updates to the City's MPN Network listing to ensure easy identification of treating physicians and specialists, and 4) reporting to the City's MPN administrator service providers who are not complying with the requirements set forth in the City's MPN's Memorandum of Understanding, and 5) preparation of Modifications or Renewals as may be required to maintain the continuity of the network services. The Contractor shall manage medical treatment for all Claimants within the scope of the MPN as required by MPN regulations. Contractor shall immediately inform the City of any medical services providers that Contractor discovers are not complying with the requirements of the City's MPN Network MOU.

- d. Manage all claims in accordance with all City 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. Nurse Triage Services shall also be available for City employee related questions on medical issues or concerns connected to any public health pandemic or public health medical issue.

- a. Contractor shall maintain a telephone hotline staffed with qualified nurses who will be available 24 hours per day, 7 days per week, to respond to employee or employer reports of injury, occupational health questions including questions relating to COVID-19 illness, exposure, and vaccines.
- b. Contractor will provide stickers, business cards, posters, 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 may 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 and/or designated occupational clinic.
 - 9) Coordinate referral to MPN physician and/or designated occupational clinic, if treatment is necessary.
 - 10) Provide initial return to work coaching.
 - 11) Complete and distribute injury report to appropriate City Liaison.
 - 12) Triage nurse, when not conducting new claim intake duties, shall be available to City 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. On an as-needed basis or as required by the City, 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 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 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 California Labor Code Section 5307.11 and approved by the City.

3.5. Medical Case Management

a. **Approved Vendors.** 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 when indicated for catastrophic injuries or other complex cases as determined by the City, and as described in the Client Service Instructions.

3.6. Pharmacy Benefit Management Program

- a. **Program Structure.** Contractor shall implement and manage a Pharmacy Benefit Management Program (Pharmacy Program) through Optum/Helios, the current provider, or other City-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 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 cost savings to the City.
- c. **Pharmacy Program Protocols.** Contractor shall within 30 days of the Effective Date of the 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.
- 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**. The PBM shall no less often than monthly submit to Contractor and the City a written report addressing the following issues:
 - a) Retail report of all Opioids prescribed by claim.
 - b) Date of prescription.
 - c) Disposition of prescription.
 - d) Action taken through clinical oversight or communications to prescribing physicians.
- 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 ergonomic evaluations or workstation adjustments to vendors approved by the City and communicate with City Liaisons on the need for equipment necessary to accommodate an employee's workplace restrictions consistent with City policy.

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, said fee adjustment shall be calculated using the rates set out in the Calculation of Charges (Appendix B of this Agreement).
- 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. 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 (AOE/COE), 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 complete that initial three-point contact and follow-up determine the following:

- a. Confirm the facts of the injury are consistent with how the injury was reported.
- b. Confirm the injured worker's disability status with the treating physician (prior to authorizing any indemnity payment).
- c. 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 delay compensability and 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 or concurrent 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. Contractor will refer only to outside investigators approved by the City if additional investigation to determine AOE/COE is necessary, consistent with Client Service Instructions.

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 if the claims system fails to provide confirmation, 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

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. Claims in which temporary disability benefits are being paid shall be regularly reviewed using the embedded Official Disability Guidelines in Claims Enterprise. Claims that extend beyond recommended disability duration shall be reviewed no less every 28 days (every other payment).

4.8. Sub Rosa Surveillance

Where the existence or extent of disability is in question Contractor may refer a claim to an investigator for sub rosa surveillance/activity check when approved in advance by the appropriate Liaison.

5. 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. CHECK PRINTING, FINANCIAL PROTOCOLS AND BENEFIT PAYMENTS

6.1. Check Printing

Contractor shall subcontract check printing and benefit payment services, as described below, for all workers' compensation benefit payments not subject to electronic fund disbursement and non-medical provider payments ("Payment Vendor"). Contractor shall ensure the printing of medical provider checks and all required remittance information as set forth in the California Division of Workers' Compensation Medical Billing and Payment Guide. Checks shall be drawn against the three Accounts described below and promptly mailed to payees. Contractor shall warrant that its subcontractor will assume responsibility for the timely printing and mailing of checks and reimburse the City for any delay that results in self-imposed penalties for the delayed printing or mailing of checks.

a. Check Stock

- 1) Contractor will issue checks drawn on three Accounts only on DHR-approved check stock. Contractor and/or its subcontractor 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: heat sensitive inks, void pantograph background, microprinting, verbiage of security features, watermark security features, and terminology for security features.

- 2) 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
Workers' Compensation Program
6020 West Oaks Blvd Ste 100
Rocklin, CA 95765

- 3) Checks used to draw on DHR's 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

- 4) All checks shall identify the bank as follows:

US Bank
621 Capital Mall, Suite 110
Sacramento, CA 95814-4582

b. Signature Authority

All checks issued for payment against the Accounts shall include an authorized signature image of the Director of DHR's Workers' Compensation Division whose name appears on the US Bank Signature Authorization card(s).

6.2. Banking

a. Bank Accounts

- 1) The City has established a bank account ("TPA Account") with US Bank from which Contractor shall issue payment of workers' compensation indemnity benefits and payments to workers' compensation vendors. Additionally, the City has established one checking account with US Bank from which its self-administered program issues benefit payments that shall be supported by Contractor's check printing and benefit payment services. If DHR and/or the SFMTA change banks or otherwise modify banking services or arrangements, DHR or the SMFTA will provide Contractor not less than 30 days' notice
- 2) The contact person at DHR to address inquiries or exceptions on or related to the Accounts is:

Stanley Ellicott, Manager of Finance and Information Systems
Department of Human Resources, Workers' Compensation Division
One South Van Ness Avenue, 4th Floor
San Francisco, CA 94103
Telephone Number: 415-701-5833
Email Address: Stanley.ellicott@sfgov.org

- 3) The City shall bear the cost of all banking service fees and charges for the bank account.

b. Purpose of Bank Account(s)

- 1) The sole purpose of the TPA account 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. Contractor shall not draw funds or issue checks from the Bank Accounts for any purpose other than that described in this Appendix A.
- 2) Contractor shall not be paid for its services from the Accounts but shall bill the City directly for its services.

6.3. Financial Protocols

a. Payment Exceptions and Accounting in Claims Enterprise

Stop payment, void check, ACH reversal, paper transaction, and other general accounting entries in the Claims Enterprise system shall be performed by DHR staff, following the timely and proper documentation of exceptions by Contractor to the City, in compliance with financial policies and procedures that are updated periodically.

b. Replacement Checks

- 1) Contractor shall not issue replacement checks (for checks to claimants or vendors claiming that their check is lost, stolen, misplaced or not received) unless and until:
 - a) Contractor has received a signed 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 DHR 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 DHR that the request has been processed with US Bank and that a replacement check may be issued.

c. Positive Pay Exceptions

Daily review of positive pay and payee positive pay exceptions on all issued checks shall be conducted by the City on each bank account. Contractor shall promptly respond to and provide additional information as requested by DHR in making decisions to pay or return check exceptions.

d. Bank Account Reconciliation

Reconciliation of bank accounts shall be handled by the City. The Department of Human Resources shall reconcile the TPA Account, and the SFMTA shall reconcile the SFMTA Account.

e. Overpayments, Refund Checks

Contractor shall document, report to the City, and request reimbursement for all overpayments issued to claimants and vendors within two business days of discovering the overpayment. Contractor shall request all reimbursements for overpayments be made payable to the “City and County of San Francisco” for all payments issued under the TPA bank account. Contractor shall coordinate with the City on all recovery efforts if recoupment of overpayments cannot be completed within 30 days.

f. Handling of Cash Receipts Payable to the City

- 1) Contractor shall coordinate the preparation of check receipt documentation and transmit original checks and supporting documentation to the City as follows:

Carmen Fong, Senior Management Assistant
Department of Human Resources
One South Van Ness Ave., 4th Floor
San Francisco, CA 94103
Phone: (415) 701-5834
carmen.fong@sfgov.org

- 2) The City shall be responsible for processing all cash receipts, including depositing of checks to City maintained Bank Accounts and posting of refunds to claims within Claims Enterprise. Contractor shall request all payments, reimbursements, credits or other compensation be made payable to the “City and County of San Francisco” for all claims or payments issued under the TPA Account.

g. 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 in accordance with Handling of Cash Receipts Payable to the City for deposit and must be accompanied by documentation describing the type of payment, the claim to be credited, and the allocation of the recovery to the appropriate reserve categories. Contractor shall coordinate with the City Attorney’s Office.

h. Electronic Payment Program

The City has established an electronic payment program with US Bank to disburse claimant and non-medical vendor payments through automated clearinghouse processes, commonly known as direct deposit or electronic funds transfer “EFT”. Contractor shall enroll new claims in electronic deposit by configuring the claimant’s payment preference as “EFT” in the Claims Enterprise application. Contractor shall communicate with claimants on opting out of electronic payments and processing payment preference forms in accordance with procedures adopted and periodically

updated by DHR. In the event that electronic payment exceptions occur, Contractor shall confer with DHR to investigate and resolve bank accounting discrepancies.

i. Audits

DHR, and/or its subcontracted auditors may perform random audits of workers' compensation payments for compliance with financial policies and procedures. Contractor agrees and warrants that it will fully cooperate in any such audit of its payments and payment practices under this Agreement. Audits may also include claim financial review services for determining or otherwise benchmarking the accuracy, timeliness, and general compliance with policies and procedures set forth by DHR for performance management.

6.4. Benefit Payments

a. Indemnity Benefits Payments

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

b. Payments to Vendors

- 1) DHR will provide Contractor access to and authority to approve payments against the TPA Account through the Ventiv System for payments to vendors providing approved services in connection with workers' compensation claims administered by Contractor.
- 2) In connection with payment processing services provided under the resulting 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 DHR adjusters. No payment can be issued against any Account unless the City adds the vendor to the system following procedures approved by the DHR Workers' Compensation Division Manager of Finance and Information Systems.
- 3) Upon receipt of a valid and complete request from TPA or DHR staff, the City shall add a vendor to the system and send confirmation to the requester via email within two business days. Additions to the vendor file shall be processed by City personnel who do not have the authority to authorize payments against the TPA Account.
- 4) 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.
- 5) Most City employees receive workers' compensation benefit payment via electronic fund disbursement (ACH) through the City's bank as referenced in this section. Should the City implement ACH payments to medical providers in the future, Contractor will be expected to assist with that transition.

7. 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 and providing information as necessary for the purposes of defending the City.
- 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 sub rosa 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 case. 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 the Ventiv System.
- d.** 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. 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 one business day from the Contractor's receipt of a Declaration of Readiness to Proceed.
- e.** Contractor shall assist the City Attorney in the preparation of litigated cases, negotiation of workers' compensation settlements and subrogation actions by providing all necessary claim information requested by the City Attorney's office, including summaries of benefit payments, investigations, medical history, and other case specifics affecting the claim. 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 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.

- f.** In all cases filed before a Board outside of San Francisco, upon receipt of the application, 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, 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.
- g.** 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.
- h.** Contractor shall provide with every claim referred to the City Attorney, as requested, 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.
- i.** Contractor shall provide the assigned Deputy City Attorney updated claims information immediately upon receipt of information that affects the litigation or claims status. Contractor shall send the City Attorney courtesy copies of all correspondence with the Workers' Compensation Appeals Board and Claimant's counsel.
- j.** No later than 15 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 upon request 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. The assigned Deputy City Attorney shall determine whether the documents should be in hard copy paper format or digital format.

- k. Contractor shall provide to the City Attorney written documentation of settlement authority up to the estimated value of a claim, not less than two business 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, mediation, or arbitration.

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. DATA MANAGEMENT

8.1. Data Management Services

Contractor shall provide data and information management services, including but not limited to database and report configuration 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. MMSEA Reporting: Using the Ventiv System, enter claim data and other required information as required by Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA), in compliance with DHR reporting protocols.
- c. FROI/SROI Reporting: Perform all reporting required by California WCIS regulations and other applicable Codes utilizing the Ventiv System, including but not limited to the following:
 - 1) **First Reports**. First Reports of Injury (FROIs) must be submitted by EDI to WCIS in the Division of Workers' Compensation (DWC) no later than 10 business days after knowledge of the claim.
 - 2) **Subsequent Reports**. Subsequent Reports of Injury (SROIs) shall be submitted within 15 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.
- d. 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.

- e. Support the ongoing development and improvement of the Ventiv System by making proactive recommendations for workflow improvement, automation of tasks, and identification of add-on tools or components to enhance the functionality of the system.

8.2. Integration with Existing Services

The City has existing vendors for related Workers' Compensation services, including investigation services (Section 4), medical bill and utilization review services (Section 5), Ventiv System (Section 2.6), Medicare reporting, disability duration and Predictive Modeling, and check processing services (Section 6). Contractor shall work cooperatively with those City vendors to integrate Contractor's Services with those vendors' business process and reporting protocols, the Ventiv System.

8.3. Claims Information Confidentiality

Contractor shall maintain all claims information and data as Confidential Information to be disclosed only to persons whom the Director of DHR's Workers' Compensation Division have authorized. The directors will provide Contractor a list of persons authorized to access workers' compensation claims information and data.

9. TASK ORDERS FOR AS-NEEDED SERVICES

9.1. As-Needed Services

As provided in Section 4.1.3 of this Agreement, if the City requests, Contractor, or its subcontractors, 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 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. **Staffing for DHR Workers' Compensation Division**. Contractor shall provide DHR with recruiting services for critical positions and temporary claims and support staff for its self-administered program when requested by the City.
- c. **Safety and Loss Control Consulting**. Contractor shall provide safety and loss control services 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, Cal/OSHA regulations compliance, and biohazard handling.

- d. **ISO Claim Search Services.** Contractor shall provide ISO Claim Search Services to the City and for its claim administration to research liability, detect fraud risks, and identify related claims filed by the subject claimant.
- e. **Knowledgebase System Services.** Contractor shall provide an online knowledgebase platform to the City and to Contractor’s employees for efficient access to shared policies, procedures, and resources. This knowledgebase platform shall continue to be hosted by Slite Technologies, an existing City system, or from an alternate technology service approved by the City.
- f. **Audit Services.** Contractor shall provide claim audits, medical provider billing investigation audits, and program management audit and consultation services.
- g. **Claim System Management Add-on Software and Services.** The Contractor shall provide for additional software or consultation with experts in predictive modeling, auditing, fraud detection, reporting, and data analytics as needed.
- h. **Fraud Investigation and Information Gathering.** The Contractor shall provide resources and serve as the City’s Special Investigation Unit (SIU) as directed by the City for complex claimant and medical provider fraud investigation and research as appropriate. Contractor will use its in-house Special Investigations Unit that complies with the Department of Insurance Requirement for insurance carriers and will conduct training sessions for City and Contractor’s staff assigned to the City’s program. Contractor will also provide assistance to the City by reviewing and providing guidance on possible fraud cases. For accepted referrals, Contractor will determine the scope of further investigation and coordinate activities with the adjuster/supervisor. Contractor will prepare and timely submit fraud cases to the Department of Insurance and the local District Attorney.
- i. **Business Intelligence Dashboards:** Contractor shall work with the City to export claims, managed care, bill review, and other data for analytical purposes using Contractor’s Business Intelligence Dashboard to support the City’s program, including a monthly performance scorecard for adjusters and service providers.

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 the Calculation of Charges (Appendix B) of the Agreement with a stated total “amount not to exceed”) or as a negotiated lump-sum, memorialized in a Task Order.

9.3. Contractor Shall Conform Its Services to Changes in Law

Contractor shall at all times keep itself and its personnel assigned to the Program fully informed as to all changes in law that may impact the delivery of the Services, and shall confirm its delivery of the Services to those changes in law. Such changes include but are not limited to changes in the California Labor Code and other statutes, WCAB opinions, and State regulations concerning workers compensation, employment and medical information privacy, and data security. Contractor shall notify the City of such changes where such changes may impact claims management, claims review, workers benefits, and reporting and payment requirements.

10. CITY OBLIGATIONS

10.1. The City 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 City will provide ancillary services and program management as follows:

- a. Conduct claims review with Contractor and review claims management service instructions, strategies and outcomes, as requested.
- b. Provide claims settlement authority above 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. Access to the Ventiv's Claims Management Software utilized by the City as its claims management system.
- e. Medical Bill Review and Medical Services Utilization Review through a contract with a qualified vendor. At present these services are provided by Allied Managed Care.
- F. Investigation Services through a contract with a qualified vendor.

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 cost 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 the 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.

- Arrange medical treatment.
- d.** Perform MPN Access Assistant coverage, services and tracking.
 - 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 three-year extensions (that the City may exercise as options) shall not exceed \$29,357,361 as set out in the table below.

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 includes all Contractor's costs for all the Services including travel, lodging, meals, claims handling costs, salaries, fringe benefits, overhead, profit margins, contract transition charges, retention incentives, and other costs related to performing the Services. DHR will not compensate the Contractor for additional and separate cost reimbursement for Services covered by the Annual Fixed Fee.

3. The Annual Fixed Fees stated in the following table include annual cost increases and shall not be subject to further increase. Amounts for as-needed services shall be stated in a separate agreed Task Order for those specific services, which shall include all costs to be billed for those services. As-Needed Services shall not be billed to claim files, and shall not exceed the amounts for As-Needed Services listed below.

Contract Period	Annual Fixed Fee	Nurse Triage	Check Printing	As Needed Services	Grand Total
Contract Year 1:	2,039,748	Included in Annual Fixed Fee	40,000	775,000	2,854,748
Contract Year 2:	2,100,940	See above	41,200	806,450	2,948,590
Contract Year 3:	2,163,968	See above	42,436	839,255	3,045,659
Contract Year 4 (First Option - Year 1):	2,228,887	See above	43,709	873,474	3,146,070
Contract Year 5 (First Option - Year 2):	2,295,754	See above	45,020	909,171	3,249,945
Contract Year 6 (First Option - Year 3):	2,364,627	See above	46,371	946,414	3,357,412
Contract Year 7 (Second Option - Year 1):	2,435,565	See above	47,762	985,272	3,468,599
Contract Year 8 (Second Option - Year 2):	2,508,632	See above	49,195	1,025,818	3,583,645
Contract Year 9 (Second Option - Year 3):	2,583,891	See above	50,671	1,068,131	3,702,693
Grand Total	20,722,012	--	406,364	8,228,985	29,357,361

As Needed Services									
Service Type	Contract Year 1:	Contract Year 2:	Contract Year 3:	Contract Year 4 (First Option - Year 1):	Contract Year 5 (First Option - Year 2):	Contract Year 6 (First Option - Year 3):	Contract Year 7 (Second Option - Year 1):	Contract Year 8 (Second Option - Year 2):	Contract Year 9 (Second Option - Year 3):
Staff Training	50,000	51,500	53,045	54,636	56,275	57,963	59,702	61,493	63,338
Staffing for DHR Workers' Compensation Division	300,000	315,000	330,750	347,288	364,652	382,885	402,029	422,130	443,237
Safety and Loss Control Consulting	75,000	77,250	79,568	81,955	84,414	86,946	89,554	92,241	95,008
ISO Claim Search Services	60,000	63,000	66,150	69,458	72,931	76,578	80,407	84,427	88,648
Knowledgebase System Services	15,000	15,450	15,914	16,391	16,883	17,389	17,911	18,448	19,001
Audit Services	100,000	103,000	106,090	109,273	112,551	115,928	119,406	122,988	126,678
Claim System Management Add-on Software and Services	50,000	52,500	55,125	57,881	60,775	63,814	67,005	70,355	73,873
Fraud Investigation and Information Gathering	100,000	103,000	106,090	109,273	112,551	115,928	119,406	122,988	126,678
Business Intelligence Dashboards	25,000	25,750	26,523	27,319	28,139	28,983	29,852	30,748	31,670
Annual Not-to-Exceed Budget for As-Needed Services	775,000	806,450	839,255	873,474	909,171	946,414	985,272	1,025,818	1,068,131

B. Department of Human Resources Claims

1. Claims Load Per 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 an average of 135 DHR indemnity claims cases assigned to each claims Examiner. (See Appendix A, section 2.2.g., for more detailed Services staffing requirements.)

Claim Type	Claims Volume
Indemnity - New	440
Medical Only - New	360
Indemnity and Medical-only - Pending	675
Future Medical - Pending	325
TOTAL	1800

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. See Appendix A, section 2.2.g., for more detailed Services staffing requirements.)

Positions	FTE
Claims Manager	0.30
Claims Supervisor	1.50
Indemnity Claims Adjuster	5.00
Future Medical Claims Adjuster	1.00
Medical Only Claims Adjuster	1.00
Claims Assistant	2.50
Admin/General Clerk	1.70

Triage/Case Management Nurse	0.50
Total FTE	13.50

3. 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.

Position	Adjustment
Claims Supervisor	\$194,239
Claims Examiner	\$173,526
FM/MO Examiner	\$152,208
Claims Assistant	\$97,848
Clerical	\$78,880

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. The rates stated below are not subject to further increase.

Position	Contract Year 1	Contract Year 2	Contract Year 3	Contract Year 4	Contract Year 5	Contract Year 6	Contract Year 7	Contract Year 8	Contract Year 9
Claims Manager	\$114.69	\$118.13	\$121.67	\$125.32	\$129.08	\$132.96	\$136.95	\$141.05	\$145.29
Claims Supervisor	\$102.72	\$105.80	\$108.98	\$112.24	\$115.61	\$119.08	\$122.65	\$126.33	\$130.12
Indemnity Claims Adjuster	\$91.77	\$94.52	\$97.36	\$100.28	\$103.29	\$106.39	\$109.58	\$112.87	\$116.25

Future Medical Claims Adjuster	\$80.49	\$82.90	\$85.39	\$87.95	\$90.59	\$93.31	\$96.11	\$98.99	\$101.96
Medical Only Claims Adjuster	\$51.75	\$53.30	\$54.90	\$56.55	\$58.25	\$59.99	\$61.79	\$63.65	\$65.56
Claims Assistant	\$41.72	\$42.97	\$44.26	\$45.59	\$46.96	\$48.36	\$49.82	\$51.31	\$52.85
Admin/General Clerk	\$37.58	\$38.71	\$39.87	\$41.06	\$42.30	\$43.57	\$44.87	\$46.22	\$47.61
Reporting Analyst	\$71.87	\$74.03	\$76.25	\$78.53	\$80.89	\$83.32	\$85.82	\$88.39	\$91.04
Management Consultant	\$129.37	\$133.25	\$137.25	\$141.37	\$145.61	\$149.98	\$154.47	\$159.11	\$163.88
Triage Nurse/TCM Nurse	\$91.04	\$93.77	\$96.58	\$99.48	\$102.47	\$105.54	\$108.71	\$111.97	\$115.33
Safety and Loss Control Specialist	\$150.00	\$154.50	\$159.14	\$163.91	\$168.83	\$173.89	\$179.11	\$184.48	\$190.02

5. 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:

Item	Per Unit Price
Printing (Simplex)	0.05
Duplex Printing	0.035
Inserting	0.05
Manual Pulls	1.00
Minimums Production Run < 500	25.00
Check Stock	0.0243
Explanation of Benefits Stock	0.0122
#10 Envelope Stock	0.0221
Flat Envelope Stock	0.1105

Postage	0.461
Flat Postage	4.775
Postage Residual	0.013
Delivery Service	1.00
Web Image Hosting Pdf	0.01
Postage Residual (Flats)	0.18
#10 Generic Sw Envelopes Sku 30001	0.0221

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 will be involved with work pertaining to workers compensation claims filed by City employees and other confidential matters and you will have access to confidential information concerning City employees medical history, disability history, medical treatment, disability status, income and other personal and confidential information that is protected under State and federal privacy laws. You may also have access to data pertaining to persons or entities represented by the Office of the City Attorney and litigated matters. 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, information concerning any workers compensation claim, City employees' personal information, information included in any claims file, data file, the Ventiv System or other claims management system, or similar 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 agree to adhere to the provisions of California Labor Code section 3762(c), which directs:

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 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.*
- (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, I will not provide to any other City employees, departments, agents and/or representatives access to information in violation of California Labor Code section 3762(c) or any other applicable law.

4. 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:
5. "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..."
6. I agree to forward all requests for the release of information received by me to my immediate supervisor.

7. 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.

8. 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 DHR AND SFMTA ORG CHART

**Andrew Mathews
Program/Claims Manager**

CCSF - DHR		SFMTA			
Christine Bagley Claims Supervisor	Laurie Burnside Claims Supervisor (.50)	Laurie Burnside Claims Supervisor (.50)	Audri Hazelton Claims Supervisor	Lourdes Greaves Claims Supervisor	
Patricia Hockett-Acosta Adjuster III	Sarah Franklin Adjuster III	Alexandra Ralls Adjuster II	Heidi Bender Adjuster III	Aaron Gouveia Adjuster III	
Pamela Brown Adjuster III	Gabrielle Sedivy Adjuster I	Jessica Tvetan Adjuster II	Kristee Smith Adjuster III	Catherine Higuchi Adjuster III	
Jeff Hawkins Adjuster III			Lynn Peterson Adjuster III	Donald Castanon Adjuster III	
TBD Adjuster III			TBD Adjuster III	Kelly Williams Adjuster III	
Edith Mortenson Adjuster I			Kristine Hart Adjuster I		
Claims Assistant Irene Mullings	Claims Assistant Erik Pedersen	Claims Assistant Paulina Simons	Claims Assistant Tim Evans	Claims Assistant Diana Blanutsa	Claims Assistant (.50) TBD
General/Admin Clerk TBD	General/Admin Clerk TBD	General/Admin Clerk TBD	General/Admin Clerk TBD	General/Admin Clerk TBD	

**Appendix E
Client Service Instructions**

SERVICE INSTRUCTION GUIDELINES (Updated 5-1-18)					
Account/Client:	City & County of San Francisco (CCSF)				
Effective Date:	11/1/2022	Check one: <input checked="" type="checkbox"/> Self-Insured			
Expiration Date:	1. 10/31/22 or contract conclusion, whichever is later				
Carrier Name:	N/A				
CONTACTS					
<i>I.</i>					
Contact Name & Title	Company Name & Address	Phone	Fax	Contact Type	
Lupe Perez, CCSF-WCD Claims Supervisor & MPN Administrator	1 South Van Ness Ave., 4 th Floor, S.F., CA 94103	(415) 701- 5875		Client	lupe.perez@sfgov.org
Julian Robinson, WCD Claims Manager	1 South Van Ness Ave., 4 th Floor, S.F., CA 94103	(410) 701- 5887		Client	julian.e.robinson@sfgov.org
Probe SIU	PO Box 418429 Sacramento, CA 95841	(916) 676- 1826		Client	referral@probeinfo.com
Ed Stone, CCSF- WCD Claims Supervisor and SIU Coordinator	1 South Van Ness Ave, 4 th Floor, S.F., CA 94103	(415) 701- 5812		Client	edward.stone@sfgov.org
Peggy Sugarman, WCD Director	1 South Van Ness Ave., 4 th Floor, S.F., CA 94103	(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.

• **CLAIM REPORTING (First Report of Injury):**

Reporting:

Reporting Method:

State Notification:

Intercare to code for FROI &
SROI Submission to State Agency

- Fax
- Email
- Agency.
- Mail

- Client will submit FROI to State

New Claim Reporting:

Fax: 916-781-5700

Fax: 877-362-5050

E-mail: newclaims@intercareins.com

Nurse Triage Program: 1-855-850-2249

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 Claims Enterprise Application (formerly known as iVOS) for location and cause codes

• **COMPENSABILITY:**

1. **Delays:**

Notify client department of claim delay by: phone or email. Notification must be documented in Claims Enterprise Notepad.

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

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. Decisions to accept must be documented in Claims Enterprise Notepad.

Notify client/department of claim acceptance by: phone or email
Please also notify the Injured Worker.

2. **Denials:**

All claim denials, including partial denials, require Supervisor and Intercare Program Manager approval. Approved denial language must be documented in Claims Enterprise Notepad.

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.

Notify client department of claim denial by: phone or email

Please notify client departments prior to claim denial of the decision and rationale. Documentation of notification must be placed in Claims Enterprise Notepad.

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.

• **CLAIMS MANAGEMENT:**

1. Communicate with assigned departmental representatives
2. Communicate with assigned WCD Supervisor and Claims Manager on high exposure claims
3. Audit claims examiner work and report results to assigned WCD Supervisor
4. Meet with the City upon request by WCD or by the client department, with WCD oversight, to review:
 - a. High exposure claims
 - b. Claims delayed in quarter
 - c. Claims denied in quarter
 - d. Caseload staffing and caseload mix
 - e. Penalties paid by TPA, including root causes and corrective action taken.

- f. Closing ratios by individual examiner as of 12/31 and 6/30 of the fiscal year.
 - g. 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.
 - h. Provide statistical information, analyses and recommendations pertaining to proposed legislation or rules and regulations that may affect the City's workers' compensation Program and costs as requested.
 - i. Estimation of claim value and required reserves.
 - j. Request review of approval for Assault (or Battery) Pay (salary continuation) from the WC Director (or designee in case of absence) immediately upon knowledge that there has been a claim for assault and it appears that the employee may be temporarily disabled as a result, consistent with the City's policy for Assault (or Battery) Pay.
5. Meet with the City and physician members of the Medical Provider Network, as indicated or upon request by the City to ensure effective communication.
 6. Prepare and handle correspondence and communication with claimants, medical providers, attorneys and City, State and Federal agencies.
 7. Prepare reports to City, State and Federal agencies in accordance with required deadlines.
 8. 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.
 9. Maintain and provide forms and benefit notices as required by statute.
 10. Provide temporary disability benefit information as required by City payroll personnel.
 11. Ensure that Department Liaison(s) approve, in advance, any and all City department requests made directly to Contractor prior to Contractor performing such requests.
 12. 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
- **FINANCIAL:**

2. Claim Payments:

Notify CCSF WCD of any payment exceeding \$50,000 via e-mail

Email addresses: Stanley Ellicott, stanley.ellicott@sfgov.org and Lupe Perez,

lupe.perez@sfgov.org

3. Wages Statements:

- Obtain wage statements/verification from **Departments and/or Payroll** by
- phone Phone Number: Specific to each Department
- email Email Address: Specific to each Department

4. Allocated Expenses:

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

- Utilization Review
- Nurse Case Management
- Bill Review Fee
- Investigations
- Defense Legal Costs
- Police reports
- Court Reporter Services and Transcripts
- Printing Costs related to Trials & Appeals
- Trial and Hearing Attendance Fees
- Credit Bureau Reports
- Photographs
- Photocopy Services
- Witness fees, testimony, opinions, appraisals, reports surveys & professionals and experts

• **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. Please notify Mark Hennig at 415-641-2605 directly for all DPW ergo evaluation needs/requests.)

• **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 Claims Enterprise 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 Medical Only and 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 department 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 Claims Enterprise file coding shall be completed and reviewed by the Adjuster within seven (7) working days of receipt of the claim. Please see the included Attachment A for required coding fields.
 - 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 Claims Enterprise and notify the DHR Workers’ Compensation Director via email to request review and approval of the issuance of Assault Pay. If, upon emailing the Director, the adjuster receives an out-of-office reply, the adjuster will forward the request to the CCSF Claims Manager for a determination. 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 Claims Enterprise 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:**

Approval needed from Intercare Supervisor prior to referral. This is to be documented in Claims Enterprise Notepad.

Notify department contacts if sending investigator to location to take statements. This includes providing the name and phone number of the investigator(s) on the assignment who will be contacting the department.

Document need for outside investigation in Claims Enterprise along with instructions to the investigator

Use Client Panel (*please see attached list*)

*** Per client, vendor rotation is not required.*

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

Approval needed from Intercare Supervisor. This is to be documented in Claims Enterprise Notepad.

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 surveillance 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.

Document in Claims Enterprise articulable suspicion to justify need for surveillance along with clear instructions to the Investigator.

Use Client Panel

a. Passanisi –<http://passanisi.com/>

b. JH Askins – <http://www.askinsco.com/>

c. PROBE – <http://www.probeinfo.com/>

4. **Other Instructions:**

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

Indexing / ISO

Index all claims

Frequency:

At setup

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 Claims Enterprise. Adjuster to document in notepad review of ISO report and document relevant findings and POA.

5. Subpoena and Copy Service

D. Diann Cohen
Vice President, Client Relations
Macro-Pro, Inc.
Cell: 916-705-1618
Phone: 916-689-6891
Direct Fax: 916-688-3668
Email: diann@macropro.com

Dana Galluppi – Carresi
President
Copy Quest Legal Services, Inc.
Phone (626) 930-1391
Fax: (626) 930- 1395
Email: dgallupi@copyquestinc.com

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, but within the maximum timeframe of 30 days of knowledge or reasonable suspicion of fraud, adjuster is to call Probe and review the issues. Adjuster and Probe will then strategize the next steps in accordance with the CCSF WCD SIU Supervisor. The FD-1 form will be completed by Probe.
- c.** Submit SIU information to Ed Stone, CCSF WC/SIU Supervisor, 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.

7. Pharmacy Benefit Management (PBM)

- a. Optum is the provider for PBM on the program
- b. Please see attached workflow and contact information.

8. Psychiatric Referrals for Medication Management

- a. Pacific Coast Psychiatric Associates (PCPA) physicians will **not** assume the role of Primary Treating Physician, nor provide AOE/COE evaluations, nor work status determinations.
- b. Referrals can be made to the PCPA Intake Coordinator:

Sophie Benjamins
Phone: 925-282-1778
Direct Fax: 415-296-5299
Email: intakes@pcpasf.com

- **SUBROGATION:**

- 2. **Subrogation:**

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

- All automobile accidents
- 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.
- All claims resulting from alleged mechanical defects
- All slip & fall claims off insured or client premises
- All claims resulting from assaults
- All claims involving injury from machinery
- Client approval not required
- Contribution

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

- **LITIGATION MANAGEMENT:**

Litigation Management:

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

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.

3. 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.
4. 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.
5. Adjuster to refer cases to the City Attorney while continuing claims management of these cases.
6. Adjuster to provide litigation support for the City Attorney's efforts.
7. Adjuster to substantiate and refer subrogation cases to the City Attorney.
8. Adjuster to seek legal advice and assistance as early as possible for discussion and resolution of high exposure cases.
9. Upon receipt of DOR if case has not yet been referred.

Any Attorney/Client Privilege is extended to the departments.

The adjuster, upon receipt of the Notice of Representation and/or Application for Adjudication, will immediately update the Claims Enterprise 'Represented' and 'Litigated' fields accordingly, for accurate litigation statistic reporting.

For any disputes between DCA's office and Intercare, notify the CCSF-WCD Claims Supervisor for resolution as appropriate.

10. 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.

• **MANAGED CARE:**

Bill Review:

1. Bill Review Contract with:

Allied Managed Care

2. PPO Network:

Allied Managed Care

MPN (Medical Provider Network):

Participating?

Yes

If yes, name of MPN: City and County of San Francisco MPN #1258

Other – www.talispoint.com/intermed/ccsfmpn

Implementation Date: Original Date: 2/21/07

Utilization review criteria:

Utilization review referrals in accordance with CCSF's UR Guidelines and procedures. This includes adherence to SB 1160, Fast Track program, and adjuster approval within their authority.

Utilization Review:

Vendor Selected:

Allied Managed Care

UR Protocols: Please see attached Fast Track program procedures and 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 only to an approved vendor. The exception to this is for approved inpatient surgical procedures by Allied Managed Care Utilization Review, EK will automatically refer the file to a nurse case manager to handle immediate discharge planning needs following an inpatient hospital stay.

At no time should any vendor or Nurse Case Manager authorize treatment or any services on behalf of CCSF or Intercare.

Preferred vendor for nurse case management: Allied Managed Care, see attached contact information.

- **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 assigned to the claim file within one (1) day.

3. PTP MMI Reports and QME/AME Med/Legal Reports

Timely review and completion of the Medical Legal Analysis Template in Claims Enterprise and discussion with the Supervisor with new POA outlining discussion and plan.

- **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.
- c. To check to see if a Non-MPN provider is properly pre-designated, please refer to the enclosed Policy and Procedure on Pre-designation of Physician

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 may 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 review a QME/AME report within 14 days of receipt 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. However, the adjuster, with supervisor approval, may use private rating for complex or exceptional cases. Supervisor approval of private ratings shall be documented in Claims Enterprise Notepad.

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, including the recommendation of the City Attorney on behalf of the City, and have approval from their Supervisor and the Intercare Program Manager. Rationale and approval should be documented in Claims Enterprise Notepad.

- **RESERVES:**

- 1. Adjuster’s initial reserve review and reserve input must be completed within two (2) working days of receipt of a new claim.
- 2. Ongoing reserve evaluation and adjust reserves within thirty (30) days of receipt of supporting documentation
- 3. Reserves shall be reviewed for adequacy on a regular ninety (90) day diary or upon material change in case facts warranting a reserve adjustment. Examples include receipt of new information and/or adverse case developments.
- 4. State in the claim notes the basis for all initial reserves, reserve revisions, and payments using the appropriate reserve analysis form. Reserve notes should be documented using the “Reserve Note” notepad type.

- **SETTLEMENTS:**

1. <u>Settlement</u>	<u>Phone Number</u>	<u>Email Address</u>
<u>Contact</u>		

Lupe Perez

(415) 701-5874

lupe.perez@sfgov.org

<u>Julian Robinson</u>	<u>(415) 701-5887</u>	<u>julian.e.robinson@sfgov.org</u>
<u>Peggy Sugarman</u>	<u>(415) 701-5848</u>	<u>peggy.sugarman@sfgov.org</u>

2. Settlement Authority:

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

Adjusters are encouraged to pursue Compromise and Release (C&R) settlements as appropriate with a financial cost analysis outlined in the claim notes, in an effort to reduce future claim exposure and liability and potential for increased medical costs over time. This should be reviewed based on the individual case facts. Should the injured employee be Medicare Eligible, a Medicare Set-Aside (MSA) should be pursued and reviewed for feasibility and cost effectiveness – examples for which it may be worth considering a C&R include (but not limited to): if the employer is no longer employed by CCSF, or; if liability for the claim is disputed, or; for employees with no prior claims and who have returned to work.

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.

- a. If a claim involves SIU and has been submitted to SIU, DOI, or 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.
- b. Should there be a scheduled hearing or conference and settlement authority is needed, Intercare shall contact CCSF-WCD for appropriate authority no later than 5 working days prior to the hearing date.
- c. Where there are multiple claims for a single injured worker that, if combined, would exceed \$25,000, CCSF-WCD Claim Supervisor approval is required.
- d. MSA's must be pursued and performed per Statute and analyzed for ultimately cost analysis for settlement purposes.
- e. 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 Claims Enterprise 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 \$150,000.

- f. Settlement authority shall be secured from the CCSF-WCD Claims Supervisor via diary on all settlements in excess of: \$25,000.00.
- g. 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 (5) five working days prior to any hearing or trial.
- h. 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.
- i. Settlement information must be completed in the Litigation Tab in Claims Enterprise for ALL settled claims. Settlement authority template must be completed.
- j. 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.

- **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 3rd 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 one hundred eighty (180) 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.
- i. Notify the City (department contact) by e-mail within forty-eight (48) hours of final settlement.

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.

c. MO to IND CLAIM CONVERSION:

- 1. 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).

Medical Only claims shall be reviewed for closure in 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.

d. 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 (DPH and DPW)

1. HSA employees who are categorized as “Jobs Now” are “loaned” to departments for work assignments, generally DPW but can be DPH also.
2. When an injury occurs, the Adjuster will do the following in these two situations:
3. Modified Duty

Adjuster will work with department contacts regarding accommodation

4. Permanent Restrictions

Please notify HSA Work Comp Coordinator, Brendan Lim at brendan.lim@sfgov.org. HSA handles the permanent restrictions/accommodations for “Jobs Now” employees.

2. CLAIM REVIEWS:

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 or division within a department (such as DPH who requires quarterly review of San Francisco General Hospital (SFGH), Laguna Honda Hospital (LHH), and Non-Hospital claims) 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. The departments shall provide a list of claims for review to Intercare within thirty (30) days from the time the review worksheets are due back to the departments or the claim review itself, whichever is the soonest date.
- c. The Adjuster and/or Supervisor shall provide the CCSF WCD Supervisor with a list of claims to be reviewed within 14 days of the scheduled claim review. The Intercare Supervisor shall also notify the CCSF WCD Supervisor immediately of the scheduled claim review date.
- d. 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.
- e. The Adjuster shall provide follow-up information back to the Department with responses to any unanswered questions from the claim review within fourteen (14) days after the review, or by an agreed-upon date by at the time of the review.
- f. Location of Reviews to be determined when claim review is scheduled

- **IMMEDIATE REPORTING REQUIREMENTS:**

Intercare to report within 24 hours of knowledge to CCSF Claims Manager of claims meeting the following criteria:

1. Claims with the following issues (not including Future Medical claims): Catastrophic/High Exposure, Potentially Confidential, Death, Psychiatric, Sensitive and/or Anything involving Discrimination or Harassment
2. Claims with anticipated large retroactive payments in the current Fiscal Year over \$100,000
3. Claims with PD exposure of 70% or above or anticipated settlements in the current Fiscal Year of over \$100,000

- **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)

- **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

- **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).

- **PROGRAM CHANGES:**

1. Staffing Changes – Intercare 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.

